AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

3–2–93
Vol. 58 No. 39

federal register

Tuesday
March 2, 1993

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

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

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

3-2-93
Vol. 58 No. 39
Pages 11951-12144

federal register

Tuesday
March 2, 1993

Briefings on How To Use the Federal Register
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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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

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

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Presidential Documents

Title 3—

The President

Proclamation 6531 of February 25, 1993

National FFA Organization Awareness Week, 1993

By the President of the United States of America

A Proclamation

America's roots run deep in agriculture. We have long prospered through the twin blessings of our natural resources and the productivity of the American farmer. Agriculture has contributed heavily to the economic and social progress of the United States, making our Nation the world's largest exporter of food products and a generous provider of food aid around the world.

For more than two centuries, our food, agricultural, and natural resource system has been nurtured and sustained by dedicated people committed to providing safe and abundant food and fiber products. About 20 percent of the Nation's work force is engaged in jobs related to agriculture, and annual employment openings in this industry are expected to outpace the supply of trained workers.

The education and training of agricultural workers have, therefore, long been a national priority, leading to the development of a comprehensive system of agricultural education in our public schools. The National Future Farmers of America was founded in 1928 to serve the needs of secondary students preparing for leadership roles in the science, business, and technology of agriculture. Chartered by Congress in 1950, the FFA is an integral part of public instruction in agriculture and today provides premier leadership, personal growth, and career development to its 401,574 members. Local, State, and national activities as well as award programs provide opportunities for students to apply knowledge and skills acquired through agricultural education. FFA members strive to develop agricultural leadership, cooperation, and citizenship.

The National FFA Foundation, which raises funds in support of FFA programs, represents an exemplary partnership between business and education. The National FFA Alumni Association provides support to these young men and women on local, State, and national levels.

The strategic importance of our food, agricultural, and natural resource system will grow during the coming decade. This will require even stronger leaders, more creative scientists, greater international business understanding, and increased sensitivity for consumers and the environment. These skilled professionals will chart the course of U.S. food, agricultural, and natural resources in the 1990s and beyond. The National FFA Organization, by attracting young people to agriculture and preparing them for future careers, contributes greatly to an important sector of the national economy. It is proper that we should honor the accomplishments and achievements of this fine organization.

The Congress, by House Joint Resolution 101, has designated the week of February 21 through February 27, 1993, as "National FFA Organization Awareness Week" and has authorized and requested the President to issue a proclamation calling upon the people of the United States to observe this week with appropriate ceremonies and activities.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the week of February 21 through February 27, 1993, as National FFA Organization Awareness Week. I encourage all Americans in rural, urban, and suburban communities to join in recognizing the achievements and contributions of the young men and women of the National FFA Organization and to observe National FFA Organization Awareness Week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of February, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and seventeenth.

William J. Clinton

[FR Doc. 93-4907
Filed 2-26-93; 3:17 pm]
Billing code 3195-01-M

Rules and Regulations

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 870, 871, 872, and 873

RIN 3206–AE65

Federal Employees' Group Life Insurance Program: Premium Rate Reduction and Open Enrollment Period

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with request for comments.

SUMMARY: The Office of Personnel Management (OPM) has reevaluated the premium rates for Basic life insurance and the three forms of optional coverage on the basis of growth in reserves, improved mortality experience, and changed demographic and economic assumptions. This reevaluation has resulted in a reduction in the premium rates for Basic coverage and for some age categories for Standard, Additional and Family Optional insurance. The reductions will be effective with the first pay period beginning on or after January 1, 1993. (For retirees, any reductions in premium levels will be reflected in their February 1, 1993, annuity payments.) OPM is also amending its regulations to permit an open enrollment period from March 29 through April 30, 1993, during which time employees otherwise eligible to participate in the Federal Employees' Group Life Insurance (FEGLI) Program will have an opportunity to add to their existing coverage or to enroll in the Program if they have previously waived coverage.

DATES: Interim regulations are effective April 1, 1993. Comments must be received on or before April 1, 1993.

ADDRESSES: Written comments may be sent to Andrea S. Minniear, Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, room 4351, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Abby L. Block, (202) 606–0191.

SUPPLEMENTARY INFORMATION: The last reduction in premium levels was on August 1, 1986, and the last open enrollment period was from June 1 through July 1, 1985. Based on our review of the rates and premium experience since 1986, we have found that the premiums for Basic coverage and some age categories of Optional coverages can be further reduced. Since no open enrollment period has been conducted since 1985 and our most recent review indicates that claims experience has more than sustained the new rates introduced in 1986, we believe employees should be given an opportunity to review their insurance needs and, if needed, either add to their coverage or enroll in FEGLI if they have previously waived some or all coverage.

We will not require a positive reenrollment of all FEGLI enrollees. As in 1985, only those employees who wish to change their participation status or their levels of coverage will have to complete an election form. However, we want to emphasize that this election will not be considered a first opportunity to enroll for purposes of meeting the requirements to carry life insurance into retirement. In order to carry these elected coverages (including a higher multiple of Option B) into retirement, they must be in effect for the 5 years of service immediately receding the date of retirement, or for the entire period(s) of service during which they were available (if this period of coverage is less than 5 years). Previous waivers (of Basic) or declinations (of options) will not be cancelled unless the employee submit a new election. Elections filed during the open enrollment period will become effective at the beginning of the first pay period which begins on or after May 30, 1993, and which immediately follows a pay period during which the employee was in a pay and duty status for at least 32 hours. Part-time employees will need to have been in a pay and duty status for one-half of the regularly-scheduled tour of duty indicated on their current SF 50's for newly-elected coverage to become effective. This 1-month minimum waiting period between the date of the election and the effective date of coverage, coupled with the length of time an employee must be in a pay and duty status before coverage can attach, are designed to protect the Program from adverse selection.

Detailed guidance will be provided agencies and employing offices in Federal Personnel Manual letters and bulletins concerning the reduction in premium rates, the open enrollment material which must be provided all eligible employees, and the shipping and distribution schedules.

OPM has determined that, in view of the need to commence action on the open enrollment period as soon as possible, a 30-day comment period is appropriate. This will accord an adequate period of time for interested parties to comment on the interim regulations.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. This notice is being waived in order to reduce the FEGLI premiums and provide an open enrollment period at the earliest date administratively possible.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect Federal employees and annuitants only.

List of Subjects

5 CFR Part 870

Administrative practice and procedure, Government employees, Hostages, Life insurance, Retirement.

5 CFR Parts 871, 872, and 873

Administrative practice and procedure, Government employees, Life insurance, Retirement.

U.S. Office of Personnel Management.

Patricia W. Lattimore,

Acting Director.

Accordingly, OPM is amending 5 CFR parts 870, 871, 872 and 873 as follows:

PART 870—BASIC LIFE INSURANCE

1. The authority citation for part 870 continues to read as follows:

Authority: 5 U.S.C. 8716; § 870.202(c) also issued under 5 U.S.C. 7701(b)(2); subpart J is also issued under section 599C of Pub. L. 101–513, 104 Stat. 2064, as amended.

§ 870.203 [Amended]

2. In § 870.203(d), the dates "June 1 through July 1, 1985", "August 1, 1985" and "June 30, 1985" are removed and the dates "March 29 through April 30, 1993", "May 30, 1993" and "March 31, 1993", respectively, are added in their place.

§ 870.204 [Amended]

3. In § 870.204(g)(1), the dates "June 1 through July 1, 1985" are removed and the dates "March 29 through April 30, 1993" are added in their place.

4. In § 870.204(g)(2), the dates "June 1 through July 1, 1985", "1985" and "August 1, 1985" are removed and the dates "March 29 through April 30, 1993", "1993" and "May 30, 1993", respectively, are added in their place.

§ 870.401 [Amended]

5. In § 870.401 (a) and (b), the amount of "$0.185" is removed and "$0.165" is added in its place.

6. In § 870.401(f)(1), the amounts "$0.4008" and "$0.0925" are removed and "$0.3575" and "$0.0825", respectively, are added in their place.

PART 871—STANDARD OPTIONAL LIFE INSURANCE

7. The authority citation for part 871 continues to read as follows:

Authority: 5 U.S.C. 8716.

§ 871.203 [Amended]

8. In § 871.203(c), the dates "June 1 through July 1, 1985", "August 1, 1985" and "June 30, 1985" are removed and the dates "March 29 through April 30, 1993", "May 30, 1993" and "March 31, 1993", respectively, are added in their place.

§ 871.205 [Amended]

9. In § 871.205(g)(1), the dates "June 1 through July 1, 1985" are removed and the dates "March 29 through April 30, 1993" are added in their place.

10. In § 871.205(g)(2), the dates "June 1 through July 1, 1985", "1985" and "August 1, 1985" are removed and the dates "March 29 through April 30, 1993", "1993" and "May 30, 1993", respectively, are added in their place.

11. In § 871.401, the first sentence of paragraph (c) is revised to read as follows:

§ 871.401 Withholding.

* * * * *

(c) The biweekly full cost per $10,000 of standard optional insurance until determined by OPM on the basis of experience to be otherwise, is—

For persons under age 35	$0.40
For persons ages 35 through 39	0.50
For persons ages 40 through 44	0.70
For persons ages 45 through 49	1.10
For persons ages 50 through 54	1.80
For persons ages 55 through 59	3.00
For persons age 60 or over	7.00

* * * * *

PART 872—ADDITIONAL OPTIONAL LIFE INSURANCE

12. The authority citation for part 872 continues to read as follows:

Authority: 5 U.S.C. 8716.

§ 872.203 [Amended]

13. In § 872.203(c), the dates "June 1 through July 1, 1985", "August 1, 1985" and "June 30, 1985" are removed and the dates "March 29 through April 30, 1993", "May 30, 1993" and "March 30, 1993", respectively, are added in their place.

§ 872.205 [Amended]

14. In § 872.205(d)(1), the dates "June 1 through July 1, 1985" are removed and the dates "March 29 through April 30, 1993" are added in their place.

15. In § 872.205(d)(2), the dates "June 1 through July 1, 1985", "1985" and "August 1, 1985" are removed and the dates "March 19 through April 30, 1993", "1993" and "May 30, 1993", respectively, are added in their place.

16. In § 872.401, the first sentence of paragraph (c) is revised to read as follows:

§ 872.401 Withholdings.

* * * * *

(c) The biweekly full cost per $1,000 of additional optional insurance in force, until determined by OPM on the basis of experience to be otherwise, is—

* * * * *

For persons under age 35	$0.04
For persons ages 35 through 39	0.05
For persons ages 40 through 44	0.07
For persons ages 45 through 49	0.11
For persons ages 50 through 54	0.18
For persons ages 55 through 59	0.30
For persons age 60 or over	0.70

* * * * *

PART 873—FAMILY OPTIONAL LIFE INSURANCE

17. The authority citation for part 873 continues to read as follows:

Authority: 5 U.S.C. 8716.

§ 873.203 [Amended]

18. In § 873.203(c), the dates "June 1 through July 1, 1985", "August 1, 1985" and "June 30, 1985" are removed and the dates "March 29 through April 30, 1993", "May 30, 1993" and "March 30, 1993", respectively, are added in their place.

§ 873.205 [Amended]

19. In § 873.205(e)(1), the dates "June 1 through July 1, 1985" are removed and the dates "March 29 through April 30, 1993" are added in their place.

20. In § 873.205(e)(2), the dates "June 1 through July 1, 1985", "1985" and "August 1, 1985" are removed and the dates "March 29 through April 30, 1993", "1993" and "May 30, 1993", respectively, are added in their place.

21. In § 873.401, the first sentence of paragraph (c) is revised to read as follows:

§ 873.401 Withholdings.

* * * * *

(c) The biweekly cost of family optional insurance applicable to employees, annuitants, and compensationers (not family members), until determined by OPM on the basis of experience to be otherwise, is—

For persons under age 35	$0.30
For persons ages 35 through 39	0.31
For persons ages 40 through 44	0.52
For persons ages 45 through 49	0.70
For persons ages 50 through 54	1.00
For persons ages 55 through 59	1.50
For persons age 60 or over	2.60

* * * * *

[FR Doc. 93–4615 Filed 3–1–93; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and General Officers of the Department to reflect a delegation of authority with respect to USDA implementation of section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 853a) as it pertains to grants, loans, and licenses.

EFFECTIVE DATE: March 2, 1993.

FOR FURTHER INFORMATION CONTACT: Juliette Bethea, Chief, Federal Assistance and Fiscal Policy Division, Office of Finance and Management,

United States Department of Agriculture, Washington, DC 20250, (202) 720–1204.

SUPPLEMENTARY INFORMATION: The delegations of authority of the Department of Agriculture are amended to reflect the delegation of responsibility to the Assistant Secretary for Administration and the Director, Office of Finance and Management for implementation of, oversight over, and monitoring of USDA implementation of section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 853a) with regard to grants, loans, and licenses. Responsibility for implementation of procurement activities rests with the Director, Office of Operations pursuant to 7 CFR 2.76.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order No. 12291. Finally, this action is not a rule as defined by Public Law No. 96–354, the Regulatory Flexibility Act, and, thus, is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, part 2, title 7, Code of Federal Regulations is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.25 is amended by adding new paragraphs (b)(2)(iv) and (b)(5)(x) as follows:

§2.25 Delegations of authority to the Assistant Secretary for Administration.

* * * * *

(b) * * *

(2) * * *

(iv) Section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 853a) as it relates to grants, loans, and licenses.

* * * * *

(5) * * *

(x) Monitoring USDA implementation of section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 853a) as it relates to grants, loans, and licenses.

* * * * *

Subpart J—Delegations of Authority by the Assistant Secretary for Administration

3. Section 2.75 is amended by adding new paragraphs (a)(2)(v) and (a)(6)(xiv) as follows:

§2.75 Director, Office of Finance and Management.

(a) * * *

(2) * * *

(v) Section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 853a) as it relates to grants, loans, and licenses.

* * * * *

(6) * * *

(xiv) Monitoring USDA implementation of section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 853a) as it relates to grants, loans, and licenses.

* * * * *

For subpart C:

Dated: January 15, 1993.

Edward Madigan,

Secretary of Agriculture.

For subpart J:

Dated: December 3, 1992.

Charles R. Hilty,

Assistant Secretary for Administration.

[FR Doc. 93–4500 Filed 3–1–93; 8:45 am]

BILLING CODE 3410–90–M

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7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document amends the delegations of authority from the Secretary of Agriculture to the Assistant Secretary for Administration to include new duties as Chief Financial Officer, to add delegations of authority to the Deputy Chief Financial Officer, and to revise delegations of authority to the Deputy Assistant Secretary for Administration and the Director of the Office of Finance and Management.

EFFECTIVE DATE: March 2, 1993.

FOR FURTHER INFORMATION CONTACT: Rita M. Morgan, Attorney, Office of the General Counsel, United States Department of Agriculture, Washington, DC 20250–1400, (202) 720–3564.

SUPPLEMENTARY INFORMATION: The Chief Financial Officers Act of 1990, Public Law No. 101–576, created the position of Chief Financial Officer for Federal agencies enumerated in the Act. One of the agencies enumerated is the Department of Agriculture. This document designates the Assistant Secretary for Administration as the Chief Financial Officer for the Department of Agriculture and states the duties of that position; it also revises the delegation of authority to the Deputy Assistant Secretary for Administration by excepting from the delegation to the Deputy Assistant Secretary for Administration the authority delegated to the Deputy Chief Financial Officer. In addition, this document delegates authority to the Deputy Chief Financial Officer to perform the duties of the Chief Financial Officer in the absence or unavailability of the Chief Financial Officer. This document also revises the delegations to the Director of the Office of Finance and Management that conflict with or overlap the delegations to the Deputy Chief Financial Officer.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order Nos. 12291 and 12778. Finally, this action is not a rule as defined by Public Law No. 96–354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, part 2, title 7, Code of Federal Regulations is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.25 is amended by adding a new paragraph (b)(24) to read as follows:

§ 2.25 Delegations of authority to the Assistant Secretary for Administration.

* * * * *

(b) *Related to finance and management.*

* * * * *

(24) Serve as Chief Financial Officer for the Department of Agriculture under the supervision of the Secretary by executing the duties enumerated for agency Chief Financial Officers in the Chief Financial Officers Act of 1990, Public Law No. 101–576, 31 U.S.C. 902, including:

(i) Reporting directly to the Secretary of Agriculture regarding financial management matters.

(ii) Overseeing all financial management activities relating to the programs and operations of the Department.

(iii) Developing and maintaining an integrated accounting and financial system for the Department, including financial reporting and internal controls, which—

(A) Complies with applicable accounting principles, standards, and requirements, and internal control standards.

(B) Complies with such policies and requirements as may be prescribed by the Director of the Office of Management and Budget.

(C) Complies with any other requirements applicable to such systems.

(D) Provides for complete, reliable, consistent, and timely information which is prepared on a uniform basis and which is responsive to the financial information needs of Department management and for the development and reporting of cost information, the integration of accounting and budgeting information, and the systematic measurement of performance.

(iv) Making recommendations to the Secretary regarding the selection of the Deputy Chief Financial Officer of the agency.

(v) Directing, managing, and providing policy guidance and oversight of Department financial management personnel, activities, and operations, including;

(A) Preparing and annually revising a Departmental plan to:

(*1*) Implement the 5-year financial management plan prepared by the Director of the Office of Management and Budget under section 3512(a)(3) of title 31 of the United States Code; and

(*2*) Comply with the requirements established for agency financial statements under section 3515 of title 31 of the United States Code and with the requirements for audits of Department financial statements established in subsections (e) and (f) of section 3521 of title 31 of the United States Code.

(B) Developing Departmental financial management budgets.

(C) Recruiting, selecting, and training of personnel to carry out Departmental financial management functions.

(D) Approving and managing Departmental financial management systems design or enhancement projects.

(E) Implementing Departmental asset management systems, including systems for cash management, credit management, debt collection, and property and inventory management and control.

(vi) Preparing and transmitting, by not later than 60 days after the submission of the audit report required by section 3521(f) of title 31 of the United States Code, an annual report to the Secretary and the Director of the Office of Management and Budget, which shall include:

(A) A description and analysis of the status of financial management of the Department.

(B) The annual financial statements prepared under section 3521 of title 31 of the United States Code.

(C) The audit report transmitted to the Secretary under section 3521 of title 31 of the United States Code.

(D) A summary of the reports on internal accounting and administrative control systems submitted to the President and the Congress under the amendments made by the Federal Managers' Financial Integrity Act of 1982, Public Law No. 97–255.

(E) Other information the Secretary considers appropriate to inform fully the President and the Congress concerning the financial management of the Department.

(vii) Monitoring the financial execution of the budget of the Department in relation to actual expenditures, and preparing and submitting to the Secretary timely performance reports.

(viii) Reviewing, on a biennial basis, the fees, royalties, rent, and other charges imposed by the Department for services and things of value it produces, and making recommendations on revising those charges to reflect costs incurred by the Department in providing those services and things of value.

(ix) Accessing all records, reports, audits, reviews, documents, papers, recommendations, or other material that are the property of the Department or that are available to the Department, and that relate to programs and operations with respect to which the Chief Financial Officer has responsibilities, except that this grant allows no access greater than that permitted under any other law to records, reports, audits, reviews, documents, papers, recommendation, or other material of the Office of Inspector General.

(x) Requesting such information or assistance as may be necessary for carrying out the duties and responsibilities granted the Chief Financial Officer by the Chief Financial Officers Act of 1990 from any Federal, State, or local governmental entity.

(xi) To the extent and in such amounts as may be provided in advance by appropriations acts, entering into contracts and other arrangements with public agencies and with private persons for the preparation of financial statements, studies, analyses, and other services, and making such payments as may be necessary to carry out the duties and prerogatives of the Chief Financial Officer.

* * * * *

Subpart J—Delegations of Authority by the Assistant Secretary for Administration

3. Section 2.74 is amended by revising paragraph (a)(1) to read as follows:

§ 2.74 Deputy Assistant Secretary for Administration.

(a) *Delegations.* * * *

(1) Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Assistant Secretary for Administration except for the duties and powers delegated to the Assistant Secretary for Administration in § 2.25(b)(24).

4. Section 2.74a is added to read as follows:

§ 2.74a Deputy Chief Financial Officer.

(a) *Delegations.* Pursuant to § 2.25(b), the following delegation of authority is made by the Assistant Secretary for Administration to the Deputy chief Financial Officer, to be exercised only during the absence or unavailability of the Assistant Secretary:

(1) Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Assistant Secretary for Administration as Chief Financial Officer.

§2.75 [Amended]

5. Section 2.75 is amended by removing paragraph (a)(2)(i) and redesignating paragraphs (a)(2)(ii) through (a)(2)(iv) as (a)(2)(i) through (a)(2)(iii) respectively; by removing paragraphs (a)(6)(i), (a)(6)(ii), (a)(6)(vi), (a)(6)(ix), and (a)(6)(x) and redesignating paragraphs (a)(6)(iii) through (a)(6)(v), (a)(6)(vii) and (a)(6)(viii), and (a)(6)(xi) through (a)(6)(xiii) as paragraphs (a)(6)(i) through (a)(6)(iii), (a)(6)(iv) and (a)(6)(v), and (a)(6)(vi) through (a)(6)(viii), respectively.

For Subpart C:

Dated: January 21, 1993

Charles R. Hilty,

Acting Secretary of Agriculture.

For Subpart J:

Dated: January 21, 1993

Charles R. Hilty,

Assistant Secretary for Administration.

[FR Doc. 93–4649 Filed 3–1–93; 8:45 am]

BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

7 CFR Part 321

[Docket No. 93–021–1]

Importation of Potatoes From Canada

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations concerning the importation of potato plants and tubers from Canada that were established to prevent the introduction of the necrotic strain of potato virus Y (PVY^n) into the United States. This interim rule relaxes certain restrictions on importing potatoes from Canada. This rule will require certification of certain potatoes imported into the United States from Canada based on surveys performed by Agriculture Canada. Implementation of this rule will provide protection to U.S. agriculture against the introduction of PVY^n while relieving unnecessary restrictions.

DATES: Interim rule effective February 24, 1993. Consideration will be given only to comments received on or before May 3, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–021–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. James Petit de Mange, Operations Officer, Port Operations Staff, PPQ, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8645.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 321 concerning the importation of potatoes from Canada require that seed potatoes imported from New Brunswick, Nova Scotia, Ontario, Prince Edward Island, and Quebec, as well as all potatoes grown within 200 meters from them, be tested and found free from the necrotic strain of potato virus Y (PVY^n). The imported potatoes also cannot be sibling or cousin potatoes to any PVY^n infected potatoes. The imported potatoes also have to be harvested at least 5 kilometers or more from any PVY^n-infected potatoes and at least 200 meters from any potatoes that are siblings or cousins of PVY^n-infected potatoes. Finally, only foundation and certified classes of potatoes can be imported.

Additionally, seed potatoes produced in other parts of Canada, but which are progeny of New Brunswick, Nova Scotia, Ontario, Prince Edward Island, and Quebec potatoes, require certification as if harvested from one of those five provinces in order to be imported into the United States.

The regulations allow the importation of table stock and processing potatoes from New Brunswick, Nova Scotia, Ontario, Prince Edward Island, and Quebec if the potatoes meet the certification requirements for seed potatoes. If they do meet these standards, the potatoes may enter if certified as treated with a sprout inhibitor.

The Animal and Plant Health Inspection Service (APHIS) feels very positively about the steps Canada is taking in the eradication and control of the spread of PVY^n, and we have confidence in their phytosanitary certification program. We have been working closely with Agriculture Canada and the provinces in their development of eradication plans as well as survey and testing procedures.

Based upon continued evaluation of data concerning the relative risks of the presence of PVY^n in Canada and the United States, as well as information about Canada's PVY^n eradication program and the operation of its certified seed potato program, we have determined that Canada possesses sufficient data to safely identify areas within Canada that are free from PVY^n. The combined effects of the survey information that is available, the prohibition against the movement of Prince Edward Island seed potatoes to other Canadian provinces since 1990, the regulatory actions taken by the Canadian government in the provinces where PVY^n was found, and testing and certification requirements required by the United States and Canada, will result in an insignificant risk of the introduction of PVY^n. Therefore, we are removing unnecessary and unduly burdensome restrictions from the existing regulations. APHIS believes these changes are warranted and may be done while continuing to provide protection to U.S. agriculture against the introduction of PVY^n into the United States.

Specifically, we will no longer require the declaration stating that the potatoes have been found free of PVY^n based on leaf and tuber sprout testing at the 1000 leaf or tuber level, or higher, per seed lot, nor the testing requirement for all potatoes grown within 200 meters. We will no longer prohibit the importation of cousin potatoes of any lot of potatoes known to be infected with PVY^n. We are also removing the requirement that the potatoes be foundation or certified seed potatoes. Further, we are removing the restriction placed on the progeny of New Brunswick, Nova Scotia, Ontario, Prince Edward Island, and Quebec potatoes when they are grown in other provinces.

APHIS also is removing restrictions as they apply to Nova Scotia and Quebec. We believe the detections of PVY^n in those provinces were isolated incidents. The potatoes that produced the infected potatoes in those provinces were traced back to Prince Edward Island. Further surveys in those provinces have not revealed an established infestation of PVY^n. Therefore, we recognize Nova Scotia and Quebec as areas free of PVY^n.

Domestic regulations of Canada restrict the movement and eliminate from use as seed potatoes in Canada any lot of potatoes found infested with PVY^n, any sibling lot(s) of known infested lots (including sibling lots that tested negative for the virus) and all potatoes grown within 1 kilometer of an infested field. Five kilometer zones are created around PVY^n infested fields and

all potatoes within that controlled area are tested for PVY^n. Potatoes from that area may be used only for table stock and processing within Canada if they have been treated with a sprout inhibitor. Further, potatoes grown within 200 meters of a sibling lot may not be used for seed in Canada. Based on these actions, we are changing the regulations to allow seed potatoes to be imported from Canada if they are accompanied by a phytosanitary certificate stating that the potatoes: (1) Are not known to be infected with PVY^n; (2) originated from fields that are 5 kilometers or more from any field testing positive for PVY^n; (3) are not sibling potatoes of a lot of potatoes known to be infected with PVY^n; and (4) originated from fields that are 200 meters or more from any field planted with sibling potatoes of a lot of potatoes known to be infected with PVY^n.

The domestic regulations and the eradication measures underway in Canada prevent movement of PVY^n-infected potatoes or their siblings to other provinces. Therefore, we are removing the restrictions placed on potatoes grown in uninfested provinces but which are the progeny of potatoes from New Brunswick, Nova Scotia, Ontario, Prince Edward Island, and Quebec.

APHIS has also determined that it is prudent to regulate table stock and processing potatoes from New Brunswick, Ontario, and Prince Edward Island, due to their proximity to potentially infested fields. Phytosanitary certificates will be required for these potatoes in order to differentiate between table stock and processing potatoes grown within 5 kilometers of an infested field or within 200 meters of sibling potatoes for which we will require sprout inhibitor treatment, and those grown beyond those areas.

Table stock and processing potatoes from provinces where PVY^n appears to have been established (New Brunswick, Ontario, and Prince Edward Island) may be imported if accompanied by a phytosanitary certificate stating that the potatoes: (1) are not known to be infected with PVY^n, originated from fields that are 5 kilometers or more from any field testing positive for PVY^n, are not sibling potatoes of a lot of potatoes known to be infected with PVY^n, and originated from fields that are 200 meters or more from any field planted with sibling potatoes of a lot of potatoes known to be infected with PVY^n; or (2) are not known to be infected with PVY^n and have been treated with the sprout inhibitors chlorpropham and/or maleic hydrazide, or both, in accordance with the rates and manner specified on the product label. Table stock and processing potatoes from provinces where PVY^n has not been established may be imported without restriction.

Additionally, we are removing the definitions for certain terms no longer used in the regulations.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is necessary to relieve restrictions which are unnecessarily burdensome and do not significantly reduce pest risk to U.S. agriculture.

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

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act impracticable. This rule may have a significant economic impact on a substantial number of small entities. If we determine this is so, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Flexibility Analysis.

Executive Order 12778

This rule will allow potatoes to be imported into the United States from Canada. State and local laws and regulations regarding potatoes imported under this rule will be preempted while the vegetable is in foreign commerce. If the potatoes are imported for immediate distribution and sale to the consuming public, they would remain in foreign commerce until sold to the ultimate consumer. The question of where foreign commerce ceases in other cases must be addressed on a case-by-case basis. This rule has no retroactive effect and does not require administrative proceedings before parties may file suit in court.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0049.

List of Subjects in 7 CFR Part 321

Imports, Plant diseases and pests, Potatoes, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 7 CFR 321 is amended as follows:

PART 321—RESTRICTED ENTRY ORDERS

1. The authority citation for part 321 continues to read as follows:

Authority: 7 U.S.C. 154, 159, and 162; 44 U.S.C. 35; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 321.2 is amended by removing the definitions for *Canadian seed potato farm; Certified seed potatoes; Cousin potatoes; Foundation seed potatoes; Leaf testing;* and *Tuber sprout testing.*

3. In § 321.9, paragraphs (b) through (d) are revised to read as follows:

§ 321.9 Importation of potatoes from Canada.

* * * * *

(b) Seed potatoes that are not prohibited importation under paragraph (a) of this section may be imported into the United States from Canada if they are accompanied by a phytosanitary certificate issued by Agriculture Canada stating the province of origin and stating that the potatoes:

(1) Are not known to be infected with PVY^n;

(2) Originated from fields that are 5 kilometers or more from any field testing positive for PVY^n;

(3) Are not sibling potatoes of a lot of potatoes known to be infected with PVY^n, and;

(4) Originated from fields that are 200 meters or more from any field planted with sibling potatoes of a lot of potatoes known to be infected with PVY^n.

(c) Table stock and processing potatoes that are not prohibited importation under paragraph (a) of this section and that are grown in New Brunswick, Ontario, or Prince Edward Island, may be imported from Canada into the United States if they are accompanied by a phytosanitary certificate issued by Agriculture Canada stating the province of origin and stating that the potatoes:

(1) Are not known to be infected with PVY^n;

(2) Originated from fields that are 5 kilometers or more from any field testing positive for PVY^n;

(3) Are not sibling potatoes of a lot of potatoes known to be infected with PVY^n; and

(4) Originated from fields that are 200 meters or more from any field planted with sibling potatoes of a lot of potatoes known to be infected with PVY^n.

(d) Table stock and processing potatoes that cannot be certified under paragraph (c) of this section and that are grown in New Brunswick, Ontario, or Prince Edward Island, may be imported from Canada into the United States if they are accompanied by a phytosanitary certificate issued by Agriculture Canada stating the province of origin and stating that the potatoes:

(1) Are not known to be infected with PVY^n; and

(2) Are treated with the sprout inhibitors chlorpropham and/or maleic hydrazide, or both, in accordance with the rates and manner specified on the product label.

* * * * *

Done in Washington, DC, this 24th day of February 1993.

Kenneth C. Clayton,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–4754 Filed 3–1–93; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Stabilization and Conservation Service

7 CFR Part 723

RIN 0560–AD11

Tobacco; Acre-for-Acre Transfer of Fire-Cured, Dark Air-Cured, and Virginia Sun-Cured Tobacco Allotments

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations to implement provisions of Public Law 102–566, enacted on October 28, 1992, which amended the Agricultural Adjustment Act of 1938 to require that the sale or lease of acreage allotments between farms by producers of fire-cured, dark air-cured, and Virginia sun-cured tobaccos be approved by the county committee on an acre-for-acre basis. Currently, a downward adjustment in the allotment transferred is required when the normal yield on the farm from which the allotment is transferred exceeds by more than 10 percent the normal yield on the farm to which the allotment is being transferred.

EFFECTIVE DATE: March 1, 1993.

FOR FURTHER INFORMATION CONTACT: Rebecca Fial, Agricultural Program Specialist, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013, telephone 202–690–0012.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Departmental Regulation No. 1512–1

This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512–1 and has been classified as "not major". It has been determined that this rule will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local governments or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Agricultural Stabilization and Conservation Service is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.51.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environment impact statement is needed.

Executive Order 12372

This program/activity is not subject to the provision of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12778

This rule has been reviewed in accordance with Executive Order 12778. It is not retroactive and does not preempt State law. The administrative appeal provisions of 7 CFR part 780 must be exhausted before any judicial action may be brought regarding the provisions of this rule.

Paperwork Reduction Act

The amendment to 7 CFR part 723 set forth in this final rule does not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

Background

Regulations at 7 CFR 723.216 require that a downward adjustment be made in a fire-cured, dark air-cured, and Virginia sun-cured tobacco allotment when the normal yield on the farm to which the allotment is being transferred exceeds, by more than 10 percent, the normal yield on the farm from which the allotment is being transferred. The purpose of that provision was to prevent the transfer of allotments between farms with substantially different production yields from altering the national marketing quota. Public Law 102–566 provides that the sale or lease of

allotments for these types of tobaccos be approved by the county committee on an acre-for-acre basis. Accordingly, this final rule amends 7 CFR 723.216 to reflect this statutory change. Since this amendment solely incorporates the mandatory statutory provision, no further rulemaking is required.

List of Subjects in 7 CFR Part 723

Acreage allotments, Marketing quotas, Penalties, Reporting and recordkeeping requirements, Tobacco.

Accordingly, 7 CFR part 723 is amended as follows:

PART 723—TOBACCO

1. The authority for 7 CFR part 723 is revised to read as follows:

Authority: 7 U.S.C. 1301, 1311–1314, 1314–1, 1314b, 1314b–1, 1314c, 1314d, 1314f, 1314h, 1315, 1316, 1363, 1372–75, 1377–1379, 1421, 1445, 1445–1, and 1445–2.

2. Section 723.216 is amended by revising paragraph (i)(4) to read as follows:

§ 723.216 Transfer of tobacco acreage allotment or marketing quota by sale, lease, or owner.

* * * * *

(i) * * *

(4) *Basis for transfer.* The transfer shall be approved acre for acre.

* * * * *

Signed at Washington, DC on February 24, 1993.

Bruce R. Weber,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 93–4752 Filed 3–1–93; 8:45 am]

BILLING CODE 3410–05–M

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7 CFR Part 723

Commodity Credit Corporation

7 CFR Part 1464

RIN 0560–AC79

1993 Marketing Quota and Price Support for Flue-Cured Tobacco

AGENCIES: Agricultural Stabilization and Conservation Service and Commodity Credit Corporation, (USDA).

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to codify determinations made by the Secretary of Agriculture (Secretary) with respect to the 1993 crop of flue-cured tobacco. In accordance with the Agricultural Adjustment Act of 1938 (1938 Act), as amended, the Secretary determined the 1993 marketing quota for flue-cured tobacco to be 891.8 million pounds. In accordance with the Agricultural Act of 1949 (1949 Act), as amended, the Secretary determined the 1993 price support level to be 157.7 cents per pound.

EFFECTIVE DATE: December 15, 1992.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Tobacco and Peanuts Analysis Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), room 3736, South Building, P.O. Box 2415, Washington, DC 20013–2415, 202–720–8839.

The Final Regulatory Impact Analysis describing the options considered in developing this final rule and the impact of implementing each option is available on request from Robert L. Tarczy.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Departmental Regulation 1512–1

This final rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major." The matters under consideration will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) Major increases in costs for consumers, individual industries, Federal, State or local government agencies or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12778

The final rule has been reviewed in accordance with Executive Order 12778, Civil Justice Reform. The provisions of this rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since neither ASCS nor the Commodity Credit Corporation (CCC) is required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Executive Order 12372

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act Requirements

The amendments to 7 CFR parts 723 and 1464 set forth in this final rule do not contain any new or revised information collection requirements that require clearance through the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35. The information collection requirements contained in the current regulations at 7 CFR parts 723 and 1464 have been approved through August 31, 1995, by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35, and assigned OMB No. 0560–0058. Public reporting burden for these collections is estimated to average 7 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 the information collection requirements, including suggestions for reducing the burden, to the Department of Agriculture, Clearance Officer, OIRM, room 404 W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0560–0058), Washington, DC 20503.

Statutory Background

This rule is issued pursuant to the provisions of the 1938 Act, as amended, and the 1949 Act, as amended. On December 15, 1992, the Secretary announced the national marketing quota and price support level for the 1993 crop of flue-cured tobacco.

Marketing Quota

Section 317(a)(1)(B) of the 1938 Act provides, in part, that the national marketing quota for a marketing year for flue-cured tobacco is the quantity of such tobacco that is not more than 103 percent nor less than 97 percent of the total of: (1) The amount of flue-cured tobacco that domestic manufacturers of cigarettes estimate they intend to purchase on U.S. auction markets or

from producers, (2) the average quantity exported annually from the U.S. during the three marketing years immediately preceding the marketing year for which the determination is being made, and (3) the quantity, if any, that the Secretary, in the Secretary's discretion, determines necessary to adjust loan stocks to the reserve stock level.

Section 317(a)(1)(C) further provides that, with respect to the 1990 through 1993 marketing years, any reduction in the national marketing quota being determined shall not exceed 10 percent of the previous year's national marketing quota. The reserve stock level is defined in section 301(b)(14)(C) of the 1938 Act as the greater of 100 million pounds or 15 percent of the national marketing quota for flue-cured tobacco for the marketing year immediately preceding the marketing year for which the level is being determined.

Section 320A of the 1938 Act provides that all domestic manufacturers of cigarettes with more than 1 percent of U.S. cigarette production and sales shall submit to the Secretary a statement of purchase intentions for the 1993 crop of flue-cured tobacco by December 1, 1992. Six such manufacturers were required to submit such a statement for the 1993 crop and the total of their intended purchases for the 1993 crop is 473.0 million pounds. The three-year average of exports of 405.6 million pounds.

The national marketing quota for the 1992 crop year was 891.8 million pounds (57 FR 43176). Thus, in accordance with section (b)(14)(C), the reserve stock level for use in determining the 1993 marketing quota for flue-cured tobacco is 133.8 million pounds.

As of December 8, the Flue-Cured Tobacco Stabilization Corporation had in its inventory 124.2 million pounds of flue-cured tobacco (excluding pre-1985 stocks committed to be purchased by manufacturers and covered by deferred sales). Accordingly, the adjustment to maintain loan stocks at the reserve supply level is an increase of 9.6 million pounds.

The total of the three marketing quota components for the 1993–94 marketing year is 888.2 million pounds. Section 317(a)(1)(B) of the 1938 Act further provides that the Secretary may increase or decrease the total by 3 percent. The Secretary used the discretionary authority to increase the three-component total by 3.6 million pounds (0.4 percent), based upon projected supply and demand levels. Accordingly, the national marketing quota for the marketing year beginning July 1, 1993, for flue-cured tobacco is 891.8 million pounds.

Section 317(a)(2) of the 1938 Act provides that the national average yield goal be set at a level, that the Secretary determines will improve or ensure the usability of the tobacco and increase the net return per pound to the growers. Yields in crop year 1992 did not change significantly from the previous year. Accordingly, the national average yield goal for the 1993–94 marketing year will be 2,088 pounds per acre, the same as last year's level.

In accordance with section 317(a)(3) of the 1938 Act, the national acreage allotment for the 1993 crop of flue-cured tobacco is determined to be 427,107.28 acres, derived from dividing the national marketing quota by the national average yield goal.

In accordance with section 317(e) of the 1938 Act, the Secretary is authorized to establish a national reserve from the national acreage allotment in an amount equivalent to not more than 3 percent of the national acreage allotment for the purpose of making corrections in farm acreage allotments, adjusting for inequities, and for establishing allotments for new farms. The Secretary has determined that a national reserve for the 1993 crop of flue-cured tobacco of 981 acres is adequate for these purposes.

In accordance with section 317(a)(4) of the 1938 Act, the national acreage factor for the 1993 crop of flue-cured tobacco for uniformly adjusting the acreage allotment of each farm is determined to be 1.0, which is the result of dividing the 1993 national allotment (427,107.28 acres) minus the national reserve (981 acres) by the total of allotments established for flue-cured tobacco farms in 1992 (426,123.92 acres).

In accordance with section 317(a)(7) of the 1938 Act, the national yield factor for the 1993 crop of flue-cured tobacco is determined to be 0.9264, which is the result of dividing the national average yield goal (2,088 pounds) by a weighted national average yield (2,254 pounds).

Price Support

Price support is required to be made available for each crop of a kind of tobacco for which quotas are in effect, or for which marketing quotas have not been disapproved by producers, at a level determined in accordance with a formula prescribed in section 106 of the 1949 Act.

With respect to the 1993 crop of flue-cured tobacco, the level of support is determined in accordance with sections 106 (d) and (f) of the 1949 Act. Section 106(f)(7)(A) of the 1949 Act provides that the level of support for the 1993 crop of flue-cured tobacco shall be:

(1) The level, in cents per pound, at which the 1992 crop of flue-cured tobacco was supported, plus or minus, respectively,

(2) An adjustment of not less than 65 percent nor more than 100 percent of the total, as determined by the Secretary after taking into consideration the supply of the kind of tobacco involved in relation to demand, of:

(A) 66.7 percent of the amount by which:

(I) The average price received by producers for flue-cured tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period, is greater or less than:

(II) The average price received by producers for flue-cured tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year prior to the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period; and

(b) 33.3 percent of the change, expressed as a cost per pound of tobacco, in the index of prices paid by tobacco producers from January 1 to December 31 of the calendar year immediately preceding the year in which the determination is made.

The difference between the two 5-year averages (i.e., the difference between (A) (I) and (II)) is 3.7 cents per pound. The difference in the cost index from January 1 to December 31, 1992, is 0.5 cents per pound. Applying these components to the price support formula (3.7 cents per pound, two-thirds weight; 0.5 cents per pound, one-third weight) results in a weighted total of 2.6 cents per pound. As indicated, section 106 provides that the Secretary may, on the basis of supply and demand conditions, limit the change in the price support level to no less than 65 percent of that amount. In order to remain competitive in foreign and domestic markets, the Secretary used his discretion to limit the increase to 65 percent of the maximum allowable increase. Accordingly, the 1993 crop of flue-cured tobacco will be supported at 157.7 cents per pound, 1.7 cents higher than in 1992.

List of Subjects

7 CFR Part 723

Acreage allotments, Marketing quotas, Penalties, Reporting and recordkeeping requirements, Tobacco.

7 CFR Part 1464

Loan programs-agriculture, Price support programs, Tobacco, Warehouses.

Accordingly, 7 CFR parts 723 and 1464 are amended as follows:

PART 723—TOBACCO

1. The authority citation for 7 CFR part 723 continues to read as follows:

Authority: 7 U.S.C. 1301, 1311–1314, 1314–1, 1314c, 1314d, 1314f, 1314h, 1315, 1316, 1363, 1372–75, 1377–1379, 1421, 1445–1, and 1445–2.

2. Sections 723.107 through 723.110 and 723.112 through 723.121 are added and reserved and § 723.111 is added to read as follows:

§§ 723.107–110 [Reserved]

§ 723.111 Flue-cured (types 11–14) tobacco.

The 1993-crop national marketing quota is 891.8 million pounds.

§§ 723.112–121 [Reserved]

PART 1464—TOBACCO

3. The authority citation for 7 CFR part 1464 is revised to read as follows:

Authority: 7 U.S.C. 1441, 1445, 1445–1, 1421 and, 1423 is U.S.C. 7146 and 714c.

§ 1464.12 [Redesignated as § 1464.24]

§§ 1464.13–1464.23 [Reserved]

4. Section 1464.12 is redesignated as § 1464.24, §§ 1464.13 through 1464.23 are added and reserved, and a new § 1464.12 is added to read as follows:

§ 1464.12 Flue-Cured (types 11–14) tobacco.

The 1993-crop national price support level is 157.7 cents per pound.

Signed at Washington, DC on February 24, 1993.

Bruce R. Weber,

Acting Administrator, Agricultural Stabilization and Conservation Service and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–4753 Filed 3–1–93; 8:45 am]

BILLING CODE 3410–05–M

Agricultural Stabilization and Conservation Service

RIN 0560–AC60

7 CFR Part 729

1993-Crop Peanuts National Poundage Quota

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: On December 15, 1992, the Secretary of Agriculture (Secretary) announced by press release that the national poundage quota for quota peanuts was established at 1,496,000 short tons (st), 44,000 st less than last year's quota. This final rule codifies the announced quota. This rule was made pursuant to the statutory requirements of the Agricultural Adjustment Act of 1938, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990.

EFFECTIVE DATE: December 15, 1992.

FOR FURTHER INFORMATION CONTACT: Ronald W. Holling, Tobacco and Peanuts Analysis Division, Agricultural Stabilization and Conservation Service (ASCS), room 3741, South Building, USDA, P.O. Box 2415, Washington, DC 20013–2415, telephone 202–720–7477. A final regulatory impact analysis on the quota level and its impacts is available from the above-named person.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Departmental Regulation 1512–1

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major" as the matter under consideration will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individuals, industries, Federal, State or local governments or geographic regions; or

(3) 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.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778, Civil Justice Reform. The provisions of this rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Federal Assistance Program

The title and number of the Federal assistance program, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are Commodity Loans and Purchases—10.051.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order No. 12372 relating to intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule because ASCS is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of this determination.

Paperwork Reduction Act Requirements

The amendments to 7 CFR part 729 set forth in this final rule do not contain information collection requirements that require clearance through the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35.

Announcement of the Quota

Section 358–1(a)(1) of the Agricultural Adjustment Act of 1938 (the 1938 Act), as amended, requires that the national poundage quota for peanuts for each of the 1991 through 1995 marketing years (MY's) be established by the Secretary at a level that is equal to the quantity of peanuts (in tons) that the Secretary estimates will be devoted in each such MY to domestic edible, seed, and related uses. Section 358–1(a)(1) further provides that the national poundage quota for a MY shall not be less than 1,350,000 st. The MY for 1993-crop peanuts is from August 1, 1993, through July 31, 1994. Poundage quotas for the 1991–95 crops of peanuts were approved by 98.2 percent of peanut growers voting in a referendum conducted December 10 through 13, 1990.

A proposed rule on the quota determination, with a public comment period, was published in the **Federal Register** (57 FR 55151) on November 24, 1992. The proposed rule set out, for purposes of the proposed quota calculation, individual estimates for: (1) Domestic food use; (2) farm sales and local sales of peanuts; (3) seed use; (4) crushing residual; (5) shrinkage and other losses; and (6) Segregation 2 and

3 loan transfers. For the reasons set out below, it was determined that the proposed quota of 1,496,000 st would be accepted without change as the national poundage quota for 1993-crop peanuts.

ESTIMATED DOMESTIC EDIBLE, SEED, AND RELATED USES

Item	Quota: In short tons
Domestic Edible:	
Domestic food	1,146,000
On farm and local sales	21,500
Subtotal	1,167,500
Seed	109,500
Related Uses:	
Crushing residual	153,000
Shrinkage and other losses	46,000
Segregation 2 and 3 loan transfers to quota loan	20,000
Subtotal	219,000
Total	1,496,000

Discussion of the Comments on Proposed Quota

A total of 12 comments were received during the public comment period that ended on December 11, 1992. Comments were submitted by 2 manufacturer/processor associations; 2 manufacturers; 2 sheller associations; 1 state farm bureau; 4 grower associations; and 1 farmer.

The comments made regarding the 1993-crop national quota are discussed below by subject matter.

a. *Overall quota level.* A number of comments were directed to the overall quota level rather than to individual elements of the calculation.

The manufacturer/processor associations and all manufacturers supported a larger quota. Each sheller association supported the proposed 1993 quota of 1,496,000 st. All other comments on the level of the proposed quota supported a quota not more than 1,450,000 st. The commenting farmer questioned the need for quota determinations and marketing restrictions imposed by statute, but provided no comments regarding the proposed rule.

b. *Domestic edible use.* The proposed estimate of 1993 domestic food use was developed in two steps. First, total domestic edible utilization of 1,160,000 st was estimated by the USDA Interagency Commodity Estimates Committee (ICEC). Second, to account for peanut butter exports, the estimate of domestic edible disappearance was reduced by 14,000 st. Estimates of domestic edible utilization include product exports. Such exports in most instances are either made from, or may otherwise be credited under section 359(e)(1) of the 1938 Act as being made from, additional peanuts.

Manufacturer/processor associations and manufacturers requested a higher domestic edible food use to enable growth in excess of projected levels. Sheller associations supported the proposed domestic edible use estimate. Grower associations stated that the proposed estimate failed to account for peanut product import and export trends and suggested a 31,300 st reduction. Based on the best data available, it was determined that the proposed quota made the most realistic estimates of growth and imports possible. Accordingly, the proposed estimate of domestic edible use was accepted without change.

c. *Farm use and local sales.* No comments were received. The proposed estimate of 21,500 st was accepted without change.

d. *Seed use.* The proposed seed estimate of 109,500 st was based on the farmer stock tonnage equivalent of the amount of seed required to plant the expected 1994 crop. Grower associations believed that reduced use of quota peanuts during MY 1993 would result in fewer acres planted under the 1994 crop. It was determined that the ICEC estimate for the amount of seed required to plant the 1994 crop was the most realistic estimate available and the ICEC seed estimate of 109,500 st was accepted in the final rule.

e. *Crushing residual.* The crushing residual represents the farmer stock equivalent weight of crushing grade kernels shelled from quota peanuts. In any given load of quota farmer stock peanuts, a portion of such peanuts is only suitable for the crushing market. The portion of such peanuts only suitable for the crushing market was proposed to be 12 percent, unchanged from the level used for setting the 1992 quota. One sheller association asserted that the crushing residual should be between 10 and 12 percent. One manufacturer association proposed that quality problems in the 1993 crop could be hedged against by increasing the quota (i.e., using a higher crushing residual). It was determined that the proposed crushing residual factor of 12 percent was the most accurate estimate available. That level is within the range the sheller association proposed. The proposed factor of 12 percent was retained.

f. *Shrinkage and other losses.* No comments were provided and the estimate was accepted as proposed.

g. *Segregation 2 and 3 transfers.* No comments were provided and the estimate was accepted as proposed. This estimate represents peanuts that would otherwise be eligible for use as quota peanuts but which will not qualify for such use due to quality problems. Such transfers to quota peanut price support loan pools occur when quota peanut producers, due to no fault of their own, would otherwise have insufficient Segregation 1 peanuts to fulfill their quota. In such instances, Segregation 2 and 3 peanuts placed under an additional peanut price support loan may be transferred to the quota price support loan. The Commodity Credit Corporation (CCC) will then ensure that such peanuts are crushed for oil.

Proposed Quota Adjustment for Undermarketings and Carryover

The foregoing components of the national poundage quota have not been adjusted for either the application of prior undermarketings to the 1993 quota or abnormal carryover stocks at the beginning of MY 1993. As peanut usage has grown, carryover stocks have also grown. But, since 1980, carryover stocks have varied more from year to year than earlier. Also, current law allows a farm's quota to be increased by the amount by which marketings for prior years back to 1989 were less than the farm's quota. The total of all such increases nationally may not exceed 10 percent of the national poundage quota. In setting the national poundage quota for the 1991 crop, the application of undermarketings from 1990 increased the effective quota by the maximum 10 percent. This increase substantially contributed to a CCC loss on the 1991 crop of $95 million. Unapplied undermarketings from 1992 suggest that the 1993 quota will also be increased by the 10-percent maximum.

In response to these stated concerns some comments favored a 15,000 st quota reduction to adjust for the application of undermarketings to the 1993-crop quota. One comment stated that quota peanuts did not comprise a significant portion of MY 1992 ending stocks and, as such, did not warrant a MY 1993 quota adjustment.

Without prejudice to possible adjustments to the 1994-crop and subsequent quota determinations, it was determined that the 1993-crop quota would not be adjusted to reflect the impact of undermarketings and end of year carryover of 1992-crop peanuts into MY 1993 because demand growth indicated that a 1,496,000 st quota would be needed to meet full demand for peanuts in the coming year.

After consideration of the comments received, the proposed change to 7 CFR 729.214 is adopted as presented in the proposed rule.

List of Subjects in 7 CFR Part 729

Poundage quotas, Peanuts, Reporting and recordkeeping requirements.

Accordingly, 7 CFR Part 729 is amended as follows:

PART 729—PEANUTS

1. The authority citation for 7 CFR part 729 continues to read as follows:

Authority: 7 U.S.C. 1301, 1357 et seq., 1372, 1373, 1375; 7 U.S.C. 1445c–3.

2. Section 729.214 is amended by adding paragraph (c) to read as follows:

§ 729.214 National poundage quota.

* * * * *

(c) The national poundage quota for peanuts for marketing year 1993 is 1,496,000 tons.

Signed at Washington, DC on February 24, 1993.

Bruce R. Weber,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 93–4751 Filed 3–1–93; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Penicillin G Procaine Aqueous Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Anthony Products Co. The NADA provides for the intramuscular use of penicillin G procaine aqueous suspension (Microcillin-Ag®) in cattle and sheep for the treatment of bacterial pneumonia caused by *Pasteurella multocida*, in swine for the treatment of erysipelas caused by *Erysipelothrix rhusiopathiae (insidiosa)*, and in horses for the treatment of strangles caused by *Streptococcus equi*.

EFFECTIVE DATE: March 2, 1993.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8623.

SUPPLEMENTARY INFORMATION: Anthony Products Co., 5600 Peck Rd., Arcadia, CA 91006, is the sponsor of NADA 65–505, which provides for the intramuscular use of penicillin G procaine aqueous suspension (Microcillin-Ag®) in cattle and sheep for the treatment of bacterial pneumonia caused by *Pasteurella multocida*, in swine for the treatment of erysipelas caused by *Erysipelothrix rhusiopathiae (insidiosa)*, and in horses for the treatment of strangles caused by *Streptococcus equi*. The NADA provides data and information to establish bioequivalency between this drug and E. R. Squibb & Sons' Crysticillin® (NADA 65–174). The NADA was approved on January 29, 1993. The regulations are amended in 21 CFR 522.1696b to reflect the approval. The basis for approval is discussed in the freedom of information summary.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval does not qualify for marketing exclusivity because no new clinical or field investigations (other than bioequivalence or residue studies) and no new human food safety studies (other than bioequivalence or residue studies) were essential to the approval and conducted or sponsored by the applicant.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 522.1696b [Amended]

2. Section 522.1696b is amended by revising the introductory text of paragraph (d) to read as follows:

§ 522.1696b Penicillin G procaine aqueous suspension.

* * * * *

(d) *Sponsor.* See No. 053501 in § 510.600(c) of this chapter for use as in paragraph (d) of this section, see No. 000864 for use as in paragraph (d)(3) of this section.

* * * * *

Dated: February 22, 1993.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 93–4735 Filed 3–1–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF–336; Re: Notice No. 757]

RIN 1512–AA07

Texas High Plains Viticultural Area (92F–016P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area located in northwest Texas known as Texas High Plains. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising allows wineries to designate the specific areas where the grapes used to make the wine were grown and enables consumers to better identify the wines they purchase.

EFFECTIVE DATE: April 1, 1993.

FOR FURTHER INFORMATION CONTACT: Marjorie D. Ruhf, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202-927-8230).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definite American

viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas. Section 4.25a(e)(1), title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in subpart C of part 9. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Petition

ATF received a petition from Clinton M. McPherson proposing to establish a viticultural area in the Texas panhandle to be known as "Texas High Plains." The viticultural area contains approximately 8 million acres of flat, intensively cultivated land with cotton, sorghum and wheat the predominant crops, irrigated from the Ogallala aquifer. The elevation is from 3,000 to 4,000 feet above sea level. Vineyards presently occupy approximately 2,000 acres, but there is growing interest in viticulture in the area. There are presently four wineries active within the viticultural area. Nearly half of all commercial wine grapes grown in Texas are grown in the Texas High Plains. In response to Mr. McPherson's petition, ATF published a notice of proposed rulemaking, Notice No. 757 in the **Federal Register** on September 30, 1992 (57 FR 45009).

Comments

ATF received four comments during the 45-day comment period which ended on November 16, 1992. Three commenters, Congressman Larry Combest, Lubbock County Judge Don McBeath, and Morris E. Wilkes of The Wilkes Company, wrote to express their support for the establishment of the Texas High Plains viticultural area. The fourth commenter, Thomas P. Kerester, Chief Counsel for Advocacy of the Small Business Administration (SBA), did not comment on the substance of the proposal, but objected to ATF's wording of the Regulatory Flexibility Act certification. In that regard, Mr. Kerester requested that ATF adequately outline the reason for its certification that this regulation will not have a significant economic impact on a substantial number of small entities. In response, ATF believes that the designation of a viticultural area itself has no significant economic impact on businesses within or without the area because any commercial advantage can only come from consumer acceptance of wines made from grapes grown in the area. ATF received two comments after the comment period closed, one from Congressman Bill Sarpalius, expressing his support for the proposed area, and one from Rick Perry, Commissioner of the Texas Department of Agriculture, addressing our concerns on the appropriateness of the name and the boundaries of the proposed area. Mr. Perry confirmed the petitioner's statement that the political boundary used as a viticultural area boundary coincides with changes in growing conditions, and that the proposed viticultural area "includes the total area suitable for viticulture within the larger geographical area known as 'Texas High Plains'." In view of these comments, ATF is adopting the Texas High Plains viticultural area as proposed.

Evidence of Name

The petitioner submitted evidence that the name "Texas High Plains" is locally or nationally known to refer to the area specified in the petition. The evidence includes:

The Wine Spectator, February 29, 1992, edition contains an article entitled "Dawn of New Texas Wine" which refers to the "High Plains around Lubbock, where many of the best wine grapes grow."

The Los Angeles Times, June 1, 1987, edition carried an article titled "Texas Wine: Taste It and Believe It" which described two wineries on the "Texas high plains"—Pheasant Ridge and Llano Estacado, both within the viticultural area.

Spirit magazine, September 1986, edition carried an article titled "The Wine Industry—Coming of Age in Texas?" which referred to the High Plains as an area in which the soil would be compatible with European vines.

Evidence of Boundaries

Evidence that the boundaries of the area are as specified in the petition includes the following:

The Fall, 1991, Market Report, a publication of the Texas Wine Marketing Research Institute, Texas Tech University, contains a map of the grape growing regions in Texas as broken down by counties. The western boundary agrees with the viticultural area boundary, but the area shown on the map extends further to the north and slightly further to the east and south.

The 1986–87 Texas Almanac and State Industrial Guide published a map of the "vegetational areas" of Texas, showing the High Plains as a somewhat larger area than the viticultural area, interrupted by a strip of "rolling plains" along the northern boundary.

The boundaries chosen by the petitioner omit portions of the larger area known as the "Texas High Plains" because they have been found to be unsuitable for commercial viticulture. The petitioner reports that, over the last 20 years, observers have found that risk of freeze damage became intolerable along the New Mexico border (the western boundary of the viticultural area) and to the north of the viticultural area's boundary. This change in the minimum temperature during winter coincides roughly with the 4,000 foot elevation of these areas, higher than most of the viticultural area.

In many of the narrative descriptions and maps submitted with the petition, an escarpment called the "Caprock" is used as the eastern boundary of the Texas High Plains. Since this escarpment is not represented on the U.S.G.S. maps as a single line, the petitioner has selected the 3,000 foot contour line as the eastern boundary for the area. This contour line runs to the west of the escarpment; in some places it appears to be at the edge of the escarpment and in others it appears to be as much as 15 miles to the west.

The southern boundary was chosen by the petitioner because, he states, it corresponds to changes in temperature, soil type and wind which alter the growing conditions significantly. His evidence will be discussed further in the sections on soil and climate.

Viticultural History

Records of the Texas Agricultural Experiment Station in Lubbock show studies were done between 1909 and 1937 on the adaptability of many grape cultivars, including *vitis vinifera*, at the station. In the 1950s and '60s, French-American hybrids, American and vinifera cultivars were planted in research plots at Texas Tech University, also in Lubbock. As a result of this work, commercial viticulture began in the area in 1945, and was expanded in the 1960s and again in 1973. Llano Estacado, the first winery in the area, had its first crush in 1976. Three more wineries have been developed in the Texas High Plains since then: Pheasant Ridge, Teysha (now Cap Rock Winery) and La Escarbada XIT.

In a report on the 1985 Lone Star State Wine Competition, Greater Lubbock, in its November 1985 issue, noted that wineries within the viticultural area

won the only gold medal awarded, 60 percent of the silver medals, and nearly 40 percent of the bronze medals in the statewide competition. The Los Angeles Times, Monday, June 1, 1987, article, "Texas Wine: Taste It and Believe It" mentioned awards won by Llano Estacado and Pheasant Ridge at the 1986 San Francisco Fair and Wine Competition, competing against nearly 2,000 other wines, "including a bunch from California."

Geographical Features

The petitioner provided the following evidence relating to features which distinguish the viticultural area from the surrounding areas:

Topography

The viticultural area is distinguished from the surrounding area in part by its elevation. The most pronounced change in terrain occurs at the eastern boundary of the area where an escarpment provides an east facing wall 200–1000 feet high along the entire east boundary of the appellation, separating the Texas High Plains from the Rolling Plains to the east." The viticultural area is described in the Texas Almanac as the "largest level plain of its kind in the United States." The high plains rise gradually from 3,000 feet in the east to more than 4,000 feet in spots along the New Mexico border.

Underlying the Texas High Plains is the Ogallala Aquifer. The Texas Almanac notes that this is an important source of irrigation water for crops grown in the area. The area has no major rivers, but there are numerous "playas" (small intermittent lakes) scattered through the area which catch water after rains and allow it to percolate back to the aquifer.

Soil

The authors of Our Texas, Ralph W. Steen and Frances Donecker, state that the High Plains were considered a "great American desert," suitable only for grazing, until late in the nineteenth century, when the land was found to be fertile. According to a report on Conservation Tillage issued by the Texas Agricultural Experiment Station (TAES) in July 1987, soils in the viticultural area vary from predominantly brown clay loams with clay textured subsoils in the north to fine sandy loams in the central and southern regions. The Ogallala aquifer, which supports irrigation within the viticultural area, ends near the southern boundary. The lack of available groundwater results in soils which are sandy, shallow and highly eroded to the south and east of the viticultural area. The petitioner told of one vineyard south of that boundary which was abandoned due to drifting sand.

Climate

According to the petitioner, the viticultural area is characterized by low annual rainfall, moderate temperature, and variable, but gentle, wind.

According to a report on Irrigation Water Management by the Texas Water Resources Institute in August 1987, average annual rainfall within the viticultural area varies from 14 inches near the western boundary to 20 inches in the east. The report notes that the greatest monthly rainfall in the area occurs between May and September, a fact the petitioner attributes to warm moist air carried into the area from the Gulf of Mexico. This tropical air sometimes brings moderate to heavy thunderstorms with hail and intense winds. According to a chart from TAES, annual precipitation gradually increases to the east of the viticultural area, and decreases to the west.

Other charts from TAES compare the annual temperatures in various parts of Texas. Mean annual temperature varies from 58° on the north to 61° on the south of the viticultural area, a range which the petitioner claims is important to the quality potential of wine grapes. The viticultural area's coldest temperatures range just above and below 0°, with colder temperatures to the north, and warmer temperatures to the south. According to the petitioner, growers to the north of the viticultural area's northern boundary have abandoned plantings due to frequent freeze loss.

The petitioner also notes that, due to the low relative humidity on the High Plains, there is a very low incidence of such disease and pest problems as downy mildew, Pierces disease, phylloxera, and black rot, which are found in other parts of Texas.

Boundary

The boundary of the Texas High Plains viticultural area may be found on six United States Geological Survey (U.S.G.S.) maps with a scale of 1:250,000. The boundary is described in § 9.144.

Miscellaneous

ATF does not wish to give the impression by approving the Texas High Plains viticultural area that it is approving or endorsing the quality of wine from this area. ATF is approving this area as being distinct from surrounding areas, not better than other areas. By approving this area, ATF will allow wine producers to claim a distinction on labels and advertisements as to origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of Texas High Plains wines.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in Executive Order 12291 and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have 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.

Regulatory Flexibility Act

As stated in the comments section of the preamble, it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to the consumers, and helps consumers identify the wines they purchase. As stated, ATF therefore certifies that the designation of a viticultural area itself has no significant economic impact on a substantial number of small businesses within or without the area because any commercial advantage can come only from consumer acceptance of wines made from grapes grown within the area. In addition, no new recordkeeping or reporting requirements are imposed. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Marjorie D. Ruhf, Wine and Beer

Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of sections in Subpart C is amended by adding § 9.144 to read as follows:

Sec.

* * * * *

9.144 Texas High Plains.

Par. 3. Subpart C is amended by adding § 9.144 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.144 Texas High Plains.

(a) *Name.* The name of the viticultural area described in this section is "Texas High Plains."

(b) *Approved maps.* The appropriate maps for determining the boundary of the Texas High Plains viticultural area are six U.S.G.S. topographical maps of the 1:250,000 scale. They are titled:

(1) "Clovis, New Mexico; Texas" 1954, revised 1973.

(2) "Brownfield, Texas; New Mexico" 1954, revised 1973.

(3) "Hobbs, New Mexico; Texas" 1954, revised 1973.

(4) "Plainview, Texas" 1954, revised 1974.

(5) "Lubbock, Texas" 1954, revised 1975.

(6) "Big Spring, Texas" 1954, revised 1975.

(c) *Boundary.* The Texas High Plains viticultural area is located in Armstrong, Bailey, Borden, Briscoe, Castro, Cochran, Crosby, Dawson, Deaf Smith, Dickens, Floyd, Gaines, Garza, Hale, Hockley, Lamb, Lubbock, Lynn, Motley, Parmer, Randall, Swisher, Terry and Yoakum Counties, Texas. The boundary is as follows:

(1) Beginning on the Hobbs, New Mexico; Texas, map at the intersection of the Texas-New Mexico border and U.S. Route 180 east of Hobbs, New Mexico;

(2) The boundary follows U.S. Route 180 east through Seminole, Texas and onto the Big Spring, Texas, U.S.G.S. map where it intersects with the 3,000 foot contour line in the town of Lamesa, Texas;

(3) The boundary then follows the 3,000 foot contour line in a generally northeasterly direction across the U.S.G.S. maps of Big Spring and Lubbock, Texas;

(4) The boundary continues along the 3,000 foot contour line onto the map of Plainview, Texas, where it follows a generally northwesterly direction until it intersects with State Highway 217 approximately 12 miles east of Canyon, Texas;

(5) The boundary then follows State Highway 217 west to Canyon, Texas, leaves State Highway 217 and proceeds in a straight line in a northwesterly direction until it intersects with U.S. Route 60, still within Canyon, Texas;

(6) The boundary then follows U.S. Route 60 in a southwesterly direction onto the U.S.G.S. map of Clovis, New Mexico; Texas, where it intersects the Texas-New Mexico border;

(7) The boundary then follows the Texas-New Mexico border south, across the U.S.G.S. map of Brownfield, Texas; New Mexico, to the beginning point on the Hobbs, New Mexico; Texas, U.S.G.S. map.

Signed: January 8, 1993.

Daniel R. Black,

Acting Director.

Approved: January 22, 1993.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 93–4707 Filed 3–1–93; 8:45 am]

BILLING CODE 4810–31–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–4561–9]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of State Implementation Plan (SIP) inadequacy and call for SIP revision.

SUMMARY: USEPA hereby gives notice that it has formally: Notified the Governor of the State of Ohio by letter dated October 28, 1992 (SIP Call letter), that the Ohio State Implementation Plan is substantially inadequate under the Clean Air Act (CAA) to attain and maintain the National Ambient Air Quality Standards (NAAQS) for lead in an area in Cuyahoga County, Ohio; and called upon the State to submit to USEPA a SIP revision to correct the deficiency.

DATES: USEPA has requested that the State of Ohio submit, by January 2, 1993, (60 days from receipt of SIP Call letter), an action plan with a schedule setting forth dates and increments of progress for correcting the Cuyahoga County area SIP deficiencies. The State must correct the plan deficiency elements and submit its fully approved Cuyahoga area lead plan to the USEPA by May 3, 1994 (18 months from receipt of SIP Call letter).

ADDRESSES: Copies of the documents associated with this information notice are available for inspection at the following address: (It is recommended that you telephone Randy Robinson, at (312) 353–6713, before visiting the Region 5 Office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of today's information notice is available for inspection at: U.S. Environmental Protection Agency, Jerry Kurtzweg, ANR–443, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Randy Robinson, Air Enforcement Branch, Regulation Development Section (AE–17J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–6713.

SUPPLEMENTARY INFORMATION: Section 110 of the CAA, 42 U.S.C. 7410, requires each State to adopt plans which provide for the attainment and maintenance of the NAAQS. In response to these requirements, Ohio submitted a SIP for lead. This SIP was approved by the USEPA on March 22, 1982 (47 FR 12164). Section 110 also requires that the State revise the plan under certain conditions. A key feature of Section 110 of the CAA requires the State to revise the plan whenever USEPA finds that the plan is "substantially inadequate to attain or maintain" the revelant NAAQS. (CAA section 110(k)(5)). More specifically, section 110(k)(5) provides that whenever USEPA finds that a SIP for an area is substantially inadequate to attain or maintain the relevant NAAQS, USEPA shall require the State to revise the plan as necessary to correct such inadequacies.

USEPA has information which indicates that the NAAQS for lead was violated in an area of the City of Cleveland, in Cuyahoga County. A lead monitor, required by USEPA, located near a facility operated by Master

Metals, Inc., in Cuyahoga County, has collected samples which, when professionally analyzed, calculate to an arithmetic quarterly average of 28 micrograms per cubic meter ($\mu g/m^3$) for the second quarter (April, May, and June) of 1992. This is well in excess of the NAAQS value for lead of 1.5 $\mu g/m^3$. 40 CFR 50.12. Samples collected during the first quarter (January, February, and March) of 1992 also indicate lead readings in substantial excess of the lead NAAQS.

A letter dated October 28, 1992, was sent to George V. Voinovich, Governor of Ohio, from Valdas V. Adamkus, USEPA Regional Administrator, notifying the State that USEPA finds the Ohio SIP substantially inadequate to attain and maintain the NAAQS for lead in an area of Cuyahoga County currently designated as unclassifiable. This is an area bounded on the north by the Conrail railroad tracks, on the west by I–71, on the east by I–77, and on the south by a line running from the intersection of I–71, and Clark Avenue to the intersection of I–77 and Pershing Avenue. 56 FR 56694, 56812–13 (Nov. 6, 1991). USEPA made this finding pursuant to sections 110(a)(2)(H)(ii) and 110(k)(5) of the CAA, based on exceedences of the lead NAAQS in the above described portion of the County (an area currently designated unclassifiable), and in doing so calls for the State of Ohio to revise the SIP for this area as necessary to assure attainment and maintenance of the NAAQS for lead.

USEPA has requested that, within 60 days following receipt of the October 28, 1992 Governor's letter, Ohio submit an action plan to USEPA with a schedule for identifying and adopting control strategies as part of the Ohio SIP to enforceably reduce lead emissions in the specified portion of Cuyahoga County to attain and maintain the lead NAAQS. The control strategies that will be adopted and implemented as part of the Ohio SIP must be submitted to EPA within 18 months from receipt of the Governor's letter, and must provide for attainment and maintenance of the lead NAAQS within 5 years of receipt of the Governor's letter. See *e.g.*, 110(n)(2) of the CAA. The finding of inadequacy and call for SIP revision set out in the letter represent a preliminary step in an ongoing administrative process. Any final USEPA judgment regarding the appropriateness of the State's response to USEPA's action will be reached when USEPA makes a binding determination regarding the State's response. See *e.g.*, CAA section 110(k) and section 307(b)(1); See also CAA section 110(m) and section 179.

The USEPA is prepared to work with the Ohio Environmental Protection Agency as it develops the required SIP provisions. The USEPA is committed to providing the necessary technical and administrative assistance to define the scope of actions which must be taken to resolve the SIP inadequacies.

This information notice 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 (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Lead.

Authority: 42 U.S.C. 7401–7671(q).

Dated: February 16, 1993.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 93–4734 Filed 3–1–93; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6958

[MT–930–4210–06; MTM 79374]

Withdrawal of National Forest System Land for Crystal Park Recreational Mineral Collection Area; MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 220 acres of National Forest System land in the Beaverhead National Forest from mining for a period of 30 years to protect the Crystal Park Recreational Mineral Collection Area. The land has been and will remain open to such forms of disposition as may by law be made of National Forest System land and to mineral leasing.

EFFECTIVE DATE: March 2, 1993.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2949.

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, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C., Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect a Forest Service recreation area:

Principal Meridian

Beaverhead National Forest

T. 4 S., R. 12 W.,
Sec. 16, W½SW¼NW¼, SE¼SW¼NW¼, NW¼SW¼, and N½SW¼SW¼;
Sec. 17, SE¼SW¼NE¼, SE¼NE¼, NE¼SE¼, E½NW¼SE¼, and N½SE¼SE¼.

The area described contains 220 acres in Beaverhead County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 30 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 93–4765 Filed 3–1–93; 8:45 am]

BILLING CODE 4310–DN

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7563]

Suspension of Community Eligibility

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the revised floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior

to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATE: As shown in fifth column of the tables below.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: James Ross MacKay, Acting Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures.

On August 25, 1986, FEMA published a final rule in the Federal Register that revised the NFIP floodplain management requirements. The rule became effective on October 1, 1986. As a condition for continued eligibility in the NFIP, 44 CFR 60.7 gives communities six months to revise their floodplain management regulations to comply with any revised NFIP regulation or be subject to suspension from participation in the NFIP.

The communities listed in this document no longer meet the statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the fifth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Federal Insurance Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, Federal Regulation, February 17, 1981, 3 CFR, 1991 Comp., p. 127. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The Authority citation for part 64 continues to read as follows:

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

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State	Community name	County	Community number	Effective date
Region 3:				
Pennsylvania	Charleston, Township of	Tioga	421172	March 15, 1993.
	Elk, Township of	Tioga	421154	Do.
West Virginia	Matoaka, Town of	Mercer	540126	Do.
Region 5:				
Illinois	Maywood, Village of	Cook	170124	Do.
	Markham, City of	Cook	175169	Do.
	Robbins, Village of	Cook	170154	Do.
Ohio	Chilo, Village of	Clermont	390067	Do.
	Rome, Village of	Adams	390003	Do.
Minnesota	Center City, City of	Chisago	270685	Do.
	Duluth, City of	St. Louis	270421	Do.
	Hermantown, City of	St. Louis	270708	Do.
	Isanti County	Isanti	270197	Do.

State	Community name	County	Community number	Effective date
	Rosemount, City of	Dakota	270113	Do.
	Warroad, City of	Lake of the Woods	270415	Do.

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

Issued: February 23, 1993.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 93–4740 Filed 3–1–93; 8:45 am]

BILLING CODE 6718–21–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92–260; FCC 93–73]

Cable Home Wiring

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This order prescribes rules as required by section 16(d) of the Cable Act of 1992. The new rules adopted in this proceeding allow subscribers the opportunity to acquire cable home wiring upon voluntary termination of service in order to use it for alternative providers and to avoid the disruption of having the wiring removed.

EFFECTIVE DATE: April 1, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Beth Richards, Telephone: (202) 632–7090. Paperwork Reduction Act: This Report and Order will not require OMB approval and is not subject to the Paperwork Reduction Act.

SUPPLEMENTARY INFORMATION:

Background

On November 6, 1992, in response to section 16(d) of the Cable Television Consumer Protection and Competition Act of 1992, Public Law 102–385, section 16(d), 106 Stat. 1460 (1992) ("Cable Act of 1992"), to be codified at 47 U.S.C. 544(i), this Commission released a Notice of Proposed Rule Making, MM Docket No. 92–260, FCC 92–500, 7 FCC rcd 7349 (1992), 57 FR 54209 (November 17, 1992). In that notice the FCC sought comment regarding rules concerning "the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such subscriber." After consideration of the record, we prescribe rules which prohibit cable operators from removing cable home wiring upon termination of service before giving the subscriber the opportunity to acquire the wiring. These rules most directly and appropriately affect the statutory language and the apparent goals of the legislation, which are to avoid the disruption of having the wiring removed and to allow subscribers to utilize the wiring with an alternative multichannel video delivery system. We also decline to adopt rules that go beyond the statutory provisions as some parties had urged. Further we address the issues of compensation and signal leakage. The full text of this Commission action is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this action may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Report and Order

This is a synopsis of the Commission's Report and Order, adopted February 1, 1993, released February 3, 1993:

1. The rules adopted here follow the plain language of the statute, and require cable operators to provide subscribers the opportunity to acquire cable home wiring before removing it from subscribers' premises upon termination of service. Specifically, cable home wiring is defined as that wiring located within the premises or dwelling unit of the subscriber that has been installed by the cable operator or its contractor. The rules provide further that, in those cases where the cable home wiring does not already belong to the subscriber, upon voluntary termination by the subscriber, the cable system operator must provide the subscriber the opportunity to acquire the wiring before the operator removes it. Cable operators may, however, remove the cable home wire of a subscriber where they have terminated service for lack of payment or for theft of service under their existing termination guidelines. An exception to this rule is where ownership of the cable home wiring has been previously transferred to the subscriber by the operator.

2. The legislative history indicates that Congress intended the rule provisions adopted in this rule making to apply to cable home wiring located within the premises of the subscriber, *i.e.*, the internal wiring contained within the home or individual dwelling unit and not the wiring outside the home or the common wiring in apartment buildings and such. We adopt a rule consistent with the legislative history and comments and set the demarcation point for single unit installations at (or about) twelve inches outside of where the cable wire enters the outside wall of the subscriber's premises. This should give alternative providers adequate access to the cable home wiring so that they may connect the wiring to their systems without disrupting the subscriber's premises. For the same reasons, we set the demarcation point for multi-dwelling units at (or about) twelve inches outside of where the cable wire enters the outside wall of the subscriber's individual dwelling unit. We exclude so called "loop through" wiring, even though it is in the individual dwelling units, because to include such wiring would give the initial subscriber in the loop control over the cable service of all remaining subscribers on the wire.

3. With regard to compensation to the cable operator when a subscriber opts to purchase his or her cable home wiring, the record reveals that, in many circumstances, the cable home wiring already belongs to the subscriber, having been transferred by the operator and/or paid for by the subscriber pursuant to specific agreement. In these situations, the subscriber already has the right to use the cable with an alternative provider and further compensation is not warranted.

4. In those remaining situations, we conclude that, before removing the cable home wiring upon voluntary termination of service, the cable operator must first give the subscriber the opportunity to acquire it. Thus, when a subscriber who does not already own his or her cable home wiring voluntarily terminates service, the cable operator has two choices: it may leave the wiring in place or seek to remove it. Where cable is left in place after service is discontinued, it is reasonable, and consistent with the objectives of the statute, to conclude and to provide in our rules that the wiring is available for alternative uses by the former subscriber or new resident.

5. The operator may instead seek to remove the cable home wiring. As noted above, where there has been non-payment or theft of service the operator is not required to give the subscriber the opportunity to acquire it. In all other situations, however, the rules will require that the cable operator give the subscriber the option of purchasing the wiring rather than having it removed.

6. Where the subscriber is given the option of purchasing the wiring, the question arises as to what the price should be. We believe, and the rules will provide, that only the value of the wire itself on a per foot replacement cost basis should be allowed. The rules will provide that the cable operator must offer the cable home wiring to the subscriber for the replacement cost of the wiring itself. This charge may be based on a reasonable approximation of what the length of cabling is in the subscriber's premises. When the subscriber calls to terminate service, however, the cable operator is required, if it proposes to remove the wiring, to inform the subscriber that he or she may purchase the wire and what the cost per foot charge is.

7. If the cable operator chooses to remove the wire, offers the subscriber the opportunity to acquire it at the replacement cost of the cable home wiring, and the subscriber refuses the offer, then the cable operator may remove the wiring within 30 days of the refusal. If, however, the operator does not remove the wiring within 30 days, it may make no subsequent attempt to remove it or to restrict its use. If the operator does remove the cable home wiring, it must do so at no charge to the subscriber and must pay for any damage caused by the operator's removal of existing wiring, as currently required by 47 U.S.C. Section 541(a)(2).

8. Many of the comments echoed the concern expressed in the Notice about cable signal leakage that causes interference to licensed over-the-air services, including aeronautical and safety-of-life services. There was almost unanimous consent that the cable operator who installed the cable home wiring should not be held responsible for signal leakage if the cable operator is no longer providing cable service. We agree. A cable operator will not be held responsible for facilities over which it does not provide service. Because these rules apply only after service termination, the responsibilities of cable operators to prevent signal leakage while providing service remain unaltered.

9. Final Regulatory Analysis.

Need and purpose of this action

This Order prescribes rules as required by Section 16(d) of the Cable Act of 1992. The new rules adopted in this proceeding allow subscribers to acquire cable home wiring upon voluntary termination of service in order to use it for alternative video providers and to avoid the disruption of having the wiring removed.

Issues raised in response to the Initial Regulatory Flexibility Analysis

There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

Significant alternatives considered

The rules adopted follow the statutory language. Certain commenters urged us to adopt broader rules. Upon consideration, we determined that because of the time constraints under which we must promulgate rules, we would limit the rules to the language of the statute.

10. Authority for the rules adopted herein is contained in section 16(d) of the Cable Act of 1992, to be codified at 47 U.S.C. Section 541(i), and sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, 47 U.S.C. Sections 154(i), 154(j), and 303(r).

List of Subjects in 47 CFR Part 76

Cable television.

Rule Changes

Part 76 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

2. Section 76.5 is amended by adding new paragraphs (ll) and (mm) to read as follows:

§ 76.5 Definitions.

* * * * *

(ll) *Cable home wiring.* The internal wiring contained within the premises of a subscriber which begins at the demarcation point. Cable home wiring does not include any active elements such as amplifiers, converter or decoder boxes, or remote control units.

(mm) *Demarcation point.* (1) For new and existing single unit installations, the demarcation point shall be a point at (or about) twelve inches outside of where the cable wire enters the subscriber's premises.

(2) For new and existing multiple unit installations, the demarcation point shall be a point at (or about) twelve inches outside of where the cable wire enters the subscriber's dwelling unit, but shall not include loop through or other similar series cable wire.

3. Part 76 is amended by adding a new subpart M and new §§ 76.801 and 76.802 to read as follows:

Subpart M—Cable Home Wiring

Sec.
76.801 Scope.
76.802 Disposition of cable home wiring

Subpart M—Cable Home Wiring

§ 76.801 Scope.

The provisions of this subpart set forth rules and regulations for the disposition, after a subscriber voluntarily terminates cable service, of that cable home wiring installed by the cable system operator or its contractor within the premises of the subscriber. The provisions do not apply where the cable home wiring belongs to the subscriber, such as where the operator has transferred ownership to the subscriber, the operator has been treating the wiring as belonging to the subscriber for tax purposes, or the wiring is considered to be a fixture by state or local law in the subscriber's jurisdiction. Nothing in this subpart shall affect the cable system operator's rights and responsibilities under § 76.617 to prevent excessive signal leakage while providing cable service, or the cable operator's right to access the subscriber's property or premises.

§ 76.802 Disposition of cable home wiring.

Upon voluntary termination of cable service by a subscriber, a cable system operator shall not remove the cable home wiring unless it gives the subscriber the opportunity to acquire the wiring at the replacement cost, and the subscriber declines. The cost is to be determined based on the replacement cost per foot of cabling multiplied by the length in feet of the cable home wiring. If the subscriber declines to acquire the cable home wiring, the cable system operator must then remove it within 30 days or make no subsequent attempt to remove it or to restrict its use.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–4688 Filed 3–1–93; 8:45 am]

BILLING CODE

47 CFR Part 76

[MM Docket No. 82–434; FCC 93–80]

Network-Cable Cross-Ownership

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: The Commission, by this Memorandum Opinion and Order, addresses issues raised in petitions for reconsideration of the Report and Order, 57 FR 35468 (Aug. 10, 1992), in this proceeding. The Report and Order amended § 76.501(a)(1) of the Commission's rules, which prohibited common ownership of cable television systems and national television networks. The Report and Order revised the rule to permit networks to own cable systems, provided that such combinations did not exceed 10 percent of homes passed by cable nationwide, and 50 percent of homes passed by cable within a local market. The Commission also in the Report and Order established a process to resolve complaints from local broadcast stations that allege competitive harm by network-owned cable systems to carriage or channel positioning.

FOR FURTHER INFORMATION CONTACT: Jim Coltharp, Policy and Rules Division, Mass Media Bureau, (202) 632–6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order in MM Docket No. 82–434 adopted February 5, 1993, and released February 23, 1993. The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Synopsis of Memorandum Opinion and Order

1. This Memorandum Opinion and Order addresses issues raised in petitions for reconsideration of the Report and Order that amended § 76.501(a)(1) of our rules, which prohibited common ownership of cable television systems and national television networks (the "network-cable cross-ownership" rule). Specifically, the Report and Order revised the rule to permit networks to own cable systems, provided that such combinations do not exceed ten percent of homes passed by cable nationwide, and fifty percent of homes passed by cable within a local market. We also established a process to resolve complaints from local broadcast stations that allege competitive harm by network-owned cable systems with respect to carriage or channel positioning. Petitions for reconsideration were filed by the National Broadcasting Company, Inc. (NBC) and the Association of Independent Television Stations (INTV). In this Memorandum Opinion and Order, we deny the petitions for reconsideration, thereby affirming our decision to permit broadcast networks to own cable systems subject to certain restrictions, including our limit on homes passed by a network-owned cable system within a local market. We also make no change in the remedies for specific cases of anticompetitive conduct, but rather will resolve the remaining concerns regarding carriage of local broadcast stations by network-owned cable systems in the proceeding that implements the must-carry provisions in Sections 4 and 5 of the Cable Television Consumer Protection and Competition Act of 1992.[1]

2. In the Report and Order, we stated that the cable industry has become a robust, independent enterprise, with over 10,000 systems and 80 networks offering an increasing diversity of programming that competes directly with over-the-air broadcast services. At the same time, in the midst of increasing competition from multichannel video services, the broadcast television networks face a growing need to generate additional revenues to respond to declining audience shares and advertising sources. Based upon these changes and our analysis of this proceeding's record, we found that the original rationale for the network-cable cross-ownership rule—to prevent network dominance or undue concentration in the video marketplace, and to promote growth in the infant cable industry—has been attenuated. Moreover, we stated that the rule may hamper competition by precluding three experienced market participants from owning cable systems, and by unnecessarily limiting the television networks' ability to diversify and generate other revenue streams. Indeed, most commenters agreed that the rule's original rationale is no longer sufficient to sustain a *per se* prohibition against network-cable cross-ownership. The Report and Order also pointed out that a number of independent parties and government agencies concluded that the rule is outdated, restrains competition and diversity in providing cable service, and lacks countervailing benefits. Therefore, we revised the cross-ownership rule to permit significant entry into the cable industry by the broadcast networks, subject to certain constraints to address the concerns raised in this proceeding regarding possible anticompetitive or discriminatory practices by network-cable operators.

3. The Report and Order emphasized that the changing structure of the video marketplace is well-documented, with over 10,000 cable systems now operating in the United States, compared to 2,490 systems in 1970 when the rule was adopted. Today's cable systems reach over 90% of the nation's households, and serve over 60% of homes passed. We continue to believe, as discussed in the Report and Order, that allowing networks to own cable systems, subject to our revised rules, could affirmatively promote competition in the video marketplace and provide other public interest benefits. Furthermore, the Report and Order stated that the opportunities for significant network entry into cable ownership are also important in view of the many technological and service innovations that appear to be imminent in the cable industry, while also observing that cable service has previously benefited from vertical integration between system operators and programmers.[2]

4. Throughout this proceeding, we have recognized arguments raised by parties seeking to retain the rule that large cable multiple system owners (MSOs) and the broadcast networks control many of the outlets for distributing programming in the video marketplace. We are not persuaded, however, that an absolute prohibition against network-cable cross-ownership is necessary in order to protect competition and diversity.

[1] In November 1992, the Commission issued a Notice of Proposed Rulemaking regarding the must-carry aspect of the 1992 Cable Act. See Notice of Proposed Rule Making in MM Docket No. 92–259, 57 FR 56298 (Nov. 27, 1992) (Must-Carry Notice). The Must-Carry Notice requested comment on the effect of the 1992 Cable Act on the process for remedying specific cases of anticompetitive conduct by network-cable operators, and the extent that the more specific statutory carriage obligations supersede the requirements adopted in the network-cable cross-ownership proceeding.

[2] The 1992 Cable Act directs the Commission to consider and adopt rules governing circumstances where vertical integration and horizontal concentration of ownership may harm competition and diversity in the video marketplace. See Cable Television Consumer Protection and Competition Act of 1992 at Sections 11 and 13; see also Notice of Proposed Rulemaking and Notice of Inquiry, MM Docket No. 92–264, 8 FCC Rcd 210 (1992) 58 FR 3523, January 11, 1993.

5. Although the Report and Order concluded that the absolute prohibition against network-cable cross-ownership was no longer in the public interest, we recognized certain commenters' concerns that network-cable operators could conceivably use their enhanced leverage in the video marketplace to harm local broadcast stations through certain discriminatory practices against nonaffiliated stations or through "bypassing" affiliated stations and distributing network programming directly through the cable system. Therefore, we adopted limited structural measures designed to protect competition and diversity in the video marketplace. The revised rule permits networks to own cable systems, provided that such combinations do not exceed (i) 10% of homes passed by cable nationwide, and (ii) 50% of homes passed by cable within an ADI. We also stated that the local limit will not apply to instances where the network-owned cable system faces a "competing" system, because direct competition between a cable system and another multichannel provider will further reduce the possibility of anticompetitive conduct by network-cable owners. The Report and Order stated that the national ownership limit would permit reasonable opportunities for network entry into cable, while also allowing for growth to increase the potential benefits to the public from diversified network investments. Similarly, we concluded that the 50-percent local limit would address commenters' concerns pertaining to dominance by network-cable combinations and anticompetitive conduct, emphasizing that the limit prevents network-cable owners from completely controlling the cable systems in any ADI and reduces any incentives for discriminatory conduct.

6. We affirm the structural limits on network ownership of cable systems as adopted in the Report and Order, and we reject the petitions that were filed seeking reconsideration of the 50-percent local limit. Given the concerns raised in this proceeding regarding the potential for anticompetitive actions by network-cable owners, we continue to believe that the limits are a necessary constraint on network entry at this time in order to mitigate the incentives for practices that could harm the public interest or local broadcast stations. In particular, the local limit should mitigate the major concerns that were raised in this proceeding regarding bypassing of local broadcast stations with programming, as well as other potential problems concerning carriage or channel positioning, because a network could not purchase enough cable systems in a market to reach an area equivalent to the reach of the local broadcast station. In this regard, we reiterate that network-cable operators that encompass only a portion of an ADI market, or an area smaller than the affiliate's coverage, would arguably have incentives to treat affiliates and other local broadcast stations no less favorably than non-network owned cable systems. We maintain that local caps are necessary at the outset of this rule change and are preferable to the behavioral restrictions that were proposed or suggested by commenters. Moreover, as we stated in the Report and Order, the local ownership limit will provide an opportunity for us to evaluate whether network-owned cable systems operate any differently than cable systems owned by other entities. Furthermore, we believe that the local limit will balance the public benefits that are attainable through network entry into the cable industry with our decision to prevent complete control by a particular network-cable entity within a given local market, which is arguably the locus of a cable system's power.

7. With respect to the 50-percent threshold, we reject the claim that the local limit is too high and allows excessive network entry. We emphasize that we intended that the local limit, along with the national limit, as adopted in the Report and Order, impose an effective constraint on network ownership of cable systems by allowing a certain degree of entry while alleviating any threat of anticompetitive conduct by the networks. Moreover, we are not persuaded that any of the potential cross-ownership opportunities as represented in the record—either certain combinations between a broadcast network and particular MSOs, or scenarios for entry in specific local markets—would necessarily limit competition and diversity in the video marketplace. We also agree with the observation that the broadcast-cable cross-ownership rule currently serves as a significant accompanying restriction on network entry into the cable industry, such that acquisitions in certain major local markets are precluded where a network already owns and operates a local broadcast station. Furthermore, we continue to believe that, the 50% measure will not create an undue obstacle to network entry and growth in most ADIs, yet it will provide essentially the same check on conduct by network-owned cable systems as the more stringent standard.

8. Next, concerning the argument that the 50-percent threshold is too restrictive, we recognize that certain potential network-cable combinations are precluded by our standard. We observe, however, that many acquisitions remain possible, including mergers of a network and a large MSO. For instance, regarding the many potential opportunities under the 50-percent cap demonstrate that the structural limits should permit at least some degree of meaningful entry, even allowing for an adjustment for the broadcast-cable provision, into the cable industry by broadcast networks. Again, we underscore that the local limit established in the Report and Order was intended to balance opportunities for entry with a reasonable ownership limit to address concerns for possible anticompetitive behavior, and that the limit takes full account of the conflicting statistical information placed in the record of this proceeding. We also reiterate that the primary concerns raised in the record focused on network-cable dominance and potential anticompetitive conduct and, in this regard, we emphasize that the 50% local limit will prevent network-cable owners from completely controlling the cable systems in any ADI while simultaneously reducing the likelihood of discriminatory conduct.

9. We also believe that the "homes passed" standard adopted in the Report and Order offers a stable and logical constraint on a network's ownership of cable within an ADI. In the Report and Order, we recognized that a base of "cable subscribers" may be more readily measurable than the "homes passed" base. However, we continue to find that a subscriber-based test—especially in the context of applying both national and local ownership standards—is fundamentally less stable as compared to a measure defined by "homes passed," given the relatively frequent changes in cable subscribership. We believe that a comparatively stable base is necessary as a point of reference for comparing acquisitions by a particular network, as well as those transactions involving different broadcast networks, over a period of time. As a result, to the extent that information for both measures is available, we find that the difference in actual opportunities for acquisition or entry are not sufficient to warrant use of a subscriber-oriented standard.

10. In order to deal further with the potential for any anticompetitive conduct, the Report and Order adopted a remedial scheme to address specific instances of discriminatory actions by network-owned cable systems. Specifically, we required that network-owned cable operators who drop or reposition a station for anticompetitive

reasons must restore the station to its prior carriage status. The Report and Order established procedures to govern the complaint process, including a requirement that a cable operator give a broadcaster 30 days' notice before repositioning or deleting its station. We provided that whenever a local broadcast station believes that it has suffered or will suffer competitive harm as a result of being dropped or repositioned by a network-owned cable system, the station may seek special relief from the Commission pursuant to § 76.7 of the Commission's Rules. The Report and Order also listed several factors the Commission will consider in evaluating a petition for special relief, including whether the cable system dropped a station in favor of another station in which it has a financial interest, whether the network-owned cable operator bypassed the local network affiliate and provided network programming on its own, whether the programming decision was supported by subscriber surveys, and the current ratings of the station as compared with its ratings before being dropped from the cable system.

11. We continue to be satisfied with the efficacy of the remedial provisions we adopted in the Report and Order. At this time, however, we will neither affirm nor repeal the provision in light of the 1992 Cable Act, which directs the Commission to adopt must-carry rules for commercial and non-commercial broadcast stations. We emphasize that, when adopted, the new must-carry rules could arguably supersede the provisions adopted in this proceeding. Until those rules are adopted, however, we will retain the current procedures for remedy.

12. In this Memorandum Opinion and Order, we deny the petitions for reconsideration, thereby affirming our decision to permit broadcast networks to own cable systems subject to certain restrictions. In particular, we affirm our prior decision to allow broadcast networks to acquire cable systems provided that such combinations do not exceed (i) 10% of home passed by cable nationwide, and (ii) 50% of homes passed by cable within an ADI. We also make no change in the remedies we adopted to resolve specific cases of anticompetitive conduct, and defer the question of whether such remedies are superseded by the must-carry provisions of the 1992 Cable Act for our pending proceeding that will implement those statutory rules.

Final Regulatory Flexibility Analysis Statement

13. Pursuant to the Regulatory Flexibility Act of 1980, the Commission included a final analysis in the Report and Order detailing (i) the need for and purpose of the rules, (ii) the summary of issues raised by public comment in response to the initial regulatory flexibility analysis, Commission assessment, and changes made as a result, and (iii) significant alternatives considered and rejected. No substantive changes have occurred pertaining to the final analysis as a result of the petitions for reconsideration.

14. The Secretary shall send a copy of this Memorandum Opinion and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. section 601 et seq. (1981)).

Ordering Clauses

15. Accordingly, *It is ordered* that the Petitions for Reconsideration filed by the Association of Independent Television Stations and the National Broadcasting Company, Inc. *Are denied.*

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–4727 Filed 3–1–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 80–9; Notice 6A]

RIN 2127–AA12

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

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

ACTION: Final rule; change of effective date for adding previously adopted amendments to the Code of Federal Regulations (CFR).

SUMMARY: This document changes the date when the amendments to Standard No. 108 published on December 10, 1992 will be added to the text of that standard as it appears in the Code of Federal Regulations. Originally, the date was to be December 1, 1993. Now it will be March 2, 1993. There is no substantive effect of this change since paragraph S5.7, containing substantive requirements for conspicuity treatments, retains the originally stated date of December 1, 1993 for mandatory compliance with the requirements. The change also has the effect of making immediately effective the redesignation of certain paragraphs of the standard. Finally, the notice amends S5.8.2 to change a reference to "S5.7.1" to "S5.8.1".

DATES: The effective date for adding the text of the amendment published in FR Doc 92–29800 on December 19, 1992 (57 FR 58406), to 49 CFR part 571 is changed from December 1, 1993, to March 2, 1993. The effective date for the amendment effected by this notice to S5.8.2 is March 2, 1993.

FOR FURTHER INFORMATION CONTACT: Patrick Boyd, Office of Rulemaking (202–366–6346).

SUPPLEMENTARY INFORMATION: On December 10, 1992, NHTSA published a final rule addressed to making large trailers more visible on the road (57 FR 58406). The effective date of the rule was stated as December 1, 1993. The rule adopted a new paragraph S5.7 which requires trailers of 80 or more inches overall width and with a GVWR of over 10,000 pounds, manufactured on and after December 1, 1993, to be equipped with the conspicuity treatment required by the paragraph. The rule also redesignated existing paragraphs S5.7, S5.7.1, and S5.7.2, as S5.8, S5.8.1, and S5.8.2, and amended the applicability section of the standard S3, to include retroreflective sheeting and reflex reflectors manufactured to conform to S5.7.

In redesignating paragraphs S5.7, S5.7.1 and S5.7.2, the agency did not make a necessary conforming change to paragraph S5.7.2's internal reference to S5.7.1. It is therefore necessary now to change the internal reference to the newly redesignated S5.8.1.

The agency also wishes to accelerate the date when the amendments adopted on December 10, 1992 will appear in the text of the Code of Federal Regulations. Accelerating the effective date of that addition to the CFR results in no substantive burden. No compliance date or text is changed. The mandatory conspicuity marking provision of S5.7, by its own terms, will not come into effect until December 1, 1993. There is no substantive reasons why the redesignations of former S5.7 cannot be made effective immediately. NHTSA also notes that such an amendment with an effective date earlier than October 1, 1993, for adding the amendments to the

text of the standard in the CFR, will allow publication of the most current version of Standard No. 108 in the next volume of 49 CFR parts 400–999 revised as of October 1, 1993. The clarity that this will afford is in the public interest.

Accordingly, for the reasons stated above, NHTSA finds that prior notice and an opportunity for comment are not required, and that an effective date of March 2, 1993 for adding the amendments to 49 CFR 571.108 Motor Vehicle Safety Standard No. 108, published on December 10, 1992, to the CFR, and the amendment to S5.8.2, is in the public interest. The effective date for adding the amendments of December 10, 1992, to the CFR, and for amending S5.8.2, is changed from December 1, 1993, to March 2, 1993.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 571 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.

§ 571.108 [Amended]

2. Paragraph S5.8.2 of § 571.108 is amended by revising the phrase "section S5.7.1" to read "paragraph S5.8.1."

Issued on: February 24, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93–4635 Filed 3–1–93; 8:45 am]

BILLING CODE 4910–59–M

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49 CFR Part 571

[Docket No. 74–14; Notice 80]

RIN 2127–AE44

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

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

ACTION: Final rule.

SUMMARY: This document amends Standard No. 208, Occupant Crash Protection, to provide all manufacturers of certain trucks and multipurpose passenger vehicles designed to be driven by persons with disabilities with an alternative to complying with the existing occupant restraint requirement. These manufacturers will be permitted to install manual safety belts that have not been dynamically tested at the front outboard seating positions instead of complying with the existing requirement for installing dynamically tested manual safety belts. This final rule will also give them the option of installing manual safety belts that have not been dynamically tested instead of complying with requirements that have been issued, but are not yet effective, for the installation of dynamically tested automatic restraints in those positions.

This action is being taken because the special modifications made to these vehicles affect the vehicles' certifiability under the dynamic test requirements for manual belts and automatic restraints. Final stage manufacturers and alterers who produce these vehicles have been unable to certify compliance with these requirements by passing through the certification of the manufacturer of the incomplete or previously certified vehicle. In addition, because final stage manufacturers and alterers are small businesses, they are not individually able to take the alternative course of independently certifying compliance with the dynamic test requirements for these vehicles.

This amendment will allow persons with disabilities to continue to purchase vehicles for their own operation.

DATES: The amendments made in this rule are effective April 1, 1993.

Any petitions for reconsideration must be received by NHTSA no later than April 1, 1993.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Cohen, NRM–12, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2264.

SUPPLEMENTARY INFORMATION: The occupant restraint requirements for trucks and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less (referred to below as "light trucks") have been upgraded twice in recent years. On November 23, 1987, NHTSA published a final rule amending Standard No. 208, Occupant Crash Protection, to require the dynamic crash testing of the lap/shoulder safety belts installed in the front outboard seating positions of light trucks (52 FR 44898). This amendment became effective on September 1, 1991. On March 26, 1991, NHTSA published a final rule amending Standard No. 208 to extend the requirements for automatic crash protection to light trucks (56 FR 12472). The requirements will be phased-in over a period of years, beginning on September 1, 1994.

On November 4, 1991, the Recreation Vehicle Industry Association (RVIA) petitioned the agency "to amend Standard No. 208 to eliminate requirements that inadvertently discriminate against individuals with disabilities including individuals who use wheelchairs." RVIA is a national trade association representing over 500 manufacturers of recreation vehicles and their related suppliers. These recreation vehicles are classified as light trucks by NHTSA. RVIA's membership also includes more than 114 van converters who manufacture approximately 80 percent of the van conversions produced in the United States. The RVIA petition alleged that its

> member manufacturers and van converters are small business entities that do not have the necessary technical or other resources to "crash test" vehicles. As a result of (the new dynamic testing) requirement, they are no longer able to provide employers and others with "customized" vans, van conversions and light trucks that are specially designed or equipped to be driven by or used to transport persons with disabilities.

While the agency was reviewing this petition, NHTSA also received a letter from the Braun Corporation, a mobility products manufacturer (Braun). This letter stated that manufacturing a van to be driven by a person with a disability necessitates raising the roof over the front seating positions (or, in more technical terms, the roof forward of the B pillar, i.e., the post between the rear side door and the front passenger door) to provide sufficient headroom for a person in a wheelchair. The letter explained that the information provided by the manufacturer of the van stated that the roof area forward of the B pillar cannot be cut if the final stage manufacturer wishes to pass through the incomplete vehicle manufacturer's certification of compliance with Standard No. 208. Since many of the final stage manufacturers and alterers are small businesses, they cannot individually afford to take the alternative course of independently certifying compliance with the new dynamic testing requirements of Standard No. 208. In addition, because vehicles manufactured for persons with disabilities are often unique, it would be difficult for the manufacturer to utilize

other analytical techniques to evaluate the compliance of different vehicles.

The agency granted RVIA's petition on January 9, 1992, and on August 5, 1992, published a Notice of Proposed Rulemaking (NPRM) in response to the petition and Braun's letter (57 FR 34539). The NPRM emphasized the agency's belief that the goal of providing all individuals with an equivalent level of occupant crash protection must be balanced with the goal of providing mobility for all Americans. Since it appeared that manufacturers who modify and alter light trucks for persons with disabilities could not readily develop and install appropriate mobility arrangements, adaptive devices, and other hardware consistent with the dynamic testing requirements of Standard No. 208 and associated certification responsibilities, the agency proposed to add light trucks manufactured to be driven by wheelchair occupants to the list of vehicles which may be equipped with nondynamically tested manual belts instead of dynamically tested manual belts or automatic restraints. More specifically, these vehicles would be required to have, at a minimum, a Type 2 seat belt assembly installed at each outboard seating position and a Type 1 seat belt assembly installed at all other seating positions.

Since the agency did not have any information that modifications to seating positions rearward of the B pillar affect compliance with the dynamic testing requirements, and since the agency believed that the exclusion from the dynamic testing requirements should be no broader than necessary to accommodate the mobility needs of persons with disabilities, the agency proposed to limit the exclusion to vehicles manufactured to be driven by a wheelchair occupant. The agency proposed to refer to these vehicles by the term "vehicles manufactured for operation by persons with disabilities" and to define that term as including vehicles that have a level change device, an adaptive driver control and vertical clearance sufficient to allow a wheelchair occupant to move between the level change device and driver's seat.

The agency received eight comments in response to the NPRM. In general, commenters supported the need for an exclusion from the dynamic testing requirement. However, commenters did disagree with some aspects of the proposal. All of the comments were considered while formulating this final rule. The most significant comments are addressed below.

Safety

One commenter, ARCCA Incorporated (ARCCA), disagreed with the proposal because it would pose an unreasonable risk for persons with disabilities. In its comment, ARCCA referred to the proposal as a "bypassing" of Standard No. 208. This characterization of the exclusion is incorrect. As stated in the NPRM, this exclusion is only for the dynamic testing requirements. Standard No. 208 will still require vehicles which are manufactured under this exclusion to have belts which comply with Standard No. 209, Seat Belt Assemblies, and Standard No. 210, Seat Belt Assembly Anchorages. Therefore, occupants of these vehicles will still have effective occupant protection systems available to them.

Extension to Other Seating Positions

All commenters except ARCCA requested that the exclusion not be limited to vehicles modified for drivers with disabilities. They urged that the exclusion be broadened to include vehicles that, although not modified for drivers with disabilities, had been modified for passengers with disabilities. More specifically, Braun, the National Truck Equipment Association (NTEA), and RVIA requested extension of the exclusion to light trucks manufactured to transport passengers with disabilities in the front and/or rear seating positions. Care Concepts, Inc. (Care Concepts), Chrysler Corporation (Chrysler), Ford Motor Company (Ford), and Independent Mobility Systems, Inc. (IMS) limited the request for an extension to include vehicles whose right front passenger position had been modified for use by persons with disabilities.

In the NPRM, the agency stated the only seating areas whose modification appear to present a problem for compliance with the dynamic testing requirements are the seating areas forward of the B pillar. The commenters who requested extension to vehicles modified to carry individuals in wheelchairs as passengers, did not provide any information explaining why the exclusion from the dynamic testing requirement (which applies only to front outboard seating positions) was necessary if modifications are made to seating positions rearward of the B pillar.

While reviewing the comments, the agency received a copy of a petition to the U.S. Architectural and Transportation Barriers Compliance Board. A copy of this petition has been placed in the docket for the NPRM. The petition states that any change to original chassis construction of Chrysler's Dodge trucks may affect compliance with Standard No. 208. However, Chrysler did not present any information that modifications rearward of the B pillar affect compliance of the front seating positions in its comment. Therefore, the agency has not extended the exclusion to include vehicles whose rear seating positions have been modified.

The commenters who requested extension of the exclusion to vehicles modified to carry an individual in a wheelchair at the right front passenger position (but not at the driver's position) based the request on assertions that passengers prefer to sit in the front seat. NHTSA believes that, in the interest of safety, a distinction must be made between drivers and passengers. As the agency stated in the NPRM, while drivers must sit in a front seat, passengers need not do so. Accordingly, the justification for excluding vehicles whose driver's seat has been modified is much stronger than that for excluding vehicles whose right front passenger's seat has been modified. Commenters did not provide any information to refute that position. Therefore, the final rule continues to limit the exclusion to vehicles modified to be driven by persons with disabilities.

Definition

The NPRM proposed to define the term "vehicles manufactured for operation by persons with disabilities" as follows:

> vehicles that incorporate a level change device (e.g., a wheelchair lift or a ramp) for onloading or offloading an occupant in a wheelchair, at least one adaptive control to enable persons who have limited use of their arms or legs to operate a vehicle, and an interior element of design intended to provide the vertical clearance necessary to permit a person in a wheelchair to move between the level change device and the driver's position or to occupy that position.

Chrysler, Ford and IMS commented that this definition was too restrictive in specifying an adaptive control as one of the definitional criteria. All three commenters asserted that not all wheelchair occupants need an adaptive control to drive a vehicle. Chrysler and IMS asserted further that adaptive controls are usually not installed by the company that installs the lift and raises the roof or lowers the floor, but by a different company. Those two commenters said that the combination of these two facts would make it difficult for the lift installer/vertical clearance changer to determine whether a vehicle would ultimately qualify for the exclusion from the dynamic testing

requirement, and thus difficult to determine its compliance certification obligations. Accordingly, Ford requested that the exclusion be extended to vehicles that are modified to accommodate "wheelchair users who operate the vehicle from a driver's seat that has been modified to allow transfer from a wheelchair to the driver's seating position."

The agency included reference to adaptive controls in the definition to provide an objective way of distinguishing between vehicles modified to be driven by a person in a wheelchair and vehicles modified to permit transportation of passengers in wheelchairs. The latter vehicles, like the former vehicles, have a level change device and a raised roof or lowered floor.

Based on the comments, NHTSA agrees that the inclusion of adaptive controls was too restrictive in that it inadvertently excluded some vehicles modified to be driven by wheelchair occupants. To broaden the exclusion while ensuring that it continues to be limited to vehicles modified to be driven by a person in a wheelchair, the agency is replacing the phrase "at least one adaptive control to enable persons who have limited use of their arms or legs to operate a vehicle" with the broader phrase

> either an adaptive control or special driver seating accommodation to enable persons who have limited use of their arms or legs to operate a vehicle. For purposes of this definition, special driver seating accommodation includes a driver's seat easily removable with means installed for that purpose or with simple tools, or a driver's seat with extended adjustment capability to allow a person to easily transfer from a wheelchair to the driver's seat.

Type 2 Belt

In the NPRM, the agency stated that vehicles which qualified for exclusion from the dynamic testing requirement "would be required to have, at a minimum, a Type 2 seat belt assembly installed at each outboard seating position and a Type 1 seat belt assembly installed at all other seating positions." IMS, Chrysler, and Ford commented that some wheelchairs may not be compatible with a Type 2 seat belt assembly. If a wheelchair has closed arms, the seat belt cannot be positioned correctly unless the lap belt is disconnected from the shoulder belt to allow it to be placed through the arms. Ford commented that other requirements of Standard No. 208 may also not be compatible with wheelchairs, for example, single buckle release and emergency locking retractors. Ford also commented that Standard No. 208 does not require a Type 2 seat belt assembly at the front outboard seating position unless that position is within the impact zone.

In the NPRM, NHTSA stated "(w)hile the agency believes that all individuals are entitled to an equivalent level of occupant crash protection, the agency believes that that goal must be balanced with the goal of providing mobility for all Americans." The agency then emphasized "that the manual safety belts in these light trucks would offer significant occupant crash protection." Type 2A belts are currently not allowed by the standard because these belts do not offer equivalent safety benefits to Type 2 belts. The commenters who requested that the agency allow a Type 2A belt offered no information to suggest that equivalent or greater safety benefits would be achieved. Thus, the agency has decided not to allow Type 2A belts. Ford's comments about possible concerns regarding other requirements of Standard No. 208 are beyond the scope of this rulemaking.

Labeling

The NPRM stated:

> [t]he agency specifically seeks public comments on whether prospective purchasers should be provided with information that the vehicles subject to this rulemaking are not required to be dynamically tested. If commenters believe such notification is necessary, they are requested to provide reasons thereof and what form the notification should take.

Only one commenter, Chrysler, stated that it would support a requirement that prospective purchasers be provided information that the vehicle is not required to be dynamically tested. However, Chrysler did not provide any reason as to why such notification was necessary, or what form the notification should take. Therefore, in the absence of any information that it would provide any benefit, a notification requirement is not included in the final rule.

Other Comments

Ford requested extension of the exclusion of the dynamic testing requirement to passenger cars. Ford stated that it "earlier offered cars equipped to accommodate disabled drivers." NHTSA is not aware of any passenger cars currently being modified for drivers in wheelchairs, or that such vehicles would need an exclusion from the dynamic testing requirements. In addition, such an extension would be beyond the scope of the NPRM.

Ford also argued that compliance with 19 other motor vehicle safety standards may be affected by modifications to accommodate persons with disabilities. Changes relating to these standards are beyond the scope of this rulemaking. In addition, Ford did not provide any information that manufacturers are unable to comply with these standards.

Braun requested information about the location of the anchorages. The anchorage location requirements are in Standard No. 210. These requirements specify permissible location zones, referenced to the seating reference point (SgRP). Section S4.1 of Standard No. 207, Seating Systems, requires each vehicle to have an occupant seat for the driver. Therefore, even if the seat is readily removable to permit driving from a wheelchair, the manufacturer will be able to determine permissible anchorage locations in the vehicle.

Duration of the Exclusion of Automatic Restraint Requirements

In a recent notice of proposed rulemaking, NHTSA interpreted the air bag mandate in section 2508 of the Intermodal Surface Transportation Efficiency Act as including all those vehicles that NHTSA had determined in previous rulemaking proceedings should be subject to the automatic crash protection requirements (57 FR 59043; December 14, 1992). With respect to light trucks, the agency determined in the March 1991 final rule that all light trucks, except walk-in van-type trucks and vehicles designed to be sold exclusively to the United States Postal Service, would be subject to the requirements. If the interpretation in the NPRM is reaffirmed in the final rule on the air bag mandate, the exclusion of light trucks designed to be driven by persons with disabilities would have to be modified so that it terminates on September 1, 1998 when installation of air bags in light trucks becomes statutorily required.

This final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for

reconsideration of other administrative proceedings before parties may file suit in court.

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's regulatory policies and procedures.

The agency estimates that there will be 1,000 to 2,000 vehicles produced annually that will qualify for the exclusion. Higher estimates provided by one commenter were not broken down by GVWR or by type of adaptation. In the absence of additional information supporting the higher estimates, the agency continues to believe that 1,000 to 2,000 represents a best estimate of the number of vehicles manufactured to be operated by persons with disabilities. If each of these 1,000 to 2,000 vehicles is unique, the manufacturer might, in the absence of an exclusion, have to separately test each model. This could necessitate the manufacture of two vehicles, one to be tested and one to be sold. The costs of a Standard No. 208 test are $13,500. The agency estimates that the total cost of the second vehicle would be $25,000. Based on these figures, the agency estimates that the final rule could potentially avoid $38.5 to $77 million in costs annually.

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.

Manufacturers of vehicles affected by this final rule are primarily small businesses. However, as stated above, the agency does not expect a significant cost impact as a result of this final rule. Since there will not be a significant cost impact, the price of new vehicles will not be affected sufficiently to affect the purchase of new vehicles by small organizations and governmental jurisdictions. In addition, this amendment will permit small businesses to produce vehicles that they will not otherwise be able to produce.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this final rule.

National Environmental Policy Act

NHTSA has also analyzed this final 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 E.O. 12612, and has determined that this rule will 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.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 of title 49 continues to read as follows:

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

2. Section 571.208 is amended by revising S4.2, the first sentence in paragraphs S4.2.2, S4.2.5.1.1, S4.2.5.2.1, S4.2.5.3.1, and S4.2.6 and, in S4.2.5.4, paragraph (a) and the first sentence of (b) to read as follows:

§ 571.208 Standard No. 208; Occupant crash protection.

* * * * *

S4.2 *Trucks and multipurpose passenger vehicles with a GVWR of 10,000 pounds or less.* As used in this section, *vehicles manufactured for operation by persons with disabilities* means vehicles that incorporate a level change device (e.g., a wheelchair lift or a ramp) for onloading or offloading an occupant in a wheelchair, an interior element of design intended to provide the vertical clearance necessary to permit a person in a wheelchair to move between the lift or ramp and the driver's position or to occupy that position, and either an adaptive control or special driver seating accommodation to enable persons who have limited use of their arms or legs to operate a vehicle. For purposes of this definition, special driver seating accommodations include a driver's seat easily removable with means installed for that purpose or with simple tools, or a driver's seat with extended adjustment capability to allow a person to easily transfer from a wheelchair to the driver's seat.

* * * * *

S4.2.2 *Trucks and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less, manufactured on or after September 1, 1991 and before September 1, 1997.* Except as provided in S4.2.4, each truck and multipurpose passenger vehicle, with a gross vehicle weight rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less, manufactured on or after September 1, 1991 and before September 1, 1997, shall meet the requirements of S4.1.2.1, or at the option of the manufacturer, S4.1.2.2 or S4.1.2.3 (as specified for passenger cars), except that convertibles, open-body type vehicles, walk-in van-type trucks, motor homes, vehicles designed to be exclusively sold to the U.S. Postal Service, vehicles carrying chassis-mount campers, and vehicles manufactured for operation by persons with disabilities may instead meet the requirements of S4.2.1.1 or S4.2.1.2. * * *

* * * * *

S4.2.5.1.1 Subject to S4.2.5.1.2 and S4.2.5.5 and except as provided in S4.2.4, each truck, bus and multipurpose passenger vehicle, other than walk-in van-type trucks, vehicles designed to be exclusively sold to the U.S. Postal Service, and vehicles manufactured for operation by persons with disabilities, with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less that is manufactured on or after September 1, 1994 and before September 1, 1995, shall comply with the requirements of S4.1.2.1, S4.1.2.2, or S4.1.2.3 (as specified for passenger cars). * * *

* * * * *

S4.2.5.2.1 Subject to S4.2.5.2.2 and S4.2.5.5 and except as provided in S4.2.4, each truck, bus, and multipurpose passenger vehicle, other than walk-in van-type trucks, vehicles designed to be exclusively sold to the U.S. Postal Service, and vehicles manufactured for operation by persons with disabilities, with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less that is manufactured on or after September 1, 1995 and before September 1, 1996, shall comply with the requirements of S4.1.2.1, S4.1.2.2, or S4.1.2.3 (as specified for passenger cars). * * *

* * * * *

S4.2.5.3.1 Subject to S4.2.5.3.2 and S4.2.5.5 and except as provided in S4.2.4, each truck, bus, and multipurpose passenger vehicle, other than walk-in van-type trucks, vehicles designed to be exclusively sold to the U.S. Postal Service, and vehicles manufactured for operation by persons with disabilities, with a GVWR of 8,500 pounds or less and an unloaded vehicle

weight of 5,500 pounds or less that is manufactured on or after September 1, 1996 and before September 1, 1997, shall comply with the requirements of S4.1.2.1, S4.1.2.2, or S4.1.2.3 (as specified for passenger cars). * * *

* * * * *

S4.2.5.4 *Alternative phase-in schedule.* * * *

(a) Except as provided in S4.2.4, each truck, bus, and multipurpose passenger vehicle, other than walk-in van-type trucks, vehicles designed to be exclusively sold to the U.S. Postal Service, and vehicles manufactured for operation by persons with disabilities, with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less that is manufactured on or after September 1, 1994 and before September 1, 1995 shall comply with the requirements of S4.1.2.1, S4.1.2.2, or S4.1.2.3 (as specified for passenger cars).

(b) Except as provided in S4.2.4, each truck, bus, and multipurpose passenger vehicle, other than walk-in van-type trucks, vehicles designed to be exclusively sold to the U.S. Postal Service, and vehicles manufactured for operation by persons with disabilities, with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less that is manufactured on or after September 1, 1995 shall comply with the requirements of S4.1.2.1 (as specified for passenger cars) of this standard. * * *

* * * * *

S4.2.6 *Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1997.* Except as provided in S4.2.4, each truck, bus, and multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and a unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1997 shall comply with the requirements of S4.1.2.1 (as specified for passenger cars) of this standard, except that walk-in van-type trucks, vehicles designed to be exclusively sold to the U.S. Postal Service, and vehicles manufactured for operation by persons with disabilities may instead meet the requirements of S4.2.1.1 or S4.2.1.2. * * *

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Issued on February 22, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93–4781 Filed 3–1–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 930225–3025]

RIN 0648–AE91

Snapper-Grouper Fishery of the South Atlantic

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

ACTION: Interim final rule and request for comments.

SUMMARY: NMFS issues this interim final rule to (1) define a sea bass pot; (2) remove the existing definition of sea bass trap; and (3) allow retention of fish caught incidentally in a sea bass pot. In addition, NMFS clarifies what constitutes having a longline on board a vessel for purposes of the prohibition on use of a longline (1) to fish for fish in the snapper-grouper fishery in the exclusive economic zone (EEZ) where the charted depth is less than 50 fathoms (91.5 m); and (2) to fish for wreckfish. Finally, NMFS removes unnecessary language regarding the multi-day possession limits applicable to charter vessels and headboats. The intended effects of this rule are to alleviate unanticipated economic impacts on black sea bass fishermen and related support industries, to enhance enforceability of the prohibition on the use of fish traps, to conform the regulations to the intent of the fishery management plan without undue burden on fishermen, and to clarify the regulations.

DATES: Effective March 1, 1993. Written comments must be received on or before April 1, 1993.

ADDRESSES: Comments on this interim final rule should be sent to the Southeast Regional Office, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Copies of documents supporting this action may be obtained from the South Atlantic Fishery Management Council, Southpark Building, suite 306, One Southpark Circle, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813–893–3161.

SUPPLEMENTARY INFORMATION: Snapper-grouper species off the southern Atlantic states, including sea bass, are managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (FMP), prepared by the South Atlantic Fishery Management Council (Council), and its implementing regulations at 50 CFR part 646, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Sea Bass Pots

Amendment 4 to the FMP prohibits the use of fish traps in the snapper-grouper fishery but allows the use of sea bass traps north of Cape Canaveral, Florida. To ensure that a sea bass trap would not be used in a directed fishery for snapper-grouper species other than sea bass, the regulations that implement Amendment 4 limit a fisherman who use or possesses a sea bass trap in the EEZ north of Cape Canaveral on any trip to the bag limits for those snapper-grouper species that have bag limits, and to zero for all other species except sea bass. These possession limits caused an unanticipated economic hardship to fishermen in North Carolina and South Carolina who had traditionally fished with sea bass traps and other gear on a single trip.

To address this economic emergency, the Council requested, and NMFS published, an emergency interim rule, effective August 31, 1992, through November 30, 1992, that established a definition of "sea bass pot," based principally on size, and removed the possession limits for snapper-grouper applicable to fishermen using sea bass pots aboard commercially permitted vessels in the EEZ off North and South Carolina (55 FR 39365, August 31, 1992). The nature and scope of the economic emergency and the rationale for and details of the revised management measures are contained in the emergency interim rule and are not repeated here.

Upon the request of the Council and with the concurrence of NMFS, effectiveness of the emergency interim rule was extended through February 28, 1993 (57 FR 56522, November 30, 1992).

A contributing factor to the problem of appropriate retention limits applicable to fishermen using sea bass traps was the Council's and NMFS' inability in Amendment 4 to define a sea bass trap in terms other than its catch. That is, differentiation between a fish trap, which is prohibited, and a sea bass trap could only be ascertained after fish were caught in it. Such after-the-fact differentiation created difficulties for fishermen and for enforcement officers. Although the proposed rule to implement Amendment 4 requested recommendations for an alternative definition, no substantive recommendations were received. The unforeseen economic emergency focused attention on this weakness in the regulations, and a suitable definition

of a sea bass pot, based principally on size, was implemented by the emergency interim rule.

Experience under the emergency interim rule, as expressed by industry representatives at Council meetings and by written comments to the Council, indicates that the definition of a sea bass pot based on size relieves the economic emergency while precluding the use of a sea bass pot in a directed fishery for snapper-grouper species other than sea bass. Accordingly, the Council initiated action under the FMP's framework procedure for establishing or modifying management measures, including gear restrictions, to establish a definition of sea bass pot, remove the definition of fish trap, and remove the incidental catch restrictions for fishermen using sea bass pots. The Council believes that the benefits of the revised measures regarding use of sea bass pots should apply throughout the range of allowed use of sea bass pots. Therefore, this action would apply these measures from Cape Canaveral through North Carolina.

Under this interim final rule, a trap in the EEZ, other than a crustacean trap or a sea bass pot, would be a fish trap. Enforcement of the FMP's prohibition on use of fish traps in the EEZ would be significantly enhanced.

It is the Council's intent that sea bass pots not be fished in multiple configurations (i.e., attaching individual pots together resulting in a trap that exceeds the dimensions specified for a sea bass pot). This would not preclude connecting individual pots to a line, such as a "trawl" or trot line.

The Council has determined that these changes are in the best interest of the black sea bass fishery. Further, the significant negative impacts, which were the basis for the emergency interim rule, argue strongly for action to implement these changes early in the 1993 fishing year, prior to expiration of the emergency interim rule. NMFS concurs.

Longlines

The regulations specify that a longline may not be used to fish for fish in the snapper-grouper fishery in the EEZ where the charted depth is less than 50 fathoms (91.5 m) (50 CFR 646.22(g)(1)). A person aboard a vessel that has a longline aboard and has fished on a trip in the EEZ where the charted depth is less than 50 fathoms (91.5 m) is precluded from possessing commercial quantities of fish in the snapper-grouper fishery on that trip, as specified in 50 CFR 646.22(g)(1)(ii). One of the criteria for determining whether a longline is aboard is possession of "a cable of diameter and length suitable for use in the longline fishery."

Similarly, a bottom longline may not be used to fish for wreckfish (50 CFR 646.22(g)(2)). A person aboard a vessel that has a longline aboard may not possess a wrechfish in or from the EEZ. One of the criteria for determining whether a longline is aboard is possession of "a cable of diameter suitable for use in the longline fishery longer than 1.5 miles (2.4 km) on any reel." Some fishermen aboard vessels that are permitted in the wreckfish fishery and other fisheries conduct trips during which they use non-longline gear for wreckfish and monofilament pelagic longlines for fish other than snapper-grouper species. Reports have been received that such multi-gear trips may be necessary to operate economically in the face of uncertain catch rates for wreckfish. The question has arisen as to whether monofilament longlines are considered "cable."

The Snapper-Grouper Advisory Panel of the Council has advised the Council and NMFS that monofilament that is normally used in pelagic longlines cannot be satisfactorily employed as a bottom longline for wreckfish. Currently available monofilament longlines would be cut by the sharp, rocky relief on the wreckfish grounds. On the other hand, the Advisory Panel advised that a monofilament longline could be satisfactorily deployed in parts of the EEZ where the charted depth is less than 50 fathoms (91.5 m). Accordingly, differentiation is necessary as to what constitutes "cable" in the two instances, so as not to interfere unnecessarily with the legitimate operations of fishermen.

In the 50-fathom (91.5 m) restriction, NMFS is clarifying the criterion for determining possession of a longline aboard by changing it to read, "a cable or monofilament of diameter and length suitable for use in the longline fishery." In the wreckfish restriction, the criterion remains unchanged and, thus, precludes any presumption that monofilament is cable.

Charter Vessels and Headboats

In the charter vessel and headboat exception to the general rule prohibiting possession of more than one daily bag limit of snapper-grouper species (50 CFR 646.23(c)(2)), there is a condition that the charter vessel or headboat must have two licensed operators aboard "as required by the Coast Guard for trips of over 12 hours." The requirement for two licensed operators aboard is explicitly stated in Coast Guard regulations that are applicable to some, but not all, of the vessels included in the terms "charter vessel" and "headboat" in these regulations. The Council, however, has concluded that having two licensed operators aboard on trips of over 24 hours is an appropriate condition for the exception. Accordingly, as a technical change, the phrase "as required by the Coast Guard for trips of over 12 hours" is removed.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this interim final rule is necessary for the conservation and management of the snapper-grouper fishery and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator determined that this interim final rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291. This rule is not 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 a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Assistant Administrator, pursuant to section 553(b)(B) of the Administrative Procedure Act (APA), finds for good cause that, in order to maximize the benefits for participants in the fishery, the revisions in this rule relating to sea bass traps must be effective immediately upon expiration of the emergency interim rule currently in effect. It is impracticable to provide notice and opportunity to comment on this aspect of the rule. Similarly, to implement measures to relieve the economic hardship in a timely manner, the Assistant Administrator finds it is contrary to the public interest to delay for 30 days the effective date of this interim final rule, under the provisions of sections 553(d)(1) of the APA. The Assistant Administrator, pursuant to section 553(b)(A) of the APA, finds that it is contrary to the public interest to require prior notice and opportunity to comment on clarifications regarding longlines and charter vessel and headboat language because they relieve restrictions. Likewise, the Assistant Administrator, pursuant to section 553(d)(1) of the APA, finds that, for the same reasons, good cause exists for making this rule effective on March 1, 1993.

The Council prepared a regulatory impact review (RIR) for the framework

portions of this interim final rule, which concludes that they would have overall net economic benefits, summarized as follows. The new definition of sea bass pots would be beneficial (1) to sea bass pot fishermen who make multi-gear trips, although some fishermen will incur initial minor costs to reduce the size of currently oversized pots; (2) to the processing and distribution sectors that handle black sea bass; and (3) to consumers who purchase black sea bass. The non-framework portions of this interim final rule are minor and technical and would not change the regulatory impacts that were previously reviewed and analyzed.

The Council determined that this interim final rule will not have a significant economic impact on a substantial number of small entities for the following reasons. For the measures relating to sea bass pots, this rule will continue in effect measures that have been in effect since August 31, 1992, for the vast majority of fishermen who use sea bass pots. Geographical extension of the measures relating to sea bass pots to include Georgia and Florida, north of Cape Canaveral, will have little impact because landings of sea bass from the extended area average less that 1,100 pounds (499 kg) annually. Few commercial fishermen will be affected by the other measures in this interim final rule. No regulatory flexibility analysis was prepared because the Regulatory Flexibility Act does not apply to this rule since it is not required to be promulgated as a proposed rule by section 553 of the APA or by any other law.

The Council prepared an environmental assessment (EA) that discusses the impact on the environment as a result of the sea bass pot measures in this rule. A copy of the EA is available (see **ADDRESSES**) and comments on it are requested. Other measures in this interim final rule do not change any of the factors considered in the environmental impact statement prepared for the FMP or in the EAs prepared for its amendments; accordingly, these measures are categorically excluded from the requirement to prepare an EA, as specified in NOAA Administrative Order 216–6.

The Council has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Florida, North Carolina, and South Carolina. Georgia does not participate in the coastal zone management program. These determinations have been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

This interim final rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act and does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 646

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 25, 1993.

William W. Fox, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 646 is amended as follows:

PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

1. The authority citation for part 646 continues to read as follows:

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

2. In § 646.2, the definition for "*Sea bass trap*" is removed, the definition for "*Fish trap*" is revised, and a new definition for "*Sea bass pot*" is added in alphabetical order to read as follows:

§ 646.2 Definitions.

* * * * *

Fish trap means a trap used for or capable of taking fish, except a sea bass pot or a crustacean trap.

* * * * *

Sea bass pot means a trap that—

(1) Has six rectangular sides;

(2) Does not exceed 25 inches (63.5 cm) in height, width, or depth; and

(3) Has mesh sizes as follows (based on centerline measurements between opposite, parallel, parallel wires or netting strands) (see Figure 3):

(i) Hexagonal mesh (chicken wire)—at least 1.5 inches (3.8 cm) between the wrapped sides;

(ii) Square mesh—at least 1.5 inches (3.8 cm) between sides; or

(iii) Rectangular mesh—at least 1 inch (2.5 cm) between the longer sides and 2 inches (5.1 cm) between the shorter sides.

* * * * *

3. In § 646.7, in paragraphs (a) and (z), the phrase "sea bass trap" is revised to read "sea bass pot"; and paragraphs (aa), (bb), and (cc) are revised to read as follows:

§ 646.7 Prohibitions.

* * * * *

(aa) Use or possess in the EEZ north of Cape Canaveral, Florida, a sea bass pot that does not conform to the requirements for openings and degradable fasteners specified in § 646.22(c)(2)(i).

(bb) Use or possess in the EEZ north of Cape Canaveral, Florida, sea bass pots in a multiple configuration, as specified in § 646.22(c)(2)(ii).

(cc) Pull or tend another person's sea bass pot except as specified in § 646.22(c)(2)(iii).

* * * * *

4. In § 646.22, paragraphs (c) and (g)(1)(iii) are revised to read as follows:

§ 646.22 Gear restrictions.

* * * * *

(c) *Sea bass pots*—(1) *South of Cape Canaveral.* A sea bass pot may not be used in the EEZ south of Cape Canaveral, Florida (28° 35.1' N. latitude—due east of the NASA Vehicle Assembly Building). A sea bass pot deployed in the EEZ south of Cape Canaveral, Florida, may be disposed of in any appropriate manner by the Secretary.

(2) *North of Cape Canaveral*—(i) *Openings and degradable fasteners.* A sea bass pot that is used or possessed in the EEZ north of Cape Canaveral, Florida, is required to have on at least one side, excluding top and bottom, a panel or door with an opening equal to or larger than the interior end of the trap's throat (funnel). The hinges and fasteners of each panel or door must be made of one of the following degradable materials:

(A) Untreated hemp, jute, or cotton string of 3/16-inch (4.8-millimeter) diameter or smaller;

(B) Magnesium alloy, timed float releases (pop-up devices) or similar magnesium alloy fasteners; or

(C) Ungalvanized or uncoated iron wire of 0.062-inch (1.6-millimeter) diameter or smaller.

(ii) *Use of sea bass pots.* Sea bass pots may not be used or possessed in the EEZ north of Cape Canaveral in multiple configurations; that is, two or more pots may not be attached one to another so that their overall dimensions exceed those allowed for an individual sea bass pot. This does not preclude connecting individual pots to a line, such as a "trawl" or trot line.

(iii) *Tending pots.* A sea bass pot may be pulled or tended only by a person (other than an authorized officer) aboard the vessel permitted to fish such pot, or aboard another vessel if such vessel has on board written consent of the vessel permit holder.

* * * * *

(g) * * *

(1) * * *

(iii) For the purpose of paragraph (g)(1) of this section, a vessel is considered to have a longline on board when a power-operated longline hauler, a cable or monofilament of diameter and length suitable for use in the longline fishery, and gangions are on board. Removal of any one of these three elements constitutes removal of a longline.

* * * * *

5. In § 646.23, in paragraph (c)(2) introductory text, the phrase, "as required by the Coast Guard for trips of over 12 hours," is removed; and paragraph (a)(2) is revised to read as follows:

§ 646.23 Bag and possession limits.

(a) * * *

(2) Special limitations on possession of fish in the snapper-grouper fishery apply to a person fishing with or possessing a crustacean trap in the EEZ. See § 646.22(d).

* * * * *

§ 646.26 [Amended]

6. In § 646.26, in paragraph (b), the phrase "fish traps" is revised to read "sea bass pots".

7. Figure 3 to part 646 is revised to read as follows: [Insert Figure 3.]

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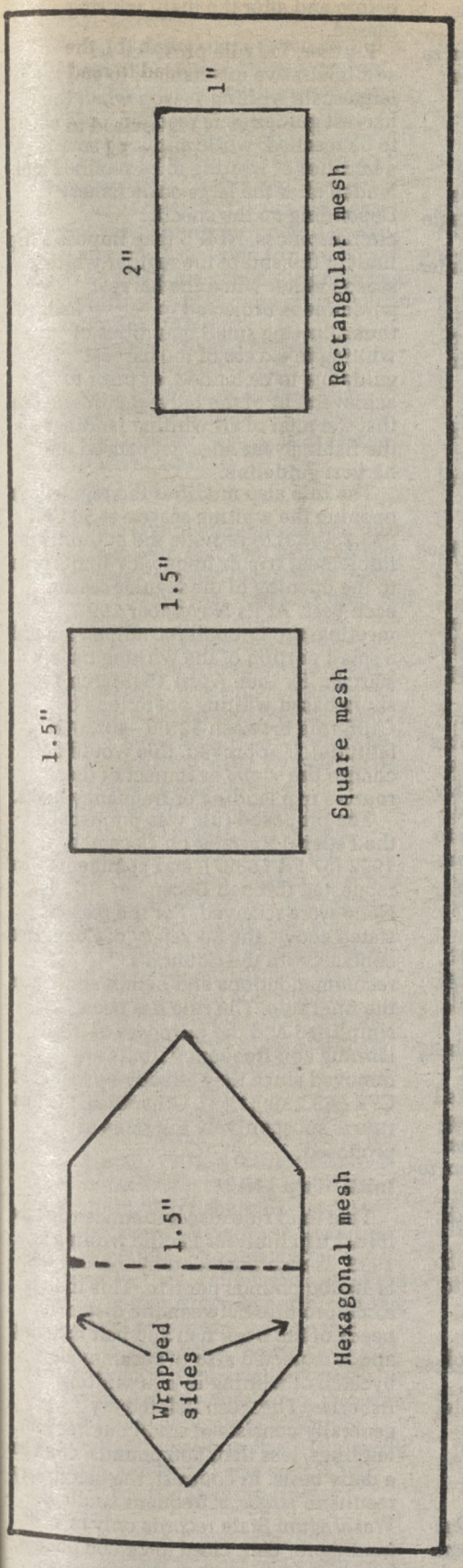


Figure 3. Examples of sea bass pot mesh that meet the minimum mesh sizes (not to scale).

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§§ 646.4 and 646.6 [Amended]

8. In addition to the amendments set forth above, in 50 CFR part 646, the words "trap" and "traps", are revised to read "pot" and "pots", respectively, wherever they appear in the following places:

a. Section 646.4(a)(1)(i) (1 time), (a)(1)(iv) (2 times), (b)(2)(vi) introductory text (1 time), (b)(2)(vi)(A) (1 time), (b)(2)(vi)(C) (1 time), and (e) (1 time);

b. Section 646.6(b) introductory text (1 time), (d) (2 times), (e) (2 times), (f) (2 times), and (g) (4 times).

[FR Doc. 93–4812 Filed 2–26–93; 8:45 am]
BILLING CODE 3510–22–M

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50 CFR Part 663

[Docket No. 921190–3018]

Pacific Coast Groundfish Fishery

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

ACTION: Final rule and notice of trip limit.

SUMMARY: NOAA issues this rule to designate as "routine" the setting of trip landing and frequency limits for Pacific whiting. The trip landing and frequency limits would apply prior to the regular season opening date and when the large-scale whiting fishery reaches or is projected to reach the annual whiting harvest guideline. This action also announces an initial trip limit of 10,000 pounds for Pacific whiting prior to the 1993 "regular season". These actions are authorized under Amendment 4 to the Pacific Coast Groundfish Fishery Management Plan (FMP) and are intended to allow small quantities of whiting to be retained and landed during periods when the fishery would otherwise be closed.

EFFECTIVE DATES: February 25, 1993.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) are available from the Pacific Fishery Management Council, 2000 SW. First Avenue, suite 420, Portland, Oregon 97201.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, Rodney R. McInnis at 310–980–4030, or the Pacific Fishery Management Council at 503–326–6352.

SUPPLEMENTARY INFORMATION:

Background

Amendment 4 to the FMP was approved on November 15, 1990, and the implementing regulations became effective on January 1, 1991. This action is being taken according to the rulemaking procedures under Amendment 4 to the FMP that authorize the designation of certain management measures as "routine." Routine management measures generally are specific for certain species and gear types. Implementation and further adjustment of those routine measures may occur after consideration at a single meeting of the Pacific Fishery Management Council (Council) and after publication in the **Federal Register**. Adjustments to routine measures are limited to those measures that are for the same purpose, and that are within the scope of the analysis performed when the measure originally was designated as routine. Descriptions of management measures designated as "routine" are published in the **Federal Register** and codified in the implementing regulations at 50 CFR 663.23, thus informing the public of the species and gear types to which they apply.

At its September 1992 meeting, the Council recommended that trip landing or frequency limits for Pacific whiting before and after the regular whiting season be designated as routine. The regular whiting season currently begins April 15 and normally ends when the harvest guideline or quota is reached. The purposes of designating pre- and post-season trip limits as routine are to provide the administrative mechanism to end the large-scale whiting fishery when the annual harvest guideline is reached, to allow small landings of whiting for fresh fish markets and for bait at times of the year when the large-scale whiting fisheries are prohibited, and to allow landings of small quantities of whiting taken while fishing for other groundfish species. These purposes are the same as contemplated under 50 CFR 663.23(c)(1)(ii): To keep landings close to the specified harvest levels; to extend the season: to minimize disruption of traditional fishing and marketing patterns; to reduce discards; to discourage target fishing while allowing small incidental catches to be landed; and to allow small fisheries to operate outside the normal season.

Small landings of whiting occur infrequently along the Pacific coast of Washington, Oregon, and California, and have very little impact on the total landings of whiting. For groundfish fisheries directed at other groundfish species that unavoidably take small amounts of whiting, this rule will prevent the waste and extra cost to the vessel operator caused by requiring the sorting of the catch onboard the vessel and the discard of all whiting taken before and after the main whiting season.

Further, the rule provides an administrative mechanism to end the large-scale whiting season when the harvest guideline is reached, or is about to be reached, while allowing small quantities of whiting to be retained and landed after the large-scale fishery. Depending on the specific circumstances, NMFS may impose a trip limit at the end of the regular whiting season either when the harvest guideline is projected to be reached, thus allowing small quantities of whiting in excess of the harvest guideline to be landed, or prior to achievement of the harvest guideline so that the total of all whiting landings for the fishing year does not exceed the harvest guideline.

The rule also modifies the regulations opening the whiting season at 50 CFR 663.23(b)(3) to provide the authority to implement trip or frequency limits prior to the opening of the regular season each year. At its November 1992 meeting, the Council recommended that a small portion of the whiting fishery start earlier than April 15 (March 1 for shore-based whiting operations in California between 42°00′–40°30′ N. latitude). If approved, this would not change the scope or impact of these routine trip landing or frequency limits.

The proposed rule was published in the **Federal Register** on December 1, 1992 (57 FR 56897), and comments were requested through December 10, 1992. None were received. For the reasons stated above, the Secretary of Commerce concurs with the Council's recommendations and herein announces the final rule. The rule has been simplified and the purposes of trip landing and frequency limits are removed since they already appear at 50 CFR 663.23(c)(1)(ii). Otherwise, the final rule is substantively the same as proposed.

Initial Trip Limit

This final rule also announces that the initial trip limit for Pacific whiting in 1993, as recommended by the Council, is 10,000 pounds per trip. This limit is a compromise between the disparate needs of the fresh fish and bait fisheries, and is expected also to accommodate bycatch of whiting in non-whiting fisheries. The fresh fish fishery generally consists of small but frequent landings, less than 500 pounds, often on a daily basis. In contrast, the bait fishery results in larger, infrequent landings. Washington State records only one landing for bait, close to 22,000 pounds, between 1987–1992, but it is possible that some landings have not been

reported. Between 1987–1992, the State of Oregon reported only seven landings before April 15, six of these were less than 10,000 pounds and one was over 50,000 pounds. Consequently, the Council and its Groundfish Management Team recommended 10,000 pounds as a reasonable level for this trip limit in 1993. The Secretary concurs with the Council's recommendation and herein announces the following trip limit which will become effective concurrent with this final rule and may be modified under 50 CFR 663.23(c):

No more than 10,000 pounds of Pacific whiting may be taken and retained, possessed, or landed, per vessel per fishing trip until the regular season for whiting begins, as specified at 50 CFR 663.23(b)(3).

Classification

This rule is published under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 *et seq.*, and was prepared at the request of the Council. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary for the conservation and management of the Pacific coast groundfish fishery and that it is consistent with the Magnuson Act and other applicable law.

Based upon an environmental assessment and regulatory impact review (EA/RIR) for this rule, the Assistant Administrator concluded that there will be no significant impact on the human environment. You may obtain a copy of the EA/RIR including the Finding of No Significant Impact from the Council (see **ADDRESSES**).

NMFS issued a Biological Opinion under the Endangered Species Act on August 10, 1990, pertaining to Amendment 4 of the FMP; a second Biological Opinion specific to the whiting fishery impacts was issued on November 26, 1991; a third Biological Opinion analyzing the impact of the entire groundfish fishery on newly listed species of salmon was issued on August 28, 1992. They concluded, respectively, that implementation of the FMP (including Amendment 4) and the conduct of the whiting fishery are unlikely to jeopardize the continued existence of any of the listed species considered. Implementation of this rule will not result in impacts that differ from those discussed in these Biological Opinions, and NMFS has concluded that further consultations are not necessary.

The Assistant Administrator has determined that this is not a major rule requiring a regulatory impact analysis under Executive Order 12291.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (RFA).

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

The Assistant Administrator has determined that this rule is consistent to the maximum extent practicable with the approved coastal zone management programs of the States of Washington, Oregon, and California. This determination was submitted for review to the responsible State agencies under section 307 of the Coastal Zone Management Act and the States concurred with the determination.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Section 4(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), states that regulations will not become effective until 30 days after publication in the **Federal Register** unless the rule relieves a restriction or the Secretary of Commerce finds good cause for an earlier effective date. This rule relieves a restriction because the trip limit will enable small fisheries to be conducted that would otherwise be prohibited and will prevent wastage of fish caught as bycatch. The rule causes no burden to the large-scale target fisheries, nor would it impede achievement of any allocation. Therefore, a delay in implementation is found to be contrary to the public interest.

This action is based upon the best available scientific information. The public participated in the July, September, and November 1992 Council meetings at which this issue was considered.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing, Reporting and recordkeeping requirements.

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

Dated: February 24, 1993.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 663 is amended as follows:

PART 663—PACIFIC COAST GROUNDFISH FISHERY

1. The authority citation for part 663 continues to read as follows:

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

2. In § 663.23, paragraphs (b)(3) and (c)(1)(i)(H) are revised, and a new paragraph (c)(1)(i)(I) is added to read as follows:

§ 663.23 Catch restrictions.

* * * * *

(b) * * *

(3) *Pacific whiting—Season.* The regular season for Pacific whiting will begin on April 15. Before and after the regular season, trip landing or frequency limits may be imposed under paragraph (c) of this section.

(c) * * *

(1) * * *

(i) * * *

(H) Boccaccio—all gear—trip landing and frequency limits; and

(I) Pacific whiting—all gear—trip landing and frequency limits.

* * * * *

[FR Doc. 93–4769 Filed 2–25–93; 1:49 pm]

BILLING CODE 3510-22-M

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 921107–2307]

Groundfish of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock in statistical area 62 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the interim specification of pollock total allowable catch (TAC) in this area. The intent of this action is to promote optimum use of groundfish while conserving pollock stocks.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), February 25, 1993, through 12 noon, A.l.t., March 29, 1993.

FOR FURTHER INFORMATION CONTACT: Andew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1(ii)(A), the interim specification of pollock TAC in statistical area 62 was established by the proposed specifications (57 FR 57982, December 8, 1992) as 6,494 metric tons (mt).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1993 interim specification of pollock TAC for statistical area 62 will soon be reached. Therefore, the Regional Director established a directed fishing allowance of 5,845 mt, and has set aside the remaining 649 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in statistical area 62, effective from 12 noon A.l.t., February 25, 1993, through 12 noon, A.l.t., March 29, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20, and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

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

Dated: February 24, 1993.

David S. Crestin,

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

[FR Doc. 93–4770 Filed 2–25–93; 1:47 pm]

BILLING CODE 3510–22–M

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50 CFR Part 672

[Docket No. 921107–2307]

Groundfish of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock in statistical area 63 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the interim specification of pollock total allowable catch (TAC) in this area. The intent of this action is to promote optimum use of groundfish while conserving pollock stocks.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), February 25, 1993, through 12 noon, A.l.t., March 29, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The groundfish in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(A), the interim specification of pollock TAC in statistical area 63 was established by proposed specifications (57 FR 57982, December 8, 1992) as 15,234 metric tons (mt).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2), that the 1993 interim specification of pollock TAC for statistical area 63 soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 13,711 mt, with consideration that 1,523 mt will be taken as incidental catch in directed fishing for other species in statistical area 63. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in statistical area 63, effective from 12 noon A.l.t., February 25, 1993, through 12 noon, A.l.t., March 29, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20, and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 672.

Fisheries, Recordkeeping and reporting requirements.

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

Dated: February 24, 1993.

David S. Crestin,

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

[FR Doc. 93–4771 Filed 2–25–93; 1:46 pm]

BILLING CODE 3510–22–M

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50 CFR Part 675

[Docket No. 921185–3021]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for aggregate species in the rock sole/"other flatfish" fishery category by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the first seasonal apportionment of the Pacific halibut prohibited species secondary bycatch allowance for the trawl rock sole/"other flatfish" fishery category in the BSAI.

EFFECTIVE DATES: Effective 12 noon, Alaska local time (A.l.t.), February 25, 1993, through 12 noon, A.l.t., April 4, 1993.

FOR FURTHER INFORMATION CONTACT: Martin Loefflad, Resource Management Specialist, Fisheries Management Division, NMFS, 907–586–7228.

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

The first seasonal apportionment of the Pacific halibut prohibited species secondary bycatch allowance for the trawl rock sole/"other flatfish" fishery category, which is defined at § 675.21(b)(4)(ii)(B), was established at 531 metric tons by the 1993 final specifications (58 FR 8703, February 17, 1993).

The Director of the Alaska Region, NMFS, has determined, in accordance with § 675.21(c)(1)(iv), that the first seasonal apportionment of the Pacific halibut prohibited species secondary bycatch allowance for the trawl rock sole/"other flatfish" fishery category in the BSAI has been reached. Therefore, NMFS is prohibiting directed fishing for aggregate species in the rock sole/"other flatfish" fishery category by vessels using trawl gear in the BSAI from 12 noon, A.l.t., February 25, 1993, through 12 noon, A.l.t., April 4, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.21 and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

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

Dated: February 25, 1993

David S. Crestin,

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

[FR Doc. 93–4768 Filed 2–25–93; 1:48 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 39
Tuesday, March 2, 1993

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 317 and 412

RIN 3206–AC12

Executive, Management, and Supervisory Development

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: The Office of Personnel Management (OPM) is proposing to amend its regulations governing executive and management development to include supervisory development; to cover needs as it applies to executive, managerial, and supervisory positions; and to provide criteria for programs for the training and development of incumbents of executive, managerial, and supervisory positions and candidates for those positions. OPM also is proposing to amend its regulations governing Qualifications Review Board certification to eliminate the 3-year limitation on the validity of qualifications certification for appointment to the Senior Executive Service (SES) for graduates of formal candidate development programs. These changes are proposed to improve the selection and performance of government managers and thus the overall effectiveness and efficiency of the Government. The regulations are intended to allow agencies the maximum flexibility in determining how to conduct their training and development programs.

DATES: Written comments will be considered if received no later than May 3, 1993.

ADDRESSES: Send or deliver written comments to the Director, Human Resources Development Group, Office of Personnel Management, room 5554, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Neal Harwood, 202–606–1610 (Qualification Review Board certification); or Constance Guitian, 202–606–1959 (executive, managerial, and supervisory development).

SUPPLEMENTARY INFORMATION: The Office of Personnel Management's (OPM) long-standing interest in strengthening human resources development in the Federal Government was reinforced by recommendations in a 1990 report of the Task Force on Executive and Management Development, which was composed of representatives from both the public and private sector. These recommendations were combined with other ideas into the larger framework of the Human Resources Development Policy Initiatives, which were issued by the OPM Director in a January 10, 1992, memorandum to heads of agencies. The Policy Initiatives outlined a systematic approach to Federal training and development that begins with an individual's initial appointment and continues through any promotions to supervisory, management, and executive positions.

The proposed revision of part 412 recognizes that the competency of supervisors, managers, and executives is critical to the efficient and effective operations of each agency. In keeping with the Policy Initiatives, supervisory functions are considered the beginning of the management continuum; and the executive development process starts with the first appointment to a supervisory position and continues through subsequent appointments to other supervisory, managerial, and executive positions.

Needs Assessment

Proposed revisions to part 410 of this chapter on training were published in the **Federal Register** on January 11, 1993 (58 FR 3508). (References in the proposed part 412 regulations to part 410 are to those proposed revisions.) The proposed part 410 regulations place increased emphasis on organizational, occupational, and individual needs assessment. The proposed part 412 regulations will help agencies develop assessment systems which focus on contributions to organizational effectiveness when designing occupational and individual needs assessment systems affecting executives, managers, and supervisors.

A principal feature of a needs assessment system is that it is used to describe the competencies needed in an occupation or a position so that desired performance can be compared to actual performance in determining what development and/or training should be provided. Proposed § 412.103 recognizes "management" as a separate occupation or profession and therefore requires managerial needs assessments as part of occupational needs assessment. The management occupation includes supervisory, managerial, and executive positions, with unique competency requirements (knowledges, skills, abilities, etc.) at each level.

OPM has developed a research-based competency model of managerial performance called the Management Excellence Framework (MEF). The MEF was updated in 1992 on the basis of responses from more than 10,000 supervisors, managers, and executives (GS–11 to SES) Governmentwide. Agencies are encouraged to use this model, or similar models, in conducting their occupational and individual needs assessments.

In proposed § 412.104 on individual needs assessment systems, the regulations permit both formal and informal assessments. The distinction between the two is that a formal system uses a validated assessment instrument such as OPM's Management Excellence Inventory (which is currently being updated and simplified). An informal system typically uses a checklist based on a set of competencies and a conversation between the individual and his or her supervisor.

The proposed regulations provide that the results of the training needs assessment are to be documented in a career enhancement plan (CEP) for the individual. The CEP focuses on the competencies the supervisor, manager, or executive needs to improve in order to increase his or her contribution to organizational effectiveness. The CEP must be approved by higher level management, or an agency Executive Resources Board, to help assure that the plan takes into account both individual and organizational needs and that there is agency commitment to the proposed training and development activities.

Systematic Training and Development

Under proposed § 412.105, agencies are required to issue procedures

covering the systematic training and development of individuals in executive, managerial, and supervisory positions and candidates for those positions. These procedures may provide for a range of training and development activities suitable to agency and employee needs.

A central concept behind the training and development provisions is to provide a process that enables individuals to reach the mastery level for each competency at each level of management. The findings of the MEF research show that individuals at higher levels of management build on the skills they perfected at the lower levels. Under a systemwide process, as managers are promoted from level to level, they will have a solid base on which to learn the additional competencies required for higher level management.

Achieving mastery of supervisory, management, and executive positions is an evolving process that can take a number of years. As an example, a typical development plan for a supervisor would start with a needs determination within 3 months appointment. Then formal training would introduce the supervisor to all the required competencies for the position. Considering the large number of competencies, 40 to 80 hours of training during the first year would be reasonable. After initial formal training, the emphasis would shift to a variety of developmental and formal training experiences covering each competency in greater depth. Training and development for managers and executives would follow the same pattern of initial formal training followed by developmental experiences and appropriate amounts of very specialized formal training in management or executive competencies.

Besides incumbency training and development, § 412.105 also requires agencies to provide for the systematic development of candidates for supervisory, managerial, and executive positions. To meet this requirement, agencies may have formal candidate development programs, which are described below. However, such programs are not required. Agencies may provide for other training and development activities to assure that there are a sufficient number of trained employees who would be qualified candidates for these positions.

Formal Candidate Development Programs for Supervisory and Managerial Positions

Formal candidate development programs at the supervisory and managerial level are a good way to prepare subject matter specialists for the management profession as well as a method for identifying high potential candidates. These programs, which can be an effective component of managerial succession planning, also can serve as a means to improve the representation of women, minorities, and persons with disabilities in management positions.

The proposed regulations provide that if individuals are selected for a candidate development program under competitive merit promotion procedures, successful graduates of the program may be promoted noncompetitively to a supervisory or managerial position. Agencies may choose to have candidate development programs which do not require initial competition under merit promotion procedures, but in these cases graduates must compete for individual promotional opportunities as they arise. No matter what the type of the candidate development program, under the criteria in the proposed regulations the program must have a competency-based needs determination, formal training, developmental assignments, a mentoring process, and a means to evaluate the candidate's performance in the program.

Formal Candidate Development Programs for the SES

The training requirements in part 412 for OPM-approved formal SES candidate development programs are being revised. First, the requirement for attendance at OPM-approved formal training has been changed to allow agencies to choose a training program or programs which provide at least 80 hours of training in executive competencies in an interagency setting. Examples of acceptable sources of training are: Universities, non-profit organizations, non-Government training organizations, or a Federal interagency training source such as OPM.

Second, there must be a development plan that covers the period of the program and is prepared from a competency-based needs determination. Third, more emphasis is being placed on the developmental experiences requirement. These assignments generally should last a total of at least 4 months. Each candidate would be required to have a mentor, and OPM recommends that mentors receive training for that role. With these changes OPM is placing increased emphasis on competency-based needs determinations so that the length and contents of the program suit the needs of both the agency and the candidate.

OPM also is proposing to remove the exception that allowed agencies with 150 or fewer SES positions to recruit for their SES candidate development programs on a less than Governmentwide basis and then to appoint graduates noncompetitively to SES positions. This is in accordance with the provisions of 5 U.S.C. 3393(a) regarding Governmentwide recruitment prior to career appointment in the SES.

The proposed regulations would continue to permit agencies with 150 or fewer SES positions to have candidate development programs with less than Governmentwide recruitment if they wanted. Graduates could still have their executive qualifications certified by a Qualifications Review Board (QRB) administered by OPM, but they could no longer be appointed noncompetitively to the SES. They would have to compete in response to a vacancy announcement for a position.

Noncompetitive placement eligibility in the SES after completing the candidate development program would be permitted only where an agency required at least Governmentwide competition for entry to the program. Eligibility would continue as long as the individual's QRB certification remained active.

Current regulations in § 317.502 place a 3-year limit on QRB certification of graduates of SES candidate development programs. The proposed regulations would remove that limit and enable graduates to keep their QRB certification active indefinitely under prescribed procedures. The graduate's career enhancement plan would have to be updated and approved by the agency Executive Resources Board (ERB) at a minimum of every 3 years, and the graduate's summary performance ratings would have to be fully successful or higher.

Agencies would be required to have a written policy for withdrawing certification from graduates. Certification could be withdrawn, for example, because the candidate does not complete activities outlined in the career enhancement plan.

The proposed regulations also provide that graduates whose QRB certification has expired because of the current 3-year limitation and who are still employed must be notified by their current agency that they may request reactivation of the certification. Graduates will have a one-time opportunity to reactivate their certification by submitting a statement of training and development activities since QRB certification and their previous 3 years of performance appraisals to the appropriate agency ERB for a determination. If an individual had eligibility for

noncompetitive entry to the SES under the original certification, the same eligibility would continue under a reactivated certification.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined in E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have significant economic impact on a substantial number of small entities because they affect only Federal employees and agencies.

List of Subjects in 5 CFR Parts 317 and 412

Government employees.

Office of Personnel Management.

Patricia W. Lattimore,

Acting Director.

Accordingly, the Office of Personnel Management proposes to amend 5 CFR parts 317 and 412 as follows:

PART 317—EMPLOYMENT IN THE SENIOR EXECUTIVE SERVICE

1. The authority citation for part 317 continues to read as follows:

Authority: 5 U.S.C. 3392, 3393, 3393a, 3395, 3397, 3593, and 3595.

2. In § 317.502, paragraph (c) is revised to read as follows:

§ 317.502 Qualifications Review Board certifications.

* * * * *

(c) Qualifications Review Board certification must be based on demonstrated executive experience; successful completion of an OPM-approved candidate development program; or possession of special or unique qualities that indicate a likelihood of executive success. There is no limitation on the length of certification, subject to the provisions of 5 CFR 412.107(c). Candidate development program graduates whose certification expired when there was a 3-year limitation may have the certification reactivated in accordance with 5 CFR 412.108.

* * * * *

3. The authority for part 412 is revised to read as follows:

Authority: 5 U.S.C. 3397, 4101, *et seq.*

4. The heading for part 412 is revised to read as follows:

PART 412—EXECUTIVE, MANAGEMENT, AND SUPERVISORY DEVELOPMENT

5. Subpart A, consisting of §§ 412.101 to 412.109, is revised to read as follows:

Subpart A—General Provisions

Sec.

412.101 Coverage.
412.102 Purpose.
412.103 Needs assessment for the management profession.
412.104 Needs assessment for individuals.
412.105 Criteria for the systematic training and development of executives, managers, supervisors, and candidates.
412.106 Formal candidate development programs for supervisory and managerial positions.
412.107 Formal candidate development programs for Senior Executive Service positions.
412.108 Reactivation of expired certifications for graduates of formal SES candidate development programs.
412.109 Review of agency programs.

Subpart A—General Provisions

§ 412.101 Coverage.

(a) This subpart applies to all supervisory, managerial, and executive employees in the General Schedule (GS and GM), the Senior Executive Service (SES), or equivalent pay systems who are also covered by part 410 of this chapter. Agencies are strongly encouraged to develop similar training and development programs for employees in other pay systems not covered by this part.

(1) Supervisors and managers are employees who occupy supervisory or managerial positions as defined in the OPM Supervisory Grade Evaluation Guide.

(**Note:** A revised Guide was issued in draft in November 1991 as the Grade Evaluation Guide for White Collar Supervisors and is currently applicable to certain Department of Defense positions as specified in the draft. An advance copy of the final General Schedule Supervisory Guide was issued in January 1993 and will replace the Supervisory Grade Evaluation Guide and the 1991 draft.)

(2) Executives are employees who occupy positions in the Senior Executive Service or similar executive personnel systems.

(b) As used in this part, "management profession" includes supervisory, managerial, and executive positions.

§ 412.102 Purpose.

(a) This subpart implements for supervisors, managers, and executives the provisions of chapter 41 of title 5 of the United States Code related to training and section 3396 of title 5 related to the systematic development of candidates for the SES and the continuing development of SES members.

(b) This subpart recognizes that the competency of supervisors, managers, and executives in their positions is critical to the efficient and effective operations of each agency. It also identifies a continuum of preparation starting with supervisory positions and proceeding through management and executive positions. For these reasons, this subpart establishes a comprehensive system that is intended to:

(1) Provide training and development needed by supervisors, managers, and executives to perform their current functions at the mastery level, i.e., at the maximum possible level of proficiency; and

(2) Provide training and development to prepare individuals for advancement, thus supplying the agency with an adequate number of well qualified candidates to fill supervisory, managerial, and executive positions.

(c) This subpart takes into account the provisions of § 410.201 of this chapter, which provides that agencies shall establish an assessment process with addresses organizational, occupational, and individual needs. This subpart describes how these assessments apply to the management profession.

§ 412.103 Needs assessment for the management profession.

(a) Under § 410.201(c)(2) of this chapter, occupational assessment identify short- and long-term job requirements that are essential to achieve operational goals and objectives for each major occupation with the agency, including executive, managerial, and supervisory positions.

(b) Needs assessment for the management professional shall be based on:

(1) Agency mission and priorities;

(2) The requirements for executives, managers, and supervisors in terms of staffing levels and competencies.

(3) A research-based competency model that identifies required or desired performance levels for the management profession—such as, OPM's Management Excellence Framework or a similar model.

(c) The information from the assessment can be used to:

(1) Analyze organizational performance issues;

(2) Implement succession planning systems for executive, managerial, and supervisory positions;

(3) Design a training and development system for executives, managers, and supervisors to improve individual and organizational performance;

(4) Evaluate the effectiveness and cost of the training and development system; and

(5) Report the results of the organizational improvement efforts to the head of the agency or the designee.

§ 412.104 Needs assessment for individuals.

(a) Section 410.201(c)(3) of this chapter requires needs assessments for individuals to identify particular knowledges, skills, and abilities required of employees to perform their jobs.

(b) Individual needs assessment for supervisors, managers, and executives may be formal or informal, but must meet the following criteria:

(1) The initial needs assessment normally occurs within the first 3 months of transition to a new position; that is, from non-supervisor to supervisor, supervisor to manager, and manager to executive. Subsequent assessments are done at least every 3 years.

(2) The assessment considers:

(i) Organizational mission and priorities;

(ii) The organization's projections of executive, managerial, and supervisory human resource needs; and

(iii) The stage in the executive's, manager's, or supervisor's career, i.e., whether newly appointed to the position.

(3) The assessment uses a research-based competency model such as OPM's Management Excellence Framework or other similar model to compare what competencies the individual already has with the competencies that are needed.

(c) The outcome of the needs assessment shall be documented in a career enhancement plan (CEP) prepared by the individual and his or her superior and concurred in by the next higher level of management or by the appropriate Executive Resources Board. The CEP focuses on the competencies needed by the individual to contribute to improved organizational effectiveness and efficiency. The CEP commits the agency to provide, and the individual to participate in, formal training and/or developmental work assignments designed to:

(1) Help the individual achieve mastery of appropriate executive, managerial, and supervisory competencies;

(2) Prepare executives, managers, and supervisors to be able to assume other positions in the agency;

(3) Maintain currency of individuals in their profession; and

(4) Promote personal and intellectual growth.

(d) The data from the individual assessments may be used to satisfy the requirements of § 412.103 to determine overall needs for the management profession.

§ 412.105 Criteria for the systematic training and development of executives, managers, supervisors, and candidates.

Each agency must provide for the initial and continuing training and development of individuals in executive, managerial, and supervisory positions, and candidates for those positions. The agency must issue written procedures to assure that their training and development programs:

(a) Are designed to increase organizational effectiveness and to improve accountability, productivity, and performance at each managerial level.

(b) Use a research-based competency model such as OPM's Management Excellence Framework or similar model.

(c) Provide for:

(1) Initial training as an individual makes critical career transitions to become a new supervisor, a new manager, or a new executive;

(2) Continuing training and development activities, both short- and long-term, throughout an individual's career in order for the individual to achieve mastery of all the competencies for his or her current management level; and

(3) Systematic development of candidates for advancement to a higher management level. Formal candidate development programs leading to noncompetitive placement eligibility represent one, but not the only, type of systematic development. Criteria for formal candidate development programs are in § 412.106 for supervisory and managerial positions and in § 412.107 for SES positions.

(d) Are periodically evaluated in terms of improved organizational and individual performance and costs.

(e) Are integrated with the agency's other personnel management programs such as recruitment, selection, compensation, performance management, affirmative employment, position management, and forecasting managerial resources needs.

§ 412.106 Formal candidate development programs for supervisory and managerial positions.

(a) If an agency wants to conduct formal candidate development programs that can result in the noncompetitive appointment to a supervisory or managerial position following successful completion of the programs, the agency must first issue written procedures describing how the programs will operate. The programs must meet the following criteria:

(1) Recruitment is consistent with the merit system principles in 5 U.S.C. 2301(b) (1) and (2), taking into consideration the need to maintain a diversified workforce in which women, minorities, and persons with disabilities are appropriately represented in the management profession in the agency.

(2) Selection to the programs follows the agency's merit promotion procedures.

(3) A supervisory or managerial development plan covering the period of the program is prepared for each candidate from a competency-based needs determination.

(4) Formal training and developmental assignments are provided covering the appropriate competencies.

(5) There is a mentor for each candidate.

(6) Periodic evaluation is conducted of the candidate's performance in the program.

(b) An agency may conduct formal supervisory and managerial candidate development programs where selections for the programs are not made under merit promotion procedures. (For example, the agency may want to train a large number, rather than a select group, of candidates and then use merit promotion procedures later when it is filling specific supervisory and managerial positions.) The candidate development programs must still comply with the other criteria in paragraph (a) of this section to assure that the programs provide appropriate training and development. Graduates of the programs, however, may not be noncompetitively promoted.

§ 412.107 Formal candidate development programs for Senior Executive Service positions.

(a) If an agency wants to conduct an SES candidate development program that can result in the certification of the executive qualifications of graduates by a Qualifications Review Board under the criterion of 5 U.S.C. 3393(c)(2)(B), OPM must approve the program before it is conducted for the first time and whenever there are substantive changes to the program.

(b) SES candidate development programs must meet the following criteria.

(1) Recruitment for the programs is from all groups of qualified individuals within the civil service, or all groups of qualified individuals whether or not within the civil service. (There is an exception for agencies with 150 or fewer allocated SES positions, but recruitment must be at least agencywide.)

(2) In recruiting, the agency, consistent with the merit system principles in 5 U.S.C. 2301(b) (1) and (2), takes into consideration the need to

maintain a diversified workforce in which women, minorities, and persons with disabilities are appropriately represented in the SES.

(3) All candidates are selected through merit staffing procedures. The number selected should be consistent with the number of expected vacancies.

(4) Each candidate has an SES development plan covering the period of the program. The plan is prepared from a competency-based needs determination which provides for formal training and developmental assignments and is approved by the Executive Resources Board.

(i) At a minimum, there must be 80 hours of formal training that covers the executive competencies as identified in a research-based competency model such as OPM's Management Excellence Framework or similar model. This training must be at a facility that has a record of having participants from a wide mix of Government agencies. Another 80 hours of formal training in the executive competencies is recommended.

(ii) Developmental assignments should generally total at least 4 months. They should be chosen to broaden the candidate's experience and/or increase knowledge of the overall functioning of the agency so that the candidate is prepared for a range of agency positions. For example, under the developmental assignment a staff person would go to a line position or the reverse, a field person would go to headquarters or the reverse, or a person in one program area would take an assignment in another program area.

(5) Each candidate has a more senior agency manager as a mentor.

(6) Each candidate's performance in the program is evaluated periodically, and there are written procedures for discontinuing a candidate's participation in the program. A candidate can be discontinued or may withdraw from the program without prejudice to his or her ability to apply directly for SES positions.

(7) Each candidate has a documented starting and finishing date in the program.

(c) An agency must request certification of a candidate's qualifications by an OPM administered Qualifications Review Board within 9 months of successful completion of the program.

(1) Certification is valid until appointment to the SES or until separation from the Government under the following conditions:

(i) The career enhancement plan for the graduate is updated at a minimum every 3 years, and the activities are approved by the appropriate Executive Resources Board; and

(ii) The graduate's summary performance rating is fully successful or higher.

(2) The agency must have written procedures for not continuing a graduate's certification including providing the graduate with the reasons for the proposed decision in writing and allowing the graduate to respond before the decision is made final. Discontinuation of a certification is without prejudice to the graduate's ability to apply directly for SES positions in a competitive action, but the individual must receive a new QRB certification before being appointed to the SES.

(d) If recruitment for the candidate development program was at least from all groups of qualified individuals within the civil service, graduates of the program who have been certified by a QRB are eligible for noncompetitive entry to the SES as long as they maintain their certification. If recruitment was from less than all groups of qualified individuals within the civil service, graduates of the program who have been certified by a QRB are not eligible for noncompetitive entry to the SES, but do not have to obtain a new QRB certification before appointment.

§ 412.108 Reactivation of expired certifications for graduates of formal SES candidate development programs.

(a) Section 317.502(c) of this chapter removes the 3-year limitation on the validity of certification of the executive qualifications of graduates of formal SES candidate development programs effective _____1993.

(b) Within [60 DAYS OF THE EFFECTIVE DATE OF THE FINAL RULE], agencies must notify all graduates who are currently employees of the agency and whose certification has expired that they can seek to reactivate their certification.

(c) Within 60 days of the date of notification, the graduates must inform the agency of their intent to seek reactivation of their certification and present the appropriate agency Executive Resources Board with:

(1) Information about training and development activities since the Qualifications Review Board certification; and

(2) The previous 3 years of performance appraisals.

(d) To be eligible for reactivation of the certification, a graduate must have had summary performance ratings of fully successful or higher for the previous 3 years.

(e) For eligible graduates, the Executive Resources Board shall decide whether:

(1) The certification is immediately reactivated; or

(2) Before the certification can be reactivated, the graduate must complete the activities described in a career enhancement plan (CEP) which is prepared from a competency-based needs assessment and is approved by the Board. The Board must determine that the graduate has successfully completed the plan before the certification is reactivated.

(f) The agency must have written procedures for not reactivating a graduate's certification, including providing the graduate with the reasons for the proposed decision in writing and allowing the graduate to respond before the decision is made final. A decision not to reactivate a certification is without prejudice to the graduate's ability to apply directly for SES positions in a competitive action.

(g) If a graduate's certification is reactivated, the graduate must comply with the provisions of § 412.107(c)(1) of this subpart to maintain currency of the certification.

§ 412.109 Review of agency programs.

(a) Agencies shall ensure that executive, management, and supervisory development programs are efficiently and effectively implemented as indicated by periodic evaluations of the programs and by the incorporation of evaluation results into planing for future program operations.

(b) OPM shall review periodically agency executive, management, and supervisory development programs. OPM shall direct any necessary corrective actions and assist the agency, as appropriate, in making any needed improvements in its program.

[FR Doc. 93–4616 Filed 3–1–93; 8:45 am]
BILLING CODE 6325–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 346

RIN 3064–AA78

Foreign Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC or Corporation).

ACTION: Proposed rule.

SUMMARY: The FDIC is proposing to amend its regulations concerning the permissible activities of state-licensed insured branches of foreign banks. Section 202 of the Federal Deposit

Insurance Corporation Improvement Act of 1991 (Improvement Act) provides that after December 19, 1992, a state-licensed insured branch of a foreign bank may not engage in any activity which is not permissible for a federal branch of a foreign bank unless the Board of Governors of the Federal Reserve System (Board) has determined that the activity is consistent with sound banking practice, and the FDIC has determined that the activity would pose no significant risk to the deposit insurance fund. The proposed amendments cover application procedures and divestiture or cessation plans. Foreign banks are required to seek both the FDIC's and the Board's approval for an insured state branch to engage in or continue to engage in an activity which is not permissible for a federal branch of a foreign bank. In the event such an application is denied or the foreign bank elects not to continue the activity, a plan of divestiture or cessation must be submitted and such divestiture or cessation must be completed within one year, or sooner if the FDIC so directs.

DATES: Comments must be received by May 3, 1993.

ADDRESSES: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to room 400, 1776 F Street, NW., Washington, DC 20429, on business days between 8:30 a.m. and 5 p.m. (FAX number: (202) 898–3838.)

FOR FURTHER INFORMATION CONTACT: Charles V. Collier, Assistant Director, Division of Supervision, (202) 898–6850; Jeffrey M. Kopchik, Counsel, Legal Division, (202) 898–3872; Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this proposed rule has been reviewed and approved by the Office of Management and Budget under control no. 3064–0114 pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Comments on the accuracy of the burden estimate, and suggestions for reducing the burden, should be directed to the Office of Management and Budget, Paperwork Reduction Project (3064–0114), Washington, DC, 20503, with copies of such comments to Steven F. Hanft, Office of the Executive Secretary, room F–453, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. The collections of information in this regulation are found in §§ 346.101(b) and (d) and take the form of a requirement that foreign banks (1) file an application with the FDIC requesting permission for an insured state branch to engage in or to continue engaging in any activity which is not permissible for a federal branch of a foreign bank and (2) submit a plan of divestiture or cessation in the event that the application is not approved, the foreign bank elects not to apply to the FDIC for permission to continue the activity, or a permissible activity becomes impermissible due to a subsequent change in statute, regulation or formal order or interpretation. The information contained in the application will allow the FDIC to properly discharge its responsibilities under section 7 of the International Banking Act of 1978 (12 U.S.C. 3101 *et seq.*) (IBA), as amended by section 202 of the Improvement Act. The information in the application will be used by the FDIC as part of the process of determining whether conduct of the activity in question by the applicant will pose a significant risk to the deposit insurance fund. The information in the divestiture or cessation plan will be used by the FDIC to make judgments concerning the reasonableness of the institution's actions to discontinue activities deemed to pose significant risk to the insurance fund.

The estimated annual reporting burden for the collection of information from foreign banks in this proposed amendment is summarized as follows:

Number of respondents:	
Application	27
Plan to Discontinue or Cease	5
Total	32

Number of responses per respondent—1
Total annual responses—32
Hours per response—8
Total annual burden hours—256

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), it is certified that the proposed rule would not have a significant impact on a substantial number of small entities.

Discussion

Section 202 of the Improvement Act (Pub. L. 102–242, 12 U.S.C. 3105) amended section 7 of the IBA by adding new subsection 7(h) of the IBA which provides that after the end of the 1-year period beginning on the date of enactment of the Improvement Act a State branch or State agency may not engage in any type of activity that is not permissible for a Federal branch unless the Federal Reserve Board has determined that such activity is consistent with sound banking practice and in the case of an insured branch, the Federal Deposit Insurance Corporation has determined that the activity would pose no significant risk to the deposit insurance fund. 12 U.S.C. 3105(h)(1).

To implement this new statutory provision with respect to insured state branches, the FDIC is proposing to amend part 346 of its regulations (12 CFR part 346) concerning foreign banks. The proposal would amend subpart A, § 346.1, to include a definition of "significant risk to the deposit insurance fund" and to add a new subpart D, "Applications Seeking Approval for Insured State Branches to Conduct Activities Not Permissible for Federal Branches."[1]

The proposed new subpart provides that a foreign bank operating an insured state branch which desires to engage in or continue an activity that is not permissible for a federal branch, pursuant to statute, regulation, official bulletin or circular, or any order or interpretation issued in writing by the Office of the Comptroller of the Currency (OCC), shall file with the FDIC a prior written application for permission to conduct or continue such activity. (Proposed § 346.101(a)). The application shall be filed with the FDIC Regional Director of the Division of Supervision for the region in which the insured state branch is located. (Proposed § 346.101(c)).

Section 202(h) of the Improvement Act became effective December 19, 1992. The FDIC proposes to allow existing insured state branches of foreign banks to continue activities (at existing levels) which may not be permissible for a federal branch until the FDIC acts on their application. The FDIC expects all foreign banks now engaged in an impermissible activity to file the required application no later than 60 days after the effective date of the final rule.

Section 346.101(b) of the proposed regulation provides that the application shall be in letter form and shall contain certain information, including a description of the activity in which the branch desires to engage or in which it is already engaged, the foreign bank's financial condition, the branch's assets and liabilities, the projected effect of the proposed activity on the financial

[1] Because § 346.101 of the FDIC's regulations is obsolete, the FDIC is proposing to remove the existing § 346.101 and to add a new § 346.101 which will comprise a new subpart D.

condition of the foreign bank and the branch, and a statement of why the proposed activity will pose no significant risk to the deposit insurance fund.

Joint Application Procedure

The FDIC is sensitive to the administrative burden on applicants of gathering the requested information and preparing an application. Since section 202 of the Improvement Act requires all state branches and state agencies that desire to engage in, or to continue to engage in, any activity which is not permissible for a federal branch to secure the approval of the Board, the FDIC is proposing to permit insured state branches to submit a copy of their application to the Board to the FDIC instead of preparing a completely separate submission. It is contemplated that the FDIC and the Board will review such applications simultaneously.

The Corporation and the Board have discussed the type of information which each agency will need in order to make an informed judgement and have agreed on a common list of information so that applicants will need to prepare only one application. Moreover, the Corporation and the Board have attempted to balance their need for information on which to base their decisions with the cost to the applicant of gathering, organizing and submitting an application. Thus, the FDIC is very interested in receiving comments concerning the amount and type of information requested pursuant to § 346.101(b) of the proposed regulation.

Permissible Activities

Section 346.101(a) of the proposed regulation refers to "any type of activity that is not permissible for a federal branch, pursuant to the National Bank Act (12 U.S.C. 21 *et seq.*) or any other federal statute, regulation, official bulletin or circular, or any order or interpretation issued in writing by the Office of the Comptroller of the Currency. * * *" Written staff opinions will be considered to evidence the position of the Comptroller so long as the opinion is still considered valid, i.e., it has not been overruled by the OCC or found invalid by a court of competent jurisdiction. This section of the proposed regulation is substantially similar to the corresponding section of the Corporation's recently adopted 12 CFR part 362, "Activities and Investments of Insured State Banks." (57 FR 53213, November 9, 1992.) The FDIC is of the opinion that § 346.101(a) of the proposed regulation should parallel § 362.2(h) of the activities regulation with regard to the determination of permissible activities.

The FDIC is also interested in whether there may be certain activities which, even though they are not permissible for federal branches, clearly pose no significant risk to the deposit insurance fund when conducted by an insured state branch such that a prior written application should not be required. If this is the case, commentators are requested to describe the activity in detail and explain precisely why its conduct by an insured state branch poses no significant risk to the deposit insurance fund. Also, in such cases, the FDIC would like to know whether commentators recommend that the prior written application described in § 346.101(b) of the proposed regulation be replaced by a more limited written notice to the FDIC. If so, precisely what information should the notice contain and when should it be filed?

Substantive Limitations on Permissible Activities

Insured branches should note that the FDIC will generally expect any conditions or restrictions set out in the OCC's regulations, bulletins, circulars, orders and interpretations to be met if the activity is to be considered permissible when conducted by an insured branch.

Engaging in an Activity as Agent

Section 202(h) of the Improvement Act, which added a new subsection 7(h) to the IBA, does not distinguish between activities which a foreign branch conducts as principal versus those conducted as agent, nor does it distinguish between activities which a foreign branch conducts directly versus those it conducts indirectly. The FDIC is of the opinion that the absence of such distinctions in section 202 is significant especially in light of the inclusion of such distinctions in other sections of the Improvement Act. For example, section 303 of the Improvement Act, which added a new section 24 to the FDI Act, provides that an insured State bank may not engage "as principal" in any type of activity that is not permissible for a national bank. 12 U.S.C. 1831a(a). Similarly, section 24(c) of the FDI Act, which was also added by section 303 of the Improvement Act, provides that an insured State bank may not, "directly or indirectly", acquire or retain any equity investment of a type that is not permissible for a national bank. 12 U.S.C. 1831a(c). The recently adopted part 362 of the Corporation's regulations reflects the clear statutory intent of FDI Act section 24(c). 12 CFR 362.3(a). The prohibition on foreign branches contained in new section 7(h) of the IBA is broader than the similar prohibitions contained in sections 24(a) and (c) of the FDI Act. Thus, the FDIC interprets new section 7(h) to apply to any activity in which an insured state branch desires to engage which is not permissible for a federal branch regardless of the capacity or manner in which the branch seeks to conduct the activity.

Significant Risk to the Fund

In approving an application to conduct or to continue to conduct an activity which is not permissible for a federal branch, the FDIC must determine that the activity in question "would pose no significant risk to the deposit insurance fund." The phrase "significant risk to the deposit insurance fund" is defined in new § 346.1(r) of the proposed regulation. Significant risk to the deposit insurance fund shall be understood to be present whenever there is a high probability that the Bank Insurance Fund (BIF) may suffer a loss. It is not necessary that engaging in the activity in question will result in the insolvency or threatened insolvency of the insured state branch before a significant risk of loss to the BIF is considered to be present. The proposed definition is substantially similar to the definition that is used in the recently adopted 12 CFR 362.2(m) and the FDIC is of the opinion that the proposed definition should parallel that definition.

Divestiture or Cessation

In the event that an insured state branch is required to cease conducting an activity pursuant to the proposed regulation, § 346.101(d) of the proposed regulation sets forth the guidelines that must be followed to divest or cease the impermissible activity. Generally, this section provides that the insured state branch shall submit a written plan of divestiture or cessation within 60 days of (1) being notified by the FDIC or the Board that an application to continue to conduct the activity has been denied, (2) the effective date of the regulation in the event that the foreign bank elects not to apply for permission to continue to conduct the activity, and (3) any change in statute, regulation, official bulletin or circular, order or interpretation issued in writing by the Office of the Comptroller of the Currency, or decision of a court of competent jurisdiction that renders the activity impermissible. Divestiture or cessation shall be completed within one year, or sooner if the FDIC so directs. (Proposed § 346.101(d)(1)) The FDIC requests comment on whether or not this period of time should be longer or shorter.

Section 346.101(e) of the proposed regulation delegates authority to review and approve divestiture and cessation plans to the Executive Director, Supervision and Resolutions and the Director of the Division of Supervision, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director.

Generally, most final regulations become effective 30 days after publication in the **Federal Register**. In this case, however, the FDIC is proposing that, after adoption, the final regulation shall become effective upon publication in the **Federal Register**. The Corporation is of the opinion that a delayed effective date is not advisable because section 202(h) of the Improvement Act became effective on December 19, 1992 and foreign banks operating insured state branches which are conducting impermissible activities will be required to file either an application or a divestiture or cessation plan with the FDIC. Unlike other regulations where regulated entities can comply by adjusting their business activity so that contact with the appropriate regulator is unnecessary, foreign banks operating insured state branches which are conducting impermissible activities will be required to file with the Board and the FDIC.

List of Subjects in 12 CFR Part 346

Bank deposit insurance; Federal branch; Foreign banking; Permissible activities; Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 12 CFR part 346 is proposed to be amended as follows:

PART 346—FOREIGN BANKS

1. The authority citation for part 346 is revised to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1819, 1820, 3103, 3104, 3105, 3108.

2. Section 346.1 of subpart A is amended by adding a new paragraph (r) to read as follows:

§ 346.1 Definitions.

* * * * *

(r) *Significant risk to the deposit insurance fund* shall be understood to be present whenever there is a high probability that the Bank Insurance Fund administered by the FDIC may suffer a loss.

3. Section 346.101 of subpart C is removed.

4. Part 346 is amended by adding a new subpart D to read as follows:

Subpart D—Applications Seeking Approval For Insured State Branches To Conduct Activities Not Permissible For Federal Branches

§ 346.101 Applications.

(a) *Scope.* A foreign bank operating an insured state branch which desires to engage in or continue to engage in any type of activity that is not permissible for a federal branch, pursuant to the National Bank Act (12 U.S.C. 21 *et seq.*) or any other federal statute, regulation, official bulletin or circular, or order or interpretation issued in writing by the Office of the Comptroller of the Currency, or which is rendered impermissible due to a subsequent change in statute, regulation, official bulletin or circular, written order or interpretation, or decision of a court of competent jurisdiction (each, an impermissible activity), shall file a prior written application for permission to conduct such activity with the FDIC pursuant to this section. An applicant may submit to the FDIC a copy of its application to the Board of Governors of the Federal Reserve System (Board of Governors), provided that such application contains the information described in § 346.101(b).

(b) *Content of application.* An application submitted pursuant to § 346.101(a) shall be in letter form and shall contain the following information:

(1) A brief description of the activity, including the manner in which it will be conducted and an estimate of the expected dollar volume associated with the activity;

(2) A discussion by management of its analysis regarding the impact of the proposed activity on the applicant's earnings, capital adequacy, and general condition, as well as the effect the proposed activity will have on the branch's balance sheet, earnings and condition (if available, include a copy of any feasibility study, management plan, financial projections, business plan, or similar document concerning the conduct of the activity);

(3) A current statement of the applicant's assets, liabilities, and capital;

(4) A current statement of the branch's assets and liabilities;

(5) A copy of the applicant's most recent audited financial statements;

(6) A resolution by the applicant's board of directors or, if a resolution is not required pursuant to the applicant's organizational documents, evidence of approval by senior management, authorizing the conduct of such activity and the filing of this application;

(7) A statement by the applicant of whether or not it is in compliance with §§ 346.19 and 346.20, Pledge of Assets and Asset Maintenance, respectively, of this part;

(8) A statement by the applicant that it has complied with all requirements of the Board of Governors concerning applications to conduct the activity in question and the status of such application, including a copy of the Board of Governors' disposition of such application, if applicable;

(9) A statement of why the activity will pose no significant risk to the deposit insurance fund; and

(10) Any other information which the regional director deems appropriate.

(c) *Application procedures.* Applications pursuant to this section shall be filed with the Regional Director of the Division of Supervision for the region in which the insured branch is located. An application shall not be deemed complete until it contains all the information requested by the Regional Director and has been accepted. Approval of such an application may be conditioned on the applicant's agreement to conduct the activity subject to specific limitations, such as but not limited to the pledging of assets in excess of the requirements of § 346.19 and/or the maintenance of eligible assets in excess of the requirements of § 346.20.

(d) *Divestiture or cessation.* (1) If an application for permission to continue to conduct an activity is not approved by the FDIC or the Board of Governors, the applicant shall submit a detailed written plan of divestiture or cessation of the activity to the Regional Director of the Division of Supervision for the region where the insured branch is located within 60 days of the disapproval. The divestiture or cessation plan shall describe in detail the manner in which the applicant will divest itself of or cease the activity in question and shall include a projected timetable describing how long the divestiture or cessation is expected to take. Divestitures or cessations shall be completed within one year from the date of the disapproval, or within such shorter period of time as the Corporation shall direct.

(2) A foreign bank operating an insured branch which elects not to apply to the FDIC for permission to continue to conduct an impermissible activity shall submit a written plan of divestiture or cessation, in conformance with § 346.101(d)(1), within 60 days of the effective date of this part or of any change in statute, regulation, official bulletin or circular, written order or interpretation, or decision of a court of competent jurisdiction rendering such activity impermissible.

(e) *Delegation of authority.* Authority is hereby delegated to the Executive Director, Supervision and Resolutions, and the Director of the Division of Supervision, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to approve plans of divestiture and cessation submitted pursuant to § 346.101(d).

By order of the Board of Directors.

Dated at Washington, DC this 23rd day of February, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–4710 Filed 3–1–93; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–CE–01–AD]

Airworthiness Directives; Beech Aircraft Company 33, 34, 35, 36, 45, 55, 56TC, 58, 58P, 58TC, 60, and 95 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Beech Aircraft Company (Beech) 33, 34, 35, 36, 45, 55, 56TC, 58, 58P, 58TC, 60, and 95 series airplanes. The proposed action would require inspecting the flap motor drive shaft for proper connection of the flap flex cable shaft, and correcting if necessary. An improper connection was found on one of the affected airplanes, which, if not detected and corrected, could cause the drive shaft and cable shaft to disengage and result in one flap extending or retracting while the other does not move. The actions specified by the proposed AD are intended to prevent the inability to extend or retract both flaps because of improper flap flex cable shaft connection.

DATES: Comments must be received on or before May 25, 1993.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–01–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4122; Facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–CE–01–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–01–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA is aware of a possible unsafe condition on certain Beech 33, 34, 35, 36, 45, 55, 56TC, 58, 58P, 58TC, 60, and 95 series airplanes. The flap flex cable shaft was improperly connected to the flap motor drive shaft on one of the affected airplanes. If not detected and corrected, the drive shaft and cable shaft could disengage and result in one flap extending or retracting while the other flap does not move.

Beech has issued Service Bulletin (SB) No. 2460, dated December 1992, which specifies procedures for inspecting the flap motor drive shaft for proper connection of the flap flex cable shaft, and correcting if improperly connected.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent the inability to extend or retract both flaps because of improper flap flex cable shaft connection.

Since an unsafe condition has been identified that is likely to exist or develop in other Beech 33, 34, 35, 36, 45, 55, 56TC, 58, 58P, 58TC, 60, and 95 series airplanes of the same type design, the proposed AD would require inspecting the flap motor drive shaft for proper connection of the flap flex cable shaft, and correcting if necessary. The proposed actions would be accomplished in accordance with the instructions in Beech SB No. 2460, dated December 1992.

The FAA estimates that 25,603 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,408,165.

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

For the reasons discussed above, I certify that this action (1) is not a "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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft

regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§39.13 [Amended]

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

Beech Aircraft Company: Docket No. 93–CE–01–AD.

Applicability: The following Model and serial number airplanes, certificated in any category:

Models	Serial Numbers
35–33, A33, B33, C33, E33, F33, and G33.	CD–1 through CD–1304.
35–C33A, E33A, and F33A.	CE–1 through CE–1632.
E33C and F33C	CJ–1 through CJ–179.
34C	GP–1 through GP–50.
T–34C–1	GM–1 through GM–71 and GM–78 through GM–98.
35, 35R, A35, B35, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, V35A–TC, V35B, and V35B–TC.	D–1 through D–10403, D–15001, and D–15002.
36 and A36	E–1 through E–2679.
A36TC and B36TC	EA–1 through EA–525.
95–A55, 95–A55A, 95–B55, and 95–B55A.	TC–1 through TC–2456.
95–C55, C55A, D55, D55A, E55, and E55A.	TE–1 through TE–1201.
56TC and A56TC	TG–2 through TG–94.
58 and 58A	TH–1 through TH–1646.
58P and 58PA	TJ–3 through TJ–497.
58TC and 58TCA	TK–1 through TK–151.
60, A60, and B60	P–4 through P–596.
95, B95, B95A, D95, and E95.	TD–2 through TD–721.
T–34C	GL–1 through GL–353.
45, A45, B45, and D45	All serial numbers.
B55B (T–42A)	TF–1 through TF–70.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent the inability to extend or retract both flaps because of improper flap flex cable shaft connection, accomplish the following:

(a) Inspect the flap motor drive shaft for proper connection of the flap flex cable shaft in accordance with the ACCOMPLISHMENT INSTRUCTIONS: INSPECTION section of Beech Service Bulletin (SB) No. 2460, dated December 1992.

(b) If improperly connected, prior to further flight, reconnect in accordance with the ACCOMPLISHMENT INSTRUCTIONS: FLAP DRIVE CABLE CONNECTION section of Beech SB No. 2460, dated December 1992.

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

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(e) Service information that applies to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

Issued in Kansas City, Missouri, on February 24, 1993.

John E. Tigue,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–4718 Filed 3–1–93; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 92–NM–65–AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 767–200 and 767–300 series airplanes, that would have required inspections to detect disbonding of the trailing edge wedges on the leading edge slats, and repair, if necessary. That proposal was prompted by numerous reports of wedge damage or disbonding; in two cases, the damage resulted in loss of a portion of the slat wedges. This action revises the proposed rule by reducing the compliance time for certain airplanes, and adding an optional terminating action, an optional time-limited repair for disbonding, and an optional ultrasonic inspection method. This action also revises the proposed rule by reducing the number of airplanes affected by this proposal. The actions specified by this proposed AD are intended to prevent separation of the slat wedges, which could adversely affect the controllability of the airplane.

DATES: Comments must be received by April 12, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–65–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Tim Backman, Aerospace Engineer, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2776; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report

summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–65–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–65–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to add an airworthiness directive (AD), applicable to certain Boeing Model 767–200 and 767–300 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on May 1, 1992 (57 FR 18841). That NPRM would have required inspections to detect disbonding of the trailing edge wedges on the leading edge slats, and repair, if necessary. That NPRM was prompted by numerous reports of wedge damage or disbonding. In two cases, the damage resulted in loss of a portion of the slat wedges. Loss of slat wedges, if not corrected, could result in reduced maneuver margins, reduced speed margins to stall, and unexpected roll before stall warning, all of which would adversely affect the controllability of the airplane.

One commenter to the NPRM requests that the compliance times for conducting the initial inspections of the trailing edge wedge of the leading edge slat on airplanes with less than 12,000 flight hours be changed to 5,000 flight hours after the effective date of the final rule in order to be consistent with the compliance time recommended in Boeing Alert Service Bulletin 767–57A0039, dated April 9, 1992.

The FAA concurs with the commenter's request. The original notice would have required that airplanes having accumulated less than 8,000 total flight hours be inspected initially prior to the accumulation of 10,000 total flight hours (or within 4,000 flight hours after the effective date of the final rule, whichever occurred later). It also would have required that airplanes having accumulated 8,000 or more total flight hours be inspected initially prior to the accumulation of 12,000 total flight hours (or within 1,000 flight hours after the effective date of the final rule, whichever occurred later). However, after reviewing the service history for airplanes having accumulated less than 12,000 flight hours, and the time-related factors relative to disbonding and core corrosion that result from moisture ingression, the FAA has determined that a reduction in the initial compliance time for those airplanes is warranted.

Therefore, this supplemental notice now proposes to require that airplanes having accumulated less than 12,000 total flight hours be inspected initially at the earlier of the following times: (1) Prior to the accumulation of 13,000 total flight hours; or (2) within 5,000 flight hours or 15 months after the effective date of the final rule, whichever occurs first. This supplemental notice also proposes to require that airplanes having accumulated 12,000 or more total flight hours be inspected initially within 1,000 flight hours after the effective date of the final rule. With these changes, this supplemental notice would reduce the compliance time for operators of airplanes having a low number of accumulated flight hours; those operators would be required to conduct the initial inspections at an earlier time than proposed in the original notice.

Several commenters request that the FAA consider permitting operators to perform a time-limited repair that is described in a recent revision of Boeing Alert Service Bulletin 767–57A0039. This service bulletin also contains revised repair limits for disbonding. The commenters feel that the disbonding limits specified in the Structural Repair Manual (SRM) and referenced by Boeing Alert Service Bulletin 767–57A0039, dated April 9, 1992, are too restrictive. The notice would require that disbonding in excess of the limits specified in the SRM be repaired prior to further flight using the permanent SRM repair. The commenters feel that these overly restrictive limits will lead to grounding of airplanes.

The FAA concurs with the commenters' requests. Since the issuance of the notice, the FAA has reviewed and approved Boeing Service Bulletin 767–57A0039, Revision 1, dated October 15, 1992. This revised service bulletin describes procedures for a time-limited repair for disbonding, which may be accomplished as an alternative to the immediate permanent repair described in the SRM. The time-limited repair allows operators to repair disbonding up to certain limits specified in the service bulletin. This repair is considered to be temporary only, and would be required to be replaced with the permanent repair (in accordance with the SRM) within 5,000 flight hours. Accomplishment of the time-limited repair will provide operators with additional time so that the permanent SRM repair can be accomplished during regularly scheduled maintenance.

Revision 1 of Boeing Service Bulletin 767–57A0039 also reduces the number of airplanes in its effectivity listing. The effectivity in the original issue of the service bulletin included all Model 767 series airplanes. However, Revision 1 of the service bulletin limits the affected airplanes to those having line numbers 1 through 488, inclusive. Airplanes having line numbers 489 and subsequent have been equipped in production with the new more corrosion-resistant slat wedges that are not subject to the unsafe condition addressed by this AD. Accordingly, the applicability statement of this supplemental notice has been changed to reflect that the rule would be applicable only to airplanes having line numbers 1 through 488.

The revised service bulletin also describes procedures for an ultrasonic inspection of the trailing edge wedges of the leading edge slats as an alternative to the "Coin-Tap" inspection that was described in the original issue of the service bulletin. Paragraph (a) of the supplemental notice includes an ultrasonic inspection as an alternative to the "Coin-Tap" inspection.

The revised service bulletin also describes procedures for replacing slat wedges with new more corrosion-resistant slat wedges, which, if accomplished, would eliminate the need for inspections of the AD. The supplemental notice has been revised to include new paragraph (e), which describes this replacement as terminating action for the inspection requirements of the AD.

The revised service bulletin recommends that repetitive inspection of a trailing edge wedge of the leading edge slat be discontinued, provided that no damage is detected on that slat wedge after the completion of 2 consecutive inspections. Based on the service history of these airplanes with respect to the subject corrosion and disbonding, the FAA concurs with this recommendation. The FAA has determined that after 2 such consecutive inspections, the slat wedge is sufficiently sealed to protect against moisture ingression, which is a cause of core corrosion. Paragraphs (b) and (d) of this supplemental notice reflect this provision.

Since certain of the changes discussed above expand the scope of the originally proposed rule, and since certain other

changes address a number of issues that were not specifically addressed in the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

There are approximately 487 Boeing Model 767–200 and –300 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 180 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $79,200 or $440 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 92–NM–65–AD.

Applicability: Model 767 series airplanes, line numbers 1 through 488, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the trailing edge wedges of the leading edge slats from the airplane, accomplish the following:

(a) Perform either a visual and a "Coin-Tap" inspection, or a visual and an ultrasonic inspection, of the trailing edge wedges of the leading edge slats in accordance with Boeing Service Bulletin 767–57A0039, Revision 1, dated October 15, 1992, and in accordance with the schedule specified in paragraph (a)(1) or (a)(2) of this AD, as applicable:

(1) For airplanes that have accumulated less than 12,000 total flight hours as of the effective date of this AD, accomplish the initial inspections at the earlier of the times specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Prior to the accumulation of 13,000 flight hours; or

(ii) Within 5,000 flight hours or 15 months after the effective date of this AD, whichever occurs first.

(2) For airplanes that have accumulated 12,000 or more total flight hours as of the effective date of this AD, accomplish the initial inspections within 1,000 flight hours after the effective date of this AD.

(b) If no disbonding is detected during the inspections required by paragraph (a) of this AD, repeat the inspections at intervals not to exceed 4,000 flight hours. After 2 consecutive repetitive inspections of the slat wedge are accomplished in which no damage is found, the inspections required by this paragraph may be discontinued for that slat wedge.

(c) If disbonding is detected during any inspection required by paragraph (a) or (b) of this AD, prior to further flight, repair the disbonded area in accordance with paragraph (c)(1) or (c)(2) of this AD, as applicable:

(1) Repair the disbonded area using the "permanent" repair method in accordance with paragraph (c)(1)(i) or (c)(1)(ii) of this AD, as applicable.

(i) Repair using the "permanent" repair method specified in 767 Structural Repair Manual (SRM), Section 57–43–02.

(ii) If damage goes into the dense core area, or if there is no applicable SRM repair, repair the disbonded area in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) If the disbonded area is within the limits specified in paragraph J., Section III, "Accomplishment Instructions," of Boeing Alert Service Bulletin 767–57A0039, Revision 1, dated October 15, 1992, operators may repair the disbonded area using the time-limited repair method in accordance with that paragraph of the Service Bulletin.

(i) Within 500 flight hours after accomplishing the time-limited repair, and thereafter at intervals not to exceed 500 flight hours until the permanent repair specified in paragraph (c)(1) of this AD is accomplished, inspect the repaired area in accordance with Boeing Service Bulletin 767–57A0039, Revision 1, dated October 15, 1992.

(ii) The permanent repair must be installed within 5,000 flight hours after installation of the time-limited repair, or prior to further flight if the disbond grows beyond the doubler edges of the slat wedge, whichever occurs first.

(d) After accomplishment of any permanent repair in accordance with paragraph (c) of this AD, continue the inspections required by paragraph (a) of this AD at intervals not to exceed 4,000 flight hours. After 2 consecutive repetitive inspections of the slat wedge are accomplished in which no damage is found, the inspections required by this paragraph may be discontinued for that slat wedge.

(e) Replacement of the slat wedge with a new more corrosion-resistant slat wedge, in accordance with Boeing Service Bulletin 767–57A0039, Revision 1, dated October 15, 1992, constitutes terminating action for the inspection requirements of this AD for that slat wedge.

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

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

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

Issued in Renton, Washington, on February 24, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–4719 Filed 3–1–93; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 92–NM–138–AD]

Airworthiness Directives; British Aerospace Model BAC 1–11–200 and –400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Model BAC 1–11–200 and –400 series airplanes, that currently requires repetitive inspections of spanwise wing flap secondary drive shafts to detect failure or damage, until all spanwise wing flap secondary drive shafts have been replaced, repaired, overhauled, or modified. This action would add new inspections, expand certain inspection areas, and continue to require repetitive inspections even though a shaft has been replaced, repaired, or overhauled. This proposal is prompted by recent service reports that indicate what was considered previously to be "improved" wing flap secondary drive shafts can fail from fatigue. Therefore, repetitive inspections are necessary to assure continued safe operation of the wing flap system. The actions specified by the proposed AD are intended to prevent unannunciated failure of the wing flap secondary drive shafts.

DATES: Comments must be received by April 26, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–138–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–138–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–138–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On August 17, 1983, the FAA issued AD 77–17–10 R2, Amendment 39–4713 (48 FR 40210, September 6, 1983), applicable to all Model BAC 1–11–200 and –400 series airplanes, to require repetitive inspections of the wing flap spanwise secondary drive shafts to detect failure or damage, until the complete wing flap secondary drive shaft system has been replaced, repaired, overhauled, or modified. That action was prompted by reports of failures of wing flap secondary drive shafts, which could result in the inability to lower wing flaps on the affected wing if a single failure occurs in a primary shaft. That condition, if not corrected, could result in possible failure of the wing flap secondary drive shafting.

The existing AD permits discontinuing repetitive inspections of the spanwise secondary drive shafting when Modification 5341 has been installed. That modification involves the installation of an "improved" wing flap secondary drive shaft. However, since the issuance of that AD, there have been several reports of failure of these improved wing flap secondary drive shafts. These failures have been due to fatigue, although generally, the tubes have fractured in line with the end of the end fitting or insert, instead of through a rivet hole. Failure of these "improved" wing flap secondary drive shafts could result in the inability of the pilot to lower the wing flaps if a single failure in the primary drive shaft were to occur.

Additionally, the manufacturer and the United Kingdom Civil Aviation Authority (which is the airworthiness authority for the United Kingdom) have indicated that there have been reports of failures of non-spanwise secondary drive shafts. The failure of these drive shafts presents the same potential unsafe condition described previously.

The manufacturer has presented data that substantiate the need for:

1. Repetitive inspections of all wing flap secondary drive shafts (whether of the modified design or not);
2. The inspection of those secondary drive shafts that are visible when the spoilers are open; and
3. The overhaul/modification of the wing flap secondary drive shafts at 30,000 hours time-in-service.

Such actions will ensure the continued integrity of the wing flap secondary drive shafts.

British Aerospace has issued BAC One-Eleven Alert Service Bulletin 27–A–PM5341, Issue 4, dated May 6, 1991, that describes procedures for a new one-time inspection, visually and by feel, of wing flap secondary drive shafts that are visible when the spoilers are open. Also, the described procedures include new repetitive visual inspections to detect failure or damage of all wing flap secondary drive shafts. If distorted or chafed shafts are found during the visual inspection, an additional inspection of the shaft in question must be performed, both visually and by feel.

Further, the service bulletin describes procedures to include an expanded area for repetitive inspections, and overhaul, of the spanwise shafts. This area includes wing station 0 to wing rib 1, in addition to the previously specified wing ribs 1 to 14, left- and right-hand. Wing station 0 was inadvertently omitted from the earlier revised service bulletin.

The service bulletin also contains procedures for repetitively inspecting shafts that have been improved by installation of Modification 5341.

Additionally, the service bulletin describes procedures for a one-time overhaul/modification of the wing flap secondary drive shafts upon the accumulation of 30,000 total hours time-in-service.

The United Kingdom CAA classified this revised service bulletin as mandatory.

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

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 77–17–10 R2 to add a new one-time inspection, visually and by feel, of wing flap secondary drive shafts that are visible when the spoilers are open. The FAA considers that a compliance time for this inspection of 300 hours time-in-service after the effective date of the final rule is warranted in order to provide a timely inspection in the area where most shaft failures have been reported and continue to occur.

This AD also would add new repetitive visual inspections of all wing flap secondary drive shafts to detect failure or damage. If distorted or chafed shafts are found during the visual inspection, an additional inspection of the shaft must be performed, both visually and by feel.

Additionally, this AD would expand the area for spanwise shafts that is required to be repetitively inspected, and overhauled/modified, to include wing station 0 to wing rib 1, in addition to the currently required ribs 1 to 14, left- and right-hand. Shafts that have been improved by installation of Modification 5341 must be repetitively inspected.

Since recent reports continue to show failure of unimproved shafts, this AD would delete low-time interval inspections that previously permitted extension of the spanwise wing flap secondary drive shaft overhaul to 48,000 total hours time-in-service. Instead, this AD would require a one-time overhaul/modification of the shafts upon the accumulation of 30,000 total hours time-in-service. At overhaul, the shaft tubing must be replaced with improved tubing.

The actions specified above would be required to be accomplished in accordance with the service bulletin described previously.

In addition, the proposed AD would require replacement of out-of-tolerance shaft support bearings, prior to further flight, in order to ensure that excessive radial play introduced by worn support bearings does not result in premature fatigue failure of wing flap secondary drive shafts. This procedure would be required to be accomplished in accordance with the BAC 1–11 Maintenance Manual.

The FAA estimates that 31 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $21,164 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $664,609, or $21,439 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this proposed AD action.

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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–4713 (48 FR 40210, September 6, 1983), and by adding a new airworthiness directive (AD), to read as follows:

British Aerospace: Docket 92–NM–138–AD. Supersedes AD 77–17–10 R2, Amendment 39–4713.

Applicability: All Model BAC 1–11–200 and –400 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note: Paragraphs (c), (e) and (f) of this AD restate the requirements of AD 77–17–10 R2, paragraphs (a), (b), (g), (h), and (i).

To prevent unannunciated failure of the wing flap secondary drive shafts, accomplish the following:

(a) Within 300 hours time-in-service after the effective date of this AD, unless previously accomplished within the last 900 hours time-in-service prior to the effective date of this AD: Open the left and right spoilers and perform an inspection, visually and by feel, of the visible wing flap secondary drive shafts to detect failure or damage, in accordance with paragraph 2.4 of British Aerospace BAC One-Eleven Alert Service Bulletin 27–A–PM5341, Issue 4, dated May 6, 1991. Prior to further flight, repair or replace any defective shafts in accordance with paragraphs (c)(2) and (e) of this AD.

(b) Within 1,200 hours time-in-service after the effective date of this AD: Perform a visual inspection of all wing flap secondary drive shafts to detect failure or damage, in accordance with paragraph 2.1 of British Aerospace BAC One-Eleven Alert Service Bulletin 27–A–PM5341, Issue 3, dated September 28, 1981, or paragraph 2.1.2 of Issue 4, dated May 6, 1991.

(1) Repeat the visual inspections thereafter at intervals not to exceed 1,200 hours time-in-service.

(2) If any shaft is found that is distorted or chafed, prior to further flight, perform an inspection of that shaft, visually and by feel, in accordance with paragraph 2.4 of British Aerospace BAC One-Eleven Alert Service Bulletin 27–A–PM5341, Issue 3, dated September 28, 1981, or Issue 4, dated May 6, 1991. Shafts that fail to meet the inspection specifications listed in paragraph 2.4 of the service bulletin must be replaced, prior to further flight, in accordance with paragraph 2.4.1 of the service bulletin.

(c) For spanwise wing flap secondary drive shafts between wing station 0 and wing rib 14: Prior to the accumulation of 3,600 total

hours time-in-service or within the next 1,200 hours time-in-service after the effective date of this AD, whichever occurs later, perform an inspection, visually and by feel, to detect failure or damage, in accordance with paragraph 2.4 of British Aerospace BAC One-Eleven Alert Service Bulletin 27–A–PM5341, Issue 3, dated September 28, 1981, or Issue 4, dated May 6, 1991.

(1) Repeat the inspection thereafter at the times specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this AD:

(i) For spanwise wing flap secondary drive shafts that have accumulated less than 24,000 total hours time-in-service: At intervals not to exceed 3,600 hours time-in-service or 24 months, whichever occurs earlier.

(ii) For spanwise wing flap secondary drive shafts that have accumulated 24,000 or more hours time-in-service: At intervals not to exceed 2,400 hours time-in-service or 24 months, whichever occurs earlier.

(2) Shafts that fail to meet the specifications listed in paragraph 2.4 of British Aerospace BAC One-Eleven Alert Service Bulletin 27–A–PM5341, Issue 3, dated September 28, 1981, or Issue 4, dated May 6, 1991, must be replaced, prior to further flight, in accordance with paragraph 2.4.1 of the service bulletin.

(d) For wing flap secondary drive shafts located between wing station 0 and wing rib 14, listed in appendix 1 of British Aerospace BAC One-Eleven Alert Service Bulletin 27–A–PM5341, Issue 4, dated May 6, 1991, on which Modification PM5341/HCA929 is applicable, but has not been accomplished: Prior to the accumulation of 30,000 total hours time-in-service, or within 1,000 hours time-in-service after the effective date of this AD, whichever occurs later; overhaul and modify by installation of British Aerospace Modification PM5341, the wing flap secondary drive shafts, in accordance with paragraph 2.3 of British Aerospace BAC One-Eleven Alert Service Bulletin 27–A–PM5341, Issue 3, dated September 28, 1981, or Issue 4, dated May 6, 1991. At overhaul, the shaft tubing must be replaced with Modification PM5341 improved tubing, but serviceable end fittings may be reused.

(e) Whenever replacing or repairing a flap secondary drive shaft in accordance with paragraph (a), (b) or (c) of this AD, or whenever overhauling a wing flap secondary drive shaft in accordance with paragraph (d) of this AD, inspect the adjacent shaft support bearings for excessive radial play, in accordance with Section 27–52–00 of the BAC 1–11 Maintenance Manual. Prior to further flight, replace any shaft support bearings having radial play in excess of 0.020 inch total indicated reading with a serviceable bearing.

(f) Operators who have not kept records of hours time-in-service on individual wing flap secondary drive shafts shall substitute airplane hours time-in-service in lieu thereof.

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

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

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

Issued in Renton, Washington, on February 24, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–4721 Filed 3–1–93; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 92–NM–245–AD]

Airworthiness Directives; Corporate Jets Limited (formerly British Aerospace) Model DH/BH/HS/BAe 125 Series Airplanes (Excluding Model BAe 125–1000A Series Airplanes), Equipped with Garrett Model TFE 731 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Corporate Jets Limited Model DH/BH/HS/BAe 125 series airplanes. This proposal would require modification of the mounting arrangements of the battery contactors and emergency contactors in the rear equipment bay. This proposal is prompted by a report of an in-service electrical overheating incident caused by a battery short-to-ground through a battery contactor in the rear equipment bay. The actions specified by the proposed AD are intended to prevent overheating of the battery contactors and emergency contactors, and a potential fire in the rear equipment bay.

DATES: Comments must be received by April 26, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–245–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Corporate Jets, Inc., 22070 Broderick Drive, Sterling, Virginia 20166. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–245–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–245–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Corporate Jets Limited Model

DH/BH/HS/BAe 125 series airplanes that are equipped with Garrett Model TFE 731 series engines. The CAA advises that a case has been reported of an in-service electrical overheating incident caused by a battery short-to-ground through a battery contactor in the rear equipment bay. This condition, if not corrected, could result in overheating of the battery contactors and emergency contactors and a potential fire in the rear equipment bay.

Corporate Jets Limited has issued Service Bulletin SB.24–293–3501 A, B,C, & D, dated October 1, 1992, that describes procedures for modification (Modification Numbers 253501A,B,C, and D) of the mounting arrangements of the number 1 and 2 battery contactors, and the number 1 and 2 emergency contactors at panel "ZL" in the rear equipment bay.

Modification Number 253501A and B involve mounting the battery contactors and emergency contactors on a non-conducting panel (0.35 inch thick) in order to provide insulation from the light alloy panel. Special flanged bushes (nylon) are used to ensure the insulation integrity at the attachment points.

Modification Number 253501C entails a modification of the battery contactors and emergency (Hartman) contactors that allows fitting of the flanged bushes under the heads of the attachment bolts. The contactors are mounted on non-conducting pads (0.062 inch thick) in order to insulate the units from the light alloy panel.

Modification Number 253501D consists of modification to the number 1 and 2 battery contactors to the Modification Number 253501C standard, in order to achieve the required insulation. The number 1 and 2 emergency contactors are mounted on a non-conducting panel (0.35 inches thick) in order to provide insulation from the light alloy panel. Special flanged bushes (nylon) are used to ensure the insulation integrity at the attachment points.

These modifications, as described in the service bulletin, will preclude the possibility for a battery short-to-ground through a battery contactor in the rear equipment bay. The CAA classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the mounting arrangements of the battery contactors and emergency contactors in the rear equipment bay. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The identified unsafe condition does not exist with respect to Model BAe 125–1000A series airplanes. Therefore, these models are not included in the applicability of this proposed rule.

The FAA estimates that 350 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $600 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $325,500, or $930 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Corporate Jets Limited (Formerly British Aerospace): Docket 92–NM–245–AD.

Applicability: Model DH/BH/HS/BAe 125 series airplanes, excluding Model BAe 125–1000A series airplanes; equipped with Garrett Model TFE 731 series engines; as listed in Corporate Jets Limited Service Bulletin SB.24–293–3501 A,B,C, & D, dated October 1, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of the battery contactors and emergency contactors and a potential fire in the rear equipment bay, accomplish the following:

(a) Within 4 months after the effective date of this AD, modify the mounting arrangements of the battery contactors and emergency contactors in the rear equipment bay, Modification Number 253501 A, B, C, & D; and prior to further flight, perform a functional test; in accordance with Corporate Jets Limited Service Bulletin SB.24–293–3501 A, B, C, & D, dated October 1, 1992.

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

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

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

Issued in Renton, Washington, on February 24, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–4720 Filed 3–1–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–NM–222–AD]

Airworthiness Directives; Gulfstream Aerospace Corp. Model G1159 (G–II), G1159A (G–III), G1159B (G–IIB), and G–IV Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Gulfstream Model G1159 (G–II), G1159A (G–III), G1159B (G–IIB), and G–IV series airplanes, that currently requires inspections of the electrical power leads to the engine fire extinguishers to determine proper installation, and correction of the installation, if necessary. This action would require modification of the electrical leads and plumbing connections to the fire extinguishers, which would terminate the requirement for inspections following maintenance on the fire extinguishing system. This proposal is prompted by the development of a modification that eliminates incorrect installation of the electrical power lead to the engine fire extinguishing system. The actions specified by the proposed AD are intended to prevent fire bottles being discharged into the wrong nacelle.

DATES: Comments must be received by April 26, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–222–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Gulfstream Aerospace Corporation, Technical Operations Department, P.O. Box 2206, Savannah, Georgia 31402–9980. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Steve Flanagan, Aerospace Engineer, Airframe Branch, ACE–120A, FAA, Atlanta Aircraft Certification Office, suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia 30349; telephone (404) 991–2910; fax (404) 991–3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–222–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–222–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 11, 1989, the FAA issued AD 89–05–05, Amendment 39–6198 (54 FR 15744, April 19, 1989), to require inspections of the electrical power leads to the engine fire extinguishers to determine proper installation, and correction of the installation, if necessary. That action was prompted by reports of incorrect installation of the electrical power leads to the engine fire extinguishing system. The requirements of that AD are intended to prevent fire bottles being discharged into the wrong nacelle.

Since the issuance of that AD, the manufacturer has developed a modification that would eliminate incorrect installation of the electrical power leads to the engine fire extinguishing system. This modification entails installing color-coded identification labels that would facilitate differentiation of engine fire bottle electrical leads and plumbing connections.

The FAA has reviewed and approved the following Gulfstream Aircraft Service Changes (ASC), that describe procedures for installation of color-coded identification labels on the engine fire bottle electrical leads and plumbing connections:

ASC No.	Date of ASC	Applicable model(s)
401	Dec. 6, 1991.	Gulfstream G1159/ G1159B (G–II/G–IIB).
195	Dec. 6, 1991.	Gulfstream G1159A (G–III).
146	Sept. 5, 1991.	Gulfstream G–IV.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 89–05–05 to require modification of the electrical leads and plumbing connections to the engine fire extinguishing system. This action would terminate the current requirement for inspections following maintenance on the fire extinguishing system. The actions would be required to be accomplished in accordance with the applicable aircraft service change described previously.

There are approximately 540 Model G1159 (G–II), G1159A (G–III), G1159B (G–IIB), and G–IV series airplanes of the affected design in the worldwide fleet. The FAA estimates that 363 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $334 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $280,962, or $774 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6198 (54 FR 15744, April 19, 1989), and by adding a new airworthiness directive (AD), to read as follows:

Gulfstream Aerospace Corporation: Docket 92–NM–222–AD. Supersedes AD 89–05–05, Amendment 39–6198.

Applicability: All Model G1159 (G–II), G1159A (G–III), G1159B (G–IIB), and G–IV series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fire bottles being discharged into the wrong nacelle, accomplish the following:

(a) Within 3 days or 10 hours time-in-service after May 8, 1989 (the effective date of AD 89–05–05, Amendment 39–6198), whichever occurs later, perform an inspection to determine proper configuration of electrical power leads to the engine fire extinguishing system, in accordance with the following Gulfstream Alert Customer Bulletins, dated February 2, 1989: G–II Bulletin No. 20 (for Model G1159/G1159B series airplanes); G–III Bulletin No. 4 (for Model G1159A series airplanes); or G–IV Bulletin No. 5 (for Model G–IV series airplanes); as applicable. If the configuration is not correct, prior to further flight, correct the installation in accordance with the applicable Gulfstream Alert Customer Bulletin.

(b) Immediately following any maintenance performed on the engine fire extinguishing system, perform the inspection procedures required by paragraph (a) of this AD in accordance with the applicable alert customer bulletin to ensure that the system is functioning properly.

(c) Within 2 years after the effective date of this AD, modify the electrical leads and plumbing connections to the fire extinguishers in accordance with the following Gulfstream Aircraft Service Changes: Gulfstream II/IIB Change No. 401, dated December 6, 1991 (for Model G1159/G1159B series airplanes); Gulfstream III Change No. 195, dated December 6, 1991 (for Model G1159A series airplanes); or Gulfstream Change No. 146, dated September 5, 1991 (for Model G–IV series airplanes); as applicable. Accomplishment of this modification constitutes terminating action for the inspection procedures required by paragraph (b) of this AD.

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

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

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

Issued in Renton, Washington, on February 24, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–4722 Filed 3–1–93; 8:45 am]

BILLING CODE 4910–13–P

RAILROAD RETIREMENT BOARD

20 CFR Part 325

RIN 3220 AA97

Registration for Railroad Unemployment Benefits

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) hereby proposes to amend its regulations under the Railroad Unemployment Insurance Act (RUIA) to allow a claimant 30 days (instead of 9) to request a claim form in order to begin receiving unemployment benefits with respect to a subsequent period of unemployment within a benefit year, and to clarify the time limit that applies to the filing of a claim for unemployment benefits.

DATES: Comments should be submitted on or before April 1, 1993.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Section 5(a) of the RUIA provides that claims for benefits under the RUIA shall be made in accordance with such regulations as the Board shall prescribe. Section 5(b) of the RUIA authorizes the Board to establish by regulation or otherwise any procedure that it deems necessary or proper for the determination of a right to benefits.

Board regulations presently require a claimant to file an application for unemployment benefits within 30 calendar days of the first day, within a benefit year, that he or she intends to claim as a day of unemployment. See 20 CFR 325.3(c). If the claimant returns to work but becomes unemployed later in the same benefit year, the regulations do not require him or her to file a new application with respect to the subsequent period of unemployment. Instead, under 20 CFR 325.4(d), the claimant may initiate a new claim for unemployment benefits by requesting a claim form for the first 14-day period in such subsequent period of unemployment, provided that such request is made within 9 calendar days after the first day in such subsequent period of unemployment for which the claimant wishes to receive unemployment benefits.

Experience has shown that the foregoing procedure is not readily understood by unemployed railroad employees and can produce inequitable results in some cases. For instance, an unemployed employee will probably not understand that while he or she has 30 days to apply for unemployment benefits for an initial period of unemployment in a benefit year, he or she has only 9 days to request a claim form for a subsequent period of unemployment in the same benefit year.

The employee could reasonably believe that upon becoming unemployed a second time, he or she has 30 days to apply for unemployment benefits. This misunderstanding has resulted in benefits being denied employees who have waited longer than 9 days to request a claim form.

To avoid this result, the Board proposes to amend its regulations. Under the proposed regulation, an employee would be allowed 30 days to request an initial claim form for a subsequent period of unemployment in a benefit year, that is, the same number of days required for an initial application for unemployment benefits under 20 CFR 325.3(c).

The Board also proposes to amend § 325.4(c) of its regulations to clarify the time limit for filing a claim for unemployment benefits. Presently, that regulation provides that a claim must be filed no later than 15 calendar days after the last day claimed as a day of unemployment during the period covered by the claim form, or 15 calendar days after the date on which the claim form was mailed to the claimant, whichever date is later. This requirement has proved to be confusing and difficult to administer when the last day claimed as a day of unemployment is not the last day in the claim period covered by the requested claim form. Accordingly, the Board proposes to amend the regulation so that the 15-day time limit will be measured from the last day of the period to be covered by the claim form, or the date on which the claim form was mailed to the claimant, whichever date is later. The regulation, as amended, will be easier to administer and will expedite processing of claims for unemployment benefits.

Units the experience rating provisions of the 1988 amendments to the RUIA (title VII of Pub. L. 100–647), claims for unemployment benefits are subject to prepayment verification with the applicable base year employer. Prepayment verification serves to assure the validity of claims for unemployment benefits filed by employees under these regulations.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no regulatory analysis is required. This rule does not impose any information collections within the meaning of the Paperwork Reduction Act (44 U.S.C. ch. 35).

List of Subjects in 20 CFR Part 325

Railroad employees, Railroad unemployment benefits.

For the reasons set out in the preamble, title 20, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 325—REGISTRATION FOR RAILROAD UNEMPLOYMENT BENEFITS

1. The authority citation for part 325 continues to read as follows:

Authority: 45 U.S.C. 362(i) and 362(1).

2. Section 325.4(c) is revised to read as follows:

§ 325.4 Claim for unemployment benefits.

* * * * *

(c) *Time for filing.* A claim for unemployment benefits shall be filed at any Board office no later than 15 calendar days after the last day of the claim period, as defined in paragraph (b) of this section, or 15 calendar days after the date on which the claim form was mailed to the employee, whichever is later. In determining whether the time for filing the claim may be extended, the standards set forth in § 325.3(d) shall be applied. None of the days included in a claim that is not timely filed shall be considered a day of unemployment.

§ 325.4 [Amended]

3. Section 325.4(d) is amended by removing "9" and inserting therefor "30" in the second sentence of that paragraph, and by removing "9th" and inserting therefor "30th" in the last sentence of that paragraph.

Dated: February 22, 1993.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 93–4766 Filed 3–1–93; 8:45 am]

BILLING CODE 7905–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL13–1–5362; FRL–4562–5]

Approval and Promulgation of Particulate Matter Implementation Plan; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA proposes approval of the State Implementation Plan (SIP) submitted by the State of Illinois for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). The implementation plan was submitted by the State to satisfy certain Federal requirements for an approvable nonattainment area PM–10 SIP for LaSalle County, Illinois. This area was designated nonattainment for PM–10 and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act (Act), upon enactment of the Act Amendments of 1990. The Act requires that States make certain submittals by November 15, 1991 for those areas designated nonattainment and classified as moderate for PM–10 upon enactment (the "initial moderate nonattainment areas"). In this action, USEPA is proposing approval of the PM–10 SIP for LaSalle County. The rationale for the approval is set out both in this notice and in supporting technical information which is available at the address indicated below.

DATES: Comments on this revision and on USEPA's proposed action must be received by April 1, 1993.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (5AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the SIP revision request and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Gustavo Felix at (312) 353–6009, before visiting the Region 5 Office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of today's revision to the Illinois SIP is available for inspection at: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Gustavo Felix, Regulation Development Branch, Regulation Development Section (5AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–6009.

SUPPLEMENTARY INFORMATION:

I. Background

The air quality planning requirements for moderate PM–10 nonattainment areas are set out in title I of the Act.[1]

[1] The 1990 Amendments to the Act made significant changes to the air quality planning requirements for areas that do not meet (or that significantly contribute to ambient air quality in a nearby area that does not meet) the PM–10 national ambient air quality standards (see Pub. L. 101–549, 104 Stat. 2399). References herein are to the Clean Air Act, as amended, 42 U.S.C. sections 7401 *et seq.*

USEPA has issued a "General Preamble" describing USEPA's preliminary views on how USEPA intends to review SIP's and SIP revisions submitted under Title I of the Act, including those State submittals containing moderate PM–10 nonattainment area SIP requirements [see generally 57 FR 13498 (April 16, 1992)]. The reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in today's proposal and the supporting rationale. In today's rulemaking action on the Illinois moderate PM–10 SIP for LaSalle County nonattainment area, USEPA is proposing to apply its interpretation taking into consideration the special factual issues presented.

Part D of Title I contains the provisions applicable to nonattainment areas. Moderate PM–10 nonattainment areas must meet the applicable requirements set out in subparts 1 and 4 of part D. Subpart 1 contains provisions generally applicable to all nonattainment areas and subpart 4 contains provisions specifically applicable to PM–10 nonattainment areas. At times, Subparts 1 and 4 overlap or conflict. USEPA has attempted to clarify the relationship among these various provisions in the General Preamble and, as appropriate, in today's notice.

Those States containing initial moderate PM–10 nonattainment areas were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technoloy—RACT) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Control requirements applicable to major stationary sources of PM–10 precursors except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Some provisions are due at a later date. States with initial moderate PM–10 nonattainment areas were required to submit a permit program for the construction and operation of new and modified stationary sources of PM–10 by June 30, 1992 (see section 189(a)). Such States also must submit contingency measures by November 15, 1993 which become effective without further action by the State or USEPA, upon a determination by USEPA that the area has failed to achieve RFP or to attain the PM–10 NAAQS by the applicable statutory deadline (see section 172(c)(9) and 57 FR 13543–13544).

II. Today's Action

Section 110(k) of the Act sets out provisions governing USEPA's review of SIP submittals (See 57 FR 13565–13566). In today's action, USEPA is proposing to approve the plan revision submitted to USEPA on October 16, 1991 and November 13, 1991, for LaSalle County, Illinois because it meets all of the applicable requirements of the Act. The USEPA will consider any timely submitted comments before taking final action on today's proposal.

A. Analysis of State Submission

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans for submission to USEPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[2] Section 110(d) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

USEPA also must determine whether a submittal is complete and therefore warrants further USEPA review and action [see section 110(k)(1) and 57 FR 13565]. USEPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, Appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). USEPA attempts to make completeness determinations within 60 days of receiving a submittal. However, a submittal is deemed complete by operation of law if a completeness determination is not made by USEPA 6 months after receipt of the submission.

[2] Also Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

The State of Illinois held a public hearing on April 17, 1991, in Chicago, and on April 19, 1991, in Oglesby, Illinois to entertain public comment on the implementation plan for LaSalle County. Following the public hearing the plan was adopted by the Illinois Pollution Control Board on September 26, 1991. The plan was submitted to USEPA on October 16, 1991 and November 13, 1991 as a revision to SIP, with a request that USEPA approve the revision.

The SIP revision was reviewed by USEPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The submittal was found to be complete and a letter dated November 29, 1992 was forwarded to the Manager, Division of Air Pollution Control, Illinois Environmental Protection Agency (IEPA) indicating the completeness of the submittal and the next steps to be taken in the review process. As noted in today's action USEPA proposes to approve the Illinois PM–10 SIP submittal for LaSalle County.

2. Accurate Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. Further, section 110(a)(2)(K) generally authorizes USEPA to request to request any data necessary to perform air quality modeling for the purpose of predicting, among other things, impacts on the PM–10 NAAQS. This would include, for example, a comprehensive, accurate, and current inventory of allowable emissions in the area. Because the submission of such inventories are a necessary adjunct to an area's attainment demonstration (or demonstration that the area cannot practicably attain), the emissions inventories must be received with this submission (see 57 FR 13539).

PM–10 and Total Suspended Particulate (TSP) monitors operated by the Illinois Environmental Protection Agency (IEPA) in Oglesby are sited at a location that is ideally suited to measure maximum impacts caused by emissions from a single company—the Lone Star Cement Company. It is IEPA's contention that the exceedances recorded in Oglesby were due entirely to emissions from that plant. The PM–10 monitor has recorded four exceedances in 1989, 2 exceedances in 1990, and 3 exceedances in 1991. Historically, the Oglesby TSP monitor

has consistently recorded some of the highest TSP concentrations in the State and these concentrations have been attributed to emissions from Lone Star Cement.

The LaSalle County emissions inventory consists of 32 point sources and 14 area sources. The allowable and actual emission inventory are the same. The four main sources of PM–10 at Lone Star Cement are the kiln, clinker cooler, finish mill high efficiency air separator, and a raw mill roller mill. The allowable emission limits for these sources are listed in § 212.423(b) of 35. Ill. Adm. Code 212 and match the emissions that was used in the modeling analysis needed to demonstrate attainment of the PM–10 NAAQS. All of the point sources, except the kiln, are controlled by baghouses. The kiln is controlled by an electrostatic precipitator.

The emissions for all the point sources, not including the four mentioned above, are controlled by a no visible emission limit in Section 423(c) of 35 Ill. Adm. Code 212. The emission calculations for these sources were based on the grain loading and the maximum flow rates. The no visible emission limit ensures that the baghouses will meet or control beyond 0.01 grains per standard cubic feet. The maximum flow rate was based on 100 percent capacity of the point sources with control equipment operating.

The fugitive emissions inventory was modeled as 14 area sources. The emissions were calculated from 27 different fugitive producing processes such as blasting, drilling, and conveying. It is possible for an area source to consist of one or more processes, depending on how the 27 fugitive producing processes were distributed to the 14 area sources.

Calculations for the fugitive emissions were done mainly from data and equations given in publication AP–42, Compilation of Air Pollutant Emission Factors (Fourth Edition, 1985) and EPA publication Control of Open Fugitive Dust Sources (EPA–450/3–88–008). Control efficiencies were based on several factors, including application intensity of § 212.424 of the Illinois State Rules and Regulations (e.g. 1.58 liters of water/square meter). When the modeling analysis was done for the 24 hour PM–10 standard, control efficiencies were zero to simulate worst case scenario.

USEPA is proposing to approve the emissions inventory because it generally appears to be accurate and comprehensive, and provides a sufficient basis for determining the adequacy of attainment demonstration for this area consistent with the requirements of sections 172(c)(3) and 110(a)(2)(K) of the Act.[3] For further details see the Technical Support Documents (TSDs).

3. RACM (Including RACT)

As noted, the initial moderate PM–10 nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented no later than December 10, 1993 [see sections 172(c)(1) and 189(a)(1)(C)]. The General Preamble contains a detailed discussion of USEPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539–13545 and 13560–13561). the USEPA's interpretation of this requirement is set out here only in broad terms.

The State should first identify available control measures evaluating them for their reasonableness in light of the feasibility of the controls and the attainment needs of the area. A State may reject an available control measure if the measure is technologically infeasible or the cost of the control is unreasonable. The SIP must demonstrate attainment of the NAAQS as expeditiously as practicable but no later than December 31, 1994 (unless the State demonstrates that attainment by that date is impracticable). Therefore, if a State adopts less than all available measures but demonstrates, adequately and appropriately, that RFP and attainment of the PM–10 NAAQS is assumed, and application of all such available measures would not result in attainment any faster, than a plan which requires implementation of less than all available measures may be approved as meeting the RACM requirement. As a suggested starting point, USEPA has identified reasonably available control measures for sources of fugitive dust, residential wood combustion, and prescribed burning (see 57 FR 18072–18074 (April 28, 1992)). The State should add to the list of available measures in an area any measures that public commenters demonstrate may well be reasonably available in a particular circumstance.

The RACT for a particular source is similarly determined. USEPA's longstanding definition of RACT is the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (see 57 FR 13541). Thus, USEPA recommends that available control technology be applied to those existing sources in the area that are reasonable to control in light of the attainment needs of the area and the feasibility of controls.[4]

A State should submit a reasoned justification for partial or full rejection of any available control measure (including any available control technology) that explains, with appropriate documentation, why each rejected control measure is infeasible or otherwise unreasonable and, therefore, does not constitute RACM (or RACT) for the area. In those PM–10 nonattainment areas where mobile sources significantly contribute to the PM–10 air quality problem, States also must address the section 108(f) transportation control measures (see 57 FR 13561).

As stated above under the section headed "Accurate Emissions Inventory", a total of 32 point sources and 14 area sources were identified as contributing to the PM–10 nonattainment problem in LaSalle County. All of the emission sources are located at Lone Star Cement. Four of the point sources will be controlled by specific mass emission limits. The four point sources are a kiln, a clinker cooler, finish mill high efficiency air separator, and a raw mill roller mill. See table below.

[3] The USEPA issued guidance on PM–10 emissions inventories prior to the enactment of the 1990 Act Amendments in the form of the 1987 PM–10 SIP Development Guideline. We believe that this document provides a general basis for meeting the requirements of the new Act.

[4] USEPA has issued technological and economic parameters that should be considered in determining RACT for a particular source (see 57 FR 18073–18074).

	Rate kg/hr	(lb/hr)	Concentration	
			mg/scm	(gr/scf)
PM–10 Emission Limits				
A. Clinker Cooler	4.67	(10.3)	28.147	(0.012)
B. Finish Mill High Efficiency Air Separator	2.68	(5.9)	26.087	(0.011)
PM–10 Emission Limits—Including Condensible PM–10				
A. Raw Mill Roller Mill (RMRM)	6.08	(13.4)	27.5	(0.012)
B. Kiln without RMRM Operating	19.19	(42.3)	91.5	(0.040)
C. Kiln with RMRM	11.43	(25.2)	89.2	(0.039)

Note that the kiln has two emission limits, one limit applies when the RMRM is operating and the other applies when the RMRM is not operating. The reason for this is that some of the kiln exhaust is fed to the RMRM to help reduce the kiln emissions. However, the RMRM only operates a portion of the time the kiln is in operation.

All other point sources at the cement plant will be controlled by a no visible emission limit. The no visible emission limit will assure that the baghouses controlling emissions from the point sources such as the conveyor transfer points will be operating properly and meeting or doing better than 0.01 gr/scf. A list of point sources may be found in the TSDs accompanying this proposed rulemaking. Complete descriptions of the individual point sources may be found in the State submittal.

The area sources will be controlled by fugitive dust suppression methods. The fugitive dust sources that require control are as follows; (1) certain unpaved roadways and open areas traversed by motor vehicles, and (2) crushing, screening, and conveying operations at the quarry that provide raw materials for the Portland cement manufacturing process.

One control measure, from § 212.424(c)(1) of 35 Ill. Adm. Code 212, requires calcium chloride and intermittent water applications to the unpaved access roadway to the Illinois Central Silos loadout at the plant. The Calcium Chloride is applied once every 16 weeks at a rate of at least 1.58 liters per square meter. This is followed by a weekly application of water at a rate of 1.58 liters per square meter. This requirement becomes moot if the roadway is paved.

Section 212.424(d)(1) from 35 Ill. Adm. Code 212 requires a foam suppressant to be applied to the primary crusher the primary screen, and to two conveyor belt points in the quarry. The foam suppressant is to be applied at a rate of at least 1.25 liters per megagram of rock processed.

Section 212.424(d)(2) requires watering of the roadways that lead to the primary crusher at a rate of 0.50 liters per square meter applied once every eight hours except under certain weather conditions that may make watering a hazard.

A more detailed discussion of the individual source contributions, their associated control measures (including reasonably available control technology) and an explanation as to why certain available control measures were not implemented, can be found in the TSDs accompanying this proposed rule which are available from the Region 5 office listed above.

USEPA has reviewed the State's explanation and associated documentation and concluded that it adequately justifies the control measures to be implemented. The implementation of Illinois's Part D particulate matter nonattainment plan control strategy will result in the attainment of the PM–10 NAAQS by December 31, 1994. By this notice, USEPA is proposing to approve the control strategy in its entirety.

4. Attainment Demonstration

As noted, the initial moderate PM–10 nonattainment areas must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 (See section 189(a)(1)(B) of the Act). Alternatively, the State must show that attainment by December 31, 1994 is impracticable. In the General Preamble, USEPA indicated that the attainment demonstrations for the initial moderate areas must follow existing modeling guidelines for PM–10 or, if appropriate, may be developed consistent with the supplemental attainment demonstration policy issued for initial areas (see 57 FR 13539).

Illinois conducted an attainment demonstration using dispersion modeling for LaSalle County. This demonstration indicates that the NAAQS for PM–10 will be attained by 1994 in LaSalle County and maintained in future years. The 24-hour PM–10 NAAQS is 150 micrograms/cubic meter ($\mu g/m^3$), and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 $\mu g/m^3$ is equal to or less than one. *See* 40 CFR 50.6. The annual PM–10 NAAQX is 50 $\mu g/m^3$, and the standard is attained when the expected annual arithmetic mean concentration is less than or equal to 50 $\mu g/m^3$. The dispersion modeling in the demonstration predicted 148 $\mu g/m^3$ as the 24-hour design concentration, thus demonstrating attainment of the 24-hour PM–10 NAAQS. The dispersion modeling in the demonstration predicted 47 $\mu g/m^3$ as the annual design concentration, thus demonstrating attainment of the annual PM–10 NAAQS. The control strategy used to achieve these design concentrations is summarized in the section titled "RACM (including RACT)". To account for growth effects in future years, a growth factor has been applied to all background concentrations used in the modeling analyses. For a more detailed description of the attainment demonstration and the control strategy used, see the TSDs prepared in support of this proposed rule.

5. PM–10 Precursors

The control requirements which are applicable to major stationary sources of PM–10, also apply to major stationary sources of PM–10 precursors unless USEPA determines such sources do not contribute significantly to PM–10 levels in excess of the NAAQS in that area (see section 189(e) of the Act). The control requirements that apply to major stationary sources in PM–10 nonattainment areas generally include the following: reasonably available control technology, which applies in moderate PM–10 nonattainment areas; best available control technology, which

applies in serious PM–10 nonattainment area; and control requirements under the applicable new source review provisions, such as the lowest achievable emission rate. The General Preamble contains a lengthy discussion on control requirements for PM–10 precursors in moderate nonattainment areas and on the type of technical information USEPA will rely on in making any determinations under section 189(e) (see 57 FR 13539–13540 and 13541–13542).

Weather stagnation is not characteristic of the LaSalle County nonattainment area. Reduction of precursor concentration (e.g. VOC, SO_2, and NO_X) would require reduction of indeterminately located sources well upwind of the nonattainment area. Control of precursors in the nonattainment area would have little if any impact on particulate matter concentrations in the nonattainment area. For this reason, it is appropriate to conclude that precursors do not contribute significantly to particulate matter concentrations on the LaSalle County nonattainment area.

6. Quantitative Milestones and Reasonable Further Progress (RFP)

The PM–10 nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP, as defined in section 171(1), toward attainment by December 31, 1994 (see section 189(c) of the Act). Reasonable further progress is defined in section 171(1) as such annual incremental reductions in emissions of the relevant air pollutant as are required by Part D or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.

For the initial moderate PM–10 nonattainment areas, the emissions reductions progress made between the SIP submittal due date of November 15, 1991 and the attainment date of December 31, 1994 (only 46 days beyond the November 15, 1994 milestone date) will satisfy the first milestone requirement. The de minimis timing differential makes it administratively impracticable to require separate milestone and attainment demonstrations. In implementing RFP for this initial moderate area, USEPA will review the attainment demonstration and control strategy for the area and determine whether annual incremental reductions different from those provided in the SIP may reasonably be required in order to ensure attainment of the PM–10 NAAQS by December 31, 1994 (see section 171(1)). The control strategy, assuring attainment by December 31, 1994, for LaSalle County went into effect on April 30, 1992. This implies that RFP as already been accomplished.

7. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and USEPA. See sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556. USEPA criteria addressing the enforceability of SIP's and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from the Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541). The criteria include, for example, applicability to sources, compliance date(s), compliance periods, test methods, record keeping requirements, and any exemptions or variances. In addition to enforceable requirements, nonattainment area plan provisions must contain a program that provides for enforcement of the control measures and other elements in the SIP [see section 110(a)(2)(C)].

The particular control measures contained in the SIP are addressed above under the section headed "RACM (including RACT)." These control measures apply to the types of activities identified in that discussion, including, for example, mass emission limits for 4 point sources, a no-visible emission limit for the remainder of the point sources, and fugitive dust suppression methods for area sources. The SIP provides that the affected activities apply to portland cement manufacturing plant and associated quarry operations located south of the Illinois River in LaSalle County, IL.

The TSDs prepared in support of this proposed rule indicate that the SIP revision contains appropriate emission limitations; a complete emission inventory; a list of source types, methods and schedules as appropriate; malfunction provision; compliance test methods; correctly cited references of incorporated methods/rules; and reporting and recordkeeping requirements.

The State of Illinois has two approaches to regulate PM–10 emissions, "testing" and "observation". Testing is the common approach to control particular matter from large process emission sources. This approach is commonly used by the USEPA for many of its New Source Performance Standards. In this approach the emission limit is set as allowable concentration, e.g. grain/scf, or an allowable emission factor, e.g. lbs/ton throughput. Compliance with the emission limit is evaluated by initial emissions testing using an appropriate method. For PM–10, the appropriate test methods are Method 201, Method, 201A, or Method 5 of Title 40 of the Code of Federal Regulations (40 CFR part 60), appendix A. Method 202 of 40 CFR part 60, appendix A is used if condensibles is also to be tested. Then there is follow up testing if needed. Between emissions tests, compliance is determined by a combination of techniques, including reviewing operating records, observation of stack opacity, and monitoring of stack opacity. These techniques are used to assure that the equipment is being operated in a manner that is consistent with that during testing. If the manner of operation deviates significantly from that during testing, the equipment must be restored to the manner of operation during testing or the equipment must be tested again. There are recordkeeping and reporting requirements that will help to verify proper operation and maintenance of control equipment.

The second approach to control of particulate matter emissions, relies solely on visual observation of the exhaust. This second approach is the "observation" approach. This approach is particularly relevant where existing or small sources are being considered, as are present at Lone Star. This approach determines whether or not equipment has no visible emissions. The no visible emission limit is a stringent standard, barring release of any exhaust gas which visibly contains particulate matter. The no visible emission limit applies to all manufacturing process emission sources other than the four addressed by specific numerical limits. Compliance with the no visible emission limit will be determined by Method 22 of 40 CFR part 60, appendix A.

8. Contingency Measures

As provided in section 172(c)(9) of the Act, all moderate nonattainment area SIPs that demonstrate attainment must include contingency measures. See generally 57 FR 13543–13544. These measures must be submitted by November 15, 1993 for the initial moderate nonattainment areas. Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures must be submitted by November 15, 1993 for initial moderate nonattainment areas. These measures must take effect without further action by the State or USEPA, upon a determination by USEPA that the area has failed to make RFP or attain the PM–10 NAAQS by the applicable statutory deadline. Illinois will have

until November 15, 1993 to submit a contingency plan for LaSalle County.

9. Outstanding Proposal To Reclassify LaSalle County to Serious

On November 21, 1991, USEPA proposed to reclassify 14 moderate nonattainment areas with design concentrations 58% or more above the standard and with 6 or more expected exceedances of the 24-hour standard per year (56 FR 58658). The LaSalle County nonattainment area met these criteria and was included in the proposed reclassification notice. At the same time, USEPA included a discussion in the notice that it did not anticipate the need to reclassify LaSalle County in the final notice of rulemaking. This conclusion was based upon the State's dispersion modeling and RACT analyses which tentatively demonstrated attainment by December 31, 1994, the moderate area attainment date. USEPA has confirmed in today's notice that the State adopted regulations, which become effective on October 4, 1991, demonstrating attainment by December 31, 1994. LaSalle County will, therefore, not be reclassified to serious for PM–10.

III. USEPA's Proposed Rulemaking Action

USEPA is proposing to approve the plan revision submitted to USEPA on October 16, 1991 and November 13, 1991, for the LaSalle County nonattainment area. Among other things, the State of Illinois has demonstrated that the LaSalle County moderate PM–10 nonattainment area will attain the PM–10 NAAQS by December 31, 1994.

As noted, additional submittals for the initial moderate PM–10 nonattainment areas are due at later dates. The USEPA will determine the adequacy of any such submittal as appropriate.

IV. Request for Public Comments

USEPA is requesting comments on all aspects of today's proposal. As indicated at the outset of this notice, USEPA will consider any comments received by April 1, 1993.

V. Executive Order (EO) 12291

The OMB has exempted this rule from the requirements of Section 3 of EO 12291.

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small no-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the Act do not create any new requirements, by simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976; 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 8, 1993.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 93–4630 Filed 3–1–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[MM Docket No. 93–24, FCC 93–90]

Experimental, Auxiliary, and Special Broadcast and Other Program Distributional Services; Instructional Television Fixed Service Filing Procedures

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This notice of proposed rulemaking seeks comment on the adoption of a window period for the filing of applications for new ITFS stations, for major changes in existing stations, or for major amendments to pending applications. The notice discusses the significant changes that have occurred in ITFS over the past few years that have resulted in a substantial increase in the number of applications received. The notice seeks comment on whether the Commission should institute a filing window procedure and, if so, how it could implement such a window. The Commission issued the notice on its own motion.

DATES: Comments are due by April 19, 1993 and reply comments are due by May 19, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Paul R. Gordon, Mass Media Bureau, Video Services Division, (202) 632–6357.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rulemaking in MM Docket No. 93–24, adopted February 11, 1993, and released February 25, 1993.

The complete text of this notice of proposed rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center, room 239, at the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554, and may also be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Synopsis of Notice of Proposed Rulemaking

1. This notice of proposed rulemaking seeks comment on changing the method by which Instructional Television Fixed Service (ITFS) applications are filed and processed. Currently, applicants for new ITFS stations or major changes in existing station are subject to the traditional A/B cut-off approach. The notice discusses the history of ITFS since its inception in 1964, noting that the service was not heavily utilized during its first two decades. However, in 1983, the Commission authorized ITFS licensees to lease their excess channel capacity to wireless cable operators. The Commission found that this would alleviate the burdensome cost of constructing and operating an ITFS system, and it also determined that the income derived from the leasing of excess channel capacity could enable ITFS operators to broadcast during a greater portion of the day, could increase programming availability, and could result in the activation of currently vacant channels.

2. The authorization of excess capacity leasing led to an increase in the number of applications filed, and the rules did not allow for an orderly, efficient, and equitable processing of those applications. Accordingly, the Commission in 1985 inaugurated a cut off procedure. Analyzing the options

before it, the Commission rejected a proposed window approach and determined that the traditional A/B cut-off procedure would best serve the public interest. The Commission then believed that use of a filing window was inappropriate, because educational institutions generally lacked expertise in filing for Commission licenses and frequently required time to obtain government funding and to negotiate an excess capacity lease.

3. The cut-off procedure involves placing the first application(s) accepted for filing and determined to be substantially complete on a public notice called an "A cut-off list." This list notifies the public that the application has been accepted and gives interested parties 60 days to file competing applications or petitions to deny. An applicant placed on the "A" cut-off list is required to make any major changes to its proposal before the end of the cut-off period. After the "A" period expires, the staff places all substantially complete applications which were filed during that period and found to be mutually exclusive with any listed "A" application on a "B" list. This list notifies the public that the specified applications have been accepted for filing, and it provides 30 days for the filing of petitions to deny or minor amendments.

4. Since the Commission first considered these issues several years ago, however, we have significantly amended our regulations to avoid inhibiting the growth of ITFS and wireless cable services. In the last three years we have modified the minimum programming requirements for new ITFS operators; authorized 15-mile interference protection for ITFS licensees which lease excess capacity for wireless cable operations; authorized the use in some situations of channel mapping technology by ITFS licensees and wireless cable lessees; and modified our "ready recapture" requirement with regard to excess channel capacity leasing by eliminating unduly restrictive time-of-day and day-of-week regulations.

5. With these changes, there has been a tremendous increase in the number of applications proposing the construction of new ITFS stations or major changes in the authorized facilities of such stations. In fiscal year 1991 alone, 454 new or major change ITFS applications were filed, a total that nearly equalled the aggregate number of such applications that had been filed in the four previous fiscal years. In fiscal year 1992, the rate of application receipts increased steadily. As a result, we received in that time 878 applications, nearly twice the number of new or major change ITFS applications than had been filed in FY 1991. In addition, a growing number of the applications filed are found to be mutually exclusive with ITFS applications listed on "A" cut-off notices.

6. The cut-off procedure has become inefficient, requiring an initial processing of a substantial number of applications simply to place them on an "A" cut-off list, with little benefit. Because each application must be processed a second time for legal and technical analysis, we are confronted with inefficient and time-consuming double processing. Further, more than 90% of these recently filed applications contained excess capacity lease agreements with wireless cable operators that were to provide substantial funding for the construction and operation of the ITFS facilities. This dramatic increase in the number and mutually exclusive nature of ITFS applications has significantly burdened our capacity to expeditiously and effectively authorize service.

7. We therefore seek comment on modifying the rules to replace the above system with one utilizing filing windows. This approach would specify a limited period of time for filing applications for new facilities, for major changes in existing facilities, or for major amendments to pending applications. The Commission would give Public Notice no fewer than 60 days or some longer period before opening a filing window, so as to provide adequate time for potential applicants to prepare. The window would remain open for a specified number of days, and no application would be accepted before or after the stated window of opportunity for filing. Applications not mutually exclusive with any other application and found to be acceptable would be placed on a proposed grant list; mutually exclusive applications would be placed on Public Notice. In each case, we would provide a 30-day period for the submission of petitions to deny. Single uncontested applications could then be granted, and winners could be selected from among the mutually exclusive applications pursuant to the selection process currently in use. Under our proposal, applications which have already been tendered but not yet placed on an "A" cut-off list as of the adoption date of this notice would not be placed on a cut-off list. Rather, they will be considered cut off as of the close of the first filing window. Applications already cut off or filed in response to an outstanding "A" cut-off list will be processed under existing standards.

8. We believe that use of a filing window will allow the staff to control the flow of applications better. In addition, many of the factors that made the Commission wary of a window procedure at the time it adopted the A/B cut-off approach are now considerably less relevant. The increase in excess channel capacity lease agreements between ITFS and wireless cable operators greatly diminishes our initial concern that educational institutions would require a substantial amount of time to obtain funding before applying for an ITFS license; it appears that the wireless cable entities almost always pay for the construction of the ITFS facilities. In addition, as wireless cable entities have gained experience with excess capacity leases, their agreements have become more uniform; therefore, less time is needed to negotiate them. Finally, unlike educational organizations, the wireless cable operators have expertise in filing for Commission licenses, and they frequently have in-house legal and engineering staff who can expeditiously prepare ITFS applications. As a result of all of these changes, it seems that the Public Notice announcing the opening of a filing window would provide educational institutions with sufficient time to prepare their applications. It also appears that potential ITFS licensees and wireless cable operators could make an excess capacity agreement and prepare an application in advance of a window Public Notice, in preparation for the next window.

9. We seek comment, therefore, on whether circumstances have sufficiently changed since 1985 to warrant a departure from the current method of filing applications. Commenters are also invited to address how far in advance a window should be announced and on how much time is sufficient to keep the window open. We emphasize that our proposed rulemaking involves only the narrow area of the filing window for applications for new ITFS facilities, major changes to existing stations, and major amendments to pending applications, and interested parties should accordingly restrict their comments to that particular issue.

10. In order to prevent potential ITFS applicants from inundating the Commission with applications during the pendency of this proceeding, we will, for a short period of time, not accept applications for new ITFS facilities or for major changes to existing facilities. However, we will continue to process applications that are already on file and already cut off. We will also continue to accept (but not process) applications in which the applicant

relies on NTIA for construction funds. We will consider these applications cut off as of the close of the first filing window. In addition, we will continue to accept and process applications filed in response to the two outstanding "A" cut-off lists dated December 17, 1992, and February 10, 1993. Moreover, we will also continue to accept major change proposals where they are filed in the same market to accommodate settlement agreements among applicants that have previously achieved cut-off status and where the settlement resolves mutually exclusive applications. We intend expeditiously to resume accepting applications for new ITFS facilities and for major changes in existing ITFS stations upon final disposition of the matters raised in this proceeding. The short delay engendered by our actions in this notice will very soon result in more efficient and rapid authorization of service to the public.

Administrative Matters

Initial Regulatory Flexibility Analysis Statement

Pursuant to the Regulatory Flexibility Act of 1980, the Commission finds:

11. *Reason for the action:* The purpose of this notice is to review and update the procedures which govern the filing of applications for new ITFS channels.

12. *Objective of this action:* The action proposed in this notice is intended to improve ITFS and wireless cable service by making the regulations that govern applying for a new ITFS channel consistent with the continuing evalution of the telecommunications industry.

13. *Legal basis:* Authority for the action proposed in this notice may be found in Sections 1, 3, 4 (i) and (j), 303, 308, 309, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154 (i) and (j), 303, 308, 309, and 403.

14. *Description, Potential Impact, and Number of Small Entities Involved:* Approximately 1,200 existing and potential wireless cable and ITFS operators would be affected by the proposal contained in this notice.

15. *Reporting, Recordkeeping, and Other Compliance Requirements Inherent in the Proposed Rule:* The proposal suggested in this notice would authorize ITFS applicants to file for a license only during specific windows. The Commission has found such a procedure to be an efficient means of controlling the flow of applications in rapidly expanding services.

16. *Federal Rules which Overlap, Duplicate, or Conflict with the Proposed Rule:* None.

17. *Any Significant Alternative Minimizing Impact on Small Entities and Consistent with the Stated Objective of the Action:* The proposal contained in this notice is meant to make the regulations that govern applying for a new ITFS channel consistent with the continuing evolution of the telecommunications industry.

18. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposal suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of the Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. section 601 *et seq.*, (1981)).

Ex Parte

19. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR sections 1.1202, 1.1203, and 1.1206(a).

Comments

20. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before April 19, 1993 and rely comments on or before May 19, 1993.

To file formally in this proceeding, you must file an original and five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, room 239, at the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

Ordering Clauses

21. Accordingly, *It is ordered,* That pursuant to sections 1, 3, 4 (i) and (j), 303, 308, 309, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154 (i) and (j), 303, 308, 309, and 403, this *notice of proposed rulemaking* is adopted.

22. *It is further ordered,* Upon adoption of this notice of proposed rulemaking, that no applications for new ITFS facilities or for major changes to existing ITFS facilities will be accepted for filing by the Federal Communications Commission until further notice by the Commission. However, such applications in which the applicant relies on the National Telecommunications and Information Administration for construction funds will be accepted, but not processed. In addition, applications filed in response to the outstanding "A" cut-off lists of December 17, 1992, and February 10, 1993, will be accepted and processed.

List of Subjects in 47 CFR Part 74

Television broadcasting.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–4726 Filed 3–1–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB66

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Hungerford's Crawling Water Beetle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to determine endangered status for the Hungerford's crawling water beetle (*Brychius hungerfordi* Spangler) and thereby provide the species protection under the Endangered Species Act of 1973, as amended (Act). The species is a small, rare beetle that lives in the cool riffles of clean, slightly alkaline streams. The species is known to occur in only three isolated locations: The East Branch of the Maple River, Emmet County, Michigan; the East Branch of the Black River, Montmorency County, Michigan; and the North Saugeen River at Scone, Bruce County, Ontario. The two

Michigan sites are in the Cheboygan River watershed. The primary threat to the species is alteration of its stream habitat. This includes changes caused by logging, beaver control, stream pollution, and general stream degradation. Fish management (particularly the introduction of brown trout) is also a threat. Critical habitat is not proposed at this time. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by May 3, 1993. Public hearing requests must be received by April 16, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111–4056. Comments and materials received will be available for public inspection, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Craig Johnson, Chief, Division of Endangered Species (see **ADDRESSES** above) at 612/725–3276 or FTS 725–3276.

SUPPLEMENTARY INFORMATION:

Background

Hungerford's crawling water beetle, *Brychius hungerfordi*, was first identified by Spangler in 1954 (Spangler 1954). The beetle is a member of an uncommon genus in the Family Haliplidae and Order Coleoptera. It can be distinguished from all other beetles as follows (from Wilsmann and Strand 1990):

Brychius hungerfordi is a small (4.20 mm), distinctive, yellowish brown beetle with irregular dark markings and longitudinal stripes on the elytra, each of which is comprised of a series of fine, closely spaced and darkly pigmented punctures. Males tend to be smaller than females. In Spangler's (1954) original series, specimens ranged from 3.70 mm in length and 1.90 mm in width (a male) to 4.35 mm in length and 2.25 mm in width (a female). Males are characterized by thickened tarsal segments of the front legs with small tufts of hair on the first three segments. *B. hungerfordi* can be differentiated from all other Haliplidae in Michigan by the shape of its pronotum, the sides of which are nearly parallel for the basal 2/3 (Hilsenhoff and Brigham, 1978) and are widened mid-laterally.

This small, rare beetle lives in the cool riffles of clean, slightly alkaline streams. The species is known to occur in only three isolated locations: The East Branch of the Maple River, Emmet County, Michigan; the East Branch of the Black River, Montmorency County, Michigan; and the North Saugeen River at Scone, Bruce County, Ontario. The two Michigan sites are in the Cheboygan River watershed. The disjunct distribution of this species suggests that it is a relict from glacial periods when cool, fast moving streams were more prevalent and the beetle was more widespread. Human activities such as fish management (particularly the introduction of brown trout), logging, beaver control, stream pollution, and general stream degradation have reduced its habitat in recent times. On May 22, 1984, the Service published in the **Federal Register** its first listing of invertebrate animal species being considered for listing under the Act, which included the Hungerford's crawling water beetle. Hungerford's crawling water beetle appeared again in the January 6, 1989 Animal Notice of Review (54 FR 554–579) as a Category 2 species. Category 2 comprises taxa for which there is some evidence of vulnerability, but for which the information necessary to list is lacking. It was again listed as Category 2 in the November 21, 1991 Animal Notice of Review (56 FR 58804–58836) but, given the research by Wilsmann and Strand (1990), it should have been listed as a Category 1 at that time. The listing priority is 2. The research results of Wilsmann and Strand indicate that the species occurs in only three vulnerable, isolated locations and should receive protection of the Act. The Service analyzed the status survey, as well as other information, and determined that the beetle is facing serious threats and should be protected as an endangered species.

All of the sites where the beetles have been found are characterized by moderate to fast stream flow, good stream aeration, inorganic substrate, and alkaline water conditions. Streams like those in which *B. hungerfordi* occur are common in the Great Lakes states. This area has been extensively surveyed for invertebrates in the last 30 years. Roughley (1989a) surveyed 30 to 40 potential locations in Ontario and 5 sites in Michigan and found the only known *B. hungerfordi* population in Canada. White surveyed portions of lower and upper Michigan (White 1989b), Hilsenhoff and Brigham (1978) surveyed Wisconsin, and Wallace (Brigham 1982) surveyed Minnesota and southern Canada without finding any new populations of *B. hungerfordi*. Strand (1989) surveyed streams in Emmet, Cheboygan, Presque Isle, Montmorency, and Otsego counties and found *B. hungerfordi* in 15 of 128 sampling stations. Of these, 14 occurred near the type location in the East Branch of the Maple River and so were effectively from the same population. The remaining site, in the East Branch of the Black River, was the only new population that has been found in the Untied States since the species was discovered.

The largest population presently occurs in the East Branch of the Maple River in a pristine portion of stream on the boundary of the University of Michigan Biological Station. This population is estimated to include 200 to 500 individuals while the other two populations are thought to be much smaller (White 1986b, Wilsmann and Strand 1990). The East Branch of the Maple River is a small stream surrounded by forest with a partially open canopy so sunlight reaches the water. The stream is cool (15–20° C) with a relatively fast flowing current (greater than 50 cm per second) and a substrate of limestone gravel and rock (White 1986b). The forest is intact, the beaver population is healthy, and their dams function to stabilize water levels so the riffles below the dams remain predictable from year to year (Wilsmann and Strand 1990). At the Black River site, the beetles occur in a moderately fast current in fairly shallow water. The site in Ontario has been degraded by road construction and the beetles occur in the riffles below an old millrace. The swift currents in these locations maintain a mineral substrate.

Perhaps the best explanation for the large population in the East Branch of the Maple River is that, unlike the other two sites, this portion of stream is inaccessible to introduced brown trout (Strand 1989). Because adult beetles must swim to the surface for air they are vulnerable to predation by foraging trout.

The life history of *B. hungerfordi* is not known. the beetles are thought to live longer than one year and to overwinter as larvae in the dense aquatic vegetation at the stream's edge (Wilsmann and Strand 1990). As with other Haliplidae, larvae probably go through three instar phases and pupate in the moist soil above the water line (Hickman 1929; White, Brigham, and Doyen 1984). Adults and larvae are seldom captured together and they appear to inhabit different microhabitats in the stream. Adults are more apt to be found in stronger currents, foraging for algae on gravel and stones. Both adults and larvae are herbivorous but very little is known about their specific dietary requirements or feeding adaptations (White 1986a, 1986b). Wilsmann and Strand (1990) reported, "The small size of *B. hungerfordi* adults

prevented direct observation of food ingestion. However, it is likely that they scrape food material from rocks by grasping with their tarsal claws and scraping with their distally flattened and single notched mandibles which are slightly medially cupped. This speculation is based on observations of the beetles crawling from rock to rock, stopping occasionally to grip a rock for varying lengths of time."

Compared to other Haliplidae, the adults are strong swimmers and they obtain oxygen by swimming to the surface or crawling to the water line at the edge of the stream. Larvae obtain oxygen directly from the water and are found in association with dense mats of vegetation (*Chara, Nitella,* or *Cladophora*) which offer protection and foraging. The growth form of this vegetative cover may be more important than the plant composition (Brigham 1990, pers comm. in Wilsmann and Strand 1990).

There is no evidence that *B. hungerfordi* has a dispersal flight. No adults have been found at black light stations, and the adults seem unusually reluctant to fly. One individual was removed from the water for 30 minutes and did not attempt to fly, an unexpected result given that most other aquatic insects would have attempted to fly after this period of desiccation. It is possible, therefore, that if this species disperses by flying, it is during a very brief period of time in the spring. The primary mode of dispersal appears to be movement within the stream system.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to Hungerford's crawling water beetle (*Brychius hungerfordi* Spangler) are as follows:

A. The Present or Threatened Destruction Modification, or Curtailment of its Habitat or Range

In recent times, stream modification has been the primary threat to *Brychius hungerfordi*. This includes dredging, logging, channelization, beaver control, bank stabilization, and impoundment. In Michigan, one site already has been impounded downstream by a dam, and the Ontario site has been impounded upstream (Roughley 1989b). Fish management also posses a threat to *B. hungerfordi*. This includes introduction (see Factor C below), removals, and chemical treatments.

Removal of existing beaver dams upstream from *B. hungerfordi* populations poses a significant threat to the beetle. The highest density locations of *B. hungerfordi* are below beaver dams or immediately below structures that provide similar conditions to those found downstream from beaver impoundments. At the same time, flooding caused by a new beaver dam could eliminate an upstream population of the beetle unless the population was able to move farther upstream (Wilsmann and Strand 1990).

The Michigan Department of Natural Resources is reviewing a proposal to build an experimental stream facility on the East Branch of the Maple River. The portion of the river identified in the proposal supports the largest of the three known populations of *B. hungerfordi* and this species and its habitat will be impacted by the project as proposed. Operation of the experimental facility will involve pumping water from the East Branch of the Maple River to experimental streams were nutrients may be added. Water from the experimental streams will be discharged downstream from the intake site. *B. hungerfordi* would be taken up by pumps and passed to the experimental streams. Construction and operation of the facility will alter the flow rate of the water near the intake and discharge sites. Water temperature will also be altered. Under special circumstances, use of non-nature species in the experimental stream will be permitted. The Michigan Department of Natural Resources has requested more information from the applicant before a permit is granted or denied.

Given the rapid rate of recreational development and the demands for fish, wildlife, and forest management in northern Michigan, unknown populations of *B. hungerfordi* could easily be extirpated before they are discovered, increasing the need to protect existing populations. Because only three small populations of this species are known to exist, loss of even a few individuals could extirpate the species from some locations (Wilsmann and Strand 1990).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The species will continue to draw scientific interest and collection should be regulated. Recent research efforts have involved mostly capture and release rather than collecting, and the few collections that have been made are housed in appropriate museum collections. However, because of the species' rarity, there is the possibility that amateur scientific collections could occur.

C. Disease or Predation

Another threat to this species is the presence of brown trout that were introduced into river systems in the early part of this century. *B. hungerfordi* inhabits water deep enough for trout to occupy and the adults must swim to the surface for oxygen where they are vulnerable to foraging trout. The best possible explanation for the large population of *B. hungerfordi* in the East Branch of the Maple River is that, unlike the other two sites, this portion of stream is inaccessible to brown trout (Strand 1989).

D. The Inadequacy of Existing Regulatory Mechanisms

B. hungerfordi is currently listed as endangered under Michigan's Endangered Species Act (P.A. 203 of 1974, as amended). Any taking of this species, including harassment, is unlawful without a permit. The Michigan Department of Natural Resources also implements section 404 of the Clean Water Act. This section allows Michigan to regulate placement of fill material in waters of the United States. Combined with Michigan's Endangered Species Act, this should have provided significant regulatory oversight on a wide variety of activities that would have prevented taking of this species and habitat loss and alteration. The Montmorency County site, including a mile of upstream and downstream buffer, is in a state forest but is not protected from fish management activities. The Emmet County site is in mixed ownership and is not protected. The Canadian population is not protected and the land surrounding it is in mixed ownership. The Federal Endangered Species Act will increase the protection for the two Michigan sites, encourage habitat protection for the species on private lands, and influence impoundment development which very likely would involve Federal funds.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Both Michigan sites are in the Cheboygan watershed and could potentially be affected by any changes upstream in the watershed such as in Van Creek, the upper portion of the East Branch of the Maple River, Town Line Creek, Foch Lakes Flooding Creek,

Rattlesnake Creek, and the upper portion of the East Branch of the Black River. Changes could include agricultural pesticide pollution, siltation, stream development, or fish management. Because two of the three known populations occur immediately downstream from a roadway, accidental events, such as chemical spills, pose a threat (Wilsmann and Strand 1990). The cumulative effects of road salt runoff also pose a threat to this species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Only three relatively small populations of this species are known to exist and these populations occur on sites threatened with habitat loss or destruction. In addition, all of these populations are in need of long-term management. Therefore, the preferred action is to list the Hungerford's crawling water beetle, *Brychius hungerfordi*, as an endangered species. An endangered species, as defined under section 3(6) of the Act, is a species that is in danger of extinction throughout all or a significant portion of its range.

Critical habitat is not being proposed at this time for the reasons discussed below.

Critical Habitat

Critical habitat, as defined by section 3 of the Act, means:

(i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and,

(ii) The specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat for Hungerford's crawling water beetle is not presently determinable. The Service's regulations (50 CFR 424.12(a)(2)) state that critical habitat is not determinable when one or both of the following situations exist: (1) Information sufficient to perform require analyses of the impacts of the designation in lacking; or (ii) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. In the case of the Hungerford's crawling water beetle, information on the biology of this species is lacking to permit specific identification of its critical habitat.

The Service will initiate a concerted effort to obtain the information needed to determine critical habitat for Hungerford's crawling water beetle. Designation of critical habitat must be completed within two years of the date of this proposed rule, unless the designation is not prudent. A proposed rule for critical habitat designation must be published in the **Federal Register**, and the notification process and public comment provisions parallel those for a species listing. In addition, the Service will evaluate the economic and other relevant impacts of the critical habitat designation, as required under section 4(b)(2) of the Act.

It should be emphasized that critical habitat designation does not necessarily affect all Federal activities. If appropriate, impacts will be addressed during consultation with the Service as required by section 7(a)(2) of the Endangered Species Act, as amended.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, state, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the states and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce, any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and state conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule, are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species;

(4) Current or planned activities in the subject area and their possible impact on this species.

Final promulgation of the regulation(s) on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to (see ADDRESSES section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is Kate Winsor (see **ADDRESSES** section), 612/725–3276 or FTS 725–3276.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of Chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 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.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under *Insects*, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Insects:							
* *	*	*	*	*	*	*	
Beetle, Hungerford's Crawling water	*Brychius hungerfordi*	U.S.A (MI) Canada	NA	E		NA	NA
* *	*	*	*	*	*	*	

Dated: February 8, 1993.

Richard N. Smith,

Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–4742 Filed 3–1–93; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic Atmospheric Administration

50 CFR Part 625

Summer Flounder Fishery

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

ACTION: Notice of availability of a resubmitted portion of a fishery management plan amendment and request for comments.

SUMMARY: NMFS issues this notice that the Mid-Atlantic Fishery Management Council (Council) has revised a management measure contained in Amendment 2 to the Fishery Management Plan for the Summer

Flounder Fishery. The measure was originally disapproved by the Secretary of Commerce (Secretary). The Council has resubmitted the revised measure for Secretarial review, and is requesting comments from the public. Copies of the revised portion of Amendment 2, or the amendment, itself, may be obtained from the address below.

DATES: Comments on the revised portion of Amendment 2 should be submitted by March 30, 1993.

ADDRESSES: All comments may be sent to Richard B. Roe, Director, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930–3799. Copies of the revised management measure pertaining to vessel logbooks for Amendment 2 and the original environmental impact statement/regulatory impact review for Amendment 2, unchanged by this resubmission, may be obtained from John C. Bryson, Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 S. New Street, Dover, DE 19001–6790.

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, 508–281–9324.

SUPPLEMENTARY INFORMATION: Amendment 2 was prepared by the Council and submitted to the Secretary for review under section 304(b) of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The Magnuson Act requires the Secretary to approve, disapprove or partially disapprove FMPs or amendments based upon a determination of consistency with national standards and other applicable law. The Secretary announced disapproval of implementation of mandatory vessel logbooks for the 1993 fishing season in the final rule to Amendment 2 (57 FR 57358, December 4, 1992).

To replace the disapproved measure for mandatory vessel logbooks, the Council adopted and submitted a revision to Amendment 2 for Secretarial review. The revised measure would require the use of mandatory vessel logbooks in the summer flounder fishery, beginning January 1, 1994.

Regulations proposed by the Council to implement this amendment are scheduled to be published within 15 days.

List of Subjects in 50 CFR Part 625

Fisheries, Reporting and recordkeeping requirements.

Dated: February 25, 1993.

David S. Crestin,

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

[FR Doc. 93–4767 Filed 2–25–93; 1:48 pm]

BILLING CODE 3510–22–M

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50 CFR Part 641

Reef Fish Fishery of the Gulf of Mexico

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

ACTION: Notice of availability of an amendment to a fishery management plan and minority reports, and request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 6 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) for review by the Secretary of Commerce (Secretary). Written comments are requested from the public.

DATES: Written comments must be received on or before April 20, 1993.

ADDRESSES: Comments should be sent to the Southeast Regional Office, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702. Copies of Amendment 6, which includes an environmental assessment and a regulatory impact review, and the minority reports, may be obtained from the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Robert A. Sadler, 813–893–3161.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that a council-prepared fishery management plan or amendment be submitted to the Secretary for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon receiving the document, immediately publish a notice that the document is available for public review and comment. The Secretary will consider public comment in determining approvability of the amendment.

On December 30, 1992 (57 FR 62237), NMFS published an emergency interim rule that established commercial vessel trip limits for red snapper of 2,000 pounds (907 kg) for a vessel that has a red snapper endorsement on its reef fish permit and 200 pounds (91 kg) for a permitted vessel without such endorsement. Amendment 6 proposes to continue the vessel trip limits through 1993 and 1994, unless replaced earlier by a more comprehensive effort limitation program.

Under Amendment 6, no new applications for red snapper endorsements would be allowed. Endorsements currently issued would remain in effect. Transfer of an endorsement would be allowed only by an owner from one permitted vessel owned by him or her to another vessel so owned. The specific trip limits applicable to red snapper may be changed for 1994 under the FMP's framework procedure for adjusting management measures.

Minority reports submitted by three members of the Council objected to several provisions in Amendment 6, including continuation of the trip limits.

Proposed regulations to implement Amendment 6 are scheduled for publication within 15 days.

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

Dated: February 25, 1993.

David S. Crestin,

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

[FR Doc. 93–4772 Filed 2–25–93; 1:46 pm]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 58, No. 39
Tuesday, March 2, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Drug Alliance: Notice of Availability of Funds

ACTION, the Federal Domestic Volunteer Agency, announces the availability of funds during fiscal year 1993 for Drug Alliance grants under the Special Volunteer Programs authorized by the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113, title I, part C). These grants will address the particular need for illicit drug use prevention programs that focus on at-risk youth from low-income communities or public housing neighborhoods.

ACTION, historically a principal source of volunteer leadership in America, confronts the crisis of illegal drug use by youth by supporting innovative prevention programs that use volunteer resources at the local level. Volunteers of all ages and from every segment of the community can make vital contributions to illegal drug use prevention and education programs. Therefore, ACTION intends to support programs which encourage and sustain the spirit of voluntarism as a weapon in America's fight against illegal drugs.

The best strategy to combat illegal drug use by youth is to prevent it from starting. Effective prevention requires the involvement of every segment of the community—especially youth and parents—in delivering and reinforcing clear and consistent "no use" messages. Because no single approach will work in every locale, ACTION has supported and promoted a wide range of models using volunteers of all ages to stop the use of illegal drugs by youth. The search continues for new approaches or models, as well as for strategies to adapt existing models to individual communities. There is continuing need for effective approaches that use volunteers to provide specific illicit drug use prevention information and refusal skills as well as to provide a wide range of positive activities for at-risk youth that can reinforce prevention efforts.

Community-based youth serving organizations are uniquely positioned to provide meaningful structured volunteer programs which focus on preventing illegal drug use among youth. Such local organizations have demonstrated in the past that they are best able to address community problems such as illicit drug use among youth because they are closest to the problem and have the greatest stake in solving it. Also, they are most able to include both parents and youth in the planning and implementation of programs to combat illegal drug use—a strategy increasingly accepted as critical to the ultimate effectiveness of such community-based projects.

In particular, youth volunteers have demonstrated that they are able to positively affect the lives and actions of other youth. There is a critical need for communities to develop programs which will provide opportunities for drug-free youth to become leaders and role models to help counter peer pressure to use illegal drugs. As well as being of value to the community, youth volunteers themselves can receive a meaningful sense of involvement and accomplishment from providing service to others.

In addition, there is growing recognition of the importance of involving youth in illicit drug use prevention activities after school, on weekends and during the summer months when schools are not in session and school-related prevention information and support is unavailable. There is particular need for such illicit drug prevention programming in low-income and public housing neighborhoods. The needs in such communities that may be met through voluntary service are great, and the youth who live in these areas are generally considered at extremely high risk of becoming involved with illegal drugs. This announcement solicits innovative and creative proposals which respond to this need.

A. Eligible Strategy

Public and private non-profit agencies, including community-based organizations, which provide services to youths residing in low-income communities or public housing neighborhoods, are encouraged to submit proposals to implement the following strategy by: (a) Expanding an existing project, (b) or developing a new project.

The proposed project must use non-stipended volunteers to provide illegal drug use prevention education and related activities for youth program participants. Such activity outside normal school hours, including after-school, weekends, and during the summer months, is crucial to the ultimate success of community-based drug prevention efforts, and is strongly encouraged. The proposed project must involve both youth and parents in planning and conducting activities, make extensive use of non-stipended youth and/or adult volunteers, and target youth who reside in low-income communities, especially inner city neighborhoods, public housing developments, and rural areas. There should be special emphasis on the recruitment of volunteers who live in the community being served by the project.

The prevention education component must include information on the harmful consequences of illegal drugs and peer pressure resistance and refusal skills. The involvement of other drug prevention educational resources from the community has been found to ensure broader initial success as well as sustained activity following the expiration of ACTION funding, and is also strongly encouraged.

Additional positive activities to benefit or to involve youth which are designed to reinforce the prevention education process should be built into the program as well. Such activities may include (but are not limited to) mentoring, tutoring, community service, employment training, and recreational/cultural/educational opportunities.

Finally, all applications for $10,000 or more must include plans for detailed evaluation to measure the project's impact on the drug use problem in the community and document "lessons learned." This information will facilitate replication and adaptation of effective strategies in other communities and add to the body of knowledge about drug prevention.

B. Eligible Applicants

Only applications from private non-profit incorporated organizations and public agencies that provide services to youth in low-income communities or

public housing neighborhoods will be eligible. Such organizations may include, but are not limited to, local coalitions or councils dedicated to the prevention of illegal drug use, youth-serving organizations and agencies, community-based volunteer groups, local government agencies, service clubs, fraternities and sororities.

Any applicant that does not adhere to a strict policy of the non-use of illegal drugs will not be eligible for consideration. Furthermore, an application must state that the applicant does not advocate a philosophy, proposed activities, training or educational materials that promote the tolerance of initial use or responsible use of any illegal drug, and/or the illegal use of any legal drug.

C. Available Funds and Scope of Grant

The amount of each grant will not exceed $25,000. Grant funding will be provided on a one-time, non-renewable basis for a budget period not to exceed 12 months.

All grants awarded under this announcement require at least 50% non-federal match for the total cost of project director's salary and fringe benefits. The project director must serve on at least a half-time basis. Additional non-federal match is strongly encouraged, and will be considered in the grant review and selection process.

Applicants should specify the sources and nature of inkind and other non-federal contributions. These contributions must be deemed allowable costs in accordance with ACTION requirements and be supported by a narrative which explains and justifies the amount of each budget line item and identifies the source of the non-federal contribution.

ACTION anticipates awarding up to 20 grants under this announcement. However, publication of this announcement does not obligate ACTION to award any specific number of grants, or to obligate the entire amount of funds available, or any part thereof.

D. General Criteria for Grant Review and Selection

Grant applications will be reviewed and evaluated with the criteria below, as well as on conformance to the instructions included in this notice and in the application itself.

1. Statement of need that includes both an analysis of the type and extent of the problem to be addressed by the project and an overview of the applicant's qualifications to meet that need.

2. Ability and plans to recruit, train, and retain non-stipended older youth or adult volunteers to assist youth in low-income communities. Applicant must explicitly state the number of volunteers and the number of volunteer hours that will be generated by the project.

3. Ability and plans for volunteers to provide appropriate illicit drug use prevention education (including information about harmful consequences to health from use and resistance training) for youth participants.

4. Ability and plans for volunteers to provide additional positive activities for youth participants (e.g., mentoring, tutoring, employment support, or recreational/cultural/educational opportunities.)

5. Specific plans to involve youth and parents developing and implementing the program.

6. Specific and feasible plans to continue project activities beyond the completion of the ACTION grant.

7. Specific and feasible plans to work with other local agencies and organizations and existing illicit drug prevention coalitions to implement the proposed project. Three letters of support attesting to the applicant's ability to meet the criteria and evidencing intent to cooperate with applicant in developing and implementing the ACTION funded project must be submitted.

8. Carefully formulated Work Plan which includes time-phased and quantifiable objectives, including objectives for continuation of the project, and the feasibility of proposed methods for meeting those objectives.

9. Potential for replication in other communities and plans to share project documentation or materials with other organizations.

10. Evidence of public and private sector support (financial and in-kind). Amount and type of non-federal support will be considered.

11. Detailed description of methods to be used in evaluating the impact of the program on the illegal drug abuse problem in the community. Failure to address this criteria will result in rejection of the application.

E. Application Review Process

Applications submitted under this announcement will be reviewed and evaluated by respective ACTION State and Regional Offices and ACTION's Program Demonstration and Development Division. ACTION's Associate Director for Domestic and Anti-Poverty Operations will make the final selection.

ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

The Associate Director of Domestic and Anti-Poverty Operations may use additional factors in choosing among applicants which meet the minimum criteria specified above, such as: 1. Geographic distribution; 2. Applicant's access to alternate resources; and 3. Allocation of Drug Alliance resources in relation to other ACTION funds.

Pursuant to Public Law 101–204, priority will be given to projects that serve communities, including rural communities, which have not previously received assistance from ACTION Drug Alliance grants.

F. Application Submission and Deadline

One signed original and two copies of each completed application must be submitted to the appropriate ACTION State Office no later than 5 p.m. local standard time on Monday, May 3, 1993. Only those applications that are received at the appropriate ACTION State Office by 5 p.m. local standard time on this date will be eligible.

All grant applications must consist of:

a. Application for Federal Assistance (ACTION Form 424–PDD) with narrative budget justification, a narrative of project goals and objectives, a detailed Work Plan (submitted on the form included in the application), and required Assurances.

b. Signed and dated Certification Regarding Drug Free Workplace Requirements.

c. Signed and dated Certification Regarding Debarment, Suspension, and Other Responsibility Matters (Primary Covered Transactions.)

d. Current resume of the candidate for the position of project director, if available, or the current resume of the director of the applicant agency or project.

e. Organizational chart of the applicant showing how the project is related to the organization.

f. List of the current board of directors showing their names, addresses and organizational and professional affiliations.

g. Three letters of support attesting to the applicant's ability to meet the above criteria and evidencing intent to cooperate with applicant in developing and implementing the ACTION funded project.

h. Statement that identifies previous ACTION funding (type, year, and amount) or a statement that applicant has not previously received funding from ACTION.

i. CPA certification of accounting capability, or recent audit (not more than two years old).

j. Articles of Incorporation, including the page that contains the State Seal.

k. Documentary proof of non-profit status or copy of application for non-profit status.

Items i, j and k above are not required for public agencies and educational institutions. Private educational institutions are not required to comply with items j. and k. above.

The Catalog of Federal Domestic Assistance Number for the Drug Alliance Program is 72–014. Applications submitted under this announcement are not subject to the state intergovernmental review process (Executive Order 12372).

Hearing-impaired individuals may contact ACTION's TDD number, (202) 606–5256. This announcement, application materials and guidance may be requested in alternative formats for the visually-impaired by calling (202) 606–4857.

To receive an application kit, please contact the appropriate ACTION State Program Office. Following is a list of ACTION Regional Offices, along with the addresses and telephone numbers of the ACTION State Program Offices under their jurisdiction.

Signed at Washington, DC, this 23rd day of February, 1993.

John Seal,

Acting Director.

Region I

ACTION Regional Director, 10 Causeway Street, Room 473, Boston, MA 02222–1039, 617/565–7000

ACTION State Program Director, 1 Commercial Plaza, 21st Floor, Hartford, CT 06103–3510, 203/240–3237

ACTION State Program Director, 10 Causeway Street, Room 473, Boston, MA 02222–1039, 617/565–7018

ACTION State Program Director, U.S. Courthouse, 76 Pearl Street, Room 305, Portland, ME 04101–4188, 207–780–3414

ACTION State Program Director, The Whitebridge, 91–93 North State Street, Concord, NH 03301–3939, 603/225–1450

ACTION State Program Director, John O. Pastore Federal Bldg., Two Exchange Terr., Room 232, Providence, RI 02903–1758, 401/528–5424

Region II

ACTION Regional Director, 6 World Trade Center, Room 758, New York, NY 10048–0206, 212/466–3481

ACTION State Program Director, 44 South Clinton Avenue, suite 702, Trenton, NJ 08609–1507, 609/989–2243

ACTION State Program Director, 6 World Trade Center, Room 758, New York, NY 10048–0206, 212/466–4471

ACTION State Program Director, U.S. Federal Building, 150 Carlos Chardon Avenue, Suite G49, Hato Rey, PR 00918–1737, 809/766–5314

ACTION State Program Office (Upstate) Leo O'Brien Federal Bldg., Clinton Ave. & No. Pearl St., Room 818, Albany, NY 12207, 518/472–3664

Region III

ACTION Regional Director, U.S. Customs House, 801 Arch Street, Suite 103, Philadelphia, PA 19107–2416, 215/597–9972

ACTION State Program Director, Federal Building, 600 M. L. King, Jr. Place, room 372–D, Louisville, KY 40202–2230, 502/582–6384

ACTION State Program Director, Federal Building, 31 Hopkins Plaza, room 1125, Baltimore, MD 21201–2814, 410/962–4443

ACTION State Program Director, Leveque Tower, 50 W. Broad Street, room 304A, Columbia, OH 43215–3301, 614/469–7441

ACTION State Program Director, Gateway Building, 3535 Market Street, room 2460, Philadelphia, PA 19104–2996, 215/596–4077

ACTION State Program Director, 400 North 8th Street, P.O. Box 10066, room 1119, Richmond, VA 23240–1832, 804/771–2197

ACTION State Program Director, 603 Morris Street, 2nd Floor, Charleston, WV 25301–1409, 304/347–5246

Region IV

ACTION Regional Director, 101 Marietta Street, NW., suite 1003, Atlanta, GA 30323–2301 404/331–2860

ACTION State Program Director, Beacon Ridge Tower, 600 Beacon Parkway West, suite 770, Birmingham, AL 35209–3120, 205/290–7184

ACTION State Program Director, 3165 McCrory Street, suite 115, Orlando, FL 32803–3750, 407/648–6117

ACTION State Program Director, 75 Piedmont Avenue, NE., suite 462, Atlanta, GA 30303–2587, 404/331–4646

ACTION State Program Director, Federal Building, 100 West Capitol Street, Room 1005–A, Jackson, MS 39269–1092, 601/965–5664

ACTION State Program Director, Federal Building/P.O. Century Station, 300 Fayetteville St. Mall, Room 131, Raleigh, NC 27601–1739, 919/856–4731

ACTION State Program Director, Federal Building, 1835 Assembly Street, room 872, Columbia, SC 29201–2430, 803/765–5771

ACTION State Program Director, 265 Cumberland Bend Drive, Nashville, TN 37228–3889, 615/736–5561

Region V

ACTION Regional Director, 77 West Jackson Boulevard, suite 442, Chicago, IL 60604–3511, 312/353–3622

ACTION State Program Director, Federal Building, 210 Walnut, Room 722, Des Moines, IA 50309–2195, 515/284–4816

ACTION State Program Director, 77 West Jackson Boulevard, suite 442, Chicago, IL 60604–3511, 312/353–3622

ACTION State Program Director, 46 East Ohio Street, Room 457, Indianapolis, IN 46204–1922, 317/226–6724

ACTION State Program Director, Federal Building, 231 West Lafayette Boulevard, Room 658, Detroit, MI 48226–2799, 313/226–7848

ACTION State Program Director, 431 South 7th Street, Room 2480, Minneapolis, MN 55415–1854, 612/334–4083

ACTION State Program Director, Henry Reuss Federal Plaza, 310 West Wisconsin Avenue, room 1240, Milwaukee, WI 53203–2211, 414/297–1118

Region VI

ACTION Regional Director, 1100 Commerce Street, room 6B11, Dallas, TX 75242–0696, 214/767–9494

ACTION State Program Director, Federal Building, 700 West Capitol Street, room 2506, Little Rock, AR 72201, 501/324–5234

ACTION State Program Director, Federal Building, 444 SE. Quincy, room 147, Topeka, KS 66683–3572, 913/295–2540

ACTION State Program Director, 640 Main Street, suite 102, Baton Rouge, LA 70801–1910, 504/389–0471

ACTION State Program Director, Federal Office Building, 911 Walnut, room 1701, Kansas City, MO 64106–2009, 816/426–5256

ACTION State Program Director, First Interstate Plaza, 125 Lincoln Avenue, suite 214–B, Sante Fe, NM 87501–2026, 505/988–6577

ACTION State Program Director, 420 West Main, suite 530, Oklahoma City, OK 73102–6093, 405/231–5201

ACTION State Program Director, 611 East Sixth Street, suite 404, Austin, TX 78701–3747, 512/482–5671

Region VIII

ACTION Regional Director, Executive Tower Building, 1405 Curtis Street, suite 2930, Denver, CO 80202–2349, 303/844–2671

ACTION State Program Director, One Sherman Place, 140 East 19th Avenue, suite 120, Denver, CO 80203–1167, 303/866–1070

ACTION State Program Director, Federal Office Bldg., Drawer 10051, 301 South Park, room 192, Helena, MT 59626–0101, 406/499–5404

ACTION State Program Director, Federal Building, 100 Centennial Mall North, room 156, Lincoln, NE 68508–3896, 402/437–5493

ACTION State Program Director, Federal Building, 225 S. Pierre Street, suite 225, Pierre, SD 57501–2452, 605/224–5996

ACTION State Program Director, Frank E. Moss U.S. Courthouse, 350 South Main Street, room 505, Salt Lake City, UT 84101–2198, 801/524–5411

ACTION State Program Director, Federal Building, 2120 Capitol Avenue, suite 8009, Cheyenne, WY 82001–3649, 307/772–2385

Region IX

ACTION Regional Director, 211 Main Street, room 530, San Francisco, CA 94105–1914, 415/744–3013

ACTION State Program Director, 522 North Central, room 205–A, Phoenix, AZ 85004–2190, 602/379–4825

ACTION State Program Director, Federal Building, 11000 Wilshire Boulevard, room 11221, Los Angeles, CA 90024–3671, 310/575–7421

ACTION State Program Director, Federal Building/P.O. Box 50024, 300 Ala Moana Boulevard, room 6326, Honolulu, HI 96850–0001, 808/541–2832

ACTION State Program Director, 4600 Kietzke Lane, suite E–141, Reno, NV 89502–5033, 702/784–5314

ACTION State Program Office, 211 Main Street, room 534, San Francisco, CA 94105–1914, 415/744–3015

Region X

ACTION Regional Director, 915 Second Avenue, Jackson Federal Office Bldg., suite 3190, Seattle, WA 98174–1103, 206/553–1558

ACTION State Program Director, 304 North 8th Street, room 344, Boise, ID 83702–5835, 208/334–1707

ACTION State Program Director, Federal Building, 511 N.W. Broadway, room 647, Portland, OR 97209–3416, 503/326–2261

ACTION State Program Director, Jackson Federal Office Building, 915 Second Avenue, suite 3190, Seattle, WA 98174–1103, 206/553–4975

ACTION State Program Director/Alaska, 915 Second Avenue, Jackson Federal Office Bldg., suite 3190, Seattle, WA 98174–1103 206/553–1558

[FR Doc. 93–4714 Filed 3–1–93; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Request for Applications from Persons Interested in Designation to Provide Official Services in the Geographic Areas Presently Assigned to the Central Iowa (IA) Agency, and the States of Maine and Montana

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations shall end not later than triennially and may be renewed. The designations of Central Iowa Grain Inspection Service, Inc. (Central Iowa), the Maine Department of Agriculture, Food and Rural Resources (Maine), and the Montana Department of Agriculture (Montana) will end August 31, 1993, according to the Act, and FGIS is asking persons interested in providing official services in the specified geographic areas to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before April 31, 1993.

ADDRESSES: Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send their application to the automatic telecopier machine at 202–720–1015, attention: Homer E. Dunn. If an application is submitted by telecopier, FGIS reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes FGIS' Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

FGIS designated Central Iowa, main office located in Des Moines, Iowa; Maine, main office located in Augusta, Maine; and Montana, main office located in Helena, Montana, to provide official grain inspection services under the Act on September 1, 1990.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act. The designations of Central Iowa, Maine, and Montana end on August 31, 1993. The geographic area presently assigned to Central Iowa, in the State of Iowa, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

Bounded on the North by U.S. Route 30 east to N44; N44 south to E53; E53 east to U.S. Route 30; U.S. Route 30 east to the Boone County line; the western Boone County line north to E18; E18 east to U.S. Route 169; U.S. Route 169 north to the Boone County line; the northern Boone County line; the western Hamilton County line north to U.S. Route 20; U.S. Route 20 east to R38; R38 north to the Hamilton County line; the northern Hamilton County line east to Interstate 35; Interstate 35 northeast to C55; C55 east to S41; S41 north to State Route 3; State Route 3 east to U.S. Route 65; U.S. Route 65 north to C25; C25 east to S56; S56 north to C23; C23 east to T47; T47 south to C33; C33 east to T64; T64 north to B60; B60 east to U.S. Route 218; U.S. Route 218 north to Chickasaw County; the western Chickasaw County line; and the western and northern Howard County lines;

Bounded on the East by the eastern Howard and Chickasaw County lines; the eastern and southern Bremer County lines; V49 south to State Route 297; State Route 297 south to D38; D38 west to State Route 21; State Route 21 south to State Route 8; State Route 8 west to U.S. Route 63; U.S. Route 63 south to Interstate 80; Interstate 80 east to the Poweshiek County line; the eastern Poweshiek, Mahaska, Monroe, and Appanoose County lines;

Bounded on the South by the southern Appanoose, Wayne, Decatur, Ringgold, and Taylor County lines; and

Bounded on the West by the western Taylor County line; the southern Montgomery County line west to State Route 48; State Route 48 north to M47; M47 north to the Montgomery County line; the northern Montgomery County line; the western Cass and Audubon County lines; the northern Audubon County line east to U.S. Route 71; U.S. Route 71 north to U.S. Route 30.

The following locations, outside of the above contiguous geographic area, are part of this geographic area assignment: Farmers Co-op Elevator Company, Chapin, Franklin County; Hampton Farmers Co-op Company, Hampton, Franklin County; and Farmers Community Co-op, Inc., Rockwell, Cerro Gordo County (located inside D. R. Schaal Agency's area).

Exceptions to Central Iowa's assigned geographic area are the following locations inside Central Iowa's area which have been and will continue to be serviced by the following official agencies:

1. A. V. Tischer and Son, Inc.: Farmers Co-op Elevator, Boxholm, Boone County; and

2. Omaha Grain Inspection Service, Inc.: Murren Grain, Elliot, Montgomery County; and Hemphill Feed & Grain, and Hansen Feed & Grain, both in Griswold, Cass County.

The geographic area presently assigned to Maine, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation, is the entire State of Maine. The geographic area presently assigned to Montana, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation, is the entire State of Montana.

Interested persons, including Central Iowa, Maine, and Montana, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above

under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning September 1, 1993, and ending August 31, 1996. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: February 22, 1993.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 93–4648 Filed 3–1–93; 8:45 am]

BILLING CODE 3410–EN–F

Request for Comments on the Applicants for Designation in the Geographic Areas Currently Assigned to the Barton (KY) and North Dakota (ND) Agencies

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS requests interested persons to submit comments on the applicants for designation to provide official services in the geographic areas currently assigned to J. W. Barton Grain Inspection Service, Inc. (Barton), and North Dakota Grain Inspection Service, Inc. (North Dakota).

DATES: Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by March 31, 1993.

ADDRESSES: Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O USDA,ID:A36HDUNN]. ATTMAIL and FTS2000MAIL users may respond to !A36HDUNN. Telecopier (FAX) users may send responses to the automatic telecopier machine at 202–720–1015, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the December 30, 1992, **Federal Register** (57 FR 62294), FGIS asked persons interested in providing official services in the geographic areas assigned to Barton and North Dakota to submit an application for designation. Applications were due by February 1, 1993. Barton and North Dakota, the only applicants, each applied for designation in the entire area currently assigned to them. Barton also applied for the portions of Guiles, Maury, and Williamson Counties, Tennessee, not currently assigned to it or any other designated agency.

FGIS is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants for designation in the Barton and North Dakota areas. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these agencies. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. FGIS will publish notice of the final decision in the **Federal Register**, and FGIS will send the applicants written notification of the decision.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: February 22, 1993.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 93–4646 Filed 3–1–93; 8:45 am]

BILLING CODE 3410–EN–F

Designation of the Alton (MO) Agency

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS announces the designation of Thomas P. Russell dba Alton Grain Inspection Department (Alton) to provide official inspection services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: April 1, 1993.

ADDRESSES: Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the September 30, 1992, **Federal Register** (57 FR 45032), FGIS announced that the designation of Alton ends on March 31, 1993, and asked persons interested in providing official services within the specified geographic area to submit an application for designation. Applications were due by October 30, 1992.

Alton, the only applicant, applied for designation in the entire area currently assigned to it. FGIS named and requested comments on the applicant in the December 1, 1992, **Federal Register** (57 FR 56899). Comments were due by December 31, 1992. FGIS received four comments supporting designation of the Alton Agency. FGIS evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and according to section 7(f)(1)(B), determined that Alton is able to provide official services in the geographic area for which it applied.

Effective April 1, 1993, and ending March 31, 1996, Alton is designated to provide official inspection services in the geographic area specified in the September 30, 1992, **Federal Register**. Interested persons may obtain official services by contacting Alton at 618–463–6845.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: February 22, 1993.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 93–4647 Filed 3–1–93; 8:45 am]

BILLING CODE 3410–EN–F

Forest Service

Southern Advisory Council Meeting for the Allegheny Wild and Scenic River; Allegheny National Forest, PA

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Southern Advisory Council for the Allegheny Wild and Scenic River will meet at 7 pm, Tuesday, March 16, 1993, at the Emlenton Civic Club, Emlenton, PA.

The Northern Advisory Council will meet at 7 pm, Wednesday, March 17, 1993, at the Holiday Inn, Warren, PA.

The primary topic of the meetings is to continue discussion on interim management guidelines and begin discussion of outstandingly remarkable values and final boundary establishment.

Meetings are open to the public. A sign language interpreter will be provided if requested by March 8, 1993.

FOR FURTHER INFORMATION CONTACT: Lionel Lemery, Wild and Scenic River Coordinator, Allegheny National Forest, 222 Liberty Street, Warren, PA 16365, 814/723–5150 (voice).

Dated: February 12, 1993.

John E. Palmer,

Forest Supervisor.

[FR Doc. 93–4694 Filed 3–1–93; 8:45 am]

BILLING CODE 3410–11–M

ARCTIC RESEARCH COMMISSION

Meeting

February 23, 1993.

Notice is hereby given that the Arctic Research Commission will hold its 30th Meeting in Boulder, CO, March 24–25, 1993. On Wednesday, March 24, a Business Session open to the public will begin at 8:30 a.m. in the INSTAAR Conference Room, Rose Lippma Lab (Bldg. RL–1), University of Colorado. Agenda items include:

(1) Chairman's Report;

(2) Comments from agencies and organizations;

(3) Other topics;

(4) Status of Arctic Stratospheric Ozone Research;

(5) Arctic Research at Institute of Arctic and Alpine Research, University of Colorado;

(6) Data of the Arctic Management, Snow and Ice Data Center, University of Colorado;

(7) Arctic Climate Change Modeling at NCAR; and

(8) Reports on ARCUS 5th Annual Meeting.

On Thursday, March 25, an Executive Session will be held at 8:30 a.m. for discussion of budget and legal matters.

The Business Session will reconvene at 9 a.m. in the above location during which there will be a discussion of the U.S. Arctic Research Draft Plan, 3rd Biennial Revision, and a review and discussion of ARC Tasks relative to the Bering Sea, Alaska Oil and Gas Assessment, Submarine Science Deployment, Revision of ARC Logistics Report, and Linkage and Tracking Tasks.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs.

Contact Person for More Information: Philip L. Johnson, Executive Director, U.S. Arctic Research Commission, 202–371–9631 or TDD 202–357–9867.

Philip L. Johnson,

Executive Director, U.S. Arctic Research Commission.

[FR Doc. 93–4759 Filed 3–1–93; 8:45 am]

BILLING CODE 7555–01–M

DEPARTMENT OF COMMERCE

Economic Development Administration

Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA).

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

Firm name	Address	Date petition accepted	Product
CTS Corporation	905 West Boulevard North, Elkhart, IN 46514	01/04/92	Electronic Components.
Lytton, Inc	3970 Image Drive, Dayton, OH 45414	12/16/92	Printed Circuit Board Assemblies, Radar Detectors and Auto Interior Lights.
Norwood Shoe Corporation	One Penallo Drive, De Soto, MO 63020	01/21/93	Footwear.
Bell Bagg, Inc	1906 Northeast 150th Street, Seattle, WA 98125	01/28/93	Nylon Briefcases, Handbags, Travel Bags, Medical Instrument Cases and Leather Pocket Articles.
United Brass Works	714 S. Main Street, Randleman, NC 27317	01/28/93	Brass, Iron Sprinkler Valves and Industrial Valves and Brass Parts of Steam Pressing Machines.
Gear Works (The)—Seattle, Inc	500 South Portland Street, Seattle, WA 98108	02/03/93	Metal Products—Gears
Crawford Home Fashions, Inc	3rd & Decatur Streets, Box 26173, Richmond, VA 23261	02/03/93	Decorative Pillows, Patio Furniture Raincovers, Footstools & Hassocks and Beanbag Chairs.
Gregorian, Inc	East Highway 12, P.O. Box 209, Lemmon, SD 57638	02/03/93	Metal Products—Copper Cooking and Kitchen Ware.
Unitek Equipment, Inc	1820 S. Myrtle Ave., Box 5033, Monrovia, CA 91017–9953.	02/04/93	Mach. & Equip.—Precision Welding Systems.
Fred F. McKenzie dba Sara Lingswood's Kitchens.	1116 34th Street, Anacortes, WA 98221	02/04/93	Food & Bevg.—Gingerbread Cookies.
West Point Foundry & Machine Company.	301 West 10th Street, West Point, GA 31833	02/04/93	Textile Machines Used to Prepare Textile Fibers for Weaving Process.
Arxe, Inc	1260 Piper Drive, Milpitas, CA 95035	02/05/93	Electronics—Electronic Circuit Boards.
Smith & Wesson Corporation	2100 Roosevelt Avenue, Springfield, MA 01102	02/05/93	Revolvers: Semi-Automatic Pistols.
Tompkins Brothers Company, Inc.	623 Oneida Street, Syracuse, NY 13202	02/05/93	Rib Circular Knitting Machines and Parts and Single Knit Circular Knitting Machines and Parts.
Tramco, Inc	1020 East 19th Street, Wichita, KS 67214	02/05/93	Mach. & Equip.—Chain Conveyors for Goods and Materials.
Navigation Technology Corp	20081 Highway 36, Covington, LA 70433	02/05/93	Mach. & Equip.—Sonar Positioning Systems.
Alpha Industries, Inc	20 Sylvan Road, Woburn, MA 01801	02/08/93	Commercial Diodes.
Maynard Steel Casting Company.	2856 South 27th Street, Milwaukee, WI 53234	02/08/93	Gears and Gear Blanks, Parts of Overhead Cranes and Mining Machines of Cast Steel.
Sterling Engineering Corporation	Route 44, P.O. Box 559, Winsted, CT 06098	02/08/93	Compressor Shrouds and Cases: Machined Parts Made From Metal Used in Jet Engines.
Ceramic Coating Company, Inc	Box 370, 123 Banklick Road, Newport, KY 41072	02/08/93	Steel Tanks, Tank Heads and Piping, Glass Enamels and Machine Tools for Metal Forming.
Wells Electronics, Inc	1701 South Main Street, South Bend, IN 46613	02/10/93	Production Sockets and Connectors, Burn and Test Sockets and Carriers and Handling/Shipping Trays.
Lady-John, Inc	231 Front Street, Brooklyn, NY 11201	02/10/93	Apparel—Women's Playsuits and Jumpsuits.
Durbin-Durco, Inc	200 S. Bemiston, Suite 307, Clayton, MO 63105	02/10/93	Metal Products—Binders Made of Steel.
ABC Fashions Co	33–49 Mulberry Street, Middletown, NY 10940	02/10/93	Apparel—Children's and Women's Jogging Suits.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: February 22, 1993.

David L. McIlwain,

Acting Deputy Assistant Secretary for Program Operations.

[FR Doc. 93–4723 Filed 3–1–93; 8:45 am]

BILLING CODE 3510–24–M

International Trade Administration

[A–485–803]

Postponement of Final Antidumping Duty Determination: Certain Cut-to-Length Carbon Steel Plate From Romania

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice.

EFFECTIVE DATE: March 2, 1993.

FOR FURTHER INFORMATION CONTACT: Erik Warga, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0922.

Postponement of Final Determination

Metalexportimport (MEI), respondent in this proceeding, represents a significant proportion of exports of certain cut-to-length carbon steel plate (steel plate) from Romania to the United States. On February 12, 1993, MEI requested that the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2) of the Tariff Act of 1930, as amended (the Act).

Pursuant to 19 CFR 353.20(b), if exporters who account for a significant proportion of exports of the merchandise under investigation request an extension subsequent to an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Such is the case with MEI in this proceeding. Accordingly, we are postponing our final determination as to whether sales of steel plate from Romania have been made at less than fair value until not later than June 21, 1993.

This notice is published pursuant to section 735(d) of the Act and 19 CFR 353.20(b)(2).

Dated: February 22, 1993.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–4678 Filed 3–1–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–559–806]

Notice of Postponement of Final Antidumping Duty Determination: Certain Portable Electric Typewriters From Singapore

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 2, 1993.

FOR FURTHER INFORMATION CONTACT: Ross L. Cotjanle or Lawrence P. Sullivan, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone numbers: (202) 482–3534 or 482–0114, respectively.

Notice of Postponement

The Department of Commerce (the Department) is postponing the date of its final determination in this investigation until June 23, 1993.

Postponement of Final Determinations

Since the Department issued its preliminary determination in this investigation (Preliminary Determination of Sales at Less Than Fair Value: Certain Portable Electric Typewriters from Singapore, 58 FR 7534, (February 8, 1993)), Smith Corona (Pte) Ltd. (Smith Corona), the respondent company in this investigation, requested that the Department postpone the final determination 60 days, as provided for in Section 735(a)(2) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)).

Since an affirmative preliminary determination was issued in this investigation and Smith Corona accounts for a significant proportion of exports of the subject merchandise, the respondent is, therefore, able to request that the final determination be postponed under Section 735(a)(2) of the Act.

Public comment: In accordance with 19 CFR 353.38(b), we will hold public hearings to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. The hearing is tentatively scheduled for May 14, 1993, in room 3708 at 1 p.m. The hearing will be held at the U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date and place of the hearings 48 hours prior to the scheduled time.

In accordance with 19 CFR 353.38(a), case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than May 4, 1993. Additionally, rebuttal briefs must be submitted no later than May 11, 1993.

This notice is published pursuant to 19 CFR 353.20(b)(2).

Dated: February 22, 1993.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–4681 Filed 3–1–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–533–806]

Notice of Antidumping Duty Order: Sulfanilic Acid From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 2, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230: (202) 482–1756.

Scope of Order

The products covered by this investigation are all grades of sulfanilic

acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid (sodium sulfanilate).

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry free flowing powders.

Technical sulfanilic acid, classifiable under the subheading 2921.42.2800 of the Harmonized Tariff Schedule of the United States ("HTSUS"), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also classifiable under the HTSUS subheading 2921.42.2800, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials. Sodium salt of sulfanilic acid (sodium sulfanilate), classifiable under the HTSUS subheading 2921.42.7500 is a granular or crystalline material containing 75 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Antidumping Duty Order

In accordance with section 735(a) of the Tariff Act of 1930, as amended, (the Act), on January 8, 1993, the Department of Commerce (the Department) made its final determination that sulfanilic acid from India is being sold in the United States at less than fair value (58 FR 3251 January 8, 1993). On February 18, 1993, in accordance with section 735(d) of the Act, the U.S. International Trade Commission notified the Department that an industry in the United States is threatened with material injury by reason of such imports. The ITC did not determine, pursuant to section 735(b)(4(B) of the Act, that, but for the suspension of liquidation of entries of sulfanilic acid from India, the domestic industry would have been materially injured.

When the ITC finds threat of material injury, and makes a negative "but for" finding, the "Special Rule" provision of section 736(b)(2) applies. Therefore, all entries of sulfanilic acid from India, entered or withdrawn from warehouse, for consumption made *on or after* the date on which the ITC publishes its final affirmative determination of threat of material injury in the **Federal Register**, (which is currently scheduled for February 24, 1993), will be liable for the assessment of antidumping duties.

The Department will direct U.S. Customs officers to terminate the suspension of liquidation for entries of sulfanilic acid from India, entered, or withdrawn from warehouse, for consumption *before the date* on which the ITC publishes its final affirmative determination of threat of material injury in the **Federal Register** (which is currently scheduled for February 24, 1993), and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated antidumping duties with respect to those entries.

The Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all relevant entries of sulfanilic acid from India. U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margin as noted below:

Manufacturer/producer/exporter	Margin percentage
All manufacturers/producers/exporters	114.8%

Section 772(d)(1)(D) of the Act prohibits assessing dumping duties on the portion of the margin attributable to an export subsidy. In this case, the product under investigation is subject to a countervailing duty investigation (see, Final Affirmative Countervailing Duty Determination: Sulfanilic Acid from India (58 FR 3259, January 8, 1993)). Therefore, for all entries of sulfanilic acid from India, entered or withdrawn from warehouse for consumption made on or after the date on which the ITC publishes its final affirmative determination of threat of material injury in the **Federal Register**, (which is currently scheduled for February 24, 1993), we will request for duty deposit purposes, that U.S. Customs deduct the portion of the margin attributable to the export subsidy from the countervailing duty investigation. Because the export subsidy rate is *43.71 percent*, the cash deposit rate for antidumping purposes will be *71.09 percent*.

This notice constitutes the antidumping duty order with respect to sulfanilic acid from India, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: February 23, 1993.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–4682 Filed 3–1–93; 8:45 am]

BILLING CODE 3510–DS–M

[C–533–807]

Countervailing Duty Order: Sulfanilic Acid From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 2, 1993.

FOR FURTHER INFORMATION CONTACT: Paulo Mendes or Magd Zalok, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5050 or 482–4162, respectively.

Scope of Order

The products covered by this investigation are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid (sodium sulfanilate).

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry free flowing powders.

Technical sulfanilic acid, classifiable under the subheading 2921.42.2800 of the Harmonized Tariff Schedule of the United States ("HTSUS"), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also classifiable under the HTSUS subheading 2921.42.2800, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25

percent maximum alkali insoluble materials. Sodium salt of sulfanilic acid (sodium sulfanilate), classifiable under the HTSUS subheading 2921.42.7500 is a granular or crystalline material containing 75 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Countervailing Duty Order

In accordance with section 705(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1671d(a)), on January 8, 1993, the Department of Commerce (the Department) made its final determination that producers or exporters of sulfanilic acid in India receive benefits which constitute subsidies within the meaning of the countervailing duty law (58 FR 3259). On February 18, 1993, in accordance with section 705(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that an industry in the United States is threatened with material injury by reason of such imports. The ITC did not determine, pursuant to section 705(b)(4)(B) of the Act (19 U.S.C. 1671(b)(4)(B)), that, but for the suspension of liquidation of entries of sulfanilic acid from India, the domestic industry would have been materially injured.

When the ITC finds threat of material injury, and makes a negative "but for" finding, the "Special Rule" provision of section 706(b)(2) (19 U.S.C. 1671e(b)(2)) applies. Therefore, all entries of sulfanilic acid from India, entered or withdrawn from warehouse, for consumption made *on or after* the date on which the ITC publishes its final affirmative determination of threat of material injury in the **Federal Register** (which is currently scheduled for February 24, 1993), will be liable for the assessment of countervailing duties.

The Department will direct the U.S. Customs to terminate the suspension of liquidation for entries of sulfanilic acid from India, entered or withdrawn from warehouse, for consumption *before the date* on which the ITC publishes its final affirmative determination of threat of material injury in the **Federal Register** (which is currently scheduled for February 24, 1993) and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated countervailing duties with respect to those entries. For entries on or after that date, the U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit of 43.71 percent *ad valorem*.

The Department will further direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to sections 706(a)(1) and 751 of the Act (19 U.S.C. 1671e(a)(1) and 1675), countervailing duties equal to the amount of the estimated net subsidy on all entries of sulfanilic acid from India. In accordance with section 706(b)(2), these countervailing duties will be assessed on all entries of sulfanilic acid from India which were entered, or withdrawn from warehouse, for consumption, on or after the date on which the ITC publishes its final affirmative determination of threat of material injury in the **Federal Register**.

This notice constitutes a countervailing duty order with respect to sulfanilic acid from India pursuant to 705(d) and 706(a) of the Act (19 U.S.C. 1671(d) and 1671e(a)). Interested parties may contact the Central Records Unit, room B–099 of the main Commerce Building, for copies of an updated list of countervailing duty orders currently in effect.

This notice is published in accordance with section 705(d) and 706(a) of the Act (19 U.S.C. 1671(d) and 1671e(a)).

Dated: February 23, 1993.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–4680 Filed 3–1–93; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Chevron U.S.A. Inc. (Destin Dome) From an Objection by the State of Florida

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice of decision.

On January 8, 1993, the Secretary of Commerce (Secretary) issued a decision in the consistency appeal of Chevron U.S.A. Inc. Chevron (Appellant) is the operator of Destin Dome Block 97, located about 29 miles from Perdido Key, Florida, in the Gulf of Mexico. In a proposed Plan of Exploration (POE) submitted for approval to the Minerals Management Service (MMS) of the Department of the Interior, the Appellant proposed to drill an exploratory well to evaluate the hydrocarbon potential of Block 97.

After the State of Florida (State) objected to the Appellant's consistency certification for the proposed POE, the Appellant filed an appeal with the Secretary under section 307(c)(3)(B) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1456(c)(3)(B), and implementing regulations at 15 CFR part 930, subpart H. The State's objection found that the proposed project was inconsistent with the State's policies of protecting its marine and coastal resources. Under section 307(c)(3)(B) of the CZMA and 15 CFR 930.131, the State's consistency objection precludes the MMS from issuing a permit for the activity unless the Secretary finds that the activity is either consistent with the objectives or purposes of the CZMA (Ground I) or necessary in the interest of national security (Ground II).

The Appellant based its appeal on both grounds. The Secretary's findings on Ground I are: The Appellant's proposed project furthers exploration, development and production of offshore oil and gas resources, thus furthering one of the objectives or purposes of the CZMA. The preponderance of evidence in the record supports a finding that the proposed project will not cause adverse effects on the natural resources of the State's coastal zone, when performed separately or in conjunction with other activities, substantial enough to outweigh its contribution to the national interest. The proposed project will not violate the Clean Air Act or the Clean Water Act, nor is there a reasonable alternative available to the Appellant that would allow its proposed POE to be carried out in a manner consistent with the State's coastal management program. Therefore, the Appellant's proposed project has met the requirements of Ground I. On Ground II, the Secretary found that there will be no significant impairment to a national defense or other national security interest if the Appellant's project is not allowed to go forward as proposed. Therefore, Appellant's project did not meet the requirements of Ground II. Because the Appellant's proposed project has met the requirements of Ground I, the proposed project may be permitted by Federal agencies.

Copies of the decision may be obtained from the contact person listed below.

FOR ADDITIONAL INFORMATION CONTACT: Mary O'Donnell, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S.

Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235, (202) 606–4392.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: February 24, 1993.

James W. Brennan,

Acting General Counsel.

[FR Doc. 93–4756 Filed 3–1–93; 8:45 am]

BILLING CODE 3510–08–M

Coastal Zone Management; Federal Consistency Appeal by Mobil Exploration & Producing U.S. Inc. From an Objection by the State of Florida

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice of decision.

On January 7, 1993, the Secretary of Commerce (Secretary) issued a decision in the consistency appeal of Mobil Exploration & Producing U.S. Inc. (Appellant). The Appellant is the operator of Block 799, located approximately 120 miles west-northwest of Key West, Florida, in the Eastern Gulf of Mexico. In a Plan of Exploration (POE) submitted for approval to the Minerals Management Service (MMS) of the Department of the Interior, the Appellant proposed to drill four exploratory wells to evaluate the hydrocarbon potential of Block 799.

The State of Florida (State) objected to the Appellant's consistency certification for the proposed POE on the grounds that the Appellant had failed to provide sufficient information and analyses to demonstrate that all of its proposed activities, associated facilities and effects are consistent with provisions of the State's Coastal Management Program. The Appellant filed an appeal from the State's objection with the Secretary under section 307(c)(3)(B) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1456(c)(3)(B) and implementing regulations at 15 CFR part 930, subpart H.

Under section 307(c)(3)(B) of the CZMA and 15 CFR 930.131, the State's consistency objection precludes the MMS from issuing a permit for the activity unless the Secretary finds that the activity is either consistent with the objectives or purposes of the CZMA (Ground I) or necessary in the interest of national security (Ground II). The Appellant based its appeal on both grounds.

The Secretary makes a number of findings. On Ground I, the Secretary finds that the Appellant's proposal does not satisfy 15 CFR 930.121(b) because the preponderance of the evidence in the record does not support a finding that the Appellant's POE will not cause adverse effects on the natural resources of the State's coastal zone, when performed separately or in conjunction with other activities, substantial enough to outweigh its contribution to the national interest. On Ground II, the Secretary finds that there will be no significant impairment to a national defense or other national security interest if the Appellant's project is not allowed to go forward as proposed. Because the Appellant's proposed POE does not meet the requirements of either of the two grounds set forth in the CZMA, the Secretary declines in this instance to override the State's objection to the proposed POE and Federal agencies may not issue permits for the project as proposed. Copies of the decision may be obtained from the contact person listed below.

FOR ADDITIONAL INFORMATION CONTACT: Margo E. Jackson, Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235, (202) 606–4200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: February 24, 1993.

James W. Brennan,

Acting General Counsel.

[FR Doc. 93–4757 Filed 3–1–93; 8:45 am]

BILLING CODE 3510–08–M

Coastal Zone Management; Federal Consistency Appeal by Union Exploration Partners, Ltd, With Texaco Inc.; From an Objection by the State of Florida

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice of decision.

On January 7, 1993, the Secretary of Commerce (Secretary) issued a decision in the consistency appeal of Union Exploration Partners, Ltd., with Texaco, Inc. (Appellant). The Appellant is the operator of Blocks 629 and 630, located approximately 135 miles southwest of Fort Myers, Florida, in the Eastern Gulf of Mexico. In a Plan of Exploration (POE) submitted for approval to the Minerals Management Service (MMS) of the Department of the Interior, the Appellant proposed to drill up to three exploratory wells to evaluate the hydrocarbon potential of Blocks 629 and 630.

The State of Florida (State) objected to the Appellant's consistency certification for the proposed POE on the grounds that the subject area is part of a unique ecosystem and frontier area which supports a varied economy in south Florida and that the data submitted by the Appellant in support of its POE did not adequately evaluate the environmental and socioeconomic effects of the POE and demonstrate that the POE is consistent with various provisions of the State's Coastal Management Program which mandate the preservation and protection of the natural resources of the area. The Appellant filed an appeal from the State's objection with the Secretary under section 307(c)(3)(B) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1456(c)(3)(B) and implementing regulations at 15 CFR part 930, subpart H.

Under section 307(c)(3)(B) of the CZMA and 15 CFR 930.131, the State's consistency objection precludes the MMS from issuing a permit for the activity unless the Secretary finds that the activity is either consistent with the objectives or purposes of the CZMA (Ground I) or necessary in the interest of national security (Ground II). The Appellant based its appeal on both grounds.

The Secretary makes a number of findings. On Ground I, the Secretary finds that the Appellant's proposal does not satisfy 15 CFR 930.121(b) because the preponderance of the evidence in the record does not support a finding that the Appellant's POE will not cause adverse effects on the natural resources of the State's coastal zone, when performed separately or in conjunction with other activities, substantial enough to outweigh its contribution to the national interest. On Ground II, the Secretary finds that there will be no significant impairment to a national defense or other national security interest if the Appellant's project is not allowed to go forward as proposed. Because the Appellant's proposed POE does not meet the requirements of either of the two grounds set forth in the CZMA, the Secretary declines in this instance to override the State's objection to the proposed POE and Federal agencies may not issue permits for the project as proposed. Copies of the decision may be obtained from the contact person listed below.

FOR ADDITIONAL INFORMATION CONTACT: Margo E. Jackson, Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of

Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235, (202) 606–4200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: February 24, 1993.

James W. Brennan,

Acting General Counsel.

[FR Doc. 93–4758 Filed 3–1–93; 8:45 am]

BILLING CODE 3510–08–M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council and its advisory entities will meet on March 9–12, 1993, at the Holiday Inn Crown Plaza, 600 Airport Boulevard, Burlingame, CA. Except as noted below, the meetings are open to the public.

The Council will begin its meeting on March 9 at 8 a.m. in a closed session (not open to the public) to discuss international negotiations, personnel matters and litigation. The open session will begin at 8:30 a.m. to consider salmon management. Agenda items include: (1) Review of 1992 fisheries and summary of 1993 stock abundance estimates; (2) identification of stocks requiring review under the overfishing definition; (3) Endangered Species Act considerations for 1993; and (4) preliminary definition of 1993 management options.

On March 10 the Council will reconvene at 8 a.m. to review the draft fishery management plan for coastal pelagic species and to address the following issues:

Groundfish Management

(1) Status of Federal regulations implementing Council actions; (2) implementation of license limitation program including proposed system for combining permits; (3) operating procedure for and composition of limited entry review board; and (4) data collection program for shore-based whiting fishery and experimental fishing permits allowing landing of salmon, and groundfish trip limit overages. Also, at the end of the March 10 session, the Council will adopt 1993 management options for Salmon Technical Team analysis.

On March 11 at 8 a.m. the Council will reconvene to receive a preliminary analysis of individual quota alternatives for sablefish and Pacific halibut and will provide further directions for analysis. The Council will clarify its intent to review a proposal for establishing an allocation of Pacific halibut to trollers in Area 2A as well as possible modifications to recreational subarea allocations of halibut in Washington.

The following administrative matters will also be addressed on March 11: (1) Budget Committee report; (2) report of the Ad Hoc Committee on Council performance; (3) reauthorization of the Magnuson Fishery Conservation and Management Act; (4) appointment to the Halibut Advisory Subpanel; and (5) establish work load priorities and adopt the April agenda. If necessary, the Council will clarify and refine its management options for the ocean salmon fishery so that the analysis can be completed.

The public may address the Council on fisheries issues unrelated to the agenda at 4 p.m. Public comments that pertain to action items on the agenda will be heard prior to Council action on each issue.

On March 12 the Council will address habitat issues impacting fish stocks managed by the Council and will receive a report from the Bureau of Reclamation on its plans to enhance salmon survival in 1993. Following the habitat discussion, the Council will address the following salmon issues: (1) Estimation of hooking mortality in the sport fishery; (2) Idaho proposal to mark all Snake river hatchery spring and summer chinook; (3) schedule of hearings on 1993 management options and appointment of hearing officers; (4) announcement of "North of Cape Falcon" meetings; and (5) adopt 1993 management options for public review.

Other Management Issues

The Salmon Advisory Subpanel will meet on March 8 at 9:00 a.m. to develop recommendations to the Council on the salmon issues on the Council agenda and will reconvene on March 9, 10, 11, and 12 at 8 a.m.

The Council's other entities will conduct meetings as follows:

The Salmon Technical Team will meet as necessary throughout the March 8–12 period to analyze impacts of management options for the ocean salmon fisheries and to address other salmon issues on the Council agenda.

The Scientific and Statistical Committee will meet on March 8 at 1:00 p.m. to address scientific issues on the Council agenda and will reconvene on March 9 at 8 a.m.

The Habitat Committee will meet on March 8 at 1 p.m. to consider habitat issues affecting stocks of fish managed by the Council.

The Budget Committee will meet on March 8 at 3 p.m. to consider budget and personnel issues.

The Enforcement Consultants will meet March 8 at 7 p.m. to consider enforcement issues related to items on the Council agenda.

Detailed agendas for the above meetings will be available to the public after February 25, 1993.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: February 24, 1993.

Alfred J. Bilik,

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

[FR Doc. 93–4713 Filed 3–1–93; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Overshipment Charges for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Oman

February 24, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs charging overshipments.

EFFECTIVE DATE: March 3, 1993.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The limit for Categories 340/640 for the restraint period beginning on September 21, 1992 and extending through September 20, 1993 is currently filled. In the letter published below, the Chairman of CITA directs the Commissioner of Customs to charge overshipments to this limit in the amounts of 43,932 dozen (Category 340) and 26,606 dozen (Category 640). These charges reflect shipments already entered for consumption for which data was not available to CITA prior to the embargo.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff

Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 56329, published on November 27, 1992.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 24, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: To facilitate implementation of the textile and apparel import restraint program, I request that, effective on March 3, 1993, you charge the following amounts to the limit established in the directive dated November 20, 1992 for cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Oman and exported during the period beginning on September 21, 1992 and extending through September 20, 1993. These charges are for goods imported during the period November 1, 1992 through November 26, 1992.

Category	Amount to be charged
340	43,932 dozen.
640	26,606 dozen.

This letter will be published in the **Federal Register**.

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–4679 Filed 3–1–93; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB)

Date of Meeting: 17–18 March 1993

Time of Meeting: 0800–1700, each day

Place: Alexandria, VA

Agenda: The Army Science Board's Ad Hoc Panel on "Space Systems and Future Army Operations" will meet in executive session for discussions focused on current projected operational concepts, the Army Long-Range Plan for Space, and associated technologies. This meeting will be closed to the public in accordance with section 552b (c) of title 5, U.S.C., specifically subparagraph (1) thereof and title 5, U.S.C. Appendix 2, subsection 10(d). The classified and unclassified information to be discussed will be so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 93–4762 Filed 3–1–93; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Intent To Repay to the New York State Education Department Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Notice of intent to award grantback funds.

SUMMARY: Under section 456 of the General Education Provisions Act (GEPA), 20 U.S.C. 1234e (1982), the U.S. Secretary of Education (Secretary) intends to repay to the New York State Education Department, the State educational agency (SEA), an amount equal to 75 percent of the funds recovered by the U.S. Department of Education (Department) as a result of a final audit determination. This notice describes the SEA's plan, submitted on behalf of the New York City Board of Education, the local educational agency (LEA), for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. The notice invites comments on the proposed grantback.

DATE: All comments must be received on or before April 1, 1993.

ADDRESS: Comments concerning the grantback should be addressed to Dr. Bruce Gaarder, Director, Division of Program Development and Support, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 2043), Washington, DC 20202–6132.

FOR FURTHER INFORMATION CONTACT: Dr. Bruce Gaarder, Telephone: (202) 401–1682. 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.

SUPPLEMENTARY INFORMATION

A. Background

The Department has recovered $20,643,510, plus accrued interest, from the New York SEA in satisfaction of claims arising from an audit of the New York City Board of Education covering fiscal year (FY) 1983.

The claims involved the SEA's administration of chapter 1 of the Education Consolidation and Improvement Act of 1981 (Chapter 1, ECIA), a program that provided financial assistance to State and local agencies to address the special educational needs of educationally deprived children in areas with high concentrations of children from low-income families. Specifically, on July 13, 1987, the then Acting Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) issued a final determination letter that concluded that the LEA's use of chapter 1 funds to help meet the costs of Promotional Gates program activities in FY 1983 was improper because chapter 1 funds were used to supplant non-Federal funds that, in the absence of the Chapter 1 funds, would have been used for the Promotional Gates program. All of the 32 community school districts were required to participate in the local compensatory education program mandated by the Chancellor. The use of chapter 1 funds for salaries and fringe benefits for 480 Promotional Gates teachers violated the supplanting prohibition in 20 U.S.C. 3807(b) (1982). The Assistant Secretary therefore directed the SEA to refund this amount to the Department.

The SEA appealed the Assistant Secretary's determinations to the Education Appeal Board (EAB). The EAB's initial decision of February 13, 1989, concluded that the LEA supplanted non-Federal funds with chapter 1 funds and had to pay $20,643,510 to the Department. On April 14, 1989, the Secretary issued a decision affirming the EAB's refund demand on the basis that the LEA violated the Chapter 1 supplanting determination. The SEA appealed the Secretary's decision to the U.S. Court of Appeals for the Second Circuit, which issued a decision on May 22, 1990, affirming the decision of the Secretary. On August 27, 1990, the SEA submitted $20,643,510, plus interest, to the Department in full settlement of all claims.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA, 20 U.S.C. 1234e(a) (1982), provides that whenever the Secretary has recovered program funds following a final audit determination, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the SEA or LEA affected by that determination an

amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this grantback arrangement if the Secretary determines that the—

(1) Practices and procedures of the SEA or LEA that resulted in the audit determination have been corrected, and the SEA or LEA is, in all other respects, in compliance with the requirements of the applicable program;

(2) SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the program, and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) Use of funds to be awarded under the grantback arrangement in accordance with the SEA's plan would serve to achieve the purposes of the program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 456(a)(2) of GEPA, the SEA has applied for a grantback of $15,482,632—75 percent of the principal amount recovered by the U.S. Department of Education—and has submitted a plan on behalf of the LEA for use of the grantback funds to meet the special educational needs of educationally deprived children in programs administered under Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended (Chapter 1, ESEA) (20 U.S.C. 2701 *et. seq.* (1988)).

According to the plan, the LEA would use the grantback funds to provide supplementary services to 52,354 public school Chapter 1 students at 262 elementary and middle schools by using the grantback funds to purchase Comprehensive Integrated Learning Systems (CILS), including hardware and software, installation of the system, staff development, and parent involvement activities; to purchase other computer-based instructional systems; to train staff to implement individualized supplementary instruction for Chapter 1 first graders at risk of failure in reading; and to pay for training new Reading Recovery staff. (Reading Recovery, an early intervention program for first grade children in the lowest 20th percentile in reading, provides intensive one-to-one lessons for 30 minutes each day. After the grantback period is completed, participating districts would continue to provide funds and other resources to support the continuation of the Reading Recovery program in participating schools.) In addition, 17,000 Chapter 1 students who attend 232 nonpublic schools would receive services as the result of grantback funds being used to complement existing computer-assisted instruction programs and non-CILS computer configurations. Current hardware would be upgraded and take-home computers and new software would be purchased to enhance instruction for eligible nonpublic school students enrolled in Chapter 1 remedial reading and mathematics classes. In addition, grantback funds would be used to implement new staff development efforts for Chapter 1 teachers, paraprofessionals, and administrators working with Chapter 1 students and for instructional materials and books to enrich existing Chapter 1 activities.

Of the $15,482,632 in grantback funds, $3,530,709 of the funds would be used for salaries and employee benefits, $1,537,237 for purchased services such as Reading Recovery staff training, $4,609,993 for software and other instructional materials, $5,147,219 for hardware and hardware configurations, $26,674 for local travel and travel related to Reading Recovery conferences, and $630,800 for indirect costs.

D. The Secretary's Determinations

The Secretary has carefully reviewed the plan submitted by the SEA. Based upon that review, the Secretary has determined that the conditions under section 456 of GEPA have been met. These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary may take appropriate administrative action. In finding that the conditions of section 456 of GEPA have been met, the Secretary makes no determination concerning any pending audit recommendations or final audit determinations.

E. Notice of the Secretary's Intent To Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the New York SEA under a grantback arrangement. The grantback award would be in the amount of $15,482,632.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

The SEA and LEA agree to comply with the following terms and conditions under which payments under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and any amendments to that plan that are approved in advance by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be obligated by September 30, 1993, in accordance with section 456(c) of GEPA and the SEA's plan.

(3) The SEA, on behalf of the LEA, will, not later than January 1, 1994, submit a report to the Secretary that—

(a) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budget; and

(b) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

(5) Before funds will be paid pursuant to this notice, the SEA must repay to the Department any debts that become overdue or enter into a repayment agreement for those debts.

(Catalog of Federal Domestic Assistance Number 84.010, Educationally Deprived Children—Local Educational Agencies)

Dated: February 24, 1993.

Richard W. Riley,

Secretary of Education.

[FR Doc. 93-4712 Filed 3-1-93; 8:45 am]

BILLING CODE 4000-01-U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP93-81-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 24, 1993.

Take notice that CNG Transmission Corporation ("CNG"), on February 19, 1993, submitted the following tariff

sheets for filing in CNG's FERC Gas Tariff:

First Revised Volume No. 1
Nineteenth Revised Sheet No. 32
Original Volume No. 2A
First Revised Sheet No. 399
First Revised Sheet No. 407
First Revised Sheet No. 426
First Revised Sheet No. 444
First Revised Sheet No. 493

CNG states that these tariff sheets are proposed to become effective on April 1, 1993. CNG requests waiver of the Commission's Regulations as may be required to permit these tariff sheets to become effective as proposed.

CNG states that the purpose of this filing is to adopt straight fixed-variable ("SFV") rate design for various individually-certificated services currently provided by CNG. Because CNG proposes to maintain the underlying costs of service approved by the Commission in the orders certificating these services, CNG files these sheets as a limited Section 4 filing under § 154.63 of the regulations. CNG states that no other rates and charges applicable to services by CNG will be affected by this filing.

CNG states that copies of this filing were served upon CNG's customers, as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR §§ 385.214 and 385.211. All motions or protests should be filed on or before March 3, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–4698 Filed 3–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–80–000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 24, 1993.

Take notice that CNG Transmission Corporation ("CNG"), on February 19, 1993, submitted the following tariff sheets for filing in CNG's FERC Gas Tariff, Original Volume No. 2A:

First Revised Sheet No. 452
First Revised Sheet No. 453
Second Revised Sheet No. 462
First Revised Sheet No. 463
First Revised Sheet No. 470
First Revised Sheet No. 471

CNG states that these tariff sheets are proposed to become effective on April 1, 1993. CNG requests waiver of the Commission's Regulations as may be required to permit these tariff sheets to become effective as proposed.

CNG states that the purpose of this filing is to adopt straight fixed-variable ("SFV") rate design for certain individually-certificated services currently provided by CNG. Because CNG proposes to maintain the underlying cost-of-service approved by the Commission in the orders certificating these services, CNG files these sheets as a limited section 4 filing under section 154.63 of the regulations. CNG states that no other rates and charges applicable to services by CNG will be affected by this filing.

CNG states that copies of this filing were served upon CNG's customers, as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR § § 385.214 and 385.211. All motions or protests should be filed on or before March 3, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–4699 Filed 3–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–3–32–000]

Colorado Interstate Gas Co.; Notice of Quarterly Purchased Gas Adjustment Filing

February 24, 1993.

Take notice that on February 22, 1993 Colorado Interstate Gas Company ("CIG") submitted for filing an original and five copies of Ninth Revised Sheet Nos. 7.1 through 8.2, reflecting a 24.05 cents/Mcf decrease in the commodity rate for the G–1, P–1, SG–1, and PS–1 Rate Schedules. CIG requests that these proposed tariff sheets be made effective on April 1, 1993.

CIG states that copies of this filing are being served on all jurisdictional customers and interested state commissions, and are otherwise available for public inspection at CIG's offices in Colorado Springs, Colorado.

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 Capital Street, NW., Washington DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 3, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–4701 Filed 3–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER91–435–006]

DC Tie, Inc.; Notice of Filing

February 24, 1993.

Take notice that on January 29, 1993, DC Tie, Inc. filed certain information as required by the Commission's July 11, 1991 letter Order in Docket No. ER91–435–000. Copies of DC Tie, Inc.'s informational filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–4700 Filed 3–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER93–299–000, and EL93–18–000]

Florida Power Corp.; Initiation of Proceeding and Refund Effective Date

February 24, 1993.

Take notice that on February 17, 1993, the Commission issued an order in the above-indicated dockets initiating an investigation in Docket No. EL93–18–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL93–18–000 will be 60 days after

publication of this notice in the **Federal Register**.

Lois D. Cashell,

Secretary.

[FR Doc. 93–4747 Filed 3–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–82–000]

Northern Natural Gas Co.; Temporary Waiver of Tariff Provision

February 24, 1993.

Take notice that on February 22, 1993, Northern Natural Gas Company (Northern) tendered for filing a motion requesting a temporary waiver of section 6(a) "Scheduling Penalties—Receipt Point" of subpart A of the General Terms and Conditions of its FERC Gas Tariff, Fourth Revised Volume No. 1, located on First Revised Sheet No. 244.

Northern states that on March 29, 1991, Northern filed a Stipulation and Agreement of Settlement resolving all outstanding issues in Docket Nos. RP88–059–046, CP88–1227–000, RP90–124–000 and RP90–161–000 (New Services Settlement). Northern states that the New Services Settlement was approved by Commission order dated June 26, 1992, and was effective November 1, 1992. The New Services Settlement contained provisions for receipt point scheduling penalties to be charged for variances between scheduled volume and actual volume at each receipt point. Northern assert that the receipt point scheduling penalty provisions were included in the New Services Settlement to assure operational and system integrity and to help shippers keep synchronization between scheduled and actual receipts.

Northern states that the Settlement provided that the first two full months following implementation would be "test months." Northern notes that during the test months, Northern and the shippers were to operate their systems as if the penalties were in effect and Northern would bill the penalties, but the shippers would not be required to pay the penalties. Northern also notes that the purpose of the test months was to give all parties an opportunity to understand the penalties and to gain experience operating under the penalties.

Northern states that it has received extended customer feedback regarding the penalties. As a result of the analysis and the feedback, Northern has determined that it would be appropriate to reevaluate the provisions to ensure that the structure of the receipt point penalties is attaining the desired result. Therefore, Northern is requesting a temporary waiver of receipt point scheduling penalties until the production month of April in order to provide Northern the opportunity to reevaluate the provision and determine if, perhaps, there is a different structure that would better achieve the results intended.

Northern states that copies of the filing have been served upon all holders of Northern FERC Gas Tariff, Fourth Revised Volume No. 1.

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 March 3, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–4746 Filed 3–1–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4600–1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 1, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR CONTACT: Ms. Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standards (NSPS) for Metallic Mineral Processing Plants–Recordkeeping and Reporting Requirements (EPA ICR No. 0982.04; OMB No. 2060–0016). This is a request for renewal of a currently approved information collection.

Abstract: Owners or operators of metallic mineral processing plants must provide EPA, or the delegated State regulatory authority, with one-time notifications and reports, and must keep records, as required of all facilities subject to the general NSPS requirements. Recordkeeping and reporting requirements specific to metallic mineral processing plants provide information on the operation of the emission control device. Owners or operators of affected facilities are required to install, calibrate, maintain, and operate a continuous monitoring system to measure the change in pressure of the gas stream through the scrubber, and the scrubbing liquid flow rate. They must notify EPA or the State regulatory authority of the date upon which demonstration of the CMS performance commences. During the initial performance test of a wet scrubber, and at least weekly thereafter a record of the described measurements must be maintained. The owner or operator must submit semiannual reports of occurrences when the scrubber pressure drop and liquid flow rate differ by more than thirty percent from the measurement recorded during the most recent performance test. The notifications and reports enable EPA or the delegated State regulatory authority to determine that best demonstrated technology is installed and properly operated and maintained and to schedule inspections.

Burden Statement: The public reporting burden for this collection of information is estimated to average 25 hours per response for reporting, and 63 hours per recordkeeper annually. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Owners or operators of metallic mineral processing plants.

Estimated Number of Respondents: 17.

Estimated Number of Responses Per Respondent: 2.

Estimated Total Annual Burden on Respondents: 1,911 hours.

Frequency of Collection: One-time notifications and reports for new facilities; semiannual reporting for existing facilities.

Send comments regarding the burden estimate, or any other aspect of the

information collection, including suggestions for reducing the burden, to:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW.,Washington, DC 20460.

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW.,Washington, DC 20503.

Dated: February 24, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–4776 Filed 3–1–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4563–1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 1, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR CONTACT: Ms. Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air Radiation

Title: New Source Performance Standards (NSPS) for Surface Coating of Metal Furniture (Subpart EE)–Reporting and Recordkeeping Requirements (EPA ICR No. 649.05; OMB No. 2060–0106). This is a request for reinstatement of a previously approved information collection for which approval has expired.

Abstract: Owners or operators of metal furniture surface coating facilities must provide EPA or the delegated State regulatory authority with one-time notifications and reports, and must keep records, as required of all facilities subject to the general NSPS requirements. Monitoring and recordkeeping requirements specific to metal furniture surface coating operations consist mainly of temperature measurements when a capture system and an incinerator are used, and the calculated daily volume of volatile organic compounds (VOC) solvent recovered and actual amount of VOC solvent recovered when a capture system is used in combination with a solvent recovery system.

Since the last renewal of this ICR, the surface coating standards have been amended to require quarterly reporting if an exceedance of the standard has occurred as determined by the monthly compliance tests and monitoring of control device parameters. Reporting is required semiannually if no exceedances or monitoring deficiencies have occurred. The notifications and reports enable EPA or the delegated State regulatory authority to determine that best demonstrated technology is installed and properly operated and maintained and to schedule inspections. All facilities subject to these standards must maintain records related to compliance for two years.

Burden Statement: The public reporting burden for this collection of information is estimated to average 10 hours per response for reporting, and 163 hours for recordkeeping annually. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Owners or operators of metal furniture surface coating facilities which commenced construction, reconstruction, or modification after November 28, 1980.

Estimated Number of Respondents: 705.

Estimated Number of Responses Per Respondent: 2.

Estimated Total Annual Burden on Respondents 128,243 hours.

Frequency of Collection: Quarterly or semiannually and on occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: February 24, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–4775 Filed 3–1–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4562–3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before April 1, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

Title: Partial Updating of TSCA Inventory Data Base; Production and Site Reports. (EPA ICR No. 1011.03; OMB No. 2070–0070). This is a request for reinstatement of a previously approved collection.

Abstract: Section 8 of the Toxic Substances Control Act (TSCA) requires manufacturers of chemical substances to report current production volume, plant site data, and their chemicals' manufacture/import status to EPA. Respondents submit reports every four years on either an EPA designated reporting form, a computer tape(s) or floppy diskette(s). EPA uses these data to compile and keep current the listing of chemical substances manufactured, imported and processed for commercial use in the United States.

Burden Statement: The estimated public reporting burden for this collection of information is estimated to average 11 and a half hours for respondents who will report to update the inventory, and 1 hour for respondents who will only report inventory corrections. These estimates include the time needed to review instructions, search existing data sources, gather the data needed, prepare data for transfer, and review the collection of information.

Respondents: Chemical Manufacturers.

Estimated Number of Respondents: 2,488 who will update the inventory and 350 who will make corrections.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 28,962 hours.

Frequency of Collection: Every four years.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM 223Y), 401 M Street, SW., Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: February 24, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–4774 Filed 3–1–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4600–4]

Phosphoric Acid Production Waste Dialogue Committee; Public Meeting

AGENCY: Environmental Protection Agency.

ACTION: Federal Advisory Committee Meeting.

SUMMARY: As required by the Federal Advisory Committee Act, we are giving notice of the January meeting of the Phosphoric Acid Production Waste Dialogue Committee. The meeting is open to the public without advance registration.

The purpose of the meeting is to continue to review information on the issue of pollution prevention in the production of phosphoric acid.

DATES: The Committee meeting will be held on March 18 and March 19, 1993 from 8:30 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Doubletree Hotel, 300 Army Navy Drive, Crystal City, Arlington, Virginia 22202, (703) 892–4100.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the technical or scientific matters related to phosphoric acid wastes should contact Dr. Daniel R. Bushman, Office of Pollution Prevention and Toxics, Economics, Exposure and Technology Division, TS–779, Environmental Protection Agency, Washington, DC, 20460; phone (202) 260–6700. Persons needing further information on the committee's procedural and logistical matters should call Deborah Dalton, Consensus and Dispute Resolution Program, (202) 260–5495, or the Committee's facilitator, Greg Bourne, Southeast Negotiation Network, Georgia Institute of Technology, Atlanta, GA (404) 853–9846.

Dated: February 25, 1993.

Deborah S. Dalton,

Designated Federal Official, Office of Regulatory Management and Evaluation, Office of Policy, Planning and Evaluation.

[FR Doc. 93–4778 Filed 3–1–93; 8:45 am]

BILLING CODE 6565–50–P

[FRL–4600–2]

Revision of New York State's National Pollutant Discharge Elimination System Program To Issue General Permits

AGENCY: Environmental Protection Agency.

ACTION: Notice of Approval of the National Pollutant Discharge Elimination System General Permits Program of New York State.

SUMMARY: On October 15, 1992, the Regional Administrator of the Environmental Protection Agency Region II approved New York State's National Pollutant Discharge Elimination System (NPDES) General Permits Program. This action authorizes New York State to issue general permits in lieu of individual NPDES permits.

FOR FURTHER INFORMATION CONTACT: Anne K. Reynolds, Water Permits and Compliance Branch, U.S. EPA Region II, 26 Federal Plaza, New York, New York 10278, phone 212–264–2911.

SUPPLEMENTARY INFORMATION:

I. Background

EPA regulations at 40 CFR 122.28 provide for the issuance of general permits to regulate discharges of wastewater that result from substantially similar operations, are of the same type wastes, require the same effluent limitations or operating conditions, require similar monitoring, and are more appropriately controlled under a general permit than an individual permit. EPA authorized New York State to administer the NPDES program on October 28, 1975. Their program, as previously approved, did not include provisions for the issuance of general permits. There are several categories of discharges that could be appropriately and efficiently regulated by general permits, so the New York State Department of Environmental Conservation (NYSDEC) requested revision of their NPDES program to include general permitting.

New York State law at ECL §§ 70–0117(6) and 70–0117(7) authorizes NYSDEC to issue general permits under the State Pollutant Discharge Elimination System (SPDES) Program for the discharge of ballast from vessels and any other category of point sources that: (1) Are within a stated geographical area; (2) include the same or substantially similar type of operations; (3) discharge the same types of pollutants; (4) require the same effluent limitations or operation conditions; (5) require the same or similar monitoring; and (6) will result in minimal adverse cumulative impacts. Pursuant to ECL §§ 70–0117(6)(b) and (7)(b), general permits can be issued for the following categories of discharges only after the NYSDEC makes a specific determination that such discharges are more appropriately controlled under a general permit than under an individual permit: (1) Ballast discharges; (2) separate storm sewer or storm water conveyance systems; (3) less than ten thousand gallons per day of sewage effluent without the admixture of industrial waste or other wastes; and (4) thermal discharges of less than one million gallons per day.

Each general permit will be subject to EPA review and approval as provided by 40 CFR 123.44. Public notice and the opportunity to request a hearing is also provided for each general permit.

II. Discussion

On September 17, 1992 the State of New York submitted a program description for New York's SPDES General Permits Program and an Amendment to the New York State Department of Environmental Protection ("DEC")—United States Environmental Protection Agency ("EPA") NPDES Memorandum of Agreement ("MOA") relating to general permits. The Amendment was signed October 15, 1992. In addition, New York submitted an Attorney General's Statement dated September 15, 1992 certifying, with appropriate citation of the statutes and regulations, that the State has adequate legal authority to administer the general permits program as required by 40 CFR 123.23(c). Based on New York's description and upon its experience in administering an approved NPDES program, EPA has concluded that the State will have the necessary procedures and resources to administer the general permits program.

Under 40 CFR 123.62, NPDES program revisions are either substantial (requiring publication of proposed program approval in the **Federal Register** for public comment) or non-substantial (where approval may be granted by letter from EPA to the state). EPA has determined that New York's assumption of general permit authority

is a non-substantial revision of its NPDES program. EPA has generally viewed approval of such authority as non-substantial because it does not alter the substantive obligations of any discharger under the State program, but merely simplifies the procedures by which permits are issued to a number of point sources.

Moreover, under the approved State program, the State retains authority to issue individual permits where appropriate, and any person may request the State to issue an individual permit for a discharge eligible for general permit coverage.

III. Federal Register Notice of Approval of State NPDES Program or Modifications

Today's **Federal Register** notice announces the approval of New York's authority to issue general permits. The following table provides the public with an up-to-date list of the status of NPDES permitting authority throughout the country.

IV. Review under Executive Order 12291 and the Regulatory Flexibility Act

The Office of Management and Budget has exempted this rule from the review requirements of Executive Order 12291 pursuant to Section 8(b) of that Order.

Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. Pursuant to section 605(d) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), I certify that this State General Permits Program will not have a significant impact on a substantial number of small entities.

Approval of New York's NPDES General Permits Program established no new substantive requirements nor does it alter the regulatory control over any industrial category. Approval of the New York State General Permits Program merely provides a simplified administrative process.

Dated: February 3, 1993.

William J. Muszynski,

Acting Regional Administrator.

STATE NPDES PROGRAM STATUS

[10/27/92]

	Approved State NPDES permit program	Approved to regulate Federal facilities	Approved State pretreatment program	Approved general permits program
Alabama	10/19/79	10/19/79	10/19/79	06/26/91
Arkansas	11/01/86	11/01/86	11/01/86	11/01/86
California	05/14/73	05/05/78	09/22/89	09/22/89
Colorado	03/27/75	.....	.....	03/04/83
Connecticut	09/26/73	01/09/89	06/03/81	03/10/92
Delaware	04/01/74	.....	.....	10/23/92
Georgia	06/28/74	12/08/80	03/12/81	01/28/91
Hawaii	11/28/74	06/01/79	08/12/83	09/30/91
Illinois	10/23/77	09/20/79	.....	01/04/84
Indiana	01/01/75	12/09/78	.....	04/02/91
Iowa	08/10/78	08/10/78	06/03/81	08/12/92
Kansas	06/28/74	08/28/85	.....	.....
Kentucky	09/30/83	09/30/83	09/30/83	09/30/83
Maryland	09/05/74	11/10/87	09/30/85	09/30/91
Michigan	10/17/73	12/09/78	06/07/83	.....
Minnesota	06/30/74	12/09/78	07/16/79	12/15/87
Mississippi	05/01/74	01/28/83	05/13/82	09/27/91
Missouri	10/30/74	06/26/79	06/03/81	12/12/85
Montana	06/10/74	06/23/81	.....	04/29/83
Nebraska	06/12/74	11/02/79	09/07/84	07/20/89
Nevada	09/19/75	08/31/78	.....	07/27/92
New Jersey	04/13/82	04/13/82	04/13/82	04/13/82
New York	10/28/75	06/13/80	.....	10/15/92
North Carolina	10/19/75	09/28/84	06/14/82	09/06/91
North Dakota	06/13/75	01/22/90	.....	01/22/90
Ohio	03/11/74	01/28/83	07/27/83	08/17/92
Oregon	09/26/73	03/02/79	03/12/81	02/23/82
Pennsylvania	06/30/78	06/30/78	.....	08/02/91
Rhode Island	09/17/84	09/17/84	09/17/84	09/17/84
South Carolina	06/10/75	09/26/80	04/09/82	09/03/92
Tennessee	12/28/77	09/30/86	08/10/83	04/18/91
Utah	07/07/87	07/07/87	07/07/87	07/07/87
Vermont	03/11/74	.....	03/16/82	.....
Virgin Islands	06/30/76	.....	.....	.....
Virginia	03/31/75	02/09/82	04/14/89	05/20/91
Washington	11/14/73	.....	09/30/86	09/26/89
West Virginia	05/10/82	05/10/82	05/10/82	05/10/82
Wisconsin	02/04/74	11/26/79	12/24/80	12/19/86
Wyoming	01/30/75	05/18/81	.....	09/24/91
Totals	39	34	27	35

Number of Fully Authorized Programs (Federal Facilities, Pretreatment, General Permits)=24

[FR Doc. 93–4777 Filed 3–1–93; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

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. Spectrum Broadcasting Co., Bowdon, GA.	BPH–911031MC	93–26
B. Steven L. Gradick, Bowdon, GA.	BPH–911031MD	.....
C. Jeffrey P. Davis, Bowdon, GA.	BPH–911031ME	.....
D. Terry C. Jenks, Bowdon, GA.	BPH–911031MF	.....

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.

Issue heading	Applicants
1. Environmental Impact	A, B
2. Comparative	A, B, C, D
3. Ultimate	A, B, C, D

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., suite 140, Washington, DC 20037 (telephone 202–857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 93–4725 Filed 3–1–93; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–979–DR]

California; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California, (FEMA–979–DR), dated February 3, and related determinations.

EFFECTIVE DATE: February 22, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of California dated February 3, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 3, 1993:

The counties of Alpine and Los Angeles for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–4741 Filed 3–1–93; 8:45 am]
BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Port of Galveston et al.

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, 800 North Capitol Street, NW., 9th Floor. 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.: 224–010889–002.

Title: Port of Galveston/Container Terminal of Galveston, Inc. Operating Agreement.

Parties: Board of Trustees of the Galveston Wharves; Container Terminal of Galveston, Inc.

Synopsis: This modification clarifies the insurance requirements of section 7.2(e) of the Operating Agreement which pertains to container cranes and spreaders.

Agreement No.: 224–200743.

Title: Kodiak/Sea-Land Terminal Agreement.

Parties: City of Kodiak ("City"); Sea-Land Service, Inc. ("Sea-Land").

Synopsis: The Agreement gives Sea-Land preferential berthing rights at the City's Terminal III which also includes use of 4.46 acres of land, a crane and dock space.

Agreement No.: 203–011402.

Title: Western Mediterranean VSA/Maersk Space Charter Agreement.

Parties:

A. P. Moller-Maersk Line ("Maersk")
Sea-Land Service, Inc., The VAS Party
P&O Containers Limited, The VSA Party
Nedlloyd Lijnen B.V., The VSA Party

Synopsis: The proposed Agreement permits Maersk to charter space from the VSA Party in the trade between ports in the United States in the Portland, Maine/Savannah, Georgia range and ports on the West Coast of Italy and Mediterranean ports in France and Spain. The parties may also discuss and agree upon any rate or service items. Adherence to any agreement reached is strictly voluntary.

Agreement No.: 203–011403.

Title: U.S./Arabian Gulf Agreement.

Parties: A. P. Moller-Maersk Line ("Maersk"); P&O Containers Limited; Sea-Land Service, Inc.

Synopsis: The proposed Agreement permits the parties to charter vessels and space to each other, and to rationalize sailings, schedules and itineraries in the trade between ports on the United States Atlantic and Gulf Coasts and U.S. points via such ports and ports on the Red Sea Coast of Saudi Arabia, the Arabian Gulf, and the Goa/Karachi range of the Indian Sub-Continent West Coast and inland points via such ports. It also permits the withdrawal of vessels or vessel capacity in the trade. The parties may discuss and agree upon any rate or service items. Adherence to any agreement reached is strictly voluntary.

By Order of the Federal Maritime Commission.

Dated: February 24, 1993.
Joseph C. Polking,
Secretary.
[FR Doc. 93-4709 Filed 3-1-93; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Banco Santander, S.A., 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 March 26, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Banco Santander, S.A., Santander, Spain; to acquire 100 percent of the voting shares of Northeast Bancorp, Inc., New Haven, Connecticut, and thereby indirectly acquire Union Trust Company, Stamford, Connecticut.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Hometown Bancshares, Inc., Middlebourne, West Virginia; to acquire 100 percent of the voting shares of The First National Bank of Powhatan Point, Powhatan Point, Ohio.

C. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Nashville Holding Company, Nashville, Georgia; to acquire at least 51.42 percent of the voting shares of Citizens Bank & Trust, Evans, Georgia.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Rockhold BanCorp., Platte City, Missouri; to become a bank holding company by acquiring at least 62 percent of the voting shares of Bank of Kirksville, Kirksville, Missouri.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. The Donley County State Bank Holding Company, Clarendon, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of The Donley County State Bank, Clarendon, Texas.

Board of Governors of the Federal Reserve System, February 24, 1993.
William W. Wiles,
Secretary of the Board.
[FR Doc. 93-4728 Filed 3-1-93; 8:45 am]
BILLING CODE 6210-01-F

George W. Krumme, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 22, 1993.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. George W. Krumme, Tulsa, Oklahoma; to acquire 44 percent, and Robert B. Krumme, Tulsa, Oklahoma, to acquire 41 percent of the voting shares of Sooner Southwest Bancshares, Inc., Bristow, Oklahoma, and thereby indirectly acquire Community Bank, Bristow, Oklahoma, and Security First National Bank, Hugo, Oklahoma.

2. Roy Harlan Krumme, Tulsa, Oklahoma; to acquire 97 percent of the voting shares of Anadarko Bancshares, Inc., Bristow, Oklahoma, and thereby indirectly acquire Anadarko Bank and Trust Company, Anadarko, Oklahoma.

Board of Governors of the Federal Reserve System, February 24, 1993.
William W. Wiles,
Secretary of the Board.
[FR Doc. 93-4729 Filed 3-1-93; 8:45 am]
BILLING CODE 6210-01-F

Alice Barbara Penn, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 22, 1993.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Alice Barbara Penn, Ashland, Wisconsin, and Theodore John Penn, Green Bay, Wisconsin; to acquire an additional 2.58 percent (totalling 27.21 percent together) of the voting shares of Drummond Bancshares, Inc., Drummond, Wisconsin, and thereby indirectly acquire State Bank of Drummond, Drummond, Wisconsin.

Board of Governors of the Federal Reserve System, February 23, 1993.
William W. Wiles,
Secretary of the Board.
[FR Doc. 93-4732 Filed 3-1-93; 8:45 am]
BILLING CODE 6210-01-F

Republic Bancorp, Inc., 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 March 25, 1993.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Republic Bancorp, Inc., Owosso, Michigan; to acquire Horizon Savings Bank, Beachwood, Ohio, and thereby engage in operating a thrift, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Midland Capital Co., Oklahoma City, Oklahoma; to acquire Near Northwest Community Development Corp. d/b/a Near Northwest CDC, Oklahoma City, Oklahoma, and thereby engage in community development activities, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 23, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-4731 Filed 3-1-93; 8:45 am]

BILLING CODE 6210-01-F

T R Financial Corp., 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 March 25, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. T R Financial Corp., Garden City, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Roosevelt Savings Bank, Garden City, New York.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. DeWitt Bancorp, Inc., DeWitt, Iowa; to acquire 50 percent of the voting shares of River Valley Bancorp, Inc., Davenport, Iowa, and thereby indirectly acquire Valley State Bank, Eldridge, Iowa, a *de novo* bank. In connection with this application, River Valley Bancorp, Inc. has applied to become a bank holding company by acquiring 100 percent of the voting shares of Valley State Bank.

2. First Financial Corporation, Terre Haute, Indiana; to merge with Parke Bancorp, Rockville, Indiana, and thereby indirectly acquire The Parke State Bank, Rockville, Indiana.

3. First Neighborhood Bancshares, Inc., Toledo, Illinois; to acquire 100 percent of the voting shares of Newman Bancshares, Inc., Newman, Illinois, and thereby indirectly acquire First State Bank of Newman, Newman, Illinois.

4. Lenawee Bancorp, Inc., Adrian, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Lenawee, Adrian, Michigan.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Davis Bancorporation, Inc., Davis, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of First Davis Bancorporation, Inc., Davis, Oklahoma, and thereby indirectly acquire The First National Bank of Davis, Davis, Oklahoma.

Board of Governors of the Federal Reserve System, February 23, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-4733 Filed 3-1-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions, and Delegations of Authority

AGENCY: Office of the Secretary, HHS Office of Inspector General.

ACTION: Notice.

SUMMARY: This notice amends Part A (Office of the Secretary) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services to change the name "Human, Family, and Departmental Services Audits" to "Administrations of Children, Family, and Aging Audits" and to add organizational changes to Accounting and Financial Management Audits.

EFFECTIVE DATE: This notice is effective on March 2, 1993.

FOR FURTHER INFORMATION CONTACT: Marlene Watkins (202)619–3172.

SUPPLEMENTARY INFORMATION: Chapter AF is amended as follows:

1. Under the headings *Sections AFH.10 E Office of Audit Services Organization, and AFH.20 E, Office of Audit Services Functions*—Human, Family, and Departmental Services Audits, the name of the office should be changed from "Human, Family, and Departmental Services Audits" to "Administrations of Children, Family, and Aging Audits."

2. Under the heading *Section AFH.20 G. Office of Audit Services—Functions*—Accounting and Financial Management Audits, add the following:

Responsible for carrying out the plan to improve organizationwide and grant audits performed by Certified Public Accountants, State Auditors and other non-Federal auditors so that Federal officials can rely upon the audits to provide an independent assessment of the adequacy of the entity's internal controls and compliance with laws and regulations.

Dated: February 19, 1993.

Bryan B. Mitchell,

Principal Deputy Inspector General, Department of Health and Human Services.

[FR Doc. 93–4691 Filed 3–1–93; 8:45 am]

BILLING CODE 4150–04–M

Administration on Aging

Statement of Organization, Functions and Delegations of Authority

This Notice amends part B of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services, Administration on Aging ("AoA") as follows: Chapter B, Administration on Aging, as last amended at 57 FR 61433 on December 24, 1992. The Secretary is changing the position title "Commissioner on Aging" to "Assistant Secretary for Aging." The Assistant Secretary for Aging will report directly to the Secretary. This organizational change will delete all references to the "Commissioner on Aging" and replace them with "Assistant Secretary for Aging." This change is made under the authority of the Secretary pursuant to 5 U.S.C. 301 and section 6 of Reorganization Plan No. 1 of 1953, 18 FR 2053, Apr. 11, 1953, 67 Stat. 631. The specific changes are as follows:

1. Chapter B.10 Organization. Delete "B.10 Organization. The Administration on Aging is headed by the Commissioner on Aging and consists of: Office of the Commissioner."

Replace the deleted material with: B.10 Organization. The Administration on Aging is headed by the Assistant Secretary for Aging and consists of: Office of the Assistant Secretary for Aging.

2. Chapter B.20 Functions. A. Office of the Commissioner. Delete in its entirety and replace with: B.20 Functions.

A. Office of the Assistant Secretary (BA)

The Office of the Assistant Secretary serves as the focal point for Older Americans Act (OAA) programs through the development, coordination and administration of those programs nationwide. Serves as the effective and visible advocate within the Federal government to assure the rights and entitlements of the elderly. Conducts active public education of officials, citizens, and the aged to assure broad understanding of the needs and capabilities of the aged.

Sets national policies, establishes national priorities, assures policy consistency, and directs plans and programs conducted by the Administration on Aging (AoA). Advises the Secretary, DHHS agencies, and other Federal departments and agencies on the characteristics, circumstances, and needs of older people and on policies, plans and programs designed to promote their welfare. The Deputy Assistant Secretary is the Assistant Secretary's primary associate in carrying out the mission of the agency.

Serves as an advocate for older people with voluntary and private organizations. Collaborates with other Federal agencies to assist older persons by the development of interagency agreements which are then implemented by the appropriate technical divisions. Coordinates joint interests and initiation of projects with other Federal agencies and other levels of government. Provides close liaison with the Federal Council on Aging, and other Federal committees focused on the aging. Works with national aging organizations, professional societies, universities, and academic organizations to identify mutual interests and plan voluntary and funded approaches. Ensures affirmative action throughout the Aging Network.

Stimulates and coordinates AoA international activities in research, training, and technical assistance; and coordinates AoA international activities with Departmental units concerned with international affairs. Cooperates with multilateral international agencies, such as the United Nations, in planning and participating in international conferences and meetings. Arranges for visits of personnel interested in aging from other nations and assists U.S. personnel in arranging visits to other countries.

Dated: February 23, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–4690 Filed 3–1–93; 8:45 am]

BILLING CODE 4150–04–M

Agency for Toxic Substances and Disease Registry

Chemical Sensitivity and Low Level Chemical Exposure; Meeting

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the following meeting.

Name: Chemical Sensitivity and Low Level Chemical Exposure.

Time and Dates: 8:30 a.m.–5 p.m., March 16, 1993. 8:30 a.m.–12 noon, March 17, 1993.

Place: Historic Inns of Annapolis, 16 Church Circle, Annapolis, Maryland 21401 (1–800–847–8882).

Status: Open to the public, limited only by space available.

Purpose: To obtain individual guidance and suggestions from a panel of experts and the public on subjects suitable for focused workshops to advance knowledge of chemical sensitivity and low level chemical exposure.

Contact Person for Additional Information: James K. Carpenter, ATSDR, 1600 Clifton Road, NE., Mailstop E33, Atlanta, Georgia 30333, telephone 404/639–6204.

Dated: February 23, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination.

[FR Doc. 93–4716 Filed 3–1–93; 8:45 am]

BILLING CODE 4160–70–M

Centers for Disease Control and Prevention

Study of Violent Crime in Virginia Convenience Stores; Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: A study of Violent Crime in Virginia Convenience Stores.

Time and Date: 1:30 p.m.–4 p.m., March 29, 1993.

Place: Prete Building, Large Conference Room, NIOSH, CDC, 3040 University Avenue, Morgantown, West Virginia 26505.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of this meeting is to receive comments on the NIOSH

project entitled, "Protocol for a case-control study of the effects of environmental designs to deter violent crime in Virginia convenience stores." Individual comments will be solicited from invited participants and attendees. Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited.

Contact Person for Additional Information: Harlan Amandus, Ph.D., NIOSH, CDC, 3040 University Avenue, Mailstop P1133, Morgantown, West Virginia 26505, telephone 304/284–5719.

Dated: February 24, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–4717 Filed 3–1–93; 8:45 am]

BILLING CODE 4160–19–M

Food and Drug Administration

[Docket No. 93N–0078]

Lyphomed, Division of Fujisawa USA, Inc.; Withdrawal of Approval of Three Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of three abbreviated new drug applications (ANDA's) held by Lyphomed, Division of Fujisawa USA, Inc., 2045 North Cornell Ave., Melrose Park, IL 60160–1002 (Lyphomed). FDA is withdrawing approval of these applications because of questions raised about the reliability of the data and information submitted to FDA in support of the applications. Lyphomed has waived its opportunity for hearing.

EFFECTIVE DATE: March 2, 1993.

FOR FURTHER INFORMATION CONTACT: Jean M. Olson, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8041.

SUPPLEMENTARY INFORMATION: Recently, FDA became aware of discrepancies concerning the data used to support approval of the following ANDA's held by Lyphomed:

ANDA 71–519, Diazoxide Injection, 15 milligrams per milliliter (mg)/(mL), 20 mL vial;

ANDA 87–250, Aminophylline Injection, 25 mg/mL, 10 and 20 mL vials; and

ANDA 88–909, Bacteriostatic Sodium Chloride Injection, 0.9%, 10 and 30 mL vials.

Lyphomed has identified discrepancies in data submitted to obtain approval of the applications listed above which have raised questions about the reliability of the data. Subsequently, in letters dated October 22, 1992, Lyphomed requested withdrawal of these ANDA's.

Therefore, under under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the ANDA's listed above, and all amendments and supplements thereto, is hereby withdrawn, effective March 2, 1993. Distribution of drug products in interstate commerce without an approved application is unlawful.

Dated: February 18, 1993.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 93–4739 Filed 3–1–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 84N–0102]

Cumulative List of Orphan-Drug and Biological Designations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a cumulative list of designated orphan drugs and biologics as of December 31, 1992. FDA has announced the availability of previous lists, which are brought up-to-date monthly, identifying the drugs and biologicals granted orphan-drug designation pursuant to section 526 of the Federal Food, Drug, and Cosmetic Act (the act).

ADDRESSES: Copies of the list of current orphan-drug designations and of any future lists are or will be available from the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and the Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4718.

FOR FURTHER INFORMATION CONTACT: Peter Vaccari, Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4718.

SUPPLEMENTARY INFORMATION: FDA's Office of Orphan Products Development reviews and takes final action on applications submitted by sponsors seeking orphan-drug designation under section 526 of the act (21 U.S.C. 360bb). In accordance with this section of the act, which requires public notification of designations, FDA maintains a list of designated orphan drugs and biologicals. This list is made current on a monthly basis and is available upon request from the Office of Orphan Products Development (contact identified above). At the end of each calendar year, the agency publishes an up-to-date cumulative list of designated orphan drugs and biologicals, including the names of designated compounds, the specific disease or condition for which the compounds are designated, and the sponsors' names and addresses. The cumulative list of compounds receiving orphan-drug designation through 1988 was published in the **Federal Register** of April 21, 1989 (54 FR 16294). This list is available upon request from the Dockets Management Branch (address above). Those requesting a copy should specify the docket number found in brackets in the heading of this document.

The list that is the subject of this notice consists of designated orphan drugs and biologicals through December 31, 1992, and, therefore, brings the February 10, 1992 (57 FR 4883) publication up-to-date.

The orphan-drug designation of a drug or biological applies only to the sponsor who requested the designation. Each sponsor interested in developing an orphan drug or biological must apply for orphan-drug designation in order to obtain exclusive marketing rights. Any request for designation must be received by FDA before the submission of a marketing application for the proposed indication for which designation is requested. (See 53 FR 47577, November 23, 1988.) Copies of the regulations (see 57 FR 62076, December 29, 1992) for use in preparing an application for orphan-drug designation may be obtained from Orphan Products Development (address above).

The names used in the cumulative list for the drug and biological products that have not been approved or licensed for marketing may not be the established or proper names approved by FDA for these products if they are eventually approved or licensed for marketing. Because these products are investigational, some may not have been reviewed for purposes of assigning the most appropriate established proper name.

Dated: February 23, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–4737 Filed 3–1–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93N–0074]

Parke-Davis, A Division of Warner-Lambert Co.; Withdrawal of Approval of New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of new drug application (NDA) 02–245 for Proloid Tablets and NDA 16–680 for Euthroid Tablets held by Parke-Davis, a division of Warner-Lambert Co., 2800 Plymouth Rd., P.O. Box 1047, Ann Arbor, MI 48106–1047 (Warner-Lambert). After discovery of discrepancies between records kept by Warner-Lambert and records submitted to FDA concerning these drug products, Warner-Lambert requested that FDA withdraw approval of the applications.

EFFECTIVE DATE: March 2, 1993.Q02

FOR FURTHER INFORMATION CONTACT: Jean M. Olson, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8041.

SUPPLEMENTARY INFORMATION: Recently, FDA discovered discrepancies between records retained by Warner-Lambert and records submitted to FDA concerning NDA 02–245 for Proloid Tablets and NDA 16–680 for Euthroid Tablets. Subsequently, Warner-Lambert requested that FDA withdraw approval of the applications and waived its opportunity for a hearing.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of NDA 02–245 for Proloid Tablets and NDA 16–680 for Euthroid Tablets, and all supplements and amendments thereto, is withdrawn, effective March 2, 1993.

Dated: February 16, 1993.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 93–4738 Filed 3–1–93; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[HSQ–198–N]

RIN: 0938–AG09

Medicare Program; Peer Review Organizations: New PRO Contracts for All States and Territories and the District of Columbia

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

ACTION: Notice.

SUMMARY: This notice gives a general description of Utilization and Quality Control Peer Review Organization (PRO) contract requirements and significant changes in the PRO program. It outlines new requirements for the review activities of PROs for contracts entered into beginning April, 1993.

This notice fulfills the requirements of section 1153(h)(1) of the Social Security Act. That section requires publication of any new policy or procedure adopted by the Secretary that affects substantially the performance of PRO contract obligations at least 30 days before the date the policy or procedure is to be used.

DATES: *Effective dates:* For contracts entered into for the District of Columbia and the States and Territories listed, the effective dates of this notice are as follows:

Apr. 1, 1993 Arkansas, Colorado, Delaware, Illinois, Kansas, Mississippi, New Hampshire, Nevada, New York, Ohio, Oregon, Pennsylvania, Tennessee, Utah, and West Virginia.

July 1, 1993 Alaska, Arizona, California, District of Columbia, Florida, Georgia, Idaho, Indiana, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, New Jersey, New Mexico, Rhode Island, South Dakota, Vermont, and Washington.

Oct. 1, 1993 Alabama, Connecticut, Guam/American Samoa/Hawaii, Iowa, Massachusetts, Missouri, Montana, Nebraska, North Carolina, North Dakota, Oklahoma, Puerto Rico, South Carolina, Texas, Virginia, Virgin Islands, Wisconsin, and Wyoming.

Comment date: Comments on information collection requirements found in section VI. will be considered if we receive them at the appropriate addresses, as provided below, no later than 5 p.m. on May 3, 1993.

ADDRESSES: Mail an original and three copies of comments on information collection requirements to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ–198–N, P.O. Box 26676, Baltimore, MD 21207.

A copy should also be sent to: Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Allison Herron Eydt, Desk Officer, Room 3001, New Executive office Building, Washington, DC 20503.

If you prefer, you may deliver your written comments to HCFA to one of the following addresses: Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HSQ–198–N. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

Because of the large number of items of correspondence we normally receive on notices, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble, and, if we revise the general requirements of the contracts discussed in this notice and publish those revisions in the **Federal Register** in a subsequent notice, we will respond to the comments in the preamble to that notice.

FOR FURTHER INFORMATION CONTACT: Sandra Kappert, (410) 966–6890.

SUPPLEMENTARY INFORMATION:

I. Background

The Peer Review Improvement Act of 1982 (Title I, Subtitle C of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248) established the Utilization and Quality Control Peer Review Organization (PRO) program. Section 1153 of the Social Security Act (the Act) requires that the Secretary enter into contracts, which may be renewable on a triennial basis, with private peer review organizations for the review of services for which payment may be made in whole or in part by the Medicare program. The PROs are physician-sponsored or physician-access organizations under contract to the Health Care Financing Administration. The purpose of the PRO program is to ensure that Medicare beneficiaries receive care that is medically necessary, reasonable, and provided in the appropriate setting and

that meets professionally accepted standards of quality; in addition, PROs ensure that Medicare enrollees in Medicare-contracting coordinated care plans receive care that meets accepted standards of quality by addressing appropriateness of setting, underutilization of services, accessibility to services, and potential for premature discharge. There are 53 PROs under contract to HCFA.

There are two basic types of providers for which PROs have contracts to perform review: (1) Those that we pay on some form of a fee-for-service basis and (2) those that we pay on a capitation basis, such as health maintenance organizations and competitive medical plans (HMOs and CMPs). Beneficiaries who receive services through HMOs and CMPs are referred to as Medicare enrollees.

The PROs' review obligations are specified in a document known as the Scope of Work, which defines duties and Medicare review functions performed by the PRO. Such duties and functions include the implementation and operation of a review system to ensure the quality of services for which payment may be made, in whole or in part, under title XVIII of the Act and to eliminate unreasonable, unnecessary and inappropriate care provided to Medicare beneficiaries. In reviewing the quality of care in HMOs/CMPs, PROs are to address the underutilization of services and problems with access to care for Medicare enrollees. All PROs are currently operating under the Third Scope of Work as modified on September 4, 1991 (56 FR 43790), or June 16, 1992 (57 FR 26871).

The Scope of Work as set forth in this notice will be implemented during 1993 by all PROs when new contracts are awarded or existing contracts are modified. Specific dates when new contracts will be awarded or existing contracts will be modified appear in the DATES section of this notice.

PROs must meet eligibility requirements as specified in section 1153 of the Act and Federal regulations. A PRO must be a physician-sponsored organization composed of a substantial number (at least ten percent) of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area and who are representative of the physicians practicing in the review area. Alternatively, the PRO may be a physician-access organization that has available to it, by arrangement or otherwise, the services of a sufficient number of licensed doctors of medicine or osteopathy practicing medicine or surgery in the review area to assure adequate peer review of the services provided by the various medical specialties and subspecialties. A PRO must not be a health care facility in the review area, an association of health care facilities, or a health care facility affiliate in the review area. Payor organizations in the designated PRO review area may be considered if no eligible nonpayor organization is available for the contract.

II. Health Care Quality Improvement Initiative

The PRO program was enacted to ensure that services provided to Medicare beneficiaries and reimbursed through title XVIII are:

(a) Reasonable and medically necessary and otherwise not in violation of section 1862 of the Social Security Act;

(b) Of a quality which meets professionally recognized standards of health care; and

(c) Provided in the most effective and economic setting.

The Congress left the precise mechanisms to be used in review to the Secretary, and the scope, focus, and nature of reviews has evolved over time. In recent years, research both on the current PRO operations and in other areas of quality assurance suggests that greater improvements in quality of care may be achieved through improvements to the total system rather than through retrospective individual case review.

With the Scope of Work effective beginning April 1, 1993, we are changing our approach to quality assurance for Medicare beneficiaries and enrollees. The new approach is called the Health Care Quality Improvement Initiative (HCQII). The goal of HCQII is to change the focus of review from dealing with individual clinical errors to helping providers improve the mainstream of care for Medicare beneficiaries and enrollees.

Four important forces drive the HCQII.

- Variations research: Research has revealed a substantial variation in patterns and outcomes of care from hospital to hospital, and geographical area to area. Accumulated evidence indicates that variations in risk-adjusted outcomes reflect variations in appropriateness and quality of care.
- Studies of peer review: A growing body of research is raising questions about the reliability of physician review of hospital medical records to determine quality of care.
- New models for quality improvement: New approaches to quality improvement that have entered the health care industry from other industries suggest that substandard care generally results from poor process design, inadequate information, and poor training.
- Practice guidelines development: The Federal government and professional groups have started a process to develop and publish clinical practice guidelines, which provide potential blueprints for quality improvement efforts in the clinical areas they address.

In response to these forces, HCFA has established a comprehensive program in which PROs will use a data-driven approach to monitoring care and outcomes and a cooperative approach for working with the health care community to improve care. While PROs will continue individual case review, including types of reviews required by statute and regulation, the major changes in the direction of PRO activities with the implementation of HCQII include the following:

- PROs will use clinical and other data bases to examine patterns of care and outcomes;
- PROs will focus primarily on differences that occur regularly between the observed and the achievable in both care and outcomes, rather than on isolated cases;
- HCFA and the PROs will identify variations that are of concern or interest by monitoring patterns of care and outcomes. Providers will be encouraged to conduct more detailed studies of the sources of outstanding performance or of problems, and how and why they occurred; and
- PROs will work cooperatively with the health care community to improve the processes and outcomes of care for Medicare beneficiaries and enrollees.

The following sources may be consulted for additional information and background concerning HCQII:

Jencks, Stephen F., MD and Wilensky, Gail R., PhD; "The Health Care Quality Improvement Initiative, A New Approach to Quality Assurance in Medicare"; Journal of the American Medical Association; August 19, 1992; 900–903.

Lohr, Kathleen N. (ed.), "Medicare: A Strategy for Quality Assurance", Institute of Medicine Report, February, 1990.

III. New PRO Contracts (Fee-for-Service)

The Scope of Work for review of services furnished on a fee-for-service basis is the result of extensive analysis of the review requirements, results, and experience achieved under previous contracts. During the formulation of this Scope of Work, HCFA regularly

consulted with an advisory group of PRO executives. Equally important was the input HCFA solicited from a number of interested groups, including the Agency for Health Care Policy and Research, the American Medical Association, the American Hospital Association, the Federation of American Health Systems, the American Association of Retired Persons, the National Committee to Preserve Social Security and Medicare, and the American Medical Peer Review Association. Additionally, we considered the input received from PROs and HCFA regional offices regarding their experiences in working with providers and in evaluating and changing patterns of care. This collaborative effort produced a Scope of Work that reflects the HCQII, creates a more effective review system, and makes more efficient use of PRO resources.

The detailed requirements of the new contracts may be found in the next Scope of Work. An individual or organization interested in obtaining copies of the next Scope of Work, which will be incorporated into all the new PRO or modified contracts, should address requests to: Office of Budget and Administration, Division of Health Standards Contracts, Attn: Brian Hebbel, Contracting Officer, room G–M–1, East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

This Scope of Work requires some changes in the types or amounts of PRO medical review activities, and, accordingly, the PRO may need to make adjustments in staff functions or in the types or quantities of staff.

A. Implementation of the Health Care Quality Improvement Initiative

The role of the PROs in the HCQII is to work with provider administrative and medical staffs on a variety of HCFA-initiated national projects and PRO-initiated local projects. The essence of each project is to combine the statistical interpretation of Medicare data (for example, pattern analysis) with feedback to the medical community to improve care and outcomes measurably.

Two national cooperative projects will be implemented at the outset of the new PRO contracts. One of these projects is the Medicare Hospital Information Project (MHIP), which involves the PROs in HCFA's periodic release of Medicare hospital data and the discussion/explanation of these data with the medical community in their States.

The other national cooperative project to be implemented under the next Scope of Work is the Cooperative Cardiovascular Project (CCP). The CCP is a collaborative effort involving HCFA, PROs, physician and provider organizations, and other groups interested in improving care for Medicare beneficiaries hospitalized for acute myocardial infarction, coronary artery bypass graft surgery or percutaneous transluminal coronary angioplasty. Under the CCP, PROs will use data supplied by HCFA to identify patterns of care and patterns of outcomes for the stated cardiovascular conditions and procedures and will feed these data back to hospitals and their medical staffs in order to promote improved care.

Additional national cooperative projects will be developed in cooperation with representatives of PROs, major specialty and provider groups, the American Medical Peer Review Association, the Agency for Health Care Policy and Research, HCFA central and regional office staff, and other interested parties. Each national cooperative project will have a particular clinical focus. Over the course of the Scope of Work, HCFA will phase in new projects. The PROs will also initiate cooperative quality improvement projects for their own areas of interest or concern. (See Section III.E. in this notice.)

A primary source of data for the PROs in the implementation of HCQII will be the Uniform Clinical Data Set (UCDS) in conjunction with HCFA's National Claims History, Medicare Enrollment Database and other administrative data sets. (See Section III.J. for further information about UCDS.) Additionally, HCFA will supply the PROs with instructions to use these data in determining the provider-specific distribution of important variables, as well as specifications for comparative national distributions. The PROs will systematically and regularly analyze these data to identify trends, changes in trends, and variations from national or peer group patterns. Once significant patterns have been identified, the PROs will, through their feedback and cooperative projects, work with provider administrative and medical staffs, as well as with interested expert groups, to improve the processes and outcomes of care provided to, and experienced by, Medicare beneficiaries. The PROs will also use baseline data to monitor progress toward sustained superior ("benchmark") performance. PRO-initiated cooperative projects are discussed in section III.E.

B. Case Review

The PROs will conduct case review for care furnished to a sample of Medicare beneficiaries that HCFA selects. (See Section III.H. for a discussion of sampling.) The PROs will perform retrospective review for quality of care, admission, discharge, invasive procedures, documentation, coverage, diagnostic-related group (DRG) coding validation and, when required, make length of stay, outlier costs and limitation of liability determinations. For cases reviewed as a part of the sample, HCFA regional offices will also continue to monitor hospitals' compliance with the requirement to provide all Medicare beneficiaries with the "An Important Message from Medicare" and with the attestation and acknowledgment (penalty) statement requirements.

Outside of the beneficiary sample, the PROs will continue to review hospital requests for increased DRG payments; hospital-issued notices of noncoverage; beneficiary complaints; and referrals from the fiscal intermediary, the Medicare carrier, and the Office of Inspector General (OIG). The PROs will perform preprocedure review for the elective use of an assistant for cataract surgery for codes designated by HCFA.

C. The Quality Review Process

The quality review process has been modified to reflect the essence of the HCQII requirements. The PROs will work with providers to identify the sources of patterns of quality problems and to correct them. The process relies heavily on communication and feedback between the PRO and the provider or practitioner.

D. Feedback Activities

To improve the quality, utilization, documentation, and reporting of care, the PROs will implement an educational feedback process. The process utilizes information derived from case review, quality and utilization profiling, systematic pattern analysis, and national and PRO-initiated cooperative projects. As a part of feedback activities, PROs will provide information pertaining to patterns of quality concerns to medical and hospital associations and to individual physicians and providers.

The feedback process will be used when a pattern of concerns or interests (for example, practices that generally result in positive outcomes) is identified. (Singular concerns will continue to be addressed through the PRO's established mechanisms for handling single-case problems; for example, concerns about denials and DRG adjustments.)

Under the educational feedback process, the PROs will develop and

implement feedback using information gathered from pattern analysis activities. The PROs will use all of the information available to them through individual case review, focused sampling, profiling, and pattern analysis to determine where the feedback process can be utilized most efficiently and effectively to improve overall performance.

When a pattern of concerns is identified for a physician or provider, the PROs will work with the relevant physician or provider to identify remediable problems that have given rise to these concerns. Systemic problems will receive priority consideration.

In order to furnish the medical community with the data necessary to promote optimal practices, PROs will furnish reports of interest to the medical community in their States on a calendar semi-annual basis. These reports will include concerns/variations in the PRO's analyses of data concerning quality of care, utilization, coding and documentation as well as patterns of utilization and DRG rates. The reports will present the PRO's findings. They are an educational tool that may positively influence the medical practices of those members of the medical community who review the findings.

E. Cooperative Projects

HCFA requires the PRO to devote a portion of its work effort to locally-initiated cooperative projects. When information from the medical community or PRO data indicate that it might be beneficial to implement a particular study, review or analysis, the PRO can develop a cooperative project. Cooperative projects are usually developed when a pattern of interests (for example, practices that consistently result in a positive outcome) or concerns is identified. (Singular concerns will be addressed through the PRO's established mechanisms for handling single-case problems; for example, denials, DRG adjustments.) Cooperative projects may be Statewide or may concentrate on groups of providers or practitioners.

Under the cooperative project process, the PROs will develop and implement cooperative projects using information gathered from pattern analysis activities. The PROs will use all of the information available to them through individual case review, focused sampling, profiling, and pattern analysis to determine where the cooperative project process can be utilized most efficiently and effectively to improve overall performance.

The cooperative projects are initiated in an individual PRO area. They parallel the national cooperative projects and utilize the expertise gained by participation in the national projects. Like the national projects, local quality improvement projects will be selected based on the prevalence of the clinical condition, a solid scientific base, demonstrable variations in care and outcomes, and feasibility of improvement. Also, like the national projects, local projects will follow the cooperative project design (with providers, physicians, beneficiaries and others as appropriate): data collection, analysis, feedback, action planning, implementation, and monitoring. The PRO-initiated projects will be designed to bring about measurable improvement in the quality, appropriateness of delivery, documentation, and/or reporting of patterns and outcomes of care.

F. Focused Review

The PROs will utilize focused review to identify and quantify results derived from all data sources to examine a pattern or concern. The PROs will also examine the reasons for unusually good outcomes or patterns of concerns and will monitor the results of interventions. The results of focused review will become part of the materials utilized by the PROs for feedback and cooperative projects (Sections III.D. and III.E.). The PROs will identify areas for focused review based on analyses of case review results, pattern analysis performed on the analytic files HCFA supplies and systematic quarterly analysis of utilization and DRG data.

G. Outreach Activities

The PROs will be required to increase their outreach activities both to beneficiaries and to the medical communities in the States. We continue to believe that beneficiaries are becoming more sophisticated health care consumers and deserve the opportunity to become informed about PROs and Medicare. Additionally, we consider it critical that physicians and providers become a proactive force in the various new activities of the PRO program. To this end, we are requiring the PROs to make special efforts to familiarize these constituencies with the PRO review and quality improvement processes.

H. Sampling

HCFA has changed its sampling methodology from a facility-specific to a beneficiary-specific selection. Under a facility-specific selection, HCFA studied services provided by an individual provider or practitioner, and thus PRO analysis of services was limited to comparing providers' current performance to past performance. The beneficiary-specific sample allows HCFA to select cases randomly from a national universe of cases, thus allowing us to analyze national trends. Additionally, HCFA will consistently track the services provided to some beneficiaries to gather more data on all the inpatient and outpatient services provided to these Medicare beneficiaries. The PROs and HCFA will use these data to better evaluate total patient care provided to beneficiaries in general.

To maximize the ability of the PROs to achieve the goals of the program, we have devised a sampling methodology that, when combined with data from other sources, will allow the PROs to identify and address both individual cases and patterns of concerns and interests. HCFA will select records for the special projects (such as the CCP) and for almost all case review. The standard sampling for the PRO contract at the national level will be approximately equal to the following:

- Twelve percent of all Medicare inpatient hospital discharges nationally (consisting of two components: those cases used for national HCQII and those requiring individual case review); and
- Five percent of all claims for specified ambulatory surgery.

The actual percentages will vary slightly by PRO depending on the extent to which a PRO focuses on inpatient and outpatient cases.

I. Sanctions/Fraud and Abuse

The PROs are responsible for initiating sanction recommendations in accordance with applicable laws, regulations, PRO Manual issuances, and other HHS instructions. When a PRO, through individual case review or pattern analysis activity, finds that Medicare obligations are not being met by a practitioner or other person, the PRO must initiate the sanction process. The PRO must provide the practitioner or other person, including representatives of the provider, with an opportunity to complete a corrective action plan (CAP), unless the PRO determines, based on the nature of the problem, that a CAP is inappropriate. If, in the judgment of the PRO, the practitioner or other person has violated an obligation(s) and is unable or unwilling to comply with the Medicare obligations violated, the PRO must send to the OIG its recommendation as to the specific sanction to be imposed.

PROs will also review cases for possible sanction actions when requested to do so by the OIG.

J. Uniform Clinical Data Set (UCDS) and Clinical Data Abstraction Centers (CDACs)

Quality assurance approaches focusing on patterns and outcomes of care are data-intensive, and new systems for acquiring and analyzing data are critical to their success. Under HCQII, the clinical data for PRO analysis will primarily be drawn from the UCDS which will provide detailed clinical information on a sample of Medicare inpatient discharges.

On September 4, 1991 (56 FR 43793), we published a notice in the **Federal Register** describing the UCDS. It is a nationally held data base of clinical data gathered through a government-furnished software system developed by HCFA. The UCDS database, when linked with Medicare claims data, provides a means for PROs to assess quality of care as reflected by patterns of use and outcomes after adjusting for the condition of the patient. The UCDS database gives the PROs and HCFA a powerful tool to evaluate quality of care using systematic, objective criteria, rather than individual experience.

The UCDS represents a standardized set of data elements to be captured from acute-care inpatient hospital medical records. Currently, approximately 1,800 UCDS variables have been defined. An average of 250–350 elements are captured for a typical hospital stay.

Six States are currently using the UCDS system for PRO review of a sample of inpatient hospital cases. These States are Alabama, Colorado, Connecticut, Iowa, Utah, and Wisconsin. The UCDS system is in a continuous quality improvement process aimed at improving the reliability of the data, the efficiency of the data entry system, and the effectiveness of the case screening system. The results of the review and experience in these six states are used to improve the UCDS system software. HCFA also works in conjunction with an American Medical Association workgroup and specialty/medical associations to improve the UCDS system. Updates to the software are implemented on a quarterly basis. The UCDS system will also be used to collect the data for the cooperative cardiovascular project in four of the six States (Colorado and Utah are not included) beginning in early 1993.

The UCDS system will be implemented nationally for the cooperative cardiovascular project beginning late 1993. This involves the collection of a subset of UCDS system data elements focusing specifically on those elements needed to support the cardiovascular project. However, the case screening portion of the UCDS system, which is applied to the broad range of clinical care provided in the inpatient setting, will continue to be pilot tested until at least January 1995. The goal is to implement the UCDS system for case screening on a national basis when it is determined that the system is operating efficiently, effectively, and producing reliable data. The current schedule plans for the first decision point for national implementation of the UCDS system for case screening to be made during October 1994. If the UCDS system is determined to be ready for national implementation at that time, phase-in of the UCDS system will begin in January 1995.

When UCDS is implemented, HCFA will coordinate the process, as well as maintain the UCDS repository. The immediate application of UCDS will be to collect data for analysis of treatment patterns and outcomes and to give providers information that will allow them to identify and improve ineffective practices.

Abstraction of clinical data will be performed within the framework of a limited number of contracts specifically focused on UCDS data abstraction. The UCDS information will be compiled by specialized contractors called Clinical Data Abstraction Centers (CDACs), which will abstract information from the hospital medical records using the UDCS direct data entry software. Each PRO will enter into a subcontract with the CDAC for its area for data abstraction services only (at a set labor rate to be determined based on HCFA's contract award). PROs will make payments directly to the CDACs for all data abstraction/entry services. The PRO will pay the CDAC on a monthly basis and HCFA will reimburse the PRO as it would for any other direct costs. A limited number of abstraction-focused contracts will allow HCFA to control the consistency, reliability and timeliness of data abstraction carefully by standardizing the abstraction protocol, putting production standards into place and implementing rigorous quality control procedures.

HCFA expects that the CDACs will begin data abstraction utilizing the UCDS for the CCP in late 1993 through early 1994. CDACs will provide the abstracted data to HCFA. HCFA will provide these data to the PROs along with other analytic data sets.

UCDS data collection and nonphysician screening for a random sample of Medicare acute, short-term general hospital discharges will be phased in starting no earlier than 1995. The CDACs will forward case screening information and associated individual records to the PROs. Ultimately, we anticipate that data will be collected and nonphysician screening will be performed at a sample level of six percent of acute, short-term general hospital discharges—approximately six hundred thousand records each year.

IV. Provisions of the PRO Contracts in Maryland, the Finger Lakes Region of New York, Virgin Islands, Guam, American Samoa, and the Northern Marianas

The case review requirements in Maryland, the Finger Lakes area of New York, the Virgin Islands, Guam, American Samoa, and the Northern Marianas are slightly different than those in most PRO areas because hospitals in these PRO areas are paid under a different methodology than that generally applicable under the Medicare prospective payment system. For example, in Maryland, the PRO performs a length-of-stay review on all cases selected, whereas in most States there is no such routine review.

V. The New PRO Contracts for HMOs and CMPs

In developing the new HMO Scope of Work, HCFA received considerable input from the American Association of Retired Persons, the Group Health Association of America and the American Managed Care and Review Association as well as PROs and HCFA regional offices.

PROs will continue to perform review of the quality of services, both inpatient and outpatient, furnished to Medicare enrollees by HMOs/CMPs with risk-based contracts under section 1876 of the Act. Following are the major areas of change in PRO contracts for review of these HMOs/CMPs:

- There will be a standard "level" of review for all HMOs/CMPs. Under the prior contract, HMOs/CMPs were subject to three levels of review (Limited, Basic and Intensified) depending upon the number or percentage of quality problems identified during PRO review.
- PROs will review a random sample of Medicare enrollees who have used HMO/CMP services. The sample will be derived from HCFA's listing of HMO/CMP enrollees and will reflect HMO/CMP reporting of those enrollees who have used services in the prior 12 month period. The annual number of cases to be reviewed will range from a minimum of 50 cases to a maximum of

300 per HMO/CMP, depending on Medicare enrollment size.

PROs will also review a 10 percent random sample, by HMO/CMP, of deceased enrollees who used services within the 12 months preceding their death. Further, PROs will review all beneficiary complaints regarding quality of care.

- PROs will review 12 months of health care services for the cases selected in the random samples and the sample of deceased enrollees. In the prior contract, PROs reviewed care for varying periods of time, ranging from one day to one year, depending on the reason the case was selected for review.
- HMOs/CMPs will now have 60 days to provide medical records required for review to the PROs. The prior contract allowed 30 days.
- When quality concerns are identified through the PRO review process, the HMO/CMP and the PRO will cooperatively develop an appropriate action plan to correct the concerns. Under the prior contract, the primary follow-up action when problems were identified was an increase in the number of cases reviewed by the PRO.
- PROs will conduct "targeted" review to demonstrate that quality concerns identified through their review activity have been corrected. This review will concentrate on HMO/CMP performance subsequent to problem identification and corrective action. Where appropriate, it will focus on monitoring activities performed under the HMO's/CMP's internal quality assurance plan.

VI. Information Collection Requirements

Provisions of this notice will be implemented by information collection requirements contained in revised PRO quarterly and monthly reporting forms. As required by section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504), these records are subject to approval by the Office of Management and Budget (OMB). These reporting and recordkeeping requirements are not effective until a notice of OMB's approval is published in the **Federal Register**. The information collection requirements concern collection of information on costs of implementation along with results of PRO review; for example, admissions, partial denials, quality and utilization findings, coding changes, and physician review outcomes. The respondents who will provide the information are PROs. Public reporting burden for this collection of information is estimated to be 283 hours per year per PRO, which includes programming hours.

Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to HCFA and to the OMB official whose name appears in the "ADDRESSES" section of this preamble.

Authority: Section 1153 of the Social Security Act (42 U.S.C. 1320c–2).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 8, 1993.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

[FR Doc. 93–4906 Filed 3–1–93; 8:45 am]

BILLING CODE 4120–01–M

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the following Heart, Lung, and Blood Special Emphasis Panels.

These meetings will be closed in accordance with the provisions set forth in Section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and Section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: NHLBI SEP for Review of Small Grants(R03).

Dates of Meeting: February 28, 1993.

Time of Meeting: 8 a.m.

Place of Meeting: Hyatt Regency Bethesda, One Bethesda Metro, Bethesda, Maryland.

Agenda: To review and evaluate grant applications.

Contact Person: Dr. David Monsees, 5333 Westbard Avenue, room 550, Bethesda, Maryland 20892, (301) 496–7361.

Name of Panel: NHLBI SEP for Review of Small Grants(R03).

Dates of Meeting: February 28, 1993.

Time of Meeting: 8:15 a.m.

Place of Meeting: Hyatt Regency Bethesda, One Bethesda Metro, Bethesda, Maryland.

Agenda: To review and evaluate grant applications.

Contact Person: Dr. David Monsees, 5333 Westbard Avenue, room 550, Bethesda, Maryland 20892, (301) 496–7361.

Name of Panel: NHLBI SEP for Review of RFPs on Phased Readiness Testing of Implantable Total Artificial Hearts.

Dates of Meeting: March 22–23, 1993.

Time of Meeting: 8:00 p.m.

Place of Meeting: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland.

Agenda: To review and evaluate contract proposals.

Contact Person: Dr. Carl Ohata, 5333 Westbard Avenue, Room 5A09, Bethesda, Maryland 20892, (301) 496–8184.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: February 22, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–4794 Filed 2–25–93; 4:49 pm]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–020–01–4332–02]

Phoenix District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Phoenix District Advisory Council.

DATES: March 29, 1993.

SUMMARY: The Phoenix District Advisory Council of the Bureau of Land Management meets March 29, 1993, at the Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona, at 9 a.m. to discuss and make recommendations on various public land issues.

The Council has been established by and will be managed according to the Federal Advisory Committee Act of 1972, the Federal Land Policy and Management Act of 1976, and the Public Rangelands Improvement Act of 1978.

The agenda for the meeting includes:

—Introduction of new Advisory Council member
—Discussion of Advisory Council Charter
—Election of chairperson and co-chairperson
—Update on status of Kingman Resource Management Plan
—Land Exchange opportunities and priorities
—Black Mountain Burro/Desert Bighorn Issue status
—BLM Management Updates

—Business from the Floor

—Comments and Statements

—Future Meetings and Agenda Topics

SUPPLEMENTARY INFORMATION: This is a public meeting and the Bureau of Land Management welcomes the presentation of oral statements or the submission of written statements that address the issues on the meeting agenda or related matters. Those interested in presenting oral statements to the council are requested to notify the Phoenix District Managers Office, telephone (602) 780–8090 by 2 p.m., March 26, 1993.

Dated: February 19, 1993.

David J. Miller,

District Manager.

[FR Doc. 93–4764 Filed 3–1–93; 8:45 am]

BILLING CODE 4320–02–M

[NM–940–4110–03; OKNM 77144]

Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 97–451, a petition for reinstatement of Oil and Gas Lease OKNM 77144, Woods County, Oklahoma, was timely filed and was accompanied by all required rentals and royalties accruing from September 1, 1992, the date of termination. No valid lease has been issued affecting the land. The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 per acre or fraction thereof and 16⅔ percent, respectively. Payment of a $500.00 administrative fee has been made. Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188 (d) and (e)), the Bureau of Land Management is proposing to reinstate the lease effective August 1, 1992, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this notice.

FOR FURTHER INFORMATION CONTACT:

Martha A. Rivera, BLM, New Mexico State Office, (505) 438–7584.

Dated: February 18, 1993.

Dolores L. Vigil,

Chief, Adjudication Section

[FR Doc. 93–4695 Filed 3–1–93; 8:45 am]

BILLING CODE 4310–FB–M

[CA–010–4210–04, CACA 31234, CACA 31274]

Realty Action; Acquisition of Private Land by Exchange in Placer County, CA

AGENCY: Bureau of Land Management (BLM), Department of Interior.

SUMMARY: The following described private land (surface and mineral estate) is being considered for acquisition by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Offered Private Land

CACA 31234

Placer County, CA

T. 15N., R. 9E., M.D.M.
Sec. 26: a portion of the E½SW¼ lying east of Highway I–80 (AP No. 99–15–19, 21-acres)
Sec. 35: a portion of the NW¼SW¼ lying east of Highway I–80 (AP No. 101–03–13, 8-acres)
Containing 29-acres, more or less.

CACA 31274

T. 15n., R.9E., M.D.M.
(Sec. 26: a portion of the 5½ lying east of Highway I–80 (AP Nos. 99–15–20, 22 and 24)
Sec. 35: a portion of the N½NE¼ (AP Nos. 101–01–17 & 20)
Sec. 36: a portion of the W½NW¼ (AP No. 101–02–01)
Containing 110-acres, more or less.

The purpose for acquiring the above described lands would be to improve the BLM's management capabilities in the vicinity of the North Fork of the American River, and in particular along the Stevens Trail. This proposal is considered to be in the public interest and is consistent with current land use plans. In exchange for the above private property, the U.S. would transfer to the proponent Federal lands previously published in the **Federal Register.**

ADDRESSES: For a period of 45 days from publication of this notice in the **Federal Register,** interested parties may submit comments concerning the private lands identified above to the District Manager, c/o Area Manager, Folsom Resource Area, 63 Natoma Street, Folsom, CA 95630.

FOR FURTHER INFORMATION CONTACT:

Contact Mike Kelley at (916) 985–4474, or at the address listed above.

D.K. Swickard,

Area Manager.

[FR Doc. 93–4693 Filed 3–1–93; 8:45 am]

BILLING CODE 4310–40–M

[OR–942–00–4730–02: GP3–116]

Filing of Plats of Survey; Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 10 S., R. 1 E., accepted February 2, 1993
T. 6 S., R. 2 E., accepted February 9, 1993
T. 10 S., R. 2 E., accepted February 8, 1993
T. 10 S., R. 3 E., accepted February 9, 1993
T. 5 S., R. 4 E., accepted February 2, 1993
T. 40 S., R. 2 W., accepted January 27, 1993
T. 4 S., R. 6 W., accepted February 9, 1993

Washington

T. 9 N., R. 15 E., accepted February 4, 1993
T. 10 N., R. 15 E., accepted February 4, 1993
T. 23 N., R. 20 E., accepted January 19, 1993
(Sheets 1 and 2)
T. 33 N., R. 39 E., accepted January 21, 1993
T. 33 N., R. 40 E., accepted January 21, 1993

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1300 NE., 44th Avenue, Portland, Oregon 97213, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT:

Bureau of Land Management, 1300 NE., 44th Avenue, P O Box 2965, Portland, Oregon 97208

Dated: February 18, 1993.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–4782 Filed 3–1–93; 8:45 am]

BILLING CODE 4310–33–M

Fish and Wildlife Service

Preparation of an Environmental Impact Statement on a Permit Application to Incidentally Take Stephens' Kangaroo Rats, an Endangered Species, in Riverside County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent and meeting.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has under consideration a proposal to issue a 30-year permit under section 10(a) of the Endangered Species Act that would authorize incidental taking of the endangered Stephens' kangaroo rat (*Dipodomys stephensi*). The applicant for this incidental take permit is the Riverside County Habitat Conservation Agency (RCHCA). The application is to be accompanied by a proposed Habitat Conservation Plan (HCP) for the Stephens' kangaroo rat. In response to the permit application and the accompanying proposal, the Service intends to prepare a joint Federal Environmental Impact Statement (EIS) and State Environmental Impact Report (EIR). This notice describes the currently proposed action and alternatives, outlines the scoping process that will be employed in preparing the joint document, and identifies the Service's address to which questions and comments concerning the proposed action and the EIS/EIR may be directed.

DATES: Public scoping meetings will be held at the three following dates and locations:

Monday, March 8, 1993 (7 p.m. to 9 p.m.), Callaway Winery, 32720 Rancho California Road, Temecula, California 92591;

Wednesday, March 10, 1993 (7 p.m. to 9 p.m.), Riverside City Council Chambers, 3900 Main Street, Riverside, California 92522; and

Thursday, March 11, 1993, (7 p.m. to 9 p.m.), Perris High School, Multi-Purpose Room, 175 East Nuevo Road, Perris, California 92571.

Written comments related to the scope and content of the EIS/EIR will be accepted by the Service at the address below until April 1, 1993.

ADDRESSES: Information, comments, or questions related to preparation of the EIS/EIR and the National Environmental Policy Act process should be submitted to the Regional Director, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181.

FOR FURTHER INFORMATION CONTACT: Persons wishing to review background material may obtain it by contacting the RCHCA. Documents also will be available for public inspection by appointment during normal business hours (8 a.m. to 5 p.m., Monday through Thursday) at the Riverside County Habitat Conservation Agency, 4080 Lemon Street, 12th Floor, Riverside, California 92501. The RCHCA may be contacted by telephone at (909/275–1100).

Interested persons are encouraged to attend one of the public meetings to identify and discuss major issues and alternatives that should be addressed in the EIS/EIR. The proposed agenda for the public scoping meetings includes a summary of the proposed action and tentative issues, concerns, opportunities, and alternatives. The primary purpose of the scoping process is to identify, rather than to debate or argue, the significant issues related to the proposed action.

SUPPLEMENTARY INFORMATION:

Background

The Service listed the Stephens' kangaroo rat as an endangered species, effective October 31, 1988 (53 FR 38485). Because of its listing as an endangered species, the Stephens' kangaroo rat is protected by the Endangered Species Act (Act) which has prohibition against "take," that is, no one may harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect the species, or attempt to engage in such conduct (16 U.S.C. 1538). The Service, however, may issue permits to conduct activities involving endangered species under certain circumstances, including carrying out scientific purposes, enhancing the propagation or survival of the species, or incidentally taking the species in connection with otherwise lawful activities.

The RCHCA presently has an interim permit from the Service, which expires on December 31, 1993, to incidentally take Stephens' kangaroo rats in connection with various proposed public and private projects in the western portion of Riverside County. Under the program established through this interim permit, Stephens' kangaroo rat habitat in public and private ownership is being acquired and managed for the long-term benefit of the species. Acquisition of private lands is funded in part from mitigation fees collected by the RCHCA as developments proceed.

As intended when the interim permit was granted, the RCHCA is applying to the Service for a 30-year incidental take permit for the same purposes. The area covered by the proposed 30-year permit will include much of the historical range of the Stephens' kangaroo rat in Riverside County. The procedures for the RCHCA to incidentally take Stephens' kangaroo rats under the proposed, 30-year permit will be evaluated in the EIS/EIR.

Congress has directed that an incidental take permit be issued if issuance is in accordance with the requirements of section 10(a) of the Act. Therefore, the Service must make a decision on the RCHCA's application. The Service's underlying purpose in evaluating the RCHCA's application is to maintain a program designed to ensure the continued existence of the Stephens' kangaroo rat in Riverside County, while resolving conflicts that arise from otherwise lawful private and public improvement projects.

The RCHCA has developed a preliminary list of five alternatives to address the Service's underlying purpose in evaluating this permit application, including; no action; continuation of the existing HCP; fixed boundaries for final reserves; elimination of study areas; and reserves based upon agreements and acquisitions at the end of 1993.

The public scoping meetings will provide an opportunity to discuss the potential effects of these alternatives and to propose others.

Dated: February 23, 1993.

William F. Shake,

Acting Regional Director.

[FR Doc. 93–4783 Filed 3–1–93; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 20, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington,

DC 20013–7127. Written comments should be submitted by March 17, 1993.

Antoinette J. Lee,

Acting Chief of Registration, National Register.

Connecticut

Hartford County

Tariffville Historic District, Roughly bounded by Winthrop St., Main St., Mountain Rd., Laurel Hill Rd. and Elm St., Simsbury, 93000173

Windsor Avenue Congregational Church, 2030 Main St., Hartford, 93000174

Indiana

Adams County

Colter, Ben, Polygonal Barn (Round and Polygonal Barns of Indiana MPS), IN 101 E side, 0.6 mi. S of jct. with Piqua Rd., Pleasant Mills vicinity, 93000194

Boone County

VanHuys, Andrew B., Round Barn (Round and Polygonal Barns of Indiana MPS). Address Restricted, Lebanon vicinity, 93000181

De Kalb County

Wiltrout, Maria and Franklin, Polygonal Barn (Round and Polygonal Barns of Indiana MPS), 0209 Co. Rd. 16, Corunna vicinity, 93000183

Fulton County

Haimbaugh, John, Round Barn (Round and Polygonal Barns of Indiana MPS). Jct. of IN 25 and Co. Rd. 400N, Rochester vicinity, 93000192

Leedy, Bert, Round Barn (Round and Polygonal Barns of Indiana MPS). Jct. of Co. Rd. 375N and US 31, SW side, Rochester vicinity, 93000182

Hancock County

Littleton, Frank, Round Barn (Round and Polygonal Barns of Indiana MPS), Address Restricted, Mount Comfort vicinity, 93000184

Huntington County

Snider, S.C., and George McFeeley Polygonal Barn (Round and Polygonal Barns of Indiana MPS), IN 9/37 1/2 mi. S of jct, with Division Rd., Huntingdon vicinity, 93000185

Jay County

Rankin, Rebecca, Round Barn (Round and Polygonal Barns of Indiana MPS). IN 18, ¼ mi. W of jct, with Co. Rd. 75E, Poling vicinity, 93000189

Kosciusko County

Orr, Robert, Polygonal Barn (Round and Polygonal Barns of Indiana MPS), IN 13, ½ mi, N of jct, with Co. Rd, 150N, North Webster vicinity, 93000190

Lagrange County

Yoder, Menno, Polygonal Barn (Round and Polygonal Barns of Indiana MPS), Co. Rd. 250N, 3/4 mi. W of jct, with IN 5, Shipshewana vicinity, 93000191

Montgomery County

Fisher, William, Polygonal Barn (Round and Polygonal Barns of Indiana MPS), Co. Rd. 850N just E of jct. with Co. Rd. 800E, Bowers vicinity, 93000188

Owen County

CCC Recreation Building—Nature Museum (New Deal Resources in Indiana State Parks MPS), McCormick's Creek SP, W of jct. of IN 43 and IN 46, Spencer vicinity, 93000176

McCormick's Creek State Park Entrance and Gatehouse (New Deal Resources in Indiana State Parks MPS), McCormick's Creek SP, W of jct. of IN 43 and IN 46, Spencer vicinity, 93000175

Stone Arch Bridge over McCormick's Creek (New Deal Resources in Indiana State Parks MPS), McCormick's Creek SP, W of jct. of IN 43 and IN 46, Spencer vicinity, 93000177

Parke County

Hill, William, Polygonal Barn (Round and Polygonal Barns of Indiana MPS), School St., Bloomingdale, 93000186

Posey County

Hagemann, Frederick and Augusta, Farm, Jct. of IN 62 and IN 69, SW corner, Mount Vernon, 93000180

Steuben County

Griffin, Cornish, Round Barn (Round and Polygonal Barns of Indiana MPS), 2015 SW. Fox Lake Rd., Pleasant Lake vicinity, 93000187

Vigo County

Senour, Frank, Round Barn (Round and Polygonal Barns of Indiana MPS), 6400 E. Organ Church Rd., Blackhawk vicinity, 93000193

New York

Essex County

Sheldon—Owens Farm, Lake Shore Rd. SE of jct. with Middle and West Rds., Willsboro vicinity, 93000171

Oregon

Lane County

Chi Psi Fraternity House (Eugene West University Neighborhood MPS), 1018 Hilyard St., Eugene, 91001563

Tennessee

Bradley County

Centenary Avenue Historic District, Roughly bounded by 8th, Harle, 13th and Ocoee Sts., Cleveland, 93000172

[FR Doc. 93–4672 Filed 3–1–93; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Notice of Investment Opportunity

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan to the Government of the Kingdom of Morocco ("Borrower") as part of A.I.D.'s development assistance program. The proceeds of these loans will be used to finance shelter projects for low-income families in Morocco. At this time, the Borrower has authorized A.I.D. to request proposals from eligible lenders for a loan under this program of $5 million ($5,000,000). The name and address of the Borrower's representative to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

Kingdom of Morocco

Project: 608–HG–003—$5,000,000, Loan Guaranty Authorization No: 608–HG–004 A01.

Attention: Mr. Thami El Barki, Adjoint au Directeur de Tresor, et des Finances Exterieures, Ministere des Finances.

Mailing Address: Direction du Tresor et des Finances Exterieures, Ministere des Finances, Boulevard Mohamed V, Rabat, Morocco, Telex No.: 36.860, Telefax No.: 212–7–764–950, Telephone No.: 212–7–762–717.

Interested lenders should contact the Borrower as soon as possible and indicate their interest in providing financing for the Housing Guaranty Program. Interested lenders should deliver their bids to the Borrower's representative by Tuesday, March 16, 1993, 12 noon Eastern Standard Time. Bids should be open for a period of 48 hours from the bid closing date. Copies of all bids should be simultaneously sent to the following:

Mr. Harry Birnholz, Housing and Urban Development Officer, RHO USAID/Rabat, Morocco, c/o American Embassy, PSC 74, Box 022 APO AE 09718, (Street address: USAID/Rabat, 137 Avenue Allal Ben Abdellah, B.P. 120, Rabat Morocco), Telex No.: 31005M, Telefax No.: 212–7–707–930 (preferred communication), Telephone No.: 212–7–762–265, ext. 2346.

Mr. David Grossman/Mr. Peter Pirnie, Agency for International Development, PRE/H, room 401, SA–2, Washington, DC 20523–0214, Telex No.: 892703 AID WSA, Telefax No.: 202/663–2552 (preferred communication), Telephone No.: 202/663–2557 or 2530.

For your information the Borrower is currently considering the following terms:

(1) *Amount:* U.S. $5 million.

(2) *Term:* Up to 30 years.

(3) *Grace Period:* Ten years grace on repayment of principal. Repayment of principal to amortize in equal, semi-annual installments over the remaining life of the loan.

(4) *Interest Rate:* Alternatives of variable rates and variable rates with interest "caps" are requested.

(a) *Variable Interest Rate:* To be based on the six-month British Bankers Association LIBOR, preferably with terms relating to Borrower's right to covert to fixed. The rate should be adjusted weekly.

(b) *Variable Interest Rate With "Cap".* Offers should include a maximum (cap) rate ranging from 10% to 12% per annum, and are to be based on the six-month British Bankers Association LIBOR. The rate should be adjusted weekly.

(5) *Prepayment:*

(a) Offers should include options for prepayment mentioning prepayment premiums, if any, and specify the earliest date the option can be exercised without penalty.

(b) Federal statutes governing the activities of A.I.D. require that the proceeds of A.I.D.-guaranteed loans be used to provide affordable shelter and related infrastructure and services to below median-income families. In the extraordinary event that the Borrower materially breaches its obligation to comply with this requirement, A.I.D. reserves the right, among its other rights and remedies, to accelerate the loan.

(6) *Fees:* Offers should specify the placement fees and other expenses, including A.I.D. fees, and Paying and Transfer Agent fees. Lenders are requested to include all legal fees and out of pocket expenses in their placement fee. Such fees and expenses shall be payable at closing from the proceeds of the loan.

(7) *Closing Date:* Estimated 60 days from date of selection of lender.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in section 238(c) of the Act. They are: (1) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from: Mr. Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, room 401, SA–2, Washington, DC 20523–0214, Telephone: 202/663–2530.

Dated: February 26, 1993.

Michael G. Kitay,

Assistant General Counsel, Bureau for Private Enterprise, Agency for International Development.

[FR Doc. 93–4893 Filed 3–1–93; 8:45 am]

BILLING CODE 6116–01–M

Housing Guaranty Program; Notice of Investment Opportunity

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan to Fonds d'Equipement Communal, Rabat, Morocco ("Borrower") as part of A.I.D.'s development assistance program. The proceeds of these loans will be used to finance infrastructure and shelter projects for low-income families in the Kingdom of Morocco. At this time, the Fonds d'Equipement Communal has authorized A.I.D. to request proposals from eligible lenders for a loan under this program of $9 Million Dollars ($9,000,000). The name and address of the Borrower's representative to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

Kingdom of Morocco

Project: 608–HG–001—$9,000,000, Loan Guaranty Authorization No. 608–HG–001 B01.

Attention: Mr. Abdelhak Sakout, Directeur, Fonds d'Equipement Communal.

Mailing Address: 1, Oued Baht, Angle Charia Omar Ibn al Khattab, Rabat, Agdal-Morocco, Telex No.: 212–7–36023, Telefax No.: 212–7–763–849, Telephone No.: 212–7–778–027.

Interested lenders should contact the Borrower as soon as possible and indicate their interest in providing financing for the Housing Guaranty Program. Interested lenders should deliver their bids to the Borrower's representative by Tuesday, March 16, 1993, 12:00 noon Eastern Standard Time. Bids should be open for a period of 48 hours from the bid closing date. Copies of all bids should be simultaneously sent to the following:

Mr. Harry Birnholz, Housing and Urban Development Officer, RHO USAID/Rabat, Morocco, c/o American Embassy, PSC 74, Box 022, APO AE 09718, (Street address: USAID/Rabat, 137 Avenue Allal Ben Abdellah, B.P. 120, Rabat, Morocco), Telex No.: 31005M, Telefax No.: 212–7–707–930 (preferred communication), Telephone No.: 212–7–762–265, ext. 2346.

Mr. David Grossman/Mr. Peter Pirnie, Agency for International Development, PRE/H, room 401, SA–2, Washington, DC 20523–0214, Telex No.: 892703 AID WSA, Telefax No.: 202/663–2552 (preferred communication), Telephone No.: 202/663–2557 or 2530.

For your information the Borrower is currently considering the following terms:

(1) *Amount:* U.S. $9 million.

(2) *Term:* Up to 30 years.

(3) *Grace Period:* Ten years grace on repayment of principal. For fixed interest rate, semi-annual level payments of principal and interest.

(4) *Interest Rate:* Fixed, Rates are to be quoted based on a spread over an index, and the lender should use as its index a long bond, specifically the 7⅛% U.S. Treasury Bond due February 15, 2023. Such rate is to be set at the time of acceptance.

(5) *Prepayment:*

(a) Offers should include options for prepayment and mention prepayment premiums, if any.

(b) Federal statutes governing the activities of A.I.D. require that the proceeds of A.I.D.-guaranteed loans be used to provide affordable shelter and related infrastructure and services to below median-income families. In the extraordinary event that the Borrower materially breaches its obligation to comply with this requirement, A.I.D. reserves the right, among its other rights and remedies, to accelerate the loan.

(6) *Fees:* Offers should specify the placement fees and other expenses, including A.I.D. fees, and Paying and Transfer Agent fees. Lenders are requested to include all legal fees and out of pocket expenses in their placement fee. Such fees and expenses shall be payable at closing from the proceeds of the loan.

(7) *Closing Date:* Estimated 60 days from date of selection of lender.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in section 238(c) of the Act. They are: (1) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from: Mr. Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, room 401, SA–2, Washington, DC 20523–0214, Telephone: 202/663–2530.

Dated: February 26, 1993.

Michael G. Kitay,

Assistant General Counsel, Bureau for Private Enterprise, Agency for International Development.

[FR Doc. 93–4894 Filed 3–1–93; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

[No. MC–C–30212]

State of New Jersey—Petition for Declaratory Order—Scope of Intrastate Passenger Authority; Notice

AGENCY: Interstate Commerce Commission.

ACTION: Notice of institution of proceeding.

SUMMARY: The State of New Jersey, through the New Jersey Department of Transportation (NJDOT), seeks a declaratory order as to whether the intrastate motor passenger service conducted by Sphinx Express, Inc. (Sphinx) and Hudson County Executive Express, Inc. (Hudson) is within the scope of their I.C.C. certificates. NJDOT explains that if the operations conducted by Sphinx and Hudson are outside the scope of their I.C.C. certificates, then the operations would be subject to regulation by NJDOT. The petition presents a controversy sufficient to warrant instituting a proceeding under 5 U.S.C. 554(e), and by this decision the Commission is instituting a proceeding.

DATES: Any person interested in participating in this proceeding as a party of record by filing and receiving written comments must file a notice of intent to do so by March 12, 1993. We will issue a service list of the parties of record shortly thereafter. Petitioner will have 10 days after service of the service list to serve each party on the list with a copy of the petition. Initial written comments must be filed within 30 days after service of the service list. All parties will have 50 days after service of the service list to reply. The exact filing dates will be specified in the notice accompanying the service list. Comments must be served upon all parties of record.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610. [TDD for hearing impaired: (202) 927–5721]

ADDRESSES: An original and 10 copies of all notices of intent and comments must be sent to: Office of the Secretary, Case Control Branch, Attn: Docket No. MC–C–30212, Interstate Commerce Commission, Washington, DC 20423.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: February 23, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–4780 Filed 3–1–93; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32248]

Hanson Natural Resources Co.—Non-Common Carrier Status—Petition for a Declaratory Order

AGENCY: Interstate Commerce Commission.

ACTION: Notice of filing of declaratory order petition and request for comments.

SUMMARY: The Commission is seeking public comment on a petition filed February 8, 1993, by Hanson Natural Resources Company (HNRC). The petition seeks a declaratory order that HNRC will not, upon consummation of certain anticipated transactions, become a common carrier by railroad. The transactions involve a rail line that serves the Lee Ranch Mine located in McKinley County, New Mexico.

DATES: Written comments must be submitted by March 22, 1993.

ADDRESSES: Send an original and 15 copies of comments referring to Finance Docket No. 32248 to: Office of the Secretary, Case Control Branch, Attn.: Finance Docket No. 32248, Interstate Commerce Commission, Washington, DC 20423.

In addition, send one copy to HNRC's representative: C. Michael Loftus, SLOVER & LOFTUS, 1224 Seventeenth Street, NW., Washington, DC 20036, (202) 347–7170.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: By petition filed February 8, 1993, HNRC seeks a declaratory order that it will not become, upon consummation of certain anticipated transactions, a common carrier by railroad.

The transactions involve a rail line that serves the Lee Ranch Mine located in McKinley County, New Mexico, which is presently owned and operated by Santa Fe Pacific Coal Corporation (SFPCoal), an affiliate of the Santa Fe Pacific Corporation. The Mine is served by a rail line that runs approximately 40 miles from the mine to a connection with a main line of The Atchison, Topeka and Santa Fe Railway Company (ATSF). This rail line, which connects to the ATSF main line at a location known as Baca, NM (also known as Prewitt, NM), consists of two segments. The first segment, called the Baca Spur (also called the LRCS Spur), runs approximately 27.4 miles from the ATSF main line at Baca/Prewitt to a point called Lee Ranch Junction. The second segment, called the LRM Spur (also called the Lee Ranch Mine Spur),

runs approximately 13 miles from Lee Ranch Junction to the Lee Ranch Mine.

The anticipated transactions envision that HNRC will receive, from affiliates of the Santa Fe Pacific Corporation, a combination of the right-of-way and certain usage rights with respect to certain portions of the right-of-way. The anticipated transactions further envision that SFPCoal will retain adequate rights of use to fulfill any future rail common carrier obligations that it has heretofore committed itself to fulfill.

HNRC contends that its use of the two spurs will be, in all respects, the same as the use typically made of mine spurs and other industry tracks. It states that it will not hold itself out in any manner to provide rail services for other parties, nor will it have the ability to provide such services. It therefore maintains that it will not become a common carrier through the acquisition of the various interests in the Baca Spur and the LRM Spur that are envisioned by the anticipated transactions.

Additional information is contained in the Commission's decision. To receive a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927–7428. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Any person seeking a copy of HNRC's declaratory order petition may request such, in writing or by phone, from HNRC's representative: C. Michael Loftus, SLOVER & LOFTUS, 1224 Seventeenth Street, NW., Washington, DC 20036, (202) 347–7170.

Decided: February 19, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden. Commissioner Philbin did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–4779 Filed 3–1–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 25, 1993, Mallinckrodt Specialty Chemicals Company, Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Coca Leaves (9040)	II
Opium, raw (9600)	II
Poppy Straw (9650)	II
Poppy Straw Concentrate (9670)	II

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 1, 1993.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: February 22, 1993.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–4745 Filed 3–1–93; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on February 1, 1993, MD Pharmaceutical, Inc., 3501 West Garry Avenue, Santa Ana, California 92704, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II
Diphenoxylate (9170)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA **Federal Register** Representative (CCR), and must be filed no later than April 1, 1993.

Dated: February 22, 1993.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–4743 Filed 3–1–93; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on January 7, 1993, Med-Physics, Inc., 3350 North Ridge Avenue, Arlington Heights, Illinois 60004, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100)	II
Phenylacetone (8501)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and

may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than 30 days from publication.

Dated: February 22, 1993.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–4744 Filed 3–1–93; 8:45 am]

BILLING CODE 4410–09–M

Federal Bureau of Investigation

Notice of Charter Renewal

In accordance with the provisions of the Federal Advisory Committee Act (title 5, United States Code, appendix 2), and title 41, Code of Federal Regulations, section 101–6.1015, the Director, FBI, with the concurrence of the Attorney General, has determined that the renewal of the National Crime Information Center (NCIC) Advisory Policy Board is in the public interest in connection with the performance of duties imposed upon the FBI by law, and hereby gives notice of its renewal.

The Board recommends to the Director, FBI, general policy with respect to the philosophy, concept, and operational principles of the NCIC, particularly the system's relationship with local and state criminal justice systems.

The Board consists of thirty members of which twenty are elected from state and local criminal justice representatives; six are appointed by the Director, FBI, consisting of two members each from the judicial, prosecutorial, and correctional segments of the criminal justice community; four are representatives of criminal justice professional associations, e.g., American Probation and Parole Association, National Sheriffs' Association, National District Attorney's Association, and the International Association of Chiefs of Police.

The Board functions solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed in accordance with the provisions of the Act.

Dated: February 22, 1993.

William S. Sessions,

Director.

[FR Doc. 93–4761 Filed 3–1–93; 8:45 am]

BILLING CODE 4410–02–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Request for copies must be received in writing on or before April 16, 1993. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Agriculture (N1–16–93–1). Rulemaking dockets.

2. Department of Agriculture, Food Safety and Inspection Service (N1–462–93–1). Correspondence relating to meat and poultry inspection.

3. Department of Commerce, Bureau of Export Administration (N1–476–93–1). Reduction in retention period for case files and public comments maintained by the Director of Administration.

4. Department of Health and Human Service, Centers for Disease Control, Office on Smoking and Health (N1–442–92–2). Lists of tobacco additives.

5. Department of Health and Human Service, Office of the Assistant Secretary for Health, Office of Research Integrity (N1–514–93–1). Summary records of disbarment from Federal funding maintained for quick reference.

6. Department of Justice, Office of Intelligence Policy and Review (N1–60–93–6). Investigative review forms.

7. Department of State, Bureau of Educational and Cultural Affairs (N1–59–93–5). Routine and facilitative files.

8. Department of State, All Foreign Service Posts (N1–84–93–6). Refugee records.

9. Department of Treasury, Internal Revenue Service (N1–58–91–6). Annual Employer's Return for Employee's

Pension and Profit Sharing Plans maintained in Service Centers.

10. Defense Logistics Agency (N1–361–93–3). Decrease in retention period for legal opinions.

11. Federal Emergency Management Agency (N1–311–92–7). Records relating to Radiological Defense Program Database.

12. Federal Emergency Management Agency (N1–311–92–8). Input documents for the National Inventory of Dams electronic system.

13. Interstate Commerce Commission (N1–134–93–1). General program and administrative records.

14. National Archives and Records Administration Division (N2–77–93–1). Glass photographic copy negatives of maps, charts, and drawings related to the Upper Mississippi River and its tributaries, accessioned from the Army Corps of Engineers.

15. National Archives and Records Administration (N2–77–93–2). Data tapes of summary statistics from the agricultural censuses of 1949, 1959, and 1964, accessioned from the Army Corps of Engineers.

16. Railroad Retirement Board (N1–184–93–3), Employee and Beneficiary Data Listings.

Dated: February 18, 1993.

Raymond A. Mosley,

Acting Archivist of the United States.

[FR Doc. 93–4696 Filed 3–1–93; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mechanical and Structural Systems; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following six meetings.

Date and Time: March 23–24, 1993; 9 a.m. to 5 p.m.

Place: Room 1133, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Contact Person: Dr. Jorn Larsen-Basse, Program Director, Surface Engineering and Tribology, Telephone: (202) 357–9542.

Date and Time: March 24–25, 1993; 8:30 a.m. to 5 p.m.

Place: Room 500B, National Science Foundation, 1110 Vermont Avenue, NW., Washington, DC 20550.

Contact Person: Dr. John Scalzi, Program Director, Large Structural and Building Systems, Telephone: (202) 357–9542.

Date and Time: March 16, 1993; 8:30 a.m. to 5 p.m.

Place: Room 1108, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Contact Person: Dr. Ken P. Chong, Program Director, Structural Systems and Building Processes, Telephone: (202) 357–9542.

Date and Time: March 30–31, 1993; 8:30 a.m. to 5 p.m.

Place: Room 500B, National Science Foundation, 1110 Vermont Avenue, NW., Washington, DC 20550.

Contact Person: Dr. Jerome Sackman, Program Director, Mechanics and Materials Program, Telephone: (202) 357–9542.

Date and Time: March 30–31, 1993; 8:30 a.m. to 5 p.m.

Place: Room 500B, National Science Foundation, 1110 Vermont Avenue, NW., Washington, DC 20550.

Contact Person: Dr. Huseyin Sehitoglu, Program Director, Mechanics and Materials Program, Telephone: (202) 357–9542.

Date and Time: April 1–2, 1993; 8:30 a.m. to 5 p.m.

Place: Room 536, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Contact Person: Dr. Mehmet Tumay, Program Director, Geomechanical, Geotechnical, and Geo-Environmental Systems, Telephone: (202) 357–9542.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals for various programs within the Division of Mechanical and Structural Systems as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 25, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–4730 Filed 3–1–93; 8:45 am]

BILLING CODE 7555–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Sherry Turpenoff, (202) 606–0950.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR part 213 on February 12, 1993 (58 FR 8433). Individual authorities established or revoked under Schedules A and B and established under Schedule C between January 1 and January 30, 1993, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30, 1993, will also be published.

Schedule A

No Schedule A authorities were established or revoked during January 1993.

Schedule B

No Schedule B authorities were established or revoked during January 1993.

Schedule C

Commodity Futures Trading Commission

Supervisory Public Affairs Specialist to the Chairman. Effective January 11, 1993.

Department of Agriculture

Director, Congressional Relations to the Assistant Secretary for Congressional Relations. Effective January 27, 1993.

Department of Health and Human Services

Staff Assistant (Scheduling) to the Chief of Staff. Effective January 8, 1993.

Federal Maritime Commission

Secretary (Typing) to the Chairman. Effective January 8, 1993.

Federal Trade Commission

Special Assistant to the Commissioner. Effective January 11, 1993.

General Services Administration

Special Assistant to the Administrator. Effective January 27, 1993.

Interstate Commerce Commission

Staff Advisor (Management) to the Commissioner. Effective January 27, 1993.

Secretary (Typing) to the Commissioner. Effective January 15, 1993.

International Trade Commission

Staff Assistant to the Commissioner. Effective January 13, 1993.

Congressional Liaison to the Chairman. Effective January 15, 1993.

Confidential Assistant to a Commissioner. Effective January 15, 1993.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P. 218.

Office of Personnel Management.

Patricia W. Lattimore,

Acting Director.

[FR Doc. 93–4617 Filed 3–1–93; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934 Release No. 34–31910; File Nos. SR–CBOE–92–17; SR–OCC–92–33; ODD 93–1]

Order Designating Flex Options as Standardized Options Under Rule 9b–1 of the Securities Exchange Act of 1934

February 23, 1993.

On August 31, 1992, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Commission a proposed rule change under the Securities Exchange Act of 1934 ("Exchange Act") for the purpose of establishing a framework for the CBOE to list and trade large-size, tailored index options, referred to as Flexible Exchange Options ("FLEX Options") based on the Standard & Poor's Corporation ("S&P") 100 and 500 Stock Indexes. On September 22, 1992, the Options Clearing Corporation ("OCC") filed with the Commission a proposed rule change under Section 19(b) of the Exchange Act to authorize the issuance and clearance and settlement of these options. FLEX Options will provide investors with the ability, within specified limits, to designate certain of the terms of the options.

Notice of the proposals appeared in the **Federal Register** on November 4, 1991 [1] and November 18, 1992.[2] The Commission received three comment letters supporting the CBOE proposal, none in regard to the OCC proposal.

Currently, the CBOE lists and trades several classes of options issued by OCC that are registered under the Securities Act of 1933 ("Securities Act") [3] on Form S–20 and for which the CBOE and OCC prepare an Options Disclosure Document ("ODD") pursuant to Rule 9b–1 of the Exchange Act. In connection with the proposals, the CBOE and OCC have sought clarification that FLEX Options are deemed "standardized" within the meaning of Rule 9b–1 under the Exchange Act, and that therefore, Form S–20 and the ODD disclosure framework may be used for FLEX Options.[4]

Form S–20 and Rule 9b–1 establish a disclosure framework specifically tailored to the informational needs of investors in standardized options that are traded on national securities exchanges and cleared through clearing agencies registered as such under the Exchange Act. Under this options disclosure system, the exchange(s) on which standardized options are listed and traded must prepare an ODD, that among other things, identifies the issuer and describes the uses, mechanics and risks of options trading and other matters in language that can be easily understood by the general investing public. Broker-dealers must provide a copy of the ODD to each customer at or prior to the approval of the customer's account for trading in any standardized option. Any amendment to the ODD must be distributed to each customer whose account is approved for trading the options class for which the ODD relates. The issuer of a "standardized option" may use Form S–20 to register the class of options under the Securities Act and the ODD is treated as a substitute for the traditional prospectus. The content of the abbreviated Form S–20 registration statement is limited to information related to the registrant (*i.e.*, OCC) and the securities to be registered.

Under rule 9b–1, use of the ODD is limited to "standardized options" for which there is an effective registration statement on Form S–20 under the Securities Act. Standardized options are defined in the Rule as:

> [O]ptions contracts trading on a national securities exchange, an automated quotation system of a registered securities association, or a foreign securities exchange which relate to options classes the terms of which are limited to specific expiration dates and exercise prices, *or such other securities as the Commission may, by order, designate.* (Emphasis added)

In the original proposal to Rule 9b–1, the Commission proposed that the options disclosure framework should apply solely to "standardized options," defined as options contracts traded on an options market which relate to options classes whose terms are limited to specific expiration dates and exercise prices. The Commission specifically reserved in the rule the authority to designate other securities in response to comments from OCC to permit use of Rule 9b–1 for new investment vehicles "that the Commission believes should be included within the options disclosure framework."[5] The Commission has used this authority once to date, in connection with the listing and trading on national securities exchanges of Index Participations ("IPs").[6]

The Commission believes that FLEX Options should be treated in a manner similar to standardized options for purposes of Rule 9b–1 under the Exchange Act. Apart from the flexibility with respect to strike prices, settlement, expiration dates, and exercise style, all of the other terms of FLEX Options are standardized pursuant to OCC and CBOE rules. Standardized terms include matters such as exercise procedures, contract adjustments, time of issuance, effect of closing transactions, restrictions on exercise under OCC rules, margin requirements, and other matters pertaining to the rights and obligations of holders and writers. In addition, FLEX Options are similar to existing exchange-traded options based on the S&P 100 and 500 stock indexes because FLEX Options are limited to these well-known underlying broad-based, stock indexes. Finally, FLEX Options can be written in a manner that would make them fully fungible with certain existing options issued by OCC that fall within the framework of Rule 9b–1.

Therefore, it is hereby ordered pursuant to Rule 9b–1 under the Exchange Act, that FLEX Options are deemed standardized options for purposes of the options disclosure framework established under Rule 9b–1 of the Exchange Act.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–4702 Filed 3–1–93; 8:45 am]

BILLING CODE 8010–01–M

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[1] *See* Securities Exchange Act Release No. 31361 (October 27, 1992), 57 FR 52655 (CBOE filing).

[2] *See* Securities Exchange Release No. 31419 (November 6, 1992), 57 FR 54436 (OCC filing).

[3] 15 U.S.C. § 77a *et seq.* (1993).

[4] 17 CFR § 240.9b–1(a)(4) (1992).

[5] See Securities Exchange Act Release No. 19055 and Securities Act Release No. 6426 (September 16, 1982), 47 FR 41950.

[6] See Securities Exchange Act Release No. 26709 (April 11, 1989), 54 FR 15280 (IPs are a type of security that falls into the category of "other security" under Rule 9b–1 which the Commission should treat in a manner similar to standardized options for purposes of Rule 9b–1 under the Act).

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Intervisual Books, Inc., Common Stock, No Par Value) File No. 1–10816)

February 24, 1993.

Intervisual Books, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, its Board of Directors (the "Board") unanimously approved resolutions on January 28, 1992, to withdraw the Company's Common Stock from listing on the American Stock Exchange ("Amex") and, instead, list such Common Stock on the National Association of Securities Dealers Automated Quotations/National Market Systems ("NASDAQ/NMS"). According to the Company, the decision of the Board followed a lengthy study of the matter, and was based upon the belief that listing of the Common Stock on NASDAQ/NMS will be more beneficial to its stockholders than the present listing on the Amex because:

(1) The Company believes that the NASDAQ/NMS system of competing market-makers will result in increased visibility and sponsorship for the Common Stock than is presently the case with the single specialist assigned to the stock on the Amex;

(2) The Company believes that the NASDAQ/NMS system will offer the Company's stockholders more liquidity than that presently available on the Amex and less volatility in quoted prices per share when trading volume is slight. The Company believes that the NASDAQ/NMS the Company will have an opportunity to secure its own group of market-makers and, in doing so, expand the capital base available for trading in its Common Stock; and

(3) The Company believes that firms making a market in the Company's Common Stock on the NASDAQ/NMS system will be inclined to issue research reports concerning the Company, thereby increasing the number of firms providing institutional research and advisory reports.

Any interested person may, on or before March 17, 1993, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–4703 Filed 3–1–93; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (The Kroger Co., Common Stock $1.00 Par Value; Common Stock Purchase Rights) File No. 1–303

February 24, 1993.

The Kroger Co. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the Cincinnati Stock Exchange, Inc. ("CSE").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

According to the Company, it decided to withdraw the above-specified securities from listing on the CSE because the management of the Company has determined that the continued listing of the securities on the CSE entails unnecessary expenditure and administrative burden while no longer serving any useful business purpose. These securities are also listed on the New York Stock Exchange, Inc. ("NYSE").

Any interested person may, on or before March 17, 1993, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–4704 Filed 3–1–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1768]

Announcement of FY 1993 Russian, Eurasian and East European Studies Grant Recipients

On January 15, 1993, the US Department of State approved the December 11, 1992, recommendations of the Russian, Eurasian and East European Studies Advisory Committee for awards in the competition which ended September 25, 1992. These awards are in connection with the Soviet-Eastern European Research and Training Act of 1983.

1. American Council of Teachers of Russian/American Council for Collaboration in Education and Language Study

Grant: $425,000.

Purpose: To provide fellowships for advanced in-country language training and combined on-site research and language training in Russian, Eurasian, and East European languages.

Contact: Dan E. Davidson, Director, ACTR/ACCELS, Third Floor, suite 300, 1776 Massachusetts Avenue, NW., Washington, DC 20036 (202) 833–7522.

2. Center for Advanced Study in the Behavioral Sciences

Grant: $77,000.

Purpose: To provide partial support for 2 residential postdoctoral fellowships on Russia, Eurasia, or Eastern Europe.

Contact: Philip E. Converse, Director, CASBS, 202 Junipero Serra Boulevard, Stanford, CA 94305 (415) 321–2052.

3. Council on International Educational Exchange

Grant: $143,000.

Purpose: To support 4 academic year and 5 semester fellowships for intensive in-country language training; 12 summer graduate research fellowships; and 10 fellowships for "Social Sciences Program for Advanced Students of Russian" at St. Petersburg University.

Contact: Damon B. Smith, Deputy Executive Director, Cooperative Russian

Language Program/CIEE, 205 East 42nd Street, New York, NY 10017 (212) 661–1414.

4. Hoover Institution on War, Revolution and Peace

Grant: $200,000.

Purpose: To support six postdoctoral fellowships (6–12 months duration) and eight summer grants for individual research projects on the countries of the former Soviet Union and Eastern Europe at Hoover.

Contact: Richard F. Staar, Coordinator, International Studies Program, Hoover Institution, Stanford, CA 94305 (415) 723–1348.

5. University of Illinois at Urbana-Champaign

Grant: $180,559.

Purpose: To provide partial funding for the University's Summer Research Laboratory on Russia and Eastern Europe, and the Slavic Reference Service.

Contact: Diane Merridith, Program Administrator, Russian and East European Center, University of Illinois at Urbana-Champaign, 104 International Studies Building, Champaign, IL 61820 (217) 333–1244.

6. Institute on International Education

Grant: $132,860.

Purpose: To support 15 Professional Development Fellowships for advanced graduate students and junior faculty in professional fields for research on policy analysis of East Central Europe, including the Baltic countries.

Contact: Giulia Squatriti, Assistant Manager, East Central Europe, Institute on International Education, 809 United Nations Plaza, New York, NY 10017–3580 (212) 984–5326.

7. International Research and Exchanges Board

Grant: $2,208,783.

Purpose: To support a variety of programs facilitating American scholarly access to the countries of the former Soviet Union and Eastern Europe: Field research fellowships; predeparture orientation; specialized language training; developmental fellowships; individual short-term research; collaborative projects and senior scholar grants; special projects; research residencies; and dissemination.

Contact: Robert Huber, IREX, Sixth Floor, 1616 H Street, NW., Washington, DC 20006 (202) 628–8188.

8. Joint Committee on Eastern Europe

Grant: $1,180,750.

Purpose: To support advanced graduate training, dissertation completion, pre- and postdoctoral research fellowships; individual and institutional language training grants; research conferences; the Junior Scholars' Training Seminar; and German-American Collaborative Research Program.

Contact: Jason Parker, Executive Associate, JCEE/American Council of Learned Societies, 228 East 45th Street, New York, NY 10017 (212) 697–1505.

9. Joint Committee on the Soviet Union and its Successor States

Grant: $1,641,220.

Purpose: To support a national fellowship program at the early and advanced graduate, dissertation, and postdoctoral levels, including a new postdoctoral retraining program, an annual workshop in underrepresented fields; institutional grants for intensive training in languages of the former Soviet Union; Research & Development program; and support for the *American Bibliography for Soviet and East European Studies* (ABSEES).

Contact: Susan Bronson, Program Officer, JCSSS/Social Science Research Council, 605 Third Avenue, New York, NY 10158 (212) 661–0280.

10. National Academy of Sciences

Grant: $136,667.

Purpose: To support training for young researchers in environmental protection through workshops with colleagues in Central Asia and the Baltic countries.

Contact: Gary Waxmonsky, Acting Director, Office for Central Europe and Eurasia, National Academy of Sciences, 2101 Constitution Avenue, NW., FO 2014, Washington, DC 20418 (202) 334–2644.

11. National Council for Soviet and East European Research

Grant: $2,459,185.

Purpose: To conduct a national competition among American institutions of higher education and non-profit corporations in support of postdoctoral research projects on the former Soviet Union and Eastern Europe.

Contact: Robert Randolph, Executive Director, NCSEER, 1755 Massachusetts Avenue, NW., suite 304, Washington, DC 20036 (202) 387–0168.

12. The Woodrow Wilson Center for International Scholars

Grant: $1,110,976 ($704,440 to Kennan; $406,536 to EES).

Purpose: To support the fellowships, meetings, and publications programs of the Kennan Institute for Advanced Russian Studies and the East European activities of the East and West European Program, including an annual Junior Scholars' Training Seminar, co-sponsored with the JCEE.

Contact: Blair Ruble, Director, Kennan Institute for Advanced Russian Studies; or John Lampe, East European Studies, East and West European Program. The Wilson Center, 370 L'Enfant Promenade, suite 704, Washington, DC 20024–2518, Kennan Institute (202) 287–3400, East European Studies (202) 287–3000, x. 225.

Dated: February 9, 1993.

Kenneth E. Robert,

Executive Director, Russian, Eurasian and East European Studies Advisory Committee.

[FR Doc. 93–4763 Filed 3–1–93; 8:45 am]

BILLING CODE 4710–32–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 93–012]

Towing Safety Advisory Committee; Applicants for Membership

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard is seeking applicants for appointment to membership on the Towing Safety Advisory Committee (TSAC). This committee advises the Secretary of Transportation on matters related to shallow-draft inland and coastal waterway navigation and towing safety.

Nine members will be appointed as follows: Three members from the barge and towing industry, reflecting a geographical balance; one member from the offshore mineral and oil supply vessel industry; two members from port districts, authorities or terminal operators; one member from maritime labor; and two members from the general public.

To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women. The committee will meet at least once a year in Washington, DC or another location selected by the Coast Guard.

DATES: Requests for applications should be received no later than May 15, 1993.

ADDRESSES: Persons interested in applying should write to Commandant (G–MTH–4), room 1304, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: CDR Robert Letourneau, Executive Director,

Towing Safety Advisory Committee (G–MTH–4), room 1304, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593–0001, (202) 267–2997.

Dated: February 10, 1993.

R.C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–4748 Filed 3–1–93; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Guaranteed Minimum Investment Yields of United States Savings Bonds and Savings Notes

AGENCY: Bureau of the Public Debt, Department of the Treasury.

ACTION: Notice.

SUMMARY: This notice announces the reduction of the guaranteed minimum investment yield for United States Savings Bonds of Series EE, bearing issue dates of March 1, 1993, or thereafter, from 6 percent per annum, compounded semiannually, to 4 percent per annum, compounded semiannually. The minimum guaranteed investment yields for all outstanding Series E and EE, and United States Savings Notes, entering a new extended maturity period will be 4 percent per annum, compounded semiannually, except as noted below. The investment yield on current-income Series HH bonds issued on or after March 1, 1993, will be 4 percent. Series H and HH bonds entering new extended maturity periods on or after March 1, 1993, will also have an investment yield of 4 percent.

EFFECTIVE DATE: March 1, 1993.

FOR FURTHER INFORMATION CONTACT: Calvin Ninomiya, Chief Counsel, Bureau of the Public Debt, Washington, DC 20239–0001, (202) 219–3320.

SUPPLEMENTARY INFORMATION: The Secretary of the Treasury has announced that the guaranteed minimum investment yield for Series EE savings bonds, having an issue date on or after March 1, 1993, will be reduced from 6 percent per annum, compounded semiannually, to 4 percent per annum, compounded semiannually. The 4 percent yield will apply to all such Series EE bonds issued, until the effective date of any subsequent revision in the guaranteed minimum investment yield.

The guaranteed minimum investment yield for Series EE bonds, theretofore issued and held for 5 years or more, had been last fixed at 6 percent per annum, compounded semiannually. The new guaranteed minimum investment yield will also apply to any Series E/EE savings bond or savings note that enters into a new extended maturity period, on or after March 1, 1993, except for Series E bonds bearing either a July 1, or August 1, 1953, issue date, until the effective date of any subsequent revision in the guaranteed minimum investment yield.

Effective March 1, 1993, Series HH savings bonds issued in exchange for Series E/EE savings bonds and for savings notes, or issued upon the reinvestment of matured Series H savings bonds, will also have an investment yield of 4 percent per annum, compounded semiannually. This rate will apply to all Series HH bonds issued until the effective date of any subsequent revision in the investment yield. The investment yield had last been 6 percent per annum, compounded semiannually. Series H and HH bonds entering a new extended maturity period on or after March 1, 1993, will have an investment yield of 4 percent, until the effective date of any subsequent revision in the guaranteed minimum investment yield.

In addition, effective March 1, 1993, the original maturity period for Series EE savings bonds bearing the issue date of March 1, 1993, or thereafter, will be lengthened from 12 years to 18 years. This will permit the issue prices of the bonds to remain unchanged and make their maturity values (calculated at the minimum investment yield) approximately twice the purchase price at issue.

Investment yields are being reduced to reflect the general decline in interest rates that has occurred, to preserve the cost effectiveness of the Savings Bond Program, and to avoid excessive competition with other thrift instruments.

Revised offering circulars for United States Savings Bonds, Series E, EE, H, HH, and for United States Savings Notes, reflecting the changes described in this notice, and providing information on redemption values and interest payments, will be published shortly.

Dated: February 26, 1993.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 93–4912 Filed 3–1–93; 8:45 am]

BILLING CODE 4810–10–P

DEPARTMENT OF VETERANS AFFAIRS

Medical Research Service Merit Review Boards; Notice of Meetings

The Department of Veterans Affairs gives notice under the Federal Advisory Committee Act, 5 U.S.C. App., of the meetings of the following Federal Advisory Committees.

Merit review board for	Date	Time	Location
Nephrology	March 23, 1993	8 a.m. to 5 p.m.	Ramada Renaissance[1].
Infectious Diseases	March 26, 1993	....do	Madison Hotel[2].
Immunology	March 26, 1993	....do	Madison Hotel.
Respiration	April 2, 1993	....do	Holiday Inn Central[3].
Surgery	April 4, 1993	....do	Ramada Renaissance.
Hematology	April 5, 1993	....do	Ramada Renaissance.
Endocrinology	April 9, 1993	....do	Ramada Renaissance.
Alcoholism and Drug Dependence	April 16, 1993	....do	Washington Vista[4].
Gastroenterology	April 19, 1993	....do	Washington Vista.
Neurobiology	April 20, 1993	....do	Ramada Renaissance.
Oncology	April 23, 1993	....do	Ramada Renaissance.
Basic Sciences	April 26, 1993	....do	Ramada Renaissance.
Cardiovascular Studies	April 29, 1993	....do	Holiday Inn Central.
Mental Health and Behavioral Sciences	April 30, 1993	....do	Holiday Inn Central.

[1] Ramada Renaissance, 999 9th Street, NW., Washington, DC 20001.
[2] Madison Hotel, 1177 15th Street, NW., Washington, DC 20005.
[3] Holiday Inn Central, 1501 Rhode Island Avenue, NW., Washington, DC 20005.
[4] Washington Vista, 1400 M Street, NW., Washington, DC 20005.

These meetings will be for the purpose of evaluating the scientific merit of research conducted in each specialty by Department of Veterans Affairs (VA) investigators working in VA Medical Centers and Clinics.

These meetings will be open to the public up to the seating capacity of the rooms at the start of each meeting to discuss the general status of the program. All of the Merit Review Board meetings will be closed to the public after approximately one-half hour from the start, for the review, discussion and evaluation of initial and renewal projects.

The closed portion of the meeting involves: discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing portions of these meetings is in accordance with 5 U.S.C., 552b(c)(6) and (9)(B). Because of the limited seating capacity of the rooms, those who plan to attend should contact Dr. LeRoy Frey, Chief, Program Review Division, Medical Research Service, Department of Veterans Affairs, Washington, DC, (202) 523–5942 at least five days prior to each meeting. Minutes of the meetings and rosters of the members of the Boards may be obtained from this source.

Dated: February 17, 1993.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 93–4706 Filed 3–1–93; 8:45 am]

BILLING CODE 8320–01–M

Special Medical Advisory Group; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that a meeting of the Special Medical Advisory Group will be held on March 18–19, 1993, at the Washington, DC Renaissance Hotel, 999 9th Street, NW., Washington, DC. The purpose of the Special Medical Advisory Group is to advise the Secretary and Under Secretary for Health relative to the care and treatment of disabled veterans, and other matters pertinent to the Department's Veterans Health Administration. The session on March 18 will convene at 5:30 p.m. and the session on March 19 will convene at 8 a.m. All sessions will be open to the public up to the seating capacity of the rooms. Because this capacity is limited, it will be necessary for those wishing to attend to contact Ginny Rassman, Office of the Under Secretary for Health, Department of Veterans Affairs (phone 202/535–7605) prior to March 16, 1993.

Dated: February 17, 1993.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 93–4705 Filed 3–1–93; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 39
Tuesday, March 2, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11 a.m., Monday, March 8, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: February 26, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–4868 Filed 2–26–93; 2:12 pm]

BILLING CODE 6210–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: March 8, 1993 at 2:30 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings.
2. Minutes.
3. Ratification List.
4. Invs. Nos. 731–TA–546–547 (Final) (Steel Wire Rope from Korea and Mexico)—briefing and vote.
5. Outstanding action jacket requests:

1. GC–92–114, Administrative protective order breach inquiry and abuse of process allegations in an investigation under section 337 of the Tariff Act of 1930.
2. GC–93–017, Request for permission to file appeal in *Hosiden Corp.* v. *United States.*

6. Any items left from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Paul R. Bardos, Acting Secretary, (202) 205–2000.

Issued: February 24, 1993.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–4820 Filed 2–26–93; 8:55 am]

BILLING CODE 7020–02–M

federal register

Tuesday
March 2, 1993

Part II

Department of Transportation

Federal Highway Administration
23 CFR Part 450
Federal Transit Administration
49 CFR Part 613

Metropolitan Planning; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 450

[FHWA Docket No. 93–4]

Federal Transit Administration

49 CFR Part 613

FHWA RIN 2125–AC95; FTA RIN 2132–AA44

Metropolitan Planning

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FHWA and the FTA are jointly proposing to replace the planning regulations governing the development of transportation plans and programs for urbanized areas. The FHWA and the FTA are requesting comments from interested parties concerning the issuance of these regulations. The Intermodal Surface Transportation Efficiency Act of 1991 significantly amended the law governing metropolitan transportation planning and, thus, requires modification of the existing implementing regulations. By implementing the law, these regulations will ensure the eligibility of metropolitan areas for Federal transportation funds.

DATES: Comments must be submitted on or before May 3, 1993.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 93–4, Federal Highway Administration, HCC–10, room 4232, 400 Seventh Street SW., Washington, DC 20590. All comments will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: For FHWA: Ms. Virginia Cherwek, FHWA Office of the Chief Counsel (HCC–31), (202) 366–1372 or Mr. Sheldon Edner, Planning Operations Branch (HEP–21), (202) 366–4066. For the FTA: Mr. Paul Verchinski, Resource Management Division (TGM–21), (202) 366–6385. Both agencies are located at 400 Seventh Street SW., Washington, DC 20590. Office hours for FHWA are 7:45 a.m. to 4:15 p.m., e.t., and for the FTA are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: Sections 1024 and 3012 of Public Law 102–240, 105 Stat. 1914, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) amended title 23 U.S.C., and the Federal Transit Act by revising sections 134 of title 23 and 8 of the Federal Transit Act (49 U.S.C. app. 1607) which require a continuing, comprehensive, and coordinated transportation planning process in metropolitan areas. The FHWA and the FTA are revising their current regulations to implement these changes.

This proposed rule was prepared over a period of several months and addresses a host of complex planning and policy issues. Recognizing intense interest among state and local transportation and planning agencies in the early availability of the rule, the Department has approved its prompt publication. However, the Department is considering publishing, within two weeks, a supplement to this NPRM that would identify additional questions on which public comment would be solicited.

To facilitate public input to the development of this regulation, it is the intent of the FHWA and the FTA to hold a series of joint public meetings to receive comments. These meetings would provide a means for written and verbal comments to be received, in addition to those submitted to the docket identified above. The schedule for the meetings will be announced after the publication of this proposed rule. For further information, please contact Mr. Sheldon Edner or Mr. Paul Verchinski at the location and phone numbers specified above.

General

Revise Existing Planning Requirements for Urban Transportation

The FHWA intends to revise part 450 and to redesignate it as Subpart A Metropolitan Planning Requirements. The FTA would revise 49 CFR part 613 to reference the provisions of 23 CFR part 450 for the FTA's programs. Finally, the FHWA and the FTA are proposing a rule on statewide planning (to implement 23 U.S.C. 135) that would be designated as subpart B of 23 CFR part 450 and would be referenced in 49 CFR part 613. This proposed rule is published elsewhere in this issue of the **Federal Register.**

Throughout this proposed rule any references to 23 CFR part 450 would, as a result of the FTA's cross-reference, also be applicable to 49 CFR part 613.

Development of Proposed Regulation

This proposed regulation was developed by an interagency task force of the FHWA and the FTA with input from the Federal Aviation Administration, Federal Railroad Administration, Maritime Administration, Office of the Secretary of the U.S. DOT, and the U.S. Environmental Protection Agency (EPA). In developing the proposed regulation, the FHWA and the FTA took cognizance of several documents and conferences which provided context for making determinations regarding its content. Specifically, the following written documents were considered and have been placed in the docket for this NPRM:

(1) The proceedings of the Conference "Moving Urban America" held in Charlotte, NC on May 4–6, 1992;

(2) The proceedings of the Conference "Transportation Planning, Programming, and Financing" held in Seattle, WA on July 19–22, 1992;

(3) The content of questions submitted to the FHWA Electronic Bulletin Board during the period subsequent to the passage of the ISTEA; and

(4) The Interim Guidance on ISTEA Metropolitan Planning Requirements issued April 6, 1992.

Relationship to Interim Guidance Issued April 6, 1992

On April 6, 1992, the FHWA and the FTA jointly issued interim guidance to aid States and MPOs in complying with the new legislative requirements. The guidance was published in the April 23, 1992, **Federal Register** at 57 FR 14943. This interim guidance will remain in effect until this regulation has been adopted or it has otherwise been superseded.

Applicability

The provisions of this NPRM would apply to all metropolitan planning organizations serving an urbanized area population of at least 50,000, State departments of transportation, and publicly operated transit agencies as appropriate. The proposed rule would provide for the development of transportation plans and Transportation Improvement Programs (TIPs) and for the selection of projects to be funded under title 23, U.S.C. and under the Federal Transit Act in metropolitan areas.

Linkage to Management System Requirements

The transportation management systems required under 23 U.S.C. 303 are being addressed in a separate rulemaking. However, these management systems are a significant factor in the metropolitan planning process and provide valuable

information and strategies supporting the development of transportation plans and programs. A section is included in this proposed rule on the Congestion Management System (CMS) and its linkage to plan and TIP development. A subsection is proposed to address the linkage of the Intermodal Management System (IMS) and the Public Transportation Management System (PTMS) to the planning process.

Single Occupant Vehicle (SOV) Capacity Additions

Section 134(l) of title 23, U.S.C., and section 8(l) of the Federal Transit Act prohibit programming of Federal funds for highway or transit projects that provide a significant increase in SOV capacity in Transportation Management Areas (TMAs) classified as nonattainment for carbon monoxide and/or ozone pursuant to the Clean Air Act unless this project results from an approved CMS. Because the implementation of the management systems under 23 U.S.C. 303 is not required before Federal fiscal year 1995, an interim procedure was included in the interim metropolitan planning guidance to permit programming action. Specifically, if a project results from a metropolitan transportation planning and/or NEPA process that meets certain criteria it will be considered a part of an approved CMS. That approach has been adopted in this proposed rule. In meeting this proposed requirement, the metropolitan planning and/or environmental impact analysis would need to address a full range of multimodal transportation management options, including demand reduction, that demonstrate that these options cannot satisfy the need for additional SOV capacity.

Planning and Programming

The ISTEA amended section 23 U.S.C. 134 and section 8 of the Federal Transit Act by expanding the area of coverage and legislatively mandating elements of the transportation planning process. Further, these changes significantly altered the nature of the planning and programming processes traditionally used in metropolitan transportation decisionmaking. Specific examples of these changes can be seen in the requirement for transportation plans that more broadly account for environmental and intermodal considerations within a financially constrained vision of future metropolitan transportation improvements. Similarly, TIPs are required to be prioritized, financially constrained, and subjected to the air quality conformity requirements in nonattainment areas established by section 176 of the Clean Air Act (42 U.S.C. 7506). In a broader sense, transportation plans are now required to be intermodal and system performance oriented in a dynamic fashion. While the planning horizon for metropolitan planning must be for a 20-year period and the metropolitan planning areas must now extend to the 20-year growth (area forecast to become urbanized) boundary, the transportation plan must be updated every three years in nonattainment areas and every five years in attainment areas, making it a dynamic planning tool rather than a static description of expected facility changes. This orientation is strengthened by the limitations on single occupancy vehicle capacity increases in TMAs that are nonattainment for carbon monoxide and ozone and by the transferability provisions of the Surface Transportation Program.

In carrying out the transportation planning process, the results of the management systems must be considered. In programming, the regulatory requirement that the TIP be a prioritized and fiscally constrained program of projects is now a statutory requirement. The TIP also must include management system strategies proposed for implementation during the timeframe of the TIP. In nonattainment areas, priority must be given to transportation control measures (TCMs). The TIP is also subject to the conformity provisions of the Clean Air Act. In sum, the TIP has become more of a management tool, permitting MPOs to establish an overall program strategy reflecting the transportation plan, in addition to being a list of projects to be funded.

Intermodal and Multimodal Transportation Planning

The NPRM reflects the intent of the ISTEA, by relying upon both intermodal and multimodal approaches to planning to meet mobility needs. For the purposes of this proposed regulation, multimodal planning reflects consideration of more than one mode to serve transportation needs in a given area and is included within the meaning of intermodal. Intermodal planning reflects a focus on connectivity between modes as a means of facilitating linked trip making. It emphasizes connections (transfers of people or freight in a single journey), choices (provisions of transportation options to facilitate trip making), and coordination and cooperation (collaboration among transportation organizations). It is the intent of the FHWA and the FTA that metropolitan plans reflect the widest consideration of modal options to most efficiently and effectively serve mobility needs within metropolitan areas and in terms of national economic goals and competitiveness.

Updates to Transportation Plan

The interim metropolitan planning guidance indicated that nonattainment areas would have to have updated transportation plans by October 1, 1993. Because of substantial comment received on this guidance provision, the FHWA and the FTA considered extending this date. Nevertheless, the dates for initial plan updates in nonattainment and maintenance areas requiring TCMs contained in this proposed rule remain unchanged from the interim guidance.

The basis for the original guidance and its retention in this proposed rule are the requirements of the Clean Air Act. The October 1, 1993, target date was established because 23 U.S.C. 134(g)(3) and section 8(g)(3) of the Federal Transit Act specifically require that the development of the transportation plan in nonattainment areas be coordinated with the process for development of transportation control measures (TCMs) for the State implementation plan (SIP). Further, there was particular concern that the SIP not include TCMs that have not been analyzed for effectiveness and financial feasibility as part of the transportation planning process.

Small particulate matter (PM–10) SIP revisions were due November 15, 1991. A comprehensive emission inventory for all nonattainment areas and SIP revisions for carbon monoxide nonattainment areas were due November 15, 1992. For ozone nonattainment areas classified as moderate and above, the SIP revisions that demonstrate a 15% reduction in hydrocarbon emissions by 1996, which also include the required TCMs to accomplish this, are due November 15, 1993. The U.S. EPA is considering requiring that a quantitative analysis of the transportation plan be conducted. The final EPA air quality conformity rule is scheduled for publication in the Federal Register in the fall 1993. While a phase-in period is currently provided for, mandatory milestone dates are fast approaching and it is important that States and metropolitan areas be working diligently toward improving the process and plan now to avoid potential non-conformity determinations later.

Major Metropolitan Transportation Investments

The proposed rule includes a number of provisions that deal with planning activities for major metropolitan transportation investments. These provisions would accomplish three objectives. First, the rule would ensure involvement of local officials, acting through the MPO, in corridor and subarea planning studies. Second, it would establish uniform FHWA and FTA requirements for the analysis of major metropolitan transportation investments. Finally, the rule would explain the role of major metropolitan investment analyses in the transportation planning process.

In the past, major projects in urbanized areas proposed for funding by the FHWA typically have been initiated through the areawide planning effort, followed by highway location studies and preparation of environmental impact statements (EISs). The location studies have in some instances been conducted by State highway agencies with the secondary involvement of local officials, often acting through the MPO. Major projects proposed for FTA discretionary funding have been assessed in areawide analyses and then studied in more detail in a corridor level alternatives analysis, documented in a draft EIS. Alternatives analyses have typically been conducted by the local transit operator, in some instances with full MPO involvement.

Separate corridor level analyses by the implementing agencies have tended to constrain full consideration of various transportation "modes" (e.g., highway, mass transit). To address this problem, it is proposed that the requirements for the analysis of major investments be included within the cooperative planning process established in §§ 450.114 through 450.122. Proposed § 450.112 defines responsibility for metropolitan transportation planning as a cooperative effort among the MPO, the State, and local public transit operators with the involvement of other operators of major modes of transportation as appropriate.

Included within the proposed process are all planning activities for major investments leading to the development of the draft EIS. The intent is to ensure cooperation without prescribing specific responsibilities or degrees of involvement for each agency. This flexibility would permit local officials to decide the specific institutional arrangements and procedures to be used in the consideration of transportation alternatives. These proposed procedures would be tailored to the range of alternatives being considered, their stage of advancement in the process, and other local considerations. It is anticipated that the degree of responsibility and involvement of the various agencies would vary with the development of proposals and their implementation. For example, the responsibility of MPOs would be heaviest at the areawide planning level, with appropriate input from implementing agencies. As proposals become more definitive, implementing agency responsibility would increase and become predominant as projects near implementation.

Section 450.118 proposes that an appropriate range of modal alternatives be considered in terms of their costs, effectiveness, air quality contributions, contribution to metropolitan transportation system performance, etc. A scoping conference composed of appropriate agency representatives would be used to establish the range of options. Where the need for a major investment is apparent but the substantiating technical work has not been completed, the adopted transportation plan could stipulate a set of assumptions regarding proposed improvements, or a no-build option, that would be refined subsequently during a corridor or subarea technical study. When corridor or subarea studies are completed, they would become the basis for amending the metropolitan transportation plan.

Corridor studies refer to improvements for existing or proposed linear corridors to serve existing or anticipated transportation demand. The anticipated improvements may be highway, transit or multimodal in nature and may entail significant new facilities or capacity upgrades. Subarea studies refer to areawide studies that may result in a linear corridor improvement but which start with the presumption that right-of-way and non-right-of-way improvements across a broad spatial area could be utilized to satisfy transportation demand. These studies are intended to provide decision makers with detailed information about the potential consequences of implementing various options for dealing with anticipated demand.

Proposed § 450.118 also identifies the FHWA and the FTA funds that may be used for corridor and/or subarea refinement studies. In the past, highway location studies have been funded by FHWA construction funds while transit alternatives analyses have used Federal Transit Act formula grant funds (49 U.S.C. 1607a). To support the more detailed analysis undertaken in a corridor refinement study and to recognize funding flexibility under the Surface Transportation Program, the FTA and the FHWA believe that additional funding may be required. Consequently, this proposed section implements the provision of the ISTEA that permits utilization of capital funds under title 23 for detailed alternatives analysis studies, paralleling the use of Federal Transit Act section 9 funds for these purposes which has been permitted since authorization of the section 9 program. Indeed, these studies would constitute the alternatives analyses required under the Federal Transit Act. Specific funding arrangements would be established on a case-by-case basis by State and local officials with the concurrence of the FHWA and the FTA.

The proposed rule specifies that the Unified Planning Work Program (UPWP) describe the corridor planning activities, regardless of funding source and implementation responsibility. The UPWP has always described planning activities financed with Federal Transit Act sections 8 and 9 funds, including alternatives analyses. Highway location studies proposed for FHWA funding usually were included in the TIP rather than in the UPWP. FHWA capital funds used for planning will now be included in the UPWP as well as the TIP.

Public Involvement

The proposed rule responds to Congress' intent to provide increased public awareness of and involvement in transportation planning and programming processes. It also recognizes the interrelationship between the conformity process for air quality nonattainment and maintenance areas and the transportation planning process. Hence, the proposed rule indicates the linkage, by cross-reference, to the specific requirements of the U.S. EPA's conformity regulations for nonattainment and maintenance areas.

Air Quality

Proposed §§ 450.108 through 450.134 contain provisions related to the transportation/air quality planning and programming roles and responsibilities of the MPO. These reflect modifications required by the Clean Air Act Amendments of 1990 as well as a series of agreements reached between the DOT and the EPA as they relate to the metropolitan transportation planning process and Federal review and approval responsibilities. These proposed sections identify those actions necessary for the enhanced coordination of the air quality and transportation planning processes at the State and local level.

The proposed regulation would provide the procedures necessary to implement the conformity and priority requirements of the Clean Air Act (42 U.S.C. 7506 (c) and (d)). Since there is significant linkage between planning, programming and project conformity findings, the FHWA and the FTA believe it is important that the entire conformity procedure be seen as an integrated element of the transportation planning and programming processes. Thus, the revised metropolitan transportation planning regulations would incorporate this requirement by reference to the U.S. EPA forthcoming rule (which is expected to be included in 40 CFR part 51) (see 58 FR 3768, Jan. 11, 1993) rather than specifying separate planning requirements.

Planning Boundaries

The ISTEA provides that the boundaries of the metropolitan planning area are, at a minimum, the urbanized area (UZA) for each metropolitan area, and the surrounding area forecast to become urbanized in a 20-year planning horizon. In areas that are nonattainment or maintenance for ozone or carbon monoxide, the planning boundary must also include the entire nonattainment or maintenance area, except where reduced by joint action of the Governor and the MPO. Where such action is taken, it is proposed that the State and the MPO indicate in a joint agreement how conformity for the total nonattainment or maintenance area will be assured. Where the planning area is expanded, the adequacy of the representation on the MPO for the added area would need to be evaluated. Adding representation for additional areas would not automatically require redesignation of the MPO.

Transportation Management Areas (TMAs)

The ISTEA requires that TMAs must be designated for UZAs exceeding 200,000 in population and for other UZAs where requested by the Governor and MPO or the affected local officials. MPOs in TMAs, in cooperation with transit operators and the State, must fully comply with the planning process requirements. MPOs also have greater responsibility for selecting projects within their TMA boundaries (in cooperation with the State), and a congestion management system must be developed as part of the metropolitan planning process.

TMA requirements apply to the entire metropolitan planning area. In situations where the MPO's jurisdiction covers more than one UZA, the provisions governing TMAs extend to the entire metropolitan planning area for the multiple UZAs whether or not all of the UZAs are over 200,000 in population. The proposed rule includes these statutory provisions.

Project Selection and Prioritization

The ISTEA retains some elements of the traditional project selection process but in modified form. In areas designated as TMAs, project selection is the responsibility of the appropriate MPO, in consultation with the State and appropriate transit operator, except for projects on the National Highway System (NHS) or funded under the Bridge and Interstate Maintenance programs. Projects selected by the MPO must come from an approved metropolitan TIP. Responsibility for selecting NHS, Bridge and Interstate Maintenance projects rests with the State in cooperation with the appropriate MPO, based on an approved metropolitan TIP. Further, highway and public transportation projects not included on the approved Statewide TIP will not be eligible for funding under title 23, U.S.C., the Federal Transit Act or other Federal funding sources. In all urbanized areas not designated as TMAs, project selection responsibility rests with the State, in consultation with the appropriate transit operator and in cooperation with the MPO (projects must come from an approved metropolitan TIP).

Because TIPs must be financially constrained, prioritized and cooperatively developed by the MPO, the State, and transit operators, the proposed rule would utilize the decision processes leading up to the approval of the TIP as an alternate to individual project selection. Hence, the first year of an approved TIP would be deemed to constitute an agreed upon list of selected projects. Projects not in the first year of an approved TIP but which are subsequently chosen for implementation by the State or MPO, as appropriate, would utilize the selection procedure specified in proposed § 450.132. In nonattainment areas, priority must be given to the timely implementation of Transportation Control Measures (TCMs) in accordance with the U.S. EPA conformity regulations.

The statutory language provides that no public lands highway projects may proceed unless the State concurs in the selection of the project.

Financial Requirements

The transportation plan must include a financial plan that demonstrates that the funding necessary to implement the transportation improvements in the plan, over its life, is expected to be available. In addition, for nonattainment areas, the plan must address the financial resources necessary to ensure compliance with the attainment of clean air requirements. The proposed rule indicates that at a minimum the financial plan must address estimated revenues and strategies for ensuring their availability for implementing, operating and maintaining all projects. In addition, innovative financing such as private participation in both capital and operating expenses would be considered.

The proposed rule also addresses the financial constraints that must be part of the TIP.

Linkage to Statewide Planning Process and Regulations

Section 135 of title 23, U.S.C. requires States to develop statewide transportation plans and programs. A separate NPRM is being developed for these plans. The linkage between these planning requirements is addressed in proposed § 450.128. Specifically, statewide transportation plan elements covering metropolitan areas must be developed cooperatively with the MPOs. Further specification of the relationship between MPO metropolitan transportation plans and plans developed by the State for metropolitan areas will be included in the statewide transportation planning NPRM.

Interim Phase-in of Legislatively Mandated Requirements

A few deadlines are established by the ISTEA. The Secretary is directed to establish schedules for implementing the law in other areas. Where the Secretary is directed to establish schedules, interim deadlines, as needed, have been proposed in § 450.136.

Certification

The planning process in TMAs must be certified every three years, or more frequently, by the Secretary. The certification/recertification process is described within the proposed rule to provide a framework for the certification process.

Section-By-Section Analysis

Section 450.100 Purpose

Proposed § 450.100 describes the general purpose of the proposed regulation: to implement certain sections of title 23, U.S.C. and the Federal Transit Act of 1964, as amended, which require metropolitan areas to have a continuing, cooperative, and comprehensive transportation planning process as a condition of receipt of Federal capital or operating

assistance. The overall rationale for requiring this transportation planning process is to achieve an efficient, effective, integrated, intermodal transportation system for each metropolitan area. Contextually, such a system should reflect the expected development patterns of the metropolitan area.

Section 450.102 Applicability

Proposed § 450.102 provides that this subpart is applicable to the agencies and organizations responsible for conducting the transportation planning process for metropolitan planning areas. The primary responsibility rests with the designated MPO which must work cooperatively with the State and public transit operators in carrying out the transportation planning process. The role and involvement of other operators of major modes of transportation also is discussed in this proposed section.

Section 450.104 Definitions

Proposed § 450.104 defines terms used in this subpart.

Section 450.106 Metropolitan Planning Organization: Designation and Redesignation

Designations of metropolitan planning organizations (MPOs), after December 18, 1991, for metropolitan areas where an MPO did not previously exist, would be made by agreement among the representatives of units of general purpose local government (representing 75% of the affected population including central cities in the metropolitan area) and the Governor or in accordance with procedures in State or local law. To the extent possible, new MPOs should be designated under specific State legislation, State enabling legislation or by interstate compact. In addition, the principal elected officials of the general purpose local governments would be adequately represented on the MPO.

All previous designations of MPOs would remain in effect until such time as redesignated or revoked by the Governor and appropriate elected local officials. Officials of general purpose local government representing 75% of the population within the existing MPO boundaries would have to agree to the redesignation. The central cities would have to be among those agreeing to the redesignation.

Special ISTEA provisions that affect only Chicago, Illinois, and southern California allow local officials representing 25% of the population residing within the existing MPO's boundaries, including central cities, to request redesignation. Similar provisions are contained in this proposal. The Governor and local officials representing 75% of the affected population, including central cities, would have to redesignate a new MPO. The current designation stays in force until the new MPO is designated. The newly designated MPO would have to provide representation for officials of general purpose local government and operators of major modes of transportation.

In TMAs, MPOs designated after December 18, 1991, would include representatives of local elected officials, agencies that operate major modes of transportation, and appropriate State officials on their policy body(ies). The ISTEA conference report (H.R. Conf. Rep. No. 404, 102d Cong., 1st Sess. 316 (1991)) also indicates that if an MPO in a TMA reorganizes after December 18, 1991, these same officials are entitled to representation on the MPO. Reorganization is not addressed in the NPRM and comments are being sought on this item. Consideration is being given to requiring changes in MPO policy board representation only for major reorganization where the planning area is significantly increased and additional representation is required. We continue to encourage all MPOs to give such officials a voice in the MPO whether or not there is a redesignation or reorganization.

In proposed § 450.110 we have used the precise language of the legislation in describing agreements. The FHWA and the FTA will encourage State and local officials to develop mutually acceptable procedures for making MPO designations. This proposal does not impose a Federal mandate on the definition of "adequate representation" of principal elected officials on the MPO policy body. In the spirit of a cooperative planning process, we expect State and local officials to develop a mutually acceptable organizational structure and representation.

Section 450.108 Metropolitan Planning Organization: Geographic Scope of Metropolitan Planning Area Boundaries

Proposed § 450.108 requires that the transportation planning process at least cover the urbanized area and the area likely to be urbanized in the period covered by the long-range element of the transportation plan. In addition, for air quality nonattainment and maintenance areas, the boundaries would extend to the entire nonattainment and maintenance area unless reduced by agreement of the Governor and the MPO. Where a reduction is made, the State and MPO would establish an agreement that specifies how conformity for the entire nonattainment area would be assured. The FHWA and the FTA need to be consulted during the development of this agreement since they also must make a conformity determination for plans, programs and projects within the nonattainment area and would rely on State/MPO procedures for their determination. The MPO and the Governor would jointly designate the metropolitan planning area. While the FHWA and the FTA will not formally approve the boundary locations, copies of the final designated metropolitan planning area boundaries must be provided to both agencies for information.

Section 450.110 Metropolitan Planning Organization: Agreements

Proposed § 450.110 requires that the responsibilities for cooperative transportation planning and programming would be identified in an agreement or memorandum of understanding between the State and the MPO. The responsibilities of the MPO and the operators of publicly owned transit services would also be specified by agreement. If the MPO is not the designated agency for air quality planning under section 174 of the Clean Air Act, there would be an agreement between the MPO and the designated local air quality planning agency regarding their respective responsibilities. To the extent possible, these agreements would be contained in a single cooperative agreement. The proposed requirement for an agreement between the MPO, the State, the public transit operators, and the air quality agency would be met if the parties agree to document their responsibilities in a unified planning work program. Responsibility for coordinating the development of agreements and the UPWP would rest with the MPO.

Section 450.112 Metropolitan Planning Organization: Responsibilities, Cooperation and Coordination

Proposed § 450.112 provides that the MPO, in cooperation with the State and the operators of publicly owned transit services, be responsible for the metropolitan transportation planning process specified in §§ 450.120 and 450.122. The MPO would also be responsible for developing the unified planning work program, the transportation plan, and the TIP in cooperation with the State and transit operator(s). In addition, the MPO would be required to develop, or assist in developing, the transportation control measures of the State implementation plan (SIP) in nonattainment and

maintenance areas. In accordance with the Clean Air Act, the MPO would be prohibited from endorsing any project, program or plan which does not conform to the SIP.

The MPO, the State, and operators of publicly owned transit services would cooperatively determine the responsibility of each in the planning area including preparation of the corridor and subarea studies described in § 450.118. The discussion relating to the responsibilities for public involvement (proposed § 450.122) activities, including the response to comments, is contained under the heading, "Major Metropolitan Transportation Investment."

Section 450.114 Urban Transportation Planning Process: Unified Planning Work Programs

Proposed § 450.114 requires the development of a UPWP in TMAs. The UPWP would include:

(1) A discussion of the area's important transportation issues;

(2) A description of all proposed transportation and transportation-related planning activities, including corridor planning activities (§ 450.118), regardless of funding sources;

(3) A description of transportation-related air quality planning activities, regardless of funding sources or which agency conducts such activities; and

(4) Documentation of all work to be performed with planning assistance provided under sections 8, 9, or 26(a)(2) of the Federal Transit Act (49 U.S.C. app. 1607, 1607(a) and 1622 (a)(2)) and 23 U.S.C. The development of a prospectus would be optional.

Section 450.116 Metropolitan Transportation Planning Process: Elements

Proposed § 450.116 requires that the urban transportation planning process consider the fifteen factors required by the ISTEA. It also stresses the importance of citizen participation by proposing a process for the development of a citizen participation program which will provide full access to the planning process. It emphasizes the continuing and meaningful participation of the public, including minorities, women and other interested persons, in the planning process.

It would also encourage increased participation of operators of major modes of transportation, private transportation providers and other interested parties. While involvement of these interests is intended to ensure consideration of their perspectives in the development of transportation plans and programs, it also serves the policy of considering all modes during the planning process.

The proposed regulation indicates that in attainment areas, not designated as TMAs, simplified planning procedures for plans and programs may be proposed. In developing such proposed simplified procedures, consideration is to be given to the complexity of the transportation planning problems and the growth the area is experiencing. Before engaging in such simplified procedures, the MPO and the State would consult with the FHWA and the FTA. Approximately fifty percent of all metropolitan planning areas not designated as TMAs might qualify for such simplified procedures.

Section 450.118 Metropolitan Transportation Planning Process: Major Metropolitan Transportation Investments

The major metropolitan investment concept, described in this section, focuses on the need, as identified through the planning process, faced by some metropolitan areas to develop large scale facilities to meet transportation demand and proposes special requirements covering such investments. The proposed definition of a major metropolitan investment (§ 450.104(b)) emphasizes projects equivalent to a controlled access arterial of more than a mile or similar scale transit projects. Such projects are considered to provide significant capacity increases and require substantial public investment. The proposed definition makes this distinction while excluding smaller facilities that serve more localized purposes.

The proposed definition of corridor or subarea study identifies the spatial context of the facility as identified by local officials working with appropriate State, FHWA, FTA and transit agency officials. The scope of the investment spatially, physically and financially would be addressed in a scoping conference convened by the MPO and including agencies with a planning and/or operational interest in the corridor and/or subarea.

The analytical effort would establish the value of the potential investment from the perspective of local, State and national goals. The cost analysis would consider the direct dollar costs of such investments as well as the indirect costs in terms of alternate investment opportunities and strategies for meeting transportation demands. Similarly, the social and environmental costs and benefits of alternatives would be addressed, as well as the more specific dimensions of land use, development and energy consumption. The objective would be to consider a wide range of alternate, multimodal strategies aimed at meeting mobility needs while establishing the relative benefits and costs of such an investment across the dimensions identified in this section.

Such studies, properly conducted, would take the place of FTA-required alternatives analyses. They would also serve as a vehicle for satisfying other Federal Transit Act section 3 requirements regarding local financial commitment, economic development, etc. The intent is to recognize the increased responsibility of State and local decision makers in evaluating alternative investments and their financial responsibility for the Federal resources provided.

Further, such studies would provide critical input to required conformity analyses required by the Clean Air Act in terms of strategies to reduce transportation related air pollutants and achieve air quality standards within nonattainment areas. It should be noted, however, that subarea studies are not a substitute for a given regional emission analysis, nor are they a substitute for required "hot spot" analyses for project level decisionmaking. An appropriate regional and/or localized analysis would still be required for the purpose of determining conformity.

Such a study would serve to evaluate the scope of all environmental impacts, including air quality. It is the intent of the FHWA and the FTA to allow utilization of such studies, done at the appropriate level of detail, to serve as the core of required draft environmental analyses under 23 CFR part 771 and the Federal Transit Act. This would reduce required analytical and reporting effort and expedite funding decisions.

Finally, such studies could be supported both with planning and capital funds available to a given urbanized area. The studies would be included in the metropolitan UPWP. If funded with capital monies, the project also would be included in the metropolitan and statewide TIP.

Section 450.120 Metropolitan Planning Process: Congestion Management System

Section 134(i)(3) of title 23, U.S.C. and section 8(i)(3) of the Federal Transit Act require that the transportation planning process in TMAs include the development of a congestion management system that provides for the effective management of new and existing transportation facilities eligible for funding under title 23, U.S.C. and under the Federal Transit Act through

the use of travel demand reduction and operational management strategies. Section 303(a) of title 23, U.S.C., requires the States, in cooperation with the MPOs and agencies receiving Federal Transit Act assistance, to develop a system for traffic congestion management. The specific requirements for the CMS required under 23 U.S.C. 134(i)(3) and 23 U.S.C. 303(a) will be detailed in a separate regulation being developed jointly by the FHWA and the FTA. Primary responsibility for developing the CMS rests with the State except that in TMAs the CMS would be part of the metropolitan planning process conducted by the MPO in cooperation with the State and transit operator.

Section 134(l) of title 23, U.S.C., requires that in TMAs that are nonattainment for carbon monoxide and/or ozone, Federal funds not be programmed for a project that will result in a significant increase in capacity for single occupant vehicles (SOV) unless the project results from an approved CMS. At a minimum, the CMS would be required to demonstrate that alternative demand reduction and operational strategies would not adequately address travel demand needs.

Since a fully operational CMS is not required before Federal fiscal year 1995, this proposed regulation would provide for an interim approach utilizing the metropolitan transportation planning and/or environmental assessment processes (see 23 U.S.C. 303 and proposed § 450.136(c)). To meet the intent of the ISTEA such analyses would address a full range of reasonable trip reduction and operational management strategies, including such areawide strategies as employer trip reduction programs, carpooling, vanpooling, and other similar techniques. If the analysis of these strategies demonstrates that they cannot fully meet the need for additional capacity in the corridor, a project that provides significant increase in SOV capacity could be considered. Nevertheless, all reasonable measures to manage the facility effectively or to facilitate its management in the future would have to be incorporated into the project. Other travel demand reductions and operation management strategies appropriate to the corridor or subarea, but not appropriate for the proposed project, would also have to be committed to by the MPO and the State. We believe this approach meets the legislative intent, is a reasonable first step in providing for the effective management of new and existing facilities, and provides a sound basis for determining whether to advance SOV projects that also meet all conformity tests in TMAs that are nonattainment for carbon monoxide or ozone.

Section 450.122 Metropolitan Planning Process: Transportation Plan

It has been traditional to treat a transportation plan as a document, formally adopted by the appropriate policy body, which serves as a statement of goals, justifying the framework for intended improvements and specifying needed facilities. Amended infrequently, plans often become historical referents and occasionally legitimating documents for transportation investment actions taken. The intent of the ISTEA is to strengthen the planning process and make it a central mechanism for structuring effective investments to enhance overall metropolitan transportation system efficiency. To this end, the plan described in the proposed regulation would be dynamic, subject to more frequent revision and intended to serve as a "current" framework for transportation decisionmaking. Hence, it would be contemporaneous, comprehensive and strategically driven (from the perspective of financial constraint and the operational efficiency of the existing transportation system). It would reflect an effective public participation process which fosters meaningful public input to the decisions ratified within the plan and, in nonattainment and maintenance areas, it would also be consistent with the conformity requirements of the U.S. EPA.

The schedule of updates proposed for the plan reflect the dynamic quality intended by the ISTEA. Nonattainment and maintenance areas would update plans more frequently, every three years, to reflect the objectives of the Clean Air Act. Attainment areas would update plans no less often than every five years.

The content of the plan would address the fifteen factors identified in the ISTEA and a twenty-year planning horizon. The plan would include both long- and short-range strategies decided upon by the MPO. Overall there would be a systematic approach to addressing current and future transportation demand. Consistent with this systematic process, the plan also would reflect the results of the management systems. These management systems are not required to be fully implemented before Federal fiscal year 1995 and, hence, plans prepared before this effective date may be limited with regard to their consideration of the full range of management strategies.

The design concept and scope of all transportation facilities identified in the plan in nonattainment and maintenance areas would be in sufficient detail to permit conformity determinations as specified by the U.S. EPA. For further information on the conformity requirements, please consult the notice of proposed rule making issued by the U.S. EPA (See 58 FR 3768, Jan. 11, 1993).

The plan would be multimodal in focus. At a minimum this would include highway and transit improvements and, as appropriate to the metropolitan area, other transportation improvements that would affect the overall structure and performance of the metropolitan transportation system. This would include port access routes, airport access routes, major freight terminal access routes, intermodal facilities and other similar projects. The plan should reflect also the consideration of multiple modes as a means for serving transportation demand. It should recognize and incorporate information from State Rail Plans (as required under FRA regulations) and the FAA National Integrated Airport System Plan and supporting State and metropolitan airport plans if available. Other modal plans (e.g., ports, freight terminals and waterways), as appropriate, also should be addressed.

In circumstances where a corridor or subarea study is anticipated as a means for assessing potential transportation improvements but is not complete, the plan may indicate for such areas that the design concept and scope (modes and alignment) are not fully determined. In these instances, the plan may stipulate a set of assumptions concerning potential improvements or a no-build condition. In the former, the level of detail concerning the potential improvement would need to be sufficient to sustain a conformity determination under 40 CFR part 51 (see 58 FR 3768, Jan. 11, 1993) and should represent the best judgment as to the likely improvement option. In some cases the option could be multimodal rather than a single mode option.

A subsequent corridor or subarea study could lead to further refinement of feasible options and the selection of the appropriate mode(s) and alignment(s) for preliminary engineering. This could result in a plan amendment. The intent of the proposed plan requirement would be to provide a wide range of multimodal options for technical evaluation rather than fixing on a given mode by virtue of its intuitive appeal or initial apparent feasibility. A no-build alternative could

be later replaced, after appropriate study and justification, with a build option reflecting appropriate planning procedures and technical justification in the same fashion.

Current adopted land use plans depicting the existing and planned development of the region should serve as a framework for the transportation planning process to the extent available. Where such plans are not available, the planning process should place a priority on the development of such plans. Additional supporting context would be drawn from the environmental, social and energy conservation objectives of the region. In this context, transportation (mobility) demand should be addressed in balance with the other demands of the community comprising the metropolitan area. The intent is to establish the reciprocal relationship between these goals in a mutually supportive fashion wherever possible.

Transportation enhancement activities funded under the provisions of the ISTEA would be identified in the plan. Wherever possible, the basis for including these enhancements should be specified.

The ISTEA requires that the plan include a financial plan that demonstrates that funds are reasonably available to fully implement the plan by the forecast (horizon) year. Wish list plans that obviously cannot be fully funded will no longer be appropriate. The analysis would address historically available revenue sources, including sources of operating and maintenance revenue. Additionally, attention would be given to the identification of potential new sources of revenue, including innovative financing techniques and private financial participation. Where appropriate, strategies for securing such financing should be identified. Long-range forecasts should be based on historical trends and any new funding sources which can reasonably be expected to be available. Past success in obtaining motor fuel tax increases or passage of bonding programs may provide a rationale for including such sources. Where new sources of funds cannot be demonstrated to be reasonably available, they would not be considered in financing the plan.

The ISTEA places considerable emphasis on enhanced public involvement processes. The specific aspects of such involvement would be developed by the MPO with an opportunity for the public to comment on the proposed procedures. In TMAs and nonattainment areas where the range of issues and potential solutions can be expected to be complex, comprehensive procedures will need to be developed. At a minimum, a public involvement process would publish the draft transportation plan and make it readily available to the public for review and comment prior to final approval.

Transportation plans would be approved by the MPO. The FHWA and the FTA would not approve metropolitan transportation plans, but copies would be sent to the appropriate division or regional office of these agencies for informational purposes. In addition, in nonattainment areas, these agencies would make their conformity finding consistent with the requirements of the EPA regulations. This conformity finding would apply to new and revised plans.

Section 450.124 Transportation Improvement Program: General and Content

As indicated above, the TIP is now considered to be a central program management tool for structuring metropolitan transportation programs. In addition to being financially constrained and prioritized, it also would have to be consistent with the plan and planning process. Cooperatively developed by the MPO with the State and local public transit operator(s), it would reflect the overall metropolitan transportation goals specified in the plan and planning process.

The TIP would be updated at least every two years, as required by 23 U.S.C. 134. Approval responsibility would rest with the MPO and the Governor. The FHWA and the FTA would not approve metropolitan TIPs but would require copies of approved and amended TIPs. In nonattainment areas, the MPO, the FHWA, and the FTA would make conformity findings in accordance with the requirements of U.S. EPA's conformity regulations (40 CFR part 51) (see 58 FR 3768, Jan. 11, 1993).

As with the development of the plan, the development of the TIP would provide for public participation.

The TIP would cover a minimum period of three years and include a priority list of those projects proposed for funding. As a minimum, projects for each year would be identified, consistent with the level of funding expected to be available in each year. Nevertheless, if an area decides to order its priorities for the entire period of the TIP, this would be acceptable. At the discretion of the MPO, the TIP could cover a longer period but would have to provide detailed financial information and a prioritization of projects. In nonattainment and maintenance areas, TCMs would be given priority and the TIP would be required to provide for their timely implementation.

The financial constraint of the plan would be reflected in more detailed fashion in the TIP. Since the TIP covers a current timeframe and projects are more fully detailed, the financing program for the TIP would reflect a higher level of detail. Sources of funds and the timing of their availability would be specified. Non-Federal sources must also be specified. The TIP would also indicate that funds to operate and maintain the existing transportation system are also available.

Included in the TIP would be all transportation projects, included phases of segmented projects, that will be funded utilizing title 23, U.S.C., and Federal Transit Act monies. Only projects consistent with the metropolitan plan could be programmed. Additionally, projects requiring FHWA or FTA approvals, but not funded with title 23, U.S.C., or Federal Transit Act funds, also would be included. Similarly, projects funded with Federal funds from other Federal agencies would be identified for information purposes to reflect the integrated and intermodal nature of the metropolitan transportation system. Projects with a regional transportation impact funded with State, local or private resources also would be identified for informational purposes.

This regulation would specify the level of detail that must be provided to identify proposed projects in the TIP. At a minimum a project description, estimated total cost, required Federal funds to be obligated in each program year, sources of Federal and non-Federal funds, and fund recipient would be included. In nonattainment areas, projects serving as TCMs would be specified. Further, all projects in these areas would be specified in sufficient detail to permit analysis in accordance with U.S. EPA conformity requirements.

Recognizing that many projects would facilitate the preservation of existing transportation facilities, a factor required to be considered under the metropolitan planning process, MPOs are encouraged to cooperate with the State and public transit operators in developing streamlined procedures for processing projects that would result in the preservation of existing facilities without a significant increase in capacity for SOVs. Such projects may be grouped in the TIP. However, in nonattainment and maintenance areas, only those projects that are exempt from conformity determinations in

accordance with 40 CFR part 51 (see 58 FR 3768, Jan. 11, 1993) may be grouped.

Projects proposed to be funded with transportation enhancement monies would be separately identified and included in the TIP.

In proposing transit projects to be funded with Federal Transit Act section 9 support, the total annual amount proposed would not exceed the Federal Transit Act section 9 funds apportioned for that year. Subsequent years might reflect reasonable projections of past trends.

Recognizing the emphasis in ISTEA on regional approaches to transportation systems, suballocation of STP funds below the metropolitan level (modal or geographic) would be prohibited unless it can be shown to be consistent with the planning process, i.e., an outgrowth of one of the fifteen factors that must be considered. The rationale for this position is drawn from the ISTEA language which empowers the MPO in cooperation with the State and transit operator to develop the TIP. Suballocation could prevent the inclusion of the highest priority projects in the TIP for a given year. While the desirability of providing an equitable distribution of funds throughout the metropolitan region is recognized, this should be a long term goal rather than an annual entitlement.

A provision is included to permit funding operating assistance and emergency relief projects in the absence of an approved metropolitan TIP. These projects are considered to be essential to the performance of the transportation system, e.g., operating assistance, or are needed to reestablish an element of the system damaged by natural causes and eligible for emergency relief funds.

To reflect the management focus of the TIP, the MPO would identify the criteria and process for prioritizing plan and program elements. Changes from previous TIPs in terms of priorities also would be identified. To permit monitoring of program progress, major projects from previous TIPs that were implemented should be described and any delays in the planned implementation of projects would be explained. In nonattainment and maintenance areas all projects previously found to conform with State implementation plans and now included in the base case for air quality purposes must be identified. Listing of these projects would continue until they are fully authorized for construction or acquisition.

Section 450.126 Transportation Improvement Program: Modification

TIPs may be amended as the need arises, consistent with the procedures developed in this proposed regulation. Based on the multi-year nature of the TIP, the FHWA and the FTA expect a minimal need to amend TIPs on more than an annual basis. Where the projects added or subtracted are exempt (neutral with regard to their air quality impacts), public comment would not be required. Nevertheless, for all other projects, provision for public involvement would be required. Further, in nonattainment and maintenance areas, amendments which add or delete projects which affect regional transportation emissions will require new conformity determinations by the MPO, the FHWA and the FTA.

Section 450.128 Transportation Improvement Program: Relationship to the Statewide TIP

This section focuses on the relationship between metropolitan TIPs and the statewide transportation improvement program (STIP) and clarifies that gubernatorial approval would constitute State commitment to include projects in the metropolitan TIPs in the STIP. The required approval of the metropolitan TIP by the MPO and the Governor would mean that the TIP is to be automatically included in the STIP, except in nonattainment and maintenance areas. Before an approved metropolitan TIP from a nonattainment or maintenance area can be included in an STIP, it must be found by the FHWA and the FTA to be conforming in accordance with the requirements of the U.S. EPA conformity regulations (40 CFR part 51) (see 58 FR 3768, Jan. 11, 1993).

Section 450.130 Transportation Improvement Program: Action Required by FHWA/FTA

This section would detail the specific findings which would have to be made by the FHWA and the FTA that the TIP results from a comprehensive, continuing and cooperative planning process and that in nonattainment areas, the plans and programs conform with the SIP.

Section 450.132 Project Selection for Implementation

This proposed project selection process identifies the agency responsible for choosing projects to be implemented from approved TIPs. For TMAs, responsibility would lie with the MPO in consultation with the State and transit operator, with the exception of projects on the NHS and projects funded under the Bridge and Interstate Maintenance programs where the State would have responsibility in cooperation with the MPO. For non-TMAs, the responsibility lies with the State and transit operator (where transit projects are involved) in cooperation with the MPO. As drafted, the rule proposes that projects in the first year of an approved TIP could be selected for implementation without going through the formal project selection process discussed above. The rationale for this is that, under a fiscally constrained TIP, only those projects which have support for implementation will be incorporated into the first year of a TIP. Requiring re-examination of this decision would place unnecessary burdens on State and local officials. Movement of projects from years two and three of the TIP to the first year would require following the project selection process. The proposed rule also states that TCMs in nonattainment areas are to be given priority.

Section 450.134 Metropolitan Transportation Planning Process: Certification

Proposed section 450.134 would provide that the FTA and the FHWA Administrators would jointly review the transportation planning process for each Transportation Management Area to determine if it meets the requirements of this regulation. In nonattainment areas, the review would include an assessment of the adequacy of the process to ensure conformity of the plans and programs.

The proposed regulation allows the FHWA and the FTA to certify with conditions where the process substantially meets the requirements. Where the process does not substantially meet the requirements an optional sanction would be available. If an area remains uncertified for two consecutive years after September 30, 1994, a mandatory sanction would go into effect on October 1, 1996. Any funds withheld under these sanction provisions that have not lapsed would be restored to the area when it becomes certified.

Section 450.136 Phase-in of New Requirements

In order to provide a reasonable period of time to meet new requirements, several provisions of the proposed rule would be phased in. The ISTEA conference report provides for such a phase-in period. To facilitate their identification and subsequent removal as they become obsolete they have been grouped together under this section.

Rulemaking Analyses and Notices

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

The FHWA and the FTA have determined that this rulemaking is not major within the meaning of Executive Order 12291. This rulemaking is considered a significant regulation under Department of Transportation regulatory policies and procedures because of substantial State, local government, congressional and public interest. These interests involve receipt of Federal financial support for transportation investments, appropriate compliance with statutory requirements, and balancing of transportation mobility and environmental goals. The FHWA and the FTA anticipate that the economic impact of this rulemaking will be minimal. Most of the costs associated with this proposed rule are attributable to the provisions of the ISTEA, the Clean Air Act (as amended), and other statutes including earlier highway acts. This proposed rule revises existing planning regulations of the FHWA and the FTA and conforms those regulations to the requirements of the ISTEA. For these reasons, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C., 605(b)), the FHWA and the FTA have evaluated the effects of this proposed rule on small entities such as local governments and businesses. The proposed regulation modifies existing requirements for urban transportation planning and does not create a new activity. The modifications of the existing planning requirements are substantially dictated by the provisions of the ISTEA and the Clean Air Act Amendments of 1990. Hence, the FHWA and the FTA believe that overall compliance burden on public entities implementing the provisions of the legislation will not be substantially greater than previously existed. Based on this evaluation, the FHWA and the FTA certify that this rulemaking would not have a significant economic impact on a substantial number of small entities. The need to further evaluate economic consequences will be reviewed on the basis of comments submitted in response to this notice and the public meetings.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The ISTEA authorizes the Secretary to promulgate rules to implement the provisions of the ISTEA regarding metropolitan planning. The proposed rule recognizes the role of State and local governments in implementing the metropolitan planning provisions of the ISTEA, including the increased discretionary authority allocated to them under the Act. Accordingly, it is certified that the policies contained in this document have been assessed in light of the principles, criteria, and requirements of the Federalism Executive Order, as well as the applicable provisions of the ISTEA. It has been determined that this proposed rule does not have sufficient Federalism implications to warrant a full Federalism Assessment under the principles and criteria contained in Executive Order 12612.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Numbers 20.205, Highway Planning and Construction; 20.500, Federal Transit Capital Improvement Grants; 20.505, Federal Transit Technical Studies Grants; 20.507, Federal Transit Capital and Operating Assistance Formula Grants. The regulations implementing Executive Order 12372 regarding intergovernmental consultation in Federal programs and activities apply to these programs.

Paperwork Reduction Act

The information collection, reporting and recordkeeping provisions in this proposal have been reviewed for compliance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The creation and submission of required reports and documents have been constrained to those specifically required by the ISTEA or essential to the performance of the FHWA and the FTA's findings and approvals. The reporting requirements for UPWPs were approved by the Office of Management and Budget under OMB control number 2132–0031. The reporting requirements for metropolitan transportation plans and programs were approved by the Office of Management and Budget under OMB control number 2132–0529.

National Environmental Policy Act

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

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Parts 450 and 613

Grant programs-transportation, Highways and roads, Mass transportation, Metropolitan planning, Project selection, and Transportation improvement program.

In consideration of the foregoing, the Federal Highway Administration proposes to amend title 23, Code of Federal Regulations, by revising part 450, and the Federal Transit Administration proposes to amend title 49, Code of Federal Regulations, by revising subpart A of part 613 as set forth below.

Issued on: February 17, 1993.

E. Dean Carlson,

Executive Director, Federal Highway Administration.

Robert H. McManus,

Acting Administrator, Federal Transit Administration.

Title 23

1. In chapter I of title 23 CFR, part 450 is revised to read as follows:

SUBCHAPTER E—PLANNING

PART 450—PLANNING ASSISTANCE AND STANDARDS

Subpart A—Metropolitan Transportation Planning and Programming

Sec.

450.100 Purpose.
450.102 Applicability.
450.104 Definitions.
450.106 Metropolitan planning organization: Designations and redesignation.
450.108 Metropolitan planning organization: Metropolitan planning area boundaries.
450.110 Metropolitan planning organization: Agreements.
450.112 Metropolitan transportation planning: Responsibilities, cooperation and coordination.
450.114 Metropolitan transportation planning process: Unified planning work programs.
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450.118 Metropolitan transportation planning process: Major metropolitan transportation investments.

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450.120 Metropolitan transportation planning process: Congestion management system.
450.122 Metropolitan transportation planning process: Transportation plan.
450.124 Transportation improvement program: General.
450.126 Transportation improvement program: Modification.
450.128 Transportation improvement program: Relationship to statewide TIP.
450.130 Transportation improvement program: Action required by FHWA/FTA
450.132 Project selection for implementation.
450.134 Metropolitan transportation planning process: Certification.
450.136 Phase-in of new requirements.

Subpart B—[Reserved]

Authority: 23 U.S.C 104(f), 134, 217, and 315; 49 U.S.C. app. 1602, 1604, 1607, and 1607(a)); sections 110, 172, 174, 175, 176, 179 of the Clean Air Act; and 49 CFR 1.48(b) and 1.51.

Subpart A—Metropolitan Transportation Planning and Programming

§ 450.100 Purpose.

The purpose of this subpart is to implement 23 U.S.C. 134 and section 8 of the Federal Transit Act, as amended, which require that an MPO be designated for each urbanized area and that the metropolitan area have a continuing, cooperative, and comprehensive transportation planning process that results in plans and programs that consider all transportation modes. These plans and programs shall lead to the development of an integrated, intermodal metropolitan transportation system that facilitates the efficient, economic movement of people and goods.

§ 450.102 Applicability.

The provisions of this subpart are applicable to agencies involved in the transportation planning, program development, and project selection processes in metropolitan planning areas.

§ 450.104 Definitions.

Except as otherwise provided, terms defined in 23 U.S.C. 101(a) are used in this subpart as so defined.

Governor means the Governor, or his/her designee, of any one of the fifty States, or Puerto Rico, and includes the Mayor of the District of Columbia.

Maintenance Area means any geographic region of the United States that the U.S. Environmental Protection Agency (EPA) has designated as a maintenance area under section 175A of the Clean Air Act Amendments of 1990 for a transportation related pollutant(s) for which a national ambient air quality standard exists.

Major metropolitan transportation investment means a project that involves new construction or extension of a controlled access principal arterial, or the capacity expansion of a controlled access principal arterial by at least one lane (or an equivalent increase in capacity through access control or technological improvement), or construction or extension of a busway, high occupancy vehicle (HOV) facility, or fixed guideway transit facility, or adding lanes to a busway, or adding tracks to fixed guideway transit facility, or a substantial increase in service on a fixed guideway. It does not include, for example:

(1) Lesser localized improvements to existing controlled access principal arterial, busway, or fixed guideway transportation facilities;

(2) Safety improvements or resurfacing, restoration, or rehabilitation of existing facilities;

(3) Added lanes to short controlled access principal arterial and busway segments (normally less than 1 mile) to alleviate specific, localized traffic flow problems;

(4) Added segments to fixed guideway transit facilities to provide specific localized improvements to system operations;

(5) Projects that are part of a demonstration program (funded under title 23, U.S.C.); and

(6) The emergency replacement of facilities damaged or destroyed as a result of a natural disaster or catastrophic failure.

Metropolitan planning area means the area in which the metropolitan transportation planning process required by 23 U.S.C. 134 and section 8 of the Federal Transit Act must be carried out.

Metropolitan planning organization (MPO) means that organization designated as being responsible, together with the State, for carrying out the provisions of 23 U.S.C. 134, as provided in 23 U.S.C. 104(f)(3) and 134(b), and capable of meeting the requirements of sections 3(e)(1), and 8 (a), (b) and (c) of the Federal Transit Act (49 U.S.C. app. 1602(e)(1) and 1607 (a), (b) and (c)). This organization is the forum for cooperative transportation decisionmaking.

Nonattainment area means any geographic region of the United States that the EPA has designated as a nonattainment area for a transportation related pollutant(s) for which a national ambient air quality standard exists.

State means any one of the fifty States, the District of Columbia, or Puerto Rico; when an action by the State is required, then "State" means the State transportation agency.

State implementation plan (SIP) means the portion (or portions) of an applicable implementation plan approved or promulgated, or the most recent revision thereof, under sections 110, 301(d) and 175A of the Clean Air Act (42 U.S.C. 7409, 7601, and 7505a).

Transportation improvement program (TIP) means a staged multiyear program of transportation projects, excluding planning and research activities funded under 23 U.S.C. 104(f) and 23 U.S.C. 307(c), section 6055(b) of Public Law 102–240, and/or sections 49 U.S.C. 1607 and 49 U.S.C. 1622.

Transportation management area (TMA) means an urbanized area (UZA) over 200,000 population, as determined by the 1990 census, or other areas when TMA designation is requested by the Governor and MPO (or affected local officials) and officially designated by the Administrators of the FHWA and the FTA. The TMA designation applies to the metropolitan planning area established by the MPO and the Governor.

§ 450.106 Metropolitan planning organization: Designations and redesignation.

(a) Designations of metropolitan planning organizations (MPOs) made after December 18, 1991, shall be made by agreement among the Governor(s) and units of general purpose local governments representing 75% of the affected metropolitan population (including the central city or cities as defined by the Bureau of the Census), or in accordance with procedures established by applicable State or local law. To the extent possible, only one MPO shall be designated for each urbanized area or group of contiguous urbanized areas. More than one MPO can be designated within an urbanized area only if the Governor(s) determines that the size and complexity of the urbanized area make designation of more than one MPO appropriate.

(b) The designation shall clearly identify the policy body that is the forum for cooperative decisionmaking and will be taking the required approval actions as the MPO.

(c) To the extent possible, the MPO designated shall be established under specific State legislation, State enabling legislation, or by interstate compact, and shall have authority to carry out metropolitan transportation planning.

(d) Redesignation (designation of a new MPO(s) to replace an existing MPO) shall occur by agreement of the Governor and affected local units of

government representing 75% of the population in the entire metropolitan area. In addition, the central city(ies) must be among the units of local government agreeing to the redesignation.

(e) Nothing in this subpart shall be deemed to prohibit the MPO from utilizing the staff resources of other agencies to carry out selected elements of the planning process.

(f) Existing MPO designations remain valid until a new MPO is redesignated unless revoked by the Governor and local units of government representing 75% of the population in the area served by the existing MPO (the central city must be among those desiring to revoke the MPO designation), or as otherwise provided under State or local procedures. If the Governor and local officials decide to redesignate a new MPO, but do not formally revoke the existing MPO designation, the existing MPO remains in effect until a new MPO is formally redesignated.

(g) Redesignation of an MPO in a multistate metropolitan area requires the approval of the Governor of each State and local officials representing 75% of the population in the entire metropolitan planning area; the local officials in the central city(ies) must be among those agreeing to the redesignation.

(h) Redesignation of an MPO covering more than one urbanized area requires the approval of the Governor and local officials representing 75% of the population in the metropolitan planning area covered by the current MPO; the local officials in the central city(ies) in each urbanized area must be among those agreeing to the redesignation.

(i) In TMAs, MPOs designated/redesignated subsequent to December 18, 1991, must include representation of local elected officials, officials of agencies that administer or operate major modes or systems of transportation, e.g., sponsors of major local airports, maritime ports, rail operators, etc. (including all transportation agencies that were included in the MPO on June 1, 1991), and appropriate State officials. Where representatives of other major modes of transportation do not already have a voice, existing MPOs (in cooperation with the States) are encouraged to provide such officials a voice in the decisionmaking process. Adding such officials to an MPO will not, in itself, constitute a redesignation action.

(j) Where the metropolitan area planning boundaries for a previously designated MPO need to be expanded, the membership on the MPO policy body, etc., should be reviewed to ensure that the added area has appropriate representation.

(k) Adding membership (e.g., local elected officials and operators of major modes or systems of transportation, or representatives of newly urbanized areas) to the policy body or expansion of the metropolitan planning area does not automatically require redesignation of the MPO. To the extent possible, it is encouraged that this be done without a formal redesignation. The State and MPO will need to review the previous MPO designation, State and local law, MPO bylaws, etc., to determine if this can be accomplished without a formal redesignation. If redesignation is considered necessary, the existing MPO will remain in effect until a new MPO is formally designated or the existing designation is formally revoked in accordance with the procedures discussed above.

§ 450.108 Metropolitan planning organization: Metropolitan planning area boundaries.

(a) The transportation planning process shall, as a minimum, cover the urbanized area(s) and the contiguous area(s) likely to become urbanized within the twenty year forecast period covered by the transportation plan described in § 450.122. The process may encompass the entire metropolitan statistical area or consolidated metropolitan statistical area, as defined by the Bureau of the Census. For areas designated as nonattainment and maintenance areas for transportation related pollutants under the Clean Air Act, the boundaries of the metropolitan planning area shall include at least the boundaries of the nonattainment and maintenance areas, except as otherwise provided by agreement between the metropolitan planning organization and the Governor, based upon reasonable cause, under the procedures specified in § 450.110(f). In the absence of a formal agreement between the Governor and the MPO to reduce the metropolitan planning area to an area less than the boundaries of the nonattainment and maintenance area, the MPO shall develop transportation plans and programs for the entire nonattainment and maintenance area.

(b) The planning area covered by an MPO for a new UZA shall be established in accordance with these criteria. The current planning/study area boundaries for previously designated MPOs shall be reviewed and modified if necessary to comply with these criteria.

(c) In addition to the criteria in paragraph (a) of this section, consideration should be given to the planning areas currently in use for all transportation modes in establishing the metropolitan planning area boundary. Where appropriate, adjustments should be made to reflect the most comprehensive boundaries to foster an effective planning process that ensures connectivity between modes, reduces access disadvantages experienced by modal systems, and promotes efficient overall transportation investment strategies.

(d) Approval of the metropolitan area planning boundaries by the FHWA or the FTA is not required. However, metropolitan area planning boundary maps must be submitted to the FHWA and the FTA so these agencies can meet their program responsibilities.

§ 450.110 Metropolitan planning organization: Agreements.

(a) The responsibilities for cooperatively carrying out transportation planning (including corridor and subarea studies) and programming shall be clearly identified in an agreement or memorandum of understanding between the State and the MPO.

(b) There shall be an agreement between the MPO and operators of publicly owned transit services which specifies cooperative procedures for carrying out transportation planning (including corridor and subarea studies) and programming as required by this subpart.

(c) In nonattainment and maintenances areas, if the MPO is not designated for air quality planning under section 174 of the Clean Air Act (42 U.S.C., 7504), there shall be an agreement between the MPO and the designated agency describing their respective roles and responsibilities for air quality related transportation planning.

(d) To the extent possible, there shall be one cooperative agreement containing the understandings required by paragraphs (a) to (c) of this section among the State, MPO, and publicly owned operators of mass transportation services.

(e) Where parties involved agree, the requirement for agreements specified in paragraphs (a), (b), (c) and (d) of this section may be satisfied by including the responsibilities and procedures for carrying out a cooperative process in the unified planning work program or a prospectus as defined in § 450.114(c).

(f) If the metropolitan planning area does not include the entire nonattainment or maintenance area, there shall be an agreement between the State department of transportation, State air agency, other affected local agencies, and the MPO describing the process for

cooperative planning and analysis of all projects outside the metropolitan planning area but within the nonattainment or maintenance area. The agreement also must indicate how the total transportation related emissions for the nonattainment and maintenance area, including areas both within and outside the metropolitan planning area, will be treated for the purposes of determining conformity in accordance with the U.S. EPA conformity regulation. The agreement shall address policy mechanisms for resolving potential conflicts between the metropolitan planning area, and the portion of the nonattainment or maintenance area outside the metropolitan planning area such as when total transportation related emissions exceed the allowable levels. Such proposals shall be coordinated with the FHWA, the FTA, the EPA, and the State air quality agency before a final decision is made to exclude a portion of the nonattainment or maintenance area.

(g) Where more than one MPO has authority within a metropolitan planning area or a nonattainment or maintenance area, there shall be an agreement between the State department(s) of transportation and the MPOs describing how the processes will be coordinated to assure the development of an overall plan for the metropolitan planning area. In metropolitan planning areas that are nonattainment and maintenance areas, the agreement shall include State and local air agencies and shall address policy mechanisms for resolving potential conflicts between the MPOs, such as when total transportation related emissions exceed the allowable levels. Such proposals shall be coordinated with the FHWA, the FTA, the EPA, and the State air quality agency before a final decision is made to exclude a portion of the nonattainment or maintenance area.

(h) For all requirements specified in paragraphs (a) through (g) of this section, existing agreements shall be reviewed for compliance and reaffirmed or modified as necessary to ensure participation by all appropriate modes.

§ 450.112 Metropolitan transportation planning: Responsibilities, cooperation, and coordination.

(a) The MPO in cooperation with the State and with operators of publicly owned transit services shall be responsible for carrying out the metropolitan transportation planning process and shall cooperatively determine their mutual responsibilities in the conduct of the planning process, including corridor refinement studies described in §§ 450.116 through 450.118. They shall cooperatively develop the unified planning work programs, transportation plan, and transportation improvement program specified in §§ 450.114 through 450.118. In addition, the MPO shall coordinate the development of the plan and TIP with other providers of transportation, e.g., sponsors of regional airports, maritime port operators, rail freight operators, etc.

(b) In nonattainment and maintenance areas, the MPO shall coordinate the development of the transportation plan with the process for the development of the transportation control measures of the SIP. The MPO shall develop or assist in developing the transportation control measures.

(c) The MPO shall approve the metropolitan transportation plan and its periodic updates. The MPO and the Governor shall approve the metropolitan transportation improvement program.

(d) In nonattainment and maintenance areas for transportation related pollutants, the MPO shall not approve any transportation plan or program which does not conform with the SIP, as determined in accordance with the U.S. EPA conformity regulation.

(e) If more than one MPO has authority in a metropolitan planning area (including multi-State metropolitan planning areas) or in an area which is designated as nonattainment for transportation related pollutants, the MPOs and the State(s) shall cooperatively establish the boundaries of the metropolitan planning area (including the twenty year planning horizon and relationship to the nonattainment and maintenance) and the respective jurisdictional responsibilities of each MPO. The MPOs shall consult with each other and the State(s) to assure the preparation of integrated plans and programs for the entire metropolitan planning area. An individual MPO plan and program may be developed separately. However, each plan and program must be consistent with the plans and programs of other MPOs in the metropolitan planning area. For the overall metropolitan planning area the individual MPO plans and programs shall reflect coordinated data collection, analysis and development. In those areas where this provision is applicable, coordination efforts shall be initiated and the process and outcomes documented in subsequent transmittals of plans and programs to the State, the FHWA, and the FTA.

(f) The Secretary must designate as transportation management areas all urbanized areas over 200,000 population. Through a Federal Register notice (Monday, May 18, 1992, 57 FR 21160–21161), TMAs have been designated for all UZAs over 200,000 population as determined by the 1990 census urbanized area population. TMAs must comply with the special requirements applicable to such areas regarding congestion management systems, project selection, and certification. The TMA designation applies to the entire metropolitan planning area for the MPOs involved. If the metropolitan planning area(s) encompasses more than one urbanized area, the designation applies to the entire metropolitan planning area(s) whether or not all of the urbanized areas are over 200,000 population.

(g) As required by 23 U.S.C. 303, the required management systems shall be developed cooperatively by the State and the MPOs for each metropolitan planning area, except in TMAs where the congestion management system will be developed by the MPO as part of the metropolitan planning process in cooperation with the State and transit operator(s). The cooperative process shall extend to the development and implementation of data and analytical systems as well as performance measures used in the assessment of transportation system performance and development of strategies and programs identified to improve such performance.

(h) The State shall cooperatively participate in the development of metropolitan transportation plans. The relationship of the statewide transportation plan and the metropolitan plan is specified in the statewide planning regulation of this part.

§ 450.114 Metropolitan transportation planning process: Unified planning work programs.

(a) In TMAs, the MPO(s) in cooperation with the State and operators of publicly owned transit shall develop unified planning work programs (UPWPs) that meet the requirements of 23 CFR part 420, subpart A and:

(1) Discuss the planning priorities facing the metropolitan planning area and describe all metropolitan transportation and transportation-related air quality planning activities (including the corridor and subarea studies discussed in § 450.118) anticipated within the area during the next one or two year period regardless of funding sources or agencies conducting activities, in sufficient detail to indicate who will perform the work,

the schedule for completing it and the products that will be produced;

(2) Document planning activities to be performed for MPO purposes with funds provided under title 23, U.S.C., and the Federal Transit Act.

(3) Demonstrate that adequate funds and staff resources are committed to the high priority activities.

(b) Arrangements may be made to combine the UPWP requirements with the work program for other Federal sources of planning funds.

(c) The metropolitan transportation planning process may include the development of a prospectus that establishes a multiyear framework within which the UPWP is accomplished. The prospectus may be used to satisfy the requirements of § 450.110 and paragraph (a)(1) of this section.

(d) In areas not designated as TMAs, the MPO in cooperation with the State and transit operators shall cooperatively describe who will perform the work and the work that will be accomplished using Federal funds.

§ 450.116 Metropolitan transportation planning process: Elements.

(a) Section 134(f) of 23 U.S.C. and Federal Transit Act section 8 (49 U.S.C. app. 1607) list 15 factors that must be considered as part of the planning process for all metropolitan areas. The consideration of the following factors shall be explicitly reflected in the planning process products:

(1) Preservation of existing transportation facilities and, where practical, ways to meet transportation needs by using existing transportation facilities more efficiently (including an analysis of existing conditions of travel, transportation facilities, vehicle fuel consumption, and systems management);

(2) Consistency of transportation planning with applicable Federal, State, and local energy conservation programs, goals, and objectives;

(3) The need to relieve congestion and prevent congestion from occurring where it does not yet occur including:

(i) The consideration of congestion management strategies or actions which improve the mobility of people and goods in all phases of the planning process; and

(ii) In TMAs, a phased in congestion management system that provides for effective management of new and existing transportation facilities through the use of travel demand reduction and operation management strategies (e.g., various elements of IVHS) shall be developed in accordance with § 450.120;

(4) The likely effect of transportation policy decisions on land use and development and the consistency of transportation plans and programs with the provisions of all applicable short- and long-term land use and development plans (the analysis should include projections of metropolitan planning area economic, demographic, environmental protection, and land use activities consistent with metropolitan development goals, and projections of potential transportation demands based on the interrelated level of activity in these areas);

(5) Programming of expenditures for transportation enhancement activities as required under 23 U.S.C. 133;

(6) The effects of all transportation projects to be undertaken within the metropolitan planning area, without regard to the source of funding (the analysis shall consider the effectiveness, cost effectiveness, and financing of alternative investments in meeting transportation demand and supporting the overall efficiency and effectiveness of transportation system performance);

(7) International border crossings and access to ports, airports, intermodal transportation facilities, major freight distribution routes, national parks, recreation areas, monuments and historic sites, and military installations (supporting technical efforts should provide an analysis of goods and services movement problem areas, as determined in cooperation with appropriate private sector involvement, including, but not limited to addressing interconnected transportation access and service needs of intermodal facilities);

(8) Connectivity of roads within metropolitan planning areas with roads outside of those areas;

(9) Transportation needs identified through the use of the management systems required under 23 U.S.C. 303 (each management system will identify prioritized facility needs, policies, and strategies that will be analyzed during the development of the transportation plan, including its financial component, for possible inclusion in the metropolitan and statewide plans and TIPs);

(10) Preservation of rights-of-way for construction of future transportation projects, including future transportation corridors;

(11) Enhancement of the efficient movement of freight;

(12) The use of life-cycle costs in the design and engineering of bridges, tunnels, or pavement (operating and maintenance costs must be considered in analyzing transportation alternatives);

(13) The overall social, economic, energy, and environmental effects of transportation decisions (the analysis shall give consideration to the effects and impact of the plan on the natural and man made environment, be based on adequate consultation with appropriate resource and permit agencies to ensure early and continued coordination with environmental resource protection and management plans, and shall place appropriate emphasis on consideration of transportation-related air quality problems and in support of the requirements of 23 U.S.C. 109(h), and sections 5(h)(2) and 14 of the Federal Transit Act (49 U.S.C. 1604(h)(2) and 1610), and section 174(b) of the Clean Air Act (42 U.S.C. 7504(b)));

(14) Expansion, enhancement, and increased use of transit services; and

(15) Capital investments that would result in increased security in transit systems.

(b) In addition, the metropolitan transportation planning process shall:

(1) Include provisions to ensure early and continuing involvement of the public in the development of plans and TIPs so that:

(i) Public involvement procedures shall reflect consultation with interested parties. As a minimum, the MPO shall publish the procedures to be used and allow 45 days for written public comment before the procedures are adopted;

(ii) When the MPO revises its established public involvement procedures, it shall publish the new procedures and allow 45 days for written public comment before the revised procedures are adopted;

(iii) In nonattainment and maintenance areas, when significant written and oral comments are received on the draft transportation plan or TIP, a summary, analysis, and report on the disposition of comments shall be submitted to the FHWA and the FTA by the MPO with the transportation plan or TIP and be made available to other parties upon request;

(iv) In nonattainment and maintenance areas, if the final transportation plan or TIP is significantly different than the one which was made available for public comment by the MPO and raises new material issues which interested parties could not reasonably have foreseen from the MPO notifications, an additional opportunity for public comment on the revised plan or TIP must be provided; and

(v) Citizens, affected public agencies, representatives of transportation agency employees, private providers of

transportation and other interested parties shall have full access to plans and programs, their supporting materials, and an opportunity to participate in all stages of the planning process.

(2) Be consistent with title VI of the Civil Rights Act of 1964 and the title VI assurance executed by each State under 23 U.S.C. 324 and 29 U.S.C. 794, which ensure that no person shall, on the grounds of race, color, sex, national origin, or physical handicap, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under any program receiving Federal assistance from the United States Department of Transportation;

(3) Identify actions necessary to comply with the Americans With Disabilities Act of 1990 (Pub. L. 101–336, 104 Stat. 327, as amended) and U.S. DOT regulations "Transportation for Individuals with Disabilities" (49 CFR parts 27, 37, and 38);

(4) Provide for the involvement of traffic, ridesharing, parking, and enforcement agencies; airport and port authorities; toll authorities; and appropriate private transportation providers; and

(5) Provide for the involvement of local, State, and Federal environmental resource and permit agencies as appropriate.

(c) In attainment areas not designated as TMAs, simplified procedures for the development of plans and programs, if considered appropriate, shall be submitted for approval by the FHWA and the FTA. In developing proposed simplified planning procedures, consideration shall be given to the transportation problems in the area and their complexity, the growth rate of the area (e.g., fast, moderate or slow), the appropriateness of the factors specified for consideration in this subpart, and the desirability of continuing any planning process that has already been established. Areas experiencing fast growth should give consideration to a planning process that addresses all of the general requirements specified in this subpart. As a minimum, all areas employing a simplified planning process will need to develop a transportation plan to be adopted by the MPO and a TIP to be approved by the MPO and the Governor.

(d) The metropolitan transportation planning process shall include preparation of technical and other reports to assure documentation of the development, refinement, and reappraisal of the transportation plan. The reports shall be reasonably available to interested parties, consistent with § 450.116(b)(1).

§ 450.118 Metropolitan transportation planning process: Major metropolitan transportation investments.

(a) Where the need for a major metropolitan transportation investment is identified as part of the metropolitan transportation planning process, and where the environmental process pursuant to 23 CFR part 771 has not been initiated, corridor or subarea studies shall be undertaken to specify the precise nature of the investment. While not required, it is encouraged that necessary studies be completed before such investments are included in the plan. The extent of the analysis shall be determined through a cooperative process which involves the MPO, the State, public transit operators, environmental resource and permit agencies, the FHWA and the FTA. A reasonable opportunity shall be provided for citizens and interested parties including affected public agencies, representatives of transportation agency employees, and private providers of transportation to comment on the proposed study. This cooperative process shall establish the range of alternatives to be studied, such as alternative modes and technologies (including intelligent vehicle and highway systems), general alignment, number of lanes, the degree of grade separation, interchange and transit station locations, and operating characteristics. Where the environmental process has been initiated, the FHWA and the FTA should be consulted on appropriate modifications of the analysis to meet the requirements of this section.

(b) To the extent appropriate as determined under paragraph (a) of this section, corridor and subarea studies shall evaluate the effectiveness and cost-effectiveness of alternative investments or strategies in attaining local, State and national goals and objectives. The analysis shall consider the direct and indirect costs of relevant alternatives and such factors as mobility improvements; social, economic, and environmental effects; operating efficiencies; land use and economic development; and energy consumption.

(c) These corridor and/or subarea studies will serve as the "alternatives analyses" required by section 3(i)(1)(A) of the Federal Transit Act (49 U.S.C. app. 1602(i)) for certain projects for which discretionary section 3 "New Start" funding is being sought. The studies will also be used as the primary source of information for the other section 3(i)(1)(A) Secretarial findings on cost-effectiveness, local financial commitment and capacity, mobility improvements, environmental benefits, economic development, etc.

(d) Corridor and subarea studies shall serve as input to the draft and final environmental documents prepared pursuant to 23 CFR part 771 and shall lead to decisions on design concept and scope in sufficient detail to meet the requirements of the U.S. EPA conformity regulations.

(e) Corridor and subarea studies are eligible for funds authorized under sections 8, 9 and 26 of the Federal Transit Act (49 U.S.C. app. 1607, 1607(a), and 1622) and planning and capital funds apportioned under title 23, U.S.C., and shall be included in the UPWP. If FHWA capital funds are utilized for this purpose, the study must also be included in the TIP.

§ 450.120 Metropolitan transportation planning process: Congestion management system.

(a) In TMAs, the planning process must include the development of a CMS that provides for effective management of new and existing transportation facilities through the use of travel demand reduction and operational management strategies.

(b) In TMAs designated as nonattainment for ozone or carbon monoxide, Federal funds may not be programmed for any project that will result in a significant increase in carrying capacity for single occupant vehicles unless the project results from an approved congestion management system.

(c) As required by the provisions of the management system regulations, within all metropolitan planning areas, the congestion management, public transportation, and intermodal management systems to the extent appropriate shall be part of the metropolitan transportation planning process required under the provisions of 23 U.S.C. 134 and 49 U.S.C. app. 1607. In metropolitan planning areas that have more than one MPO and in metropolitan areas that include more than one State, the establishment, development, and implementation of these systems shall be coordinated among the State(s) and MPO(s) to ensure compatibility of the systems and appropriate consideration of their outputs.

(d) The effectiveness of the congestion management system in enhancing transportation investment decisions and improving the overall efficiency of the metropolitan area's transportation systems and facilities shall be evaluated periodically as part of the metropolitan planning process.

§ 450.122 Metropolitan transportation planning process: Transportation plan.

(a) The metropolitan transportation planning process shall include the development of a transportation plan addressing at least a twenty year planning horizon. The plan shall include both long range and short range strategies/actions that lead to the development of an integrated intermodal metropolitan transportation system. The transportation plan shall be reviewed and updated at least triennially in nonattainment and maintenance areas and at least every five years in attainment areas to confirm its validity and its consistency with current and forecasted transportation and land use conditions and trends and to extend the forecast period. The transportation plan must be approved by the MPO.

(b) In addition, the plan shall:

(1) Identify the near-term transportation demand of persons and goods in the metropolitan planning area;

(2) Identify adopted congestion management strategies including, as appropriate, traffic operations, ridesharing, pedestrian and bicycle facilities, alternative work schedules, freight movement options, high occupancy vehicle treatments, telecommuting, and public transportation improvements (including regulatory, pricing, management, and operational options), that demonstrate a systematic approach in addressing current and future transportation demand;

(3) Identify pedestrian walkway and bicycle transportation facilities in accordance with 23 U.S.C. 217(g);

(4) Reflect the consideration given to the results of the management systems, including in TMAs that are nonattainment areas for carbon monoxide and ozone identification of SOV projects that result from an approved congestion management systems;

(5) Assess capital investment and other measures necessary to preserve the existing metropolitan transportation system (including requirements for operational improvements, resurfacing, restoration, and rehabilitation of existing and future major roadways, as well as operations, maintenance, modernization, and rehabilitation of existing and future transit facilities) and make the most efficient use of existing transportation facilities to relieve vehicular congestion and maximize the mobility of people and goods;

(6) Include design concept and scope descriptions of existing and proposed transportation facilities in sufficient detail in nonattainment and maintenance areas to permit conformity determinations under the U.S. EPA conformity regulations at 40 CFR part 51;

(7) Reflect a multimodal evaluation of the transportation, socioeconomic, environmental, and financial impact of the overall plan, including all major transportation investments in accordance with § 450.118;

(8) For major transportation investments for which analyses are not complete, indicate that the design concept and scope (mode and alignment) have not been fully determined and will require further analysis. The plan shall stipulate either a set of assumptions concerning the proposed improvements which will be subsequently analyzed in a corridor or subarea level analysis under § 450.118 or a no-build condition. In nonattainment and maintenance areas, the set of assumptions shall be in sufficient detail to specify design concept and scope to permit conformity determinations under U.S. EPA conformity regulations at 40 CFR part 51;

(9) Reflect, to the extent that they exist, consideration of: the area's comprehensive long-range land use plan and metropolitan development objectives; environmental resource plans of local, State and Federal agencies; local, State, and national goals and objectives; and the area's overall social, economic, environmental, and energy conservation goals and objectives;

(10) Indicate, as appropriate, proposed transportation enhancement activities; and

(11) Include a financial plan that demonstrates the consistency of proposed transportation investments with known and projected sources of revenue. The financial plan shall compare the estimated revenue from existing and proposed funding sources that can reasonably expected to be available for transportation uses, and the estimated costs of constructing, maintaining and operating the total (existing plus planned) transportation system over the period of the plan. The estimated revenue by existing revenue source (at the local, State, and Federal level) available for transportation projects shall be calculated and any shortfalls identified. Proposed new revenues and/or revenue sources to cover shortfalls shall be identified, including strategies for ensuring their availability for proposed investments. Existing and proposed revenues shall cover all forecasted capital, operating, and maintenance costs. All cost and revenue projections shall be based on the best reasonably available data and trends. For nonattainment and maintenance areas, the financial plan shall address the specific financial strategies required to ensure the implementation of projects and programs to reach air quality compliance.

(c) There must be adequate opportunity for public official and citizen involvement in the development of the transportation plan before it is approved by the MPO, in accordance with the requirements of § 450.116(b)(1). Such procedures shall include opportunities for interested parties (including citizens, affected public agencies, representatives of transportation agency employees, private providers of transportation) to be involved in the early stages of the plan development/update process. The procedures shall include publication of the plan or other methods to make it readily available for public review and comment.

(d) Although transportation plans do not need to be approved by the FHWA or the FTA, copies of any new/revised plans must be provided to each agency.

(e) In nonattainment and maintenance areas for transportation related pollutants, the FHWA and the FTA, as well as the MPO, must make a conformity determination on any new/revised plan in accordance with the Clean Air Act and the EPA conformity regulations at 40 CFR part 51.

§ 450.124 Transportation improvement program: General.

(a) The metropolitan transportation planning process shall include development of a transportation improvement program (TIP) for the metropolitan planning area by the MPO in cooperation with the State and public transit operators.

(b) The TIP must be updated and approved at least every two years by the MPO and the Governor. Although metropolitan TIPs do not need to be approved by the FHWA or the FTA, copies of any new or amended TIPs must be provided to each agency. Additionally, in nonattainment and maintenance areas for transportation related pollutants, the FHWA and the FTA, as well as the MPO, must make a conformity determination on any new or amended TIPs in accordance with the Clean Air Act requirements and the EPA conformity regulations.

(c) There must be reasonable opportunity for public comment on the proposed TIP prior to approval in accordance with the requirements of § 450.116(b)(1).

(d) The TIP shall cover a period of not less than 3 years, but may at local discretion cover a longer period if it identifies priorities and financial information for the outyears. The TIP must include a priority list of projects to be carried out in the first 3 years. As a minimum, the priority list shall group the projects that are to be undertaken in each of the years, e.g., year 1, year 2, year 3. In nonattainment and maintenance areas, the TIP shall give priority to TCMs identified in the approved SIP in accordance with 40 CFR part 51 and shall provide for their timely implementation.

(e) The TIP shall be financially constrained and include a financial plan that demonstrates how the projects can be implemented while the existing transportation system is being adequately operated and maintained. Only projects for which construction and operating funds can reasonably be expected to be available may be included. In developing the financial analysis, the MPO shall take into account all projects and strategies funded under title 23, U.S.C., and the Federal Transit Act, other Federal funds, local sources, State assistance, and private participation.

(f) The TIP shall include:

(1) All transportation projects, or identified phases of a project, (including pedestrian walkways, bicycle transportation facilities and transportation enhancement projects) within the metropolitan planning area proposed for funding under title 23 and the Federal Transit Act;

(2) Only projects that are consistent with the transportation plan;

(3) All projects for which an FHWA or FTA approval is required whether or not the projects are to be funded with title 23, U.S.C., or Federal Transit Act funds, e.g., addition of an interchange to the Interstate System with State, local, and/or private funds or demonstration projects not funded under title 23, U.S.C., or the Federal Transit Act;

(4) For informational purposes, all transportation projects proposed to be funded with Federal funds, including intermodal facilities, not covered in paragraph (f)(1) or (f)(3) of this section; and

(5) For informational purposes, all regionally significant projects to be funded with non-Federal funds.

(g) With respect to each project under paragraph (f) of this section the TIP shall include:

(1) Sufficient descriptive material (i.e., type of work, termini, length, etc.) to identify the project or phase;

(2) Estimated total cost;

(3) The amount of Federal funds proposed to be obligated during each program year;

(4) Proposed source of Federal and non-Federal funds;

(5) Identification of the recipient/subrecipient and State and local agencies responsible for carrying out the project; and

(6) In nonattainment and maintenance areas, identification of those projects which are TCMs.

(h) In nonattainment and maintenance areas, projects included shall be specified in sufficient detail (design concept and scope) to permit air quality analysis in accordance with the U.S. EPA conformity requirements at 40 CFR part 51.

(i) Projects proposed for Federal support that are not considered by the State and MPO to be of appropriate scale for individual identification in a given program year may be grouped by function, geographic area, and work type. In nonattainment and maintenance areas, classifications must be consistent with the exempt project classifications contained in the U.S. EPA conformity requirements at 40 CFR part 51.

(j) Federal funds that have been allocated to the area pursuant to 23 U.S.C. 133(d)(3)(E) shall be identified.

(k) The total Federal share of projects included in the TIP and proposed for funding under section 9 of the Federal Transit Act (49 U.S.C. app. 1607(a)) may not exceed apportioned section 9 funds available to the area during the program year.

(l) Procedures or agreements that distribute suballocated Surface Transportation Program or section 9 funds to individual jurisdictions or modes within the metropolitan area by predetermined percentages or formulas are inconsistent with the legislative provisions that require MPOs in cooperation with the State and transit operators to develop a prioritized and financially constrained TIP and shall not be used unless they can be clearly shown to be based on considerations required to be addressed as part of the planning process.

(m) As a management tool for monitoring progress in implementing the transportation plan, the TIP shall:

(1) Identify the criteria and process for prioritizing implementation of transportation plan elements (including intermodal trade-offs) within the TIP and any changes in priorities from previous TIPs.

(2) List major projects from the previous TIP that were implemented and identify any significant delays in the planned implementation of major projects.

(3) In nonattainment and maintenance areas, describe the progress in implementing any required TCMs, including the reasons for any significant delays in the planned implementation.

(4) In nonattainment and maintenance areas, include a list of all projects found to conform in a previous TIP and are now part of the base case for the purpose of air quality conformity analyses. Projects shall be included in this list until construction or acquisition has been fully authorized.

(n) In order to maintain or establish operations, in the absence of an approved metropolitan TIP, the FTA and/or the FHWA Administrators, as appropriate, may approve operating assistance or emergency relief funding for specific projects or programs.

§ 450.126 Transportation improvement program: Modification.

The TIP may be modified at any time consistent with the procedures established in this part for its development and approval, except an opportunity for public comment is not required for TIP amendments that only involve projects of the type covered in § 450.124(i). In nonattainment and maintenance areas for transportation related pollutants if the TIP is amended by adding or deleting projects which contribute to and/or reduce transportation related emissions or replaced with a new TIP, new conformity determinations by the MPO and the FHWA and the FTA will be necessary.

§ 450.128 Transportation improvement program: Relationship to statewide TIP.

(a) After approval by the MPO and the Governor, the TIP shall be included in the statewide transportation improvement program required under 23 U.S.C. 135, except that in nonattainment and maintenance areas, a conformity finding by the FHWA and the FTA must be made before it is included in the STIP. After approval, a copy shall be provided to the FHWA and the FTA.

(b) The State shall notify the MPO when the TIP has been included in the STIP.

§ 450.130 Transportation improvement program: Action required by FHWA/FTA.

(a) The FHWA and the FTA must jointly find that each metropolitan TIP is based on a continuing, comprehensive transportation process carried on cooperatively by the States and local communities in accordance with the provisions of 23 U.S.C. 134 and section 8 of the Federal Transit Act (49 U.S.C. app. 1607). This finding shall be based on the self-certification statement

submitted by the State and MPO under § 450.134 and upon other reviews as deemed necessary by the FHWA and the FTA.

(b) In nonattainment and maintenance areas, the FHWA and the FTA must also jointly find that the metropolitan TIP conforms with the adopted SIP and that priority has been given to the timely implementation of transportation control measures contained in the SIP in accordance with 40 CFR part 51. If the TIP is found to be in nonconformance with the SIP, the TIP shall be returned to the Governor/MPO with the joint finding. If the TIP is found to conform with the SIP, the Governor/MPO shall be notified of the joint finding. After the FHWA and the FTA find the TIP to be in conformance, the TIP shall be incorporated into the statewide transportation improvement program.

§ 450.132 Project selection for implementation.

(a) In areas not designated as TMAs, projects to be implemented shall be selected by the State and transit operator in cooperation with the MPO from the approved metropolitan TIP.

(b) In areas designated as TMAs, all projects, except projects on the NHS and projects funded under the bridge and interstate maintenance programs, shall be selected by the MPO in consultation with the State and transit operator from the approved metropolitan TIP and in accordance with the priorities in the approved metropolitan TIP. Projects on the NHS, and projects funded under the bridge and interstate maintenance programs shall be selected by the State, in cooperation with the MPO, from the approved metropolitan TIP.

(c) Notwithstanding any other provision of title 23, U.S.C., no public lands highway projects in TMAs may proceed unless the State concurs in the selection of the project. This concurrence will need to be reflected in the MPO/State selection procedures for such projects.

(d) Once a TIP that meets the requirements of § 450.124 has been developed and approved, the first year of the TIP shall constitute an "agreed to" list of projects for project selection purposes and no further project selection action is required for the State or transit operator to proceed with projects. If the State or transit operator wishes to proceed with a project not in the first year of the TIP the specific project selection procedures stated in paragraphs (a) and (b) of this section must be used. The MPO, State, and transit operator may jointly develop expedited project selection procedures to provide for the advancement of projects from the second or third year of the TIP.

(e) Projects not included in the federally approved STIP will not be eligible for funding with title 23, U.S.C., or Federal Transit Act funds.

(f) In nonattainment and maintenance areas, priority will be given to the timely implementation of TCMs in accordance with the U.S. EPA conformity regulations at 40 CFR part 51.

§ 450.134 Metropolitan transportation planning process: Certification.

(a) At the time the metropolitan TIP is submitted to the FHWA and the FTA, the State and the metropolitan planning organization shall certify that the planning process addressing the major issues facing the area is being conducted in accordance with all applicable requirements of:

(1) Section 134 of title 23, U.S.C., section 8 of the Federal Transit Act (49 U.S.C. app. 1607) and these regulations;

(2) Sections 174 and 176 (c) and (d) of the Clean Air Act (42 U.S.C. 7504, 7506 (c) and (d));

(3) Title VI of the Civil Rights Act of 1964 and the Title VI assurance executed by each State under 23 U.S.C. 324 and 29 U.S.C. 794;

(4) Section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240) regarding the involvement of disadvantaged business enterprises in FHWA and FTA funded planning projects (Pub. L. 97–424, section 105(f); 49 CFR part 23); and

(5) The provisions of the Americans with Disabilities Act (Pub. L. 101–336, 104 Stat. 327, as amended) and U.S. DOT regulations "Transportation for Individuals with Disabilities" (49 CFR parts 27, 37, and 38).

(b) The FHWA and the FTA Administrators jointly will review and evaluate, as appropriate (but at least once every three years), the transportation planning process for each TMA to determine if the process meets the requirements of this subpart.

(c) In nonattainment and maintenance areas for transportation related pollutants, the FHWA and the FTA Administrators shall also review and evaluate the transportation planning process to assure that the MPO has an adequate process to ensure conformity of plans and programs in accordance with procedures contained in 40 CFR part 51.

(d) Upon the review and evaluation conducted under paragraphs (b) and (c) of this section, the FHWA and the FTA Administrators jointly determine that the transportation planning process in a metropolitan planning area meets or substantially meets the requirements of this part, they may take one of the following actions, as appropriate:

(1) Jointly certify the transportation planning process;

(2) Jointly certify the transportation planning process subject to certain specified corrective actions be taken; or

(3) Jointly certify the planning process as the basis for approval of only those categories of programs or projects that the Administrators may jointly determine and subject to certain specified corrective actions being taken.

(e) A certification action under this section will remain in effect for three years unless a new certification determination is made sooner.

(f) If, upon the review and evaluation conducted under paragraph (b) or (c) of this section, the FHWA and the FTA Administrators jointly determine that the transportation planning process in a metropolitan planning area does not substantially meet the requirements, they may take the following action as appropriate: If after September 30, 1993, the transportation planning process is not certified, withhold in whole or in part the apportionment attributed to the relevant metropolitan planning area under 23 U.S.C. 133(d)(3), capital funds apportioned under section 9 of the Federal Transit Act, and section 3 funds under the Federal Transit Act (49 U.S.C. 1607(a)).

(g) If a transportation planning process remains uncertified for more than two consecutive years after September 30, 1994, 20 percent of the apportionment attributed to the metropolitan planning area under 23 U.S.C. 133(d)(3) and capital funds apportioned under the formula program of section 9 of the Federal Transit Act (49 U.S.C. app. 1607(a)) shall be withheld;

(h) The State and the MPO shall be notified of the actions taken under paragraphs (f) and (g) of this section. Upon full certification by the Administrators of the FHWA and the FTA, all funds withheld shall be restored to the metropolitan area, unless they have lapsed.

§ 450.136 Phase-in of new requirements.

(a) Compliance with the criteria established in § 450.108 shall be accomplished as soon as possible to ensure that the process, plan, and TIP fully cover the metropolitan area no later than October 1, 1993.

(b) Except for reflecting the consideration given the results of the management systems, all plans in nonattainment and maintenance areas requiring TCMs, as established in § 450.122, shall comply to the extent

possible with the requirements of this subpart by October 1, 1993. Where time does not permit a quantitative analysis of certain factors, a qualitative analysis of those factors will be acceptable. If a forecast period of less than twenty years is acceptable for SIP development and air quality conformity purposes, that same time period will be acceptable for transportation planning. The initial plan update shall be financially feasible, taking into account capital costs and the funds reasonably available for capital improvements, as well as addressing to the extent possible the costs of and revenues available for operating and maintenance of the transportation system. Subsequent updates of the plan shall comply with the requirements of this subpart. Except for reflecting consideration of the management systems, plans for all other metropolitan areas shall address the requirements of this subpart as soon as possible, but no later than December 18, 1994. Plan updates performed in all areas subsequent to the date that the management systems have been implemented to the point where they provide recommended projects or strategies shall reflect the consideration of the results of the management systems.

(c) (1) During the period prior to the full implementation of the CMS in a TMA, the MPO in cooperation with the State, the public transit operators, and other operators of major modes of transportation shall identify the location of the most serious congestion problems in the metropolitan area and proceed with the development of a comprehensive CMS to address these problems.

(2) During the interim prior to the full implementation of a CMS, an adequate interim CMS in a TMA designated as nonattainment for carbon monoxide or ozone shall, as a minimum, include a process that results in an appropriate analysis of all reasonable (including multimodal) travel demand reduction and operational management strategies for the corridor in which a SOV facility is proposed. This analysis must demonstrate how far such strategies can go in eliminating the need for additional SOV capacity in the corridor. If the analysis demonstrates that additional SOV capacity is warranted, then all reasonable strategies to manage the facility effectively (or to facilitate its management in the future) shall be incorporated into the proposed facility. Other travel demand reduction and operational management strategies appropriate for the corridor, but not appropriate for incorporation into the SOV facility itself must be committed to by the State and the MPO for implementation in a timely manner. If the area does not already have a traffic management and carpool/vanpool program, the establishment of such programs must be a part of the commitment.

(3) In TMAs that are nonattainment and maintenance areas for carbon monoxide and ozone, the MPO, a State and/or transit operator may not advance a project utilizing Federal funds that provides a significant capacity increase for SOVs beyond the NEPA process unless an interim CMS is in place that meets the criteria in paragraphs (c)(1) and (2) of this section and the project results from this interim CMS.

(4) Projects that are part of or consistent with a State mandated congestion management system/plan are not subject to the requirements in paragraphs (c)(1) and (c)(2) of this section.

(5) Projects that have advanced beyond the NEPA process and which are being implemented, e.g., right-of-way acquisition has been approved, will be deemed to be programmed and not subject to this requirement.

(d) (1) Except for consideration of the management systems, the planning process in all areas (other than newly designated urbanized area) established in § 450.116 shall comply to the extent possible with all requirements of this subpart by October 1, 1993. Initially, where a quantitative analysis is not possible, the elements may be addressed in a qualitative manner. The planning process for subsequent updates shall comply with all requirements of this subpart. The planning process shall consider the results of the management systems.

(2) MPOs in new UZAs designated as a result of the 1990 census that are not under the jurisdiction of an existing MPO shall meet the metropolitan planning requirements by December 18, 1994.

Title 49

PART 613—PLANNING ASSISTANCE AND STANDARDS

2. The authority citation for part 613 is revised to read as follows:

Authority: 23 U.S.C 104(f), 134, 217, and 315; 49 U.S.C. app. 1602, 1604, 1607, and 1622; Sections 110, 172, 174, 175, 176, 179 of the Clean Air Act; and 49 CFR 1.48(b) and 1.51.

3. Subpart A of part 613 is revised to read as follows:

Subpart A—Metropolitan Transportation Planning and Programming

§ 613.100 Metropolitan transportation planning and programming.

The regulations in 23 CFR part 450, subpart A, shall be followed in complying with the requirements of this subpart. These regulations require a metropolitan planning organization (MPO) be designated for each urbanized area and that the metropolitan area have a continuing, cooperative, and comprehensive transportation planning process that results in plans and programs that consider all transportation modes. These plans and programs shall lead to the development of an integrated, intermodal metropolitan transportation system that facilitates the efficient, economic movement of people and goods.

[FR Doc. 93–4125 Filed 3–1–93; 8:45 am]

BILLING CODE 4910–22–P

federal register

Tuesday
March 2, 1993

Part III

Department of Transportation

Federal Highway Administration
23 CFR Part 450
Federal Transit Administration
49 CFR Part 613

Statewide Transportation Planning; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 450

[FHWA/FTA Docket No. 93–5]

Federal Transit Administration

49 CFR Part 613

FHWA RIN 2125–AC94; FTA RIN 2132–AA48

Statewide Transportation Planning

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FHWA and the FTA are proposing to issue joint regulations governing the development of statewide transportation plans and programs. The Intermodal Surface Transportation Efficiency Act of 1991 amended the surface transportation laws of the United States to include requirements for a statewide transportation planning process that considers all modes of transportation. These regulations would help ensure the adequacy of statewide transportation planning and the eligibility of States to receive Federal transportation funds. The FHWA and the FTA are requesting comments from interested parties concerning the issuance of these regulations.

DATES: Comments must be submitted on or before May 3, 1993.

ADDRESSES: Submit written, signed comments to FHWA/FTA Docket No. 93–5, Federal Highway Administration, HCC–10, room 4232, 400 Seventh Street, SW., Washington, DC 20590. All comments will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: For the FHWA: Mr. Martin Weiss, Planning Programs Branch (HEP–12), (202) 366–5010, or Ms. Virginia I. Cherwek, Right-of-Way and Environmental Law Branch (HCC–31), (202) 366–1372. For the FTA: Mr. Paul Verchinski, Resource Management Division (TGM–21), (202) 366–6385, or Mr. Scott A. Biehl, Environmental and Regional Operations Division, Office of the Chief Counsel, (TCC–40), (202) 366–4063. Both agencies are located at 400 Seventh Street, SW., Washington, DC 20590. Office hours for the FHWA are 7:45 a.m. to 4:15 p.m., e.t., and for the FTA are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: Section 1025 of Public Law 102–240, 105 Stat. 1914, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and section 502 of Public Law 102–388, 106 Stat. 1520, the Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 1993, amended title 23, U.S.C., and the Federal Transit Act (49 U.S.C. app. 1601 *et seq.*) by revising 23 U.S.C. 135 and section 8 of the Federal Transit Act, respectively, to require a continuing, comprehensive and coordinated transportation planning process in each State. The FHWA and the FTA are proposing regulations to implement this requirement.

This proposed rule was prepared over a period of several months and addresses a host of complex planning and policy issues. Recognizing intense interest among state and local transportation and planning agencies in the early availability of the rule, the Department has approved its prompt publication. However, the Department is considering publishing, within two weeks, a supplement to this NPRM that would identify additional questions on which public comment would be solicited.

To facilitate public input leading to the development of a final rule, the FHWA and the FTA intend to hold a series of joint public meetings to receive comments. The schedule for these meetings will be announced in a separate notice.

Development of the Proposed Regulation

This proposed regulation was developed by the FHWA and the FTA in consultation with other agencies of the Department of Transportation. In developing the proposed regulation, the FHWA and the FTA considered several documents. Specifically, the following documents were considered, and copies of them have been placed in the docket for this NPRM: (1) The proceedings of the conferences "Moving Urban America" held in Charlotte, NC, May 4–6, 1992, and "Transportation Planning, Programming, and Financing" held in Seattle, WA, July 19–22, 1992; (2) preliminary guidance contained in questions and answers placed on the FHWA electronic bulletin board subsequent to the passage of the ISTEA; and (3) written comments submitted to the FHWA and the FTA on the interim guidance issued on May 28, 1992, for the new statutory statewide transportation planning requirements.

General Approach and Objective

Unlike metropolitan transportation planning, there was no statutory basis for the FHWA and the FTA to require a statewide transportation planning process in each State prior to the ISTEA. Section 1025 of the ISTEA not only provides a legislative basis for statewide transportation planning but also prescribes elements of the statewide process, plan and program. Given the detail provided in the legislation, the fundamental objective of the FHWA and the FTA has been to implement the new legislation as mandated without adding unnecessary prescription. The FHWA and the FTA also intend to issue guidance to assist the States to satisfy the statewide transportation planning requirements.

Relationship to Interim Guidance

Interim guidance was issued jointly by the FHWA and the FTA on May 28, 1992, to aid the States in their initial efforts to comply until completion of this rulemaking process. The guidance has been used in preparing this proposed regulation. In some instances, however, the FHWA and the FTA are proposing changes from the interim guidance, in response to further analysis and suggestions from interested parties. For example, the interim guidance provided for approval of the transportation plan by the Governor. The proposed regulation would not require a specific type of approval but stresses that the plan be formally recognized by the State. A Governor or a State legislature could, however, choose to review this plan and/or provide specific direction to the State transportation agency regarding content or format. The FHWA and the FTA specifically invite comments on the desirability or need to require formal plan approval and, if a need is identified, how such approval should occur.

Structure of the Proposed Regulation

The proposed regulation largely follows the structure of the law with two important exceptions. The first is that a separate section is included in the proposed regulation on "coordination." The intent of this section is to bring together in one place important coordination tasks which, if successfully carried out, would substantially enhance the effectiveness and validity of the statewide transportation planning process. The FHWA and the FTA strongly believe that successful coordination of programs

and actions is a key to implementing the Federal statewide transportation planning requirements intended in the ISTEA. The separate section would emphasize this vital element of the statewide transportation process. This emphasis was not added explicitly to the interim guidance.

The second exception is that the proposed regulation contains a unified section on "public involvement," whereas public involvement requirements are addressed separately in the law as a part of plan development and program development. In this manner, the FHWA and the FTA intend (1) to highlight the overall importance of public involvement and (2) to stress its importance throughout the entire statewide transportation planning process. In the interim guidance, the States were required to establish or modify existing public involvement procedures to comply with the ISTEA. Because some States may have already accomplished this step, no further specific direction on the subject is proposed. However, the FHWA and the FTA encourage the States to further improve their public involvement procedures, as appropriate.

Section-by-Section Analysis

Section 450.200 Purpose

This section describes the general purpose of the proposed regulation. Although the specific purpose of the regulation is to prescribe policies and procedures to implement 23 U.S.C. 135, the FHWA and the FTA recognize that the fundamental purpose of the proposed regulation is to achieve the development of transportation plans and programs that facilitate the efficient movement of people and goods with full consideration of all modes and all significant planning factors.

Section 450.202 Applicability

This section makes the provisions of this subpart applicable to agencies and organizations which carry out statewide transportation planning. The primary responsibility rests with the State transportation agency working with the metropolitan planning organizations (MPOs) and other agencies and jurisdictions in carrying out the statewide transportation planning process. The FHWA and the FTA recognize that the structure for statewide transportation planning varies among States; therefore, specific organizational and institutional arrangements for carrying out statewide transportation planning are not proposed.

Section 450.204 Definitions

This section defines various terms used in the proposed regulation. The FHWA and the FTA recognize that, even with definitions, there may be some initial confusion since, among other things, the meanings of terms have changed over time (e.g., "metropolitan planning areas" have evolved from the "urbanized areas" used in earlier regulations). However, the FHWA and the FTA have avoided definitions that could unnecessarily restrict program actions, but have attempted to make definitions consistent among regulations implementing the statutory language of the ISTEA.

A number of terms used in the regulation are defined elsewhere in the CFR. At the time a final rule is issued, the FHWA and the FTA intend to combine the definitions used in metropolitan and statewide transportation planning in a separate subpart.

The terms "statewide transportation plan" and "statewide transportation improvement program" (STIP) use the word "statewide" to cover the statutory "for all areas of the state". These are specifically defined in the proposed regulation. The former term omits the statutory "long-range" because the time horizon is established in the body of the regulation.

The terms "coordination", "cooperation" and "consultation" are also specifically defined. The first of these is defined for reasons noted above in the discussion of the general structure of the proposed regulation. The latter two terms are defined essentially the same as in the guidance on the FHWA electronic bulletin board and are important in development of the statewide transportation plan and in project selection. Notwithstanding the above, the FHWA and the FTA encourage all agencies involved in statewide transportation planning to attempt to reach mutual agreement on all important matters, especially on such matters as overall policy, objectives and priorities. However, in the case of the term "consultation", the definition implies that the consulting party is not bound by the views of the other party.

The defined term "regionally significant" is mentioned in development of the statewide transportation improvement program.

The term "metropolitan area" in the law has been expanded to "metropolitan planning area" to avoid confusion with the term established by the Office of Management and Budget for statistical purposes.

A number of statewide and metropolitan planning processes are already underway that define the term "intermodal" which is used in the proposed regulation and a related term "multimodal" which is not used in the proposed regulation. For the purpose of this proposed regulation, multimodal planning reflects consideration of more than one mode to serve transportation needs in a given area and is included within the meaning of intermodal. Intermodal planning reflects a focus on connectivity between modes as a means of facilitating linked tripmaking. It emphasizes connections, choices, coordination and cooperation. The continued use by planning agencies of definitions similar to these is acceptable. Details of how intermodal transportation needs should be considered are addressed in a concurrent rulemaking on Intermodal Facilities and Systems: Management Systems (57 FR 23459, June 3, 1992, advance notice of proposed rulemaking).

No definition is believed necessary for the terms "continuing" or "comprehensive," as used in § 450.200. The FHWA and the FTA do, however, recognize a continuing process to be one in which on-going analysis and decision activities are not subject to major interruptions (frequent, basic, fundamental and substantial change) and a comprehensive process to be one in which all relevant considerations (e.g. modes, geography, time period) are part of on-going analysis and decision activities.

The term "transportation control measure" (TCM) is used in the proposed regulation in connection with air quality. This term is not defined in the proposed regulation; however, it refers to measures identified in air quality implementation plans which reduce transportation related emissions by reducing vehicle use or changing traffic flow or congestion conditions. Two air quality terms are defined, however. One is the term "nonattainment area" which essentially refers to areas where air quality standards are not met for transportation related pollutants. The other is the term "maintenance area" which essentially refers to areas where standards are met but conformity procedures are found necessary to maintain standards. Separate proposed conformity regulations (See 58 FR 3768, Jan. 11, 1993.) more fully discuss this subject. Finally, the term "management systems" is used in the proposed regulation. The definition of this term will be established in a separate rulemaking; however, the term refers to the systems required by 23 U.S.C. 303

to manage pavements, bridges, safety, congestion, public transportation and intermodal facilities.

Comments on the need for formal definition of terms (e.g., cooperation, comprehensive), or the appropriate use of terms (e.g., intermodal) are encouraged and will be considered for the final rule.

Section 450.206 State Transportation Planning Process: General Requirements

This section would require several components for the statewide transportation planning process in each State. Since no substantive Federal requirements for statewide transportation planning existed prior to the ISTEA, the FHWA and the FTA would establish a general framework for this process. The six steps of the process are identified in the order that they would typically occur. However, the FHWA and the FTA acknowledge that process is not necessarily sequential. For example, data collection and coordination activities (which, in turn, may be part of a management system) typically occur throughout the process, rather than as unique or individual steps in the process. Further, much of the data collection and coordination is not specific to any given project or group of projects. The FHWA and the FTA intend to confine their monitoring of the statewide transportation planning process to these six steps.

Section 450.208 Statewide Transportation Planning Process: Factors

The factors included under paragraph (a) of this section are a restatement of those contained in 23 U.S.C. 135 (c) and (d) with each factor given equal weight.

Paragraph (b) recognizes that because conditions clearly vary from one State to another, it is reasonable that the degree of consideration given to the factors in paragraph (a) of this section may vary. The FHWA and the FTA considered minimum requirements for the specific factors in paragraph (a), but are proposing instead to allow flexibility to the States in deciding how the factors should be addressed.

The FHWA and the FTA do expect the States to give maximum practicable consideration to the factors in paragraph (a) and to provide a reasonable explanation of the extent of consideration given to each factor. For example, consideration of a factor may be reflected in a product or procedure in the planning process. If substantive consideration of a factor did not occur, a reasonable explanation of the reason(s) would be expected. The FHWA and the FTA specifically invite comments on this approach or others that should be considered in developing the final rule. As noted above, the FHWA and the FTA intend to issue additional guidance to assist the States in providing substantive consideration of the factors in paragraph (a).

Section 450.210 Coordination

This section specifies various types of coordination that the FHWA and the FTA believe are crucial to an effective statewide transportation planning process. These requirements are consistent with the overall mandate of 23 U.S.C. 135 that statewide transportation planning be continuous, cooperative, and comprehensive in nature. In proposing these requirements, the FHWA and the FTA acknowledge that the degree to which they apply in each State will vary depending on the complexity of transportation problems and other factors. As in the case of § 450.208, minimum requirements for this section are not specified. Instead, the FHWA and the FTA will expect the States to provide maximum practicable consideration to the 11 areas identified in the proposed regulation and to provide a reasonable explanation of the extent of such coordination or lack thereof.

Neither the FHWA nor the FTA is under the illusion that the difficulties of coordination are easily or quickly solvable. For example, paragraph (a)(6) specifies coordination between transportation planning carried out by the State highway/transportation agency and planning by other agencies for economic development and recreation and tourism resources and operators for ports, airports, and other intermodal transportation. In carrying out this coordination, agencies and operators have to learn each other's basic rules, constraints and language. This may be difficult and could take some time to accomplish. Nonetheless, the FHWA and the FTA believe such coordination is essential and should be required.

States may find establishment of on-going advisory or other types of committees useful in undertaking the coordination requirements. Such committees could be structured by function (e.g., goods movement, intermodal access, etc.) or by geographical area.

The FHWA and the FTA invite comments on whether the need for better coordination justifies addition of this section and, if this section is justified, which areas of coordination are the most important and whether the 11 areas in this section are too many or too few.

Section 450.212 Public Involvement

This section proposes specific public involvement requirements for the statewide transportation planning process. Paragraph (a) of this section addresses public involvement in the development of the statewide transportation plan, and paragraph (b) the statewide transportation improvement program. The proposed requirements of this section are similar except that the State is responsible for the former, while the Governor, specifically, is responsible for the latter. This distinction is made in the statutory language of 23 U.S.C. 135(e) and (f).

The FHWA and the FTA also intend to provide further guidance in this area. Until guidance is issued, the FHWA and the FTA encourage the States to use approaches that emphasize opportunities for meaningful input from and interaction with the broadest possible range of parties who provide, use or are affected by transportation facilities and programs.

Section 450.214 Statewide Transportation Plan

This section proposes requirements for the statewide transportation plan. With two exceptions the proposed requirements simply mirror those contained in 23 U.S.C. 135(e). The first is a proposed requirement that the statewide transportation plan reference, summarize, or contain various studies, reports, etc., related to the plan. The FHWA and the FTA recognize that the statewide transportation plan is but one product of the statewide transportation planning process and that many other policies and studies provide the substance or framework for the plan and process. However, to ensure that the plan is comprehensive, the FHWA and the FTA believe that relevant policies and studies should be included either by reference or in summary form.

The second exception is a proposed requirement that the statewide transportation plan reference, summarize, or contain information on available financial and other resources needed to carry out the plan. Although financial planning requirements are not explicitly included in 23 U.S.C. 135(e), the FHWA and the FTA believe this proposed requirement is consistent with the overall intent of the law to address transportation needs in an efficient and effective manner and specifically invite comment on this provision.

The FHWA and the FTA propose neither structural nor content details of the plan, with the exception of the statutory requirement that the plan contain a bicycle and pedestrian

element. Instead, the proposed regulation would require that the plan accomplish a number of functions, e.g., be intermodal (including consideration and provision, as applicable, of elements of rail, waterway, and aviation facilities, particularly with respect to intercity travel), reflect factors to which substantive consideration was provided, etc. This approach is intended to provide sufficient flexibility for the States to tailor their plan to their needs. For example, the proposed regulations would provide several ways for the States to structure the relationship of the statewide transportation plan and the metropolitan transportation plans required by 23 U.S.C. 134(g)(2) as well as several ways to incorporate information from other on-going planning efforts involving railroads, airports, ports, freight terminals and waterways.

The FHWA and the FTA received a number of inquiries about the content of the statewide transportation plan, whether a State policy plan will satisfy the requirement for a plan, and about the time horizon and update schedule for the statewide transportation plan. With respect to the content of the plan, the three paragraphs above provide some additional direction. With respect to the adequacy of a State policy plan to satisfy the requirement, the proposed regulation does not rule out such a plan. However, the FHWA and the FTA believe that the proposed requirements can best be met though a corridor-level systems plan which is based on appropriate policy plans and studies. Although the proposed regulation does not prescribe content details for the plan, it must have sufficient specificity for development of a STIP. Further, by including corridor level information, the FHWA and the FTA believe that public involvement will be considerably more meaningful. The FHWA and the FTA invite comments on whether a State policy plan, alone, meets the statewide transportation plan requirement.

With respect to the time horizon and update schedule of the statewide transportation plan, the FHWA and the FTA recognize that an equal time horizon of 20 years in metropolitan areas, with metropolitan transportation plans incorporated by reference, and in non-metropolitan areas may have some value from a consistency standpoint. Such an alternative would also have some disadvantages. For example, the plan would need frequent revisions, especially if the State had many metropolitan planning areas.

Another alternative would be to have an initial horizon of 25 years in metropolitan areas, with more general corridor information than that contained in the metropolitan transportation plans, and 30 years in non-metropolitan areas (where the transportation system changes more slowly than in metropolitan areas). This has the disadvantage of making the statewide and metropolitan transportation plans different in time horizon. It may have the advantage, however, of allowing about 5 years between plan updates. To allow the flexibility to use either of these approaches, the phrase "reasonably consistent" is used in § 450.214(a)(1).

Finally, 23 U.S.C. 135(e) and these proposed regulations provide for the development of the statewide transportation plan by the State in cooperation with the MPOs and Indian tribal governments. States are encouraged to actively involve the MPOs and Indian tribal governments in the development of elements of the statewide transportation plan within their jurisdiction. As a minimum, MPOs or Indian tribal governments should, as appropriate, provide technical and policy information to the State, participate in analytical and decision-related activities and/or make informal comments on any elements of the statewide transportation plan that have an impact on the area within their jurisdiction. The proposed regulation also provides for the statewide transportation plan to be consistent with the metropolitan transportation plans; however, the FHWA and the FTA recognize that the statewide transportation plan may contain less detail than the metropolitan transportation plans. The FHWA and the FTA acknowledge that, given the cooperation required, one portion of the plan may be completed before another portion, and that the plan may evolve in a piecemeal manner, while elements are developed for specific subareas of the State. In this event, the State in cooperation with the MPO or Indian tribal government must identify sufficient existing plans and policies to support projects in the statewide transportation improvement program. The possibility that projects in a proposed STIP may not be funded due to a lack of plan support should, in this case, be a substantial incentive to reach agreement on the plan. The FHWA and the FTA invite comments on the relationship of the statewide transportation plan to plans for areas within the jurisdiction of an MPO or Indian tribal government and the appropriate roles and responsibilities of the States, MPO and Indian tribal governments in developing the statewide transportation plan.

Section 450.216 Statewide Transportation Improvement Program (STIP)

This section specifies what must be included and what must not be included in a STIP. To be included are projects throughout the State, projects with an identified priority (e.g., year 1 is highest priority), projects consistent with the plan, projects for which funds can reasonably be expected to be available, projects proposed for funding under title 23, U.S.C., or under the Federal Transit Act, and projects for which approval by the FHWA or the FTA is required (e.g., Interstate system access, projects listed in section 1103 of the ISTEA, etc.). Other projects may be included for informational purposes and more effective public involvement in the review of the STIP. The FHWA and the FTA intend that not only projects requiring funding but also projects (most of which will probably come from metropolitan TIPs) which substantially change the existing transportation system itself, e.g., changes in the definition of high occupancy vehicle for a certain facility, major changes in traffic control, changes in parking charges as a part of a congestion pricing project, etc., be included in the proposed STIP. It is also important to note that, except in air quality nonattainment and maintenance areas, the approvals of the metropolitan TIP by the MPO and Governor mean that the metropolitan TIP is automatically included in the STIP. In nonattainment and maintenance areas, there is an additional step, namely the conformity finding that the FHWA and the FTA are required to make. However, in both attainment and nonattainment areas the Governor's approval of the metropolitan TIP is a State commitment to include the TIP in the proposed STIP.

The FHWA and the FTA, recognizing the importance of air quality concerns throughout 23 U.S.C. 135, require projects in the STIP to be conforming (that is, essentially, conforming with air quality plans and standards). This applies to nonattainment areas or maintenance areas. Conformity is typically through a conformity determination made on a metropolitan TIP. Furthermore, in nonattainment areas, projects identified as transportation control measures (i.e., essentially projects whose implementation is required to achieve attainment) are to be given priority. With respect to the requirement that funds be reasonably available, the FHWA and the FTA recognize that

obligational limitations on Federal funds are typically not known during development of the STIP. Thus, authorized title 23, U.S.C., funds and Federal Transit Act section 9 apportionments (49 U.S.C. app. 1607a) may be used to comply with this requirement. A number of suggestions have been received to allow a specific amount of over-programming, 10 or 25 percent. The FHWA and the FTA, while not requiring available funds and project costs to be equal, are not proposing to allow over-programming. However, there are two provisions in this section that provide States with a certain amount of flexibility. The first would allow projects to be moved from one year of the STIP to another year, subject to project selection requirements; the second would allow the STIP to be amended. The FHWA and the FTA invite comments on the need for further flexibility in programming projects. The FHWA and the FTA intend that the funds availability requirement apply to each year of the STIP and that a summary sheet or other means be provided to readily compare the funds available and the funds required.

Also, in a manner similar to that for partial plans, the FHWA and the FTA recognize that there will be some cases in which partial STIPs should be approved. This provides a mechanism whereby a failure to, for example, obtain a conformity finding in one portion of the State does not jeopardize projects in another part of the State. This interpretation was implied in the interim guidance discussed previously, and subsequently made explicit.

Paragraph (a)(6) identifies the project-specific information that would be included in the STIP. This prescription was not included in the interim guidance. It is important to note that this paragraph applies to both non-capital and capital projects as discussed previously. The FHWA and the FTA believe this detail is necessary to assure reasonable consistency within a State, especially between the TIPs and the STIP.

Paragraph (a)(7) allows projects with small-scale impacts (e.g., seismic retrofit, pavement resurfacing, rehabilitation of transit vehicles, etc.) to be grouped to avoid minor amendments to the STIP for scope of work, cost, etc., and provides a flexible mechanism for reducing the bulk of the STIP. In the NPRM for conformity (See 58 FR 3768, Jan. 11, 1993.), the discussion of exempt projects is in 40 CFR 51.403 and the listing of such projects is in table 3.

The FHWA and the FTA believe that, in most cases, States and metropolitan areas will establish an effective process to coordinate the timing of TIPs for metropolitan areas and STIPs for States without having a requirement to this effect in the regulation.

The ISTEA did not rescind the programming requirements of 23 U.S.C. 105, which are similar to, but less detailed than, those in 23 U.S.C. 135(f). The FHWA and the FTA believe the Congress fully intended for 23 U.S.C. 135 to be the operative requirement. Until a legislative remedy is made, the FHWA will consider compliance with the proposed regulations to constitute compliance with 23 U.S.C. 105. Similarly, the FTA will consider the STIP as the programming document for sections 3, 9, 16 and 18 of the Federal Transit Act.

Finally, as an implication of the requirements of the proposed regulation, suballocation of flexible surface transportation program (STP) funds and STP funds allocated for use in areas with less than 200,000 population to individual jurisdictions or by mode, except for the allocation of funds to transportation management areas, is discouraged. While geographic equity is desirable and encourages local funding of local needs, the FHWA and the FTA believe it is more desirable that priorities be based on objective areawide estimates of needs, benefits, etc.

Section 450.218 Funding

This section confirms that certain funding categories in title 23, U.S.C., and the Federal Transit Act are eligible for accomplishing the requirements of the proposed regulation.

Section 450.220 Approvals

This section details the respective responsibilities of the States and the FHWA/FTA with respect to approval of the STIP. The State has the responsibility to submit a proposed STIP and to certify that the STIP complies with Federal law relating to disadvantaged business enterprises, title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, lobbying, and air quality. The FHWA and the FTA have the responsibility to jointly review and approve or disapprove the proposed STIP. Federal approval is a determination that the State has complied with the requirements of 23 U.S.C. 135 as a condition of eligibility of the State's projects for Federal-aid funding. It does not relate to the content of the plan or STIP, which (except for TCMs in a SIP for a nonattainment area) is the prerogative of the State. The FHWA and the FTA also have the responsibility to notify the State of their action.

Paragraph (e) indicates that the FHWA and the FTA, may approve certain projects, even without an approved STIP. These projects, however, include only operating assistance and emergency projects. The FHWA and the FTA invite comments on the need for this flexibility and whether its scope should be expanded or further restricted.

Section 450.222 Project Selection for Implementation

This section would prohibit using title 23, U.S.C., or Federal Transit Act funds to fund projects not on the federally approved STIP, other than the exceptions identified in section 450.220. The section also contains the project selection criteria in the ISTEA and an interpretation that identifies the projects on the first year of the STIP as being "selected" projects.

Finally, this section contains a procedure for moving projects from the second or third year of the STIP to the first, i.e., "selected" year of the STIP by using the selection procedures contained in the ISTEA or expedited procedures as agreed to by the parties involved in the selection.

Section 450.224 Phase-in of New Requirements

This section would establish an effective date of January 1, 1995, for full implementation of 23 U.S.C. 135 and would allow the use of existing transportation plans and policies on an interim basis to meet the plan requirements. Notwithstanding the phase-in allowed by this section and the phase-in of other ISTEA requirements (e.g., management systems), the FHWA and the FTA encourage the States to complete the statewide transportation plan requirement, including the documentation task as described in § 450.214, as soon as reasonably practicable. A plan that is fully responsive to the requirements of 23 U.S.C. 135 will expedite development of intermodal projects and will provide a vehicle for public involvement in the entire transportation planning process.

Rulemaking Analyses and Notices

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

The FHWA and the FTA have determined that this rulemaking is not major within the meaning of Executive Order 12291. This rulemaking is considered a significant regulation under Department of Transportation

regulatory policies and procedures because of substantial State, local government, congressional, and public interest. These interests involve receipt of Federal financial support for transportation investments, appropriate compliance with legislative instructions, and balancing of transportation mobility and environmental goals. Because the proposed regulation adds only minimally to the requirements of the ISTEA, the FHWA and the FTA anticipate that the economic impact of this rulemaking will be minimal and, therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 601–612), the FHWA and the FTA have evaluated the effects of this proposed rule on small entities such as local governments and businesses. The proposed regulation establishes new requirements for statewide transportation planning; however, these are substantially dictated by the provisions of the ISTEA and the Clean Air Act Amendments of 1990. Where legislative language required clarification, regulatory language has been provided. Hence, the FHWA and the FTA believe that the overall compliance burden on public entities implementing the provisions of the legislation will not be substantially greater than previously existed and is mandated by legislative provision. Based on the evaluation, the FHWA and the FTA certify that this rulemaking would not have a significant economic impact on a substantial number of small entities. The need to further evaluate economic consequences will be reviewed on the basis of comments submitted in response to this notice and the public meetings.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The proposed rule recognizes the role of State and local governments in implementing the statewide transportation planning provisions of the ISTEA, including the increased discretionary authority allocated to them under the Act. Accordingly, it is certified that the policies contained in this document have been assessed in light of the principles, criteria, and requirements of the Federalism Executive Order as well as the applicable provisions of the ISTEA authority for this proposal. It has been determined that this proposed rule does not have sufficient Federalism implications to warrant a full Federalism Assessment under the principles and criteria contained in Executive Order 12612.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Numbers 20.205, Highway Planning and Construction; 20.500, Federal Transit Capital Improvement Grants; 20.505, Federal Transit Technical Studies Grants; 20.507, Federal Transit Capital and Operating Assistance Formula Grants. The regulations implementing Executive Order 12372 regarding intergovernmental consultation in Federal programs and activities apply to these programs.

Paperwork Reduction Act

The information collection, reporting and recordkeeping provisions in this proposal have been reviewed for compliance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The creation and submission of required reports and documents have been constrained to those specifically required by the ISTEA or essential to the performance of the FHWA and the FTA's findings and approvals.

National Environmental Policy Act

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

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 450 and 49 CFR Part 613

Highways and roads, Mass transportation, Statewide transportation planning, Statewide transportation improvements Program, and Project selection.

In consideration of the foregoing, the Federal Highway Administration proposes to amend 23 CFR part 450 and the Federal Transit Administration proposes to amend 49 CFR part 613, as set forth below.

Issued on: February 17, 1993.

E. Dean Carlson,

Executive Director, Federal Highway Administration.

Robert H. McManus,

Acting Administrator, Federal Transit Administration.

Title 23

PART 450—PLANNING ASSISTANCE AND STANDARDS

1. The authority citation for part 450 is revised to read as follows:

Authority: 23 U.S.C. 104(f), 134, 135, 217, and 315; 49 U.S.C. app. 1602, 1604, 1607, and 1607a; and 49 CFR 1.48(b) and 1.51.

2. Subpart B of part 450 is revised to read as follows:

Subpart B—Statewide Transportation Planning

Sec.
450.200 Purpose.
450.202 Applicability.
450.204 Definitions.
450.206 Statewide transportation planning process: General requirements.
450.208 Statewide transportation planning process: Factors.
450.210 Coordination.
450.212 Public involvement.
450.214 Statewide transportation plan.
450.216 Statewide transportation improvement program (STIP).
450.218 Funding.
450.220 Approvals.
450.222 Project selection for implementation.
450.224 Phase-in of new requirements.

Subpart B—Statewide Transportation Planning

§ 450.200 Purpose.

The purpose of this subpart is to implement 23 U.S.C. 135, which requires each State to carry out a continuing, comprehensive, and intermodal statewide transportation planning process, including the development of a statewide transportation plan and transportation improvement program, that facilitates the efficient, economic movement of people and goods in all areas of the State, including those areas subject to the requirements of 23 U.S.C 134.

§ 450.202 Applicability.

The requirements of this subpart are applicable to States and any other agencies/organizations which are responsible for satisfying these requirements.

§ 450.204 Definitions.

Except as otherwise provided, terms defined in 23 U.S.C. 101(a) are used in this part as so defined.

Consultation means that one party confers with another identified party and, prior to taking action(s), considers that party's views.

Cooperation means that actions taken are subject to the concurrence of the identified parties.

Coordination means the comparison of the transportation plans, programs, and schedules of one agency with related plans, programs and schedules of other agencies or entities with legal standing, and the subsequent adjustment of plans, programs and schedules to maintain consistency and reduce or resolve possible omissions, duplications and conflicts.

Governor means the Governor, or his/her designee, of any one of the fifty States, or Puerto Rico, and includes the Mayor of the District of Columbia.

Maintenance Area means any geographic region of the United States that the U.S. Environmental Protection Agency (EPA) has designated as a maintenance area, under section 175A of the Clean Air Act Amendments of 1990, for a transportation related pollutant(s) for which a national ambient air quality standard exists.

Metropolitan planning area means the area in which the metropolitan transportation planning process required by 23 U.S.C. 134 and section 8 of the Federal Transit Act must be carried out.

Metropolitan planning organization (MPO) means that organization designated as being responsible, together with the State, for carrying out the provisions of 23 U.S.C. 134, as provided in 23 U.S.C. 104(f)(3) and 134(b), and capable of meeting the requirements of sections 3(e)(1), and 8(a), (b) and (c) of the Federal Transit Act (49 U.S.C. app. 1602(e)(1) and 1607(a), (b) and (c)). This organization is the forum for cooperative transportation decisionmaking.

Nonattainment area means any geographic region of the United States which the U.S. Environmental Protection Agency (EPA) has designated as a nonattainment area for a transportation related pollutant(s) for which a national ambient air quality standard exists.

Regionally significant means any transportation facility with an arterial or higher functional classification, plus any other facility that serves regional travel needs (such as access to and from the area outside of the region, to major activity centers in the region, or to transportation terminals) and would normally be included in the modeling for the transportation network.

State means any one of the fifty States, the District of Columbia, or Puerto Rico; when an action by the State is required, then the *State* means the State transportation agency.

Statewide transportation improvement program (STIP) means a staged multiyear program of transportation projects that are capital and non-capital, highway and transit, metropolitan and nonmetropolitan, federally funded and nonfederally funded.

Statewide transportation plan means the official transportation plan that is:

(1) Intermodal in scope, including bicycle and pedestrian features;

(2) Addresses at least a twenty year planning horizon; and

(3) Covers the entire State.

Transportation improvement program (TIP) means a staged multiyear program of transportation projects for a metropolitan planning area, excluding planning and research activities funded under 23 U.S.C. 104(f) and 23 U.S.C. 307(c), section 6055(b) of the Intermodal Surface Transportation Efficiency Act and/or sections 8 and 26 of the Federal Transit Act (49 U.S.C. app. 1607 and 1622).

§ 450.206 Statewide transportation planning process: General requirements.

(a) The statewide transportation planning process shall include, as a minimum:

(1) Data collection and analysis;

(2) Consideration of factors contained in § 450.208;

(3) Coordination of activities as noted in § 450.210;

(4) Development of a statewide transportation plan;

(5) Development of a statewide transportation improvement program; and

(6) Development and evaluation of alternative transportation solutions and projects.

(b) The statewide transportation planning process shall be carried out in coordination with the metropolitan planning process required by 23 CFR part 450, subpart A.

§ 450.208 Statewide transportation planning process: Factors.

(a) Each State shall, at a minimum, consider the following factors throughout a continuous statewide transportation planning process:

(1) The results of the management systems required by 23 U.S.C. 303;

(2) Any Federal, State, or local energy use goals, objectives, programs, or requirements;

(3) Strategies for incorporating bicycle transportation facilities and pedestrian walkways in appropriate projects throughout the State;

(4) International border crossings and access to ports, airports, intermodal transportation facilities, major freight distribution routes, national parks, recreation and scenic areas, monuments and historic sites, and military installations;

(5) The transportation needs of areas outside of metropolitan planning areas through a process that includes consultation with local elected officials with jurisdiction over transportation;

(6) Any metropolitan area plan developed pursuant to 23 U.S.C. 134;

(7) Connectivity between metropolitan planning areas within the State and with metropolitan planning areas in other States;

(8) Recreational travel and tourism;

(9) Any State plan developed pursuant to the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*);

(10) Transportation system management and investment strategies designed to make the most efficient use of existing transportation facilities;

(11) The overall social, economic, energy, and environmental effects of transportation decisions;

(12) Methods to reduce traffic congestion and to prevent traffic congestion from developing in areas where it does not yet occur, including methods which reduce motor vehicle travel, particularly single-occupant motor vehicle travel;

(13) Methods to expand and enhance appropriate transit services and to increase the use of such services;

(14) The effect of transportation decisions on land use and land development, including the need for consistency between transportation decisionmaking and the provisions of all applicable short-range and long-range land use and development plans;

(15) The transportation needs identified through use of the management systems required by 23 U.S.C. 303;

(16) Where appropriate, the use of innovative mechanisms for financing projects, including value capture pricing, tolls, and congestion pricing;

(17) Preservation of rights-of-way for construction of future transportation projects, including identification of unused rights-of-way which may be needed for future transportation corridors, and identification of those corridors for which action is most needed to prevent destruction or loss;

(18) Long-range needs of the State transportation system;

(19) Methods to enhance the efficient movement of commercial motor vehicles;

(20) The use of life-cycle costs in the design and engineering of bridges, tunnels, or pavements;

(21) The coordination of transportation plans and programs developed for metropolitan planning areas of the State under 23 U.S.C. 134 and section 8 of the Federal Transit Act with the statewide transportation plans and programs developed under this subpart, and the reconciliation of such plans and programs as necessary to ensure connectivity within transportation systems;

(22) Investment strategies to improve adjoining State and local roads that support rural economic growth and tourism development, Federal agency renewable resources management, and multipurpose land management practices, including recreation development; and

(23) The concerns of Indian tribal governments having jurisdiction over lands within the boundaries of the State.

(b) The degree of consideration of the factors may be appropriate to the scale and complexity of the transportation problems, land use, economic development and environmental objectives, and other circumstances within the State and to the problems, objectives and/or circumstances that vary from one portion of the State to another.

§ 450.210 Coordination.

(a) In addition to the coordination required under § 450.208(a)(20), each State shall, to the extent appropriate, provide for coordination of the following activities and/or organizational entities participating in the activities in carrying out the requirements of this subpart:

(1) Data collection, data analysis and evaluation of alternative transportation projects for a transit, highway, bikeway, scenic byway, recreational trail, or pedestrian program with any such activities for the other programs;

(2) Plans, such as the statewide transportation plan required under § 450.214, with programs and priorities for transportation projects, such as the STIP;

(3) Data analysis used in development of plans and programs, especially information resulting from traffic data analysis, with land use projections, public involvement relating to project implementation and with establishment and maintenance of management systems developed in response to 23 U.S.C. 303;

(4) Consideration of intermodal facilities with land use planning, including land use activities carried out by local, regional, and multistate agencies;

(5) Transportation planning carried out by the State with transportation planning carried out by Indian tribal governments, Federal agencies and local governments, MPOs, large-scale private transportation providers and multistate businesses;

(6) Transportation planning carried out by the State with significant transportation-related actions carried out by other agencies for recreation, tourism, and economic development and for the operation of airports, ports, and other intermodal facilities;

(7) Public involvement carried out for planning with public involvement carried out for programming and project development;

(8) Transportation planning carried out by the State with Federal, State, and local environmental resource planning that substantially affects transportation actions;

(9) Transportation planning with financial planning;

(10) Transportation planning with analysis of potential corridors for preservation; and

(11) Transportation planning with analysis of social, economic, energy and environmental effects of transportation actions.

(b) The degree of coordination may be appropriate to the scale and complexity of the transportation problems, land use, economic development and environmental objectives, and other circumstances within the State and to the objectives and/or circumstances that vary from one portion of the State to another.

§ 450.212 Public involvement.

(a) During development of the statewide transportation plan required under § 450.214, the State shall provide citizens, affected public agencies and jurisdictions, employee representatives of transportation and other affected agencies, private providers of transportation, and other interested parties a reasonable opportunity to comment on the proposed plan. Opportunities shall be provided for interested parties to be involved in the early stages of the plan development/update process. The plan shall be published, with reasonable notification of its availability, or otherwise made readily available for public review and comment.

(b) During development of the statewide transportation improvement program required under § 450.216, the Governor shall provide citizens, affected public agencies and jurisdictions, employee representatives of transportation or other affected agencies, private providers of transportation, and other interested parties a reasonable opportunity to comment on the proposed program. Opportunities shall be provided for interested parties to be involved in the early stages of the program development and update process. The program shall be published, with reasonable notification of its availability, or otherwise made readily available for public review and comment.

(c) The State shall, as appropriate, provide for public comment on existing and proposed procedures for public involvement throughout the statewide transportation planning and programming process.

§ 450.214 Statewide transportation plan.

(a) The State shall develop a statewide transportation plan for all areas of the State. The portion of the plan in metropolitan planning areas shall be developed in cooperation with the MPOs and shall be consistent with the metropolitan transportation plans required under 23 U.S.C. 134. The portion of the plan for areas of the State under the jurisdiction of an Indian tribal government shall be developed in cooperation with such government and the Secretary of the Interior. The State shall provide for public involvement as the plan is being developed, as required under § 450.212. When the document, or documents, comprising the plan is completed or amended, the State shall provide a mechanism to establish the plan as the official statewide transportation plan.

(b) In addition, the plan shall:

(1) Be intermodal (including consideration and provision, as applicable, of elements of rail, waterway, and aviation facilities, particularly with respect to intercity travel) and statewide in scope in order to facilitate the efficient movement of people and goods;

(2) Be reasonably consistent in time horizon among its elements, but cover a period of at least 20 years;

(3) Contain, as an element, a plan for bicycle transportation and pedestrian walkways in appropriate areas of the State which is interconnected with other modes;

(4) Reflect those factors to which substantive consideration was provided under § 450.208;

(5) Reflect substantive coordination provided under § 450.210;

(6) Reference, summarize or contain any applicable short range planning

studies, strategic planning and/or policy studies, transportation need studies, management system reports and any statements of policies, goals and objectives that were significant to development of the plan; and

(7) Reference, summarize or contain information on the availability of financial and other resources needed to carry out the plan.

(c) The plan may be revised using the procedures in this section for development and establishment of the plan.

§ 450.216 Statewide transportation improvement program (STIP).

(a) Each State shall develop a statewide transportation improvement program for all areas of the State. The portion of the STIP in a metropolitan planning area shall be developed in cooperation with the MPO. Metropolitan TIPs in nonattainment and maintenance areas are subject to FHWA and FTA conformity findings before their inclusion in the STIP. Otherwise, the metropolitan planning area TIP shall be included in the STIP, either directly or by reference, once it has been approved by the MPO and the Governor. In nonattainment and maintenance areas outside metropolitan planning areas, Federal findings of conformity must be made prior to placing projects in the STIP. The Governor shall provide for public involvement as required by § 450.212. In addition, the STIP shall:

(1) Include a priority list of transportation projects to be carried out in the first 3 years of the STIP. As a minimum, the priority lists shall group the projects that are to be undertaken in each of the years, e.g., year 1, year 2, year 3. The STIP shall cover a period of not less than 3 years, but may at State discretion cover a longer period. If the STIP covers more than 3 years, the projects in the additional years will be considered by the FHWA and the FTA only as background information. In nonattainment areas, the State shall give priority to TCMs and other projects identified in an approved air quality state implementation plan as having potential to substantially reduce transportation related pollution;

(2) Be consistent with the plan developed under § 450.214;

(3) In nonattainment and maintenance areas, contain only transportation projects found to conform, or from programs that conform, to the requirements contained in 40 CFR part 51.

(4) Be financially constrained and include sufficient financial information to demonstrate that funds can reasonably be expected to be available to implement the projects, as well as to maintain the system as a whole;

(5) Contain all capital and non-capital transportation projects (including transportation enhancements and pedestrian walkways and bicycle transportation facilities), or identified phases of transportation projects, proposed for funding under title 23, U.S.C., and/or sections 3, 9, 16(b)(2) and 18 of the Federal Transit Act (49 U.S.C. app. 1602, 1607a, 1612, and 1614), other than funds authorized by section 402 of the Surface Transportation Assistance Act of 1982, as amended (49 U.S.C. app. 2302), section 6055 of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240, 105 Stat. 1914), section 8 or 26 of the Federal Transit Act (49 U.S.C. app. 1607 and 1622) or 23 U.S.C. 104(f) or 23 U.S.C. 307(c)(1). The STIP shall also contain all transportation projects for which an approval by the FHWA or the FTA is required whether or not the projects are to be funded with title 23, U.S.C. or Federal Transit Act funds. The STIP should, for information purposes, include all transportation projects proposed to be funded with Federal funds other than title 23, U.S.C., or Federal Transit Act funds. It may also include, for information purposes, all regionally significant projects, irrespective of source of funding; and

(6) Include for each project the following:

(i) Sufficient descriptive material (i.e., type of work, termini, length, etc.) to identify the project or phase;

(ii) Estimated total cost;

(iii) The amount of Federal funds proposed to be obligated during each program year;

(iv) Proposed category of Federal funds and source(s) of non-Federal funds; and

(v) Identification of the agencies responsible for carrying out the project.

(b) Projects that are not considered to be of appropriate scale for individual identification in a given program year may be grouped by function and/or geographic area using the classifications under 23 CFR 771.117 (c) and (d) and/or 40 CFR part 51.

(c) Projects in any of the first three years of the STIP may be moved to any other of the first three years of the STIP in nonattainment and maintenance areas, and in other areas, to any year of the STIP, without requiring an amendment to the STIP, subject to the project selection requirements of § 450.222.

(d) The STIP may be amended at any time under procedures consistent with the procedures established in this section for STIP development and in § 450.220 for FHWA and FTA approval.

§ 450.218 Funding.

Funds provided under sections 8, 9, 18, and 26(a)(2) of the Federal Transit Act and 23 U.S.C. 104(b)(1), 104(b)(3), 104(f)(3) and 307(c)(1) may be used to accomplish activities in this subpart.

§ 450.220 Approvals.

(a) At least every two years each State shall submit the entire proposed STIP concurrently to the FHWA and the FTA for approval and amendments as necessary. The State shall certify that the transportation planning process is being carried out in accordance with all applicable requirements of:

(1) 23 U.S.C. 135, and these regulations;

(2) Title VI of the Civil Rights Act of 1964 and the title VI assurance executed by each State under 23 U.S.C. 324 and 29 U.S.C. 794;

(3) Section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240, 105 Stat. 1914) regarding the involvement of disadvantaged business enterprises in FHWA and FTA funded projects (Pub. L. 97–424, section 105(f); 49 CFR part 23);

(4) The provisions of the Americans with Disabilities Act (Pub. L. 101–336, 104 Stat. 327, as amended) and U.S. DOT regulations "Transportation for Individuals with Disabilities" (49 CFR parts 27, 37, and 38);

(5) The provisions of 49 CFR part 20 regarding restrictions on influencing certain Federal activities; and

(6) In States containing nonattainment and maintenance areas, sections 174 and 176 (c) and (d) of the Clean Air Act as amended (42 U.S.C. 7504, 7506 (c) and (d)).

(b) The FHWA and the FTA will, by mutual arrangement, review the STIP or amendment and jointly determine to what extent the STIP meets or substantially meets the requirements of title 23, U.S.C., the Federal Transit Act and these regulations. Approval action will take one of the following forms, as appropriate:

(1) Joint approval of the STIP; or

(2) Joint approval of the STIP subject to certain corrective actions being taken; and/or

(3) Joint approval of the STIP as the basis for approval of identified categories of projects.

(c) If, upon review, the FHWA and the FTA Administrators jointly determine that the STIP or amendment does not substantially meet the requirements of 23 U.S.C. 135 and these regulations for any identified categories of projects, they will not approve the STIP.

(d) The FHWA and the FTA will notify the State of actions taken under this section.

(e) Where necessary in order to maintain or establish operations in the absence of an FHWA/FTA approved STIP, the Federal Highway and/or Transit Administrators, as appropriate, will approve operating assistance or emergency funding for specific projects or programs.

§ 450.222 Project selection for implementation.

(a) Projects not included in the federally approved STIP, except as described in § 450.220(e) shall not be eligible for funding with title 23, U.S.C., or Federal Transit Act funds.

(b) In metropolitan planning areas, transportation projects to be implemented shall be selected in accordance with procedures established pursuant to 23 CFR 450.132.

(c) Outside metropolitan planning areas, transportation projects undertaken on the National Highway System and under the bridge and Interstate maintenance programs shall be selected by the State in consultation with the affected local officials. Federal lands highway projects shall be selected in accordance with 23 U.S.C. 204. Other transportation projects undertaken shall be selected by the State in cooperation with the affected local officials.

(d) Transportation projects listed in the first year of an approved STIP shall be considered selected. Movement of projects in the second or third year of an approved STIP to the first year of the STIP requires use of the selection procedures in paragraphs (b) and (c) of this section. Expedited selection procedures which provide for the advancement of projects from the second or third years of the STIP may be used if agreed to by all the parties involved in the selection.

§ 450.224 Phase-in of new requirements.

The State shall, by January 1, 1995, identify the official statewide transportation plan, described under § 450.214, to be used as a basis for subsequently approved STIPs. Until such a plan is identified, but no later than January 1, 1995, the State may identify existing plans and policies which can serve as the official interim plan. Development of the STIP may be based on the interim plan, provided that all factors identified in § 450.208 are considered.

Title 49

PART 613—PLANNING ASSISTANCE AND STANDARDS

3. The authority citation for part 613 is revised to read as follows:

Authority: 23 U.S.C. 104(f), 134, 135, 217, and 315; 49 U.S.C. app. 1602, 1604, 1607, 1607 and 1622; 49 CFR 1.48(b) and 1.51.

4. Subpart B of part 613 is revised to read as follows:

Subpart B—Statewide Transportation Planning

§ 613.200 Statewide transportation planning.

The regulations in 23 CFR part 450, subpart B, shall be followed in complying with the requirements of this subpart. These regulations require each State to carry out an intermodal statewide transportation planning process, including the development of a statewide transportation plan and transportation improvement program that facilitates the efficient, economic movement of people and goods in all areas of the State, including those areas subject to the requirements of 23 U.S.C. 134, in order to implement 23 U.S.C. 135 and sections 3, 5, 8, 9 and 26 of the Federal Transit Act (49 U.S.C. app. 1602, 1604, 1607, 1607 and 1622).

[FR Doc. 93–4124 Filed 3–1–93; 8:45 am]

BILLING CODE 4910–22–P

Federal Register

Tuesday
March 2, 1993

Part IV

Department of Transportation

Federal Highway Administration
23 CFR Part 500, et al.
Federal Transit Administration
49 CFR Part 614

Management and Monitoring Systems; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 500, 511, and 626

[FHWA/FTA Docket No. 92–14]

Federal Transit Administration

49 CFR Part 614

FHWA RIN 2125–AC97; FTA RIN 2132–AA47

Management and Monitoring Systems

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FHWA and the FTA are requesting comments from interested parties concerning the issuance of regulations to implement the provisions of section 1034 of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991. In accordance with the provisions of section 1034, the Secretary of Transportation (the Secretary) is required to issue regulations for State development, establishment, and implementation of systems for managing highway pavement of Federal-aid highways; bridges on and off Federal-aid highways; highway safety; traffic congestion; public transportation facilities and equipment; and intermodal transportation facilities and systems. In addition the Secretary must issue guidelines and requirements for the State development, establishment, and implementation of a traffic monitoring system for highways and public transportation facilities and equipment. An advance notice of proposed rulemaking (ANPRM) was published in the June 3, 1992, **Federal Register** (57 FR 23459) to solicit early input for development of these regulations. The ANPRM was issued with two docket numbers, FHWA 92–14 and FTA 92–B. Approximately two-thirds of the comments submitted to the FTA docket were duplicates of those submitted to the FHWA docket. Therefore, to avoid further duplication, FTA Docket 92–B is closed and this NPRM is being issued under FHWA/FTA Docket 92–14 only. Those comments submitted to FTA Docket 92–B that were not duplicates have been placed in FHWA/FTA Docket 92–14. In order to facilitate analysis of comments on this NPRM, it is requested that commenters specify in their submission which management system(s) their comments address.

These proposed regulations are being issued jointly by the FHWA and the FTA because the sanction provisions may be applied to funds apportioned under the Federal Transit Act (formerly the Urban Mass Transportation Act of 1964, as amended), as well as under Title 23, United States Code, Highways. In addition, the metropolitan planning provisions under both the Federal Transit Act and title 23, U.S.C., require consideration of the needs identified by the management systems. While not included as issuing agencies, other DOT administrations, such as the National Highway Traffic Safety Administration (NHTSA), may be actively involved in particular systems as appropriate.

DATES: Comments must be received on or before May 3, 1993.

ADDRESSES: Submit written, signed comments to FHWA/FTA Docket No. 92–14, Federal Highway Administration, HCC–10, room 4232, 400 Seventh Street, SW., Washington, DC 20590. All comments will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Wilbert Baccus, FHWA Office of the Chief Counsel, (202) 366–0780. For information on the general provisions, Mr. Tony Solury, (202) 366–5003. For information on a specific system: Highway pavement—Mr. Frank Botelho, (202) 366–1336; Bridges—Mr. Dan O'Connor, (202) 366–1567; Highway safety—Mr. Fred Small, (202) 366–2171; Traffic congestion—Mr.Tony Solury, (202) 366–5003; Public transportation facilities and equipment—Mr. Ron Jensen-Fisher, (202) 366–0257; Intermodal transportation facilities and systems—Mr. Dane Ismart, (202) 366–4071; Traffic monitoring—Mr. Ed Kashuba, (202) 366–0175. Office hours are 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: Section 1034 of the ISTEA amended title 23, United States Code, Highways by adding new section 303, Management Systems which requires the Secretary of Transportation to issue regulations for State development, establishment, and implementation of a system for managing each of the following:

(1) Highway pavement of Federal-aid highways (PMS),

(2) Bridges on and off Federal-aid highways (BMS),

(3) Highway safety (SMS),

(4) Traffic congestion (CMS),

(5) Public transportation facilities and equipment (PTMS), and

(6) Intermodal transportation facilities and systems (IMS).

The systems must be developed and implemented in cooperation with metropolitan planning organizations (MPOs) in metropolitan areas and with affected agencies receiving assistance under the Federal Transit Act.

In accordance with the legislation, the regulations may include a compliance schedule and minimum standards for each such system.

States must be implementing each management system beginning in Federal fiscal year 1995, and must annually certify, before January 1 of each fiscal year (the first certification is due by January 1, 1995), that the systems are being implemented, or the Secretary may withhold up to 10% of funds apportioned under title 23, U.S.C., or under the Federal Transit Act for any fiscal year beginning after September 30, 1995.

Section 303 also requires the Secretary to issue guidelines and requirements for the State development, establishment, and implementation of a traffic monitoring system (TMS) for highways and public transportation facilities and equipment.

Both the metropolitan (23 U.S.C. 134 and 49 U.S.C. app. 1607) and statewide (23 U.S.C. 135) transportation planning processes must include consideration of the needs identified under all of the management systems.

Beginning January 1, 1993, the Secretary must submit annual reports to Congress on the progress being made by both the Secretary and the States in carrying out the provisions of 23 U.S.C. 303.

An advance notice of proposed rulemaking (ANPRM) covering the six management systems and the traffic monitoring system was issued jointly by the FHWA and the FTA in the June 3, 1992, **Federal Register** (57 FR 23459). Comments were requested on issues common to all systems. Background information on each system and specific issues and questions for comment for each system were discussed. The comment period for the ANPRM closed on August 3, 1992.

Public workshops for the SMS were announced in the April 28, 1992, **Federal Register** (57 FR 17868) and were conducted in Washington, DC, on May 29, in San Francisco, CA, on June 1, and in Kansas City, MO, on June 10. Four public workshops for the CMS, PTMS, and IMS were announced in the May 26, 1992, **Federal Register** (57 FR 21915) and were conducted in Los Angeles, CA, on June 18, in New York

City, NY, on June 29, in Chicago, IL, on July 14, and in Houston, TX, on July 21. The purpose of the workshops was to obtain input to the rulemaking process to supplement the comments to the ANPRM docket.

Approximately 125 individuals attended the SMS workshops and over 320 attended the workshops for the CMS, PTMS, and IMS. Summaries of comments presented and documents submitted at the public workshops have been placed in FHWA docket 92–14 and are available for review.

Approximately 162 sets of comments totaling over 900 pages were submitted to dockets FHWA 92–14 and FTA 92–B. Approximately 48% of the comments to the dockets were from State agencies (transportation/highway departments, motor vehicle departments, State police, etc.), 13% from National interest groups/associations, 10% from regional planning agencies/MPOs, 10% from local agencies (cities, counties), 8% from private businesses or individuals, 7% from transit operators, and 4% from miscellaneous agencies. All of the testimony from the workshops and comments to the dockets have been reviewed and used to prepare this NPRM.

Testimony received at the workshops and the comments submitted to the dockets were similar. A summary of the significant comments and their disposition follows.

General

These proposed regulations will be issued as part 500 of subchapter F of title 23, Code of Federal Regulations (23 CFR). Subpart A of part 500 includes definitions and general requirements applicable to all of the systems. Subparts B through H of part 500 include additional regulations applicable to specific systems. The general requirements in subpart A and the requirements for the CMS, PTMS and IMS in subparts E through G would be incorporated by cross reference into the FTA's regulations as part 614 of chapter VI of title 49, Code of Federal Regulations.

By design, the proposed regulations are not definitive in all instances. The FHWA and the FTA intend to develop an extensive program to provide technical assistance to the States and other affected agencies in implementing the requirements.

Discussion of Comments to Dockets FHWA 92–14 and FTA 92–B and at the Public Workshops

The legislation states that the regulations may include minimum standards for the management systems. Based on comments on the questions raised in the ANPRM related to this issue, it was decided that establishment of a minimum set of standards applicable to all of the systems or to all States would not be appropriate or practicable. In addition, the FHWA and the FTA agree with the majority of commenters who indicated that the end results should be identified in the regulations but that the States should be allowed to develop systems to produce the desired results without overly prescriptive Federal requirements. While the regulations for each system include minimum requirements applicable to that system, an "end-result" philosophy is reflected to a great degree in the proposed regulations.

As defined in § 500.103 of the general subpart of the proposed regulations, the term "Federal agency(ies)" means the FHWA for the pavement and bridge management systems; the FHWA and the NHTSA for the safety management system; and the FHWA and the FTA for the congestion, public transportation, and intermodal management systems. This term is used in the proposed regulations to avoid the need to identify each involved agency for each system when referring to common requirements.

While the legislation requires development, establishment, and implementation of each management system by the States, in metropolitan areas the systems must be developed, established, and implemented in cooperation with MPOs. States also must cooperate with affected agencies receiving assistance under the Federal Transit Act. Several questions were asked in the ANPRM with regard to the nature of this cooperation and the degree of flexibility that the States should be allowed in determining how to meet this requirement. A few commenters indicated that a minimum level of cooperation needs to be specified in the regulations. However, while none disagreed that cooperation is essential, the vast majority indicated that each State and metropolitan area should be allowed to determine the nature of the cooperation because of unique organizational structure and requirements. Many indicated that cooperative mechanisms were already in place and functioning well within existing MPO processes. The FHWA and the FTA agree that flexibility is desirable. Such flexibility is reflected in proposed § 500.105(c), but the State must give MPOs and agencies (including private owners and operators) that have responsibility for operation of the affected transportation systems or facilities, and the public the opportunity for involvement in the development, establishment, and implementation of each management system. In addition proposed § 500.107(b) would require cooperation among the States, MPOs, and such agencies, and § 500.107(d) would permit them to mutually determine their roles.

Title 23, U.S.C., section 134 and 49 U.S.C. app. 1607 specify that MPOs, in developing plans and programs, must consider the transportation needs identified through use of the management systems. Similarly, the statewide planning process required under 23 U.S.C. 135 also must consider these needs. In addition, the results of the management systems must be considered in making project selection decisions under title 23, U.S.C., and under the Federal Transit Act. Most of the responses to issues raised in the ANPRM on this subject supported allowing considerable flexibility to the States, MPOs, and other affected agencies to determine how the results of the management systems will be considered in the planning processes and indicated that mechanisms for such consideration already exist. Paragraph (d) of § 500.105 would require consideration of the outputs as specified above, but does not mandate a specific level or form of consideration. Implementation of the outputs of the systems would be one significant indicator of such consideration.

The questions of what institutional structure should be established at the State or MPO level to implement the CMS, PTMS, and IMS and whether a common institutional structure should be required for all of the management systems were raised in the ANPRM. A few respondents expressed the opinion that a particular management system should be the "umbrella" mechanism for coordinating the outputs of the systems. However, the most often mentioned mechanism for coordination of the outputs of the systems was the transportation planning processes. The FHWA and the FTA agree that the metropolitan and statewide planning processes are the appropriate forums for coordinating the outputs of the management systems, as well as other transportation needs, particularly since the legislation specifically requires the outputs of the systems to be considered in these planning processes. This legislative requirement is reflected in proposed § 500.107(a). In addition, it is proposed in § 500.107(c) that, as appropriate, the CMS, PTMS, and IMS be part of the transportation planning processes in all metropolitan planning areas. It is also proposed in § 500.107(e) that the combined effectiveness of all of

the management systems in enhancing transportation investment decisions be periodically evaluated, preferably as part of the metropolitan and statewide planning processes. With respect to a mechanism to coordinate all of the systems at the State level, proposed § 500.107(a) would require each State to establish procedures to oversee the development, establishment, and implementation of the systems to ensure that target dates are met, that the outputs of the systems are considered, and that common or coordinated databases are used, but specific procedures are not mandated.

Each of the management systems will require data to define and monitor the magnitude of the problems, identify needs, analyze alternative solutions, and measure the effectiveness of the implemented actions. Some data needs, such as traffic volumes or travel demand, may be common to all systems while other data will be unique to the particular system, e.g., specific structural data for bridges, and vehicle or person hours of delay for congestion. At least one respondent to this issue suggested that standardized data be provided to the U.S. DOT for all systems and be made available to the public at low cost. A few others indicated that at least a minimum dataset should be provided to the Federal agencies for comparing performance among States and metropolitan areas. It is not the intent of the FHWA and the FTA to burden the States with data collection efforts or to have such data reported to the agencies for comparison purposes. Any data collected should be that necessary to implement effective management systems. Therefore, the proposed regulations in § 500.105(e) indicate that the traffic monitoring system required by the legislation, the FHWA's Highway Performance Monitoring System (HPMS), and the data required by section 15 of the Federal Transit Act, 49 U.S.C. app. 1611, (Section 15 data) will be used by the FHWA and the FTA to the extent possible to meet their needs. States are encouraged to also use these databases to the extent possible. In addition, proposed § 500.107(a) would require the use of data bases with common or coordinated reference systems to facilitate data sharing, but would not mandate specific data systems or elements. Any specific data that may be needed for the individual systems are identified in the proposed regulations for that system.

At the Transportation Research Board (TRB) Conference on Transportation Data Needs: Programs for a New Era, held in Irvine, California, on May 27–29, 1992, the FHWA presented a paper, "Data Needs for Management Systems," that identified potential data needs for the CMS, PTMS, and IMS. A copy of this paper has been placed in the docket and is available from the contacts identified for these three systems. The conference proceedings, which should be available in January 1993, will contain additional information on management systems data needs.

To provide information for the Secretary's annual report to Congress on the status of implementation of the systems, § 500.109(c) proposes that the annual State certifications include information on the status of each system in lieu of separate status reports. However, since both the States' certifications and the Secretary's status report are due by January 1, separate status reports may be needed from the States to avoid a delay in the Secretary's report to Congress. Comments on the amount of additional effort that would be needed to submit separate status reports are solicited.

Section 307(h) of title 23, U.S.C., requires the Secretary to report estimates of future highway needs of the nation biennially to the Congress. Similarly, 49 U.S.C. 308 requires the Secretary to report biennially to Congress the condition, performance, and needs of the nation's public transportation systems and facilities. These requirements are separate from the provisions of 23 U.S.C. 303 and are accommodated primarily by use of the FHWA's HPMS and the FTA's Section 15 data, respectively.

By January 1, 1995, and annually thereafter, States must certify that they are implementing the six management systems. The legislation allows the regulations to include a compliance schedule for development, establishment, and implementation of each such system, but did not provide a definition of "implementation." Comments ranged from one State indicating that all of the management systems could be fully implemented within 18 months of issuance of final regulations to various phase-in scenarios that would require five or more years. The agencies recognize that sufficient time must be allowed to develop systems that produce useful results, particularly for those systems that are new, such as the CMS, PTMS and IMS. Proposed § 500.109(a) indicates that a State shall be considered to be implementing a system if the system is in operation by the date of the certification in accordance with any phase-in criteria for each system as specified in the proposed regulations for the specific system. For some systems, phase-in schedules by facility classification (e.g., National Highway System (NHS) versus lower order systems) or by jurisdictional responsibility (e.g., State versus local facilities) are proposed. Each management system must be in operation to some degree in Federal fiscal year 1995.

With respect to the issue of whether there should be one State certification statement covering all six management systems or separate statements for each system, a majority of commenters expressed a preference for a single statement while a few recommended separate statements, particularly if responsibility for the systems resided in different State agencies. In recognition of differing State organizational structures, the proposed regulations in § 500.109 do not mandate a single certification but recommend it. A single certification should significantly reduce administrative and paperwork burdens and may facilitate coordination of implementation of the systems. If more than one certification statement is used, they should be coordinated and submitted simultaneously. Also, to reduce the burden on the States, it is proposed that the statement(s) only be submitted to the FHWA division office in each State and that the division office provide copies to other U.S. DOT agencies involved with the specific system(s). The majority of commenters on the issue of the level of State government (e.g., Governor, State secretary of transportation, etc.) that should certify implementation, recommended that it be the head of the State transportation agency. While a high level transportation official is a logical choice, the proposed regulations do not mandate it. The proposed regulations at § 500.109(b) would require the Governor of the State or the Mayor of the District of Columbia to notify the FHWA in writing of the name(s) or title(s) of the certifying official(s) and recommend that one certifying official be designated for all systems.

The legislation does not specify the extent of coverage for the systems except for highway pavement, bridges, and congestion in transportation management areas (TMAs). The legislation specifies that the highway pavement management system is to cover "Federal-aid highways" (those highways eligible for assistance under title 23, U.S.C., except those functionally classified as local or rural minor collectors). The bridge management system is to cover bridges on and off "Federal-aid highways." In TMAs, the congestion management

system is to provide for effective management of existing and future transportation facilities eligible for funding under title 23, U.S.C., and under the Federal Transit Act. Responses to this issue also varied, from coverage of all public roads to only the NHS. The majority of State transportation agencies indicated that all of the systems, including those where the legislation specifies broader coverage, should be limited to facilities under State jurisdiction since the States only have authority for managing those facilities and they should not be held accountable and sanctioned for noncompliance by local jurisdictions. The FHWA and the FTA believe that the ISTEA clearly indicates Congress' concern for protecting and enhancing the performance of the nation's transportation infrastructure, regardless of level of jurisdictional control. Some of the management systems by their nature, such as the PTMS and the IMS, will be limited in coverage since the facilities to be managed are limited in extent. With respect to the remainder of the management systems (PMS, BMS, SMS, and CMS), the FHWA and the FTA believe that the minimum extent of coverage should be Federal-aid highways as defined above. In addition, it is proposed that a lower level of effort and sophistication be allowed for some of the systems for local jurisdictions and/or lower functional class transportation facilities. The extent of coverage for each management system is specified in the regulations for that system.

While the systems may cover facilities under the jurisdiction of other than the State transportation agency, the FHWA and the FTA propose to use discretion before imposing sanctions for noncompliance. As indicated in § 500.111, the FHWA and the FTA propose to carefully consider the extent of non-compliance so that any sanctions to be imposed can be targeted to the specific situation. The intent of any such sanctions would be to correct the deficiency as soon as feasible without undue adverse effect. It is also proposed in § 500.111(c) to give consideration to efforts underway or planned to correct any deficiencies in a timely manner before imposition of a sanction.

In lieu of development of a new congestion management system in States where one already exists, 23 U.S.C. 135(h) allows State laws, rules or regulations pertaining to congestion management systems or programs to constitute the congestion management system required under the ISTEA if the Secretary finds that the State laws, rules or regulations are consistent with, and fulfill the intent of 23 U.S.C. 135, 23 U.S.C. 134, or section 8 of the Federal Transit Act, as appropriate. The legislation does not address acceptance of existing State laws or procedures for the other systems. The FHWA and the FTA do not consider it appropriate to impose duplicative requirements if procedures are in place that would meet the intent of the legislation for any of the management systems; therefore, it is proposed in § 500.115 that existing State laws, rules, or procedures that fulfill the purposes of any of the management systems as specified in the applicable regulations be accepted by the FHWA and the FTA in lieu of development and implementation of a new system by the State. It is proposed that the State submit a written request, with appropriate supporting documentation, to the FHWA Division Office in the State within 6 months of the effective date of the regulations if it desires to use its existing procedures. The FHWA Division Office would be required to coordinate with other affected U.S. DOT agencies before taking action on the State's request.

Highway Pavement of Federal-Aid Highways

As part of its PMS, each State would have a comprehensive process for: Establishing the network inventory and project histories; collecting and storing the condition data; analyzing the information; identifying the network needs; and considering the PMS information in the metropolitan and statewide planning processes.

Existing 23 CFR part 626, Pavement Policy, which addresses pavement management, pavement design, safety, and eligibility, would be superseded. However, this proposed rule would continue the current requirement that each State shall have a pavement management system that covers rural and urban principal arterials under its jurisdiction by January 13, 1993, and would expand coverage to all Federal-aid highways by January 1, 1995, as required by the ISTEA. The existing policy contains detailed requirements for the design and type selection of new, as well as reconstructed pavements. All of the States have developed, or have made significant progress in developing, processes to meet these requirements. Accordingly, pavement design requirements are now proposed to be integrated with pavement management and included in § 500.205. The proposed definition of pavement design, § 500.203, includes consideration of alternative materials to provide adequate load carrying capacity. Section 500.205, Policy, would require that pavements be designed to accommodate current and predicted traffic needs in a safe, durable, and cost-effective manner. The proposed rule, therefore, extends the basic requirements of the existing policy as it pertains to pavement management, pavement design, safety, and eligibility as to design features. Because all of the States have procedures in place to comply with these requirements, much of the detail of the existing policy is no longer needed and is not included in the proposed rule.

Discussion of Comments to Dockets FHWA 92–14 and FTA 92–B

Of the responses to the June 3, 1992, ANPRM, 48 pertained to PMS: Thirty-one State highway agencies (SHAs), four local highway agencies, four metropolitan planning organizations (MPOs), three individuals, two local associations, one consultant, one institute, one association, and one Federal agency.

The eight major PMS issues raised by the ANPRM were: (1) Levels of technical complexity, (2) standards, (3) responsibility, (4) data, (5) coverage, (6) uniformity, (7) MPOs, and (8) the implementation date.

Of major concern to most commenters were the issues of level of technical complexity and standards which accounted for 54 out of 97 issue-related comments. Thirty-two respondents favored the tiered approach to developing State and local PMSs. The respondents indicated that PMSs can be less technically complex at the local level than at the State level. The respondents favored local jurisdictions using less inventory data, a limited condition survey, a lower frequency of data collection, and only a basic analysis with a limited number of maintenance and rehabilitation techniques. The concept put forth in this NPRM agrees with the position of the 32 respondents. Each SHA should work with MPOs and local agencies to determine the level of technical capability to meet their needs.

It is likely that some local highway agencies that have a limited number of miles and/or low volume roads may choose to use subjective methods to collect data and manual data storage and analysis rather than a computer. This may be the simplest, least costly, and most practical approach for some local agencies. States, MPOs, and local agencies would have the flexibility to determine what level of technical capability best suits their needs.

The second major issue concerned the degree to which the FHWA should set standards for a PMS. Twenty-two out of

23 respondents supported the current FHWA policy on PMS standards. Commenters recommended that the new rule establish the framework and basic components of a PMS and allow each agency the maximum flexibility to design its PMS to fit the agency's needs. The current FHWA policy and this NPRM agree with this concept. The NPRM includes the basic framework, essential components, and basic analyses that are germane and essential to all PMSs. These are fundamental building blocks that all PMSs need in order to function adequately. If an agency were to reduce this framework and the essential components, the resulting system would not meet the minimum definition and purpose of a PMS. One of the 23 respondents recommended that the new rule contain detailed PMS standards, engineering criteria, pavement maintenance and performance standards, detailed data and reporting requirements. Since pavement conditions and factors vary greatly from State-to-State, region-to-region, and locale-to-locale, it would not be economically prudent or viable from an engineering viewpoint to mandate one PMS to fit all agencies. Each agency should establish the engineering criteria that fit its conditions and factors.

The other six issues in the ANPRM accounted for the remaining 43 comments.

Issue No. 3 dealt with who has the responsibility to oversee the State and local PMSs. Five out of 10 respondents indicated that State and local agencies should be independently responsible, three wanted the States to have the option, and two wanted more guidance. The NPRM reflects the intent of the ISTEA that the SHAs have the primary responsibility to oversee the statewide program, including the coordination that is required with MPOs and local agencies. The MPO issue is covered in more detail under Issue No. 7.

Issue No. 4 dealt with the collection, storage, analysis, and use of the data. All eight respondents supported high quality data collection, analysis, and use. Two of the respondents advocated optimization. While optimization and near-optimization are extremely beneficial in many ways, the NPRM does not require it. The NPRM would require multi-year prioritization which can approach optimization. Optimization is highly desirable and its use is strongly encouraged.

Issue No. 5 dealt with the amount of network coverage that is required in the ISTEA. Seven out of 14 respondents supported the coverage in the ISTEA and seven out of 14 recommended that the coverage be limited to either the NHS or the mileage in the current FHWA PMS policy. Because this issue of coverage is mandated by law in the ISTEA, it is not possible to change the coverage under this NPRM.

One State DOT made the comment that, "it may not be worthwhile to collect information on all eligible roads unless there is Federal investment in them." As each SHA plans and oversees the development and implementation of its statewide PMS program, it should carefully consider all factors that contribute to providing an acceptable pavement network to the motoring public. Some of the major factors that should be considered in this evaluation and planning stage are the size of the system, distribution of the network by functional class, usage of the network, funding programs, the administration of various pavement preservation programs, and the types of agreements existing between the State and local agencies.

Issue No. 6 dealt with uniformity of data collection among the SHAs and the local agencies. Three out of seven respondents favored uniformity, three did not, and one favored limited uniformity on key components. The NPRM proposes to allow the States and local agencies the flexibility to determine what is needed or not needed for their particular organizations. Uniformity can have as many disadvantages as advantages depending on its application. Because the detailed design of PMSs varies at every level, it is not prudent to predetermine in this NPRM that uniformity is beneficial in all or most cases. Therefore, the issue of whether to institute uniformity should be determined at the State and local levels.

Issue No. 7 dealt with the role of MPOs in a PMS. Three out of six respondents indicated that the role of an MPO should be to coordinate with other agencies, one indicated that the MPOs should provide technical assistance to local agencies, and two requested more guidance. The general ISTEA requirement that the PMS be developed and implemented in cooperation with MPOs is clear. However, each SHA would have responsibility for the overall State PMS, and therefore, would be responsible for reaching an understanding with the MPOs on their specific roles. Each State and MPO would develop and implement a PMS program to meet their needs, organizational structure, and institutional operating procedures. More information is available on this issue in § 500.107 of the general section of this NPRM.

Issue No. 8 dealt with the implementation deadline in the ISTEA. Three out of five respondents recommended keeping January 1, 1995, as the implementation date with coverage limited to the NHS, one recommended extending the time period but did not specify the date, and one supported the ISTEA implementation date. Information on the compliance schedule is provided in § 500.205(b) of the NPRM.

Bridges On and Off Federal-Aid Highways

A total of 41 commenters responded to issues raised in the June 3, 1992, ANPRM pertaining to BMS. The commenters consisted of 32 State transportation agencies, 2 cities, 2 counties, 1 regional transportation agency, 1 MPO, 1 county organization, 1 transit authority, and 1 consumer group. The comments on issues that pertain to BMS are discussed in the section-by-section analysis portion of this NPRM where they apply.

Background

All States are currently required by Federal law to inventory, inspect, and report the condition of all highway bridges (23 U.S.C. 151). This requirement was first established under the Federal-aid Highway Act of 1968 (Pub. L. 90–495, 82 Stat. 815) as a part of the National Bridge Inspection Program for bridges on the nation's principal highways, involving some 274,000 bridges. The Surface Transportation Assistance Act of 1978 (Pub. L. 95–599, 92 Stat. 2689) later expanded the National Bridge Inspection Program to include bridges on all public roads, comprising some 577,000 bridges in total. The regulations that were promulgated under 23 U.S.C. 151 are contained in 23 CFR part 650, subpart C. Section 650.311(a) of those regulations specifies that certain data conforming to National Bridge Inspection Standards (NBIS) are to be collected and retained within each of the various State organizations. A tabulation of the data collection requirements is contained in the FHWA's "Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges."[1] The FHWA annually collects and assembles these data into what is known as the National Bridge Inventory (NBI). These data include, for each bridge, inventory information (e.g., structure type, size,

[1] Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges, DOT/FHWA, December 1988, is available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

location, age, material composition, ownership, traffic characteristics, etc.), and ratings of the bridge's physical condition, load carrying capacity, and functional adequacy for the traffic being served. The FHWA uses the NBI data for apportioning Federal funds to the States for bridge replacement and rehabilitation, to monitor the National Bridge Inspection Program, and to report to Congress biennially on the status of the nation's bridges. The States make similar uses of the NBI in administering State and local programs for bridge replacement and rehabilitation, and in managing State and local bridge inspection programs.

BMS development began in the mid 1980's when several States (principally Wisconsin, North Carolina, Pennsylvania, and Indiana) initiated studies to develop, test, and evaluate concepts and tools, and to implement BMSs. Also, in recognition that a BMS was a high priority in many States, the American Association of State Highway and Transportation Officials (AASHTO), through the National Cooperative Highway Research Program (NCHRP), sponsored research beginning in 1984 for the development of a model BMS. This research led to the publication of NCHRP Report 300, Bridge Management Systems, in December 1987, and became, in part, the basis for an ongoing NCHRP project for the development of BMS software to meet the needs of small to medium transportation agencies. In addition, AASHTO, through the NCHRP, prepared "AASHTO Guidelines for Bridge Management Systems" [2] in 1992 (hereinafter referred to as the AASHTO BMS Guidelines). The AASHTO BMS Guidelines describe the minimum requirements of a BMS, as well as alternative methodologies and implementation steps. Although this rulemaking does not propose to formally adopt the AASHTO BMS Guidelines as regulations, the rulemaking acknowledges them as representing "good practices," and incorporates many of the recommendations on minimum requirements. The AASHTO BMS Guidelines also provide practical guidance to agencies on organizational, managerial, and technical issues relating to the establishment and implementation of a BMS.

Concurrent with AASHTO developments, the FHWA promoted interest in BMS through State workshops in 1986–88 under Demonstration Project 71, and subsequently sponsored the development of a BMS named Pontis in 1989–91. Pontis is a network level BMS which incorporates models that can operate efficiently for both small and large bridge inventories, and that can be readily adapted to the needs and practices of any agency. Pontis was developed in California under an agreement with the FHWA, and with technical assistance and oversight by a committee made up of engineers from the FHWA, the NCHRP, and the States of California, North Carolina, Minnesota, Tennessee, Vermont, and Washington. A pre-release version of the Pontis software has undergone extensive testing in several States over the past year and an updated version containing minor technical and programming modifications will be available soon. Pontis is also being introduced into the AASHTO Cooperative Computer Software Development program as an AASHTOWare™ product for long-term maintenance, support, and enhancement.

Section-by-Section Analysis

Section 500.301 Purpose

The purpose of subpart C of this rulemaking is to set forth policies, requirements, and minimum standards for State development, establishment, implementation, and continued operation of a bridge management system (BMS) for bridges on and off Federal-aid highways within each State.

Section 500.303 Definitions

The introductory paragraph of § 500.303 references the terms defined in 23 U.S.C. 101(a) and 23 CFR 500.103.

A definition of a "Bridge Management System (BMS)" is provided. As stated in the June 3, 1992, ANPRM (57 FR 23460), the primary purpose of management systems is to improve the efficiency of, and protect the investment in, the nation's existing and future transportation infrastructure. A BMS serves this purpose primarily by providing decisionmakers information for making informed decisions on bridge program expenditures. The system itself consists of a database and an analysis capability that enable an agency to efficiently evaluate bridge needs, develop recommendations, and assess the near and long-term impacts of bridge policies and alternative courses of action. The definition expresses this concept of a BMS and is similar to the AASHTO BMS Guidelines definition.

The remainder of the section provides definitions of technical terms that are used in § 500.307 on minimum standards. The definitions conform to the usual meaning of the terms and, with the exception of "multiperiod optimization," are identical to those given in the AASHTO BMS Guidelines. The definition of "multiperiod optimization" follows the AASHTO BMS Guidelines explanation. "Multiperiod" means that bridge conditions, traffic growth, and budgets are projected and analyzed for each period (typically one or two years) within a long-term planning cycle (typically 10 to 20 years). "Optimization" means that feasible actions are selected in a way that best meets an objective, typically maximizing benefits or minimizing costs. Multiperiod optimization models have the ability to examine bridge conditions and costs over the long term, and determine the best allocation of multiperiod budgets across the bridge inventory for maintenance, repair, rehabilitation, and replacement. They also give management a tool that can work efficiently with large databases to explore a wide variety of policy and planning questions. Examples of multiperiod optimization programs are North Carolina's Optimum Budget Forecasting and Allocation System (OPBRIDGE), and the optimization routines in *Pontis*.

Section 500.305 Policy

This section specifies requirements for the development, establishment, implementation, and continued operation of a BMS for bridges on and off Federal-aid highways within each State. The States are required to cooperate and take the lead in establishing agreements with MPOs and local bridge owners to establish system specifications, operational requirements, and responsibilities of MPOs and bridge owners for developing, implementing, and operating a BMS that meets the minimum standards set forth in § 500.307. It requires the State to maintain a centralized database for all bridges in the State, and to implement network analysis procedures that are capable of analyzing data for all bridges in the inventory or subset. Local jurisdictions are not precluded from operating separate BMSs to complement the State BMS.

State and Local Responsibilities for BMS

In most States, bridges that are off Federal-aid highways are owned and maintained primarily by cities and counties. In addition, in some States, a significant share of the bridges on Federal-aid highways are also owned

[2] *AASHTO Guidelines for Bridge Management Systems*, 1992, may be purchased from the American Association of State Highway and Transportation Officials, 444 N. Capitol Street, NW., Suite 225, Washington, D.C. 20001. It is available for inspection as prescribed in 49 CFR part 7, appendix D.

and maintained by cities and counties. The June 3, 1992, ANPRM raised the question of the division of State and local responsibilities in operating a BMS in view of the widely diverse bridge ownership and maintenance responsibilities. The specific questions raised were whether it is necessary for local bridge owners to operate management systems that are separate from the State's management system, and would it suffice for local bridge owners to simply collect the required data for purposes of establishing needs estimates and funding allocations under the bridge program (57 FR 23460 at 23462).

Twenty-five State transportation agencies, 1 regional transportation agency, 1 MPO, 2 counties, 1 county organization, 2 cities, 1 transit authority, and 1 consumer group responded to this question. Seventeen of the 25 State transportation agencies indicated that a State-operated BMS that includes locally owned bridges should be sufficient. Seven State transportation agencies seemed more in favor of locally operated systems, 6 stressed the need for flexibility in setting up State/local relationships and responsibilities, 6 mentioned that local bridge owners should be responsible for data collection, 3 indicated that local participation in the State's BMS should be optional, 5 indicated that local bridge owners should be free to operate a BMS that is consistent with the State's BMS, 5 indicated that the State should not be responsible for carrying out BMS recommendations for bridges not owned by the State, and 1 indicated that the BMS should not be required for programming projects where no Federal money is involved. Of the other commenters (other than State transportation agencies), 6 favored a State operated BMS with local involvement, 1 suggested that the MPO should be primarily a coordinator between the State and the locals, 1 proposed that local bridge owners be afforded the option to operate a BMS which is based on the State system, and 2 indicated that the local bridge owners should have an active role in the operation of the BMS.

The rulemaking follows the recommendations of the majority of the commenters who prefer a State operated system that includes locally owned bridges. The fact that States administer State and local bridge programs involving Federal bridge program funds and maintain a complete bridge inventory favors the concept of a central State operated BMS. Under this arrangement, MPOs and local governments would be provided network analysis results for use in their decisionmaking processes. The FHWA's view is that the BMS needs of local jurisdictions can be provided for adequately through a central, State operated BMS. Central operation also facilitates statewide analyses of bridge needs and provides better assurances that the bridge needs of all local jurisdiction bridges are uniformly considered in the development of statewide transportation plans and programs, as compared with a decentralized approach. Since the legislation requires a State BMS for bridges on and off Federal-aid highways, local jurisdiction non-participation is not an option. The proposed regulation would not preclude local jurisdictions, such as cities, counties, or toll authorities, from operating a BMS that is tailored to their needs; however, participation in the State's BMS would also be required. The minimum requirements would be that bridge data conforming to State standards are submitted to the State for inclusion in the State's central database and that outputs of the State's BMS are considered in the Statewide and metropolitan planning and programming processes where Federal funds are used.

Section 500.307 Minimum Standards

This section proposes minimum standards for data collection, analysis, and monitoring activities of a State BMS. It proposes to incorporate NBI data and use the bridge inspection and data collection process currently in place in all States under the NBIS. Section 500.307(b) specifies 4 types of data in addition to NBI data. These are element condition data, cost data, traffic and accident statistics, and historical data. Element condition and agency cost data are essential inputs to deterioration, action, and cost models. Traffic and accident statistics are necessary to assess the safety and serviceability of bridges and to model user costs. Historical data of bridge condition and actions taken are needed for estimating deterioration and cost models.

For analysis, the basic requirement is a network model capable of multiperiod optimization. The model must include, as a minimum, the procedures listed under § 500.307(c) which follow the recommendations of the AASHTO BMS Guidelines.

Section 500.307(d) specifies minimum monitoring requirements, which are to monitor the status of BMS recommendations and to update the database when actions are taken. The monitoring system provides feedback on the adequacy of the BMS in guiding project decisions, and it provides the essential information for keeping BMS condition and cost data current. The monitoring system includes a construction and maintenance reporting and cost tracking process.

Standardization of Data

The June 3, 1992, ANPRM raised the issue of the need for statewide data uniformity to allow flexibility for grouping bridges in various ways for analysis (e.g., needs estimates, funding distributions, deterioration rate predictions, etc.) (57 FR 23460 at 23463). The question was: "To what extent should data collection requirements be standardized?"

Twenty-two State transportation agencies, 1 MPO, 1 county, 1 transit authority, 1 consumer group, and 1 Federal military agency responded to the question. Of the 22 State transportation agencies, 15 indicated that data collection should be standardized statewide, 3 responded that flexibility for local jurisdictions should be allowed, 2 suggested it was not appropriate for the regulations to require standardization outside of the NBIS, 1 suggested data could be less detailed for lower functional class highways, and 1 indicated that the database pertaining to cost should be flexible. Of the remaining 5 commenters (not State transportation agencies), 4 indicated that data collection within a State should be standardized, and 1 respondent (the Department of the Army) indicated that the method of determining inventory and operating ratings should be standardized and suggested that there be consideration of the use of the Bridge Analysis Rating System (BARS) for all States to support specific vehicle and load evaluations for defense needs.

The requirement that the State maintain a centralized database and implement network analysis procedures that are capable of analyzing data for all bridges or any subset essentially sets a standard for uniformity of data formats. However, States would have flexibility with respect to the detail of the data collected for various classes of roads. For example, in tracking element level data, an agency may find that it is not important to subdivide certain elements by type of construction (e.g., to differentiate among types of bearing assemblies, joint seals, or paint systems) except on the higher classes of roads. Analysis procedures that work with elements allow more detail to be considered where element definition supports it. The FHWA plans to address the issue of standardization of the

method for determining inventory and operating ratings reported to the NBI, but not as a part of this rulemaking. States and other bridge owners were advised by way of the 1988 revisions to the FHWA's "Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges," page 41, that they "should anticipate that the FHWA will require that a single uniform method be used to calculate the inventory and operating ratings reported to the NBI sometime in the 1990's."

Compatibility With NBI Data

The June 3, 1992, ANPRM raised the issue of possible conflicts between the current system of reporting bridge conditions under the NBI, and the more detailed descriptions of bridge condition that are used in a BMS (57 FR 23460 at 23463). As discussed in the ANPRM, NBI data include overall condition ratings for the deck, superstructure, and substructure, while BMS data would generally include a more detailed breakdown of bridge elements (e.g., beams, joints, bearings, etc.) as well as an indication of the extent of deterioration. States were concerned that bridge inspectors would be required to report under both systems. They were also concerned that a computer conversion of more detailed BMS condition information to NBI codes may not be consistent with past reporting practices and may adversely affect a State's apportionment of Federal-aid bridge funds. The question was: "Should the FHWA provide standard procedures or guidelines for converting BMS element level condition data to NBI data?"

A total of 32 commenters responded to this ANPRM issue. The commenters included 28 State transportation agencies, 1 county, 1 MPO, 1 transit authority, and 1 consumer group.

Of the 28 State transportation agencies responding, 18 indicated that the FHWA should provide standard procedures or guidelines to convert BMS condition data to NBI data, with 5 of the 18 suggesting that it should be in the form of a guideline. Eight State transportation agencies suggested that rather than data conversion, there should be one reporting format consistent with the needs of a BMS. Four State transportation agencies that favored one reporting format suggested a transition period for converting over. Three State transportation agencies appeared to be opposed to a conversion process; one commented that use of a conversion should be optional, and that State input should be solicited for its development. Of the other commenters (not State transportation agencies), 1 indicated that certain structure information in the NBI should be replaced with superior BMS information, 2 suggested that the FHWA should issue standard guidelines for converting element level condition data, and 1 suggested a transition to BMS data.

The FHWA plans to distribute guidelines for converting element condition data to NBI condition rating codes. For Pontis users, the FHWA will provide a computer program that will make the conversion automatically, based on a set of commonly recognized elements. The States will be given an opportunity to comment on the guidelines and the program before they are finalized. The FHWA is not proposing to convert the NBI database to a BMS database at this time, believing that data needs at the national level can be adequately served through improved uniformity in condition and load rating data now reported to the NBI.

Section 500.309 Compliance Schedule

This section specifies the implementation requirements for BMSs. The State would be considered to be implementing a BMS in Federal fiscal year 1995, if, by October 1, 1994, the State has defined its BMS objectives and system design is completed or underway. For subsequent annual certifications, the State would be considered to be implementing a BMS if system design and testing are completed and full-scale data collection is underway. Within 4 years of the effective date of the final rule, a State BMS would need to meet the minimum standards in § 500.307 and result in the identification and consideration of bridge needs as specified in § 500.305(b). The proposed 4-year implementation time frame is intended to allow sufficient time after system design is completed to conduct a full cycle of bridge inspections.

Highway Safety

The primary purpose of all of the management systems is to improve the efficiency of, and protect the investment in, the nation's existing and future transportation infrastructure. The Highway Safety Management System may be further defined as management processes to ensure that all opportunities to improve safety are identified, considered, implemented where appropriate, and evaluated. Highway safety necessitates the involvement of many agencies, internal agency units, and organizations within the States and localities. It is therefore imperative that a management approach be adopted wherein safety is totally integrated into the decisionmaking processes of day-to-day activities and the development of programs and project priorities, within agencies and among the involved disciplines.

Previous activities associated with highway safety and safety management, date to the 1966 Highway Safety Act (Pub. L. 89–564, 80 Stat. 731), which provided the basic foundation for establishing active highway safety programs in the States. Legislation in subsequent highway and surface transportation bills strengthened and broadened the requirements and scope of the States' involvement in enhancing highway safety. Specific highway safety program policy guidance is directed through 23 CFR chapters I and II and 49 CFR chapter III.

Section 402 of title 23, U.S.C., includes State highway safety planning requirements, with vehicle and driver related activities primarily administrated and implemented by the NHTSA and with roadway related and commercial motor carrier safety programs primarily administrated and implemented by the FHWA.

Two major initiatives were undertaken in the early 1980's by the Transportation Research Board (TRB) and the American Association of State Highway and Transportation Officials' (AASHTO), Standing Committee on Highway Traffic Safety (SCOHTS). The TRB conducted a conference in 1981 on the subject of "Enhancing Highway Safety in an Age of Limited Resources." This conference was followed up by the AASHTO committee in 1983 through development and publication of a document titled "A Guide For Enhancement of Highway Safety Directed to Agencies, Programs and Standards"[3] (AASHTO Safety Guide). Each of these activities were directed toward the effective management of highway activities to ensure timely and appropriate consideration of safety in the ongoing programs and operations of State transportation agencies.

The findings and recommendations from these two organizations were utilized by an FHWA task force in 1988, in reviewing ongoing programs and activities by the States in implementing good safety management initiatives. Model State initiatives or practices were assembled into a draft document titled "Management Approach to Highway Safety—A Compilation of Good

[3] *A Guide For Enhancement of Highway Safety Directed to Agencies, Programs and Standards*, 1983, can be purchased from the American Association of State Highway and Transportation Officials, 444 N. Capitol Street, NW., suite 225, Washington, DC 20001. It is available for inspection as prescribed in 49 CFR part 7, appendix D.

Practices." A pilot program was then initiated wherein the elements of the document were reviewed by 9 States to test its practicality and effectiveness when applied to enhancing highway safety in State DOTs. The pilot program included States that were institutionally organized to incorporate all highway safety programs under one organizational unit and States which have their highway safety programs dispersed among several agencies. The pilot States were, Delaware, Florida, Maine, Minnesota, North Carolina, Oregon, Pennsylvania, Virginia, and Washington. The degree of review by each State varied due to changes in administration at the State level, reorganization, and the uncertainty of statutory requirements, as legislation for management systems was under consideration by Congress during the pilot States' efforts. Each State did report that the "Management Approach to Highway Safety" document served as a good basis from which it could develop an SMS. Several States expanded their pilot review activities to include an examination of internal organizational restructuring to better address the multi-disciplinary functions and activities of highway safety within their State.

A Safety Management System Workshop was conducted in Williamsburg, Virginia, in September 1991 to review the findings of the task force, obtain feedback from the pilot States, and receive input on the content of the "Management Approach to Highway Safety" document from other States and organizations involved in highway safety activities. Proceedings of this workshop were published in December 1991. The "Management Approach to Highway Safety" document was revised on December 20, 1991, to reflect recommendations from the workshop. The workshop proceedings and the above document have been placed in FHWA/FTA docket 92–14 and are available for review.

Discussion of Comments to Dockets FHWA 92–14 and FTA 92–B and at the Public Workshops

Eighty-eight of the responses to the ANPRM specifically addressed the SMS. In addition, a number of the responses included comments which were generally applicable to all of the management systems. Responses to specific issues in the ANPRM relative to the safety management system are addressed in the analysis of individual applicable sections below.

Section-by-Section Analysis

Section 500.401 Purpose

The rulemaking provides a policy for the development and implementation of a Highway Safety Management System (SMS) in each State.

Section 500.403 Definitions

It is proposed that definitions in 23 U.S.C. 101(a) and § 500.103 be applicable to the SMS. In addition it is proposed that highway safety, the SMS, and operations be defined. These definitions and discussion are as follows:

Highway safety is the reduction of traffic accidents, and deaths, injuries, and property damage resulting therefrom, on public roads.

Highway safety management system means a systematic process to ensure that all opportunities to improve highway safety are identified, considered, implemented where appropriate, and evaluated.

Operations means those activities associated with managing, controlling, and regulating traffic. It is proposed that operations be defined to incorporate the multi-disciplinary activities involved with safety on the nations roadways. The proposed definition includes signing, marking, maintenance of traffic control devices and highway elements, enforcement and emergency response activities associated with operating the highway system.

Section 500.405 Policy

This section delineates the requirement for each State to have a Highway Safety Management System (SMS). The SMS is proposed to be applicable to all roads within a State. The SMS would also address safety elements from a comprehensive approach, including roadway, human, and vehicle safety components. These roadway system coverage and safety element components would be addressed by the States, as a minimum through formalized communication and coordination mechanisms.

The issues of roadway system coverage and the extent to which coverage of the roadway, human, and vehicle safety components should be included, were the two greatest concerns expressed by respondents to the docket, public workshops, and the Safety Management System Workshop in 1991. Under the roadway system coverage, there were four options suggested: (1) The NHS, (2) roads eligible under the Surface Transportation Program (i.e., Federal-aid highways), (3) roads under State highway agency jurisdiction, and (4) all public roads. There was strong support for the safety management system to provide adequate roadway system coverage to ensure that motorists are provided consistent operational practices which affect their safety, as they cross jurisdictional or administrative road system boundaries. There was also a concern that extensive expansion of the roadway system coverage would create severe coordination and control issues for the States and localities.

There were 48 responses to the ANPRM on application of the SMS to the roadway system coverage, with 12 in support of only the NHS, 13 supporting the Federal-aid roadway, 9 favoring only those roads under the jurisdiction of the State DOTs, and 14 supporting application to all roads.

In response to the ANPRM, 36 State agencies, 4 metropolitan planning organizations, 2 cities, 7 national associations and organizations, 1 private industry, and 1 private individual supported a comprehensive safety management system to include the roadway, human, and vehicle safety elements. Thus, 51 of the 73 responses received on this specific issue support a comprehensive system and the comments to the dockets were indicative of the responses received during the public workshops. In addition, a number of the 18 respondents who advocated restricting the safety element coverage supported a comprehensive approach but did not support a mandatory requirement. Of the 51 supporters for including all safety elements in a comprehensive approach, the responses ranged from full comprehensiveness with mandatory requirements, to a more limited approach to encourage and require that the safety management activities of the State highway agency be closely coordinated with the safety activities of other State and local agencies. There were also concerns with organizational and institutional structures within the States. The State DOTs expressed concern with the potential for being sanctioned for actions or failure to act by others, over which the State DOTs had no control. The AASHTO suggested that mandated requirements subject to the sanction provisions should be limited to only those functions and responsibilities under the control of each highway agency. The International Association of Chiefs of Police (IACP) responded that any attempt to manage one of the safety elements without the others will ultimately fail.

The National Association of Governors Highway Safety Representatives responded that

inclusion of only the roadway would result in a static, incomplete, and ineffective plan. Other positions supported the need for the SMS to be comprehensive, while recognizing the control and sanction concerns. These comments provide the general thrust of the different perspectives of the various responses to the docket.

Each of these issues was carefully weighed, and while the importance of each position is understood, the following basis provided the rationale for the proposed roadway system coverage and the comprehensiveness of the system relative to the roadway, human, and vehicle safety elements.

At a time in which the Congress has expressed overwhelming concern for the safety of our highway transportation system, it seems inconceivable that it would deliberately plan or intend for the Safety Management System to apply to only a small portion of the highway safety problem, particularly those that are not addressed through other sections of legislation. Admittedly, there are factors and concerns associated with extending roadway system coverage beyond roadway jurisdictional boundaries of State DOTs, but the principal objective of providing a safe and efficient transportation system must be the overriding factor in establishing and implementing the SMS. Legislative language supports the broader roadway system coverage proposed in this NPRM.

Section 303 of title 23 U.S.C., requires that, in developing and implementing a management system under this section, each State shall cooperate with metropolitan planning organizations for urbanized areas of the State and affected agencies receiving assistance under the Federal Transit Act and shall consider the results of the management systems in making project selection decisions under this title and under this Act. (Implying that highways eligible for Federal assistance under these provisions should be included as part of the SMS).

Further, both the metropolitan (23 U.S.C. 134) and statewide (23 U.S.C. 135) planning processes required under the legislation must include consideration of the needs identified under all the management systems (again, implying broader road system coverage).

Section 106(b)(3) of title 23 U.S.C., provides that safety consideration on resurfacing, restoration, and rehabilitation (3R) projects on the NHS, non-NHS projects and low-cost NHS projects, may be met by phase construction consistent with an operative safety management system established in accordance with 23 U.S.C. 303.

Paragraph (d)(1) of 23 U.S.C. 133 provides that 10 percent of the funds apportioned to a State under 23 U.S.C. 104(b)(3) for the surface transportation program for a fiscal year shall only be available for carrying out 23 U.S.C. 130 and 152. These funds may be used on roads other than the NHS or roads under the State DOT's jurisdiction.

Paragraph (b)(1) of 23 U.S.C. 326 provides that the Secretary may make grants and enter into contracts for education and training, technical assistance, and related support services to assist rural local transportation agencies to develop and expand their expertise in road and transportation areas (including pavement, bridge, and safety management systems).

Each of the above referenced sections necessitates that the roadway network coverage of the management system be sufficiently comprehensive to incorporate the requirements of those sections.

In addition to the impetus provided by the legislative language, the safety needs for the highway users that are provided through a continuity of designs or activities associated with like roadways must be a paramount force in determining any safety program coverage or components. The consistency in design and operation of similar type roadways must be maintained. The highway users do not always have physical clues, or realize the need to adjust their expectations, based on some jurisdictional or administrative boundary.

Should the management system's roadway system coverage be limited to only the NHS or roads under the State DOT's jurisdiction, it would, in many situations, be applying only to the roads in the nation that experience the most favorable accident rates and design characteristics. Likewise, if the regulations require that the same level of standards, data collection, etc., be developed and maintained for all public roads, small percentages of traffic and accidents would likely demand too much attention and resources. It is therefore proposed that the States be provided the flexibility of developing an SMS for non-Federal-aid highways consistent with their functional classification and characteristics, while still providing the States the ability to identify and correct safety problems.

The component comprehensiveness (roadway, human, vehicle or any combination thereof) of the SMS presents a more complex issue. Safety issues cannot be addressed in a vacuum, thus all components must be considered. However, these three components, in combination, involve a multitude of entities and activities that could preclude either the effective or efficient achievement of managing or enhancing highway safety, unless approached in a systematic and coordinated manner. There is a need to ensure that initiatives or activities in any of the components consider the impact and benefits from the others. This proposed position is supported by the ISTEA since the SMS is required under Title I while safety issues involving the vehicle and driver components are included in other titles and sections of the ISTEA.

Achieving the safety management system objectives through the formalized coordination and cooperation issues that emerge from the proposal set forth in this NPRM should be readily facilitated through the coordination and cooperation requirements contained in other sections of the ISTEA. It is also proposed that the States identify a focal point for the SMS. This provision of the regulation provides the mechanisms from which States can establish and enhance their formalized coordination and communication processes.

The concern that a State could be sanctioned for actions, or inactions, out of its jurisdictional and administrative control again involves the requirements of cooperation between State and local agencies as contained in other sections in the Act. It should be noted that the legislation requires the State and not one of its agencies or localities to develop and implement the management systems. It is therefore incumbent on the Chief Executive of the State, as he/she deems appropriate, to ensure that necessary mechanisms are in place to effectively achieve maximum utilization of resources and funds throughout the entire State.

Section 500.407 Program Structure

The program structure for the Highway Safety Management System is proposed to incorporate components for planning, coordination, implementation, and evaluation of activities at the State and local level as necessary to provide for effective highway safety programs and projects. These components would be comprised of plans, processes, procedures, and practices developed by the States, in cooperation with MPOs where appropriate. The basic structure for these components evolve from the "Management Approach to Highway Safety" document, augmented by responses to the dockets and at the public workshops. The document's

approach would be adapted in the proposed regulations to target the need to focus on a coordinated, comprehensive system by addition of a major element—coordination and integration of broad base safety programs such as motor carrier, corridor, and community based traffic safety activities into a comprehensive management approach for highway safety. The "Management Approach to Highway Safety" was very strongly endorsed by States and responding organizations as a foundation from which States could develop their SMS. The proposed regulations are directed toward identifying specific major areas and key elements associated with the major areas each State must address in its SMS. To offer flexibility to the States, the proposed regulations do not include reference to the how-to requirements, thus allowing the States the latitude to develop the SMS to best fit each State's situation.

It is proposed that States identify and incorporate provisions for collecting, maintaining and analyzing data to facilitate an effective SMS and that data requirements and integration of databases be determined by the individual States to allow flexibility for integration of safety into their total decision-making processes. Minimum data requirements would include information on crashes, traffic (including trains at highway-rail crossings), highway inventory, pedestrians, enforcement, vehicle, driver, and emergency medical services in sufficient detail to allow the identification and analysis of problems and to determine improvement priority. Most States are currently collecting, maintaining, and utilizing the proposed data; however it is often fragmented among and within various agencies. States are encouraged to use Federal data sources such as the Fatal Accident Reporting System and the HPMS. Analysis requirements are associated with those data elements necessary to determine specific problem identification or improvement needs. Such analysis would include procedures for identifying causative factors and highway locations, sections and elements determined to be hazardous or have a high accident potential; and for establishing countermeasure or improvement priorities either through construction, operations, maintenance, or programs; and other analysis as determined appropriate by the State. The SMS would also include provisions for ensuring that goals, accountability, training, monitoring and evaluation, integrated databases, safety analysis, coordination, technology and information exchange, and public information elements are considered and established as appropriate for the following five major areas.

The "Management Approach to Highway Safety" presented four major areas, and these, along with an additional fifth area for coordination and integration, are proposed as the specific major areas to be included in the States' SMS. It is proposed that the major areas include:

(a) Coordinating and integrating broad base safety programs such as motor carrier, corridor, and community based traffic safety activities into a comprehensive management approach for highway safety. This area incorporates a management approach to address safety problems and issues in a comprehensive and coordinated effort of multi-disciplinary activities and programs.

(b) Identifying and investigating hazardous or potentially hazardous highway safety problems, roadway locations and features, including railroad-highway grade crossings, and establishing countermeasures and setting priorities to correct the identified hazards or potential hazards. This area would include a number of the requirements set forth in 23 CFR parts 924 and 1251. The States would include procedures and measures to identify and correct highway safety problems and locations.

(c) Ensuring early consideration of safety in all highway transportation programs and projects. Processes would be developed by the States to ensure the early consideration of safety needs, goals, and priorities throughout the planning, development, and construction of all projects and activities.

(d) Identifying safety needs of special user groups, such as older drivers, pedestrians, bicyclists, motorcyclists, commercial motor carriers, and hazardous material carriers, in the planning, design, construction and operation of the highway system. Provisions in the States' SMS would include processes for consideration and provisions where appropriate to address the needs and special requirements of these diverse user groups of the highway facilities.

(e) Routinely maintaining and upgrading safety hardware, highway elements and operational features. States would include policies, practices, or procedures to address safety enhancement opportunities in maintenance and operational activities.

Traffic Congestion

Subpart E of this NPRM would require that each State develop, establish, and implement a traffic congestion management system (CMS) in accordance with the provisions of 23 U.S.C. 303. This subpart also recognizes the requirements in 23 U.S.C. 134 and 49 U.S.C. app. 1607 that the metropolitan planning process in TMAs include a congestion management system and that, in TMAs that are nonattainment for ozone or carbon monoxide, Federal funds may not be programmed for a project that significantly increases single-occupant-vehicle (SOV) capacity unless the project is part of an approved CMS.

In addition to the comments to the ANPRM dockets and testimony presented at the four public workshops held in June and July, the proceedings of two other workshops were considered in the development of this subpart. The first, as noted in the ANPRM, was an FHWA sponsored workshop held in Arlington, Virginia in August 1991, that was designed to conceptualize approaches and identify issues related to congestion management. Representatives from States, MPOs, transit agencies, universities, professional organizations, the FHWA, and the FTA participated in this workshop. The second was the May 1992, TRB conference on transportation data needs, cited in the discussion of general issues, at which suggested measures of congestion and potential data needs for a CMS were presented.

As proposed in § 500.505(a), a CMS would identify areas where congestion occurs or may occur, identify the causes of the congestion, evaluate strategies for managing congestion and enhancing mobility, and develop a plan for implementation of the most effective strategies. The CMS would consider a wide variety of traditional and non-traditional strategies for reducing congestion and enhancing mobility. These strategies, as identified in § 500.507(d), would include, but not be limited to:

(1) Transportation demand management measures such as carpooling, vanpooling, alternative work hours, telecommuting, and parking management;

(2) Traffic operations improvements such as the installation of traffic surveillance and control equipment, computerized signal systems, motorist information systems, integrated traffic control systems, roadway channelization and intersection improvements;

(3) Measures to encourage use of high occupancy vehicles (HOV) such as public transit improvements, HOV lane provisions, guaranteed ride home programs, and employer trip reduction ordinances;

(4) Congestion pricing;

(5) Land use management and activity center strategies; (6) access management techniques;

(7) Incident management strategies;

(8) Applications of intelligent vehicle-highway system technology; and

(9) The addition of general purpose lanes.

Discussion of Comments to Dockets FHWA 92–14 and FTA 92–B and at the Public Workshops

Eighty-three of the commenters to dockets FHWA 92–14 and FTA 92–B, and many commenters at the public workshops, addressed the CMS.

In addition to issues common to all of the management systems, six issues related specifically to the CMS were raised in the ANPRM. The first CMS issue in the ANPRM dealt with the question of whether national standards for an acceptable level of congestion should be established for all areas or for the NHS; or whether each State and/or metropolitan area should be allowed to establish its own standards. The responses fit into three categories. The first category consisted of those that suggested that each State or region be allowed to decide what congestion means in its area, but that national guidelines would be acceptable and that consistency for national comparisons may be desirable. The second category consisted of responses that indicated that a single national standard was not warranted, but that Federal guidance and, in some cases, approval might be desirable. Responses in the third category were that a national standard was needed to facilitate statewide comparison and/or reporting to Congress. However, most of the respondents stressed that the States and MPOs should determine what an "acceptable" level of congestion would be in their areas. There were no emphatic requests for a single national standard for all areas. Proposed § 500.507(b) would allow the State, in cooperation with MPOs, local agencies, and operators of major modes of transportation, to establish standards for acceptable congestion levels.

The monitoring of congestion would require a continuous data collection effort. The second issue in the ANPRM dealt with the questions of what congestion data should be reported, whether new reporting mechanisms need to be developed, or whether existing mechanisms could be refined to meet data needs. Most responses to this issue indicated that reported data needed to include measures of mobility, such as people-moving capabilities, not just vehicle movement. Many of the commenters expressed the hope that the National Cooperative Highway Research Program (NCHRP) study 7–13 "Quantifying Congestion," which is scheduled to be completed in 1994, would produce better performance measures to describe mobility. A majority of the commenters stated that existing tools such as the HPMS and Section 15 data should be expanded and enhanced, or overhauled. However, several commenters requested that no increases be made to the reporting requirements. Many States and MPOs indicated that existing mechanisms were adequate and requested that they not be "plagued" with excessive monitoring and reporting requirements. Proposed § 500.507(c) specifies that data requirements and collection techniques be determined jointly by the States, MPOs, and operators of major modes of transportation, that the data be updated periodically, and that new sources of data be considered. The following categories and specific data items are among those that should be considered in a CMS:

System characteristics. Lane miles, HOV lane miles, capacity, roadway functional class, proportion of system congested, type and location of construction underway, location and duration of incidents.

System usage/demand. Vehicle miles of travel, person miles of travel, average daily traffic, number of vehicles and persons using HOV lanes, proportion of travel congested/delayed, proportion of persons and vehicles delayed, duration of peak period.

Time/cost. Person hours and vehicle hours of delay, average speed, peak period speed, average peak and off-peak travel time, proportion of travel time under congestion or delay, parking cost.

Geographic location or area of interest. Central city, suburbs, suburban fringe, geographic information system coordinates, specific functional classification.

The development and implementation of a CMS will require the involvement of various public and private agencies. The third issue dealt with the questions of how implementing agencies could successfully be integrated into a CMS process developed as part of a transportation planning process and what roles various public and private agencies and groups should play in the development, establishment, and implementation of the CMS. Some respondents stated that the CMS should serve as the umbrella for the other management systems, especially the public transportation and the intermodal management systems. These respondents indicated that, of all the management systems, the CMS is best suited for assessing the overall efficiency of the transportation system because the CMS recognizes the multimodal, physical facility, and traveller behavior aspects of the transportation system. Proposed § 500.505(c) through (f) recognize the need for cooperation and for coordination with the other management systems, the process for development of the State implementation plan for air quality, and the statewide and metropolitan transportation planning processes in the development, establishment and implementation of the CMS.

The fourth issue dealt with the capability of existing transportation planning models and procedures to identify congestion problems and possible corrective strategies and to measure performance of implemented strategies at the micro-level. Respondents were asked to identify new tools that would be needed to perform these tasks. Response to this issue was mixed, and tended to correlate with population densities of the responding States and MPOs. Approximately one-third of the responses, generally from rural States, said that existing tools were adequate. Another third of the responses, primarily from States with a mixed level of urban development, indicated that existing tools needed to be enhanced. The remaining responses were from highly urbanized States and indicated that existing tools were not adequate and needed to be completely replaced. Several respondents stated that new planning models were needed to coordinate land use and transportation planning, correlate congestion levels with air quality, and measure total transportation system mobility. Proposed § 500.507(a)(4) would require that a comprehensive program of traditional and nontraditional congestion reduction strategies be developed but does not specify the methodologies to be used in the evaluation of these strategies. Enhanced evaluation methodologies are expected to be developed and incorporated into the CMS on a regular basis. The FHWA and the FTA intend to support the development of these methodologies and will, through a program of technical assistance, provide for the transfer of these enhanced

methodologies to implementing agencies.

The fifth issue dealt with the question of what current measures of changes in congestion and mobility could be used on a multimodal basis and what measures would be suitable in a fully implemented system. NCHRP study 7–13 was mentioned again by several commenters as a possible future source for new and enhanced congestion measures. As noted previously, § 500.507(b) would allow the State, in cooperation with MPOs, local agencies, and operators of major modes of transportation, to select appropriate performance measures. While the proposed regulations do not require specific performance measures, the following measures, or combination of them, might be appropriate: Level-of-service (LOS); lane-miles over a specific LOS; vehicle-miles-of-travel (VMT) over a specific LOS; percent of VMT by functional class; VMT per lane-mile; delay per lane-mile; delay per VMT; delay per trip; delay per vehicle; delay per person delayed; delay per incident; delay due to construction; average travel time per trip; persons per hour on facility or corridor; or persons per vehicle.

Issue six dealt with the question of the time that would be needed for development and implementation of a statewide or metropolitan CMS. Most of the responses to this issue stated that it would take 2 to 3 years, but provided no rationale supporting these time frames. A few commenters stated 3 to 5 years were necessary and one said that implementation depended on the degree of cooperation between the involved parties. Section 500.511 would require that the CMS be fully operational by October 1, 1995. By October 1, 1994, as a minimum: Performance measures would need to be established, data collection activities initiated, the most critical areas requiring analysis be identified, and a work plan developed that shows how full implementation will be achieved by October 1, 1995.

While not singled out as an issue in the ANPRM, many commenters addressed the requirements in 23 U.S.C. 134 and 49 U.S.C. app. 1607 that the metropolitan planning process in TMAs include a CMS that provides for effective management of new and existing transportation facilities through the use of travel demand reduction and operational strategies and that, in TMAs that are nonattainment for ozone or carbon monoxide, Federal funds may not be programmed for a project that significantly increases SOV capacity unless the project is part of an approved CMS.

In response to these requirements, the proposed regulations recognize that, while the addition of general purpose lanes may be an appropriate strategy to consider to relieve congestion, priority needs to be given to strategies that reduce SOV travel and improve the existing transportation system. Full consideration needs to be given to all reasonable travel demand reduction and operational management strategies before the decision can be made to proceed with the implementation of general purpose lanes. In addition, in the design and construction of general purpose lanes, consideration would need to be given to the incorporation of appropriate operational management strategies, or measures to facilitate the addition of such strategies in the future when conditions warrant them.

In TMAs that are nonattainment for carbon monoxide and/or ozone, a project that significantly increases the capacity for SOVs cannot be programmed for Federal funding unless the project results from an approved congestion management system. To meet this requirement, the following criteria would need to be met: the analysis performed in the development of the strategy would need to show that the implementation of all reasonable travel demand and operational management strategies in the corridor in which the SOV project is proposed will not satisfy the need for additional capacity in the corridor; the SOV project would need to incorporate all reasonable strategies to manage it effectively and the design must facilitate the addition of such measures in the future; and all other appropriate strategies that can reasonably be expected to affect demand in the corridor, but have broader application than the immediate project right-of-way, would need to be committed to by the State and the MPO. An interim provision for meeting this requirement was included in the Joint FHWA/FTA Interim Guidance on the ISTEA Metropolitan Planning Requirements issued on April 6, 1992 (and published at 57 FR 14943 on April 23, 1992), and is also included in the metropolitan transportation planning NPRM. Section 500.509 of this NPRM addresses how these requirements can be satisfied with a fully implemented CMS.

Other related legislative requirements in 23 U.S.C. 134 and 135 specify that, respectively, the metropolitan planning process consider the need to relieve congestion and prevent it from occurring where it does not yet occur and that the statewide planning process consider methods to reduce traffic congestion and to prevent it from developing in areas where it does not yet occur, including methods which reduce motor vehicle travel, particularly SOV travel. These planning process requirements will be addressed more specifically in the metropolitan and statewide regulations currently under development.

Public Transportation Facilities and Equipment

Subpart F of 23 CFR Part 500 would require each State to develop, establish, and implement a system for managing public transportation facilities and equipment (PTMS).

Discussion of Comments to Dockets FHWA 92–14 and FTA 92–B and at the Public Workshops

The comments submitted to dockets FHWA 92–14 and FTA 92–B and presented at the public workshops provided guidance on the eight PTMS issues described in the ANPRM.

The first PTMS issue sought information on the specific goals and objectives of the PTMS. The most common response was that the primary goal of the PTMS should be the preservation of current capital facilities and equipment in a good state of repair. The PTMS was characterized as a planning tool which should not replace, but provide data for, the transportation planning processes. This proposed NPRM emphasizes that preservation of transit assets is the primary goal of the PTMS and that the information in the PTMS should supplement the planning processes.

A common response was that the nature of each PTMS could vary significantly because of the diverse nature of public transportation agencies. The proposed NPRM would accommodate this diversity by recognizing different classes of transportation providers with different information requirements.

The second issue asked what the appropriate roles should be for the States, MPOs, public transit operators, and private transit operators in the development, establishment and implementation of the PTMS. There was no consensus regarding which agency should be the lead for the development of the PTMS. Generally, each respondent thought that its agency should have the lead. Also, there was no agreement over the type of agency that should be responsible for data collection and analysis. However, many respondents identified the need for coordination among States, MPOs, and transit operators if the PTMS is to be useful. The NPRM would require coordination among local agencies in

the development, establishment, and implementation of the PTMS. The States would be given the option of designating lead agencies and agencies responsible for other aspects of the PTMS.

The third issue asked if the U.S. DOT should provide national summaries of the information from the management systems, or if the data from the management systems should be solely for the benefit of the States, local governments, and transit operators. Most respondents emphasized that the PTMS was primarily for local needs and that national reporting must recognize the difficulty in consistent definitions among diverse agencies and peer comparisons. The NPRM would not require national reporting of PTMS information.

The fourth issue requested suggestions on whether a PTMS should be required only for urbanized areas, or for rural areas as well. About as many respondents thought that the PTMS should include rural operators as did not. The NPRM would require that rural transit operators be included in the PTMS.

The fifth issue sought guidance on whether the PTMS should be required for agencies receiving little Federal funding. No clear consensus emerged from the responses. Some respondents thought that all transit systems, regardless of funding source, should be covered while others suggested minimum thresholds and types of Federal funding which should be met before inclusion is required. The NPRM would require only those systems receiving Federal funds to be included in the PTMS.

The sixth issue asked what other elements should be included in a PTMS and to what extent the elements of a PTMS should be standardized. Many respondents suggested that data requirements be as consistent as possible with those now in effect for section 15 data and that the data elements included within the PTMS be flexible so that local concerns could be addressed. The NPRM suggests, but does not require, the collection of information on the age, condition, useful life, and replacement cost of transit system assets. Comments are invited on the adequacy of these data elements, the data elements suggested for dedicated transit right-of-ways in § 500.609(c)(2), and whether other data may be needed.

The seventh issue requested guidance on whether the emphasis of a PTMS should be on condition of facilities and equipment or system performance, or both. The most common response was that the PTMS should emphasize maintenance of facilities and equipment in a good state of repair. A few respondents indicated that system performance should be considered. The NPRM would place emphasis on maintaining facilities and equipment in a good state of repair by requiring an assessment of their condition. Performance of the system as measured by passenger utilization, except for dedicated transit right-of-ways, or cost per unit of service would not be required as part of the PTMS.

The eighth issue sought information on the coordination of the PTMS with other management systems and the statewide and metropolitan transportation planning processes. The majority of respondents suggested that it is necessary for the PTMS to be linked to both the CMS and IMS and to other ongoing planning processes. The NPRM would require coordination with these systems and planning processes.

Intermodal Transportation Facilities and Systems

Subpart G of 23 CFR part 500 would require each State to establish an intermodal facilities and systems management system (IMS) that: identifies intermodal facilities, efficiency measures, and performance standards or goals; encourages data collection at the project and systems levels; and evaluates and implements intermodal strategies and actions. A fully implemented IMS would result in: (1) A continuing inventory of intermodal facilities and systems, (2) incorporation of IMS strategies and actions into transportation planning processes, and (3) an implementation plan for integrating results of an IMS into the statewide and metropolitan transportation plans and programs.

An effective, comprehensive IMS should consider the following intermodal needs:

—Connections: The convenient, rapid, efficient, and safe transfer of people and goods among modes that characterize comprehensive and economic transportation service.
—Choices: Opportunities afforded by modal systems that allow transportation users to select their preferred means of conveyance.
—Coordination and Cooperation: Collaborative efforts of planners, users, and transit providers to resolve travel demands by investing in dependable, high-quality transportation service either by a single mode or by two or more modes in combination.

The objective of the IMS as a transportation planning element is to increase efficiency, productivity and the use of advanced technologies in transportation systems.

Discussion of Comments to Dockets FHWA 92–14 and FTA 92–B and at the Public Workshops

In addition to issues common to each of the systems, the ANPRM requested public comment on eight issues related specifically to the IMS. To varying degrees, the responses provided guidance on how each of the issues should be addressed.

The first IMS issue raised in the ANPRM sought guidance on what parameters should be used to measure the efficiency of intermodal transportation facilities and systems. The responses to this question identified a number of parameters for passenger and freight facilities and systems. For passenger facilities, suggested parameters included: Numbers of passengers, origins and destinations, time, cost, capacity, delay, impacts on air quality and energy consumption, accidents, and comfort. For freight facilities parameters included: Time, cost, delay, system reliability, system flexibility, ease of access, modal commodity changes, turn-around rates, contingency operations, information flows, level of service, impacts on air quality and energy consumption, condition of freight on arrival, facilities and equipment capacity and measures of freight cargo, value, units per distance traveled, transfers, and origins and destinations. The NPRM recognizes that transportation services and their perceived quality vary between communities and industries, and that performance standards or goals should be established at the State or local level with private sector coordination.

Many of the respondents also indicated a strong desire to avoid costly, duplicative data collection efforts by relying on existing data collection programs to generate information on intermodal movements. The NPRM endorses the use of existing data collection programs in ways that will reduce costs and express data in consistent, continuous formats that can be consolidated into regional and national databases.

The second IMS issue requested information on mechanisms or institutional arrangements that should be established to address intercity, interstate, and international IMS issues. The majority of respondents indicated that when intercity and intrastate issues are to be addressed, States should cooperate with MPOs to establish regional multi-disciplinary technical

and policy working groups, with public and private sector representation from transportation users, modal operators, and private carriers. These working groups would develop guidelines for intermodal priorities, identify issues, develop an approach to intermodal planning, and coordinate issues.

A minority of respondents advocated creation of a national commission of Federal, State, and local government agencies, private industry and citizens to resolve interstate and international issues. The rulemaking recognizes the need for establishing institutional arrangements with multi-disciplinary involvement. Title V of the ISTEA identifies the U.S. DOT as the entity responsible for addressing national and international transportation issues.

The third IMS issue requested suggestions on how an IMS should be coordinated with the statewide and metropolitan area transportation planning processes. Several respondents indicated that the statewide planning process should include an intermodal element and provide the policy framework and direction for designing and implementing an IMS.

The ISTEA requires the involvement of representatives of all interested/affected parties in intermodal transportation, including MPOs. The NPRM provides States and MPOs with a framework in which to identify intermodal issues and problems, to develop intermodal solutions to problems and to make the difficult tradeoffs in programming limited fiscal resources for intermodal projects versus other projects. The level of sophistication and effort required or appropriate for rural States and small urban areas should be significantly less than that for larger, more complex urban States and metropolitan areas. The requirements should therefore be flexible.

This NPRM directs the States and MPOs to consider the needs identified by the IMS strategies in development of plans and programs. The IMS would provide MPOs and States with planning opportunities and processes for identifying intermodal issues, problems and solutions. The NPRM would allow flexibility in developing and implementing an IMS and allow for differences in sophistication and effort appropriate for small and rural States.

The fourth IMS issue asked for feedback on how IMS requirements should vary based on the complexity of the transportation issues of individual States and metropolitan areas. The majority of respondents indicated that while IMS regulations should specify the required elements and overall framework, they should also provide flexibility to adapt individual IMS requirements to accommodate demographic and geographic diversity of States and metropolitan areas. A minority of respondents indicated that national standards should be developed for an IMS, and States would then be required to adopt those standards.

A fully implemented IMS required by this NPRM would result in an inventory of intermodal facilities and systems and incorporation of IMS strategies and actions into State and metropolitan area transportation plans, programs, and project selection. The IMS elements in this NPRM allow for consideration of differences in transportation services and perceived quality between communities and industries and the establishment of performance standards or goals at the State or local level with private sector coordination.

The fifth IMS issue dealt with how the private sector should be involved in the IMS. Respondents identified five different ways in which the private sector should be involved in IMS: (1) The private sector should be involved at all levels from the problem definition stage to implementation. Private/public partnerships should be fostered at both the policy and operational levels, and input from private/public resource groups should be encouraged at all transportation planning levels; (2) The private sector should be involved through participation on advisory committees that would include all major private sector providers and users of intermodal services. These advisory committees could work with the State and MPOs in the development of the Statewide and metropolitan transportation plans and programs; (3) Private industry participation that reflects input from transportation service providers, manufacturers, and their clients must be considered at all levels of transportation planning if the IMS is to be successful; (4) Data collection will also require large scale private sector involvement to identify intermodal needs and determine what types of data they would be willing or able to share. Since most of this data will be proprietary, there need to be safeguards to insure confidentiality; and (5) Private sector participation should be voluntary because the States and MPOs are not in a position to mandate such participation.

A concern was expressed by some respondents that full participation in an IMS by the private sector would be difficult due to the expense and liability of reporting proprietary data and the fact that their pricing structure and competitive advantages may be compromised by open discussions in evaluating intermodal priorities.

Responses to the docket characterized private sector coordination as being both anticipated and necessary for a successful intermodal management system. This coordination was believed to be necessary in all elements of the intermodal management system, but was seen as especially important in identifying intermodal facilities, identifying efficiency measures and performance standards and evaluating system and facility performance. The NPRM recognizes that the specific mechanisms for involving the private sector will be a State and local decision.

The sixth IMS issue requested suggestions on whether the IMS should be applied in a narrow context (connections and transfers at terminals) or in a broader context (system-wide, multi-modal). The vast majority of respondents to this question were in favor of a broader context. The reasons for this view were varied: (1) The IMS must meet the demands of the program and operational goals of the overall transportation network; (2) System-wide problems will be more difficult to solve because they are geographically dispersed but intermodalism encompasses more than just terminal transfers; and (3) An IMS must encompass system level analysis of intermodal barriers and issues to reflect consistent and complementary access of modes.

The minority who were in favor of a more narrow context stated that initial efforts should be focused on intermodal transfer points at terminals and then five years later expand the scope of the IMS. Others indicated that time and resources are not available now for a broad implementation of the IMS.

The NPRM uses a narrow context as a base when it addresses identification of intermodal facilities, identification of efficiency measures and performance standards as well as data collection and system monitoring. The NPRM builds on this base and has a broader context when it addresses system and facility performance evaluations, strategy and action identification and evaluation and implementation of products.

The ANPRM requested input on a seventh issue addressing identification of existing data sources that could provide information on intermodal facilities and systems. The majority of respondents noted a variety of sources including private industry, State and local governments, commissions, trade associations, public records and census data. A minority of respondents stated that data sources for freight/goods movement are very limited. The NPRM

looks to State and local transportation officials to define the level of precision needed in the performance evaluation process to provide input on information needs. The NPRM does not specify the types of data to be collected or the level of precision required in recognition of the flexibility needed by the States to develop their systems. The NPRM does, however, direct States to coordinate their data collection programs with the U.S. DOT as directed by the ISTEA.

The eighth and final IMS issue raised in the ANPRM requested guidance on whether the IMS requirement for an implementation plan should include financial analysis. The majority of respondents were in favor of an implementation plan that included financial analysis, indicating that the reason for including it is to ensure the most efficient expenditure of limited public financial resources and that the analysis should also include a cost/benefits analysis. Several respondents noted that a financial analysis was important because of the involvement and impact of the private sector in freight transportation (improvements to one carrier will yield a competitive advantage over other carriers). A minority indicated that a financial plan should be included, but not immediately, and it should not be as detailed as the analysis required for the statewide and metropolitan transportation improvement programs. The NPRM encourages financial analysis in the implementation plan to identify the proposed methods and obstacles (institutional, financial or legal) to implement the strategies and actions.

Traffic Monitoring System

Subpart H of the rulemaking is directed to the highway component of a TMS (TMS/H) including travel associated with public transportation on public highways and streets. This subpart reflects comments received in response to the advance notice of proposed rulemaking (ANPRM) published in the June 3, 1992, Federal Register. This subpart would require States to establish a TMS/H. As part of its TMS/H each State would have a comprehensive process for the collection of highway person and vehicular traffic data. This comprehensive process would include elements to assure that the data precision is adequate to address highway issues, that adequate care is taken in the collection of highway traffic data through continuous and short term monitoring, that procedures used in the field data collection phase of a TMS/H support the acquisition of high quality data, that data is readily available to the user, and that the processing of collected data into estimates of average highway traffic is carried out in a consistent fashion. The regulations would ensure comparable and consistently high quality data for application to the administration of the national highway program and in the consideration of intermodal issues.

Paragraph (b) of 23 U.S.C. 303 identifies the required traffic monitoring system as being for highways and public transportation facilities and equipment. Because of the special monitoring needs of both highways and public transportation facilities and equipment, it has been determined that separate monitoring systems should be developed for highways and for non-highway public transportation facilities and equipment. The current rulemaking concerns the traffic monitoring system for highways including public transportation on public roads and highways. Guidance on traffic monitoring for non-highway public transportation facilities and equipment is included in subpart F of 23 CFR part 500.

States must be implementing the six management systems beginning in Federal fiscal year 1995. Since traffic data is a significant element in the administration of each of the management systems, traffic monitoring systems for highways are proposed to be functioning no later than by October 1, 1994.

Previous direction and guidance to States on the collection and reporting of highway traffic data has been provided by the FHWA as part of its "Traffic Monitoring Guide,"[4] (TMG) (originally issued in 1985 and reissued in 1992), and as directions for the reporting of traffic data to the FHWA's HPMS. In addition, the 1992 publication "AASHTO Guidelines for Traffic Data Programs"[5] (AASHTO Traffic Guidelines) provides a basis for a common understanding of traffic data as well as describing an appropriate state of the practice for a State.

The TMG is the FHWA's statement of good traffic monitoring practices. The TMG describes the number and duration of traffic data collection sessions and the adjustments that need to be made to the collected data to develop location or system level estimates of count. The TMG also describes vehicle classification and truck weight data collection programs. As a guide, the application of the TMG procedures by the States is voluntary.

The HPMS, established in 1979, is the Federal Highway Administration's inventory of the nation's highways and their traffic volumes. The concepts for traffic data collection in the HPMS reference those in the TMG. Because of the use of the HPMS data for biennial reports to Congress and its extensive use in policy and program assessments, all data reported to the HPMS, including traffic data, are expected to conform to the rigorous collection, reporting, editing, and review procedures developed to support the current HPMS and planned 1993 revision to the HPMS.

The AASHTO Traffic Guidelines were developed to define and work toward a common traffic monitoring practice on a national basis. Six fundamental principles established in the AASHTO Traffic Guidelines are:

1. These Guidelines will move toward a common traffic monitoring practice.
2. These Guidelines will establish a phased program to achieve a common practice, including near-term minimum practices and future direction.
3. These Guidelines will be practical and capable of implementation.
4. What is practical in these Guidelines will be directed by the need to provide quality traffic data for decisionmaking.
5. Truth-in-Data, which is the disclosure of practice and estimate of data variability, is central to these Guidelines to ensure appropriate data quality and use.
6. These Guidelines will present a dynamic approach to traffic data programs. Further development will be encouraged through the clarity and integrity of common practice.

The AASHTO Traffic Guidelines are intended to identify the importance of common and consistent practice within and among transportation agencies. Its scope ranges from field equipment to traffic reports. It is expected that the AASHTO Traffic Guidelines will be updated and refined over the coming years through implementation by State agencies.

The FHWA worked with the member AASHTO States in the development of the AASHTO Traffic Guidelines and has based the proposed regulations on the principles embodied in these Guidelines.

Because of the various organizational arrangements in use by States to collect highway traffic data, sufficient flexibility would be provided to assure

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[4] *Traffic Monitoring Guide*, DOT/FHWA, October 1992, is available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

[5] *AASHTO Guidelines for Traffic Data Programs*, 1992, can be purchased from the American Association of State Highway and Transportation Officials, 444 N. Capitol Street, NW., Suite 225, Washington, DC 20001. It is available for inspection as prescribed in 49 CFR part 7, appendix D.

that the actions covered by the rulemaking are reasonable and can be adequately supported by the implementing agencies. This flexibility extends to the recognition that assessment of the quality of the highway traffic data in use by a State must depend on how well it meets the expectations of the users of the data and particularly those users who are responsible for the development, implementation and operation of the six management systems called for in 23 U.S.C. 303(a).

The FHWA's existing practice has been to allow States to use procedures other than those recommended by the FHWA in the collection and reporting of highway traffic data, if it can be objectively demonstrated that the alternative procedures achieve the same statistical objectives as the recommended FHWA procedures. The existing practice continues under the proposed rulemaking. States are allowed to use alternative procedures if such procedures meet the statistical objectives for FHWA programs.

Discussion of Comments to Dockets FHWA 92–14 and FTA 92–B

Six issues were raised in the ANPRM. A total of 24 comments were received. To varying degrees the respondent agencies (one city, one metropolitan association of governments, one metropolitan transportation commission, and 21 State transportation and/or highway agencies) provided guidance on how each of the issues should be addressed.

The first issue dealt with information that might be reflected in development of a regulation. The ANPRM noted that development of guidelines and requirements were expected to reflect (1) the content of guidelines and requirements for traffic monitoring, (2) the traffic data needs of the managements systems called for in 23 U.S.C. 303(a), (3) redesign of the HPMS, (4) EPA guidance relative to the Clean Air Act Amendments of 1990 (Pub. L. 101–549, 104 Stat. 2399), (5) potential AASHTO adoption of "AASHTO Guidelines for Traffic Data Programs," (6) ASTM Standard E1442–91 "Standard Practice for Highway-Traffic Monitoring," and (7) procedures and techniques documented in the FHWA's "Traffic Monitoring Guide" (report No. HPM–30/R7–90(100)QE, June 1985). None of the respondents disagreed with the documents cited and only one currently available source document was suggested for inclusion, ASTM Standard E1318–90 "Standard Specification for Highway Weigh-in-Motion (WIM) Systems with User Requirements and Methods." The TMS regulations would encourage the use of national standards developed by the ASTM and the AASHTO without citing specific standards. The results of the 1992 proceedings of the Transportation Research Board Conference "Transportation Data Needs: Programs for a New Era: Implications for State DOTs and MPOs" were suggested but were not available in time for development of the NPRM. These results will be considered in any revision process if they are available.

The ANPRM also requested suggestions as to program areas that might require special emphasis in the traffic data collection program. Additional direction was requested by one respondent each on the topics of the collection of data in support of the Clean Air Act Amendments of 1990, the collection of freight movement data and the collection of transit data. The EPA has provided, and continues to provide, guidance on the traffic data needed in the Clean Air program. This rule would require the traffic data collector to be responsive to user needs. Freight data needs in the NPRM are directed to the collection of vehicle weight information for highway vehicles. Data collection for transit vehicles operating on public highways is discussed in the NPRM, while guidance on collection of data for non-highway transit vehicles will be provided by the FTA.

The third issue requested guidance on the precision levels needed in the collection of various types of traffic data. Although three respondents provided specific suggestions as to precision levels, no clear consensus was apparent. Six respondents indicated that existing levels of data collection efforts were sufficient for national and State level reporting. The NPRM looks to the users of the data to define the level of precision needed and specifies that the traffic data collection program provide information on how well these precision levels are met.

The fourth issue requested information on how the precision level might vary with system level issues versus site or project specific issues. The five comments received on this issue asserted that project level issues do not require national standards. The proposed regulations would require that any traffic data used in support of a Federal program, study, or Federal-aid project conform, as appropriate, to the regulations. For site specific data this may mean that the traffic data were collected, edited and adjusted in conformance with the documented procedures of the highway agency.

The fifth issue sought guidance on the appropriateness of including only vehicle data or including transit and automobile passenger trips data as well. Seven of the 16 comments received on this issue favored the collection of person data as part of a traffic monitoring system. The NPRM provides for the collection of such data to the level deemed appropriate by the data collection agency using data collection methods that are determined to be most effective by the agency.

The sixth issue focused on which ISTEA management system should maintain transit passenger data. Four of the 16 comments supported the inclusion of such data as a part of a traffic monitoring system with the other comments in opposition or suggesting other management systems for retaining such data. The NPRM calls for the traffic monitoring system to have data on bus usage.

Section-by-Section Analysis

This analysis discusses the proposed addition of 23 CFR part 500, subpart H, Traffic Monitoring System.

Section 500.801 Purpose

The rulemaking would provide a policy for the collection, reporting and retention of data as part of a person and vehicular traffic monitoring system for highways (TMS/H) and encompasses data programs for traffic monitoring systems related to public transportation on public roads and highways if the data are reported to the U.S. Department of Transportation (U.S. DOT) or if the data are collected using funds provided by the U.S. DOT.

Section 500.803 Definitions

Except as noted below, the definitions are taken directly from the AASHTO Traffic Guidelines.

The definition of "annual seasonal factors" was developed by the FHWA to emphasize the factoring necessary to convert a coverage count to an AADT estimate. Although the definition refers to only twelve factors, States may use a more refined factoring process, such as week of year factors instead of month of year factors.

The definition of "automatic traffic recorder" is an elaboration of the definition in the AASHTO Traffic Guidelines. The AASHTO Traffic Guidelines does not emphasize that the count is for vehicles across all lanes of traffic. Proper development of factors for application to coverage counts and the use of automatic traffic recorders for tracking the trend in changes in highway travel require that travel in all highway lanes be included.

A definition of "continuous counter" is included because of the widespread use of the term in reference to automatic traffic recorders.

"Functional system" is defined to emphasize that the delineation of highway systems is a product of the functional classification process.

The definition of "highway traffic data" highlights the interrelationship of the various traffic data elements and emphasizes not only the movement of vehicles but, more importantly, the movement of people and goods.

The definition of "traffic data collection session" was developed by the FHWA and means the period of time during which highway traffic data is collected at a specific location.

"Traffic Monitoring Guide" (TMG) means the FHWA's statement of good traffic monitoring practices.

Section 500.805 Policy

This section would require each State to have a TMS/H. Whether the FHWA accepts the TMS/H will depend on the TMS/H's adherence to the concepts described in the current, or amended, AASHTO Traffic Guidelines. It is further expected that any TMS/H will be responsive to the concepts of the FHWA's TMG and able to supply traffic data needed for the HPMS. Although a State's TMS/H could cover all highways, it must as a minimum include all highways in the following functional classes, both on and off State administered systems: rural interstate, rural other principal arterials, rural minor arterials, rural major collectors, urban interstate, urban other freeways and expressways, urban other principal arterials, urban minor arterials, and urban collectors. To be useful in the implementation of the management systems called for under 23 U.S.C. 303(a), a TMS/H must be operational as soon as possible but no later than by October 1, 1994. Recognizing that various approaches may achieve the objectives of a TMS/H, States would be allowed to use procedures other than those specified in the rulemaking if the alternative procedures are found acceptable by the FHWA. Nothing in this section is intended to prohibit the collection of other types of traffic data needed for the administration of the highway program such as vehicle weights for enforcement purposes, axle weights for pavement research, adherence to national and local speed limits or provision of level of service.

Each State's TMS/H is expected to address the following elements:

(1) Precision of Reported Data—The intensity of the TMS/H data gathering effort should reflect the precision needed by the data user. At a minimum, a State's TMS/H will meet any statistical precisions established by the State for the six management systems identified in 23 U.S.C. 303(a) and the FHWA's HPMS. Therefore the TMS/H should have a method to respond to the special data needs of the data user and to estimate the precision of an item of data provided to a data user. This feature of a TMS/H makes the data user an active participant in the formation of the traffic data gathering program.

(2) Continuous Counter Operations—An analysis of the data needs to be addressed and the necessary accuracy of the data expected by the data user would be required to determine the necessary number of continuous counters. The rulemaking emphasizes the importance of the continuous count program to the TMS/H in order for a State's TMS/H to be able to track changes in highway travel patterns at the functional class level and to provide for the development of day-of-week, seasonal and growth factors.

(3) Short Term Traffic Monitoring—Data collected to make estimates of traffic volumes using short term traffic monitoring must be adjusted to AADT in order to provide comparability from one location or time of data collection to another location or time of data collection. The AADT is the result of the application of seasonal factors, day-of-week factors and when necessary, axle correction and growth factors. The use of other factors in the calculation of AADT such as corrections for the use of pneumatic tubes as the axle sensing device or for temperature would not be allowed because of the lack of rigorous development of methods that would allow their application by all States.

Because of the high national interest in better monitoring of the nation's heavy truck movements (and therefore motor freight flows) more intense vehicle classification activities are specified for the NHS. The rule would provide that vehicle classification activities be sufficient to ensure that, as a minimum, on a three year cycle, on the NHS, every major rural system segment (defined as between interchanges or intersections of principal arterials of the rural NHS) will be monitored to provide information on the numbers of single-trailer combination trucks, multiple-trailer combination trucks, two-axle four-tire vehicles, buses and the total number of vehicles operating on an average day. In urban areas (i.e., areas of 5,000 or more population) similar monitoring would be required, as a minimum, on every four-mile segment of the NHS. The installation of permanent monitoring detectors (and associated classifier electronics to the extent possible) is strongly encouraged by the FHWA.

(4) Vehicle Occupancy Monitoring—States in cooperation with local governments and official transportation planning groups would be expected to collect data on the average number of persons per automobile, light two-axle truck, or bus that are appropriate for addressing the issues of their concern including the six management systems called for under 23 U.S.C. 303(a). The decisions as to duration, geographic extent and level of detail of such data collection are left to the States, MPOs, and cooperating local governments. The FHWA believes that vehicle occupancy data should be updated at a minimum of every three years if it is to be of value in tracking changes in occupancy. A wide range of data collection methods are acceptable including roadside monitoring, traveler surveys, and the use of administrative records, such as accident reports. Other data collection methods mutually acceptable to the State, MPOs and the FHWA may also be used.

(5) Field Operations—(a) The FHWA expects that a State's TMS/H will have specific procedures for acceptance testing of traffic monitoring equipment when initially received and for the periodic retest of such equipment. In order to assure consistency from one equipment test to the next, the testing procedures should be documented for use by the State's staff. If appropriate testing procedures are available from national organizations such as the American Society for Testing and Materials or the AASHTO, these national procedures may be referenced as the State's testing procedures. In those situations where traffic data is collected using human observers, the State's TMS/H is expected to have quality control procedures to assure that the manually collected data are accurate.

(b) The documentation for a TMS/H shall provide a clear description of the functional systems monitored, the procedures used to gather the data, the number of counts, the period of monitoring, the cycle of monitoring, and the spatial and temporal distribution of count sites.

(6) Source Data Retention—(a) The AASHTO Traffic Guidelines emphasize the continuing need to retain the data as collected and to be able to describe those elements that might bear on the resulting traffic estimates. These elements are: when and where the data are collected, the data as originally collected, and the identity of the

specific machine(s) used in the data collection.

(b) In conformance with the AASHTO Traffic Guidelines, the original data are expected to be available for at least 10 years. Longer time periods may be appropriate depending on the use of the data. Having the data available in an electronic medium is believed to be reasonable in order to promote the widest use of the data.

(c) Although data need not be retained in any specific format, a State's TMS/H must be able to provide data in formats compatible with the FHWA guidance. This feature will assure that States can be certain there will be a similar format for the sharing of traffic data.

(7) Office Factoring Procedures—(a) The importance of accurate factors to be applied to short counts is emphasized in calling for the annual update of these factors. It is further emphasized that the factors should be specific to each of the functional groups identified in the "Policy" section.

(b) The discussion of rounding of decimal values is intended to assure a degree of uniformity in the calculation of the factors used to adjust short counts without being unduly burdensome.

(c) The method of rounding to be applied in the reporting of estimates of traffic volumes is taken from the AASHTO Traffic Guidelines.

(d) Emphasis is placed on the adherence to practices documented by the State of its procedures for the derivation of annual traffic estimates based on short counts. This emphasis is necessary in order to assure that each data analyst within a State will be following the same procedures. It is expected that application of the same procedures will assure that each analyst will produce the same estimate of annual travel given the same original data. The documentation will include the factors to be applied when making an estimate of average traffic conditions. The documentation will explain how information based on data that was actually collected at a specific site is differentiated from information that was estimated for a site based on data collected at a different site or sites. The documentation will remain available as long as the source data to which the procedures were applied remain available.

Rulemaking Analyses and Notices

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

The actions being considered in this document are required by statute. The FHWA and the FTA have determined that this rulemaking is not major within the meaning of Executive Order 12291. However, the FHWA and the FTA consider this to be a significant regulation under the regulatory policies and procedures of the DOT because of substantial State, local government, congressional and public interest. These interests involve infrastructure management, receipt of Federal financial support for transportation investments, and compliance with legislative requirements. This proposed regulation would implement section 1034 of the ISTEA which expressly requires that States implement the identified management and monitoring systems. This proposal builds upon existing requirements and State practices, especially in the areas of pavement, bridge, safety, congestion relief, and traffic monitoring programs. The FHWA and the FTA believe that most States and local governmental units have processes and procedures that parallel the basic requirements for these systems. The effect of this regulation would be to strengthen these processes and procedures by emphasizing the collection and analysis of data to support better informed transportation investment decisionmaking. The FHWA and the FTA believe that any additional costs to State and local governments to develop and implement these systems will be minimal and, in view of current process and procedures, that these costs will be outweighed by the benefits. For these reasons, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the FHWA and the FTA have evaluated the effects of this proposed rule on small entities, such as local governments and businesses. This proposed regulation would require States, in cooperation with MPOs, local governments, and others, to develop and implement the management and monitoring systems required by section 1034 of the ISTEA. Several categories of Federal funds that are available for these purposes are identified in the proposed regulations. Because the FHWA and the FTA believe that the cost of implementing these systems will be minimal and because Federal funds are available for these activities, the FHWA and the FTA believe that this proposal will not have a significant economic impact on a substantial number of small entities. Accordingly the FHWA and the FTA certify that this rulemaking would not have a significant economic impact on a substantial number of such entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612.

Section 303 of title 23, U.S.C., requires the Secretary to issue regulations and requirements/guidelines to implement the management and traffic monitoring system provisions. The proposed rule recognizes the role of States, MPOs, local governments, and operators of transportation systems and facilities in implementing these systems. Accordingly, it is certified that the policies contained in this document have been assessed in light of the principles, criteria, and requirements of the Federalism Executive Order as well as the applicable provisions of the title 23, U.S.C., for this proposal. It has been determined that this proposed rule does not have sufficient Federalism implications to warrant a full Federalism Assessment under the principles and criteria contained in Executive Order 12612.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Numbers 20.205, Highway Planning and Construction, 20.505, FTA Technical Studies Grants, and 20.507, Capital and Operating Assistance Formula Grants. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to these programs.

Paperwork Reduction Act

The creation and submission of required reports and documents have been limited to those necessary for performance of the FHWA's and the FTA's legislative and administrative responsibilities. The legislation requires the States to certify annually that they are implementing the management systems. The Secretary must also report annually to the Congress on progress being made in implementing the legislative provisions. The proposed rule would require the States to provide information on status of implementation for use in preparing the Secretary's report as part of the certification statements. It is estimated that the burden per year for the States to provide the certifications and status information will be approximately 2100 hours. To the extent possible, the FHWA's HPMS data (approved through September 30, 1993, by the OMB under control number 2125–0028) and the FTA's Section 15

data (approved through May 13, 1994, by the OMB under control number 2132–0008) will be used for the systems. It is believed by the FHWA and the FTA that any additional data needed for the systems is already being collected by the States, MPOs, local governments, or Federal Transit Act recipients.

National Environmental Policy Act

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

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

23 CFR Part 500

Bridges, Grant programs—transportation, Highway pavement, Highway traffic safety, Highways and roads, Intermodal transportation facilities and systems, Management systems, Public transportation facilities and equipment, Traffic congestion, Traffic monitoring, Transportation infrastructure.

23 CFR Part 511

Grant programs—transportation, Highways and roads, Research.

23 CFR Part 626

Design standards, Grant programs—transportation, Highways and roads.

49 CFR Part 614

Intermodal transportation facilities and systems, Management systems, Public transportation facilities and equipment, Traffic congestion, Transportation infrastructure.

Issued on: February 17, 1993.

E. Dean Carlson,

Executive Director, Federal Highway Administration.

Robert H. McManus,

Acting Administrator, Federal Transit Administration.

In consideration of the foregoing, the Federal Highway Administration proposes to amend chapter I of title 23, Code of Federal Regulations, by removing parts 511 and 626, by amending subchapter F by revising the heading and by adding part 500, and subparts A through G, and the Federal Transit Administration proposes to amend chapter VI of title 49 CFR by adding new part 614 as set forth below.

Title 23

PART 511—RESEARCH AND DEVELOPMENT (R&D) STUDIES ANDPROGRAMS; GENERAL [REMOVED]

1. Chapter I of title 23 CFR is amended by removing part 511, §§ 511.1 through 511.10, in its entirety.

SUBCHAPTER F—(PARTS 500 THROUGH 599) [REVISED]

2. The heading of subchapter F, Research and Development, is revised and a new part 500 is added to read as follows:

SUBCHAPTER F—TRANSPORTATION INFRASTRUCTURE MANAGEMENT

PART 500—MANAGEMENT AND MONITORING SYSTEMS

Subpart A—General

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500.101 Purpose.
500.103 Definitions.
500.105 Policy.
500.107 Coordination and evaluation of systems.
500.109 Certification of implementation.
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Subpart B—Pavement Management System

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500.501 Purpose.
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500.509 Single-occupant-vehicle capacity projects.
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Subpart F—Public Transportation Facilities and Equipment Management System

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500.601 Purpose.
500.603 Definitions.
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Subpart G—Intermodal Facilities and Systems Management System

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500.701 Purpose.
500.703 Definitions.
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Subpart H—Traffic Monitoring System

Sec.
500.801 Purpose.
500.803 Definitions.
500.805 Policy.

Authority: 23 U.S.C. 134, 135, 303 and 315; 49 U.S.C. app. 1607; 23 CFR 1.32; and 49 CFR 1.48 and 1.51.

Subpart A—General

§ 500.101 Purpose.

The purpose of 23 CFR part 500 is to implement the requirements of 23 U.S.C. 303, Management Systems, which requires State development, establishment, and implementation of systems for managing highway pavement of Federal-aid highways (PMS), bridges on and off Federal-aid highways (BMS), highway safety (SMS), traffic congestion (CMS), public transportation facilities and equipment (PTMS), and intermodal transportation facilities and systems (IMS). Section 303 also requires State development, establishment, and implementation of a traffic monitoring system for highways and public transportation facilities and equipment (TMS). This subpart includes definitions and general requirements that are applicable to all of these systems. Additional requirements applicable to a specific system are included in subparts B through H of this part 500.

§ 500.103 Definitions.

Unless otherwise specified herein, the definitions in 23 U.S.C. 101(a) are applicable to this part 500.

Certifying official(s). The individual(s)/position(s), designated by the Governor of a State or the mayor of the District of Columbia to certify that the management system(s) is/are being implemented in the State.

Federal agency(ies). For the PMS and BMS, the Federal Highway Administration (FHWA); for the SMS, the FHWA and the National Highway Traffic Safety Administration; for the CMS, PTMS, and IMS, the FHWA and the Federal Transit Administration (FTA).

Federal-aid highways. Those highways eligible for assistance under title 23, U.S.C., except those functionally classified as local or rural minor collectors.

Highway Performance Monitoring System (HPMS). The system used by the FHWA to provide information to Congress, the States, and the public on the extent and physical condition of the nation's highway system, its use, performance, and needs. The system includes an inventory of the nation's highways including traffic volumes. (Approved through September 30, 1993, by the OMB under control number 2125–0028.)

Metropolitan planning area. The area, established by the MPO and the Governor in accordance with 23 CFR part 450, in which the metropolitan transportation planning process required by 23 U.S.C. 134 and section 8 of the Federal Transit Act (49 U.S.C. app 1607) must be carried out.

Metropolitan planning organization (MPO). The organization designated, in accordance with 23 CFR part 450, as being responsible, together with the State, for carrying out the metropolitan planning provisions of 23 U.S.C. 134 and 49 U.S.C. app. 1607. This organization is the forum for cooperative transportation decisionmaking.

National highway system (NHS). The system of highways designated and approved in accordance with the provisions of 23 U.S.C. 103(b).

Section 15 data. A reporting system required under section 15 of the Federal Transit Act (49 U.S.C. app. 1611) that annually accumulates public mass transportation financial and operating information by uniform categories and a uniform system of accounts and records.

(Approved through May 13, 1994, by the OMB under control number 2132–0008.)

State. Any one of the fifty states, the District of Columbia, or Puerto Rico.

Transportation Management Area (TMA). An urbanized area with a population over 200,000, as determined by the latest decennial census, or other area when TMA designation is requested by the Governor and MPO (or affected local officials), and officially designated by the Administrators of the FHWA and the FTA. The TMA designation applies to the metropolitan planning area.

§ 500.105 Policy.

(a) The primary purpose of the management systems is to provide additional information needed to make effective decisions on the use of limited resources to improve the efficiency of, and protect the investment in, the nation's existing and future transportation infrastructure at all levels of jurisdictional control.

(b) Each State shall develop, establish, and implement, on a statewide basis, each of the management and monitoring systems identified in § 500.101. Each State may tailor management systems to meet State, regional, and local goals, policies, and resources, but the systems must be acceptable to the Federal agencies and shall meet the requirements and cover the transportation systems/elements applicable to the particular system as specified in subparts B through H of this part. Documentation that describes each management system and procedures for implementing each system and its outputs shall be maintained by the States for the Federal agencies to determine, on a periodic basis, if the systems fulfill the purpose stated in paragraph (a) of this section and meet the requirements in this subpart and subparts B through H, as applicable.

(c) MPOs, agencies (including private owners and operators) that have responsibility for operation of the affected transportation systems or facilities, and the public shall be given appropriate opportunities for involvement in the development, establishment, and implementation of each management system.

(d) The outputs (e.g., policies, programs, projects, etc.) of the individual management systems shall be integrated into the metropolitan planning process required under 23 U.S.C. 134 and 49 U.S.C. app. 1607 and the statewide transportation planning process required under 23 U.S.C. 135, and shall be considered in the development of metropolitan and statewide transportation plans and improvement programs and in making project selection decisions under title 23, U.S.C., and under the Federal Transit Act.

(e) Existing data sources, such as the HPMS and Section 15 data, and the traffic monitoring system described in subpart H of this part will be used by the Federal agencies to the maximum extent possible to meet their needs. States are encouraged to also use these databases to the extent possible in the management systems.

§ 500.107 Coordination and evaluation of systems.

(a) Each State shall have procedures, within the State's organization, for coordination of the development, establishment and implementation of the management systems. The procedures must include: An oversight process to assure that adequate resources are available for implementation and that target dates of the systems are complementary so that the outputs of all systems can be given timely consideration in development of metropolitan and statewide transportation plans and programs; the use of data bases with a common or coordinated reference system and methods for data sharing; and interrelationships among the systems to address outputs and issues related to the purposes of more than one management system.

(b) In developing and implementing each management system, States shall cooperate with MPOs in metropolitan areas, local officials in non-metropolitan areas, and with affected agencies receiving assistance under the Federal Transit Act.

(c) Within all metropolitan planning areas, to the extent appropriate the CMS, PTMS, and IMS shall be part of the metropolitan transportation planning process required under the provisions of 23 U.S.C. 134 and 49 U.S.C. app. 1607. In metropolitan planning areas that have more than one MPO and or that include more than one State, the establishment, development, and implementation of these systems shall be coordinated among the State(s) and MPO(s) to ensure compatibility of the systems and appropriate consideration of their outputs.

(d) The roles and responsibilities of the State, MPO(s), recipients of assistance under the Federal Transit Act, and other agencies involved in the development, establishment, and implementation of each system shall be mutually determined by the parties involved. A State may enter into agreements with local governments, regional agencies (such as MPOs), recipients of funds under the Federal Transit Act, or other entities to develop, establish, and implement appropriate parts of any or all of the systems, but the State shall be responsible for overseeing and coordinating such activities.

(e) Each management system must include appropriate means to evaluate the effectiveness of implemented actions developed through use of that system. The effectiveness of the management systems in enhancing transportation investment decisions and improving the overall efficiency of the

State's transportation systems and facilities shall be evaluated periodically, preferably as part of the metropolitan and statewide planning processes.

§ 500.109 Certification of implementation.

(a) States must be implementing each management system beginning in Federal fiscal year 1995 (October 1, 1994 to September 30, 1995) and must certify annually to the FHWA that they are implementing each of the management systems. A State shall be considered to be implementing a system if the system is in operation by the date of the certification in accordance with any phase-in criteria for that system as specified in subparts B through H of this part. While a State may enter into agreements with local governments or other agencies to develop, establish, and implement all or parts of the management systems, in accordance with the provisions of § 500.107(d), the State's certification(s) shall describe the status of implementation for the entire State.

(b) The FHWA shall be notified by the Governor of the State or the Mayor of the District of Columbia in writing by September 30, 1994, of the name(s) or title(s) of the certifying official(s) for each management system. Designation of a position title, instead of an individual by name, is recommended to reduce the need for subsequent designations. If there is a change in designated official(s)/position(s), the State shall provide documentation of the revised designation with, or prior to, the next annual certification. In those States where responsibility for all of the management systems is within a single agency (e.g., State DOT), designation of one certifying official for all of the systems is recommended.

(c) The certification statement(s) shall be submitted by the State to the FHWA Division Administrator by January 1 of each year, beginning January 1, 1995. To the extent possible, one certification statement should cover all 6 management systems. If more than one certification statement will be submitted by a State, the statements should be coordinated at the State level and submitted simultaneously. The certification statement(s) shall include a summary of the status of implementation of each system and a discussion of planned actions and target dates for implementation of any systems that are not fully operational. The information in the State certification statements will be used to prepare annual reports to the Congress on the status of implementation of the management systems.

(d) The FHWA Division Office will provide copies of the certification statement(s) and any relevant supporting documentation and correspondence to other Federal agencies identified for the specific system(s) in § 500.103. After review by the Federal agencies, the State will be notified by the FHWA if the certification statement(s) is acceptable.

§ 500.111 Sanctions.

(a) Beginning January 1, 1995, if a State fails to certify annually as required by this regulation, or if the Federal agencies determine that any management system is not being adequately implemented within the entire State, notwithstanding the State's certification(s), the Secretary may withhold up to 10 percent of the funds apportioned to the State under title 23, U.S.C., and to any recipient of assistance under the Federal Transit Act for any fiscal year beginning after September 30, 1995. Depending on such factors as which systems are not being adequately implemented or are not being implemented in specific areas of a State or by specific agencies, sanctions may be imposed on a statewide basis, by sub-area of a State, for specific categories of funds or types of projects, or for specific recipients of funds under the Federal Transit Act.

(b) While a State may enter into agreements with local governments or other agencies to develop, establish, and implement all or parts of the management systems, in accordance with § 500.107(d), the State shall be responsible for ensuring that the systems are being implemented statewide and for taking any necessary corrective action, including implementing the systems at the regional and local levels if necessary.

(c) Prior to imposition of a sanction, a State will be notified in writing by the Federal agencies of the sanction(s) to be imposed, the reasons why, and what actions and by whom are necessary to correct the deficiencies. The State will have a reasonable period of time to respond to such notice and to propose actions, satisfactory to the Federal agencies, to correct the identified deficiencies.

(d) In instances where a State, or responsible sub-unit of a State or recipient of funds under the Federal Transit Act, has not fully implemented all of the management systems, consideration shall be given by the Federal agencies to efforts underway or planned to make the systems fully operational within a reasonable time period.

(e) To the extent that they have not lapsed, funds withheld pursuant to this subpart shall be made available to the State or recipient under the Federal Transit Act upon a determination by the Federal agencies that the management systems are being adequately implemented.

§ 500.113 Funds for establishment, development, and implementation of the systems.

(a) The following categories of funds may be used for development, establishment, and implementation of any of the management and monitoring systems: National Highway System, Surface Transportation Program, FHWA state planning and research and metropolitan planning funds (including the optional use of minimum allocation funds authorized under 23 U.S.C. 157(c) for carrying out the provisions of 23 U.S.C. 307(c)(1) and 23 U.S.C. 134(a)), Federal Transit Act Section 9 (Capital, Planning, and Operating), Federal Transit Act Section 8 (Metropolitan Planning), Federal Transit Act section 26(a)(2) (State Planning and Research), and Federal Transit Act section 26(b)(1) (National Planning and Research). Congestion Mitigation and Air Quality Improvement Program funds (23 U.S.C. 104(b)(2)) may be used for certain management system purposes, if such use will likely contribute to the attainment of a national ambient air quality standard. Apportioned bridge funds (23 U.S.C. 144(e)) may be used for development and establishment of the bridge management system.

(b) Federal funds identified in paragraph (a) of this section used for development, establishment, or implementation of the management and monitoring systems shall be administered in accordance with the procedures and requirements applicable to the category of funds.

§ 500.115 Acceptance of existing management systems.

(a) Existing State laws, rules, or procedures that the Federal agencies determine fulfill the purposes of a management system, or portion thereof, as specified in this subpart and the subpart for the applicable system may be accepted by the Federal agencies in lieu of the State's development and implementation of a new system.

(b) If a State has existing laws, rules, or procedures that it wishes to use to meet the requirements of these regulations, it shall submit a written request to the FHWA Division Administrator that the Federal agencies accept the existing management system in lieu of development of a new system.

The State shall submit any documentation necessary to show that the existing system meets such requirements along with a discussion of how it does so.

(c) Upon receipt of a request, the FHWA Division Administrator will coordinate review of the request with the other Federal agencies specified in § 500.103 and, after consultation with appropriate FHWA headquarters offices, notify the State that the existing system is either fully acceptable, acceptable subject to specific modifications, or unacceptable and that a new system must be developed.

(d) To meet implementation deadlines, the State must submit any requests under paragraph (a) of this section within 6 months of issuance of these regulations, so that any needed modifications can be made, or a new system developed, by Federal fiscal year 1995 (i.e., by October 1, 1994).

Subpart B—Pavement Management System

§ 500.201 Purpose.

The purpose of this subpart is to set forth a policy for State development, establishment, and implementation of a system for managing pavements of Federal-aid highways.

§ 500.203 Definitions.

Unless otherwise specified herein, the definitions in 23 U.S.C. 101(a) and § 500.103 of this part are applicable to this subpart.

Pavement design. A project level activity where detailed consideration is given to alternative combinations of subbase, base, and surface materials which will provide adequate load carrying capacity. Factors which are considered include: materials, traffic, climate, maintenance, and drainage.

Pavement management system (PMS). A systematic process that collects and analyzes pavement information used as input in selecting cost-effective strategies for providing and maintaining pavements in a serviceable condition.

§ 500.205 Policy.

(a) Each State highway agency (SHA) shall have a PMS that covers rural arterial and urban principal arterial routes under its jurisdiction by January 13, 1993.

(b) Each SHA shall have a PMS that covers all Federal-aid highways, by January 1, 1995. This coverage includes rural arterials and major collectors and urban arterials and collectors. The needs identified by the PMS must be considered in the metropolitan (23 U.S.C. 134) and statewide (23 U.S.C. 135) planning processes. Pavements shall be designed to accommodate current and predicted traffic needs in a safe, durable, and cost effective manner.

§ 500.207 Coordination.

Each SHA is responsible for PMS coverage of all Federal-aid highways in its State. A SHA may enter into agreements with counties, municipalities, MPOs, toll authorities or other agencies to develop, establish, and implement PMSs that cover the Federal-aid highways under that agency's jurisdiction. In metropolitan planning areas, the State must develop and implement the PMS in cooperation with the MPO.

§ 500.209 Standards.

(a) *Components.* (1) Each SHA's PMS shall be based on the concepts described in the "AASHTO Guidelines for Pavement Management Systems."[1] It is anticipated that PMSs will be designed at various levels of technical complexity depending on the nature of the pavement network. These different levels may depend on mileages, functional classes, volumes, loadings, usage, or other criteria the agency deems appropriate. It is expected that most local PMSs will be less complex than State PMSs.

(2) Each PMS shall be designed to fit the agency's goals, policies, criteria, and resources using the following essential components as a basic framework for a PMS:

(i) *Inventory.* The physical pavement features including the number of lanes, length, width, surface type, functional classification, and shoulder information.

(ii) *History.* The project dates and types of construction, reconstruction, rehabilitation, and maintenance.

(iii) *Condition survey.* The ride, distress, rutting, and surface friction.

(iv) *Traffic.* The volumes, classification, and load data.

(v) *Database.* The compilation of all the data files used in the PMS. The database shall also be the source for reporting pavement related information to FHWA for the Highway Performance Monitoring System (HPMS). Data reported for the HPMS shall be collected and reported in accordance with the HPMS Field Manual.[2]

(3) If some of the inventory or historic data is difficult to establish, it should be collected when preservation or reconstruction work is performed.

(b) *Analyses.* The following are analyses that shall be performed in a PMS:

(1) Condition analysis. Includes ride, distress, rutting, and surface friction.

(2) Performance analysis. Includes pavement performance analysis and an estimate of the remaining service life.

(3) Investment analysis. Includes an estimate of network-level and project-level investment strategies. Network-level includes total cost estimates for present and projected future conditions. Project level includes a prioritized list of recommended candidate projects that span a single-year and multi-year period. Most agencies use 5 years for the multi-year horizon. Each agency should determine the appropriate horizon for its pavement program. The analysis should consider life-cycle cost evaluation.

(4) Engineering analysis. Includes the evaluation of design, construction, rehabilitation, materials, mix designs, and maintenance as they relate to the performance of pavements.

(5) Feedback analysis. Includes the annual evaluation and updating of procedures and calibration of relationships and criteria using the PMS performance data and the agency's most current engineering criteria.

Subpart C—Bridge Management System

§ 500.301 Purpose.

The purpose of this subpart is to set forth policies, requirements, and minimum standards for the development, establishment, implementation, and continued operation of a management system for bridges on and off Federal-aid highways within each State.

§ 500.303 Definitions.

Unless otherwise specified herein, the definitions in 23 U.S.C. 101(a) and § 500.103 are applicable to this subpart.

Bridge management system (BMS). A decision support tool that supplies analyses and summaries of data, uses mathematical models to make predictions and recommendations, and provides the means by which alternative policies and programs may be efficiently considered. A BMS includes formal procedures for collecting, processing, and updating data, predicting deterioration, identifying alternative

[1] *AASHTO Guidelines for Pavement Management Systems*, July 1990, can be purchased from the American Association of State Highway and Transportation Officials, 444 N. Capitol Street, NW., suite 225, Washington, DC 20001. It is available for inspection as prescribed in 49 CFR part 7, appendix D.

[2] *Highway Performance Monitoring System (HPMS) Field Manual for the Continuing Analytical and Statistical Data Base*, DOT/FHWA, December 1987 (FHWA Order M5600.1A), as revised July 15, 1988, and April 20, 1990, is available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

actions, predicting costs, determining optimal policies, performing short- and long-term budget forecasting, and recommending projects and schedules within policy and budget constraints.

Elements. The components of a bridge important from a structural, user, or cost standpoint. Examples are decks, joints, bearings, girders, abutments, and piers.

Lifecycle cost analysis. Procedure for evaluating the economic worth of one or more projects or investments by discounting future costs over the life of the project or investment.

Multiperiod optimization. A procedure that optimally allocates limited funds among alternative actions over a planning horizon (both short and long-term) using an optimization procedure such as minimizing life-cycle and user costs. The modeling procedure accounts for traffic growth and deterioration, and facilitates "what if" analysis of the effects of alternative policies, budgets, and operational practices on the future conditions and long-term serviceability of the bridge inventory.

Network level analysis. An analysis pertaining to policy, system planning, programmatic, or budgeting issues for the whole bridge inventory on a roadway network or a subset thereof.

Serviceability. The degree to which a bridge provides satisfactory service from the point of view of its users.

User costs. Costs borne by bridge users, traveling on or beneath the structure. Also includes excess costs to those who cannot use the bridge due to load and clearance restrictions. The costs include travel time, motor vehicle operating, and accident costs.

§ 500.305 Policy.

(a) Each State shall have a BMS for bridges on and off Federal-aid highways that meets the minimum standards set forth in § 500.307 of this subpart. The State shall cooperate and take the lead in establishing agreements with the metropolitan planning organizations in metropolitan areas, and local bridge owners to:

(1) Define the scope of responsibilities of each for the development, establishment, implementation, and continued operation of the BMS.

(2) Set system specifications and operational requirements for the BMS including standards for data collection, analysis, reporting, and exchanging information.

(b) Each State shall maintain a centralized database that contains the BMS data for bridges on and off Federal-aid highways, and shall implement network analysis procedures that are capable of analyzing data for all bridges in the inventory or any subset. Local bridge owners are not precluded from supplementing the State BMS with a locally operated system that is tailored to their particular needs.

§ 500.307 Minimum standards.

(a) A State BMS shall include, as a minimum, the processes and procedures identified in paragraphs (b) through (d) of this section.

(b) A computerized database and an ongoing program for the collection and maintenance of the inventory, inspection, cost, and supplemental data needed to support the BMS. A minimum BMS database shall include, or link:

(1) The data required by 23 CFR 650.311.

(2) Data characterizing the severity and extent of deterioration of bridge elements.

(3) Data for estimating the cost of actions.

(4) Traffic and accident statistics to support estimates of user cost savings.

(5) A history of conditions and actions taken on each bridge, excluding minor or incidental maintenance.

(c) A computer model for applying network level analysis and optimization to the bridge inventory. The network model shall include procedures to:

(1) Predict the deterioration of bridge elements with and without intervening actions.

(2) Identify feasible actions to improve bridge condition, safety, and serviceability.

(3) Estimate the cost of actions.

(4) Estimate expected user cost savings for safety and serviceability improvements.

(5) Determine least-cost maintenance, repair, and rehabilitation strategies for bridge elements using lifecycle cost analysis or a comparable procedure.

(6) Perform multiperiod optimization.

(7) Generate summaries and reports as needed for the planning and programming processes.

(d) A system for monitoring the status of actions recommended by the BMS and for updating the BMS database when actions are taken.

§ 500.309 Compliance schedule.

The State will be considered to be implementing a BMS in Federal fiscal year 1995 if, by October 1, 1994, BMS objectives are formally established and system design is completed or underway. In subsequent fiscal years, system design and testing must be completed and full-scale data collection must be underway. Within 4 years of the effective date of this regulation, a State BMS that meets the minimum standards of § 500.307 and results in the identification and consideration of bridge needs, as specified in § 500.105(d), shall be fully implemented.

Subpart D—Highway Safety Management System

§ 500.401 Purpose.

The purpose of this subpart is to establish regulations for the development, establishment, and implementation of a Highway Safety Management System (SMS) in each State in accordance with the provisions of 23 U.S.C. 303.

§ 500.403 Definitions.

Unless otherwise specified herein, the definitions in 23 U.S.C. 101(a) and § 500.103 are applicable to this subpart.

Highway safety. The reduction of traffic accidents, and deaths, injuries, and property damage resulting therefrom, on public roads.

Highway safety management system. Systematic processes to ensure that all opportunities to improve highway safety are identified, considered, implemented where appropriate, and evaluated.

Operations. Those activities associated with managing, controlling, and regulating highway traffic.

§ 500.405 Policy.

Each State shall develop, establish, and implement, on a continuing basis, an SMS that has the overall goal of reducing the number and severity of highway crashes. The SMS shall apply to all public roads and encompass a comprehensive approach incorporating the roadway, human, and vehicle safety elements. Formalized interactive communication, coordination, and cooperation shall be established among the organizations responsible for these major safety elements including: enforcement, emergency medical services, emergency response, motor carrier safety, motor vehicle administration, State highway safety agencies; the public health community; State and local transportation/highway agencies; and State and local railroad regulatory agencies. State agencies shall also coordinate, as appropriate, with Local Technical Assistance Program centers to develop and expand the SMS expertise of local transportation agencies. In addition, the coordination requirements set forth in § 500.107 in development, establishment, and implementation of the SMS, and in carrying out the provisions for planning and project selection are applicable. States shall also consider and include, where appropriate, projects and

programs identified under the SMS in their Highway Safety Plan, 23 CFR chapter II, and Motor Carrier Safety Assistance Program, State Enforcement Plans, 49 CFR chapter III.

§ 500.407 Program structure.

(a) The SMS shall ensure that safety is considered and implemented as appropriate, in all phases of highway planning, design, construction, maintenance, and operations. This necessitates that safety be totally integrated into the decisionmaking processes of day-to-day activities and the development of projects and program activities.

(b) Plans, processes, procedures, and practices shall be established to implement, coordinate, and evaluate programs, projects, and activities of the five major areas identified in paragraph (c) of this section. These plans, processes, procedures, and practices, shall incorporate as a minimum:

(1) Establishment of long and short term highway safety goals. These goals should be tailored to allocate resources and address both existing and anticipated safety problems as well as substandard highway locations, designs, and features;

(2) Establishment of accountability by identifying and defining the safety responsibilities of units and positions;

(3) Recognition of institutional and organizational initiatives through identification of disciplines involved in highway safety at the State and local level, assessment of multi-agency responsibilities and accountability, and establishment of coordination, cooperation, and communication mechanisms. This includes assignment of a focal point of responsibility for the SMS at the State level;

(4) Collection, maintenance, and dissemination of data necessary for problem identification and determining improvement needs. Data bases and data sharing shall be integrated as necessary to achieve maximum utilization of existing and new data within and among the agencies. These records, as a minimum, shall consist of information pertaining to: Crashes, traffic (including number of trains at highway-rail crossings), pedestrians, enforcement, vehicle, driver, highways, and emergency medical services;

(5) Analysis of available data, multi-disciplinary and operational investigations, and comparisons of existing conditions and current standards to assess highway safety needs, select countermeasures, and set priorities;

(6) Evaluation of the effectiveness of all activities that relate to highway safety performance. This information shall be used to guide future decisions;

(7) Development and implementation of public information and education activities to educate and inform the public on safety needs, programs, and countermeasures which affect safety on the nation's highways; and

(8) Identification of skills and resources needed to implement the State's activities and programs affecting highway safety, identification of current and future training needs, development of a program to carry out necessary training, and development of methods for monitoring and disseminating new technology and incorporating effective results.

(c) Five major areas shall be addressed in structuring each State's SMS:

(1) Coordinating and integrating broad base safety programs such as motor carrier, corridor, and community-based traffic safety activities into a comprehensive management approach for highway safety;

(2) Identifying and investigating hazardous or potentially hazardous highway safety problems, roadway locations and features, including railroad-highway grade crossings, and establishing countermeasures and setting priorities to correct the identified hazards or potential hazards;

(3) Ensuring early consideration of safety in all highway transportation programs and projects;

(4) Identifying safety needs of special user groups such as older drivers, pedestrians, bicyclists, motorcyclists, commercial motor carriers, and hazardous material carriers, in the planning, design, construction, and operation of the highway systems; and

(5) Routinely maintaining and upgrading safety hardware (including highway-rail crossing warning devices), highway elements, and operational features.

(d) While the SMS applies to all public roads, the extent of system requirements (e.g., data collection, analyses, and standards) for local and rural minor collectors may be tailored to be consistent with the functional classification of the road. However, adequate detail must be included for each functional classification to provide for effective inclusion of safety decisions in the administration of highway transportation by State and local agencies.

Subpart E—Traffic Congestion Management System

§ 500.501 Purpose.

The purpose of this subpart is to implement the provisions of 23 U.S.C. 303 that require State development, establishment, and implementation of a system for managing traffic congestion. The requirement in 23 U.S.C. 134 that the transportation planning process in a transportation management area (TMA) include a congestion management system is also covered by this subpart and by 23 CFR part 450.

§ 500.503 Definitions.

Unless otherwise specified herein, the definitions in 23 U.S.C. 101(a) and § 500.103 are applicable to this subpart.

Congestion. The level at which transportation system performance is no longer acceptable to the traveling public due to traffic interference. The level of acceptable system performance may vary by type of transportation facility, geographic location and/or time of day.

Congestion management system (CMS). A systematic process that provides information on transportation system performance to decisionmakers for selecting and implementing cost-effective strategies to manage new and existing facilities so that traffic congestion is alleviated and the mobility of persons and goods is enhanced.

§ 500.505 Policy.

(a) Each State shall develop, establish, and implement, on a continuing basis, a CMS that identifies and assesses transportation system congestion and leads to the implementation of strategies that provide the most efficient use of existing and future transportation facilities and enhance the mobility of people and goods.

(b) The CMS must cover the entire State, but may consist of sub-systems for each metropolitan and non-metropolitan area. The State may enter into agreements with metropolitan planning organizations (MPOs), local governments, and other appropriate agencies for the development, establishment, and implementation of appropriate portions of the CMS, but the State shall be responsible for ensuring that the CMS is implemented in accordance with the requirements of the regulations in this subpart.

(c) States shall cooperate with MPOs in metropolitan planning areas, local officials in non-metropolitan planning areas, and with affected agencies receiving assistance under the Federal Transit Act in the development, establishment, and implementation of the CMS.

(d) In TMAs, the CMS shall be part of the metropolitan planning process as required under the provisions of 23 U.S.C. 134 and 49 U.S.C. app. 1607.

(e) In areas that are nonattainment for transportation related pollutants, the

development of the CMS strategies shall be coordinated with the process for the development of the transportation control measures of the State implementation plan for air quality required by the Clean Air Act.

(f) If the CMS covers the performance of intermodal facilities, the relationship of the CMS and the intermodal management system, described in subpart G of 23 CFR Part 500, must be established and coordination between these systems must be addressed.

§ 500.507 Management system structure.

(a) *Area of consideration.* Each State shall identify metropolitan and rural areas where congestion is occurring, or where the potential for congestion exists, based on an acceptable level of transportation system performance established by the State in cooperation with MPOs, local agencies and operators of major modes of transportation. Within these areas, all corridors and facilities with existing or potential recurring and nonrecurring congestion shall be identified and an assessment of the level of congestion shall be made. Based on this assessment, the geographical area to be covered and the transportation facilities and land use activities to be included in the CMS shall be established. Coverage of facilities and activities shall be sufficient to accurately reflect any cumulative effects that a combination of physical improvements and/or areawide transportation policy decisions may have on transportation system performance.

(b) *Performance measures.* Performance measures or indicators shall be established that will provide for the identification and monitoring of the extent of both recurring and nonrecurring congestion and the evaluation of the effectiveness of congestion reduction and mobility enhancement strategies. Performance measures shall be established cooperatively by the States and affected MPOs or local officials in consultation with the operators of major modes of transportation in the coverage area.

(c) *Data collection and system monitoring.* A continuous program of data collection and system monitoring shall be established so that the duration and magnitude of congestion can be determined and monitored. Both existing and new sources of data shall be considered in order to best meet the data requirements of selected performance measures. Where existing data collection activities do not adequately measure the movement of people and goods, new data collection activities must be initiated. The data collection activities shall provide information needed for the evaluation of the effectiveness of implemented strategies.

(d) *Identification and evaluation of proposed strategies.* The CMS shall identify and evaluate anticipated performance, based on the area's established performance measures, and expected benefits of traditional and nontraditional strategies that will ensure the most efficient use of existing and future transportation systems. These strategies shall include, but not be limited to:

(1) Transportation demand management measures such as carpooling, vanpooling, alternative work hours, telecommuting, and parking management;

(2) Traffic operations improvements such as intersection and roadway widening, channelization, and geometric and signalization improvements;

(3) Measures to encourage high occupancy vehicle (HOV) use such as public transit improvements, HOV lane provisions, guaranteed ride home programs, and employer trip reduction ordinances;

(4) Congestion pricing;

(5) Growth management and activity center strategies;

(6) Access management techniques;

(7) Incident management;

(8) Application of intelligent vehicle-highway system technology; and

(9) The addition of general purpose lanes.

(e) *Implementation of strategies.* For each proposed CMS strategy, the following information shall be identified as a minimum: implementation responsibilities, time frame for implementation, and probable funding sources.

(f) *Evaluation of the effectiveness of implemented strategies.* A process for periodic assessment of the effectiveness of implemented strategies, in terms of the area's established performance measures, shall be developed. The results of this evaluation shall be provided to State and local decisionmakers to determine future actions and provide direction on the most effective strategies for further implementation.

§ 500.509 Single-occupant-vehicle capacity projects.

(a) In both metropolitan and non-metropolitan areas, priority shall be placed on strategies that reduce single-occupant vehicle travel and improve existing transportation system efficiency. Where the addition of general purpose lanes is determined to be an appropriate strategy, consideration shall be given to the incorporation of appropriate features which will facilitate future demand management and operational improvement strategies that will serve to maintain the functional integrity of those lanes.

(b) In TMAs that are nonattainment for carbon monoxide and/or ozone, Federal funds may not be programmed for a highway or transit project that significantly increases capacity for single-occupant-vehicles (SOVs) unless the project results from an approved CMS. To satisfy this requirement, the CMS shall, as a minimum, include a process that results in an appropriate analysis of all reasonable (including multimodal) travel demand reduction and operational management strategies for the corridor in which an SOV facility is proposed. This analysis must demonstrate the degree to which such strategies can reduce travel demand and thus reduce the need for additional SOV capacity in the corridor. If the analysis demonstrates that additional SOV capacity is warranted, all reasonable strategies to manage the facility effectively (or to facilitate its management in the future) shall be incorporated into the proposed facility. Other travel demand reduction and operational management strategies appropriate for the corridor, but not appropriate for incorporation into the SOV facility itself must be committed to by the State and the MPO for implementation in a timely manner. If the TMA does not already have traffic management and carpool/vanpool programs, the establishment of such programs must be a part of the commitment unless it can be demonstrated that such measures are not appropriate for the area. Projects that have advanced beyond the process required under the National Environmental Policy Act and which are being implemented, e.g., right-of-way acquisition has been approved, will be deemed to be programmed and not subject to this requirement.

§ 500.511 Compliance schedule.

(a) By October 1, 1994, as a minimum: performance measures must be established, data collection activities must be initiated, the most critical areas requiring analysis must be identified, and a work plan must be developed that shows how full implementation will be achieved by October 1, 1995.

(b) Each State's CMS, including any subsystems, shall be fully operational by October 1, 1995.

Subpart F—Public Transportation Facilities and Equipment Management System

§ 500.601 Purpose.

The purpose of this subpart is to set forth a policy for State development, establishment, and implementation of a system for managing public transportation facilities, equipment and rolling stock.

§ 500.603 Definitions.

Unless otherwise specified herein, the definitions in 23 U.S.C. 101(a) and § 500.103 of this part are applicable to this subpart.

Public transportation facilities and equipment management system (PTMS). A systematic process that collects and analyzes transit facilities, equipment, and rolling stock information on an ongoing basis. It provides information for decisionmakers to select cost-effective strategies for providing and maintaining transit facilities, equipment, and rolling stock in a serviceable condition.

§ 500.605 Policy.

Each State shall develop, establish, and implement a PTMS in cooperation with recipients and subrecipients of funds under Federal Transit Act Sections 3, 9, 16, and 18. Transit facilities, equipment, and rolling stock shall be designed to accommodate current and predicted ridership in a safe and cost effective manner.

§ 500.607 General requirements.

Facilities, equipment, and rolling stock (dates of initial construction and major renovations/additions) shall be inventoried and condition identified to establish estimated replacement schedules. Estimated major maintenance and/or replacement costs shall be identified.

§ 500.609 Management system structure.

(a) *Identification of public transportation systems.* Urban and rural area public transportation systems operated by the State, local jurisdictions, public transportation agencies and authorities, and private transit operators receiving Federal funds for capital and/or operating assistance shall be identified.

(b) *Identification of condition measures.* Measures and standards that allow for the evaluation of the condition of the assets of transit systems shall be developed. The measures and standards shall reflect State and local goals and objectives. These measures shall address such factors as the condition of transit facilities, equipment, and rolling stock. The standards shall reflect the necessity to maintain transit assets in a good state of repair.

(c) *Data collection and system monitoring.* (1) A base year comprehensive inventory of the transit system's facilities (e.g., maintenance facilities, stations, terminals, transit related structures), equipment, and rolling stock shall be collected. For each type of asset in the inventory, information could be collected on its age, condition, useful life, and replacement cost. Facility, equipment, and rolling stock data shall be collected in conjunction with transit operators at a frequency and level of detail appropriate to the type of capital stock of the transit system.

(2) As required by 23 U.S.C. 303(b), data related to highway transit vehicles and ridership will be collected as part of the highway traffic monitoring system as specified in subpart H of this part. As part of the PTMS, number of vehicles and ridership data for dedicated transit right-of-ways (e.g., rail and busways) should be collected, at a minimum, at the maximum load points for the peak period in the peak direction and for the daily time period.

(3) Data collection shall be coordinated with the intermodal facilities and systems management system.

(d) *Strategy and action identification and evaluation.* Based on the results of the data collection and system monitoring activities, strategies and projects shall be identified and alternatives evaluated, where appropriate, to address current and future deficiencies. The costs of these strategies and projects, along with priorities and potential funding sources, shall be identified. Strategies and projects will be evaluated for potential incorporation into the metropolitan and statewide transportation plans and programs required under 49 U.S.C. app. 1607 and 23 U.S.C. 134 and 135.

Subpart G—Intermodal Facilities and Systems Management System

§ 500.701 Purpose.

The purpose of this subpart is to establish policy and regulations for the development, establishment, and implementation of an intermodal management system (IMS) in each State in accordance with the provisions of 23 U.S.C. 303.

§ 500.703 Definitions.

Unless otherwise specified herein, the definitions in 23 U.S.C. 101(a) and § 500.103 of this part are applicable to this subpart.

Intermodal facility. A transportation element that accommodates and interconnects different modes of transportation. Intermodal facilities include, but are not limited to, highway elements, coastal, inland and Great Lakes ports, canals, pipeline farms, airports, marine and/or rail terminals, truck terminals, and intercity bus terminals. Intermodal transportation facilities serve intrastate, interstate, and international movement of goods and passengers.

Intermodal system. A transportation network for moving people and goods using various combinations of transportation modes.

§ 500.705 Policy.

(a) Each State in cooperation with MPOs shall develop, establish, and implement, on a continuing basis, an IMS that has the overall goal of better integration of all transportation facilities and systems and that improves the coordination in planning and implementation of air, water, and the various land-based transportation systems.

(b) Intermodal needs shall be addressed by a process that considers the following issues:

(1) *Connections.* The convenient, rapid, efficient and safe transfers of people and goods among modes that characterize comprehensive and economic transportation service.

(2) *Choices.* Opportunities afforded by modal systems that allow transportation users to select their preferred means of conveyance.

(3) *Coordination and cooperation.* Collaborative efforts of planners, users, and transit providers to resolve travel demands by investing in dependable, high-quality transportation service either by a single mode or by two or more modes in combination.

(c) An intermodal management system shall consider the movement of both goods and people; provide timely and appropriate information for intermodal transportation decisions for site-specific intermodal facilities, as well as the overall systems necessary to achieve the most efficient transportation movement; and be integrated with the metropolitan and statewide planning processes. Intermodal movements may also be covered by the congestion management system (CMS); therefore the IMS and the CMS must be coordinated.

§ 500.707 Management system structure.

The State shall establish an IMS consisting of plans, processes, procedures, and practices to implement, coordinate and evaluate programs,

projects and activities. In metropolitan planning areas that have more than one MPO and/or include more than one State, the development, establishment and implementation of the IMS shall be coordinated among the State(s) and MPO(s) to ensure compatibility of the systems and appropriate consideration of their outputs. These plans, processes, procedures, and practices, as a minimum shall incorporate:

(a) *Identification of intermodal facilities.* Intermodal facilities to be identified include, but are not limited to, highway elements, coastal, inland and Great Lakes ports, canals, pipeline farms, airports, marine and/or rail terminals, major truck terminals, and intercity bus terminals. The IMS will identify the intermodal transportation networks connecting intermodal facilities and the demands placed upon them to accommodate intrastate, interstate, and/or international movements of goods and passengers.

(b) *Identification of efficiency measures and performance standards.* In order to evaluate the efficiency of intermodal facilities and systems, parameters shall be identified that will allow measurement and evaluation of the movement of people and goods from origin to destination. Parameters may include the total travel time, cost, and volumes for moving cargo and passengers, origins and destinations, capacity, accidents, ease of access, perceived quality, and the average time to transfer people or freight from one mode to another. Since the expectations and measurements of transportation quality of service vary between communities and industries, performance standards or goals shall be established at State and local levels with private sector coordination.

(c) *Data collection and system monitoring.* A base year inventory consisting of physical condition and operational characteristics of intermodal facilities and systems is essential. Data collection should be coordinated with the traffic congestion and public transportation facilities and equipment management systems. Operational and physical characteristics survey will be based on selected efficiency measures and performance measures. Operational characteristics may include time, cost, capacity, usage, and environmental impact information for the intermodal facilities and systems. This information should be obtained, to the extent possible, from the ongoing metropolitan and statewide planning processes. States shall coordinate their data collection programs with programs of the U.S. DOT. These data shall include:

(1) The volume of goods and number of people carried in intermodal transportation by relevant classification;

(2) Patterns of movement of goods and people carried in intermodal transportation by relevant classification in terms of origin and destination; and

(3) Public and private investment in intermodal transportation facilities and services.

(d) *System and facility performance evaluation.* Data collection and system monitoring shall be used by the States and local agencies to evaluate the performance of intermodal facilities and systems. The performance evaluation program is to determine the efficiency of the movement of goods and people as part of an intermodal transportation system.

(e) *Strategy and action identification and evaluation.* Strategies and actions shall be developed and evaluated for improving intermodal efficiency. Statewide as well as local strategies and actions shall be identified for the movement of people and goods. Interstate and international IMS coordination issues should be referred to the U.S. DOT. Methods for increasing productivity, increasing the use of advanced technologies, and the use of innovative marketing techniques shall be evaluated, including high speed rail, maglev, and just-in-time delivery where appropriate. The evaluation program should determine what project or combination of projects and actions would most effectively increase intermodal productivity.

(f) *Implementation.* An IMS shall produce strategies and actions for improving the intermodal productivity of transportation systems for both the short and long term. A fully implemented IMS will result in:

(1) An inventory of intermodal facilities and systems, and

(2) Incorporation of appropriate IMS strategies and actions in developing State and metropolitan area transportation plans, programs and project selection.

Subpart H—Traffic Monitoring System

§ 500.801 Purpose.

(a) The purpose of this subpart is to set forth a policy for the collection, reporting and retention of highway related person and vehicular traffic data, including public transportation on public highways and streets, as part of a traffic monitoring system for highways (TMS/H) to be used by Federal departments and agencies, States, local governments, other public agencies, or private agencies when:

(1) The data are supplied to the U.S. Department of Transportation (U.S. DOT),

(2) The data are used in support of the management systems required under 23 U.S.C. 303,

(3) The data are used in support of studies which are the responsibility of the U.S. DOT,

(4) The collection of the data is supported by the use of Federal funds provided from programs of the U.S. DOT,

(5) The data are used in the apportionment or allocation of Federal funds,

(6) The data are used in the design or construction of a Federal-aid project, or

(7) The data are required as part of a federally mandated program.

(b) Nothing in this rule shall prohibit the collection of additional traffic data if it is needed in the administration or management of a highway activity or is needed in the design of a highway project.

§ 500.803 Definitions.

Unless otherwise specified herein, the definitions in 23 U.S.C. 101(a) and § 500.103 are applicable to this subpart.

Annual average daily traffic (AADT). The estimate of typical daily traffic on a road segment for all days of the week, Sunday through Saturday, over the period of one year.

Annual seasonal factors. The set of 12 factors, one for each month of the year, that is used to adjust coverage counts to estimates of AADT. Annual Seasonal Factors make use of the full year's data collected by continuous counters.

Automatic traffic recorder. A device that records the continuous passage of vehicles across all lanes of a given section of roadway by hours of the day, days of the week or months of the year.

Continuous counter. An automatic traffic recorder that operates continuously for all hours of a year.

Coverage count. A traffic count taken as part of the requirement for system-level estimates of traffic. The count is typically short-term, and may be volume, classification, or weigh-in-motion.

Functional classification. The grouping of streets and highways into classes, or systems, according to the character of service they are intended to provide. The recognition that individual roads do not serve travel independently and most travel involves movement through a network of roads is basic to functional classification.

Functional system. Highways of a similar type as determined by functional classification.

Highway traffic data. Estimates of the amount of person or vehicular travel,

vehicle usage or vehicle characteristics associated with a system of highways or with a particular location on a highway. These types of data include estimates of the number of vehicles traversing a section of highway or system of highways during a prescribed time period (traffic volume), the portion of such vehicles that may be of a particular type (vehicle classification), the weights of such vehicles including weight of each axle and associated distances between axles on a vehicle (vehicle weight), or the average number of persons being transported in a vehicle (vehicle occupancy).

Traffic data collection session. The collection of highway traffic data for a defined period of time at a specific highway location.

Traffic Monitoring Guide (TMG). The FHWA's statement of good traffic monitoring practices. The TMG describes the number and duration of traffic data collection sessions and the adjustments that need to be made to the collected data in order to develop location or system level estimates of the average traffic volume. The TMG also describes vehicle classification and truck weight data collection programs.

§ 500.805 Policy.

(a) Each State shall have a TMS/H that is based on the concepts described in the American Association of State Highway and Transportation Officials (AASHTO) "AASHTO Guidelines for Traffic Data Programs",[1] as augmented by the FHWA "Traffic Monitoring Guide",[2] and which is in conformance with the HPMS Field Manual.[3] The State's TMS/H shall cover all highways in the following functional classes, both on and off State administered systems: rural arterial (interstate, other principal arterials, and minor arterials), rural major collector, urban arterials (interstate, other freeways and expressways, other principal arterials, and minor arterials), and urban collectors. The State's TMS/H will provide for its application to the collection, reporting and retention of traffic data by local governments and other public or private non-State government entities collecting data within the State if the collected data is to be used for any of the purposes enumerated in § 500.801 of this subpart. The expansion of a State's TMS/H to include all highway classes regardless of jurisdiction is desirable. These traffic monitoring requirements including documentation of State practice are applicable starting with data to be collected beginning no later than October 1, 1994. Copies of the State's documentation of its field operations and office factoring procedures shall be provided to the FHWA. States may use procedures other than those referenced in this regulation if the alternative procedures are documented by the State to furnish the precision levels as defined for the various purposes enumerated in § 500.801 of this subpart and are found acceptable by the FHWA. Finally, it is recognized that additional measurements of traffic beyond those discussed in this rule may be necessary for the effective management or implementation of a highway program and such additional measurements are permitted under this rule.

(b) Each State's TMS/H, including those using alternative procedures, shall affirmatively address the following elements:

(1) *Precision of reported data.* Traffic data supplied for the purposes identified in § 500.801 of this subpart will be to the statistical precision currently applicable at the time of the data's collection as specified by the data user. At a minimum, a State's TMS/H will meet any statistical precisions established by the State for the six management systems identified in this part and the FHWA's Highway Performance Monitoring System. A State's TMS/H will be capable of providing estimates of the statistical precision of the supplied data if requested by the data user.

(2) *Continuous counter operations.* Within each State there shall be sufficient continuous counters of traffic volumes, vehicle classification, and vehicle weight to provide estimates of changes in highway travel patterns at the functional class level and to provide for the development of day-of-week, seasonal, axle correction and growth factors supporting traffic data estimates that meet the statistical precision requirements of the data uses identified in § 500.801 of this subpart. Further, the number and location of continuous counters will be adjusted, as needed, to conform to the requirements of the HPMS.

(3) *Short term traffic monitoring.* (i) Count data for traffic volumes, vehicle classification and vehicle weight collected in the field shall be adjusted to reflect annual average conditions. The estimation of AADT for traffic volumes will be through the appropriate application of only the following: seasonal factors, day of week factors and when necessary, axle correction and growth factors. Whenever possible, vehicle classification and vehicle weight data will be adjusted to annual average conditions using patterns developed from continuous traffic monitoring operations. Count data that have not been adjusted to represent annual average conditions will be noted as being unadjusted when they are reported. The duration and frequency of such monitoring shall comply to the data needs identified in § 500.801 of this subpart, the HPMS or the AASHTO Traffic Guidelines whichever is more stringent.

(ii) Vehicle classification activities on the National Highway System (NHS), which consists of interstate plus most other principal arterials, shall be sufficient to assure that, on a cycle of no greater than three years, every major rural system segment (defined as between interchanges or intersections of principal arterials of the rural NHS) will be monitored to provide information on the numbers of single-trailer combination trucks, multiple-trailer combination trucks, two-axle, four-tire vehicles, buses and the total number of vehicles operating on an average day. In urban areas similar monitoring will occur at least on every four-mile segment of the NHS. The installation of permanent monitoring detectors (and associated classifier electronics to the extent possible) is strongly encouraged by the FHWA.

(4) *Vehicle occupancy monitoring.* As deemed appropriate by States in cooperation with local governments, MPOs, and transit operators, and as necessary to support the management systems authorized by 23 U.S.C. 303(a), data will be collected on the average number of persons per automobile, light two-axle truck, and bus. The duration, geographic extent and level of detail shall be at the discretion of the States, MPOs, and cooperating local governments. Such vehicle occupancy data shall be updated at a minimum of every three years. Acceptable data collection methods include roadside monitoring, traveler surveys, the use of administrative records such as accident reports, or any other method mutually acceptable to the State and the FHWA.

(5) *Field operations.* (i) Each State's TMS/H shall include the testing of

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[1] *AASHTO Guidelines for Traffic Data Programs*, 1992, can be purchased from the American Association of State Highway and Transportation Officials, 444 N. Capitol Street, N.W., suite 225, Washington, D.C. 20001. It is available for inspection as prescribed in 49 CFR part 7, appendix D.

[2] *Traffic Monitoring Guide*, DOT/FHWA, October 1992, is available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

[3] *Highway Performance Monitoring System (HPMS) Field Manual for the Continuing Analytical and Statistical Data Base*, DOT/FHWA, December 1987 (FHWA Order M5600.1A), as revised July 15, 1988, and April 20, 1990, is available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

equipment used in the collection of highway traffic data. This testing shall be based on documented procedures developed by the State. This documentation will describe the test procedure as well as the frequency of testing. Equipment shall be tested prior to initial use and at least every third year thereafter. The same documentation shall describe methods used to ensure that measurements made using manual techniques adhere to the State's quality control practices. Whenever available, the standards of the American Society for Testing and Materials or guidance from the AASHTO will be used. In lieu of other guidance, permanent volume counting devices shall be within 2 percent of the actual value; portable volume counting devices shall be calibrated within 5 percent of the actual value; classification devices shall be properly calibrated to identify 95 percent of all vehicles including at least 90 percent of all single-unit trucks, 90 percent of all single-trailer combination trucks, and 90 percent of all multi-trailer combination trucks in terms of the number of axles and units making up the vehicle. Equipment failing to pass the test procedures will not be used for the collection of data to be used for the purposes identified in § 500.801 of this subpart.

(ii) Documentation of field operations shall include all pertinent aspects of traffic data collection and cover all highway functional classes for which data are reported. As a part of the documentation, a complete description of the procedures will be provided including the number of counts, the period of monitoring, the cycle of monitoring, and the spatial and temporal distribution of count sites.

(6) *Source data retention.* (i) The following data will be available for each highway traffic data collection session:

(A) Each value or values as collected during the session,

(B) The date on which each count was made,

(C) The location of the counting session,

(D) The hours during which the count took place,

(E) The type/model of machine used,

(F) The machine serial number or other machine specific identifier,

(G) The date of the last successful test of the machine used, or

(H) If human observers are used instead of automatic data collection, the names of the observers will be a part of the information for the data collection session.

(ii) All of the data identified in this section will remain available as computer readable electronic media for a minimum of 10 years from the date of the data's collection.

(iii) Data shall be available in formats that conform to those in the version of the TMG current at the time of data collection or as then amended by the FHWA.

(7) *Office factoring procedures.* (i) Functional class specific factors used to adjust data from short term monitoring sessions to estimates of average daily conditions shall be used to adjust for month, day of week, axle correction, and growth, and such factors shall be updated annually.

(ii) All decimals in factors shall be rounded to two places after the decimal or to the first significant digit if rounding to two decimal places results in a value of zero.

(iii) Reporting of all traffic volumes derived through factoring or other estimating processes are to be rounded to the nearest ten for values less than 1,000; to the nearest 100 for values equal or greater than 1.000 and less than 10,000; and to the nearest 1,000 for values of 10,000 or greater.

(iv) The procedures used by a State to edit and adjust highway traffic data as collected at field locations to estimates of average traffic volume shall be documented. The methodology used by the State for assigning a coverage count to a particular continuous counter (or group of continuous counters) when assigning adjustment factors shall be described in the documentation. The documentation shall explain how reported highway traffic characteristics for a specific highway section or highway system that are based on monitoring specific to that segment or system are differentiated from reported highway traffic characteristics that are not based on monitoring specific to that segment or system. The documentation shall include the factors discussed in paragraph (b)(7)(i) of this section. The documentation shall remain available for the same duration as the associated source data discussed in paragraph (b)(6)(ii) of this section.

PART 626—PAVEMENT POLICY [REMOVED]

3. Chapter I of 23 CFR is amended by removing part 626, §§ 626.1 through 626.7, in its entirety.

4. Title 49, Code of Federal Regulations, chapter VI, is amended by adding part 614 to read as follows:

Title 49

CHAPTER VI—FEDERAL TRANSIT ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 614—TRANSPORTATION INFRASTRUCTURE MANAGEMENT

Sec.

614.101 Cross reference to management systems.

Authority: 23 U.S.C. 303; 49 U.S.C. app. 1607; and 49 CFR 1.48 and 1.51.

§ 614.101 Crossreference to management systems.

The regulations in 23 CFR part 500, subparts A and E through G, shall be followed in complying with the requirements of this part. These regulations implement 23 U.S.C. 303 for State development, establishment, and implementation of systems for managing traffic congestion (CMS), public transportation facilities and equipment (PTMS), and intermodal transportation facilities and systems (IMS).

[FR Doc. 93–4126 Filed 3–1–93; 8:45 am]

BILLING CODE 4910–22–P

federal register

Tuesday
March 2, 1993

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 71 and 93

Offshore Airspace Reconfiguration; Control Areas; Area Low Routes; Reporting Points; Flushing (New York) Traffic Rule; and Valparaiso, FL Terminal Area; Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71 and 93

[Docket No. 26968; Amendment Nos. 71–19, 93–67]

RIN 2120–AE32

Offshore Airspace Reconfiguration; Additional Control Areas; Continental Control Area; Area Low Routes; Control Areas Associated With Jet Routes Outside the Continental Control Area; Reporting Points; Flushing (New York) Airport Traffic Rule; and Valparaiso, Florida Terminal Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Aviation Regulations (FAR) by designating additional control areas as offshore airspace areas or en route domestic airspace areas, as appropriate; revising certain additional control areas; including restricted and prohibited areas in the Continental Control Area; eliminating domestic area low routes; eliminating control areas associated with jet routes outside the Continental Control Area; eliminating domestic high altitude reporting points; eliminating certain domestic low altitude reporting points; eliminating the special air traffic rules for Flushing, New York; and replacing the Valparaiso, Florida terminal area and special air traffic rules with the Eglin, Florida Class D airspace areas. These amendments respond to recommendations from the National Airspace Review (NAR) and meet a goal of the Airspace Reclassification final rule—to simplify airspace assignment and use.

EFFECTIVE DATES: The amendments to §§ 71.1 and 71.9 which are currently in effect, become effective April 1, 1993, through September 15, 1993; the removal of § 71.6 become effective April 1, 1993; the removal of subpart P of part 93 becomes effective June 20, 1993; the amendments to §§ 71.1, 71.33 and 71.71 which are effective September 16, 1993, and the removal of § 71.77, become effective September 16, 1993; and the removal of subpart F of part 93 becomes effective December 9, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. William M. Mosley, ATP–230, Air Traffic Rules Branch, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9251.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1991, the final rule on Airspace Reclassification was published (56 FR 65638). The new airspace classes described in that final rule will become effective on September 16, 1993. That final rule amends FAR part 71 (14 CFR part 71) to reclassify U.S. airspace in accordance with the airspace classes adopted by the International Civil Aviation Organization (ICAO).

Under the Airspace Reclassification final rule, effective September 16, 1993, positive control areas (PCA's), jet routes, and area high routes are classified as Class A airspace areas; terminal control areas (TCA's) are classified as Class B airspace areas; airport radar service areas (ARSA's) are classified as Class C airspace areas; control zones for airports with operating control towers and airport traffic areas that are not associated with the primary airport of a TCA or an ARSA are classified as Class D airspace areas; all other controlled airspace is classified as Class E airspace; and airspace that is not otherwise designated as a controlled airspace area is classified as Class G airspace.

The implementation of the Airspace Reclassification final rule includes two reviews of certain existing airspace areas to ensure that the areas correspond to the new airspace classifications. The first of these reviews, the Terminal Airspace Reconfiguration, addressed control zones, transition areas, certain TCA's, and certain ARSA's. The Terminal Airspace Reconfiguration final rule was published on August 27, 1992 (Amendment Number 71–16; 57 FR 38962).

This final rule, which addresses offshore airspace and other areas related to the reclassification of airspace, is the second rulemaking action.

Discussion of the Amendments and Public Comments

This final rule is based on Notice of Proposed Rulemaking (NPRM) No. 92–13 (57 FR 42810; September 16, 1992). The rule amends part 71 by revising certain existing airspace areas designated in FAA Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. This final rule also revises the corresponding airspace areas designated in FAA Order 7400.9, Airspace Reclassification, effective September 16, 1993, which is also incorporated by reference in 14 CFR 71.1.

This final rule reflects amendments that have been issued since the publication of Notice No. 92–13. On November 27, 1992, Amendment No. 71–18 "Airspace Reclassification; Incorporation by Reference" was published in the **Federal Register** (57 FR 56246). Amendment No. 71–18 reflected the approval of the Director of the Federal Register for the incorporation by reference of FAA Order 7400.7A, Compilation of Regulations, as of November 27, 1992, through September 15, 1993.

In addition, this final rule reflects Airspace Docket No. 92–ANM–2 "Alteration of VOR Federal Airways" (57 FR 46977; October 14, 1992), which established the Rogue Valley, Oregon reporting point.

Four comments were submitted in response to Notice No. 92–13. The comments were submitted by the Air Line Pilots Association (ALPA), Aircraft Owners and Pilots Association (AOPA), the New York City Economic Development Corporation, and Vandenberg Air Force Base, California.

ALPA stated that the proposed rule is a natural extension of other rulemaking related to airspace reclassification. The other commenters addressed specific proposals in the NPRM; their comments are addressed under the amendment to which they pertain.

The Department of Defense (DOD) expressed concern that, although the FAA consulted with the Department of State and DOD in accordance with Executive Order 10854, Notice No. 92–13 did not include language that explains the impact of this rulemaking action on international and DOD operations. These issues are addressed in this final rule in the portion entitled "ICAO Considerations." Correspondence from DOD to the FAA pertaining to this issue was placed in the docket.

Additional Control Areas

In Notice No. 92–13, the FAA proposed to designate additional control areas as either offshore airspace areas or en route domestic airspace areas, as appropriate, and to revise controlled airspace in accordance with Presidential Proclamation No. 5928, "Territorial Sea of the United States," which was signed on December 27, 1988. The proclamation extended the sovereignty of the U.S. Government to 12 nautical miles from the baselines of the United States (including its territories) in accordance with international law. On January 4, 1989, the FAA published Amendment Nos. 71–12 and 91–207, "Applicability of Federal Aviation Regulations in the Airspace Overlying

the Waters Between 3 and 12 Nautical Miles From the United States Coast" (54 FR 264). These amendments extended controlled airspace and the applicability of certain flight rules to the airspace overlying the waters between 3 and 12 nautical miles from the U.S. coast.

Notice No. 92–13 proposed to: (1) Designate additional control areas as offshore airspace areas or en route domestic airspace areas, as appropriate; (2) implement, to the extent practicable, a uniform base altitude of 5,500 feet mean sea level (MSL) for offshore airspace areas; (3) identify offshore airspace areas by name, to the extent possible; (4) classify offshore airspace as Class A or Class E airspace areas, as appropriate; and (5) classify en route domestic airspace areas as Class E airspace areas.

The commander of the 30th Space Wing at Vandenberg Air Force Base, California, questioned the replacement of existing lateral boundaries of offshore airspace areas. These boundaries are currently designated at 3 nautical miles from the U.S. coast and were proposed to be designated at 12 nautical miles from the U.S. coast. The commenter expressed concern that the revision would affect Restricted Areas R–2516 and R–2517, in which missile launches and commercial space launches occur.

The FAA is not altering special use airspace, including the special use airspace near Vandenberg Air Force Base, under this amendment. The current boundaries of warning and restricted areas will remain unchanged under this amendment. Specific proposals in Notice No. 92–13 apply to controlled airspace that is off the U.S. coast and designated by the FAA in FAR part 71 and FAA Order 7400.7A. The proposals do not apply to any special use airspace designated by the FAA in FAR part 73 and FAA Order 7400.8, Special Use Airspace. Examples of special use airspace are warning areas, restricted areas, and prohibited areas.

In addition, the FAA will continue the current air traffic control (ATC) procedures associated with offshore airspace and warning areas. Specifically, ATC will continue to prohibit any aircraft operating under instrument flight rules (IFR) to be routed through an active warning areas unless the FAA receives approval from the using agency.

AOPA supports the FAA's proposed action to establish a uniform base of 5,500 feet MSL for most of the offshore airspace areas.

The FAA received no other comments on the proposal to revise additional control areas. The amendments to additional control areas are addressed below the titles "Offshore Airspace Areas" or "En Domestic Airspace Areas."

The separation of additional control areas into offshore airspace areas or en route domestic areas only applies to the airspace areas found in subpart E of FAA Order 7400.9, which is effective September 16, 1993. Specifically, the FAA amends part 71, effective September 16, 1993, by revising § 71.33 to designate Class A offshore airspace areas and § 71.71(e) to designate Class E en route domestic airspace areas and by adding § 71.71(f) to designate Class E offshore airspace areas.

Offshore Airspace Areas

The FAA amends the additional control areas in section 71.163 of FAA Order 7400.7A as discussed below. The United States has jurisdiction over these airspace areas through an ICAO regional agreement.

No comments were received on the proposals concerning individual airspace areas. The offshore airspace areas are adopted as proposed in Notice No. 92–13 with the exception of technical corrections to the airspace descriptions, which are discussed below.

Many of the changes to the airspace descriptions are technical corrections of an administrative nature. These changes are based on suggestions from the National Ocean Service (NOS) to help simplify the airspace descriptions and ensure proper depiction on aeronautical charts. For example, these changes include replacing references to geographic positions with references to control area (CTA)/flight information region (FIR) boundaries, ensuring that the areas meet adjacent controlled airspace, amending the airspace descriptions by moving the clause describing the area's floor to the beginning of the airspace description (which is consistent with the format of other airspace descriptions), eliminating unnecessary or redundant geographic positions, and converting geographic positions from the North American Datum (NAD) of 1927 survey to the NAD of 1983 survey. The NAD–83 survey has been adopted as the horizontal geodetic referencing system used in all NOS charts and chart publications. The more accurate geographic locations in NAD–83 are necessary for systems such as the Global Positioning Systems (GPS). Regardless of the number or type of administrative changes made, this final rule does not increase any existing controlled airspace beyond what was proposed in Notice No. 92–13.

The FAA adopts the proposal to eliminate the existing control areas entitled Newport, Oregon; San Francisco, California; and Santa Barbara, California, and to establish the Pacific High and Pacific Low offshore airspace areas. The lateral boundaries of the Pacific High and Pacific Low offshore airspace areas are based upon the existing lateral boundaries of the Newport, Oregon; San Francisco, California; and Santa Barbara, California control areas. The Pacific Low extends upward from 5,500 feet MSL up to, but not including, 18,000 feet MSL. The overlying Pacific High has a floor of 18,000 feet MSL and a ceiling of flight level (FL) 600.

The eastern boundaries for the Pacific High and Pacific Low offshore airspace areas are 12 miles off the U.S. shoreline.

The FAA adopts the proposals to eliminate the existing control areas entitled Barnegat, New Jersey; Brunswick, Maine; North Atlantic; and South Atlantic; to revise the South Florida control area; to designate the South Florida control area as the South Florida Low offshore airspace area; and to establish the Atlantic Low and Atlantic High offshore airspace areas.

The South Florida Low offshore area's lateral boundaries align with the Miami Oceanic CTA/FIR lateral boundaries. This revised boundary includes the existing portion of the South Atlantic control area south of latitude 28°00′00″ North. The South Florida Low offshore airspace area extends upward from 2,700 feet MSL up to, but not including, 18,000 feet MSL. The South Florida airspace description is amended by replacing references to geographic positions, which describe the area's lateral boundaries, with references to the lateral boundaries of the Houston Oceanic CTA/FIR, Jacksonville Air Route Traffic Control Center, New York Oceanic CTA/FIR, San Juan Oceanic CTA/FIR, Santo Domingo FIR, Port-Au-Prince CTA/FIR, and Havana CTA/FIR.

The lateral boundaries of the Atlantic Low offshore airspace area are based upon the existing boundaries of the Brunswick, Maine; North Atlantic; and South Atlantic control areas, north of latitude 28°00′00″ North except that the western boundary has been changed from 3 miles to 12 miles from and parallel to the U.S. shoreline. The Atlantic Low extends upward from 5,500 feet MSL up to, but not including, 18,000 feet MSL. The Atlantic Low airspace description is amended by replacing references to geographic positions, which describe the area's northern and eastern lateral boundaries, with references to the lateral boundaries

of the Moncton FIR and New York Oceanic CTA/FIR.

The Atlantic High offshore airspace area has a floor of 18,000 feet MSL and a ceiling of FL 600. The lateral boundaries of the Atlantic High are based upon the boundaries of the following control areas: (1) Existing Brunswick, Maine; (2) existing North Atlantic; (3) existing South Atlantic, north of latitude 28°00'00" North; and (4) revised South Florida Low except that the western boundary has been changed from 3 miles to 12 miles from and parallel to the U.S. shoreline. The Atlantic High airspace description is amended by replacing references to geographic positions, which describe the area's northern, eastern, and southern lateral boundaries, with references to the lateral boundaries of the Moncton FIR, New York Oceanic CTA/FIR, San Juan Oceanic CTA/FIR, Santo Domingo FIR, Port-Au-Prince CTA/FIR, Havana CTA/FIR, Houston Oceanic CTA/FIR, and Jacksonville Air Route Traffic Control Center.

The FAA adopts the proposal to revise the existing Gulf of Mexico control area by dividing it into two airspace areas: The Gulf of Mexico Low and Gulf of Mexico High offshore airspace areas. The Gulf of Mexico Low extends upward from 1,200 feet MSL up to, but not including, 18,000 feet MSL. The floor of the Gulf of Mexico Low remains at 1,200 feet MSL due to the high volume of air traffic and the requirement for air traffic control services below 5,500 feet MSL. The Gulf of Mexico High has a floor of 18,000 feet MSL and a ceiling of FL 600.

The lateral boundaries of the areas are based on the existing lateral boundaries for the Gulf of Mexico control area, except the eastern boundaries of the areas are aligned with the Houston Oceanic CTA/FIR. The airspace descriptions for the Gulf of Mexico Low and Gulf of Mexico High areas are amended by replacing references to geographic positions which describe the areas with references to the Jacksonville Air Route Traffic Control Center, Miami Oceanic CTA/FIR, Houston CTA/FIR; by specifying that the line 12 miles offshore and parallel to the U.S. shoreline is off the coast of Texas, Louisiana, Mississippi, Alabama, and Florida; and by ensuring that the lateral boundary off the U.S. shoreline meets the lateral boundaries of the adjoining controlled airspace. The adjoining controlled airspace areas include the Continental Control Area and transition areas.

The FAA adopts the proposal to establish the San Juan low, by revising the existing control area for San Juan, Puerto Rico, in section 71.163 of FAA Order 7400.7A. The floor is raised from 2,000 feet MSL to 5,500 feet MSL. The portion of the San Juan Low offsore airspace area that was proposed to have a floor of 2,700 feet MSL is included in the San Juan transition area that became effective October 15, 1992; therefore, this portion is eliminated from the San Juan Low offshore airspace description. The airspace description is updated by replacing the geographic position for Fernando Luis Ribas Dominicci Airport from "lat. 18°27'33"N., long. 66°05'55"W." to "lat. 18°27'25"N., long. 66°05'53"W."

The FAA adopts the proposal to divide the following additional control areas into two offshore airspace areas: Control 1155, Control 1156, Control 1176, Control 1177, Control 1316, Control 1318, Control 1415, Control 1416, Control 1418, Control 1419, Control 1486, and Control 1487. These areas retain their current lateral boundaries. In each case, one offshore airspace area extends upward from 5,500 feet MSL up to, but not including, 18,000 feet MSL. The other offshore airspace area has a floor at 18,000 feet MSL and a ceiling of FL 450. To distinguish between the offshore airspace areas with the same numerical identification, the titles of those offshore airspace areas that are below 18,000 feet MSL have an "L" suffix and the titles of those that are above 18,000 feet MSL have an "H" suffix.

The airspace descriptions for Control 1176H and Control 1176L are amended to eliminate duplicated descriptions of airspace areas and to ensure that the lateral boundaries continue to meet the adjoining warning areas.

The airspace descriptions for Control 1316H and Control 1316L are amended by replacing "VOR" with "VORTAC."

The airspace descriptions for Control 1318H and Control 1318L are amended by replacing "Elkey Fix" with the "Oakland CTA/FIR."

The airspace descriptions for Control 1415H and Control 1415L are amended by replacing "VOR" with "VORTAC."

The airspace descriptions for Control 1418H and Control 1418L are amended by specifying that the Hoquiam 232° radial is from the Hoquiam, Washington VORTAC.

The airspace descriptions for Control 1419H and Control 1419L are amended by specifying that the Newport 237° radial is from the Newport, Oregon VORTAC.

The airspace descriptions for Control 1486H and Control 1486L are amended by replacing "VOR" with "VORTAC" and by replacing "Seattle Oceanic CTA/FIR" with "Oakland Oceanic CTA/FIR."

The airspace descriptions for Control 1487H and Control 1487L are amended to ensure that lateral boundaries off the U.S. shoreline meet the lateral boundaries of the adjoining controlled airspace. The adjoining controlled airspace areas include the Continental Control Area and transition area.

The FAA adopts the proposal to divide Control 1154 and Control 1173 into two areas each. The western boundaries of the areas are amended to meet the current eastern boundary of the Oakland Oceanic CTA/FIR. The southeast boundaries of Control 1173H and Control 1173L continue to meet Warning Area 283, Warning Area 285A, and Warning Area 285B, which are adjacent special use airspace areas. Control 1154L and Control 1173L have floors of 5,500 feet MSL and ceilings of up to, but not including, 18,000 feet MSL. Control 1154H and Control 1173H have floors at 18,000 feet MSL and ceilings of FL 450.

The airspace description of Control 1154H is amended by replacing references to VOR Federal Airway V–199, which describes the eastern boundary, with references to specific geographic positions.

The airspace descriptions for Control 1154L and Control 1173L are amended by eliminating a reference to controlled airspace below 5,500 feet MSL.

The FAA adopts the proposal to divide Control 1234 into two airspace areas. Control 1234L retains the existing floor of Control 1234, which is 2,000 feet above the surface, so that aircraft operating under IFR at low altitudes over the Alaskan Peninsula, the Aleutian Islands, and the surrounding waters remain within controlled airspace. Control 1234L would extend up to, but not including, 18,000 feet MSL. Control 1234H has a floor at 18,000 feet MSL and a ceiling of FL 450. Both retain the current lateral boundaries of Control 1234. The airspace descriptions are amended by replacing references to certain geographic positions, which describe the lateral boundaries, with references to the boundaries of the Anchorage Air Route Traffic Control Center.

The FAA adopts the proposal to establish the Gulf of Alaska low offshore airspace area. The airspace area retains the current lateral boundaries except the northern boundaries are changed to 12 miles off the U.S. shoreline. The airspace area has a floor at 700 feet MSL, and a ceiling of up to, but not including, 18,000 feet MSL.

The FAA will not adopt the proposed Gulf of Alaska High offshore control area because the same airspace area is within Control 1487H.

The FAA adopts the proposal to divide the control areas for Norton Sound and Woody Island, Alaska, into two offshore airspace areas each. Both areas retain their current lateral boundaries. The Norton Sound and Woody Island Low offshore airspace areas extend upward from 14,500 feet MSL to, but not including, 18,000 feet MSL. The Norton Sound and Woody Island High offshore airspace areas have floors of 18,000 feet MSL and ceilings of FL 450.

The airspace descriptions for the Norton Sound High, Norton Sound Low, Woody Island High, and Woody Island Low are amended to ensure that the lateral boundaries meet the adjoining controlled airspace. The adjoining controlled airspace areas include the Continental Control Area and transition areas. These changes will eliminate the potential for a small corridor of uncontrolled airspace next to the areas.

The FAA adopts the proposal to designate Control 1485 as Control 1485H. The revised airspace area retains its floor of FL 230, its ceiling of FL 450, and its existing lateral boundaries except that the northern boundary has been changed from 3 miles to 12 miles from and parallel to the U.S. shoreline.

The FAA adopts the proposal to designate Control 1141 as Control 1141L; Control 1142 as Control 1142L; Control 1143 as Control 1143L; Control 1144 as Control 1144L; and Control 1146 as Control 1146L. The amended airspace areas retain current lateral boundaries, have floors at 5,500 feet MSL, and ceilings of up to, but not including, 18,000 feet MSL.

The airspace description for Control 1143L is amended by replacing "RBN" with "NDB" and by excluding airspace in Canada.

The FAA amends subparts A and E of FAA Order 7400.9, effective September 16, 1993, by: (1) revising, as described above, the areas that correspond to the offshore airspace areas in section 71.163 of FAA Order 7400.7A; and (2) designating these control areas as Class A or Class E airspace areas as noted below.

The FAA designates those offshore airspace areas listed below, which have a floor of 18,000 feet MSL, or higher, as Class A airspace areas.

Offshore Airspace Areas That Become Class A Airspace

Atlantic High
Control 1154H
Control 1155H
Control 1156H
Control 1173H
Control 1176H
Control 1177H
Control 1234H
Control 1316H
Control 1318H
Control 1415H
Control 1416H
Control 1418H
Control 1419H
Control 1485H
Control 1486H
Control 1487H
Gulf of Mexico High
Norton Sound High, Alaska
Pacific High
Woody Island High, Alaska

The FAA designates those offshore airspace areas listed below as Class E airspace. These airspace areas have a floor set at a specified altitude and extend up to, but not including, 18,000 feet MSL.

Offshore Airspace Areas That Become Class E Airspace

Atlantic Low
Control 1141L
Control 1142L
Control 1143L
Control 1144L
Control 1146L
Control 1154L
Control 1155L
Control 1156L
Control 1173L
Control 1176L
Control 1177L
Control 1234L
Control 1316L
Control 1318L
Control 1415L
Control 1416L
Control 1418L
Control 1419L
Control 1486L
Control 1487L
Gulf of Alaska Low, Alaska
Gulf of Mexico Low
Norton Sound Low, Alaska
Pacific Low
San Juan Low, Puerto Rico
South Florida Low
Woody Island Low, Alaska

En Route Domestic Airspace Areas

In Notice No. 92–13, the FAA proposed to revise the additional control areas in section 71.163 of FAA Order 7400.7A, which are en route domestic airspace areas. Specifically, the FAA proposed to eliminate the additional control areas entitled Kirksville, Missouri, and Ottumwa, Iowa. The airspace described for these areas is encompassed in the statewide transition areas for Iowa and Missouri, which have floors at 1,200 feet above the surface. The FAA also proposed to rename the additional control area entitled Sault Sainte Marie, Michigan, as Upper Peninsula, Michigan. This would distinguish the additional control area entitled Sault Sainte Marie, Michigan, from the transition area entitled Sault Sainte Marie, Michigan.

No comments were received on the proposals concerning individual airspace areas. The FAA amends section 71.163 of FAA Order 7400.7A by eliminating the two additional control areas entitled Kirksville, Missouri, and Ottumwa, Iowa; renaming the Sault Sainte Marie, Michigan additional control area as Upper Peninsula, Michigan; and minor changes to the airspace descriptions, which are discussed below. Many of the changes to the airspace descriptions are technical corrections of an administrative nature. These changes are based on suggestions from the National Ocean Service (NOS) to help simplify the airspace descriptions and ensure proper depiction on aeronautical charts. For example, these changes ensure that the areas meet geographic positions, and convert geographic positions from the North American Datum (NAD) of 1927 survey to the NAD of 1983 survey. Other changes are discussed below.

The Bozeman, Montana additional control area is eliminated. The airspace area is within the Helena, Montana and Livingston, Montana transition areas that became effective October 15, 1992.

The Browerville/Barter Island, Alaska airspace description is amended by deleting a reference to the Lonely, AK NDB, which has been decommissioned, and by replacing "RBN" with "NDB."

The Burley, Idaho additional control area is eliminated. The airspace area is within the Burley, Idaho transition area that became effective October 15, 1992.

The Lakeview, Oregon additional control area is eliminated. The airspace is within the Lakeview, Oregon transition area that became effective October 15, 1992.

The Ogden, Utah additional control area is eliminated. The airspace is within the Ogden, Utah transition area that became effective October 15, 1992.

The Omak, Washington additional control area is eliminated. The airspace area is within the Omak, Washington transition area that became effective October 15, 1992.

The Rattlesnake, Wyoming airspace description is amended by eliminating an unnecessary reference to the Casper ILS west course.

The Reveille, Nevada airspace description is amended by ensuring that the southern lateral boundary meets the adjoining controlled airspace.

The Schloredt, Wyoming airspace description is amended by replacing the geographic position of Ellsworth Air Force Base from "lat. 44°08'45"N., long. 103°06'15"" to "lat. 44°08'42"N., long. 103°06'13"W." In addition, the references to 53 miles and 5.3 miles,

which are distances in statute miles, are replaced with 46.2 miles and 4.6 miles, which are the nearest equivalent in nautical miles.

The Zuni, New Mexico airspace description is amended by replacing the radial from the St. Johns, AZ, VORTAC from 247° to 248°.

The FAA amends subpart E of FAA Order 7400.9, effective September 16, 1993, by deleting the airspace descriptions that correspond to the airspace areas eliminated in section 71.163 of FAA Order 7400.7A; by revising the airspace descriptions that correspond to the airspace descriptions modified in section 71.163 of FAA Order 7400.7A; and by renaming the area entitled Sault Sainte Marie, Michigan, as Upper Peninsula, Michigan. In addition, the FAA designates the following en route domestic airspace areas as Class E airspace areas.

En Route Airspace Areas That Become Class E Airspace

Badlands, South Dakota
Boardman, Oregon
Boise, Idaho
Brownerville/Barter Island, Alaska
Colville, Washington
Olympic Peninsula, Washington
Rattlesnake, Wyoming
Reveille, Nevada
Schloredt, Wyoming
Sidney, Montana
Upper Peninsula, Michigan
Zuni, New Mexico

Continental Control Area

Currently, the Continental Control Area consists of the airspace at and above 14,500 feet MSL overlying the United States, including the waters within 12 nautical miles of the 48 contiguous States and Alaska, excluding the Alaska peninsula west of longitude 160°00'00" West. The Continental Control Area does not include: Airspace less than 1,500 feet above the surface; prohibited areas; or restricted areas other than the restricted areas currently listed in part 71, subpart D. Effective September 16, 1993, the Continental Control Area will be designated as Class E airspace extending upward from 14,500 feet MSL to, but not including, 18,000 feet MSL.

In Notice No. 92–13, the FAA proposed that the Continental Control Area include the airspace in any prohibited area or restricted area that is at or above 14,500 feet MSL.

The FAA adopts the proposal to include the airspace in any prohibited or restricted area that is at or above 14,500 feet MSL in the Continental Control Area. In addition, the FAA: (1) Revises existing § 71.9, "Continental control area," by deleting the provision to exclude prohibited and restricted areas; (2) revises § 71.71(a), effective September 16, 1993, by deleting the provision to exclude prohibited and restricted areas; (3) removes and reserves section 71.151 in FAA Order 7400.7A, which lists all restricted areas included in the Continental Control Area; and (4) revises subpart E of FAA Order 7400.9, effective September 16, 1993, by eliminating the restricted areas included in the Class E airspace area described in § 71.71(a), effective September 16, 1993.

Area Low Routes

In Notice No. 92–13, the FAA proposed to remove the provisions for establishing area low routes. No area low routes exist, and the FAA has no plans to create any area low routes. No comments were submitted in response to this proposal and it is adopted by the FAA as proposed.

To accomplish removal of the area low route provisions, the FAA: (1) Removes and reserves existing § 71.6, "Extent of area low routes;" (2) removes and reserves section 71.301 in FAA Order 7400.7A which, if any existed, would list the airspace descriptions for area low routes; (3) removes and reserves § 71.77, "Extent of area low routes," effective September 16, 1993; (4) revises subpart E of FAA Order 7400.9, effective September 16, 1993, by deleting the provision that would list the airspace descriptions for area low routes; and (5) revises § 71.71(d), effective September 16, 1993, by eliminating the reference to area low routes.

Control Areas Associated with Jet Routes Outside the Continental Control Area

In Notice No. 92–13, the FAA proposed to eliminate control areas associated with jet routes outside the Continental Control Area. Control areas associated with jet routes outside of the Continental Control Area duplicate controlled airspace encompassed by the other airspace areas off the U.S. coast and over Alaska that extend upward from 18,000 feet MSL to FL 450.

No comments were received in response to this proposal. The proposal is adopted by the FAA. The FAA removes and reserves section 71.161, "Designation of control areas associated with jet routes outside the Continental Control Area," of FAA Order 7400.7A. In addition, the FAA revises subpart A of FAA Order 7400.9, effective September 16, 1993, by eliminating the corresponding airspace descriptions for control areas associated with jet routes outside the Continental Control Area.

Reporting Points

In Notice No. 92–13, the FAA proposed to eliminate domestic high altitude and domestic low altitude compulsory reporting points. Because of extensive domestic radar coverage, pilots are seldom required to report passing these points.

AOPA agreed with the FAA's proposal to let air traffic control retain the option of requiring pilots to make position reports because of radar system limitations or as circumstances warrant.

Individual FAA regions have stated that certain domestic low altitude reporting points are necessary. Most of these reporting points are necessary because of a lack of complete radar coverage to the minimum en route altitude (MEA) or because of a lack of overlapping radar coverage in mountainous regions. The FAA revises section 71.203, "Domestic low altitude reporting points," of FAA Order 7400.7A and subpart H of FAA Order 7400.9, effective September 16, 1993, by eliminating all of the domestic low altitude reporting points except the 72 points listed below.

FAA Region: Central

Fort Dodge, IA
Goodland, KS
Hill City, KS
Ainsworth, NE
O'Neill, NE
Pawnee City, NE
Sidney, NE

FAA Region: Eastern

Pulaski, VA

FAA Region: Great Lakes

MILTO: INT Eau Claire, WI, 134° and Nodine, MN, 055° radials
Pellston, MI
White Cloud, MI
Alexandria, MN
Humboldt, MN
Mankato, MN
Bismarck, ND
Dickinson, ND
Dupree, SD
Yankton, SD
Wausau, WI

FAA Region: Northwest Mountain

GARRI: INT Drummond, MT, 092° and Butte, MT, 002° radials
TITON: INT Yakima, WA 284° and Ellensburg, WA 191° radials
Akron, Co
Alamosa, CO
Blue Mesa, CO
Grand Junction, CO
Gunnison, CO
Hayden, CO
Kremmling, CO
Pueblo, CO

Thurman, CO
Burley, ID
Twin Falls, ID
Bozeman, MT
Cut Bank, MT
Lewistown, MT
Miles City, MT
Rogue Valley, OR
Rome, OR
Bryce Canyon, UT
Delta, UT
Hanksville, UT
Lucin, UT
Yakima, WA
Cherokee, WY
Crazy Woman, WY
Sheridan, WY

FAA Region: Southern

HEFIN: INT Talladega, AL, 087° and La Grange, GA, 342° radials
Barretts Mountain, NC
Greensboro, NC
Sugarloaf Mountain, NC
Holston Mountain, TN

FAA Region: Southwest

Carlsbad, NM
Columbus, NM
Corona, NM
Deming, NM
Farmington, NM
Pinon, NM
Roswell, NM
Santa Fe, NM
Zuni, NM
Sayre, OK
Childress, TX
Dalhart, TX
Fort Stockton, TX
Pecos, TX
Salt Flat, TX

FAA Region: Western Pacific

Mendicino, CA
Saint Johns, AZ
Winslow, AZ
Battle Mountain, NV
Coaldale, NV
Sod House, NV

No comments were received on the proposal to eliminate all domestic high altitude reporting points. Therefore, the FAA removes and reserves section 71.207, "Domestic high altitude reporting points," in FAA Order 7400.7A and revises subpart H of FAA Order 7400.9, effective September 16, 1993, by deleting domestic high altitude reporting points.

Flushing (New York) Airport Traffic Rule

In Notice No. 92–13, the FAA proposed to eliminate the special air traffic rules for the Flushing, New York airport. The Flushing, New York airport is closed and no immediate plans exist to reopen it. One commenter responded to this proposal.

The New York City Economic Development Corporation supports the proposal. However, the commenter stated that its support is based on the premise that eliminating the special air traffic rules will not adversely affect the Flushing Airport airspace exclusion from the LaGuardia Airport TCA.

The elimination of the Flushing (New York) special air traffic rules will not affect other airspace. Currently, the FAA does not intend to revise the New York TCA, including the portion for LaGuardia Airport. However, if in the future, the FAA decides to revise the New York TCA, the revision would be addressed under a separate rulemaking action.

The New York City Economic Development Corporation disagreed with the FAA's statement that no known plans exist to reopen Flushing Airport in the immediate future. The commenter noted that the City of New York is conducting an Airport Feasibility/ Master Plan Study and preparing an associated Environmental Impact Statement to establish a vertiport at Flushing Airport.

As stated in Notice No. 92–13, Flushing Airport is closed. The possibility of reopening the airport as a vertiport remains uncertain. If plans to reopen Flushing Airport as a vertiport, or in any other capacity, are finalized and approved, the surrounding airspace would be reviewed.

The FAA adopts the proposal to eliminate the Flushing (New York) special air traffic rules and removes and reserves subpart P of part 93. The amendment becomes effective June 20, 1993, and will appear on the next sectional aeronautical chart for New York.

Valparaiso, Florida Terminal Area

In Notice No. 92–13, the FAA proposed to replace the Valparaiso, Florida Terminal Area with the Eglin, Florida Class D airspace areas. The proposal provided for one airspace area for the north-south corridor and one for the east-west corridor.

The proposed Eglin, Florida Class D airspace areas would revise existing vertical limits and the lateral boundaries, which separate the existing north-south and east-west corridors. The lateral boundaries between the corridors would be moved from north of Eglin Air Force Base to south of the base. This would ensure restricted access to the north-south corridor during military testing without constraining access to the east-west corridor.

The FAA also proposed to revise the current vertical limits of the area. The existing east-west corridor extends upward from the surface up to, but not including 8,500 feet MSL. The FAA proposed that the corresponding portion of the Eglin, Florida Class D airspace area also have a ceiling of 8,500 feet MSL, except that the portion of the existing corridor that does not underlie Restricted Areas R–2915C, R–2919B, and R–2914B was proposed to extend upward from the surface to, but not including, 18,000 feet MSL. The existing north-south corridor does not have a specified ceiling; the FAA proposed that the corresponding portion of the Eglin, Florida Class D airspace area have a vertical limit up to, but not including, 18,000 feet MSL.

No comments were received on these proposals. The FAA adopts the proposal by removing and reserving subpart F of part 93, "Valparaiso, Florida, Terminal Area" and revising subpart D of FAA Order 7400.9, and by establishing the Eglin, Florida Class D airspace areas. The airspace descriptions for the Eglin, Florida Class D airspace areas are revised by incorporating the airspace formerly contained in subpart F to part 93 and ensuring that the lateral boundaries of the areas continue to meet the lateral boundaries of the adjoining restricted areas. This amendment becomes effective December 9, 1993, which is when the New Orleans sectional aeronautical chart is issued.

The FAA revises subpart D of FAA Order 7400.9, effective September 16, 1993, by deleting the Eglin Air Force Base and Eglin AF Aux No. 3 Duke Field, Florida Class D airspace areas, which are encompassed by the Eglin, Florida Class D airspace areas. The airspace descriptions for these areas are amended by converting geographic positions from the NAD–27 to the NAD–83 survey.

The FAA revises subpart D and subpart E of FAA Order 7400.9, effective September 16, 1993, by modifying the Hurlburt Field, Florida Class D airspace area and the Crestview, Florida Class E airspace area. The revised airspace areas exclude the portion of each airspace area that extends into the Eglin, Florida Class D airspace areas.

Incorporation by Reference

The FAA amends the airspace descriptions of certain additional control areas and control zones; eliminates certain domestic low altitude reporting points; includes restricted and prohibited areas in the Continental Control Area; and eliminates all domestic high altitude reporting points, area low routes, and control areas associated with jet routes outside the Continental Control Area. The descriptions of these airspace areas, reporting points, and routes are not listed in the Code of Federal Regulations (CFR) and are not set forth in the full

text of this final rule. The full listings for all additional control areas, restricted areas included in the Continental Control Area, control areas associated with jet routes outside the Continental Control Area, domestic low altitude reporting points, domestic high altitude reporting points, and area low routes are contained in sections 71.151, 71.161, 71.163, 71.203, 71.207, and 71.301 of FAA Order 7400.71, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The amended descriptions will subsequently be published in FAA Order 7400.7A—Supplement. Copies of FAA Order 7400.7A and FAA Order 7400.7A—Supplement may be obtained from the Document Inspection Facility, APA–220, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–3485. Copies of FAA Order 7400.7A and FAA Order 7400.7A—Supplement may be inspected in Docket Number 26968 at the Federal Aviation Administration, Office of the Chief Counsel, AGC–10, room 915G, 800 Independence Avenue, SW., Washington, DC, weekdays between 8:30 a.m. and 5 p.m. or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Under the Airspace Reclassification final rule, descriptions of additional control areas, restricted areas included in the Continental Control Area, area low routes, and control areas associated with jet routes outside the Continental Control Area are set forth as Class E airspace areas in subpart E of FAA Order 7400.9, and descriptions of domestic low altitude reporting points and domestic high altitude reporting points are set forth in subpart H of FAA Order 7400.9. Class D airspace areas are set forth in subpart D of FAA Order 7400.9. FAA Order 7400.9, Airspace Reclassification, effective September 16, 1993, is also incorporated by reference in 14 CFR 71.1. The amended airspace descriptions are not listed in the CFR and are not set forth in the full text of this final rule but will subsequently be published in FAA Order 7400.9—Supplement. Copies of FAA Order 7400.9 and FAA Order 7400.9—Supplement may be obtained from the Document Inspection Facility, APA–220, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–3485. Copies of FAA Order 7400.9 and FAA Order 7400.9—Supplement may be inspected in Docket Number 26968 at the Federal Aviation Administration, Office of the Chief Counsel, AGC–10, room 916G, 800 Independence Avenue, SW., Washington, DC, weekdays between 8:30 a.m. and 5 p.m. or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

ICAO Considerations

Because a portion of this amendment relates to navigable airspace outside the United States, this amendment is subject to, and complies with, the ICAO International Standards and Recommended Practices.

The application of International Standards and Recommended Practices by the FAA Air Traffic Rules and Procedures Service in areas outside U.S. domestic airspace is governed by the Convention on International Civil Aviation. Specifically, the FAA is governed by Article 12 and Annex 11, which pertain to the establishment of necessary air navigational facilities and services to promote the safe, orderly, and expeditious flow of civil air traffic. The purpose of the documents is to ensure that civil aircraft operations on international air routes are performed under uniform conditions.

The International Standards and Recommended Practices in Annex 11 apply in those portions of airspace under the contracting state's jurisdiction, which is granted by ICAO, wherein air traffic services are provided and where a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices in a manner that is consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, a state's aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Because these amendments involve, in part, the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), no requirements for information collection are associated with this rule.

Regulatory Evaluation Summary

Executive Order 12291 established the requirement that, within the extent permitted by law, a Federal regulatory action may be undertaken only if the potential benefits to society for the regulations outweigh the potential costs to society. In response to this requirement, and in accordance with Department of Transportation policies and procedures, the FAA has estimated the anticipated benefits and costs of this rulemaking action. The results are summarized in this section. For more detailed economic information, see the full regulatory evaluation contained in the docket.

Costs

The costs of the Offshore Airspace Reconfiguration final rule are a part of the $1.9 million cost of the Airspace Reclassification final rule because the costs, which include modification of manuals, charts, and training materials, have already been accounted for in that final rule. For a detailed discussion of how the FAA derived these costs, the reader is directed to the final regulatory analysis of the Airspace Reclassification final rule (56 FR 65638). A brief discussion explaining each of these costs is presented below.

Revisions to Aeronautical Charts

The cost of modifying the aeronautical charts to reflect the new offshore airspace areas is part of the estimated $1.2 million cost of making all revisions necessitated by airspace reclassification. The National Ocean Service (NOS), which publishes and distributes aeronautical charts, provided this cost estimate. The estimate represents the cost of changing the airspace dimensions and symbols on the plates from which aeronautical charts are printed.

Revisions of Air Traffic Training Courses

The cost of revising the courses used to instruct air traffic controllers in offshore airspace areas is part of an estimated $53,000 (discounted) in controller training costs noted in the Airspace Reclassification final rule. This includes developing and conducting a one-week seminar for FAA student controllers ($10,000) and revising lesson plans, visual aids, handouts, laboratory exercises, and tests ($43,000).

Re-education of Pilot Community

The cost of re-educating the pilot community on the modifications in the

Offshore Airspace Reconfiguration final rule is part of an estimated $625,000 (discounted) total cost of re-educating the pilot community specified in the Airspace Reclassification final rule. This includes the publication and mailing of an advisory circular ($550,000) and the production of a video tape documenting the new airspace classifications ($75,000).

Conversion of Statute Miles to Nautical Miles

The statute mile designations in part 71 and FAA Order 7400.7A, Compilation of Regulations, and FAA Order 7400.9, Airspace Reclassification, are being converted to nautical miles as part of the Airspace Reclassification final rule. The Offshore Airspace Reconfiguration final rule will share some of the $1.2 million (discounted) cost to complete the revision to aeronautical charts.

Revising Offshore Airspace Areas

The current base levels of offshore areas range from 700 feet MSL to FL 240. Most of the base levels, however, are below 5,500 feet MSL so the final rule will, in effect, raise them. Raising the base levels will convert controlled airspace into uncontrolled airspace and consequently lower the minimum visibility and cloud clearance requirements. The volume of air traffic offshore and the need for air traffic control services are minimum below 5,500 feet MSL. Thus, the FAA contends that raising the base levels will not result in a decrease in safety or impose any costs on the FAA or on the flying public.

Deletion of Area Low Routes

Since the FAA has not established any area low routes and because there is no need to create any, there will be no monetary cost or decrease in safety when their reference is removed from the FAR.

Removal of High and Low Altitude Reporting Points

Advances in radar technology have increased domestic radar coverage so extensively that most compulsory reporting points have become an unnecessary redundancy in the air traffic control system. Therefore, there will be no reduction in safety when domestic high altitude reporting points and most domestic low altitude reporting points are removed.

Continental Control Area

The provision to include prohibited and restricted areas above 14,500 feet MSL in the Continental Control Area will not impose costs or decrease safety. Restricted airspace and prohibited airspace will be released to air traffic control only with the permission of the using agency, and then IFR aircraft operators will be allowed in only with a clearance from air traffic control.

Benefits

The Offshore Airspace Reconfiguration final rule will share benefits of enhanced aviation safety and operational efficiency with the Airspace Reclassification final rule. Like the costs, most of the benefits of this final rule have already been attributed to the Airspace Reclassification final rule. However, there are some additional safety and efficiency benefits that this final rule will generate apart from the Airspace Reclassification final rule. All of these benefits are discussed below.

Offshore Airspace Reconfiguration

This final rule will reclassify certain airspace areas that were not specifically addressed in the Airspace Reclassification final rule. However, these changes will be carried out in conjunction with that rule. The areas that would be reclassified by the Offshore Airspace Reconfiguration final rule are as follows:

- Offshore airspace areas from 18,000 feet MSL to FL 600 will be reclassified as Class A airspace; and
- Offshore airspace areas designated between 5,500 feet MSL, or other specified altitudes, and 18,000 feet MSL will be reclassified as Class E airspace.

These new offshore airspace classifications will enhance aviation safety by simplifying the airspace classifications and reducing airspace complexity. The airspace areas affected by the final rule will be designated on aeronautical charts with fewer airspace names, terms, and symbols. Furthermore, the new airspace classifications will mirror those established by ICAO, thus making U.S. airspace more standardized and more familiar to foreign pilots. All of these changes will generate benefits of easier and more precise navigation and safer operation in offshore airspace areas.

Uniform Base Levels

Establishing a uniform base of 5,500 feet MSL for offshore areas will, in effect, convert controlled offshore airspace into uncontrolled and, consequently, lower the minimum visibility and cloud clearance requirements. This will benefit pilots because they can operate in more uncontrolled offshore airspace with less stringent requirements.

Continental Control Area

By eliminating the automatic exclusion of prohibited and restricted areas from the Continental Control Area, these areas automatically revert to controlled airspace when released to air traffic control by the using agency. This action benefits aircraft operators and air traffic control because it promotes real time use of joint use airspace by allowing air traffic control to route IFR aircraft through the special use airspace.

Simplification of U.S. Airspace

The Offshore Airspace Reconfiguration final rule will also generate benefits in the form of a simpler and more efficient airspace system. This will be accomplished by deleting several airspace designations that have become obsolete or redundant due to advances in radar technology, expansion of radar and radio coverage, and changes in air traffic control and aircraft operator's airspace requirements. The deletions and their specific benefits are discussed below.

High and Low Altitude Reporting Points

Advances in radar technology have increased domestic radar coverage so extensively that most domestic compulsory reporting points have become an unnecessary redundancy in the air traffic control system. Because of extensive radar coverage, pilots are seldom required to inform air traffic control when passing reporting points. Therefore, there will be no reduction in safety when all domestic high altitude reporting points and most domestic low altitude reporting points are removed.

Area Low Routes

Deleting area low routes will not reduce aviation safety because no routes were ever established.

Conclusion

The costs of the Offshore Airspace Reconfiguration final rule are part of an estimated $1.9 million cost (discounted, 1990 dollars), which has already been accounted for in the Airspace Reclassification final rule. The benefits of the final rule will be a simpler, more efficient, and more uniform airspace system, ultimately resulting in increased safety to the aviation community. Thus, the FAA contends that the final rule is cost beneficial.

International Trade Impact Analysis

Because the Offshore Airspace Reconfiguration final rule will only affect U.S. airspace and airspace over which the United States has jurisdiction, it will not impose any adverse operating requirements on

foreign aircraft operators. By September 16, 1993, virtually all foreign aircraft operators will be operating under requirements similar to those contained in this final rule and the Airspace Reclassification final rule. The requirements in this Final Rule are based on those established by ICAO's airspace reclassification. Thus this final rule will have no effect on the sale of foreign aviation products or services in the U.S., nor will it affect the sale of U.S. products or services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities." The small entities that the final rule will affect are pilot schools (SIC 8299).

Training materials used in the courses offered by the pilot schools will have to be modified to reflect the changes in airspace classification. However, pilot schools will not incur any cost impact since the documents they use must be regularly updated as a normal cost of doing business. Thus, the final rule will not have a significant cost impact on them.

Federalism Implications

The regulation herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive order 12612, the FAA has determined that this regulation will not have sufficient federalism implications to warrant the preparation of the Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not major under Executive Order 12291. In addition, the FAA certifies that this regulation 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. This regulation is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A final regulatory evaluation of the regulation, including a final Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

14 CFR Part 71

Airspace, Airways, Incorporation by reference.

14 CFR Part 93

Special air traffic rules.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends parts 71 and 93 of the Federal Aviation Regulations (14 CFR parts 71 and 93) as follows:

The following amendments are to part 71 currently in effect:

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

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. Section 71.1 is revised to read as follows:

§ 71.1 Applicability.

The complete listing of all jet routes, area high routes, Federal airways, control areas, control area extensions, area low routes, control zones, transition areas, terminal control areas, airport radar service areas, positive control areas, reporting points, and other controlled airspace can be found in FAA Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992. Superseding portions of FAA Order 7400.7A, the descriptions of additional control areas, domestic low altitude reporting points, and control zones can be found in FAA Order 7400.7A—Supplement. The incorporation by reference of FAA Order 7400.7A was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The approval to incorporate by reference FAA Order 7400.7A and 7400.7A—Supplement is effective November 27, 1992, through September 15, 1993. During the incorporation by reference period, proposed individual changes to the listings of jet routes, area high routes, Federal airways, control areas, control area extensions, control zones, transition areas, terminal control areas, airport radar service areas, positive control areas, reporting points, and other controlled airspace will be published in full text as proposed rule documents in the **Federal Register.** Amendments to the listings of jet routes, area high routes, Federal airways, control areas, control area extensions, control zones, transition areas, terminal control areas, airport radar service areas, positive control areas, reporting points, and other controlled airspace will be published in full text as final rules in the **Federal Register.** Periodically, the final rule amendments will be integrated into a revised edition of the FAA Order and submitted to the Director of the Federal Register for approval for incorporation by reference in this section. Copies of FAA Order 7400.7A and FAA Order 7400.7A—Supplement may be obtained from the Document Inspection Facility, APA–220, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–3485. Copies of FAA Order 7400.7A and FAA Order 7400.7A—Supplement may be inspected in Docket Number 26968 at the Federal Aviation Administration, Office of the Chief Counsel, AGC–10, room 915G, 800 Independence Avenue, SW., Washington, DC, weekdays between 8:30 a.m. and 5 p.m. or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. This section is effective from April 1, 1993, through September 15, 1993.

§ 71.6 [Removed and reserved]

3. Section 71.6 is removed and reserved.

4. Section 71.9 is revised to read as follows:

§ 71.9 Continental control area.

The Continental Control Area consists of the airspace at and above 14,500 feet MSL overlying the 48 contiguous States, including the waters within 12 nautical miles from the coast of the 48 contiguous States; the District of Columbia; Alaska, including the waters within 12 nautical miles from the coast of Alaska; excluding the Alaska peninsula west of longitude 160°00′00″W. The Continental Control Area does not include the airspace less than 1,500 feet above the surface of the earth.

The following amendments are to part 71 in effect as of September 16, 1993:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; 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; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. Section 71.1 is amended by revising the introductory text to read as follows:

§ 71.1 Airspace classification.

The complete listing of these airspace designations can be found in FAA Order 7400.9, Airspace Reclassification, which is effective September 16, 1993. Superseding portions of subparts A, D, E, and H of FAA Order 7400.9, the descriptions of Class A, Class D, and Class E airspace areas and reporting points can be found in FAA Order 7400.9—Supplement. The incorporation by reference of FAA Order 7400.9 was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The approval to incorporate by reference FAA Order 7400.9 and 7400.9—Supplement is effective as of September 16, 1993, through September 15, 1994. During the incorporation by reference period, proposed individual changes to the listings of Class A, Class B, Class C, Class D, and Class E airspace areas, airways, routes, and reporting points will be published in full text as proposed rule documents in the **Federal Register**. Amendments to the listings of Class A, Class B, Class C, Class D, and Class E airspace areas, airways, routes, and reporting points will be published in full text as final rules in the **Federal Register**. Periodically, the final rule amendments will be integrated into a revised edition of the FAA Order and submitted to the Director of the Federal Register for approval for incorporation by reference in this section. Copies of FAA Order 7400.9 and FAA Order 7400.9—Supplement may be obtained from the Document Inspection Facility, APA–220, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–3485. Copies of FAA Order 7400.9 and FAA Order 7400.9—Supplement may be inspected in Docket Number 26968, at the Federal Aviation Administration, Office of the Chief Counsel, AGC–10, room 915G, 800 Independence Avenue, SW., Washington, DC 20591, weekdays between 8:30 a.m. and 5 p.m. or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

* * * * *

3. Section 71.33 is amended by adding paragraph (c) to read as follows:

§ 71.33 Class A airspace areas.

* * * * *

(c) The airspace areas listed as offshore airspace areas in subpart A of FAA Order 7400.9 (incorporated by reference, see § 71.1) that are designated in international airspace within areas of domestic radio navigational signal or ATC radar coverage, and within which domestic ATC procedures are applied.

4. Section 71.71 is amended by revising paragraphs (a), (d), and (e), and by adding paragraph (f) to read as follows:

§ 71.71 Class E airspace.

* * * * *

(a) The airspace of the United States, including that airspace overlying the waters within 12 nautical miles of the coast of the 48 contiguous states and Alaska, extending upward from 14,500 feet MSL to, but not including, 18,000 feet MSL, and excluding—

(1) The Alaska peninsula west of longitude 160°00′00″W.; and

(2) The airspace below 1,500 feet above the surface of the earth.

* * * * *

(d) The Federal airways described in subpart E of FAA Order 7400.9 (incorporated by reference, see § 71.1).

(e) The airspace areas listed as en route domestic airspace areas in subpart E of FAA Order 7400.9 (incorporated by reference, see § 71.1). Unless otherwise specified, each airspace area has a lateral extent identical to that of a Federal airway and extends unward from 1,200 feet above the surface of the earth to the overlying or adjacent controlled airspace.

(f) The airspace areas listed as offshore airspace areas in subpart E of FAA Order 7400.9 (incorporated by reference, see § 71.1) that are designated in international airspace within areas of domestic radio navigational signal or ATC radar coverage, and within which domestic ATC procedures are applied. Unless otherwise specified, each airspace area extends upward from a specified, altitude up to, but not including, 18,000 feet MSL.

§ 71.77 [Removed and reserved]

5. Section 71.77 is removed and reserved.

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPROT TRAFFIC PATTERNS

6. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. app. 1302, 1303, 1348, 1354(a), 1421(a), 1424, 2451 *et seq.* 49 U.S.C. 106(g).

Subpart F—§§ 93.81, 93.83 [Removed and Reserved]

7. Part 93 is amended by removing and reserving subpart F (§§ 93.81 and 93.83).

8. Part 93 is amended by removing and reserving subpart P (§§ 93.181, 93.183, 93.185, 93.187, 93.189, 93.191 and the map at the end of the subpart).

Issued in Washington DC, on February 24, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–4715 Filed 3–1–93; 8:45 am]

BILLING CODE 4910–13–M

federal register

Tuesday
March 2, 1993

Part VI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 22, 36 and 52
Federal Acquisition Regulation; Issuance of Final Rule to Implement Executive Order 12836

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22, 36, and 52

[FAC 90–17]

Federal Acquisition Regulation; Issuance of Final Rule To Implement Executive Order 12836

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are issuing a final rule that eliminates two interim rules published in the Federal Register at 57 FR 55470, November 25, 1992, and 57 FR 20372, May 12, 1992.

FAR subpart 22.5, Open Bidding on Federal Construction Contracts, and the clause at FAR 52.222–5 are removed. They were published on an interim basis to implement Executive Order 12818 of October 23, 1992.

FAR subpart 22.15, Notification of Employee Rights Concerning Payment of Union Dues or Fees, and the clause at FAR 52.222–18 are also removed. They were published on an interim basis to implement Executive Order 12800 of April 13, 1992.

EFFECTIVE DATE: March 2, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb at (202) 501–4547 in reference to Executive Order 12818, FAR case 92–300, or Mr. Jack O'Neill at (202) 501–3856 in reference to Executive Order 12800, FAR case 92–608.

For general information, contact the FAR Secretariat, room 4037, GSA Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–17, Implementation of Executive Order 12836.

SUPPLEMENTARY INFORMATION:

A. Background

On February 1, 1993, President Clinton signed Executive Order 12836, Revocation of Certain Executive Orders Concerning Federal Contracting. Section 1 of Executive Order No. 12836 revoked Executive Order No. 12818 of October 23, 1992 (prohibiting the use of project agreements on Federal construction contracts), and Executive Order No. 12800 of April 13, 1992 (requiring Federal contractors to post a notice that workers are not required to join unions). Executive Orders 12818 and 12800 were deemed to not be in the public interest.

B. Regulatory Flexibility Act

FAR Case 92–608 and FAR Case 92–300

This final rule will not have a significant economic impact on a substantial number of small entities because it is a deletion of two interim rules that did not have a significant economic impact on the same entities.

C. Paperwork Reduction Act

FAR Case 92–300

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

FAR Case 92–608

Paperwork collection under the interim rule was approved under the Office of Management and Budget clearance number 9000–0127. Inasmuch as the interim rule is being deleted in its entirety, the paperwork clearance is no longer necessary.

List of Subjects in 48 CFR Parts 22, 36, and 52

Government procurement.

Dated: February 24, 1993.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition Policy

Federal Acquisition Circular

Number 90–17

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90–17 is effective March 2, 1993.

Dated: February 11, 1993.

Eleanor R. Spector,

Director, Defense Procurement, DOD.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy, GSA.

Walker Lee Evey,

Acting Associate Administrator for Procurement, NASA.

Accordingly, the interim rules (FAR cases 92–608, and 92–300) published at 57 FR 20372, May 12, 1992, and 57 FR 55470, November 25, 1992, are deleted.

1. The authority citation for 48 CFR parts 22, 36, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.5 [Removed]

2. Subpart 22.5, consisting of sections 22.501 through 22.507, is removed and reserved.

22.15 [Removed]

3. Subpart 22.15, consisting of sections 22.1500 through 22.1509, is removed.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

4. Section 36.101 is amended at the end of paragraph (a) by removing the parenthetical.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.222–5 [Removed]

5. Section 52.222–5 is removed and reserved.

52.222–18 [Removed]

6. Section 52.222–18 is removed and reserved.

[FR Doc. 93–4675 Filed 3–1–93; 8:45 am]

BILLING CODE 6820–34–M

federal register

Tuesday
March 2, 1993

Part VII

Environmental Protection Agency

40 CFR Part 300
Notification of Policy Change;
Categorization of Superfund Sites

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-4561-5]

Notification of Policy Change; Categorization of Superfund Sites

AGENCY: Environmental Protection Agency.

ACTION: Policy change.

SUMMARY: In this document, the Environmental Protection Agency (EPA) is introducing the Superfund Construction Completion List (CCL). EPA is also categorizing or recategorizing a number of present or former National Priority List (NPL) sites on the CCL. The CCL contains 155 sites and publishes these in one place to show Superfund progress. EPA is taking this step to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities.

EFFECTIVE DATE: March 2, 1993.

FOR FURTHER INFORMATION CONTACT: Hugo Paul Fleischman, State Requirements Section (5203G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; (703) 603–8769. An alternative contact is the Superfund Hotline; 1–800–424–9346 (TDD 800–553–7672), or in the Washington, DC, area, (703) 920–9810 (TDD 703–486–3323)

SUPPLEMENTARY INFORMATION:

A. Background

The National Priorities List (NPL) is appendix B to 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA promulgated the NPL pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.*, as amended. The NCP lets EPA categorize releases on the NPL or delete sites from the NPL when such action is appropriate. This notice describes changes to the process for categorizing sites previously defined in the preamble to the 1990 revisions to the NCP (55 FR 8666, 8699–8700), and subsequent guidance (See 56 FR 66601, December 24, 1991, and OSWER Directive 9320.2–3C, February 19, 1992).

B. Notice of Policy Change

Construction Completion List Introduced

The CCL is a compilation of sites presently or formerly on the NPL. Sites qualify for the CCL when:

(1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved;

(2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or

(3) The site qualifies for deletion from the NPL. See 40 CFR 300.425(e).

Sites that have been deleted from the NPL are included on the CCL, with the year of deletion noted. However, deleted sites will not qualify for the CCL if physical construction remains to be conducted under another statutory authority.

The CCL is simply a mechanism for better communicating Superfund progress to the public. Inclusion of an NPL site on the CCL does not have any legal significance. The CCL will be published periodically in the **Federal Register**. The CCL is not a rulemaking document like the NPL, so it will not be included in the Code of Federal Regulations (CFR).

Documentation

Each site on the CCL has a preliminary, interim, or final Close Out Report (COR); a Record of Decision (ROD) requiring no further construction; or, documentation showing deletion from the NPL. A "preliminary COR" documents the completion of physical construction at a site; at these sites the final cleanup levels or other requirements specified in the ROD may not yet have been achieved. An "interim COR" documents the completion of construction and the Operational and Functional periods at long-term remedial action sites (e.g., ground water restoration actions). The interim COR is being phased out and will not be required in the future. A "final COR" documents the achievement of all cleanup levels and other requirements related to site cleanup. A ROD may be used to document construction completion when no additional response is necessary.

Routine Adjustments

Work is expected to continue at many sites on the CCL until final ROD requirements are attained and the site can be deleted from the NPL. Also, routine adjustments and modifications to a constructed remedy can be expected, but do not affect a site's status on the CCL. Examples of adjustments or modifications include the drilling of additional extraction wells, modifications to unit processes at ground water treatment plants, and dismantling and removing on-site remediation facilities.

C. Notice of Categorization

On January 16, 1992 (57 FR 1872), EPA announced the inclusion of 25 sites in the Construction Completion category of the NPL. The CCL consists of those 25 sites, plus 130 sites added today, for a total of 155 sites. Sites added today are marked with an asterisk (*). The CCL includes 47 sites that have been deleted from the NPL.

Construction Completion List

1. A&F Material Reclaiming, Inc., Greenup, Illinois. *
2. Action Anodizing, Plating, & Polishing Corp., Copiague, New York. *
3. Adrian Municipal Well Field, Adrian, Minnesota. *
4. Advanced Micro Devices, Inc. (Building 915), Sunnyvale, California. (LTRA) *
5. Aidex Corporation, Council Bluffs, Iowa. *
6. Alpha Chemical, Galloway, Florida.
7. A.L. Taylor (Valley of Drums), Brooks, Kentucky.
8. Arkansas City Dump, Arkansas City, Kansas. *
9. Arrcom (Drexler Enterprises), Rathdrum, Idaho. *
10. Arsenic Trioxide Site, Southeastern North Dakota. *
11. Bayou Sorrel Site, Bayou Sorrel, Louisiana. *
12. Beachwood/Berkeley Wells, Berkley Township, New Jersey. (Deleted 1992) *
13. BEC Trucking, Vestal, New York. (Deleted 1992) *
14. Belvidere Municipal Landfill, Belvidere, Illinois. *
15. Big River Sand, Wichita, Kansas. (Deleted 1992)
16. BioClinical Laboratories, Inc., Bohemia, New York. *
17. Boise Cascade/Onan Corp./Medtronics, Inc., Fridley, Minnesota. *
18. Bowers Landfill, Circleville, Ohio. *
19. Brown Wood Preserving, Live Oak, Florida. *
20. Bruin Lagoon, Bruin Borough, Pennsylvania. *
21. Cannon Engineering Corporation, Bridgewater, Massachusetts. (LTRA)
22. Cecil Lindsey, Newport, Arkansas. (Deleted 1989) *
23. Celtor Chemical Works, Hoopa, California.
24. Cemetery Dump, Rose Center, Michigan.
25. Charlevoix Municipal Well, Charlevoix, Michigan. *
26. Chem-Dyne, Hamilton, Ohio. (LTRA) *
27. Chemical Metals Industries, Inc., Baltimore, Maryland. (Deleted 1982) *
28. Chemical & Minerals Reclamation, Cleveland, Ohio. (Deleted 1982) *
29. Chisman Creek, York County, Virginia. (LTRA)
30. Cimarron Mining Corp., Carrizozo, New Mexico. (LTRA) *
31. Compass Industries (Avery Drive) (once listed as Compass Industries), Tulsa, Oklahoma. *

32. Conservation Chemical Company, Kansas City, Missouri. (LTRA)
33. Cooper Road, Voorhees Township, New Jersey.(Deleted 1989) *
34. CTS Printex, Inc., Mountain View, California. (LTRA) *
35. Crystal City Airport, Crystal City, Texas.
36. Darling Hill Dump, Lyndon, Vermont. *
37. Del Norte Pesticide Storage, Crescent City, California. (LTRA) *
38. Distler Farm, Jefferson County, Kentucky. (LTRA) *
39. Eau Claire Municipal Well Field, Eau Claire, Wisconsin. (LTRA) *
40. Enterprise Avenue, Philadelphia, Pennsylvania. (Deleted 1986) *
41. Fairchild Semiconductor Corp. (South San Jose Plant) (once listed as Fairchild Camera & Instrument Corp. (South San Jose Plant)), South San Jose, California. (LTRA) *
42. Firestone Tire & Rubber Co. (Salinas Plant), Salinas, California. (LTRA) *
43. FMC Corp. (Fridley Plant), Fridley, Minnesota. (LTRA) *
44. Friedman Property (once listed as Upper Freehold site), Upper Freehold Township, New Jersey. (Deleted 1986) *
45. Fulbright Landfill, Springfield, Missouri. *
46. General Mills/Henkel Corp., Minneapolis, Minnesota. (LTRA) *
47. Gold Coast Oil Corporation, Miami, Florida. (LTRA) *
48. Grand Traverse Overall Supply Co.,Greilickville, Michigan. *
49. Gratiot County Golf Course, St. Louis, Michigan. (Deleted 1983) *
50. Harris (Farley Street), Houston, Texas. (Deleted 1988) *
51. Henderson Road, Upper Merion Township, Pennsylvania. (LTRA) *
52. Highlands Acid Pit, Highlands, Texas. *
53. Hydro-Flex Inc., Topeka, Kansas. *
54. IMC (Terre Haute East Plant), Terre Haute, Indiana. (Deleted 1991) *
55. Independent Nail, Beaufort, South Carolina.
56. Industrial Waste Control, Fort Smith, Arkansas. *
57. Intel Corp. (Santa Clara III), Santa Clara, California. (LTRA) *
58. Intel Magnetics, Santa Clara, California. (LTRA) *
59. Intersil Inc./Siemens Components, Cupertino, California. (LTRA) *
60. Jibboom Junkyard, Sacramento, California.(Deleted 1991) *
61. John Deere (Ottumwa Works Landfills), Ottumwa, Iowa. *
62. Johns Manville Corp., Waukegan, Illinois. *
63. Johns' Sludge Pond, Wichita, Kansas. (Deleted 1992) *
64. Katonah Municipal Well, Bedford, New York. (LTRA) *
65. Krysowaty Farm, Hillsborough, New Jersey.(Deleted 1989) *
66. LaBounty Site, Charles City, Iowa.
67. Lakewood Site, Lakewood, Washington. (LTRA) *
68. Lansdowne Radiation, Lansdowne, Pennsylvania. (Deleted 1991) *
69. Lawrence Todtz Farm, Camanche, Iowa.
70. Lee's Lane Landfill, Louisville, Kentucky.
71. Leetown Pesticide, Leetown, West Virginia. *
72. Lehigh Electric & Engineering Co., Old Forge Borough, Pennsylvania. (Deleted 1986) *
73. Lehillier/Mankato Site, Lehillier/Mankato, Minnesota. (LTRA) *
74. Luminous Products, Inc., Athens, Georgia. (Deleted 1982) *
75. M&T De Lisa Landfill, Asbury Park, New Jersey. (Deleted 1991) *
76. Matthews Electroplating, Roanoke County, Virginia. (Deleted 1989) *
77. McKin Co., Gray, Maine. (LTRA) *
78. Metal Working Shop, Lake Ann, Michigan. *
79. Mid-South Wood Products, Mena, Arkansas. (LTRA)
80. Middletown Road Dump, Annapolis, Maryland.(Deleted 1988) *
81. Morris Arsenic Dump, Morris, Minnesota. (Deleted 1986) *
82. Mountain View Mobile Home Estates (once listed as Globe) Globe, Arizona. (Deleted 1988) *
83. Mowbray Engineering Company, Greenville, Alabama.
84. New Castle Spill (once listed as TRIS Spill), New Castle County, Delaware. *
85. New Castle Steel, New Castle County, Delaware. (Deleted 1989) *
86. New Lyme Landfill, New Lyme, Ohio. (LTRA) *
87. Newport Dump, Newport, Kentucky.
88. Northern Engraving Co., Sparta, Wisconsin.
89. Novaco Industries, Temperance, Michigan. *
90. Nutting Truck & Caster Co., Faribault, Minnesota.(LTRA) *
91. Old Mill (once listed as Rock Creek/Jack Webb), Rock Creek, Ohio. (LTRA)
92. Ordot Landfill, Guam. *
93. Pagano Salvage, Los Lunas, New Mexico. (Deleted 1992)
94. Parramore Surplus, Mount Pleasant, Florida.(Deleted 1989) *
95. PCB Spills, 243 miles of road, North Carolina. (Deleted 1986) *
96. PCB Warehouse, Saipan, Guam. (Deleted 1986) *
97. PCB Wastes, Pacific Trust Territory. (Deleted 1986) *
98. Pesses Chemical Co., Fort Worth, Texas. *
99. Pesticide Lab (Yakima), Yakima, Washington. *
100. Petersen Sand & Gravel, Belvidere, Illinois.(Deleted 1991) *
101. Pioneer Sand Co., Warrington, Florida. *
102. Plymouth Harbor/Cannon Engineering Corp. (once listed as Plymouth Harbor/Cordage), Plymouth, Massachusetts. *
103. Poer Farm, Zionsville, Indiana. (Deleted 1991) *
104. Pomona Oaks Residential Wells, Galloway Township, New Jersey. *
105. Presque Isle, Erie, Pennsylvania. (Deleted 1989) *
106. Reeser's Landfill, Upper Macungie Township, Pennsylvania. (Deleted 1990) *
107. Republic Steel Corp. Quarry, Elyria, Ohio. *
108. Revere Textile Prints Corps., Sterling, Connecticut. *
109. Rose Park Sludge Pit, Salt Lake City, Utah. *
110. Route 940 Drum Dump (once listed as Pocono Summit), Pocono Summit, Pennsylvania. *
111. SCRDI Dixiana, Cayce, South Carolina. (LTRA) *
112. Sealand Limited, Mount Pleasant, Delaware. *
113. Silver Mountain Mine, Loomis, Washington. *
114. Sola Optical USA, Inc., Petaluma, California. (LTRA) *
115. Spectra-Physics, Inc., Mountain View, California.(LTRA) *
116. Stewco, Inc., Waskom, Texas. *
117. Suffern Village Well Field, Suffern, New York. *
118. Suffolk City Landfill, Suffolk, Virginia. *
119. Sylvester, Nashua, New Hampshire. (LTRA) *
120. Synertek, Inc. (Building 1), Santa Clara, California. (LTRA) *
121. Taputimu Farm, Island of Tutila, American Samoa. (Deleted 1986) *
122. Taylor Borough Dump, Taylor Borough, Pennsylvania.
123. Teledyne Semiconductor, Mountain View, California.(LTRA) *
124. Toftdahl Drums, Brush Prairie, Washington.(Deleted 1988) *
125. Town Garage/Radio Beacon (once listed as Holton Circle Ground Water Contamination), Londonderry, New Hampshire. *
126. Triana/Tennessee River (once listed as Triana (Redstone) Arsenal), Limestone/Morgan, Alabama. (LTRA)
127. Triangle Chemical, Bridge City, Texas.
128. Tri-City Oil Conservationist, Inc., Tampa, Florida. (Deleted 1988) *
129. Tri-State Plating, Columbus, Indiana. (LTRA) *
130. Twin Cities Air Force Reserve Base (Small Arms Range Landfill), Minneapolis, Minnesota. *
131. Union Scrap Iron and Metal, Minneapolis, Minnesota. (Deleted 1991) *
132. United Chrome Products, Inc., Corvallis, Oregon. (LTRA)
133. Varsol Spill (once listed as part of Biscayne Aquifer), Miami, Florida. (Deleted 1988) *
134. Velsicol Chemical Corp. (Illinois), Marshall, Illinois. *
135. Vineland State School, Vineland, New Jersey. *
136. Voortman Farm, Upper Saucon Township, Pennsylvania. (Deleted 1989) *
137. Wade (ABM) (once listed as ABM-Wade), Chester, Pennsylvania. (Deleted 1989) *
138. Walcotte Chemical Co. Warehouses, Greenville, Mississippi. (Deleted 1982) *
139. Washington County Landfill, Lake Elmo, Minnesota. *
140. Wedzeb Enterprises, Lebanon, Indiana. (Deleted 1991) *
141. Western Processing Co., Inc., Kent, Washington. (LTRA)

142. Western Sand & Gravel, Burrillville, Rhode Island. *
143. Westline, Westline, Pennsylvania. (Deleted 1992)
144. Wheeler Pit, La Prairie Township, Wisconsin. *
145. Whitehall Wells, Whitehall, Michigan. (Deleted 1991) *
146. Whitewood Creek, Whitewood, South Dakota. *
147. Whittaker Corp., Minneapolis, Minnesota. (LTRA) *
148. Wide Beach Development, Brant, New York. *
149. Wildcat Landfill, Dover, Delaware. *
150. Wilson Concepts of Florida, Inc.,Pompano Beach, Florida. *
151. Windom Dump, Windom, Minnesota. (LTRA) *
152. Witco Chemical Corp. (Oakland Plant),Oakland, New Jersey. *
153. Woodbury Chemical Co., Commerce City, Colorado. *
154. Woodbury Chemical Co. (Princeton Plant),Princeton, Florida. *
155. Yakima Plating Co., Yakima, Washington. *

Dated: February 17, 1993.

Richard J. Guimond,

Assistant Surgeon General, USPHS, Acting Assistant Administrator.

[FR Doc. 93–4773 Filed 3–1–93; 8:45 am]

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Tuesday, March 2, 1993

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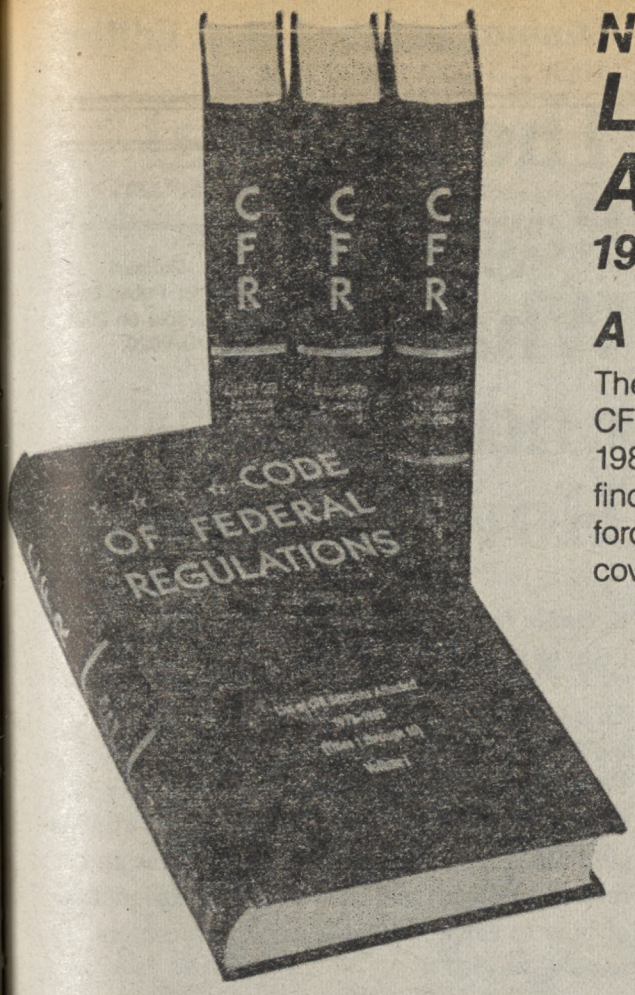
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To designated February 21 through February 27, 1993, as "National FFA Organization Awareness Week". (Feb. 25, 1993; 107 Stat. 31; 2 pages)

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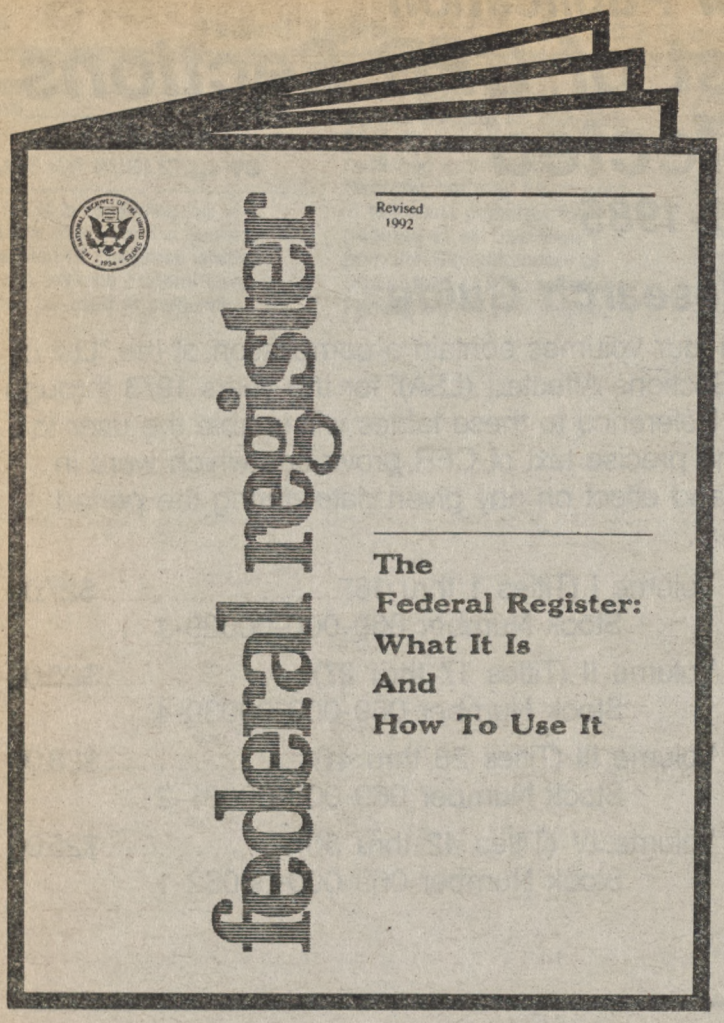
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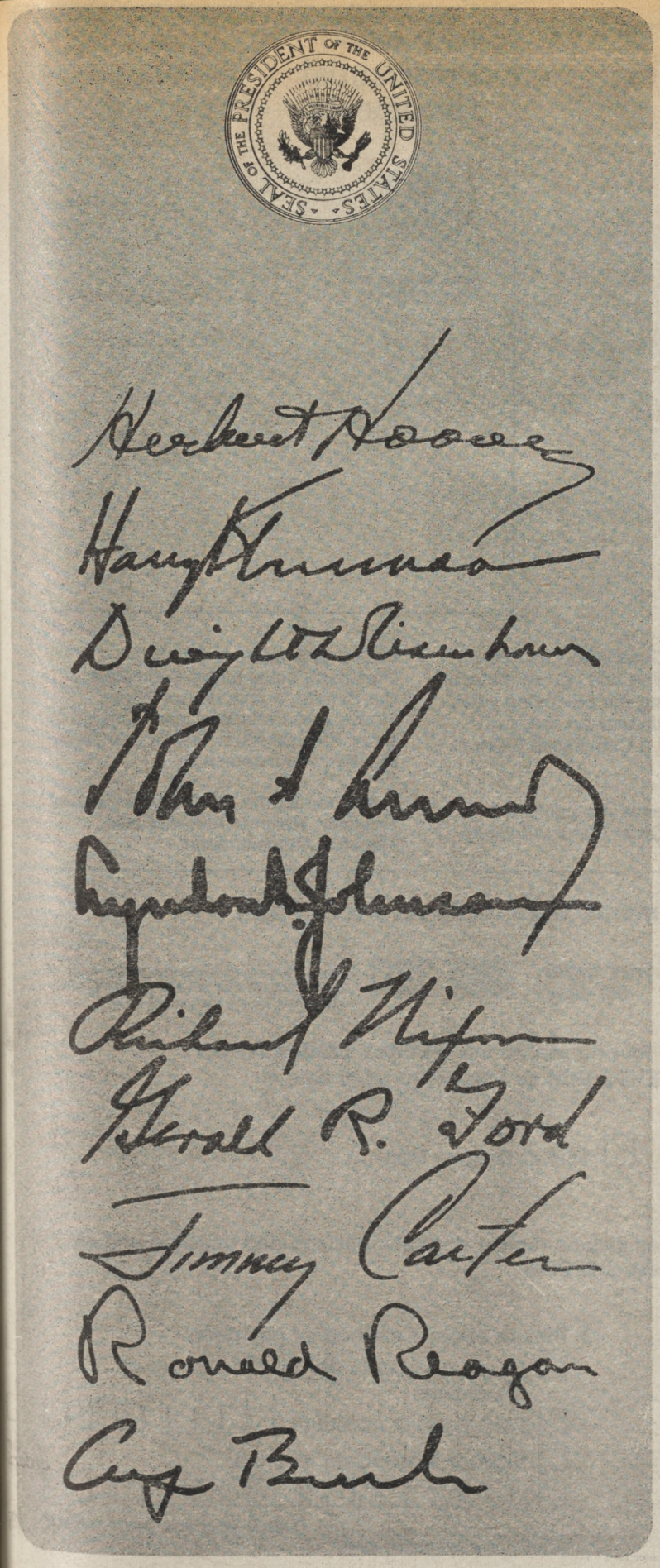
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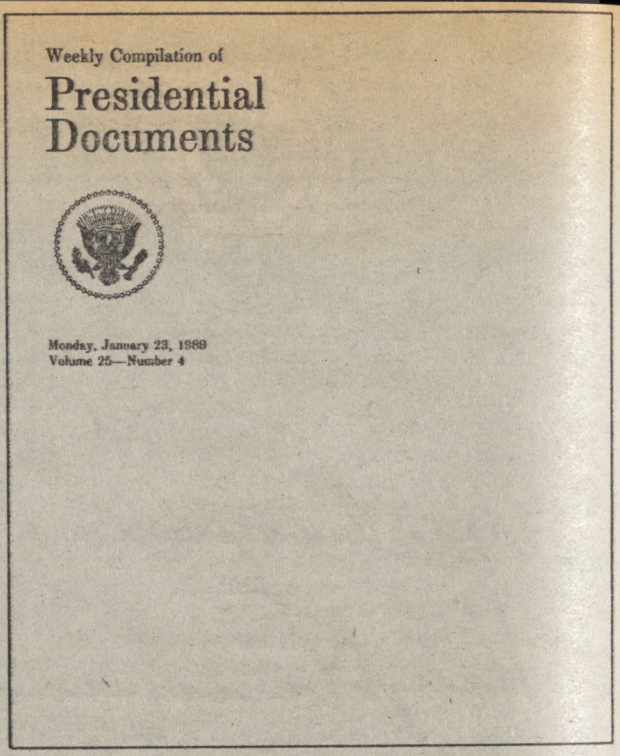
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