AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

12–13–94
Vol. 59 No. 238

federal register

Tuesday
December 13, 1994

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)

12–13–94
Vol. 59 No. 238
Pages 64109–64280

Tuesday
December 13, 1994

federal register

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.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

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.

The **Federal Register** is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. It is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. The annual subscription fee for a single workstation is $375. Six-month subscriptions are available for $200 and one month of access can be purchased for $35. Discounts are available for multiple-workstation subscriptions. To subscribe, Internet users should telnet to swais.access.gpo.gov and login as newuser (all lower case); no password is required. Dial-in users should use communications software and modem to call (202) 512–1661 and login as swais (all lower case); no password is required; at the second login prompt, login as newuser (all lower case); no password is required. Follow the instructions on the screen to register for a subscription for the **Federal Register** Online via *GPO Access*. For assistance, contact the *GPO Access* User Support Team by sending Internet e-mail to help@eids05.eids.gpo.gov, or a fax to (202) 512–1262, or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $494, or $544 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $433. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 59 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806

Online:

Telnet swais.access.gpo.gov, login as newuser <enter>, no password <enter>; or use a modem to call (202) 512–1661, login as swais, no password <enter>, at the second login as newuser <enter>, no password <enter>.

Assistance with online subscriptions	202–512–1530

Single copies/back copies:

Paper or fiche	512–1800
Assistance with public single copies	512–1803

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register

Vol. 59, No. 238

Tuesday, December 13, 1994

Agency for International Development
NOTICES
Agency information collection activities under OMB review, 64212–64213
Meetings:
Community Colleges Task Force, 64213

Agriculture Department
See Animal and Plant Health Inspection Service
See Forest Service

Animal and Plant Health Inspection Service
NOTICES
Environmental statements; availability, etc.:
Genetically engineered organisms; field test permits—
Carrot plants, etc., 64187
Nonregulated status determinations—
Upjohn Co. ZW–20 virus resistant squash, 64187–64189

Bonneville Power Administration
NOTICES
Floodplain and wetlands protection; environmental review determinations; availability, etc.:
Amazon/Willow Creek Project, OR, 64199–64200

Centers for Disease Control and Prevention
NOTICES
Meetings:
Vital and Health Statistics National Committee, 64207

Coast Guard
PROPOSED RULES
Drawbridge operations:
Louisiana, 64178–64180
NOTICES
Meetings:
New York Harbor Traffic Management Advisory Committee, 64230–64231

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See Patent and Trademark Office

Defense Department
See Defense Logistics Agency
See Uniformed Services University of the Health Sciences
PROPOSED RULES
Acquisition regulations:
Small business and small disadvantaged business concerns, 64185–64186
Federal Acquisition Regulation (FAR):
Cost principle provisions; implementation, 64268–64270

Defense Logistics Agency
PROPOSED RULES
Acquisition regulations:
Small business and small disadvantaged business concerns, 64185–64186
NOTICES
Privacy Act:
Computer matching programs, 64196–64198

Education Department
NOTICES
Agency information collection activities under OMB review, 64198

Energy Department
See Bonneville Power Administration
See Energy Research Office
See Federal Energy Regulatory Commission
NOTICES
Grant and cooperative agreement awards:
Custom Electronics, Inc., 64198–64199
University of—
Central Florida, 64199
Powerplant and industrial fuel use; new electric powerplant coal capability:
Self-certification filings—
LSP-Whitewater L.P., 64199

Energy Research Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Electron beam irradiation of medical waste; commercial exploitation, 64203–64204
Energy biosciences program, 64204–64205

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
California, 64130–64133
Montana, 64133–64139
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Montana, 64180

Equal Employment Opportunity Commission
NOTICES
Senior Executive Service:
Performance Review Board; membership, 64205

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
Beech et al., 64112–64120
PROPOSED RULES
Air carrier certification and operations:
Air carrier and commercial operator training programs, 64272–64280

Federal Communications Commission
RULES
Personal communications services:
Licenses in 2 GHz band (broadband PCS)
Competitive bidding, 64159–64162
NOTICES
Meetings; Sunshine Act, 64236
Rulemaking proceedings; petitions filed, granted, denied, etc., 64205

Federal Emergency Management Agency
RULES
Flood elevation determinations:
Maryland et al., 64156–64157
North Carolina et al., 64158–64159
Ohio, 64157–64158
PROPOSED RULES
Flood elevation determinations:
Indiana et al., 64180–64185

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Midwest Power Systems Inc. et al., 64200–64201
Natural Gas Policy Act:
State jurisdictional agencies tight formation recommendations; preliminary findings—
Louisiana Conservation Office, 64201–64202
Applications, hearings, determinations, etc.:
El Paso Natural Gas Co., 64202
National Fuel Gas Supply Corp., 64202
Northwest Pipeline Corp., 64202–64203
Texas Gas Transmission Corp., 64203

Federal Highway Administration
RULES
Highway safety programs; effectiveness determinations:
Speed control; priority program area, 64120–64128

Federal Maritime Commission
NOTICES
Applications, hearings, petitions, etc.:
Trans-Atlantic Agreement, 64205

Federal Reserve System
PROPOSED RULES
International banking operations (Regulation K):
Evaluation criteria for foreign bank operations in United States, 64171–64173
NOTICES
Meetings; Sunshine Act, 64236
Applications, hearings, determinations, etc.:
Crestar Financial Corp., 64205–64206
IBW, Inc., et al., 64206
Keystone Financial, Inc., 64206

Fish and Wildlife Service
NOTICES
Environmental statements; availability, etc.:
Sport fish and wildlife restoration programs; Federal aid, 64211–64212

Food and Drug Administration
RULES
Human drugs:
Pediatric use subsection of professional labeling requirements; revision, 64240–64250
NOTICES
Food additive petitions:
Roquette America, Inc., 64207–64208

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Delaware—
Zeneca Inc.; pharmaceutical manufacturing plant, 64191

Forest Service
NOTICES
Environmental statements; availability, etc.:
Boise and Payette National Forests, ID, 64189–64191

General Services Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Cost principle provisions; implementation, 64268–64270
NOTICES
Senior Executive Service:
Performance Review Board; membership, 64206–64207

Geological Survey
NOTICES
Grants and cooperative agreements; availability, etc.:
National Digital Cartographic Data Base; topographic maps for entry, 64212

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
See Public Health Service

Health Care Financing Administration
RULES
Medicaid and medicare:
Hospitals; participation conditions, 64141–64153
Medicare:
Hospital inpatient prospective payment systems and 1995 FY rates
Correction, 64153–64156

Health Resources and Services Administration
See Public Health Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Podiatric primary care residency training programs, 64208–64210

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Public and Indian housing—
Designated housing for disabled families program, 64252–64266

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Land Management Bureau
See Surface Mining Reclamation and Enforcement Office

International Development Cooperation Agency
See Agency for International Development

International Trade Administration
NOTICES
Antidumping:
Disposable pocket lighters from—
China, 64191–64195
Export trade certificates of review, 64195–64196
Applications, hearings, determinations, etc.:
Arizona State University, 64196

Labor Department
See Occupational Safety and Health Administration

Land Management Bureau
RULES
Public land orders:
Montana, 64159
NOTICES
Environmental statements; availability, etc.:
Little Rock Mine, NM, 64210–64211
Oil and gas leases
New Mexico, 64211
Realty actions; sales, leases, etc..
Montana; correction, 64211

National Aeronautics and Space Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Cost principle provisions; implementation, 64268–64270
NOTICES
Agency information collection activities under OMB review, 64219–64221

National Archives and Records Administration
NOTICES
Meetings:
Archival still photographs, aerial film, maps, and drawings; ordering reproductions—
Researchers, 64219
Vendors, 64219

National Highway Traffic Safety Administration
RULES
Highway safety programs; effectiveness determinations:
Speed control; priority program area, 64120–64128
Motor vehicle safety standards:
Nonconforming vehicles importation—
Certification; registered importers, 64169–64170
Motor vehicle theft prevention standard:
Multipurpose passenger vehicles and light-duty trucks; designation as high theft lines, 64164–64169
Organization, functions, and authority delegations:
Associate Administrator for Rulemaking, 64162–64164
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
Chrysler Corp., 64231–64232
Uniroyal Goodrich Tire Co., 64232

Nuclear Regulatory Commission
NOTICES
Meetings; Sunshine Act, 64236
Applications, hearings, determinations, etc.:
Georgia Power Co. et al., 64221
Illinois Power Co. et al., 64221–64222
Philadelphia Electric Co. et al., 64222–64223
Power Authority of State of New York, 64223–64225

Occupational Safety and Health Administration
PROPOSED RULES
Shipyard employment safety and health standards:
Personal protective equipment
Meeting, 64173–64176
NOTICES
Grants and cooperative agreements; availability, etc.:
OSHA Training Institute education centers, 64213–64218

Patent and Trademark Office
NOTICES
Remeron; interim patent term extension, 64196

Presidential Documents
ADMINISTRATIVE ORDERS
Military personnel serving in NATO headquarters; waiver of funding prohibition in National Defense Authorization Act (Presidential Determination No. 95–4 of November 12, 1994), 64109

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
RULES
Grants:
National Institute of Environmental Health Sciences hazardous waste worker training program, 64139–64141

Resolution Trust Corporation
RULES
Affordable housing disposition program, 64111–64112

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 64225–64227

Small Business Administration
NOTICES
Agency information collection activities under OMB review, 64227

State Department
NOTICES
Meetings:
International Telecommunications Advisory Committee, 64227–64228

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Indiana, 64128–64130
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Missouri, 64176–64178

Tennessee Valley Authority
NOTICES
Environmental statements; availability, etc.:
Land Between the Lakes, KY and TN; natural resources management plan, 64228–64230

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See National Highway Traffic Safety Administration

Uniformed Services University of the Health Sciences
NOTICES
Meetings; Sunshine Act, 64236–64237

United States Information Agency
NOTICES
Grants and cooperative agreements; availability, etc.:
Binational teacher training project, 64232–64235

Meetings:
Public Diplomacy, U.S. Advisory Commission, 64235

Veterans Affairs Department
NOTICES
Medical care reimbursement rates; 1995 FY, 64235

Separate Parts In This Issue

Part II
Department of Health and Human Services, Food and Drug Administration, 64240–64250

Part III
Department of Housing and Urban Development, 64252–64266

Part IV
Department of Defense, General Services Administration, National Aeronautics and Space Administration, 64268–64270

Part V
Department of Transportation, Federal Aviation Administration, 64272–64280

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR
Administrative Orders:
Presidential Determinations:
November 12, 1994.....64109

12 CFR
1609.....64111
Proposed Rules:
211.....64171

14 CFR
39.....64112
Proposed Rules:
121.....64272
135.....64272

21 CFR
201.....64240

23 CFR
1205.....64120

29 CFR
Proposed Rules:
1915.....64173

30 CFR
914.....64128
Proposed Rules:
925.....64176

33 CFR
Proposed Rules:
117.....64178

40 CFR
52 (4 documents) 64130, 64131, 64132, 64133
Proposed Rules:
52.....64180

42 CFR
65.....64139
405.....64141
412 (2 documents) 64141, 64153
413.....64153
482.....64141

43 CFR
Public Land Orders:
7106.....64159

44 CFR
65 (2 documents) 64156, 64157
67.....64158
Proposed Rules:
67.....64180

47 CFR
1.....64159

48 CFR
Proposed Rules:
31.....64268
37.....64268
42.....64268
52.....64268
219.....64185
252.....64185
5452.....64185

49 CFR
501.....64162
541.....64164
567.....64169

Federal Register
Vol. 59, No. 238
Tuesday, December 13, 1994

Presidential Documents

Title 3—

The President

Presidential Determination No. 95–4 of November 12, 1994

Determination To Waive the Funding Prohibition in Section 1404(f)(3)(A) of the National Defense Authorization Act for Fiscal Year 1995 in the Case of U.S. Military Personnel Serving in NATO Headquarters Positions

Memorandum for the Secretary of Defense

Pursuant to the authority provided in section 1404(f)(3)(A) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337) (the "Act"), I hereby determine that the limitation in section 1404(f)(2) of the Act is waived in the case of U.S. military personnel serving in NATO headquarters positions, including the following:

(1) All U.S. military personnel assigned to or performing duties at NATO Headquarters in Brussels, Belgium.

(2) The Commanders and all U.S. military personnel assigned to or performing duties at the staffs of the Supreme Allied Commander, Europe or the Supreme Allied Commander, Atlantic.

(3) The Commanders and all U.S. military personnel assigned to or performing duties at the staff of the Commander in Chief, Allied Forces Southern Europe.

(4) Those U.S. Commanders and U.S. military personnel assigned to or performing duties at subordinate NATO headquarters staffs of the above listed staffs.

(5) Those U.S. Commanders and other U.S. military personnel assigned to or performing duties at other Allied Forces Europe staffs, such as Commander in Chief, Allied Forces Central Europe.

You are authorized and directed to report this determination to the Congress and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, November 12, 1994

[FR Doc. 94–30769
Filed 12–9–94; 3:31 pm]
Billing code 5000–04–M

Rules and Regulations

Federal Register
Vol. 59, No. 238
Tuesday, December 13, 1994

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

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.

RESOLUTION TRUST CORPORATION

12 CFR Part 1609

RIN 3205–AA03

Affordable Housing Disposition Program

AGENCY: Resolution Trust Corporation.

ACTION: Final rule.

SUMMARY: The Resolution Trust Corporation (RTC) is adopting the interim final rule which was published on October 19, 1994, as a final rule without change. The rule provides policies and procedures, required under subsections (c)(3) of section 21A of the Federal Home Loan Bank Act, for the marketing of properties under the Affordable Housing Disposition Program (AHDP). The rule is necessary because the Resolution Trust Corporation Refinancing, Restructuring and Improvement Act of 1991 (Refinancing Act), the Departments of Veterans Affairs, Housing and Urban Development and Independent Agencies Appropriations Act of 1992 (1992 Appropriations Act), the Housing and Community Development Act of 1992 (1992 Housing Act) and the Resolution Trust Corporation Completion Act of 1993 (Completion Act) changed the manner in which the RTC is to identify, market and sell certain properties under the AHDP. This rule also clarifies certain policies of the RTC regarding the disposition of assets in the AHDP and reflects certain comments received with respect to a previously published interim final rule. By implementing the statutory changes required by the Refinancing Act, the 1992 Appropriations Act, the 1992 Housing Act, and the Completion Act, and clarifying certain provisions of the AHDP and making the other changes set forth herein, these regulations will enhance the availability and affordability of residential real property for very-low income, lower-income and moderate-income families and individuals.

EFFECTIVE DATE: This final rule is effective January 12, 1995.

FOR FURTHER INFORMATION CONTACT: Stephen S. Allen, Director, Affordable Housing Disposition Program, (202) 416–7348, or Barry Wides, Deputy Director, Affordable Housing Disposition Program, (202) 416–7138. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Regulatory Procedure

On August 31, 1990 (55 FR 35564), the RTC published a final rule establishing the procedures to be followed by the RTC in connection with the sale of eligible residential properties to qualifying purchasers under the AHDP. Those procedures were established in accordance with the affordable housing provisions of section 21A(c) of the Federal Home Loan Bank Act, as amended be section 501 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 1441a).

On May 6, 1992 (57 FR 19500), the RTC published an interim final rule and requested comments (May 6, 1992 Interim Rule). That publication implemented some of the statutory changes made to the AHDP by the Refinancing Act and clarified the RTC's policies on a number of issues relating to the disposition of assets in the AHDP.

On June 12, 1992 (57 FR 24937), the RTC published an interim statement of policy titled Lower Income Occupancy Requirements for Bulk Sales in the Multifamily Affordable Housing Disposition Program. That publication provided that when more than one multifamily property is purchased from the RTC under the AHDP, the RTC will require that not less than 15 percent of the dwelling units in each separate multifamily property purchased in bulk be made available to low or very-low income individuals. The final statement of policy was published on August 19, 1992 (57 FR 37581) and reflected no changes from the interim statement of policy.

On October 19, 1994, (59 FR 52669) the RTC published an interim Final Rule which implemented several statutory changes made to the AHDP by the Refinancing Act and not reflected in the May 6, 1992 interim final rule, implemented a number of statutory changes made to the AHDP by the enactment of the 1992 Appropriations Act, the 1992 Housing Act, and the Completion Act, and, it further clarified RTC policies relating to the disposition of assets within the AHDP.

Comments

The RTC received written comments only from the Savings and Community Bankers of America ("SCBA"). SCBA endorsed the interim final rule and suggested no changes to the rule.

Final Rule

The RTC is making no changes to the interim final rule in the adoption of the final rule. The supplementary information accompanying the interim final rule provides an explanation of 12 CFR part 1609 and the reasons for its adoption.

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, the following regulatory flexibility analysis is provided:

1. A succinct statement of the need for, and the objective of, the rule. The objective of the rule is to implement changes made to the AHDP by enactment of the 1992 Appropriations Act, the Housing Act, and the Completion Act, which establishes certain requirements for the RTC in the marketing and selling of real estate assets. The rule is needed in order to implement the requirements of the cited statutes.

2. A summary of the issues raised by public comments in response to the initial regulatory flexibility analysis, a summary of the assessment by the agency of such issue, and a statement of any changes made in the interim final rule as a result of such comments. The one public comment received by the RTC endorsed the regulations as drafted in the interim final rule. No changes were made as a result of that comment.

3. A description of each of the significant alternatives to the rule consistent with the stated objectives of applicable statutes and designed to minimize any significant economic impact of the rule on small entities which was considered by the agency, and a statement of the reasons why each one of such alternatives was rejected. The rule has no significant impact on small entities, and therefore, no

alternatives to the rule were identified or considered.

List of Subjects in 12 CFR Part 1609

Low and moderate income housing, Reporting and recordkeeping requirements. Savings associations.

Accordingly, the interim final rule revising 12 CFR part 1609 which was published at 59 FR 52671 on October 19, 1994, is adopted as a final rule without change.

By order of the Deputy and Acting Chief Executive Officer.

Dated at Washington, D.C., this 7th day of December 1994.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 94–30527 Filed 12–12–94; 8:45 am]

BILLING CODE 6714–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–204–AD; Amendment 39–9094; AD 94–25–10]

Airworthiness Directives; Beech Model 400, 400A, 400T, and MU–300–10 Airplanes, and Mitsubishi Model MU–300 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Beech Model 400, 400A, 400T, and MU–300–10 airplanes, and all Mitsubishi Model MU–300 airplanes. This action requires a revision to the Airplane Flight Manual that provides pilots with special operating procedures during icing conditions. This amendment is prompted by the results of icing tests, which demonstrated that ice accumulations on the horizontal stabilizer may cause the airplane to pitch down at certain flaps settings. The actions specified in this AD are intended to prevent uncommanded nose-down pitch at certain flap settings during icing conditions.

DATES: Effective December 28, 1994.

Comments for inclusion in the Rules Docket must be received on or before February 13, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–204–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The information concerning this amendment may be examined at the FAA, Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tina L. Miller, Aerospace Engineer, Flight Test Branch, ACE–160W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4168; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: Recently, the FAA has received the results of icing tests conducted on the horizontal stabilizer of a Beech Model 400 airplane. These icing tests, conducted in an icing wind tunnel, demonstrated that, under certain icing conditions, ice (called "runback ice") may accumulate on the horizontal stabilizer aft of the heated element on the leading edge. This accumulated ice caused the test airplane to pitch down at landing flaps set beyond 10 degrees.

After further review and evaluation of the test data, Beech has developed landing performance data for Beech Model MU–300–10 airplanes and Beech Model 400 series airplanes with flaps set at 10 degrees. These landing performance data include landing distances, landing brake energy, and maximum landing weight. (The 10-degree landing flap performance data for Mitsubishi Model MU–300 airplanes were included previously in that airplane's Airplane Flight Manual.)

Subsequent to those icing tests, the FAA received a report of tailplane icing that occurred during a maintenance flight of a Beech Model 400A airplane. The airplane's tail anti-ice/de-ice systems were turned on during this flight, which was only 15 minutes in duration, and the airplane did not go above 4,000 feet elevation. During this flight, when the flaps were extended beyond 20 degrees, the pilot noted some buffet and "stick walking," a pitch control effect in which uncommanded oscillation of the control column caused the airplane to pitch. The pilot was able to land the airplane without incident with the flaps set at 10 degrees. Subsequent investigation revealed that the horizontal stabilizer had accumulations of triangularly-shaped runback ice formations, which were approximately 2 inches in height. These runback ice formations were similar in size and shape to those used in the icing tests.

Such runback ice formations could result in an uncommanded nose-down pitch at flap settings that exceed 10 degrees.

Due to the similarity in design of the horizontal stabilizers on Beech Model 400A airplanes and Mitsubishi Model MU–300 airplanes, and Beech Model 400, 400T, and MU–300–10 airplanes, the FAA has determined that all of these airplanes may also be subject to the same unsafe condition.

Since an unsafe condition has been identified that is likely to exist or develop on other Beech Model 400, 400A, 400T, and MU–300–10 airplanes and Mitsubishi Model MU–300 airplanes and of the same type design, this AD is being issued to prevent uncommanded nose-down pitch at flap settings that exceed 10 degrees during icing conditions. This AD requires a revision to the Limitations Section and Normal Procedures Section of the FAA-approved Airplane Flight Manual (AFM), that provides pilots with special operating procedures during icing conditions. The landing performance data developed as a result of the icing tests may be used under certain conditions for Beech Model MU–300–10 airplanes and Model 400 series airplanes.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days. Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire.

Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether

additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–204–AD." The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13—[Amended]

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

94–25–10 Beech Aircraft Corporation and Mitsubishi Heavy Industries (MHI), LTD.: Amendment 39–9094. Docket 94–NM–204–AD.

Applicability: All Beech Model 400, 400A, 400T, and MU–300–10 airplanes; and all Mitsubishi Model MU–300 airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded nose-down pitch at flap settings exceeding 10 degrees during icing conditions, accomplish the following:

(a) Within 20 days after the effective date of this AD, revise the Limitations Section and Normal Procedures Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"Icing Conditions

If icing conditions are encountered during flight, no greater than 10 degrees flaps may be utilized for landing unless the following conditions are met:

1. The icing conditions were encountered for less than 10 minutes, and the Ram Air Temperature (RAT) during such encounter was warmer than −8 degrees C.

or

2. A RAT of +5 degrees C or warmer is observed during approach and landing.

If either of the above two conditions are met, 30 degrees flaps may be utilized for landing.

Otherwise,

Flaps (landing flaps setting)—10 degrees
Land Select (LAND SEL) Switch—Flaps 10 degrees

For Mitsubishi Model MU–300 airplanes: Use landing data for 10 degrees flaps from Section 6, Performance.

For Beech Model 400, 400A, 400T, or MU–300–10 airplanes: Use landing data for 10 degrees flaps from Appendix 1 of this AD."

(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, Wichita 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, Wichita ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

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

(d) This amendment becomes effective on December 28, 1994.

BILLING CODE 4910–13–U

Appendix 1 to AD 94–25–10

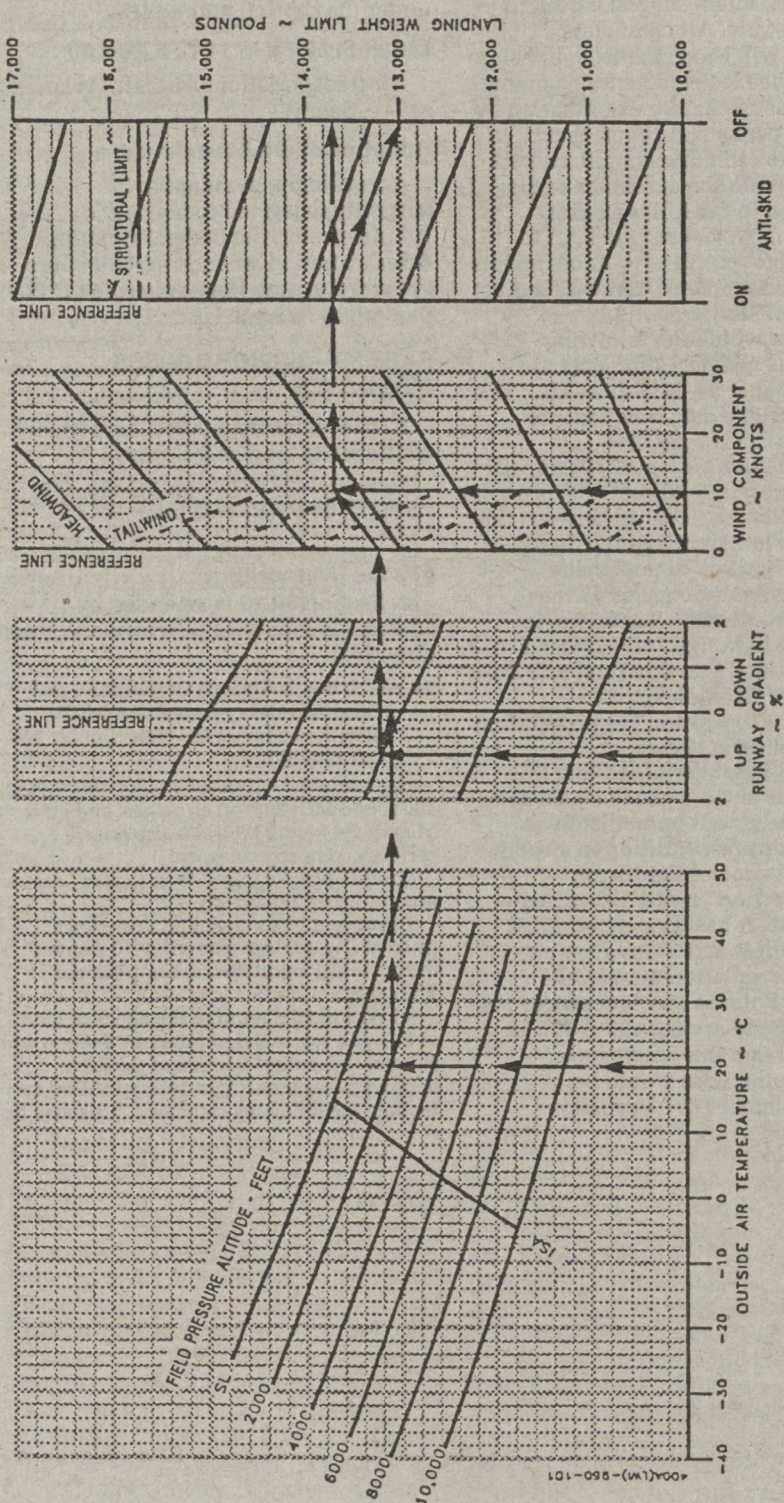
MODEL 400A (RK-24 AND AFTER) AND 400T

MAXIMUM LANDING WEIGHT LIMITED BY MAXIMUM BRAKE ENERGY

FLAPS 10°

ASSOCIATED CONDITIONS:
BRAKING . . . MAXIMUM

EXAMPLE:
OAT . . . . . 20°C
FIELD PRESSURE ALTITUDE . . . . . 2000 FT
RUNWAY GRADIENT . . . . . 1% UP
HEADWIND . . . . . 10 KTS
LANDING WEIGHT LIMIT:
ANTI-SKID (ON) . . . . . 13,715 LBS
ANTI-SKID (OFF) . . . . . 13,000 LBS



MODEL 400A (RK-24 AND AFTER) AND 400T

LANDING DISTANCE - FLAPS 10°

ASSOCIATED CONDITIONS:

THRUST....RETARDED TO MAINTAIN 3° APPROACH ANGLE TO 50 FT. AT 50 FT, RETARD TO IDLE.

RUNWAY....PAVED, DRY SURFACE

V_{REF}.....KIAS AS TABULATED

BRAKING ...MAXIMUM

NOTE: TO DETERMINE THE FLAPS 10° LANDING DISTANCE, READ FROM THE "LANDING DISTANCE" GRAPH FOR THE APPROPRIATE FLAP 30° DISTANCE. THEN ENTER THE GRAPH BELOW WITH THAT VALUE, AND READ THE FLAPS 10° LANDING DISTANCE.

WEIGHT ~ POUNDS	V_{REF} ~ KNOTS
16,100	133
15,700	131
15,000	128
14,000	124
13,000	119
12,000	114
11,000	110
10,000	104

EXAMPLE:

FLAPS 30° LANDING DISTANCE

ANTI-SKID (ON).....3020 FT

ANTI-SKID (OFF).....3480 FT

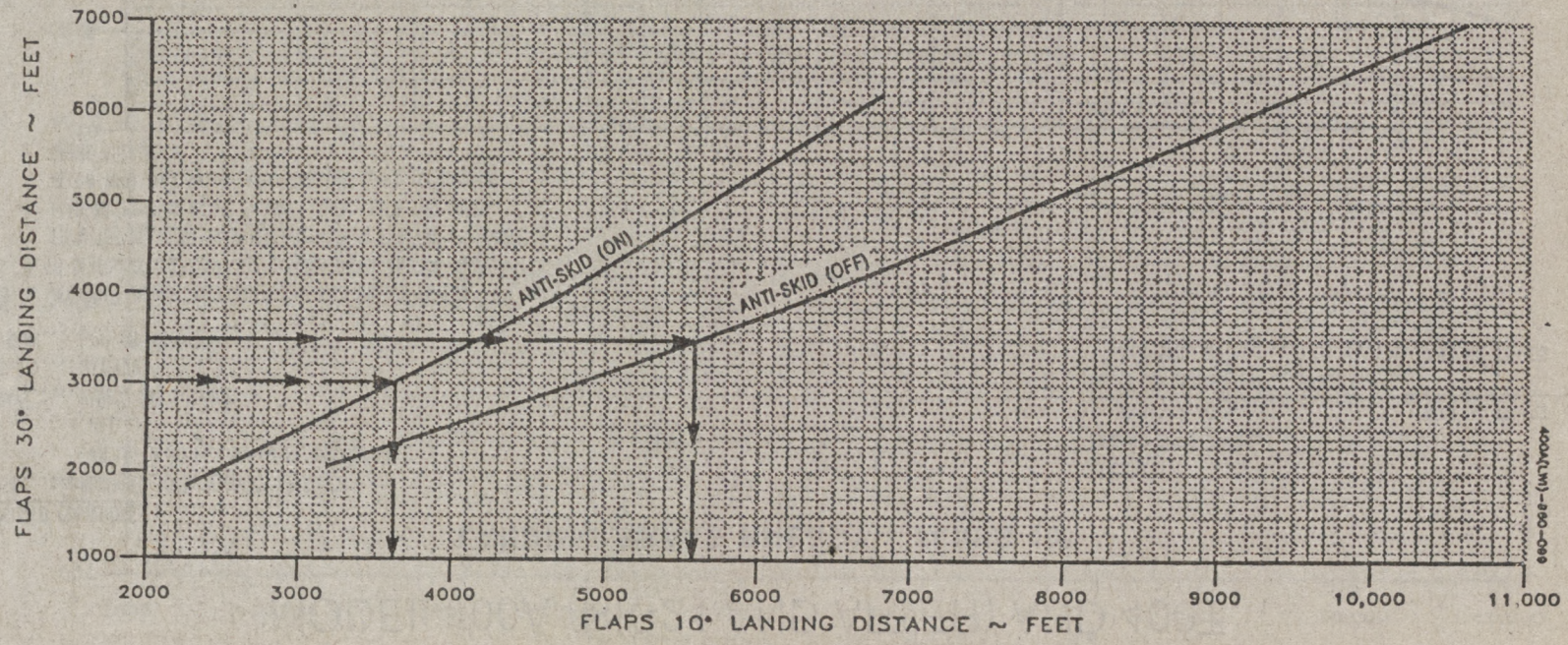
LANDING WEIGHT .....13,000 LBS

FLAPS 10° LANDING DISTANCE

ANTI-SKID (ON).....3622 FT

ANTI-SKID (OFF).....5580 FT

V_{REF}.....119 KTS



MODEL 400A (RK-24 AND AFTER) AND 400T

LANDING BRAKE ENERGY - FLAPS 10°

ASSOCIATED CONDITIONS:

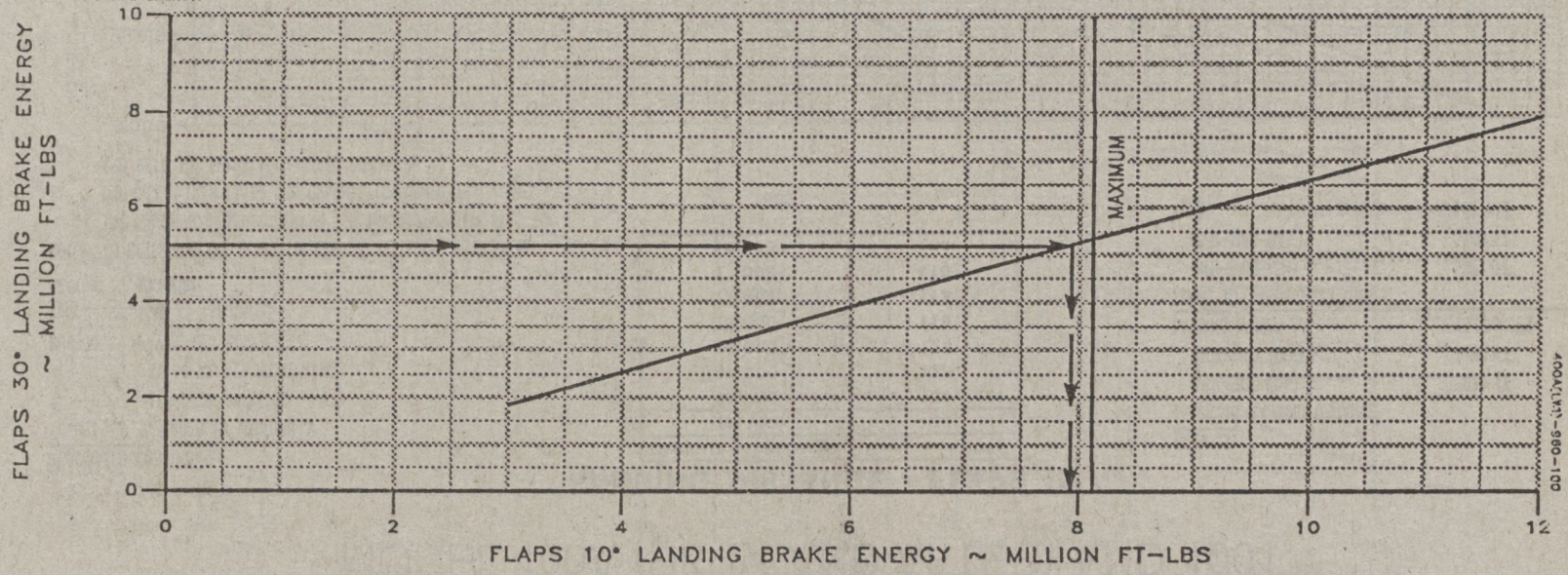
THRUST.....RETARDED TO MAINTAIN 3° APPROACH ANGLE TO 50 FT. AT 50 FT, RETARD TO IDLE.
RUNWAY.....PAVED, DRY SURFACE
BRAKING.....MAXIMUM
ANTI-SKID....(ON) OR (OFF)

EXAMPLE:

LANDING BRAKE ENERGY
ANTI-SKID (ON).....5.18 MIL FT-LBS

FLAPS 10° LANDING BRAKE ENERGY
ANTI-SKID (ON).....7.93 MIL FT-LBS

NOTES: 1. MAXIMUM LANDING BRAKE ENERGY = 8.12 MILLION FT-LBS.
2. TO DETERMINE THE FLAPS 10° LANDING BRAKE ENERGY, READ FROM THE "LANDING BRAKE ENERGY" GRAPH FOR THE APPROPRIATE FLAP 30° LANDING BRAKE ENERGY. THEN ENTER THE GRAPH BELOW WITH THAT VALUE, AND READ THE FLAPS 10° LANDING BRAKE ENERGY.



MODEL 400A (RK-1 THRU RK-23), 400, AND MU-300-10

LANDING FIELD LENGTH - FLAPS 10°

ASSOCIATED CONDITIONS:

THRUST....RETARDED TO MAINTAIN 3° APPROACH ANGLE TO 50 FT. AT 50 FT, RETARD TO IDLE.

RUNWAY...PAVED, DRY SURFACE

V_{REF}.....KIAS AS TABULATED

BRAKING...MAXIMUM

NOTE: TO DETERMINE THE FLAPS 10° LANDING FIELD LENGTH, READ FROM THE "LANDING FIELD LENGTH" GRAPH FOR THE APPROPRIATE FLAP 30° FIELD LENGTH. THEN ENTER THE GRAPH BELOW WITH THAT VALUE, AND READ THE FLAPS 10° LANDING FIELD LENGTH.

WEIGHT ~ POUNDS	V_{REF} ~ KNOTS
15,780	133
14,220	126
13,000	121
12,000	116
11,000	112
10,000	106
9000	101

EXAMPLE:

FLAPS 30° LANDING FIELD LENGTH

ANTI-SKID (ON).....3550 FT

ANTI-SKID (OFF).....4350 FT

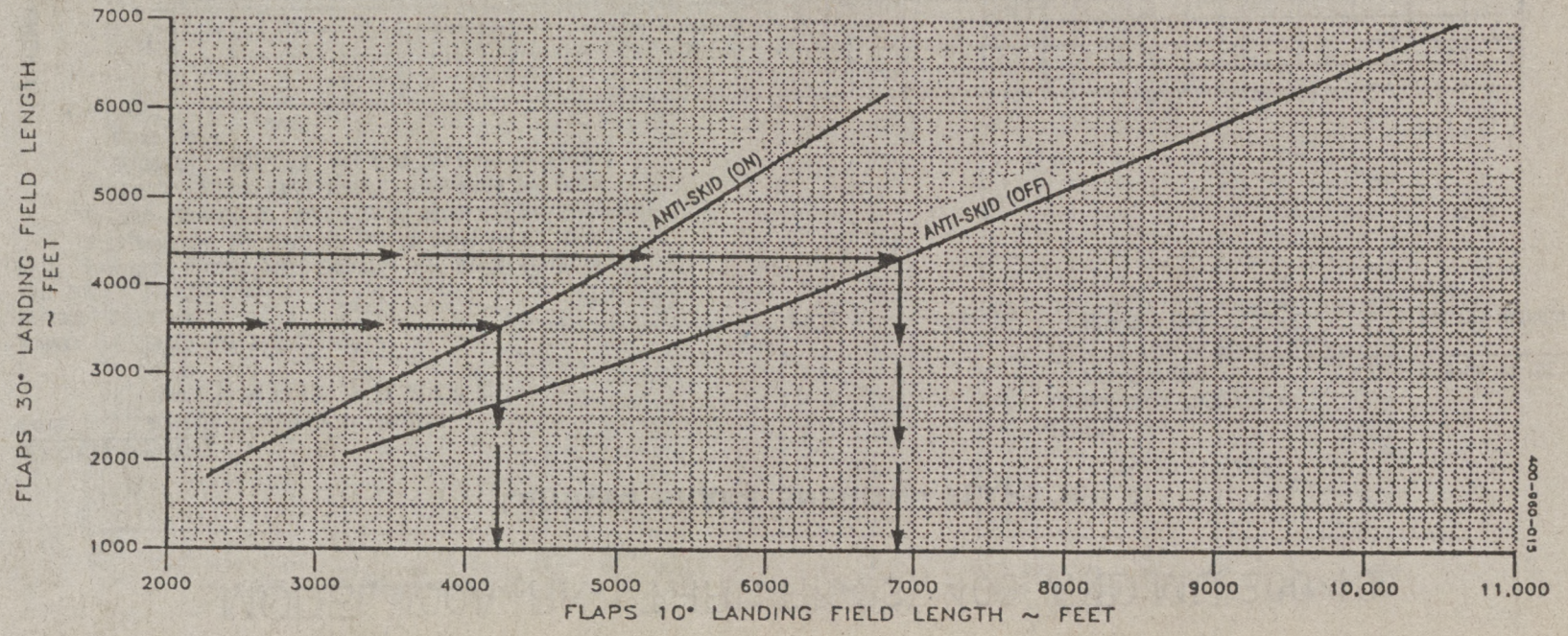
LANDING WEIGHT.....13,700 LBS

FLAPS 10° LANDING FIELD LENGTH

ANTI-SKID (ON).....4214 FT

ANTI-SKID (OFF).....6892 FT

V_{REF}.....124 KTS



MODEL 400A (RK-1 THRU RK-23), 400, AND MU-300-10

LANDING BRAKE ENERGY - FLAPS 10°

ASSOCIATED CONDITIONS:

THRUST . . . . . RETARDED TO MAINTAIN 3° APPROACH ANGLE TO 50 FT. AT 50 FT, RETARD TO IDLE.

RUNWAY. . . PAVED, DRY SURFACE

BRAKING . . . . . MAXIMUM

ANTI-SKID . . . . (ON) OR (OFF)

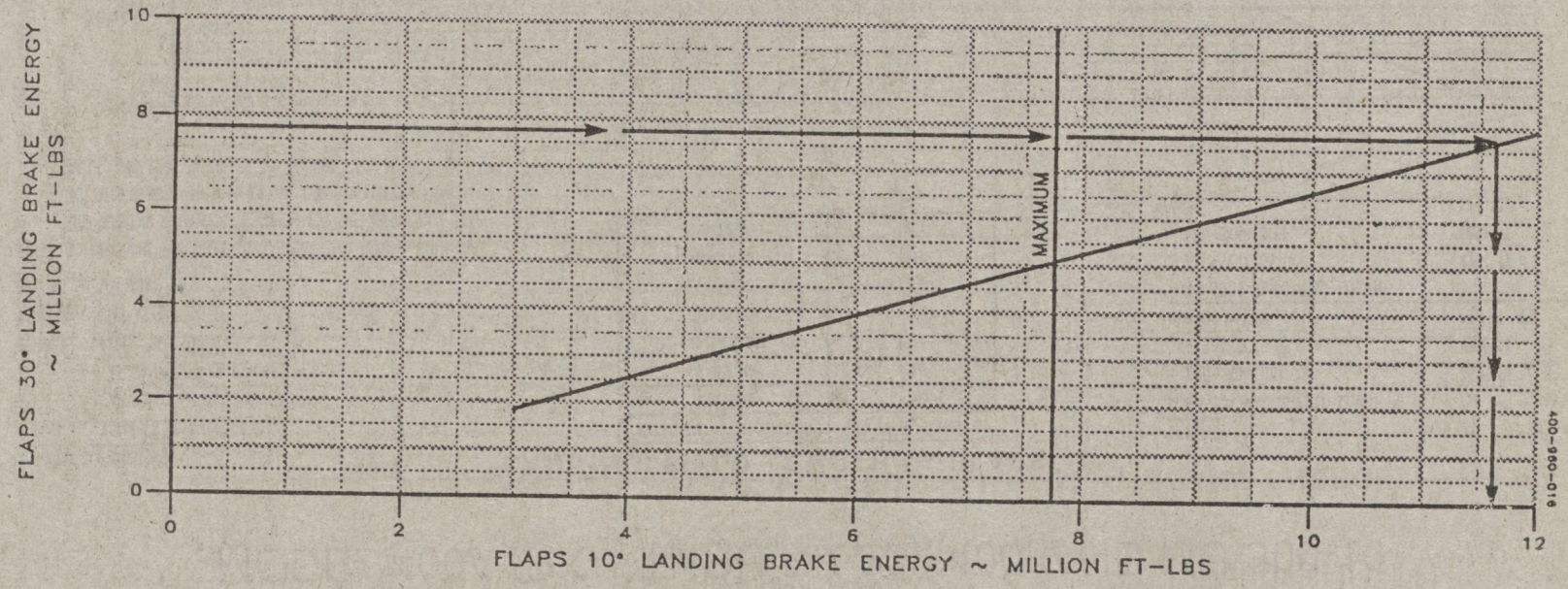
NOTES: 1. MAXIMUM LANDING BRAKE ENERGY = 7.76 MILLION FT-LBS.

2. TO DETERMINE THE FLAPS 10° LANDING BRAKE ENERGY, READ FROM THE "LANDING BRAKE ENERGY" GRAPH FOR THE APPROPRIATE FLAP 30° LANDING BRAKE ENERGY. THEN ENTER THE GRAPH BELOW WITH THAT VALUE, AND READ THE FLAPS 10° LANDING BRAKE ENERGY.

EXAMPLE:

LANDING BRAKE ENERGY
ANTI-SKID (ON) . . . . . 7.75 MIL FT-LBS

FLAPS 10° LANDING BRAKE ENERGY
ANTI-SKID (ON) . . . . . EXCEEDS MAXIMUM



BILLING CODE 4910-13-C

MODEL 400A (RK-1 THRU RK-23), 400, AND MU-300-10

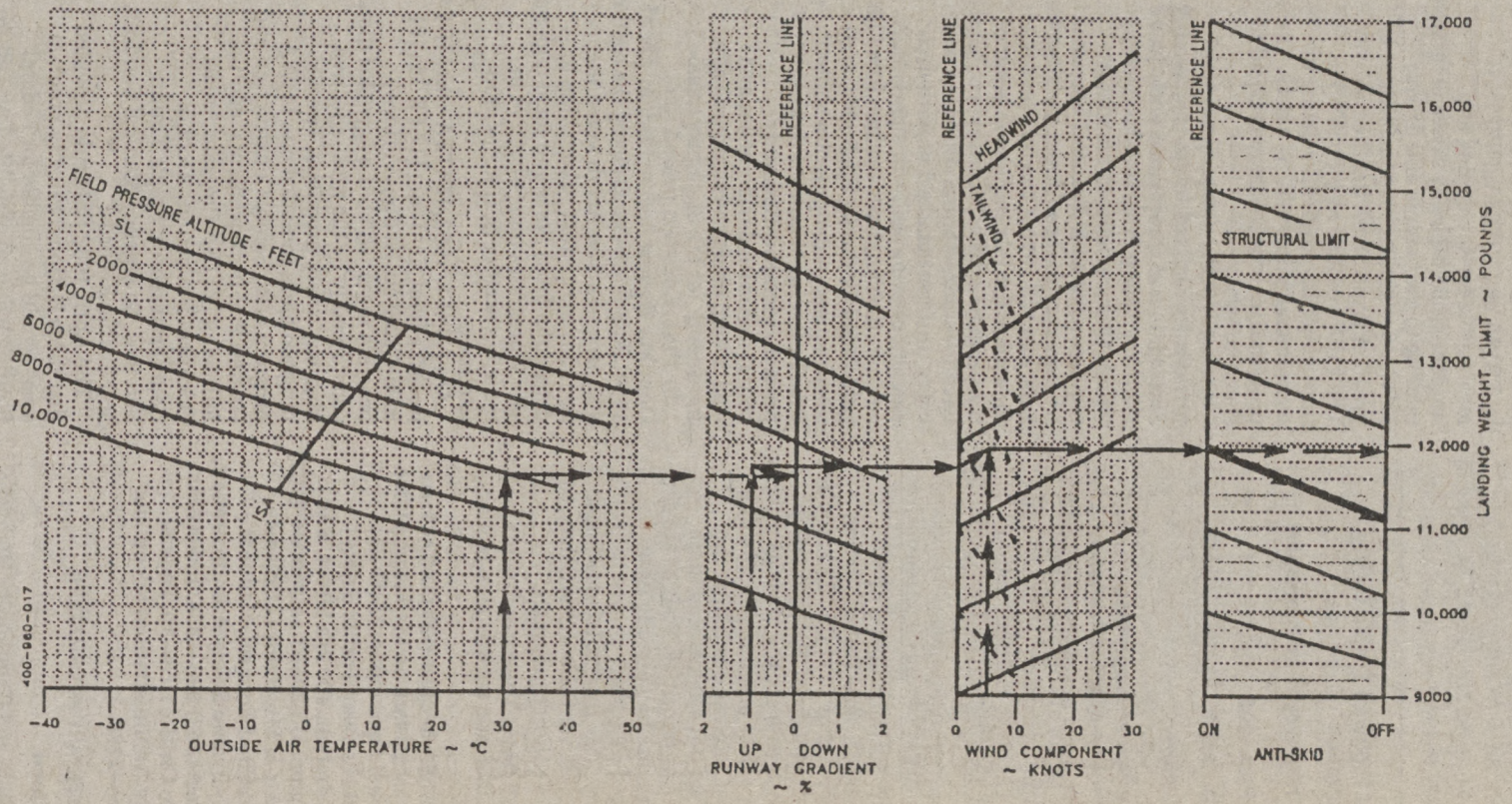
MAXIMUM LANDING WEIGHT LIMITED BY MAXIMUM BRAKE ENERGY

FLAPS 10°

ASSOCIATED CONDITIONS:
BRAKING . . . MAXIMUM

EXAMPLE:

OAT	30°C
FIELD PRESSURE ALTITUDE	6000 FT
RUNWAY GRADIENT	1% UP
HEADWIND	5 KTS
LANDING WEIGHT LIMIT:	
ANTI-SKID (ON)	11,940 LBS
ANTI-SKID (OFF)	11,100 LBS



Issued in Renton, Washington, on December 5, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–30395 Filed 12–12–94; 8:45 am]

BILLING CODE 4910–13–U

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1205

[NHTSA Docket No. 93–20; Notice 2]

RIN 2127–AE89

Highway Safety Programs; Determination of Effectiveness

AGENCY: National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: Section 2002(a) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) required that the Secretary of Transportation either designate six key areas as priority highway safety programs or submit a report to Congress describing the reasons for not establishing these programs as priorities. Four of the six program areas had already been designated as priority programs by the Secretary. This final rule adds Speed Control, but not School Bus Safety, to the list of priority programs.

EFFECTIVE DATE: The amendments made by this final rule are effective January 12, 1995.

FOR FURTHER INFORMATION CONTACT: In NHTSA: Ms. Marlene Markison, Office of Regional Operations, NRO–01, National Highway Traffic Safety Administration, 400 7th Street, S.W., Washington, DC 20590, telephone: (202) 366–2121; or Ms. Heidi L. Coleman, Office of Chief Counsel, National Highway Traffic Safety Administration, telephone: (202) 366–1834. In FHWA: Ms. Julie Cirillo, HHS–10, Federal Highway Administration, telephone: (202) 366–2170.

SUPPLEMENTARY INFORMATION:

Background

The State and Community Highway Safety Grant Program (section 402 program) was established under the Highway Safety Act of 1966, 23 U.S.C. 402. The Act required the establishment of Uniform Standards for State Highway Safety Programs to assist the States and local communities in organizing their highway safety programs. Eighteen such standards were established and have been administered at the Federal level by FHWA and NHTSA. NHTSA is responsible for developing and implementing highway safety programs relating to the vehicle and driver; FHWA has similar responsibilities in program areas involving the roadway. The FHWA is also responsible for implementing programs relating to commercial motor vehicle safety. These programs include measures related to speed control.

Until 1976, the 402 program was principally directed towards achieving State and local compliance with the 18 Highway Safety Program Standards, which were considered mandatory requirements with financial sanctions for non-compliance. Under the Highway Safety Act of 1976, Congress provided for a more flexible implementation of the program so the Secretary would not have to require State compliance with every uniform standard or with each element of every uniform standard. As a result, the standards became more like guidelines for use by the States, and management of the program shifted from enforcing standards to one of problem identification and countermeasure development and evaluation, using the standards as a framework for the State programs.

In 1981, Congress passed the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, revising the section 402 program. The Act directed the agencies to conduct rulemaking to determine those State and local highway safety programs most effective in reducing accidents, injuries, and fatalities.

On April 1, 1982, NHTSA and FHWA issued a joint final rule (47 FR 15116) identifying six National Priority program areas which the agencies then considered to be the most effective highway safety programs. The six program areas included one FHWA program area, Safety Construction and Operational Improvements, and the following NHTSA Program Areas: Occupant Protection, Alcohol Countermeasures, Police Traffic Services, Emergency Medical Services, and Traffic Records.

The April 1982 final rule provided that these National Priority program areas would be eligible for Federal funding using an expedited procedure under the 402 program. 23 CFR 1205.4. It also established a mechanism by which other, nonpriority programs identified by a State may be eligible for Federal funding. 23 CFR 1205.5(a) and (b).

Periodic Review and Determination of Priority Programs

On April 2, 1987, the enactment of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100–17) revised 23 U.S.C. 402. The changes provided for a periodic review of the effectiveness of the various programs eligible for funding under section 402 in reducing crashes, injuries and fatalities. The periodic review procedure was enacted to ensure the continued relevance of the section 402 program to changing circumstances and traffic safety needs and to ensure that Federal funds continue to be used for the most effective programs.

The legislation also provided that the standards promulgated under section 402 and codified in 23 CFR Part 1204 be changed to guidelines. The purpose of this amendment was to conform the language of section 402 and Part 1204 to the current implementation of the programs.

Pursuant to these amendments, NHTSA and FHWA conducted a rulemaking action to review those programs most effective in reducing crashes, injuries and fatalities. In a final rule issued on April 6, 1988 (53 FR 1255), the agencies determined that the National Priority program areas should continue to include the one FHWA program area, Roadway Safety (formerly, Safety Construction and Operational Improvements), and the five NHTSA program areas that had been identified in 1982. In addition, the agencies determined that a sixth NHTSA area, Motorcycle Safety, should be added.

On May 3, 1991, NHTSA and FHWA published a joint NPRM (56 FR 20387) proposing to add Pedestrian and Bicycle Safety as one of the National Priority program areas. The public comments supported that proposal and the area of Pedestrian and Bicycle Safety was added to the list of National Priority program areas eligible for the expedited funding process on October 4, 1991 (56 FR 50250).

As a result of these rulemaking actions, the National Priority program areas included the following:

1. Alcohol and Other Drug Countermeasures
2. Police Traffic Services
3. Occupant Protection
4. Traffic Records
5. Emergency Medical Services
6. Motorcycle Safety
7. Pedestrian and Bicycle Safety
8. Roadway Safety

ISTEA Requirements

On December 18, 1991, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) was signed into law. Section 2002(a) of ISTEA required that the Secretary of Transportation either designate six key areas as priority highway safety programs or submit a report to Congress describing the reasons for not establishing these programs as priorities. The six program areas listed in ISTEA included programs:

(1) To reduce injuries and deaths resulting from motor vehicles being driven in excess of posted speed limits (Speed Control), (2) to encourage the proper use of occupant protection devices (including the use of safety belts and child restraint systems) by occupants of motor vehicles and to increase public awareness of the benefit of motor vehicles equipped with air bags (Use of Occupant Protection Devices), (3) to reduce deaths and injuries resulting from persons driving motor vehicles while impaired by alcohol or a controlled substance (Driving While Impaired), (4) to reduce deaths and injuries resulting from accidents involving motor vehicles and motorcycles (Motorcycle Safety), (5) to reduce injuries and deaths resulting from accidents involving school buses (School Bus Safety) and (6) to improve law enforcement services in motor vehicle accident prevention, traffic supervision, and post-accident procedures (Police Traffic Services).

The Secretary had already designated four of these six program areas as priority programs, but not Speed Control or School Bus Safety.

Accordingly, on January 14, 1994, NHTSA and FHWA published a notice of proposed rulemaking (NPRM) in the **Federal Register** requesting comments from the public on whether to expand the list of National Priority program areas.

The agencies explained that they apply three criteria to determine whether a program area should be identified as a National Priority program under 23 CFR Part 1205:

- Whether the problem is of national concern (including the relative magnitude of the problem);
- Whether effective countermeasures have been developed in this area which address this concern; and
- Whether State programs in the area appear to be among the most effective in reducing crashes, injuries, and fatalities as compared to other traffic safety program areas.

The NPRM proposed to expand the list of National Priority program areas to include Speed Control, and requested comments on the agencies' preliminary determination that School Bus Safety should not be added as a National Priority program area at this time.

Comments Received

The agencies received 34 comments to the docket in response to the NPRM, including comments from 22 State agencies (with responsibility for transportation/highway safety, law enforcement and education); a local PTA Council; a county health department; a private bus operator; and nine national organizations. The national organizations represent highway safety interests (National Association of Governors' Highway Safety Representatives, Insurance Institute for Highway Safety, Advocates for Highway and Auto Safety and the Center for Auto Safety); law enforcement organizations (International Association of Chiefs of Police and National Sheriffs' Association); and pupil transportation interests (National Association for Pupil Transportation, National Association of State Directors of Pupil Transportation Services and National School Transportation Association).

Based on our review of the comments received and other available information, NHTSA and FHWA have decided to adopt the proposal published in the NPRM. For the reasons set forth below, the agencies have decided to add Speed Control to the list of National Priority program areas, and not to add School Bus Safety to the list at this time.

Speed Control

Is Speeding a Problem of National Concern?

NHTSA and FHWA tentatively concluded in the NPRM that speeding is a problem of national concern, based on a number of considerations.

The agencies explained in the NPRM that speeding is defined as not only exceeding the posted speed limit, but also driving too fast for conditions. While the agencies recognized that reliable data on travel speeds are relatively limited and often difficult to compare, NHTSA and FHWA tentatively concluded in the NPRM, based on the most reliable data available, that the travel speeds of motorists have increased in recent years.

The NPRM explained that NHTSA studies suggest that most drivers recognize that speeding is a violation of the law, but few regard the violation as a serious offense. This led the agency to conclude that the public does not view speeding per se as an immediate safety risk.

However, as NHTSA and FHWA pointed out in the NPRM, speeding is one of the most prevalent reported factors associated with crashes, and studies identify correlations between speeding and other factors often associated with crashes, including alcohol involvement, young drivers, male drivers, motorcyclists and nighttime driving.

The agencies reported in the NPRM that speeding is cited as a contributing factor in approximately 11 percent of all police-reported crashes and in approximately 34 percent of all fatal crashes (NHTSA, Fatal Accident Reporting System, 1991). The agencies estimated that in 1991, 13,909 fatalities and 77,000 moderate to critical injuries occurred in speed-related crashes, resulting in an economic cost for all speed-related crashes (including all injury levels) of over $19 billion.

As explained in the NPRM, excessive speed contributes to motor vehicle crashes in a number of ways. Drivers have less time to react when travelling at higher speeds since speed increases the distance a vehicle travels during the time it takes for a driver to react to a perceived danger; speed increases the total stopping distance necessary to halt a vehicle; and speed reduces a driver's ability to steer safely around curves on highways or objects in the roadway.

Speed variance, the difference in speed among vehicles in the traffic stream, also contributes to motor vehicle crashes. As speed variance increases, vehicles come close to each other more frequently, which leads to more frequent lane changes and passing maneuvers as the faster drivers seek to avoid slower-moving vehicles. Research studies have shown that motor vehicle crashes are more likely where speed variance is greater, and data have shown that a speed variance of 20 mph from the average speed can result in a crash risk 11 times greater than those travelling at the average speed.

Finally, increased speeds result in reduced margins for error and increased severity for those vehicles involved in crashes. As the speed of a car increases from 20 mph to 80 mph, a factor of four, the energy of the impact delivered in a collision with a fixed object goes up by a factor of sixteen, increasing dramatically the chance of death or serious injury.

Citing a recent FHWA study entitled Assessment of Current Speed Zoning Criteria, the NPRM indicated that: (1) On average, seven out of ten motorists exceeded posted limits; (2) average speeds ran approximately two to six mph above posted limits; and (3) prevailing 85th percentile speeds ran approximately eight to twelve mph above posted limits.

One commenter, the West Virginia Division of Highways, questioned the agencies' tentative conclusion that

speeding is a problem of national concern. The State asserted that the agencies' comparison between the 85th percentile speed and the speed limit indicates a problem with speed zones (which, according to West Virginia, are set through public pressure rather than by engineering principles), not with speeding. West Virginia further suggested that, as drivers have gained additional experience driving faster than 55 (following the speed limit's being raised to 65 on certain rural Interstates), "it is to be anticipated that speeds would gradually increase."

The agencies accept West Virginia's explanation that, as drivers gain additional experience driving faster, their speeds tend to increase. We disagree, however, that this supports a conclusion that the difference between the 85th percentile speed and the speed limit indicates a problem with speed zones, not with speeding. In fact, if West Virginia's explanation is correct, the agencies believe that, if speed limits were increased to match the 85th percentile, speeds are likely to gradually increase even further, as drivers adjust to the higher speed limits.

All other comments received in response to the NPRM supported the agencies' conclusion that speeding is a problem of national concern. New Mexico, for example, reported that it continues to suffer among the highest rates of motor vehicle deaths in the nation, and some 25% of their crash fatalities involve excessive speed. Michigan reported that in 1991 excessive speed accounted for 43% of the total crashes, 44% of fatal crashes, 52% of injury crashes and 41% of property damage crashes in that State.

Alaska commented that traveling at unsafe speeds is the leading cause of the State's motor vehicle crashes and is a contributing factor in 27% of its fatal crashes. North Carolina stated that in 1992 speed was noted as a contributing factor in 32% of all crashes and 39.8% of fatal crashes.

The Insurance Institute for Highway Safety (IIHS) provided data supporting the agencies' conclusion that travel speeds are increasing. In addition, IIHS stated that fatalities have increased along with travel speeds. According to IIHS:

> In the 40 States that increased their speed limits to 65 mph on rural interstates during 1987 and 1988, deaths on these roads were 17 percent higher in 1992, compared with the average number of deaths on the same roads during 1982–86. In contrast, deaths on rural interstates where the 55 mph limit was retained were 28 percent lower in 1992 compared with 1982–86. In the 40 States that raised their rural interstate speed limit, the urban interstate limit speed remained unchanged and on those highways, deaths in 1992 were 8 percent lower than in 1982–86 (IIHS, 1993b).

The agencies continue to conclude that speeding is a problem of national concern.

Have Effective Speed Control Countermeasures Been Developed?

The agencies identified, in the NPRM, a number of speed control countermeasures that they consider to be effective. They indicated that NHTSA has identified and evaluated, and is currently demonstrating in the law enforcement community a number of new law enforcement technologies to further advance speed control efforts, including radar, VASCAR, laser speed measuring devices, aerial speed measurement, photo radar and electronic signing.

The NPRM stated that NHTSA studies show that one of the best methods for obtaining compliance with speed limits is to combine an aggressive enforcement campaign with a vigorous public information and education effort. It also cited other effective countermeasures, such as saturation patrols and multi-agency, multi-jurisdictional enforcement efforts.

In the areas of highway design and traffic control, the agencies explained that freeway design, culminating in the Interstate System, has eliminated at-grade intersections and provided for free flow traffic, which has resulted in a significant reduction in speed variance and the promotion of uniform operating speed.

Other effective countermeasures were also mentioned. For example, the NPRM indicated that variable message speed signs have been developed to control speed for varying conditions and that real time regulatory variable speed limits are now being tested in the State of Washington. The NPRM indicated that these efforts can be further enhanced through the development of comprehensive speed control programs.

The commenters cited many of the same countermeasures and technologies in their responses to the NPRM, and indicated they considered them to be effective. IIHS, for example, indicated it believes VASCAR and laser technologies can be effective at increasing the proportion of speeders cited for violations since they are not detectable by radar detectors. IIHS recommended also the use of radar detector detectors (RDDs) as an effective countermeasure for identifying individuals who are likely to be "professional speeders."

No commenters suggested that no effective speed control countermeasures have been developed, and the agencies continue to conclude that effective countermeasures have been developed.

Do State Speed Control Programs Appear To Be Among the Most Effective in Reducing Crashes, Injuries, and Fatalities?

NHTSA and FHWA stated in the NPRM that state programs that have been conducted to date demonstrate that speed control countermeasures are extremely effective in reducing deaths and injuries, and cited a number of examples. (For details, interested persons should read the NPRM.)

The California Office of Traffic Safety (OTS) interpreted this statement to mean that the agencies were placing more importance on State, rather than local, programs. NHTSA and FHWA did not intend to give this impression. In fact, the agencies recognize that many countermeasures in the Speed Control area can be carried out most effectively at the local level. The agencies' reference to "State programs" was intended to cover programs conducted at either the State or local level within a State. California OTS went on to indicate that many countermeasures have been employed successfully throughout the State to address the speeding problem.

The Department of California Highway Patrol (CHP) stated that effective countermeasures exist only for localized speed control. CHP claimed that the success of these programs is almost always localized and/or temporary. The agencies agree that localized enforcement efforts alone generally result in only localized, short-term impacts. However, it has long been established that enforcement efforts, when combined with a vigorous public information and education campaign, have much more long-lasting effects. (See, "Evaluation of the New York State Police 55 MPH Speed Enforcement Project," August 1969, by the Institute for Traffic Safety Management and Research.)

Commenters, such as IIHS and Advocates for Highway and Auto Safety, supported this view. Advocates further commented, "A national effort [which provides a greater level of public information and awareness regarding the safety dangers associated with speeding] will establish the safety context for state and local speed control efforts under the 402 Program and provide those efforts with added credibility."

West Virginia questioned the validity of the examples cited in the NPRM. The

State argued that "the reductions in speed [experienced in South Carolina and St. Louis] were minuscule" and "the sample [used in California] was very small." West Virginia continued, "the Notice states a belief that the programs were effective but it gives no measures of statistical significance or indications of necessary seasonal adjustments or other information to back up this conclusion."

The agencies disagree with West Virginia's comments. The success of the South Carolina study, for example, was not measured by reductions in speed, but rather using other factors. As stated in the NPRM, there were 12,472 fewer crashes (a 10% decrease), 2,331 fewer injuries (a 7% decrease) and 106 fewer fatalities in 1991 in South Carolina as compared to 1989 (an 11% decrease). The vehicle miles traveled (VMT) in South Carolina increased from 32,780 million to 34,456 million (a 5% increase) during this period of time. The agencies believe the State's rural initiative contributed to these reductions and that these reductions are significant.

The agencies agree that the reduction in average speed (from 62 mph to 61 mph) experienced in the first year of the St. Louis enforcement operation (Operation Gateway) was not a significant reduction. However, the NPRM stated that the St. Louis program was continuing and was expected to result in further speed decreases, and further results have in fact been achieved. The Missouri Division of Highway Safety did not report the reduction in average speed as part of the second phase of Operation Gateway. The State did report, however, that, prior to the kickoff of the operation, the average speed of vehicles stopped for speeding on I–270 was 78.3 mph, and the average speed of vehicles stopped during the Operation Gateway kickoff was 74.3 mph. This represents a 5% reduction in speed. The agencies believe this reduction is significant.

With regard to the California study, the sample used may have appeared small, as compared with the general motor vehicle population, but the study's focus was on commercial motor vehicles, and the study used as its sample a census of all crashes where the commercial motor vehicle was at fault. As the agencies explained in the NPRM, speed control efforts targeted commercial motor vehicles, and the data revealed that the number of crashes where commercial motor vehicles were at fault decreased by 3.5% (from 810 in 1986 to 782 in 1987). The number of crashes caused by commercial motor vehicles which resulted in injuries also declined, by 11.2% (from 259 in 1986 to 230 in 1987).

Seasonal adjustments were not made for the studies referenced in the NPRM because they were not considered to be necessary. Seasonal adjustments are not considered to be necessary, for example, for studies in which data is to be collected during a brief period of time involving no seasonal changes or for studies in which data is to be collected during comparable time periods. Data was collected for the South Carolina study during the same four months in 1990 and 1991. Data was collected for the St. Louis effort during a brief period of time before and during the kickoff of Operation Gateway, so seasonal changes were not a factor in that study.

Most of the commenters agreed with the conclusion in the NPRM that Speed Control Programs appear to be among the most effective in reducing crashes, injuries, and fatalities, and they provided examples demonstrating the effectiveness of speed control countermeasures.

IIHS indicated that, in South Carolina, police issued 41 tickets per 1,000 vehicles using lasers, as compared with 33 per 1,000 using conventional radar.

New York State reported that it experienced the lowest fatality rate on record in 1992 (1.65 deaths per hundred million vehicle miles traveled), "due in large part to the Division's strict [comprehensive speed] enforcement program." According to New York, the fatality rate of 1.65 was 29 percent lower than 2.33 in 1987 (when the State started its program) and equates to 520 fewer lives lost on the highways of that State. The program included a saturation strategy that not only led to the apprehension of specific motorists, but also established a visible presence and generated publicity which raised the perception of risk among all motorists within the State.

Based on available information and the comments received in response to the NPRM, the agencies continue to conclude that Speed Control Programs are among the most effective in reducing crashes, injuries, and fatalities.

Other Comments Received About Speed Control

The State of Illinois agreed that Speed Control should be designated a priority program, but commented that there should be no earmarking of funds for Speed Control (or any other program) and monetary sanctions should not be imposed on States for failing to meet compliance levels. Congress enacted the National Maximum Speed Limit law, which established monetary sanctions for noncompliance and has, from time to time, imposed earmarking or set-aside requirements in appropriations legislation. NHTSA and FHWA are bound to implement these congressional requirements. However, the designation of Speed Control as a priority program under section 402 in this final rule will not create any additional earmarking requirements or monetary sanctions.

Most comments strongly supported the designation of Speed Control as a National Priority program area, particularly at this time. New Mexico, for example, expressed its view that:

> Speed control is ready to mature as a significant injury prevention tool, following the cycle of public attitude change, institutional preparation, and coordinated operational programming that has worked well in * * * other areas. * * * [S]tate programs in the coming * * * years for speed control could be among the most productive injury control measures available to the safety world.

Advocates for Highway and Auto Safety stated:

> Speeding and excessive highway speeds have reached epidemic proportions and must be treated as a national public health problem. * * * It is incumbent on the agencies to develop a high profile national program against speeding that provides a greater level of public information and awareness regarding the safety dangers associated with speeding.

NAGHSR concurred with the designation of Speed Control as a National Priority, but expressed concern about the "proliferation of 402 priorities" and the "possible overlap and duplication" between the Speed Control and Police Traffic Services (PTS) programs. NAGHSR suggested that the agencies consider instead combining these two programs in a way that emphasizes the importance of speed compliance activities.

Three other commenters also recommended that Speed Control be included under PTS, but for different reasons. California OTS expressed concern that a separate Speed Control program area could "result in the redirection of efforts into 'speed only' projects and dilute the accomplishments made in highlighting speed as a major problem in all traffic safety ventures." CHP stated that Speed Control already receives considerable attention, and argued that including Speed Control under PTS would allow individual States to better balance their overall approach to traffic safety. West Virginia expressed its opinion that "public acceptance is likely to be higher if the Speed Control function is part of a well-reasoned and balanced enforcement program rather than as a stand-alone

effort which can be interpreted as a revenue enhancement measure."

The agencies agree with the commenters that Speed Control programs should continue to be included as part of broader traffic safety programs. However, the designation of Speed Control as a priority program does not require that States establish "stand-alone" efforts. States have the ability and, in fact, are encouraged by the agencies to continue to include Speed Control messages in their other traffic safety programs. It is the agencies' hope that the program's designation as a National Priority program area will result in the inclusion of Speed Control messages in more traffic safety programs than before.

NHTSA and FHWA have considered the comments cited above, and decided not to include Speed Control as part of PTS. The agencies recognize that there will be some overlap between the areas of Speed Control and PTS, since law enforcement activity is an important component in any Speed Control program. (There is a similar level of overlap between the areas of PTS and other priority programs, such as Alcohol Countermeasures and Occupant Protection, to the extent that police agencies enforce laws designed to address these issues.)

However, the agencies believe it is important to list the Speed Control program (as well as Alcohol Countermeasures and Occupant Protection) separately, to reflect non-law enforcement activities that are equally important components of these programs. In the area of Speed Control, these components include, for example, the development and enactment of speed-related laws, the use of new technologies, public information and education activities, and the reexamination of speed zoning criteria to ensure that posted speed limits are appropriate for conditions.

Speed Control Determination

The agencies conclude that speeding does represent a significant traffic safety problem throughout the country, and that numerous countermeasures have been developed that have proven to be most effective in addressing this problem. Accordingly, NHTSA and FHWA have decided to designate Speed Control as a separate National Priority program area. Speed Control will be administered jointly by both agencies.

School Bus Safety

Is School Bus Safety a Problem of National Concern?

NHTSA and FHWA explained in the NPRM that the safety of children in school buses has been a primary concern of parents and school systems ever since buses began to be used to transport children and that this concern has helped develop school buses into the safest form of transportation in the country. The NPRM reported that, according to the National Safety Council's "Accident Facts" (1991), during the 1989–90 school year, an estimated 380,000 buses were used to transport 22 million pupils approximately 3.8 billion miles (21 million miles per school day) and that occupant fatality rates per hundred million passenger miles in 1989 were 1 12 for passenger cars and 0.04 for school buses.

The agencies recognized in the NPRM that school bus crashes, as compared with automobile crashes, have a much different effect on the population as a whole. When a child is fatally injured in a school bus crash, there is a greater sense of loss and a greater sense of tragedy For this reason, school bus fatalities and crashes often receive a high degree of public attention and draw an immediate and passionate response from the community

However, the number of fatalities in school bus crashes is small, particularly when considering exposure and when compared to the number of fatalities related to other priority programs. In 1991, passenger cars were involved in 86.4 percent of all traffic crashes and 67.9 percent of all fatal crashes; whereas school buses were involved in only 0.4 percent of all traffic crashes and in 0.3 percent of all fatal crashes. These data demonstrate that the safety problem related to school buses is not great when compared to that of other types of vehicles.

Based on these findings, NHTSA and FHWA tentatively concluded in the NPRM that School Bus Safety is not a problem that merits designation as a National Priority program area.

Two commenters argued that any number of school bus fatalities above zero is too high a fatality rate and, therefore, justifies designating School Bus Safety as a Priority program. According to the California Department of Education, "school bus safety must be a priority issue for both the State and Federal Government for as long as our accident statistics show one '1' pupil passenger or one '1' pupil pedestrian fatality. Zero '0', tolerance of pupil passenger and pedestrian fatalities must be our goal." Similarly, the Center for Auto Safety argued that "the only way DOT could reject school bus safety as a Priority Program would be to find that such a designation would not reduce injuries and deaths in school buses at all."

The agencies disagree, and while other commenters sought to have the agencies designate School Bus Safety as a priority program area, they did not suggest that School Bus Safety represents a significant national problem. In fact, the Superintendent of Public Instruction for Washington State said, "We cannot disagree with [the statistics] you have published [and w]e can not provide any additional statistics that disagree with what you have already stated regarding Pupil Transportation as the safest means of travel in the highway safety system."

Most commenters fully agreed with the agencies' conclusion that School Bus Safety does not represent a serious problem when compared to safety in other types of vehicles. The Oregon Department of Transportation, for example, stated "Oregon has had one serious school bus accident in the last seventeen years. And, even though safety of our children is a major concern, I do not believe school busses should be a NHTSA priority. * * * School busses are probably the safest place for students to be. We do not need to concentrate extraordinary effort on school bus safety." The North Carolina Department of Transportation commented, "In North Carolina, as in the rest of the nation, school buses remain the safest mode of transportation. * * * While the safety of our children is still paramount, it will be extremely difficult for any further school bus safety initiatives to be cost effective."

New Mexico provided data which supported the agencies' conclusion. The State's comments indicated, "95 percent of school children in serious crashes during school hours were in conventional passenger vehicles—passenger cars, pickups, and vans." Only one percent of New Mexico's school children in serious crashes during school hours were in buses. The remaining 4 percent were pedestrians, on motorcycles, on pedalcycles, and others, at one percent each. New Mexico's comments continued, "It is fair to say that non-use of safety belts in private vehicles is the largest part of New Mexico's schoolchild safety problem. * * * Indeed, the only deaths involving school buses in the past decade have occurred outside the bus, or while entering or leaving."

Based on the comments received and the information available to the agencies, NHTSA and FHWA continue to find that School Bus Safety does not represent a serious problem that warrants its designation as a National Priority program area.

Have Effective School Bus Safety Measures Been Developed?

NHTSA and FHWA explained in the NPRM that, although statistics demonstrate that school buses already provide a remarkably safe form of transportation, steps have been taken to further improve School Bus Safety. These steps included providing set-aside funds in 1990 and 1991 to assist States in implementing "effective" and "most effective" school bus safety measures and publishing a number of rulemaking actions, such as a final rule requiring new school buses to be equipped with a stop signal arm, a final rule revising the minimum requirements for school bus emergency exits and improving access to school bus emergency doors and a final rule requiring that school buses enable drivers to see either directly or through mirrors certain specified areas in front of and along both sides of the vehicle. For a full discussion of these and other actions, interested individuals are encouraged to read the NPRM (59 FR 2341–42).

NHTSA has taken a number of additional steps that were not listed in the NPRM to improve School Bus Safety. For example, to improve the lateral stability and control of medium and heavy vehicles (including school buses) during braking, NHTSA issued an NPRM proposing to require that these vehicles be equipped with an antilock brake system (58 F.R. 50738). NHTSA also published a School Bus Safety Report and an annual publication entitled "Traffic Safety Facts 1993—School Buses."

In addition, the National Safety Council (NSC) has agreed to undertake a comprehensive marketing campaign on a school bus/pedestrian safety educational program, developed recently by NHTSA for children in grades K–6. This program is currently being modified into a product that will be more marketable. NSC anticipates reaching over seven million people in its initial marketing effort.

NHTSA has also taken steps to improve communications with the Pupil Transportation community. The Department issued a press release concerning school bus safety in August 1994, just prior to the beginning of the new school year and, on August 18, 1994, NHTSA conducted a National Meeting on Transporting Pre-Kindergarten Children on School Buses. The meeting brought together, for the first time, school bus manufacturers, child safety seat manufacturers, pupil transportation officials, child safety seat trainers, injury control professionals and Federal officials to discuss this emerging transportation issue.

NHTSA and FHWA will continue to engage in appropriate activities that improve the safety of school buses.

Do State School Bus Safety Measures Appear To Be Among the Most Effective in Reducing Crashes, Injuries, and Fatalities?

As stated previously, school buses already provide the safest form of transportation in our country. Since the number of fatalities that are school bus-related is already so small, it is difficult to quantify the benefits of the actions that have been taken. The agencies believe, however, that these actions (described above), are the ones most likely to reduce or eliminate fatal and serious injuries.

Other Comments Received About School Bus Safety

Fourteen commenters supported the agencies' tentative conclusion not to designate School Bus Safety as a National Priority program area. These commenters included three national highway safety organizations, ten State highway safety/transportation agencies and one State highway patrol. Twelve commenters urged the agencies to reconsider their tentative conclusion. These commenters included one national highway safety organization, one national police organization, three national pupil transportation organizations, five State departments of education, one local PTA council and one private bus operator.

Several commenters supported the designation of School Bus Safety as a National Priority program area based on specific safety concerns they face. Three commenters, for example, expressed concern over recent increases in the number of incidents involving misbehavior and violence on school buses, and one commenter expressed concern about crashes involving buses and heavy trucks. While these problems may be of concern in particular communities, the comments did not reveal and our data do not indicate that these are problems of great magnitude throughout the nation.

The section 402 program provides States with a mechanism for funding programs that address State or local concerns, by providing justification that includes information on the identified problem and the activities or projects that are planned. Accordingly, these States and communities have the ability, if they so choose and can provide the justification, to develop programs to address the problems identified in their comments. Moreover, the existence of these local problems does not support a decision to designate School Bus Safety as a National Priority program area for the entire nation.

A number of commenters supported the agencies' view. The Massachusetts Governor's Highway Safety Bureau, for example, stated, "School bus safety deserves a place within the 402 program, however each state should identify the need for funding, within the framework of the existing 402 guidelines." The Michigan Department of State Police commented, "[school bus safety] is an important element of any state's highway safety program but should be based upon the identified need in a particular state." The Arizona Governor's Office of Highway Safety reported that it was able to support a school bus driver/instructor training and certification program using section 402 dollars using the current funding procedures. Arizona commented, "There was no program priority for school bus safety at that time, and we were still able to address the issue by utilizing the current U.S. Department of Transportation 402 program management procedures already in place."

The comments of the National Association of Governors' Highway Safety Representatives (NAGHSR) were most comprehensive, and represented the views expressed by many of the other commenters. NAGHSR stated:

> We * * * concur that school bus safety should not be designated a National Program Priority NAGHSR is very supportive of the need for protecting the safety of school children. However, state crash statistics indicate that the problem is not of sufficient magnitude to warrant a priority designation. Furthermore, we are concerned that the designation of school bus safety will divert scarce 402 resources away from critical highway safety areas such as impaired driving, occupant protection, and speed control. States currently have the flexibility to spend 402 funds on school bus safety if the needs exist and can be documented. This flexibility is sufficient to address whatever school bus safety needs may exist

Many commenters that urged the agencies to designate School Bus Safety as a National Priority program area did so not based on a perceived current safety problem or concern, but rather based on a need for continued funding to maintain their positive safety record. As explained previously, however, this

is not a valid criterion for designating a program to be a National Priority area.

The agencies are not attempting, as suggested by the National School Transportation Association, to "[p]enaliz[e] the industry for doing a good job." In fact, we applaud the industry for its dedication and continued excellent record of service and safety. Rather, we are simply making our best efforts to ensure that scarce 402 resources are used where they can have the greatest positive effect.

Most of the commenters agreed with this approach. The North Carolina Department of Transportation, for example, stated, "By not including school bus safety as a priority program NHTSA and FHWA will allow limited resources to be utilized where they can be most effective." New Mexico commented that it supports the agencies' decision to "leav[e] school bus safety in its current status as an important area of state efforts to protect children, but without elevating it to a higher status as a national priority program area."

The agencies understand the concern of many of the commenters who are fearful that funds currently available may be discontinued. The agencies do not intend for the decision not to include School Bus Safety as a National Priority program to create an implication that resources currently devoted to School Bus Safety should be reduced or redirected.

A number of commenters noted that many more school children die or are injured as pedestrians or bicyclists than as school bus occupants. The National School Transportation Association stated, "Outside the bus, in the loading/unloading zone area, has been and is still the problem area." According to NHTSA's "Traffic Safety Facts 1993—School Buses," of the people who lost their lives in school bus-related crashes from 1983 through 1993, 59 percent were occupants of other vehicles involved in the crash, 30 percent were non-occupants (pedestrians, bicyclists, etc.) and only 11 percent were occupants of school buses.

Some of these commenters were hopeful that problems related to the loading and unloading of school children can be addressed through the Pedestrian Safety program area, which was designated a National Priority area in 1991. Within this context, some commenters requested additional emphasis and attention from the agencies with regard to pedestrian safety issues, and the Superintendent of Public Instruction in Washington State cautioned that "the emphasis of [pedestrian safety programs] usually has little to do with school bus stops."

NHTSA has already taken steps to address this concern, which is shared by the agencies. In September 1992, NHTSA started a research and development effort relating to elementary school-age pedestrians who are school bus riders. Under this effort, which was completed in the spring of 1994, the agency reviewed existing training materials and national crash data relating to school bus pedestrian safety for elementary school-age children; developed a school bus/pedestrian safety educational program for children in grades K–6, which includes teacher's guides, a poster and a video for grades K–3, videos and brochures for parents and bus drivers, and promotional materials; selected a school district to assess the program's effectiveness in reducing crash-related behaviors; implemented and evaluated the program in that district and modified the program, as warranted. A report regarding this effort is expected to be published in the spring of 1995.

As stated earlier, the National Safety Council (NSC) has agreed to undertake a comprehensive marketing campaign on the school bus/pedestrian safety educational program. This program is currently being modified into a product that will be more marketable. NSC anticipates reaching over seven million people in its initial marketing effort.

The Center for Auto Safety (CAS) objected to the agencies' decision by arguing that Congress "mandated" in ISTEA that School Bus Safety must be a priority program. CAS asserted that, since Congress was aware when it enacted ISTEA that there were lower fatality rates for school buses, "The only way for DOT to overturn the Congressional mandate in ISTEA that school bus safety shall be a Priority Program is for DOT to find that a Priority Program cannot reduce deaths and injuries in school bus accidents." According to CAS, "DOT cannot substitute its judgment for that of Congress which has determined that saving even a few lives from school bus accidents is as important a priority as saving thousands of lives lost due to excess speeds."

The agencies strongly disagree with CAS' comments. We have no reason to believe, and CAS cites no basis for its assertions, that Congress mandated that School Bus Safety must be designated a priority program if the program has the potential to save just a single life or that Congress believes that the thousands of lives lost due to excess speeds (many of whom are children) are somehow less important than the few children whose lives are lost in school buses.

In fact, the legislative history shows quite the contrary. The House version of ISTEA identified eight required and seven optional highway safety programs. Speeding was identified in the House legislation as a required program; school bus safety was identified as an optional program. (The Senate version of ISTEA had no comparable provision.) The final ISTEA legislation, which was developed in conference, listed just six program areas and eliminated the separate categories. However, it specifically provided the agencies with the option of choosing not to designate one or more of these six programs as National Priorities by reporting to Congress the reasons for not establishing the programs as priority areas. (CAS acknowledged this option in its comments.) Moreover, there is no suggestion anywhere in the legislative history that School Bus Safety (or any of the highway safety programs, for that matter) should meet criteria other than those normally applied by the agencies when they determine what programs should be designated as National Priority areas.

CAS also questioned the agencies' reliance on data from FARS, "Accident Facts" and the National Safety Council. CAS argued that the agencies should not rely on these data because they under-report school crashes, deaths and injuries. Another commenter, Advocates for Highway and Auto Safety, also pointed out that school bus crashes, injuries and fatalities may be under-reported, and suggested that the agencies investigate this issue. This commenter, however, fully supported the agencies' preliminary conclusions.

The agencies acknowledge that there may be some under-reporting of school bus crashes, deaths and injuries, and we are taking steps to improve these data. Currently, pursuant to section 2002(a) of ISTEA, the Department is in the process of developing minimum reporting criteria for States regarding deaths and injuries resulting from school bus crashes, as well as deaths and injuries involving other circumstances. While it may be possible to improve the data, it is clear from the data currently available (including those contained in comments received in response to the NPRM) that the numbers of school bus crashes, injuries and fatalities are extremely low

School Bus Safety Determination

The safety of children in school buses is an important concern, since any crash, particularly one resulting in fatalities or serious injury to children, is so tragic.

However, the number of crashes, injuries and fatalities involving school buses is small, particularly when considering exposure and when compared to the number of crashes, injuries and fatalities related to other priority programs.

The agencies believe significant attention has been devoted to School Bus Safety and steps have been taken to improve the already excellent safety record of this mode of transportation.

Furthermore, the states already have the ability under the Section 402 program to address school bus and other highway safety programs, and are proficient in allocating existing resources as they deem necessary to achieve maximum safety benefits. In addition, the States are able to address the majority of school bus-related fatalities, which occur while children are boarding or exiting, not riding the bus, under the Pedestrian and Bicycle Safety program, which is a designated National Priority area.

For these reasons, and based on a review of the comments and other information currently available, the agencies conclude that there is not sufficient justification for designating School Bus Safety as a National Priority program area.

Therefore, the agencies have not included School Bus Safety as a National Priority program at this time. The agencies wish to stress that this decision should not be construed to imply that the current resources focused upon School Bus Safety should be reduced or redirected. NHTSA and FHWA believe that all existing efforts in this area should be continued to maintain the impressive safety record associated with school bus transportation.

Other Comments

One commenter, a local health department in Reno, Nevada, urged the agencies to reinstate Emergency Medical Services (EMS) as a priority program under section 402. As mentioned earlier in this notice, EMS was designated as a priority program on April 1, 1982. It has not been removed from the list of priorities. In fact, every program that has been designated by the agencies as a priority program remains on the list.

As explained above, ISTEA required that the Secretary of Transportation either designate six program areas as priority highway safety programs or submit a report to Congress describing the reasons for not establishing these programs as priorities. Four of the programs that NHTSA and FHWA had previously designated as priority areas (Traffic Records, Emergency Medical Services, Pedestrian and Bicycle Safety and Roadway Safety) were not listed in ISTEA. ISTEA continued to provide the agencies with authority, however, to include additional programs or maintain existing programs on the list of priority areas. Accordingly, these four programs continue to be included on the list of National Priority program areas.

The National Sheriffs' Association recommended that the following be considered priority programs: (1) Speed Control; (2) Occupant Protection/Child Safety Protection; (3) DWI/DUI Detection and Standardized Field Sobriety Programs for law enforcement officers/deputies; (4) Conspicuity Markings at Railway/Railroad/Mass Transit Crossings and (5) Drug Evaluation, Classification, Drug Recognition Expert (DRE), and the Drug Recognition Technician (DRT) Programs for law enforcement officers/deputies.

As explained above, this final rule designates Speed Control as a National Priority program area. Occupant Protection has been a National Priority area since 1982. It includes activities designed to protect occupants who are children. Alcohol and Other Drug Countermeasures has also been a National Priority since 1982. States and communities may conduct DWI/DUI Detection, Standardized Field Sobriety, Drug Evaluation and Classification (DEC), Drug Recognition Expert (DRE), and Drug Recognition Technician (DRT) Programs for law enforcement officers/deputies under this program area. The agencies do not see a need to emphasize these programs as separate priorities. Finally, States and communities can conduct certain activities to improve the conspicuity of markings at railway, railroad and mass transit crossings under Roadway Safety, a FHWA National Priority program. In addition, there are other sources of Federal assistance available from FHWA to improve safety in this area. FHWA does not believe there is reason to designate these activities as a separate priority program.

Economic and Other Effects

The agencies have considered the impacts associated with this action, and determined that it is not significant within the meaning of Executive Order 12866 and the DOT Regulatory Policies and Procedures. The rulemaking does not affect the level of funding available in the highway safety program or otherwise have a significant economic impact. Accordingly, this rulemaking document was not reviewed under E.O. 12866.

Small Entity Impact

In compliance with the Regulatory Flexibility Act, the agencies have evaluated the effects of this action on small entities. Based on the evaluation, we certify that this rule will not have a significant economic impact on a substantial number of small entities. States are the recipients of any funds awarded under the section 402 program. Accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

Environmental Impacts

The agencies have also analyzed this action for the purpose of the National Environmental Policy Act. The agencies have determined that this action will not have any effect on the human environment.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that it has no federalism implication that warrants the preparation of a federalism assessment.

Paperwork Reduction Act

The requirement relating to this regulation, that each State must submit a highway safety plan to receive section 402 grant funds, is considered to be an information collection requirement, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. Accordingly, these requirements have been submitted to and approved by OMB, pursuant to the Paperwork Reduction Act (44 U.S.C. § 3501 *et seq.*). These requirements have been approved through 11/30/95; OMB No. 2127–0501. This final rule establishes no new information collection requirement, as that term is defined by the OMB in 5 CFR part 1320.

List of Subjects in 23 CFR Part 1205

Grant programs, Highway safety.

In consideration of the foregoing, the agencies amend 23 CFR Part 1205 as follows:

PART 1205—[AMENDED]

1. The authority citation for Part 1205 continues to read as follows:

Authority: 23 U.S.C. 402; delegations of authority at 49 CFR 1.48 and 1.50.

2. In § 1205.3, paragraph (c) is revised to read as follows:

§ 1205.3 Identification of National Priority Program Areas.

* * * * *

(c) Under statutory provisions jointly administered by NHTSA and FHWA, the following highway safety program areas, jointly administered by NHTSA and FHWA, have been identified as encompassing a major highway safety problem which is of national concern, and for which effective countermeasures have been identified. Programs developed in such areas are eligible for Federal funding, pursuant to guidelines issued by NHTSA and FHWA and the review procedures set forth in § 1205.4:

(1) Pedestrian and Bicycle Safety
(2) Speed Control

Issued on: December 7, 1994.

Rodney E. Slater,

Administrator, Federal Highway Administration.

Ricardo Martinez,

Administrator, National Highway Traffic Safety Administration.

[FR Doc 94–30514 Filed 12–12–94, 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[IN–116–FOR; Amendment 94–3]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with an exception, a proposed amendment to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The program amendment consists of revisions to Indiana's Surface Coal Mining and Reclamation Rules concerning performance standards for restoring soil productivity for surface coal mining and reclamation operations under IC 13–4.1. The amendment is intended to revise the Indiana program to be consistent with SMCRA and the corresponding Federal regulations.

EFFECTIVE DATE: December 13, 1994

FOR FURTHER INFORMATION CONTACT: Mr Roger W Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204, Telephone (317) 226–6166

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program.
II. Submission of the Amendment
III Director's Findings.
IV Summary and Disposition of Comments.
V Director's Decision.
VI. Procedural Determinations.

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Submission of the Amendment

By letter dated January 4, 1993 (Administrative Record Number IND–1193), Indiana submitted a proposed amendment (#93–1) intended to address the required program amendments concerning revegetation at 30 CFR 914.16 (i), (j), (k), (l), and (m). See 57 FR 41869 (September 14, 1992), and 57 FR 22653 (May 29, 1992) for background on these required amendments. The amendments submitted on January 4, 1993, were reviewed and approved by the Director on August 2, 1993 (58 FR 41039).

By letter dated August 11, 1994 (Administrative Record Number IND–1392), Indiana submitted formal program amendment #94–3. The proposed program amendment concerns the performance standards for restoring soil productivity for surface coal mining and reclamation operations under IC 13–4.1. In its submittal of this amendment, Indiana stated that all of the rules, except 310 IAC 12–4–16, were submitted in a previous package (amendment #93–1) and approved by OSM August 2, 1993. In addition, 310 IAC 12–5–145(c), which was approved as part of amendment #93–1 has been deleted and does not appear in this submittal. Indiana stated that as a result of ongoing Federal litigation over the language of the previously-submitted subsection (c) of 310 IAC 12–5–145, IAC 12–5–145(c) will not be resubmitted.

With amendment #94–3, only those provisions which differ from the amendments approved by OSM in the August 2, 1993, **Federal Register** notice were considered by OSM to be amendments subject to public review and comment in the current rulemaking process.

OSM announced receipt of the proposed amendment in the September 16, 1994, **Federal Register** (59 FR 47574), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on October 17, 1994.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director s findings concerning the proposed amendment to the Indiana program.

1 310 IAC 12–4–16 Performance Bond Release, Requirements

Subsection 16(c)(3)(A) is amended by deleting the word "or" and replacing that word with "and." As amended, subsection 16(c)(3)(A) provides that Phase III bond may be released only after: (A) the operator has successfully completed all surface coal mining and reclamation activities required in IC 13–4.1, 310 IAC 12, "and" the permit. The Director finds this change to be no less stringent than SMCRA at sections 509(a) and 519(c)(3), and no less effective than the Federal regulations at 30 CFR 800.40(c)(3).

2. 310 IAC 12–5–145 Prime Farmland, Special Performance Standards

Indiana has deleted subsection 145(c) which was approved by OSM on August 2, 1993 (58 FR 41039). Deleted subsection 145(c) contained the following language: "Soil reconstruction shall be carried out in accordance with the specifications of the Soil Conservation Service (SCS) of the United States Department of Agriculture establishing prime farmland soil reconstruction specifications for Indiana." In its submittal of this amendment Indiana tated that the language quoted above was omitted because of ongoing litigation concerning the language of subsection 145(c). The litigation which Indiana referred to above is *Indiana Coal Council, Inc.* vs. *Babbitt*, No. IP93–1328–C (S.D. Ind. filed October 1, 1993).

The Federal regulations at 30 CFR 823.4(b) provide that the regulatory authority within each State shall use the soil-reconstruction specifications established by the SCS to carry out the State's responsibilities concerning prime farmland. Prior to the #93–1 program amendment Indiana had no counterpart to the Federal regulations at 30 CFR 823.4(b). Indiana added a counterpart to 30 CFR 823 4(b) at 310

IAC 12–5–145(c) in amendment #93–1, and OSM approved the addition. In the #94–3 amendment, Indiana has removed the counterpart to 30 CFR 823.4(b), due to the lawsuit cited above.

The lawsuit cited above involves the following. The U.S. District Court for the District of Columbia has held that the SCS's specifications for prime farmland soil reconstruction must be promulgated as "rules" under the Federal Administrative Procedures Act, 5 U.S.C. 551 *et seq.*, and must be subject to public comment prior to becoming effective. *In re: Permanent Surface Mining Regulation Litigation II*, No. 79–1144 (D.D.C. October 1, 1984), slip. Op. pp. 23–24. The Indiana Coal Council, Inc. (ICC) contends that an Indiana counterpart to 30 CFR 823.4(b) should not be approved by OSM until after the SCS has complied with the requirement to subject its "specifications" to public comment.

OSM had required that Indiana promulgate a regulation addressing the requirements of 30 CFR 823.4(b). (57 FR 41873, September 14, 1992). When Indiana proposed 310 IAC 12–5–145(c) as the counterpart to 30 CFR 823.4(b), OSM removed the required amendment at 30 CFR 914.16(l). (58 FR 41042, August 2, 1993.) Since Indiana has now deleted 310 IAC 12–5–145(c), the State's program again lacks a counterpart to 30 CFR 823.4(b). Therefore, the Director finds that the deletion of 310 IAC 12–5–145(c) renders the Indiana program less effective than the Federal regulations. Consequently, the Director is requiring that Indiana amend its program to include a counterpart to 30 CFR 823.4(b) or to otherwise require that any prime farmland soil reconstruction specifications promulgated as rules for the State of Indiana by the SCS be incorporated by reference into the Indiana program.

IV. Summary and Disposition of Comments

Federal Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. No comments were received.

Public Comments

The public comment period and opportunity to request a public hearing was announced in the September 16, 1994, **Federal Register** (59 FR 47574). The comment period closed on October 17, 1994. No one commented and no one requested an opportunity to testify at the scheduled public hearing so no hearing was held.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA. EPA responded by letter dated September 27, 1994 (Administrative Record Number IND–1402). In that letter, the EPA stated that it had no comments on the proposed amendment.

V. Director's Decision

Based on the findings above, the Director is approving, except as noted herein, Indiana's program amendment concerning performance standards for restoring soil productivity submitted by Indiana on August 11, 1994. As discussed in Finding 2, the Director has determined that the deletion of 310 IAC 12–5–145(c) renders the Indiana program less effective than the Federal regulations. The Director is requiring that Indiana amend its program to include a counterpart to 30 CFR 823.4(b) or to otherwise require that any prime farmland soil reconstruction specifications promulgated as rules for the State of Indiana by the SCS be incorporated by reference into the Indiana program.

The Federal regulations at 30 CFR Part 914 codifying decisions concerning the Indiana program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Indiana program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Indiana of only such provisions.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5

U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated. December 6, 1994.

Tim L. Dieringer,

Acting Assistant Director, Eastern Support Center

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for Part 914 continues to read as follows:

Authority: 30 U S.C. 1201 *et seq*

2. In § 914.15, paragraph (ddd) is added to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(ddd) The following amendment to the Indiana program as submitted to OSM on August 11, 1994, under program amendment #94–3, is approved effective December 13, 1994: 310 IAC 12–4–16(c)(3) concerning performance bond release.

3. In § 914.16, paragraph (gg) is added to read as follows:

§ 914.16 Required program amendments.

* * * * *

(gg) By May 31, 1995, Indiana shall amend the Indiana program by adding a counterpart to 30 CFR 823.4(b), or by otherwise requiring that any prime farmland soil reconstruction specifications promulgated as rules by the United States Soil Conservation Service for the State of Indiana be incorporated by reference into the Indiana program.

[FR Doc 94–30506 Filed 12–12–94, 8 45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 13–3–6723; FRL–5118–7]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Yolo-Solano Air Pollution Control District, Ventura County Air Pollution Control District, and Placer County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on April 4, 1994. The revisions concern rules from the following air pollution control districts: Yolo-Solano Air Pollution Control District (Yolo-Solano APCD), Placer County Air Pollution Control District (Placer County APCD), and Ventura County Air Pollution Control District (Ventura County APCD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from cleaning and degreasing operations. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on January 12, 1995.

ADDRESSES: Copies of the rules and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Yolo-Solano County APCD, 1947 Galileo Court, suite 103, Davis, CA 95616.

Ventura County APCD, 702 County Square Drive, Ventura, CA 93003.

Placer County APCD, 11464 B Avenue, Auburn, CA 95603.

Environmental Protection Agency, Air Docket 6102, 401 "M" Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Helen Liu, Rulemaking Section, Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, telephone: (415) 744–1199.

SUPPLEMENTARY INFORMATION:

Background

On April 4, 1994 in 59 FR 15691, EPA proposed to approve the following rules into the California SIP: Yolo-Solano APCD's Rule 2.24—Surface Cleaning Operations, Placer County APCD's Rule 216—Degreasing Operations, and Ventura County APCD's Rule 74.6—Surface Cleaning and Degreasing. Rule 2.24 was adopted by Yolo-Solano APCD on November 14, 1990, Rule 216 was adopted by Placer County APCD on September 25, 1990, and Rule 74.6 was adopted by Ventura County APCD on December 10, 1991. These rules were submitted by the California Air Resources Board (CARB) to EPA on May 13, 1991, April 5, 1991, and June 19, 1992, respectively. These rules were submitted in response to EPA's 1988 SIP-Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the NPRM cited above.

EPA has evaluated all of the above rules for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRM cited above. EPA has found that the rules meet the applicable EPA requirements. A detailed discussion of the rule provisions and evaluations has been provided in 59 FR 15691 and in technical support documents (TSDs) available at EPA's Region IX office (TSDs dated August 6, 1993 for Rules 2.24, 216, and 74.6).

Response to Public Comments

A 30-day public comment period was provided in 59 FR 15691. EPA received no comments.

EPA Action

EPA is finalizing this action to approve the above rules for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and part D of the CAA. This approval action will incorporate

these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of VOCs in accordance with the requirements of the CAA.

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

Regulatory Process

The OMB has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

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

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 30, 1994.

John Wise,

Acting Regional Administrator

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U S C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c) (183)(i)(C)(*5*), (184)(i)(E) and (188)(i)(D)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(183) * * *

(i) * * *

(C) * * *

(*5*) Rule 216, adopted on September 25, 1990.

* * * * *

(184) * * *

(i) * * *

(E) Yolo-Solano Air Quality Management District.

(*1*) Rule 2.24, adopted on November 14, 1990.

* * * * *

(188) * * *

(i) * * *

(D) * * *

(*2*) Rule 74.6, adopted on December 10, 1991.

* * * * *

[FR Doc. 94–30509 Filed 12–12–94; 8:45 am]

BILLING CODE 6560–50–W

40 CFR Part 52

[CA37–10–6750; FRL–5117–8]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of a revision to the California State Implementation Plan (SIP) proposed in the **Federal Register** on September 21, 1994. The revision consists of one rule from the Santa Barbara County Air Pollution Control District (SBCAPCD), concerning the control of NO_X and carbon monoxide emissions from industrial boilers, steam generators, and process heaters in Santa Barbara County. This approval action will incorporate the rule into the federally approved SIP. The intended effect of approving the rule is to regulate emissions of oxides of nitrogen (NO_X) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA is finalizing the approval of this revision into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This final rule is effective on January 12, 1995.

ADDRESSES: Copies of the rule revision and EPA's evaluation report for the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revision is available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket 6102, 401 "M" Street, SW, Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Santa Barbara County Air Pollution Control District, Rule Development Section, 26 Castilian Drive B–23, Goleta, CA 93117

FOR FURTHER INFORMATION CONTACT: Wendy Colombo, Rulemaking Section, Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, telephone: (415) 744–1202.

SUPPLEMENTARY INFORMATION:

Background

On September 21, 1994 in 59 FR 48410, EPA proposed to approve the following rule into the California SIP: SBCAPCD's Rule 342, Control of Oxides of Nitrogen (NO_X) from Boilers, Steam Generators, and Process Heaters. Rule 342 was adopted by SBCAPCD on March 10, 1992. The California Air Resources Board (CARB) submitted this rule to EPA on June 19, 1992. Rule 342 was adopted as part of Santa Barbara County's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and in response to Section 182(f) NO_X RACT requirements of the Clean Air Act (CAA).

EPA has evaluated Rule 342 for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRM cited above. EPA has found that the rule meets the applicable EPA requirements. A detailed discussion of the rule provisions and evaluation has been provided in 59 FR 48410 and in the technical support document (TSD), dated May 1994 available at EPA's Region IX office.

Response to Public Comments

A 30-day public comment period was provided in 59 FR 48410. EPA received no comments.

EPA Action

EPA is finalizing this action to approve the above rule for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and part D of the CAA. This approval action will incorporate this rule into the federally approved SIP. The intended effect of approving this rule is to regulate emissions of NO_X in accordance with the requirements of the CAA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation

plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982

Dated: November 18, 1994.

David P. Howekamp,

Acting Regional Administrator

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(188)(i)(A)(*3*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(188) * * *

(i) * * *

(A) * * *

(*3*) Rule 342, adopted on March 10, 1992.

* * * * *

[FR Doc. 94–30508 Filed 12–12–94; 8:45 am]

BILLING CODE 6560–50–W

40 CFR Part 52

[CA 21–2–6706; FRL–5115–2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; San Diego County Air Pollution Control District; San Joaquin Valley Unified Air Pollution Control District; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on July 19, 1994 and August 24, 1994. The revisions concern rules from the following districts: the San Diego County Air Pollution Control District (SDCAPCD), the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD), and the South Coast Air Quality Management District (SCAQMD). This approval action will incorporate these rules into the Federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from surface cleaning and degreasing operations, oil sump operations, storage of materials containing VOCs, and operations related to the loading of marine tank vessels. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This final rule is effective on January 12, 1995.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket 6102, 401 "M" Street, SW, Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, suite 200, Fresno, CA 93721.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, telephone: (415) 744–1200.

SUPPLEMENTARY INFORMATION:

Background

On August 24, 1994 in 59 FR 43521, EPA proposed to approve the following rules into the California SIP: SDCAPCD Rule 67.6, Solvent Cleaning Operations; SDCAPCD Rule 67.17, Storage of Materials Containing Volatile Organic Compounds; SJVUAPCD Rule 461.1, Organic Solvent Degreasing Operations; and SJVUAPCD Rule 465.2, Crude Oil Production Sumps. SCAQMD Rule 1142, Marine Tank Vessel Operations, was proposed for approval into the California SIP on July 19, 1994 in 59 FR 36731.

SDCAPCD Rule 67.6 was adopted on October 16, 1990 and submitted by the California Air Resources Board (CARB) on April 5, 1991. SDCAPCD Rule 67.17 was adopted on September 21, 1993 and submitted on February 11, 1994. SJVUAPCD Rule 461.1 and Rule 465.2, both adopted on September 19, 1991, and SCAQMD Rule 1142, adopted on June 19, 1991, were all submitted by the CARB on January 28, 1992. These rules were submitted in response to EPA's 1988 SIP-Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amended Act. A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the Notices of Proposed Rulemaking (NPRMs) cited above.

EPA has evaluated all of the above rules for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRMs cited above. EPA has found that the rules meet the applicable EPA requirements. A detailed discussion of the rule provisions and evaluations has been provided in 59 FR 36731 and 59 FR 43521, and in technical support documents (TSDs) available at EPA's Region IX office.

Response to Public Comments

A 30-day public comment period was provided in 59 FR 36731 and 59 FR 43521. No comments were received.

EPA Action

EPA is finalizing action to approve the above rules for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and part D of the CAA. This approval action will incorporate these rules into the Federally approved SIP. The intended effect of approving these rules is to regulate emissions of VOCs in accordance with the requirements of the CAA.

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

Regulatory Process

The OMB has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

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

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 18, 1994.

David P. Howekamp,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c) (183)(i)(A)(*12*), (187)(i)(A)(*5*), (187)(i)(C) and (195) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(183) * * *

(i) * * *

(A) * * *

(*12*) Rule 67.6, adopted on October 16, 1990.

* * * * *

(187) * * *

(i) * * *

(A) * * *

(*5*) Rule 461.1 and Rule 465.2, adopted on September 19, 1991.

* * * * *

(C) South Coast Air Quality Management District.

(*1*) Rule 1142, adopted on June 19, 1991.

* * * * *

(195) New and amended regulations for the following APCDs were submitted on February 11, 1994, by the Governor's designee.

(i) Incorporation by reference.

(A) San Diego Air Pollution Control District.

(*1*) Rule 67.17, adopted on September 21, 1993.

* * * * *

[FR Doc. 94–30507 Filed 12–12–94; 8:45 am]

BILLING CODE 6560–50–W

---

40 CFR Part 52

[MT22–1–6399a, MT9–3–6561a, & MT13–2–6560a; FRL–5118–3]

Clean Air Act Approval and Promulgation of State Implementation Plan for Montana; Missoula; PM_{10} and CO Contingency Measures and Local Regulations; Disapproval of Missoula Variance Provision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA approves the State implementation plan (SIP) revisions submitted by the State of Montana with a letter dated March 2, 1994. This submittal addresses the Federal Clean Air Act requirement to submit contingency measures for both particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}) and for carbon monoxide (CO) for the areas in Missoula designated as nonattainment for the PM_{10} and CO National Ambient Air Quality Standards (NAAQS). Further, this submittal satisfies several commitments made by the State in a previous PM_{10} SIP submittal. Due to the completion of those commitments, EPA is approving the related rules of the Missoula City-County Air Pollution Control Program, as adopted by the Montana Board of Health and Environmental Sciences (MBHES) on June 28, 1991 and amended on March 20, 1992 and November 19, 1993, and submitted by the Governor in letters dated August 20, 1991, June 4, 1992, and March 2, 1994. These rules include regulations regarding inspections, emergency procedures, minor source construction permitting, open burning, and wood waste burners. EPA also approves minor revisions to the previously approved Missoula City-County Air Pollution Control Program's Chapters VII and VIII, as included in the March 2, 1994 submittal. Further, EPA is declining to take action on Missoula's minor source operating permit regulations. Finally, EPA disapproves Missoula City-County Air Pollution Control Program's Chapter X, Variances, which was submitted on August 20, 1991.

DATES: This final rule is effective on February 13, 1995 unless notice is received by January 12, 1995 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations:

Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2405.

Montana Department of Health and Environmental Sciences, Air Quality Division, Cogswell Building, Helena, Montana 59620–0901.

The Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Amy Platt, 8ART-AP, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado, (303) 293–1769.

SUPPLEMENTARY INFORMATION:

I. Background

The Missoula, Montana 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, upon enactment of the Clean Air Act Amendments of 1990.[1] See 56 FR 56694 (Nov. 6, 1991); 40 CFR 81.327 (Missoula and vicinity). The air quality

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act See Pub. L. No. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U S. Code at 42 U.S.C. Sections 7401, *et seq.*

planning requirements for moderate PM_{10} nonattainment areas are set out in subparts 1 and 4 of part D, title I of the Act.[2] The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under Title I of the Act, including those State submittals containing moderate PM_{10} nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in this action and the supporting rationale.

Those States containing initial moderate PM_{10} nonattainment areas such as Missoula were required to submit, among other things, several provisions by November 15, 1991. These provisions are described in EPA's final rulemaking on the Missoula moderate PM_{10} nonattainment area SIP (59 FR 2537–2540, January 18, 1994). Such States were also required to submit contingency measures by November 15, 1993 (see 57 FR 13543). These measures must become effective, without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve reasonable further progress (RFP) or to attain the PM_{10} National Ambient Air Quality Standards (NAAQS) by the applicable statutory deadline. See section 172(c)(9) and 57 FR 13510–13512 and 13543–13544.

On November 15, 1990, the Missoula area was also designated nonattainment and classified as a moderate area for CO by operation of law. See section 107(d)(4)(B) of the Act; 56 FR 56694 at 56705–56706, 56790 (November 6, 1991); 40 CFR 81.327 (Missoula and vicinity). Unlike PM_{10} nonattainment areas, moderate CO areas with a design value of less than or equal to 12.7 parts per million (including Missoula) are not required by the Act to submit a SIP demonstrating attainment of the NAAQS. Rather, these areas are required to submit certain SIP elements, including an oxygenated fuels program, an emissions inventory, and contingency measures. Section 172(c)(9) of the Act requires the State to submit contingency measures for implementation in the event that the area fails to reach attainment by the applicable attainment date (December 31, 1995). EPA has established November 15, 1993 as the deadline by which the contingency measures must be submitted to EPA as a SIP revision.

II. This Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566). The Governor of Montana submitted revisions to the SIP for Missoula with a letter dated March 2, 1994. The revisions address contingency measures for PM_{10} and CO, and they also amend several of the Missoula City-County Air Pollution Control Program regulations.

EPA approved a large portion of the Missoula City-County Air Pollution Control Program on January 18, 1994 (59 FR 2537–2540). Some of the local regulation amendments, which are included in the March 2, 1994 submittal, were made to satisfy commitments made by the Governor with the original PM_{10} SIP submittal. In the January 18, 1994 rulemaking, EPA delayed action on the regulations related to the Governor's commitments.

To address deficiencies identified by EPA, the State took commitments through the public hearing process on November 23, 1992, and submitted the commitments to EPA as additional tasks to be completed to correct the deficiencies in the Missoula and statewide SIP (a more detailed discussion of these commitments can be found in EPA's prior proposed rulemaking action on the Montana PM_{10} SIP revisions for Missoula (58 FR 48339, September 15, 1993), the Technical Support Document (TSD) for that action, Section II.E. below, and the TSD for this action).

Due to the satisfaction of those commitments, EPA is now approving the following Missoula City-County Air Pollution Control Program regulations as adopted by the State of Montana on June 28, 1991 and submitted to EPA by Montana's Governor on August 20, 1991, with amendments adopted by the State on March 20, 1992 and November 19, 1993 and submitted to EPA by the Governor on June 4, 1992 and March 2, 1994, respectively: Chapter IX—Subchapter 4, Emergency Procedures; Subchapter 13, Open Burning; and Subchapter 14, Rule 1407, Wood-Waste Burners.

EPA is also approving the following minor revisions to two previously approved chapters of the Missoula City-County Air Pollution Control Program—revisions to Chapter VII, involving a name change for the advisory council, and revisions to Chapter VIII, regarding inspections. These revisions were also adopted by the State on November 19, 1993 and were included in the March 2, 1994 submittal.

A. Analysis of State Submission

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[3] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see Section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

To entertain public comment, the State of Montana, after providing adequate notice, held public hearings for the local air pollution control program on June 28, 1991 and March 2, 1992, and a hearing was held on November 19, 1993 to address the Missoula contingency measures and further revisions to the local air pollution control program regulations. Following the public hearings, the local air pollution control plan, revisions, and the Missoula contingency measures were adopted by the State.

The local air pollution control program was submitted as a proposed revision to the SIP by the Governor with a letter dated August 20, 1991. In a letter to the State dated December 4, 1991, EPA identified deficiencies with the local program. Some of these deficiencies were addressed in the Missoula PM_{10} SIP, which was submitted by the Governor to EPA in a letter dated June 4, 1992. Commitments to correct the remaining deficiencies were submitted by the Governor in a letter dated November 30, 1992. EPA described the commitments and approved the provisions of the local program that were not affected by these

[2] Subpart 1 contains provisions applicable to nonattainment areas generally and Subpart 4 contains provisions specifically applicable to PM_{10} nonattainment areas. At times, Subpart 1 and Subpart 4 overlap or conflict. EPA has attempted to clarity the relationship among these provisions in the "General Preamble" and, as appropriate, in today's action and supporting information.

[3] Also section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

commitments on January 18, 1994 (59 FR 2537). A detailed description of the Missoula City-County regulations that are the subject of this action, the deficiencies that EPA identified in its December 4, 1991 letter to the State, the State's commitments to address these deficiencies, and the current revisions is contained in the TSD for this action.

The SIP revisions were reviewed by EPA to determine completeness in accordance with the completeness criteria set out at 40 CFR part 51, appendix V. The submittals were found to be complete and letters dated December 4, 1991, December 11, 1992, and May 12, 1994 were forwarded to the Governor indicating the completeness of the submittals and the next steps to be taken in the review process.

B. Contingency Measures

The Clean Air Act requires State's containing PM_{10} nonattainment areas to adopt contingency measures that will take effect without further action by the State or EPA upon a determination by EPA that an area failed to make reasonable further progress or to timely attain the applicable NAAQS, as described in section 172(c)(9). See generally 57 FR 13510–13512 and 13543–13544. Pursuant to section 172(b), the Administrator has established a schedule providing that states containing initial moderate PM_{10} nonattainment areas shall submit SIP revisions containing contingency measures no later than November 15, 1993. (See 57 FR 13543, n. 3.)

The General Preamble further explains that contingency measures for PM_{10} should consist of other available control measures, beyond those necessary to meet the core moderate area control requirement to implement reasonably available control measures (see Clean Air Act sections 172(c)(1) and 189(a)(1)(C)). Based on the statutory structure, EPA believes that contingency measures must, at a minimum, provide for continued progress toward the attainment goal during the interim period between the determination that the SIP has failed to achieve RFP/ provide for timely attainment of the NAAQS and the additional formal air quality planning following the determination (57 FR 13511).

The Act similarly requires that states containing certain CO nonattainment areas to adopt contingency measures that will take effect without further action by the State or EPA upon a determination by EPA that an area failed to make reasonable further progress or to attain the standards, as described in section 172(c)(9). ("Not Classified" areas, that is, areas that had a design value less than the 9.0 part per million CO NAAQS at the time of designation, are not required to submit contingency measures.) Pursuant to section 172(b), the Administrator has established a schedule providing that states containing areas not exempted from the contingency measure requirement shall submit SIP revisions containing contingency measures no later than November 15, 1993. EPA guidance ("Technical Support Document to Aid States with the Development of Carbon Monoxide State Implementation Plans," EPA–452/R–92–003, July 1992) recommends that implementation of the contingency measures provide vehicle miles travelled (VMT) reductions or emission reductions sufficient to counteract the effect of one year's growth in VMT. However, the Act does not specify how many contingency measures are needed or the magnitude of emissions reductions that must be provided by these measures. In the interim period (*i.e.*, after an area fails to attain and while required additional measures are being adopted due to being reclassified to serious), EPA believes that contingency measures must provide for continued progress toward the attainment goal. This would be the minimum requirement and is consistent with the statutory scheme.

Section 172(c)(9) of the Act specifies that contingency measures shall "take effect * * * without further action by the State, or the [EPA] Administrator." EPA has interpreted this requirement (in the General Preamble at 57 FR 13512) to mean that no further rulemaking activities by the State or EPA would be needed to implement the contingency measures. In general, EPA expects all actions needed to affect full implementation of the measures to occur within 60 days after EPA notifies the State of its failure to attain the standard or make RFP.

EPA recognizes that certain actions, such as notification of sources, modification of permits, etc., may be needed before some measures could be implemented. However, States must show that their contingency measures can be implemented with minimal further administrative action on their part and with no additional rulemaking action such as public hearing or legislative review.

The PM_{10} and CO contingency measures for Missoula were developed by the Missoula City-County Health Department (MCCHD), with input from the Montana Department of Health and Environmental Sciences (MDHES). After a local public hearing on September 16, 1993, the Missoula City-County Air Pollution Control Board adopted the measures. At its November 19, 1993 MBHES public hearing, the Board adopted the contingency measures.

The Governor submitted the contingency measures to EPA with a letter dated March 2, 1994. After reviewing the submittal for conformance with the completeness criteria in 40 CFR part 51, appendix V, EPA determined the submittal to be administratively and technically complete and notified the Governor of such determination in a letter dated May 12, 1994.

1. PM_{10} Contingency Measure

Upon sixty days notification by EPA [4] that Missoula has failed to attain the PM_{10} NAAQS or make RFP, MCCHD will select a contingency measure rule based on chemical or microscopic analysis of exposed PM_{10} filters to determine which source is the significant contributor to the PM_{10} violation. If, after analysis, the major contributing source is determined to be re-entrained road dust, the area of regulated road sanding materials will be expanded to include Section 1, T12N R20W; Sections 5 and 24, T13N R19W; and Sections 19, 24, 25, 30, 31, and 36, T13N R20W (*i.e.*, Rule 1401(7)(b) will be implemented). In general terms, the regulated sanding material usage area will be expanded to include East Missoula, Southwest Missoula near Buckhouse Bridge, West Missoula between the Clark Fork and Bitterroot Rivers, and Northwest Missoula in the Grant Creek area.

If after analysis the major contributing source is determined to be residential wood burning, then the exemption for burning during an air pollution alert allowed for Class I permitted stoves and dealer demonstration permitted devices will not be allowed (*i.e.*, Rule 1428(5)(d) and (7)(b) will be implemented). Regardless of the results of the analysis, either Rule 1401(7)(b) or Rule 1428(5)(d) and (7)(b) will be implemented within sixty days of notification from EPA.

[4] The actual wording of Missoula's PM_{10} contingency measure regulation is "[u]pon sixty (60) days notification by the Montana Department of Health and Environmental Sciences and U.S. EPA * * *." However, in a November 3, 1994 letter from Jeffrey T. Chaffee, MDHES, to Douglas M. Skie, EPA, the State indicated that the word "and" is not intended to imply that EPA cannot make an independent finding of Missoula's failure to attain the standard. Therefore, EPA is approving this regulation based on the expectation that all actions needed to affect full implementation of the contingency measure will occur within 60 days after EPA notifies the State of Missoula's failure to attain the PM_{10} standard or make RFP *i.e.*, the State need not provide notification as well.

2. CO Contingency Measure

Within sixty days of notification by EPA[5] that the Missoula CO nonattainment area has failed to attain the CO NAAQS, the MCCHD will implement the contingency measure, Rule 1428(5)(d), immediately. This portion of the Missoula Solid Fuel Burning Devices regulations states that Rule 1428 (5)(a) and (7)(d) will be modified to delete Class I and Dealer Demonstrated permitted devices, and Rule 1428(5)(c) is void. In other words, if the area has failed to attain the CO NAAQS, then the exemption for burning during an air pollution alert for permitted Class I and dealer demonstrated woodburning devices will not be allowed.

C. Effectiveness of the Contingency Measures

1. Re-entrained Road Dust Contingency Measure for PM_{10}

If the re-entrained road dust contingency measure is implemented, the control efficiency of the re-entrained road dust measures will be 76% in the 24-hour attainment demonstration (an increase of 14% over the control efficiency of the re-entrained road dust measures in the original SIP attainment demonstration). This calculation takes into account the expanded area for using washed sand, the existing areas for using washed sand and liquid de-icer, and the existing street sweeping measures (see the TSD for the Missoula PM_{10} SIP for further details on the existing re-entrained road dust strategies). Total reduction from the contingency measure is calculated to be 4073 pounds of PM_{10} per day.

2. Residential Woodburning Contingency Measure for PM_{10}

Since no credit was taken for the residential woodburning measures in the original SIP attainment demonstration, control efficiency from the residential woodburning contingency measure increases in the 24-hour attainment demonstration. See the TSD for the Missoula PM_{10} SIP for further details on the existing residential woodburning strategies (available at the EPA Region VIII address listed at the beginning of this notice). Total reduction from the contingency measure would be 12.6 pounds of PM_{10} per day.

EPA believes this contingency measure is adequate for several reasons. First, the existing Missoula solid fuel burning device regulation (Rule 1428) is already a very stringent mandatory curtailment program. Any further emissions reductions through this program are very difficult to achieve. Second, the emissions inventory for the Missoula area indicates that re-entrained road dust contributes a somewhat higher portion of the PM_{10} emissions than residential woodburning. Therefore, the analysis necessary for the contingency measure selection process most likely will indicate that residential woodburning is not the major contributing source to Missoula's failure to attain the PM_{10} NAAQS or make RFP, and that the re-entrained road dust contingency measure should be implemented instead of the woodburning measure. Finally, the control measures implemented in the PM_{10} SIP achieve more emissions reductions than needed to demonstrate attainment of the $PM_{10}10$ NAAQS, as indicated by the State's predicted 24-hour attainment concentration of 143.8 $\mu g/m^3$ (see 58 FR 48341–48342, 59 FR 2538, and the related TSD). Since the 24-hour PM_{10} NAAQS is 150 $\mu g/m^3$, this established safety margin further supports the reasonableness of the contingency measure.

3. Residential Woodburning Contingency Measure for CO

With the implementation of the residential woodburning contingency measure, Class I devices will not be allowed to burn during an alert. Assuming a conservative 60% compliance rate, 7,915 pounds of CO per day will be reduced. Since the estimated one-year growth of vehicle miles travelled (VMT) is 1%, and the CO emissions inventory report has determined that 140,786 pounds of CO per day are emitted from automobiles, approximately 1,409 pounds of CO per day are needed for a sufficient amount of reduction from the contingency measure. Therefore, emissions reductions are adequately met with the implementation of this contingency measure.

D. Early Implementation

Subchapter 3, Contingency Measure Selection Process, of the Missoula City-County Air Pollution Control Program's Chapter IX—Regulations, Standards, & Permits—sets out its early implementation policy as follows. For either the PM_{10} or CO contingency measures, early implementation of the measures will not result in the requirement to implement additional moderate area contingency measures if the area fails to attain the NAAQS or make reasonable further progress in reducing emissions. However, if Missoula is reclassified to a serious nonattainment area, additional planning requirements, including, but not limited to, serious area contingency measures, would be necessary. (See 59 FR 41998, August 16, 1994.)

E. PM_{10} SIP Commitments and Variance Provision

In a letter dated August 20, 1991, the Governor of Montana submitted to EPA the Missoula City-County Air Pollution Control Program as a revision to the Montana SIP. EPA's review identified numerous deficiencies, including inconsistencies with the State regulations, as well as deficiencies similar to those EPA identified in the State regulations. In a December 4, 1991 letter from the EPA Region VIII Administrator to the Governor of Montana, the deficiencies in the Missoula regulations were outlined in detail (this letter is available for public inspection at the EPA Region VIII address listed at the beginning of this notice). The problem areas included rules involving emergency procedures, permitting, open burning, wood-waste burners, National standards of performance for new stationary sources (NSPS), National emission standards for hazardous air pollutants (NESHAPs), and variances.

To address EPA's concerns, the State took commitments through the public hearing process on November 23, 1992 and submitted the commitments to EPA in a letter dated November 30, 1992, as additional tasks to be performed to correct the deficiencies in the Missoula and statewide SIP. Montana requested that EPA consider the August 20, 1991 submittal concurrent with its June 4, 1992 PM_{10} SIP submittal and the conditions outlined in the State's commitments.

Commitments related to the Missoula local regulations were as follows:

(A) Missoula shall add language in Chapter VIII of the Missoula regulations to include provisions for inspection of sources to ascertain compliance with the adopted emission control action for each emergency episode stage.

(B) Missoula shall review and revise the internal and external communication strategies contained

[5] The actual wording of Missoula's CO contingency measure regulation is "[w]ithin sixty (60) days of notification by the MDHES and the U.S. EPA * * *" However, in a November 3, 1994 letter from Jeffrey T Chaffee, MDHES, to Douglas M. Skie, EPA, the State indicated that the word "and" is not intended to imply that EPA cannot make an independent finding of Missoula's failure to attain the standard. Therefore, EPA is approving this regulation based on the expectation that all actions needed to effect full implementation of the contingency measure will occur within 60 days after EPA notifies the State of Missoula's failure to attain the CO standard, *i.e.*, the State need not provide notification as well.

in Missoula's emergency episode regulations (Subchapter 4) to ensure consistency with the state requirements (SIP Chapters 7 and 8).

(C) Missoula shall revise the Missoula permitting regulation to correct the deficiencies that EPA identified in James Scherer's December 4, 1991 letter by:

a. Replacing the terms "new or altered source or stack" and "new or altered source" with more definitive terms.

b. Adding the terms "demolition" and "modifications" to the definition of construction.

c. Eliminating the blanket exemption from permitting for emergency equipment installed at hospitals [Rule 1102(1)(h)].

d. Eliminating the blanket exemption from permitting for equipment associated with the storage of agricultural products [1102(1)(f)].

e. Replacing the term "air pollution control capability" contained in Rule 1103(1) with the term "air pollution control equipment or techniques."

f. Changing the reference to the 1977 Federal Clean Air Act contained in Rule 1103 to the 1990 Federal Clean Air Act.

g. Replacing the term "expected production capacity" contained in Rule 1105(1)(b)(ii) with the term "maximum design production capacity."

h. Replacing the word "or" contained in Rule 1109, Sections (1), (2), and (3) with the word "and."

(D) If suggestions are made by Montana for Missoula to revise their open burning regulations in accordance with amendments to Montana open burning regulations to ensure that a state open burning permit to burn creosote railroad ties cannot be issued for any location in Missoula County, Missoula shall complete the necessary revisions.

(E) Missoula shall revise Rule 1407 to make it consistent with the proposed amendments to Montana Rule 16.8.1407 regarding wood waste burners.

(F) Missoula shall revise the Missoula NSPS and NESHAP regulations to incorporate all federal requirements promulgated through July 1, 1992.

The revisions to the Missoula City-County Air Pollution Control Program regulations, which were submitted by the Governor with a letter dated March 2, 1994, fulfill four of the State's commitments (see A, B, C, and E above). However, EPA still has concerns with respect to the minor source operating permit regulations (see below).

Additional information submitted to Doug Skie, EPA, from Jeff Chaffee, MDHES, in a letter dated June 9, 1994 fulfills one more commitment (see D above). In this letter, the State indicated that there is no need for Missoula to revise its open burning regulations. The State revised its open burning regulations to prohibit the burning of creosote railroad ties (revisions adopted by the Montana Board of Health and Environmental Sciences at its May 20, 1994 hearing), and the Missoula regulation already prohibits such burning. Therefore, the State does not believe that revisions to Missoula's open burning regulations are required at this time.

Therefore, EPA is now approving the following portions of Chapter IX of the Missoula City-County Air Pollution Control Program, as submitted in a letter dated August 20, 1991, with revisions submitted in letters dated June 4, 1992 and March 2, 1994—Subchapters 4 and 13, and Subchapter 14, Rule 1407—addressing emergency procedures, open burning, and wood-waste burners, respectively. EPA is also approving all portions of Subchapter 11—Permit, Construction, and Operation of Air Contaminant Sources—except Rules 1102(3), 1105(2), and 1111(2). The portions of Subchapter 11 that EPA is approving relate to construction permits.

Although EPA is approving Missoula's construction permit regulations of Subchapter 11 as part of the SIP, EPA's approval does not include Missoula's minor source operating permit regulations, which are found in Chapter IX: Subchapter 11, Rules 1102(3), 1105(2), and 1111(2). EPA is declining to take action on these minor source operating permit regulations because they do not meet the criteria of the June 28, 1989 **Federal Register** notice, which are required in order for the minor source operating permits to be considered federally enforceable (see 54 FR 27282).

Also included in the March 2, 1994 submittal are minor amendments to two previously approved chapters of the Missoula City-County Air Pollution Control Program. These revisions involve a name change for the air advisory council listed in Chapter VII, and amendments to Chapter VIII, to provide for emergency episode inspections of operating point sources, which are capable of emitting 25 tons or more per year of any regulated air pollutant, to ensure compliance with abatement plan requirements. EPA approves these revisions.

EPA's concerns regarding Missoula City-County Air Pollution Control Program, Chapter X, Variances, as included with the August 20, 1991 submittal, have not been addressed. In the December 4, 1991 letter to the Governor, EPA informed the State that section 110(i) of the Federal Clean Air Act, as amended, prohibits the suspension of any requirement of an applicable SIP from being taken with respect to a stationary source by a State or the Administrator of EPA, except by SIP revision under section 110(a) (and a few other exceptions). Neither the June 4, 1992 submittal, nor the March 2, 1994 submittal, corrected this problem. Therefore, EPA must disapprove Missoula's Chapter X, Variances, at this time.

One of the November 30, 1992 Governor's commitments regarding Missoula is still outstanding. That commitment addresses Missoula NSPS and NESHAP regulations (see (F), above). EPA will take separate action on those regulations, as appropriate.

F. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and EPA (see Sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, *et al.* (see 57 FR 13541). State implementation plan provisions also must contain a program to provide for enforcement of control measures and other elements in the SIP [see section 110(a)(2)(C)].

The specific measures contained in the Missoula contingency plan are addressed above in Section II.B. The Missoula air pollution control regulations, as included in the SIP, are legally enforceable by MCCHD. There are civil penalties, which increase with each violation, for noncompliance with the solid fuel burning device regulation. Violation of any other provision, regulation or rule enforced under the program results in a criminal offense punishable by a fine.

The Missoula City-County Air Pollution Control Program regulations are also enforceable by the MDHES, if the MCCHD fails to administer the program. Since the program has been approved by the MBHES in accordance with Section 75–2–301 of the Montana Clean Air Act and effectuated by an MBHES order, and since the MDHES can enforce MBHES orders, the MDHES has independent enforcement powers. Enforcement provisions are found in the

Clean Air Act of Montana, Sections 75–2–401–429, Montana Code Annotated.

If a State relies on a local government for the implementation of any plan provision, then, according to Section 110(a)(2)(E)(iii) of the Act, the State must provide necessary assurances that the State has responsibility for ensuring adequate implementation of such plan provision. A State would have responsibility to ensure adequate implementation if, for example, the State has the authority and resources to implement the provision when the local entity has failed to do so.

The Missoula City-County Air Pollution Control Program was established in accordance with the requirements of Section 75–2–301 of the Montana Clean Air Act, as amended (1991). A revised version of the air pollution control regulations was approved by the Missoula City-County Air Pollution Control Board on April 24, 1991, and on June 28, 1991 the MBHES issued a board order approving these regulations. A stipulation between the MDHES and the Missoula City-County Air Pollution Control Board that delineates responsibilities and authorities between the MDHES and the local authorities was signed April 29, 1991. On March 20, 1992, the MBHES issued a board order approving revisions to the Missoula City-County Air Pollution Control Program. The April 29, 1991 stipulation, the June 28, 1991 Board order, and the March 20, 1992 Board order were incorporated into the SIP on January 18, 1994 (59 FR 2540).

On November 19, 1993, the MBHES issued a Board order approving the Missoula PM_{10} and CO contingency measures and revisions to the Missoula City-County regulations. These regulations and the November 19, 1993 Board order were submitted to EPA as a modification to the Montana SIP.

The Missoula City-County rules are in effect now. The State of Montana has a program that will ensure that the contingency measures contained in the Missoula SIP are adequately enforced. EPA believes that the State's and Missoula's existing air enforcement program will be adequate. The TSD for this action contains further information on enforceability requirements, responsibilities, and a discussion of the personnel and funding intended to support effective implementation of the control measures.

III. Final Action

EPA is approving Montana's SIP revisions, submitted by the Governor with a letter dated March 2, 1994, for the Missoula, Montana nonattainment area. This submittal addressed PM_{10} and CO contingency measure plans that were due on November 15, 1993. These plans involve the incorporation of a new Subchapter 3 (Contingency Measure Selection Process) in Chapter IX of the Missoula City-County Air Pollution Control Program and revisions to Chapter IX, Subchapter 14, Rule 1401 (regarding the contingency measure to expand the area of regulated road sanding materials) and Rule 1428 (regarding the contingency measure to void certain solid fuel burning device permits).

The March 2, 1994 submittal also revised several Missoula City-County Air Pollution Control Program regulations, as committed to be completed by the Governor of Montana to EPA in a letter dated November 30, 1992. Due to the satisfaction of those commitments, EPA can now approve the following portions of Chapter IX of the Missoula City-County Air Pollution Control Program, as submitted on August 20, 1991, with revisions submitted June 4, 1992, and March 2, 1994: (1) Subchapter 4, Emergency Procedures; (2) all portions of Subchapter 11, Permit, Construction, and Operation of Contaminant Sources—except Rules 1102(3), 1105(2), and 1111(2) (the portions of Subchapter 11 that EPA is approving relate to construction permits); (3) Subchapter 13, Open Burning; and (4) Subchapter 14, Rule 1407, Wood-Waste Burners.

Although EPA is approving Missoula's construction permit regulations of Subchapter 11 as part of the SIP, EPA's approval does not include Missoula's minor source operating permit regulations. EPA is declining to take action on Missoula's minor source operating permit regulations, which are found in Chapter IX: Subchapter 11, Rules 1102(3), 1105(2), and 1111(2), because they do not meet the criteria of the June 28, 1989 **Federal Register** document. These criteria must be met in order for the minor source operating permits to be considered federally enforceable (see 54 FR 27282).

EPA also approves minor revisions to previously approved Missoula City-County Air Pollution Control Program Chapter VII and Chapter VIII, as included in the March 2, 1994 submittal.

Finally, EPA is disapproving Missoula City-County Air Pollution Control Program, Chapter X, Variances, as adopted by the MBHES on June 28, 1991, and submitted by the Governor of Montana in a letter dated August 20, 1991. This chapter is not consistent with section 110(i) of the Clean Air Act, which prohibits any State or EPA from granting a variance from any requirement of an applicable implementation plan with respect to a stationary source.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. Under the procedures established in the May 10, 1994 **Federal Register** (59 FR 24054), this action will be effective February 13, 1995 unless, by January 12, 1995, adverse or critical comments are received.

If such comments are received, this action will be withdrawn before the effective date by publishing a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on February 13, 1995.

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

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Approvals of SIP submittals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, 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 Clean Air Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic

reasonableness of state action The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co v U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

EPA's disapproval—of the portion of the submittal containing Missoula's variance rule—under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new Federal requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 13, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: November 29, 1994.

William P. Yellowtail,

Regional Administrator

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart BB—Montana

2. Section 52.1370 is amended by adding paragraph (c)(35) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(35) The Governor of Montana submitted PM_{10} and CO contingency measures for Missoula, Montana in a letter dated March 2, 1994. The Governor of Montana also submitted the Missoula City-County Air Pollution Control Program in a letter dated August 20, 1991, with amendments submitted in letters dated June 4, 1992 and March 2, 1994. The March 2, 1994 submittal satisfies several commitments made by the State in its original PM_{10} moderate nonattainment area SIP.

(i) Incorporation by reference.

(A) Board order issued on November 19, 1993 by the Montana Board of Health and Environmental Sciences approving the amendments to Missoula City-County Air Pollution Control Program Chapter VII, VIII, and IX, regarding, among other things, the PM_{10} and CO contingency measures, inspections, emergency procedures, permitting, and wood-waste burners.

(B) Missoula City-County Chapter IX, Subchapter 3, effective November 19, 1993, which addresses the PM_{10} and CO contingency measure selection process.

(C) Missoula City-County Rule 1401(7), effective November 19, 1993, which addresses PM_{10} contingency measure requirements for an expanded area of regulated road sanding materials.

(D) Missoula City-County Rule 1428(5) and 1428(7), effective November 19, 1993, which addresses PM_{10} and CO contingency measure requirements for solid fuel burning devices.

(E) Missoula City-County Air Pollution Control Program Chapter IX, Subchapter 13, Open Burning, effective June 28, 1991.

(F) Other Missoula City-County Air Pollution Control Program regulations effective June 28, 1991, with amendments effective on March 20, 1992 and November 19, 1993, as follows: all portions of Chapter IX, Subchapter 11, Permit, Construction and Operation of Air Contaminant Sources, except, Rules 1102(3), 1105(2), and 1111(2).

(G) Other Missoula City-County Air Pollution Control Program regulations effective June 28, 1991, with amendments effective on November 19, 1993, as follows: Chapter IX, Subchapter 4, Emergency Procedures and Chapter IX, Subchapter 14, Rule 1407, Prevention, Abatement and Control of Air Pollution from Wood-Waste Burners.

(H) Minor revisions to Missoula City-County Air Pollution Control Program Chapter VII, Air Quality Advisory Council, and Chapter VIII, Inspections, effective on November 19, 1993, as follows: Chapter VII(1) and Chapter VIII(4).

3. Section 52.1390 is added to read as follows:

§ 52.1390 Missoula Variance Provision.

The Missoula City-County Air Pollution Control Program's Chapter X, Variances, which was adopted by the Montana Board of Health and Environmental Sciences on June 28, 1991 and submitted by the Governor of Montana to EPA in a letter dated August 20, 1991, is disapproved. This rule is inconsistent with section 110(i) of the Clean Air Act, which prohibits any State or EPA from granting a variance from any requirement of an applicable implementation plan with respect to a stationary source.

[FR Doc. 94–30512 Filed 12–12–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 65

RIN 0905–AD69

National Institute of Environmental Health Sciences Hazardous Waste Worker Training

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: The National Institutes of Health (NIH) is amending regulations governing the National Institute of Environmental Health Sciences Hazardous Waste Worker Training Program to make them applicable to the new Hazmat Employee Training Grants Program authorized by section 118 of the Hazardous Materials Transportation Act, as amended by the Hazardous Materials Transportation Uniform Safety Act of 1990.

EFFECTIVE DATE: Effective January 12, 1995.

FOR FURTHER INFORMATION CONTACT: Chip Hughes, Worker Education and Training Program, Office of Disease Prevention, P. O. Box 12233, NIEHS, West Campus, MD WC–04, Research Triangle Park, North Carolina 27709, telephone (919) 541–0217 (this not a toll-free number).

SUPPLEMENTARY INFORMATION: The Hazardous Materials Transportation Uniform Safety Act (HMTUSA) of 1990, Public Law 101–615, enacted on November 16, 1990, amends the Hazardous Materials Transportation Act (HMTA) (49 U.S.C. Appendix 1801 *et seq.*) by authorizing the National Institute of Environmental Health Sciences (NIEHS) of the National Institutes of Health to administer a program of grants to qualified non-profit organizations for the purpose of providing training and education to hazardous materials employees regarding the safe unloading, loading, handling, storage and transportation of hazardous materials and emergency preparedness for responding to accidents or incidents involving the transportation of hazardous materials in order to meet the training requirements issued under section 106(b) of the HMTA. Section 118 of the HMTA directs NIEHS to administer the Hazmat Employee Training Grant Program in consultation with the Secretary of the U.S. Department of Transportation (DOT), the Administrator of the Environmental Protection Agency (EPA) and the Secretary of the U.S. Department of Labor (DOL). The grants are funded from the collection of fees, as specified under section 117A(h) of the HMTA, which are collected from the transporters of hazardous materials on an annual basis. Funds to support the grant program are transferred from DOT to NIEHS on an annual basis through an Interagency Agreement.

This rule amends regulations at 42 CFR part 65 governing the NIEHS Hazardous Waste Worker Training Grants Program to make them applicable to the new Hazmat Employee Training Grants Program. Specifically, the authority citation for part 65 is amended to include the authority for the new training grants (49 U.S.C. App. 1816); § 65.1 is amended by revising paragraphs (a), (b) concluding text and (c) introductory text to set forth the applicability of part 65 to the Hazmat Employee Training Grant Program; and § 65.2 is amended by deleting the definition of "Act" and adding definitions of the acronyms "SARA" and "HMTA" and by revising the definition of "Award or grant." Additionally, references to "section 126 of the Act" found in sections 65.1, 65.4 and 65.5 of the part 65 are revised to read "section 126 of the SARA or section 118 of the HMTA."

Further, Public Law 103–227, enacted on March 31, 1994, prohibits smoking in certain facilities in which minors will be present. The Department of Health and Human Services is now preparing to implement the provisions of that law. Until those implementation plans are in place, PHS continues to strongly encourage all grant recipients to provide a smoke-free workplace and promote the nonuse of all tobacco products.

On September 29, 1993, NIH published a notice of proposed rulemaking in the **Federal Register** announcing our plans to amend the regulations governing the Hazardous Waste Worker Training Program at 42 CFR part 65 by making these changes and invited public comment. We received two comments on the proposed changes. These comments were received from the George Meany Center for Labor Studies and the Chemical Waste Transportation Institute of the National Solid Wastes Management Association.

Comment: The George Meany Center for Labor Studies suggested that the inclusion of both planning grants and program grants in part 65 is inconsistent with section 118(c) of the amended HMTA which restricts funding to "non-profit organizations which previously have demonstrated their expertise in implementing and operating hazmat employee training and education programs."

Response: While planning grants are an option for NIEHS in the overall training program under the Superfund Amendments and Reauthorization Act of 1986 (SARA), it would not be an option with the HMTA Hazmat Employee Training Grant Program since the statute is so narrowly drawn. In response to the comment, we have clarified § 65.1 (c) to indicate that planning grants are available only under SARA.

Comment: The Chairman of the Chemical Waste Transportation Institute suggested the title heading of part 65 be expanded to make reference to both types of grants programs. He suggested the heading be altered to read: "NIEHS Hazardous Waste Worker Training and Hazmat Employee Training Grant Programs."

Response: NIEHS prefers to retain the original title heading of part 65 which is generically descriptive of the kinds of programs covered, including additions of new programs related to hazardous waste worker training and additions to a program's purview and statutory authority. The public will be notified of the availability of funds for particular programs through the standard process of the issuance by NIH of Requests for Applications (RFA). Hence, there is no need for changing the program's general title with every new statutory or regulatory amendment.

Accordingly, no changes have been made in the proposed rule, except for minor editorial changes.

Regulatory Impact Statement

. Executive Order No. 12866 of September 30, 1993, Regulatory Planning and Review, requires us to prepare an analysis for any rule that meets one of the E. O 12866 criteria for a significant regulatory action, that is, that may—

Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal, governments, or communities,

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

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

Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

In addition, we prepare a regulatory flexibility analysis, in accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6), if the rule is expected to have a significant impact on a substantial number of small entities.

Because this rule merely makes minor changes in the authority citation, applicability section, and definitions section to incorporate the new Hazmat Employee Training Grant Program authority into part 65, it will have no major consequential effects on the economy or small entities. Therefore, the Secretary has determined that this rule is not significant within the definition of E.O. 12866, and the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities

Paperwork Reduction Act

Sections 65.4(a), (b) and (c) of part 65 contain information collection requirements subject to Office of Management and Budget (OMB) review under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The information collection language in these sections is currently approved under OMB control number 0925–0348. Response burden in conjunction with the program is approved under OMB control number 0925–0001 This rule does not result in any changes in the language currently approved under control number 0925–0348

Catalog of Federal Domestic Assistance

The OMB Catalog of Federal Domestic Assistance (CFDA) numbered program affected by the subject rule is: 93.142

List of Subjects in 42 CFR Part 65

Education study programs, Grant programs—education, Grant programs—health, Hazardous materials transportation, training programs.

Dated: November 1, 1994.

Philip R. Lee,

Assistant Secretary for Health.

Approved: December 7, 1994.

Donna E. Shalala,

Secretary

For reasons set out in the preamble, part 65 of title 42 of the code of Federal Regulations is amended to read as set forth below

PART 65—NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCES HAZARDOUS WASTE WORKER TRAINING

1 The authority citation for part 65 is revised to read as follows:

Authority: 42 U.S.C. 9660a; 49 U.S.C. App. 1816.

2. Section 65.1 is amended by revising paragraphs (a), (b) concluding text and (c) introductory text to read as follows:

§ 65.1 To what projects do these regulations apply?

(a) The regulations in this part apply to:

(1) The program of grants for the training and education of workers who are or are likely to be engaged in activities related to hazardous waste removal or containment, or emergency response that is authorized under section 126(g) of the SARA, and

(2) The program of grants to support qualified non-profit organizations for the purpose of providing training and education to hazardous materials employees regarding: the safe unloading, loading, handling, storage, and transportation of hazardous materials; and, emergency preparedness for responding to accidents or incidents involving the transportation of hazardous materials that is authorized under section 118 of the HMTA.

(b) * * *

(1) * * *

* * * * *

Target populations may also be regulated under standards promulgated by the Secretary of Labor, the Secretary of Transportation, the Administrator of the Environmental Protection Agency, and other agencies under section 126(g) of the SARA or section 106(b) of the HMTA.

(c) Two types of grants are available: Program grants covering the full range of activities, including program development, direct worker training and education, and program evaluation; and planning grants under the SARA.

* * * * *

3. Section 65.2 is amended by removing the definition of "Act" and by adding in alphabetical order definitions of the acronyms "HMTA" and "SARA", and by revising the definition of "Award or grant", to read as follows:

§ 65.2 Definitions.

As used in this part:

Award or *grant* means a grant or cooperative agreement made under section 126(g) of the SARA or section 118 of the HMTA.

* * * * *

HMTA means the Hazardous Materials Transportation Act, as amended (49 U.S.C. App. 1801 *et seq.*).

* * * * *

SARA means the Superfund Amendments and Reauthorization Act of 1986, Public Law 99–499, as amended (42 U.S.C. 9601 *et seq.*).

* * * * *

4. Section 65.4 is amended by revising paragraph (b) to read as follows:

§ 65.4 Project requirements.

* * * * *

(a) * * *

(b) Each applicant must detail the nature, duration, and purpose of the training for which the application is filed. The proposed training program must meet the standards promulgated by the Secretary of Labor and Secretary of Transportation under section 126(g) of the SARA or section 106(b) of the HMTA, and such additional requirements as the Director may prescribe to ensure appropriate health and safety training.

(c) * * *

5. Section 65.5 is amended by revising paragraph (b) to read as follows:

§ 65.5 How will applications be evaluated?

(a) * * *

(b) Within the limits of funds available, the Director may award training grants to carry out those projects which have satisfied the requirements of the regulations of this part; are determined by the Director to be technically meritorious; and in the judgment of the Director best promote the purposes of the grant programs authorized by section 126(g) of the SARA or section 118 of the HMTA, the regulations of this part, and program priorities.

* * * * *

[FR Doc. 94–30557 Filed 12–12–94; 8:45 am]

BILLING CODE 4140–01–P

Health Care Financing Administration

42 CFR Parts 405 and 482

[BPD–421–F]

RIN 0938–AD11

Medicare and Medicaid Programs; Revisions to Conditions of Participation for Hospitals

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

ACTION: Final rule.

SUMMARY: This final rule establishes as a condition of participation (which facilities must meet in order to participate in the Medicare and Medicaid programs) the requirement that hospitals have a discharge planning process for patients who require such services and specifies the elements of that process. It also changes the required qualifications of a hospital's medical director These provisions implement sections 9305(c) of the Omnibus Budget Reconciliation Act of 1986 (OBRA '86) and 6025 of the Omnibus Budget Reconciliation Act of 1989

Also, we are not adopting several minor proposed revisions to the conditions for coverage of suppliers of end-stage renal disease (ESRD) services. We are now developing comprehensive revisions to the ESRD regulations and believe that it would be appropriate to reconsider the proposed changes as part of that rulemaking process.

DATES: *Effective date:* These rules are effective January 12, 1995.

FOR FURTHER INFORMATION CONTACT:

Arlene Ford (410) 966–4617—For hospital discharge planning

Beverly Christian (410) 966–4616—For qualifications of medical directors

Jackie Sheridan (410) 966–4635—For ESRD-related issues

SUPPLEMENTARY INFORMATION:

I. Background

A. General

On June 16, 1988, we published a proposed rule (53 FR 22506) concerning discharge planning as a hospital condition of participation, certain laboratory director qualifications required by recent legislation, and proposed revisions to regulations aimed at reducing paperwork and information collection requirements. In the proposal,

we explained that conditions of participation (conditions) are the requirements that hospitals must meet in order to participate in the Medicare program; hospitals that participate in the Medicaid program must meet the same requirements. These conditions implement sections 1861(e), (f), (k), and (z) of the Social Security Act (the Act).

These conditions are intended to protect patient health and safety and to help assure that high-quality care is provided to all patients. The current regulations containing the conditions of participation for hospitals are located in the Code of Federal Regulations at 42 CFR Part 482, Subparts A, B, C, D, and E. Providers are surveyed by a State survey agency to ensure that they meet our participation requirements. (Our regulations concerning survey and certification procedures for providers affected by this rule are at 42 CFR Part 488 unless otherwise noted.) Hospitals accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the American Osteopathic Association (AOA) are deemed under section 1865 of the Act and § 488.5 of our regulations to meet most of our requirements in the hospital conditions of participation and need not be routinely surveyed.

Failure to meet a condition of participation may jeopardize the continuation of a facility's participation in the Medicare or Medicaid program.

B. Discharge Planning Process

Over the past 20 years, the average length of a hospital stay has become significantly shorter for a number of reasons. Factors contributing to this reduction include payment methods for hospitals, such as Medicare's prospective payment system, which furnishes incentives to hospitals to retain only those patients needing care that can be safely furnished only in the inpatient hospital setting. Additionally, increases in the aged population, coupled with shorter lengths of hospital stays, have created a demand for rehabilitative and restorative treatments in non-hospital settings that can be furnished after hospital discharge. To assure the coordination needed to achieve a timely transition to post-hospital care, discharge planning is necessary. It enables a hospital and patient to arrange for services that do not need to be furnished in an inpatient hospital setting.

Our current regulations do not require discharge planning as a distinct condition of participation. However, we include as a standard under the quality assurance condition (42 CFR 482.21(b)) the requirement that a hospital have an effective, ongoing discharge planning program that facilitates the provision of followup care.

We require the hospital to initiate the discharge planning process in a timely manner and to transfer or refer patients, along with necessary medical information, to appropriate facilities, agencies or outpatient services, as needed, for followup or ancillary services.

C. Clinical Laboratory Director Standards

In order to assure the health and safety of patients, our conditions of participation for hospitals and conditions for coverage of services of laboratories include standards that personnel, including laboratory directors, must meet. The clinical laboratory director requirements apply in all States, including those that have adopted their own qualification requirements. When OBRA '86 was enacted, it specified in section 9339(d) that if a State has standards that a clinical laboratory director (including a hospital laboratory director) must meet, directors who meet these standards will be considered as meeting Federal standards. We included this provision in our June 16, 1988 proposed rule. Subsequently, on October 31, 1988, the enactment of the Clinical Laboratory Improvement Amendments of 1988 (CLIA), Public Law 100–578, drastically revised laboratory requirements, obviating the proposal. Because the Medicare provision has been superseded, we are withdrawing our proposal and not discussing public comments in this final rule. (See our February 28, 1992 final rule (57 FR 7002) for the regulations implementing clinical laboratory director requirements under CLIA.)

D. Other Revisions

Following the summary of changes made to the proposed rule based on our evaluation of public comments, we discuss in section VI of this preamble technical changes to our regulations concerning hospital medical director qualifications. An unrelated change inserts in regulations the new name adopted by the accrediting program of the Committee on Allied Health Education and Accreditation. These changes were not issued in a proposed rule. The first change is technical and conforms the rules to the statute without interpretation, while the second change merely updates the rules by substituting the new name of an accrediting program.

II. Legislation

Section 9305 (c)(1) and (c)(2) of OBRA '86 amends section 1861(e) of the Act, which defines "hospital", by adding to paragraph (6) a requirement that a hospital have in place a discharge planning process that meets the requirements of a new section 1861(ee) of the Act. Under section 1861(ee), a discharge planning process of a hospital is sufficient if it applies to services furnished by the hospital to Medicare beneficiaries and meets the guidelines and standards established by the Secretary of HHS to ensure a timely and smooth transition to the most appropriate type of setting for post-hospital or rehabilitative care.

Section 1861(ee) requires that the Secretary's standards and guidelines include the following:

(1) The hospital must identify, at an early stage of hospitalization, those patients who are likely to suffer adverse health consequences if discharged without adequate discharge planning.

(2) Hospitals must provide a discharge planning evaluation for the patients identified under (1) above and for other patients upon request of the patient or his or her representative or physician.

(3) Any discharge planning evaluation must be made on a timely basis to ensure that appropriate arrangements for post-hospital care will be made before discharge and to avoid unnecessary delays in discharge.

(4) A discharge planning evaluation must include an evaluation of a patient's likely need for appropriate post-hospital services and the availability of those services.

(5) The discharge planning evaluation must be included in the patient's medical record for use in establishing an appropriate discharge plan, and the results of the evaluation must be discussed with the patient or his or her representative.

(6) Upon the request of a patient's physician, the hospital must arrange for the development and initial implementation of a discharge plan for the patient.

(7) Any discharge planning evaluation or discharge plan required under section 1861(ee) of the Act must be developed by, or under the supervision of, a registered professional nurse, social worker, or other appropriately qualified personnel. (Although the statute refers to a "registered professional nurse," both in this provision and in section 1861(e)(5) of the Act, there is no distinction between this term and "registered nurse," which is more commonly used. We will hereafter use the term "registered nurse", to be

consistent with other references in our regulations.)

Section 9305(c)(3) of OBRA '86 amends section 1865(a) of the Act so that, in effect, when the JCAHO or AOA requires hospitals to have a discharge planning process or imposes a requirement that serves substantially the same purpose as the condition of participation for discharge planning, the Secretary is authorized to find that those hospitals with JCAHO or AOA accreditation meet that condition of participation.

The provisions of section 9305(c) of OBRA '86 were effective October 21, 1987

III. Provisions of the Proposed Regulations

On June 16, 1988, we published a proposed rule to implement these legislative changes as well as the clinical laboratory director standards revisions mentioned earlier (53 FR 22506). We also proposed several minor revisions to the conditions for coverage of suppliers of ESRD services to accommodate a request from the Office of Management and Budget concerning paperwork burden and reporting requirements.

A. Discharge Planning Process

To implement section 9305(c) of OBRA '86, we proposed to incorporate the provisions of the statute and would add a new hospital condition of participation, § 482.43, Discharge planning, which would have applied only to Medicare patients. We proposed to delete the current discharge planning requirement in § 482.21, Quality assurance, as a medically-related patient care service standard applicable to all patients.

Section 1861(ee) of the Act confers authority to include standards and guidelines beyond those explicitly enumerated in the statute. We proposed to specify that the discharge planning evaluation include an evaluation of the Medicare patient's capacity for self-care or the possibility of this patient being cared for in the environment from which he entered the hospital. Under the requirements for the discharge plan, we would require, on an as-needed basis, that the Medicare patient and family members or interested persons be counseled to prepare them for post-hospital care. For clarity, we wanted to include the concept in the current regulation explicitly requiring the actual transfer or referral of Medicare patients after discharge planning is complete. We also proposed to require periodic reassessment of the Medicare patient's discharge plan to determine whether it needs to be changed. We would also require the hospital to reassess its discharge planning process on an ongoing basis to ensure that it meets Medicare patients' discharge needs.

We deferred proposing any requirements relating to the needs assessment instrument that is being developed by the Secretary as required by section 9305(h) of OBRA '86. On June 30, 1992, HHS submitted a report on the needs assessment instrument to Congress including recommendations for further testing and development of the instrument.

The statutory requirement, under section 1861(ee) of the Act, mandating the inclusion of discharge planning into the hospital conditions of participation, explicitly applies only to Medicare beneficiaries. Although we believed the Secretary had the authority to expand the application of the provision beyond the statutorily mandated population, we did not choose to do so at the time we published the proposed rule, in part because we believed that additional development of mechanisms for effectively completing and executing discharge plans was warranted before a requirement as detailed as this one was made applicable beyond the mandated population. We have since changed our view and now are applying the requirement to all patients who need it. (See section IV , "Comments and Responses", below for further discussion of this issue.)

At the time of the proposal, we had not yet made a determination as authorized under section 9305(c)(3) as to whether the JCAHO or AOA discharge planning standards were at least equivalent to the statutory standards and guidelines in section 1861(ee) of the Act. Our current regulations at 42 CFR 488.5, as redesignated from 42 CFR 405.1901(d)(3) on June 17, 1988 (53 FR 22850), already provide that JCAHO and AOA accredited hospitals are deemed to meet our conditions of participation unless our requirements are higher or more precise. We indicated that we would review each organization's standards to determine if they are at least equivalent and invited comments on this issue. We requested comments from the public on this issue and proposed to announce in the final rule whether hospital compliance with the JCAHO or AOA accreditation programs would provide the Secretary with a "reasonable assurance" that the hospital met the new condition of participation.

The new section 1861(ee)(2)(B) includes the requirement that hospitals provide discharge planning evaluations upon the request of the "patient, patient's representative, or patient's physician." We proposed to characterize "patient's representative" in § 482.43(b)(1) as any properly authorized "person acting on the patient's behalf."

We proposed not to require hospitals to inform Medicare patients of the availability of discharge planning services separately from other information furnished. Currently, hospitals give all Medicare patients a notice ("An Important Message from Medicare") that informs beneficiaries, among other things, of the availability of discharge planning. This message was designed to help Medicare patients who may believe they need post-hospital services but do not know how to obtain them.

We proposed to allow hospitals to determine the appropriate personnel to carry out the discharge planning. In proposed §§ 482.43(b)(2) and 482.43(c)(1), we stated that a registered nurse, social worker, or other appropriate personnel (consistent with available community and hospital resources) must develop or supervise the development of the evaluation and discharge plan. We did not stipulate in the regulation what qualifications would need to be related to the size and location of the hospital and the variety of resources available for post-discharge care in the area. In our interpretive guidelines, though, we would instruct the surveyor to look at such factors as previous experience in discharge planning, knowledge of clinical and social factors that affect functional status at discharge, knowledge of community resources to meet post-discharge clinical and social needs, and assessment skills.

To be compatible with our other regulations we proposed to divide this condition of participation into several standards: the first, identification of Medicare patients in need of evaluation; the second, the evaluation process; the third, the discharge plan, and the fourth, referral or transfer of the Medicare patient, along with necessary medical information. (The statute does not explicitly require actual transfer or referral of patients after discharge planning is complete, so we proposed to retain, for clarity, the concept of current § 482.21(b)(2).) A fifth standard would require an ongoing reassessment of the discharge planning process to ensure that discharge plans are responsive to discharge needs of individual Medicare patients. Because the requirements in § 482.43 (a), (b)(1), (b)(2), (b)(3), (b)(5), (b)(6), and (c)(2) would be those required by section 1861(ee) of the Act, failure to meet any of these

requirements could result in termination of the hospital's participation agreement in the Medicare and Medicaid programs.

B. ESRD Conditions for Coverage

We also proposed several minor revisions to §§ 405.2135 and 405.2137 of the ESRD conditions for coverage. The purpose of the changes was to reduce the paperwork burden on ESRD facilities, in keeping with a request from the office of Management and Budget that we conduct an overall review of the paperwork burden and reporting requirements associated with HCFA regulations. We received no comments on the proposed changes.

At this time, however, we are working with representatives of the ESRD industry and consumers to develop comprehensive revisions to the ESRD conditions for coverage. We believe that it would be confusing and inappropriate to adopt the minor changes from the June 16, 1988 proposed rule at a time when the ESRD community is anticipating extensive revisions to the conditions for coverage. Instead, we believe it would be more appropriate to reconsider the proposed changes as part of our overall revision of the ESRD conditions. Thus, we are not adopting the proposed changes to §§ 405.2135 and 405.2137.

IV. Comments and Responses

We received comments from 21 commenters on the proposed discharge planning provision, including a number of favorable comments. The commenters consisted of hospitals, advocacy groups, local and State government agencies, individuals, provider and supplier associations, and a medical equipment supplier.

Application

Comment: One commenter disagreed with our limiting the new condition of participation to Medicare patients only. He believed we should extend coverage to all patients.

Response: We agree. We believe it is a good management practice for hospitals to assure continuity of care for all patients, and we recognize that most hospitals achieve this result through discharge planning. In this regard, we note that the JCAHO, which accredits approximately 6000 hospitals, has a discharge planning requirement that applies to all patients and that is, in our view, even more comprehensive than the one required under the law and these regulations. The practical effect of the JCAHO requirement is that discharge planning does apply to all patients in the vast majority of the nation's hospitals.

Based on our further review of the issue raised by this commenter, we now believe that the requirements in this regulation, which will be applied in the approximately 1500 hospitals not accredited by the JCAHO, should be applied to all patients who need them. Accordingly, under the authority contained in section 1861(e)(9) and 1861(ee)(1), we are expanding the applicability of the discharge planning requirements to all hospital patients who require it.

There are several reasons why we believe it is appropriate to expand the discharge planning requirement to all patients. First, expanding the requirement to all patients is consistent with the requirements set forth in current § 482.21, which has been in place since June 17, 1986 (51 FR 22042). Section 482.21(b) includes a discharge planning requirement that applies to all patients, Moreover, the commenter's suggestion also is consistent with our long-standing position that the Secretary's responsibility under section 1861(e)(9) of the Act to promulgate health and safety requirements for hospitals applies to all patients. Rather than limiting the Secretary's responsibilities to Medicare beneficiaries, section 1861(e)(9) refers to the "health and safety of individuals who are furnished services in the institution." Thus, the statute supports our decision to require that the new discharge planning procedures be applicable, as the old procedures were, to all of a hospital's patients. Clearly, adequate discharge planning is essential to the health and safety of all patients. It is not just the Medicare patient that may suffer adverse health consequences upon discharge without the benefit of appropriate planning. Such planning is vital to mapping a course of treatment aimed at minimizing the likelihood of having any patient rehospitalized for the reasons that prompted the initial hospital stay. To this extent, all of the elements of the discharge planning process that Congress has made explicitly applicable to Medicare beneficiaries are of equal value to all hospital patients in the interests of their health and safety.

As discussed above, expanding the scope of the discharge planning provisions would parallel current JCAHO and AOA requirements, which also apply to all patients. We do not believe that it is administratively feasible to separate Medicare and other patients for discharge planning purposes. Furthermore, such a separation of Medicare and other patients for discharge planning purposes might have the adverse affect of fostering a dual level of care system for Medicare and other patients. The discriminatory aspects of such a situation would be neither desirable nor supportable.

Finally, we do not believe that the cost of expanding the application of the requirement is significant. There will be no expense in the approximately 6000 hospitals accredited by the JCAHO. Moreover, in the approximately 1500 hospitals directly subject to the requirement, the marginal impact on hospital staffing is likely to be relatively small. Since our current hospital conditions of participation already require discharge planning, hospital staff must already be employed to carry out this function. We believe that the new discharge planning provisions impose only a minimal additional workload on these staff, and applying these requirements to all patients, rather than just to Medicare beneficiaries, will not have a significant incremental impact.

Comment: Two commenters explicitly suggested and many others implicitly suggested that we require written policies and procedures for the discharge planning process.

Response: We agree and are revising proposed § 482.43 to require the hospital to commit its discharge planning policies and procedures to writing. This requirement will help assure that the process is well thought out, clear, comprehensive and understood by all staff. It will also assist in monitoring the process. We believe most hospitals already have written discharge planning policies and procedures and will have little or no difficulty in complying with this requirement.

Effect of JCAHO or AOA Accreditation

Comment: We received five comments on the equivalency of the JCAHO's standards to ours. Two commenters believe the JCAHO's standards for discharge planning (and supporting standards for social work services and nursing services) to be equivalent to ours, while two believe them not to be equivalent.

Response: We have reviewed JCAHO's 1994 standards and find them to be at least equivalent to those in this final regulation. Included in our determination finding them equivalent was a consideration of the JCAHO's standards for patient assessment and education of patients and family.

We are announcing that JCAHO-accredited hospitals that participate in Medicare have been found by the

Secretary and HCFA to meet the new discharge planning requirement in 42 CFR 482.43. Those hospitals will not have to be surveyed for compliance with this requirement when the final regulation becomes effective. For these reasons, we believe no revision of the regulations at 42 CFR 488.5(a) is necessary.

Comment: The fifth commenter was philosophically opposed to accepting the equivalency of the JCAHO's discharge planning standards to ours because he believed a private agency is not accountable to the government for enforcement of its standards.

Response: We cannot accept the commenter's contention that a private agency should not be used to enforce government standards, as the statute explicitly authorizes this type of use of a private agency (section 1865(a) of the Act). In order to ensure that the hospitals the JCAHO accredits are meeting standards equivalent to HCFA's, we conduct validation surveys under section 1864(c) of the Act. Hospitals found out of compliance with conditions of participation may have their provider agreements terminated if they do not correct their deficiencies.

Comment: We received one comment concerning the equivalency of AOA standards to ours. The commenter believed that the AOA's discharge planning standards are more general than HCFA's but that they would be strengthened to meet new Medicare standards.

Response: We agree that AOA standards on discharge planning in effect at the time the commenters commented were not equal to or higher than ours. We are pleased to report that the AOA subsequently revised its standards for discharge planning.

We are announcing that AOA-accredited hospitals that participate in Medicare have been found by the Secretary and HCFA to meet the new discharge planning requirement in 42 CFR 482.43. These hospitals will not have to be surveyed for compliance with this requirement when the final regulation becomes effective. For these reasons, we believe no revision of the regulations at 42 CFR 488.5(a) is necessary.

Identification of Patients

Comment: Two commenters believed we should require hospitals to identify all Medicare patients, particularly high risk patients, in need of post-hospital care, within 24 hours of being admitted, including, for one commenter, patients appearing in the emergency room, whether or not they are admitted.

Response: We do not agree that a 24-hour limitation should be imposed on the identification requirement. Both the statute and the regulation require identification to take place "at an early stage of hospitalization." We think this is sufficient because the specific timing of identification within that context, we believe, is best left to the hospital, its staff, and the attending physician. Discharge planning presupposes hospital admission and section 9305(c) of OBRA '86 specifically indicates that discharge planning follows hospitalization. The requirements of § 482.43 do not apply to patients who appear in a hospital emergency room but are not admitted as hospital inpatients.

Comment: Three commenters thought we should require each hospital to have a policy for developing and utilizing screening criteria for identifying those patients whose medical conditions and social circumstances would warrant discharge planning and to require that the hospital review its criteria annually. As an alternative, they suggested that hospitals be required to have a procedure for identifying at an early stage patients likely to need post-acute care services.

Response: We believe the use of an outcome oriented standard is sufficient for the regulation and in accord with the basic approach used in the June 17, 1986 revision to the conditions of participation for hospitals (51 FR 22042). Hospitals will be able to choose from many methods to demonstrate compliance with the standard, and we wish to preserve their flexibility in this regard, including the option of reviewing all Medicare patients admitted to the facility. An on-going reassessment of the hospital's discharge planning process, which would include any screening or identification methods, is required in § 482.43(e).

Comment: One commenter wanted us to establish specified criteria (e.g., age, functional ability, psychosocial factors and health status), to identify patients who are likely to suffer adverse health consequences without discharge planning.

Response: As mentioned in response to the previous comment, we want to continue the approach used in the June 17, 1986 revision to the conditions of participation for hospitals, which avoided prescriptive administrative requirements through the use of language that is stated in terms of expected outcomes, thereby providing hospitals with greater flexibility. Since the criteria suggested by the commenter are overly prescriptive and not outcome oriented, we are not adopting them.

Comment: One commenter suggested that we have as an alternative to the phrase "patients who are likely to suffer adverse health consequences," "patients who are likely to be inhibited in performing activities of daily living."

Response: We do not believe it is necessary to add this category of patients because it is subsumed in the original category: someone unable to perform activities of daily living would be likely to suffer adverse health consequences.

Comment: Two commenters thought that, if there is no evaluation, hospitals should have to document in the patient's medical record that a patient is not at risk.

Response: We do not believe it is necessary to specify in regulations how a hospital may show compliance with this provision. Instead, the hospital should have the flexibility to comply with the requirement in the best way for the hospital.

Evaluation of Patients

Comment: One commenter believed there should be a mandatory written form for the evaluation, preferably in the form of a check-off list. The commenter also thought this evaluation form should include specified factors, such as social needs and capacity for self-care.

Response: At the present time, a nationally used and accepted form for all hospitals does not exist. Section 9305(h) of OBRA '86 requires the Secretary to develop uniform needs assessment instrument(s) in consultation with a panel of experts and to submit a report to Congress, which makes recommendations for the appropriate use of this instrument. The panel completed its work and forwarded its recommendations to Congress in a report on June 30, 1992. It is premature, however, to include a requirement for widespread use of the instrument in patient assessments until the instrument is fully developed, field tested, and its utility proven.

Comment: One commenter wanted us to clarify whether the patient could request the development and initiation of a discharge planning evaluation.

Response: As stated in § 482.43(b)(1), a physician or a patient (or patient's representative) may request a discharge planning evaluation.

Comment: One commenter thought the patient's physician should explicitly be included in the definition of patient representative.

Response: The statute uses the term "patient representative" in addition to references to the patient's physician, and thus we conclude that the term was

not meant to include physicians. A physician's role is defined by other Federal requirements such as those found in § 482.12(c), the condition of participation on the governing body concerning care of patients. Not including the patient's physician as his representative was not intended to limit or eliminate the role of the physician in decisions about a patient's medical care, including the setting in which the care is provided, nor was it meant to imply that the physician does not serve the patient's interest.

Comment: We received one favorable comment concerning the inclusion of registered nurses and social workers as qualified personnel who develop or supervise the development of the evaluation and discharge plan. We also received two comments indicating that registered nurses and social workers should have additional training or credentialing.

Response: The statute provides that the Secretary may view the existing training and credentialing a registered nurse or social worker receives as sufficient for discharge planning and we see no need to impose further requirements.

Comment: Four commenters remarked about the provision to allow "other appropriately qualified personnel" to develop or supervise the development of the evaluation and discharge plan. One commenter thought we should omit "other appropriately qualified personnel"; three thought we should specify in regulations rather than interpretive guidelines the qualifications these personnel should have.

Response: It is our policy to avoid specifying credentials in the conditions of participation wherever possible. Such requirements could inappropriately restrict hospital selection of staff, may superimpose the requirements of private groups over State law, and do not necessarily ensure the provision of quality care. We believe that including the criteria in the interpretive guidelines will assure that minimum standards are met while allowing State surveyors to monitor the requirement. In the future we will reevaluate the effectiveness of the interpretive guidelines based on survey experience.

Comment: Two commenters believed we should delete the phrase "(consistent with available community and hospital resources)" that we had included for hospitals that might have difficulty obtaining and retaining qualified personnel. The commenters believed this provision dilutes the statute. Another commenter suggested that as an alternative we add that a hospital may arrange a contractual agreement to meet the discharge plan requirement.

Response: We are deleting the parenthetical phrase both in § 482.43 (b)(2) and (c)(1) after reevaluating its appropriateness. We agree with the commenters that, in the present circumstances, the parenthetical phrase inadvertently dilutes the statute. We are not accepting the second comment as to do so would be superfluous; the condition of participation for the hospital's governing body already contains a standard at § 482.12(e) for all contracted services. The hospital's governing body must ensure that a contractor for services (including one for shared services and joint ventures) furnishes services that permit the hospital to comply with all applicable conditions of participation and standards for the contracted services.

Comment: One commenter thought we should add a requirement that "other appropriately qualified personnel" should be supervised by a registered nurse or social worker.

Response: To accept this comment would conflict with the statute, which places "other appropriate qualified personnel" as equals in qualifications of registered nurses and social workers. Indeed, these personnel may be more suited for discharge planning by virtue of credentials or training and in some cases, such as in a rural hospital, it may be a physician who does the discharge planning. We would like to note that in any event it is a management function of the hospital to assure proper supervision of its employees and we do not wish to interfere with this function.

Comment: One commenter thought HCFA should devise a certification program with time-limited certificates.

Response: We do not believe such a certification program is warranted or intended by the legislation. It is not our view that this regulation should enfranchise people with certain credentials at the expense of others who have the requisite abilities to do the job, regardless of how the abilities were acquired.

Comment: One commenter believed the regulation should explicitly reaffirm existing Medicare legal requirements that all Medicare beneficiaries have the freedom to choose the vendor for post-hospital care.

Response: Section 1802 of the Social Security Act guarantees free choice by Medicare patients. It provides that any individual entitled to Medicare may obtain health services from any institution, agency, or person qualified to participate under the Medicare law if the institution, agency, or person undertakes to provide him or her those services. We do not believe it is necessary to reaffirm this requirement in the standard for discharge planning evaluation. There is nothing in this rule that prevents a Medicare beneficiary from exercising freedom of choice of a post-hospital vendor of services.

Comment: One commenter thought that we should specify that the evaluation include an assessment of biopsychosocial needs, the patient's and family's understanding of discharge needs, and the identification of health and social care resources needed to assure high-quality post-hospital care.

Response: We do not believe that this specificity is needed in the regulation. Our approach is consistent with that used in the June 17, 1986 regulatory revision to the conditions of participation for hospitals, which avoided prescriptive administrative requirements and use of specific details. Although the factors mentioned by the commenter are relevant, it is not our intention to create an "all-inclusive" list in the regulation. We will consider these, as well as other factors, when formulating interpretive guidelines.

Comment: One commenter believed that it would be more meaningful if the regulation required the discharge evaluation to specify the type of post-hospital services that a given patient would require and the availability of those services from vendors in the community.

Response: We believe the current language of the final regulation, which is stated in terms of expected outcomes, provides hospitals with sufficient flexibility and is in accord with the philosophy of the June 17, 1986 revision to the conditions of participation for hospitals. We do not agree that the degree of specificity desired by the commenter is needed in the regulation. His comments will, however, be considered for inclusion in the interpretive guidelines.

Comment: Three commenters addressed the inclusion of § 482.43(b)(4), which requires an evaluation of the patient's capacity for self-care or of the possibility of the patient being cared for in the environment from which he or she entered the hospital. Two commenters believed paragraph (b)(4) to be a positive addition and supported inclusion of this element in the evaluation. The third commenter stated that § 482.43 (b)(3) and (b)(4) are duplicative.

Response: We disagree with the third commenter. The intent of the two paragraphs is as follows: § 483.43(b)(3) reproduces the statutory provision,

while (b)(4) specifies an element that must be included in the evaluation that is not necessarily apparent from the text of the statute.

Comment: One commenter believed that we should require that more than a patient's capacity for self-care be considered. The commenter urged that we consider the patient's wishes as well, as some persons with limited capacity for self-care may be cared for at home. Also, the commenter indicated that emphasis on capacity for self-care can lead to an overemphasis on care in a skilled nursing facility (SNF) rather than by a home health agency (HHA).

Response: The patient's wishes are an integral aspect of the capacity for self-care, since the capacity includes not only the patient's ability for self-care, but also the willingness for such care. There are a variety of services that are provided equally well by both SNFs and HHAs. A determination of which provider is appropriate depends necessarily on other conditions such as ability, availability, and willingness of caregivers, the availability of resources in the community, and patient preference. All these factors need to be considered.

Comment: One commenter believed we should emphasize that the hospital should give each beneficiary the full range of options to consider for post-hospital care rather than focusing on returning him or her to his or her prehospitalization environment, particularly when the prehospitalization environment is an SNF.

Response: In most instances the focus on a return to the prehospitalization environment is a valid one, serving the interests of the patient within available community resources. Alternatively, the regulations call for an assessment of the patient's ability for self-care. We do not believe these alternative elements of the evaluation preclude a patient from being offered a full range of options to consider for post-hospital care and we see no need to change the regulation.

To allay the commenter's concern, however, we will include a statement in the interpretive guidelines to assure that patients admitted to a hospital from an SNF are not shortchanged by the hospital discharge planning process. We would like to point out that sometimes a patient's expectations of where he or she wants to go after hospital discharge (e.g., a return to the patient's former residence rather than to the SNF from which he or she was admitted) are not realistic due to the patient's physical or mental condition, available community resources, or any one or more of these three.

Comment: Two commenters thought we should delete the phrase, "to the greatest extent possible," from the requirements for making appropriate arrangements for post-hospital care before discharge, as this is contrary to the statute and waters it down.

Response: We are removing the phrase as requested. It was not our intent to weaken this statutory provision.

Comment: One commenter believed that the patient should be consulted in the process of the evaluation and not simply after the fact. Three commenters believed we should require the involvement of the patient and family in the discharge plan. One commenter believed we should require a meeting with the patient or patient representative for input and plan approval.

Response: While we do not believe it is appropriate to mandate involvement of the patient and family in every case, the regulations do not preclude such involvement. We would hope that hospital staff would be open to information that the patient or his family might like to provide to make the discharge as easy and effective as possible.

Discharge Plan

Comment: Two commenters believe that the statute requires a hospital to develop a discharge plan only upon request of a physician.

Response: The purpose of the legislation is to assure that patients receive any necessary discharge planning, not to ensure that a hospital develops a discharge plan only upon a physician's request. We agree that the physician is important to the discharge plan, and we included a provision to require a hospital to develop a discharge plan if a physician requests one, even if the hospital had determined one to be unnecessary. This provision, based on the statute, gives the physician the final decision as to whether a discharge plan is necessary but does not unnecessarily require his input on a routine basis.

Comment: Four commenters remarked about the use of the word "assist" in § 482.43(c)(3), which requires the hospital to "assist in implementing the * * * discharge plan." One commenter liked the word "assist" as it requires the hospital to become involved without placing the entire responsibility on the hospital. Two commenters objected to the word as it is vague and passive; the statute requires the hospital to be the initiator of discharge planning. The fourth commenter thought the provision required the hospital to implement the discharge plan.

Response: We have decided to revise this paragraph to use the statutory language to allay any confusion. As revised, the regulations require the hospital to arrange for the initial implementation of the Medicare patient discharge plan.

Comment: Two commenters stated that we should specify in regulations the format and content of the discharge plan.

Response: We do not believe it desirable to specify a single format and content for a discharge plan. Discharge planning is a discipline with competing theories and practices, each of which likely carries with it unique documentation procedures and formats. We believe the hospital should retain flexibility in deciding the plan's format and content. As our experience with this requirement develops and as needed, we will develop and revise interpretive guidelines for survey personnel to assist them in assessing the sufficiency of an acceptable discharge plan.

Comment: Two commenters thought we ought to require the hospital to furnish a written discharge plan to the patient or patient representative. Two commenters would like us to require the patient or representative to sign the discharge plan to acknowledge receipt and acknowledge participation in the plan. One commenter believed we ought to require hospitals to document in the medical record the fact that the patient and family have been counseled.

Response: Although a hospital may choose to follow any of these suggestions, we do not want to encroach on its autonomy and flexibility by requiring these procedures.

Comment: One commenter believed that the patient or patient representative should have the right to a review if he or she does not approve of the discharge plan, with no financial liability during the review process. Another commenter thought that we should include specific guidance about what hospitals must tell their patients about their rights when there are disputes about discharge plans.

Response: It is the hospital's responsibility to assure there is a mechanism for handling discharge planning complaints and disputes and we believe they should have the flexibility to determine how to address these. The reassessment process in § 482.43(e) can measure how successful the hospital's procedures are.

Comment: Two commenters wanted the discharge plans to be given to patients within specified timeframes before discharge.

Response: We do not believe that establishing a specific time before discharge by which a discharge plan must be furnished would be useful. In some difficult situations, the plan may not be ready until shortly before the patient is discharged; having the plan ready too long before discharge does not allow for changing circumstances.

Comment: One commenter wanted us to require that the discharge plan be entered into the medical record.

Response: The State surveyors, in determining compliance with this condition, will look at whether the hospital developed discharge plans for patients who needed them and whether the hospital arranged for its initial implementation. The hospital will be expected to be able to document its decision about the need for a plan, document the existence of plans where they are needed and show what steps it took to implement those plans initially. In our view, the hospital has the latitude to accomplish this result in the most efficient way possible. We do not believe that the discharge plan, which may contain information already in the medical record in the form of clinical notes, for example, is always an essential part of the patient's formal medical record. We recognize that the JCAHO requires that the discharge plan be entered into the medical record, and that many hospitals may do it, but we do not believe that making this mandatory in all cases would serve a useful purpose.

Comment: Several commenters remarked about the requirement in § 482.43(c)(4) concerning periodic reassessment; one commenter thought that the reassessment should be based on changes in the patient's condition or progress. Another commenter wanted to know how the periodic reassessment differs from an assessment on an as-needed basis. The third commenter believed that the requirement, as written, could apply after discharge and the regulation needs to specify that the reassessment occurs before discharge.

Response: We are modifying proposed § 482.43(c)(4) to require reassessments on an as-needed basis, based on factors that may affect continuing care needs or the appropriateness of the discharge plan. We do not agree that the regulation needs to specify that the reassessment must be done before discharge. The duty for discharge planning ends after discharge, assuming the hospital has arranged for the initial implementation of the Medicare patient's discharge plans in accordance with § 482.43(c)(3) and has transferred or referred the patient in accordance with § 482.43(d).

Comment: One commenter wanted us to specify predetermined times at which the patient and family must be counseled to prepare for post-hospital care, rather than requiring this counseling on an as-needed basis.

Response: We do not agree that we should be so specific. Hospital personnel are in the best position to judge the best times to counsel the patient and family and to accommodate individual situations.

Comment: One commenter thought we should avoid over-utilization of family caregiving systems and use more non-family-based community resources.

Response: Use of family caregivers occurs in discharge planning only when the family is both willing *and* able to perform needed services. In the absence of such a commitment, it is appropriate to use community resources that are not family-based.

Comment: One commenter thought there is a need for greater identification of the caregiver in the discharge planning process; in each case, the commenter suggested, we should require the hospital to determine whether there is a caregiver, the caregiver's willingness and ability to provide care, and mechanisms for preparing families to provide the care. Another commenter, on the other hand, expressed concern that the regulation text inappropriately advocates the use of family caregivers in situations where community-based services are available and that we are not providing the patient his or her choice in such situations.

Response: We agree that identification of family or other caregiver is a key attribute of effective discharge planning and believe that our regulations at 42 CFR 482.43(b)(3), (b)(4), (b)(6) and (c)(5) both appropriately and in a balanced manner relate to this need.

More specific information on the role of the caregiver will be included in the interpretive guidelines, including provision of specialized instruction or training in post-hospital care.

Transfer and Referral

Comment: We received four comments on our requirement that a hospital must discharge or transfer the patient after executing a discharge plan. One commenter thought we were going beyond the intent of the statute and that few hospitals have the authority to transfer or refer patients; one thought our statement that the statute did not require discharge or transfer to be misleading; and two commenters were in favor of the provision.

Response. While it is true that the statute does not explicitly require the hospital to follow through and actually discharge or transfer the patient, we believe the requirement is implicit in the purpose of the legislation: to assure that patients receive proper post-hospital care. This requirement, as with other conditions of participation, must operate within the constraints of a hospital's authority under State law and within the limits of a patient's right to refuse discharge planning services. As we stated in the preamble to the proposed rule, the proposed requirement is *not* new and has been in place for some time.

Comment: One commenter remarked that we should strengthen the regulation by requiring hospital discharge planning personnel to maintain complete and accurate information on community long-term care services and facilities for advising patients and their representatives of their options.

Response: We do not believe a change in the regulation is warranted. The current outcome-oriented standard is sufficient and in accord with the regulatory approach used in the June 17, 1986 revision to the conditions of participation for hospitals. Hospitals will be able to choose from many methods to demonstrate compliance with the standard. We will incorporate the commenter's suggested language in the interpretive guidelines for the standard and for the on-going reassessment of the hospital's discharge planning process required in § 482.43(e).

Comment: One commenter questioned whether § 482.43(d), which requires the hospital to transfer necessary medical information along with the patient for post-hospital services, is compatible with § 482.24(b)(3), which requires release of information only to authorized individuals.

Response: 42 CFR 482.24(b)(3) requires that the hospital have a procedure for insuring confidentiality of patient records. Information from or copies of records must be released only to authorized individuals and the hospital must ensure that unauthorized individuals cannot gain access to or alter patient records. Original medical records must be released by the hospital only in accordance with Federal or State laws, court orders, or subpoenas.

Since proposed § 482.43(d) has been in effect as § 482.21(b)(2) (beginning September 15, 1986), there has been no conflict with § 482.24(b)(3) and we do not anticipate any problems when § 482.43(d) becomes effective as a final rule. "Necessary medical information" has not been interpreted in our guidelines as requiring transmission of the patient's medical record.

Comment: One commenter wanted to know how a hospital decides what an appropriate facility is and what information is necessary to send to it.

Response: "Appropriate facilities" refers to facilities that can meet the patient's medical needs on a post-discharge basis. Our interpretive guidelines for § 482.21(b)(2) give as examples of "necessary" information: functional capacity of an individual, the nursing and other care requirements of the patient, discharge summary, and referral forms.

Comment: One commenter asked who pays the photocopy costs for the information transferred with the patient to post-hospital services.

Response: These are typical overhead costs of Medicare hospital operations that are allocated to the appropriate cost center and that are already taken into account as part of the cost base used to develop payment rates under the prospective payment system (PPS). Therefore, the PPS payment rates already reflect these costs and no additional payment by either Medicare or the beneficiary is needed.

Comment: One commenter inquired what authority the patient or patient representative has to limit the transmission of medical information required under § 482.43(d).

Response: If the information is governed by § 482.24(b)(3), which concerns medical record services, it is subject to the safeguards of that provision. This provision requires that medical information be released only to authorized individuals and that the hospital ensure that unauthorized individuals cannot gain access to or alter patient records. Otherwise the release of the information is governed by any other Federal law, State law or hospital policy, which may require a patient's written authorization before release of information.

Comment: One commenter requested that we define "appropriate facility" as one that (a) is able to provide needed care in a manner that complies with Federal and State standards; (b) participates in payment programs that are needed to pay for the beneficiary's care; and (c) is within a reasonable distance of the beneficiary's home so that relatives and friends may visit. Such a definition, the commenter suggested, would establish reasonable guidelines consistent with current HCFA policies and Congressional intent.

Response: The term "appropriate facility" has been utilized in present 42 CFR 482.21(b)(2) since September 15, 1986 without further definition and has not presented an implementation problem. Therefore, we do not believe we need a more specific definition in this regulation. Our interpretive guidelines for § 482.21(b)(2) currently define "appropriate facilities" as facilities that can meet the patient's medical needs on a post-discharge basis. We will consider the commenter's suggested factors, and others, when drafting implementing guidelines for § 482.43(d).

Comment: One commenter suggested that we require at least one post-hospital follow-up by the discharge planning staff.

Response: Although it may be desirable to do a follow-up, we believe that it is beyond the scope of our statutory authority to require it.

Reassessment

Comment: One commenter thought we should reinforce the requirement in § 482.43(e) that a hospital reassess its discharge planning process on an on-going basis; the reinforcement would be a requirement that a hospital document its discharge planning process, the procedure and the results of the reassessment.

Response: As stated in response to comments on the general opening statement in § 482.43, we are requiring that the hospital have written policies and procedures for its entire discharge planning process, which will include its reassessment. A specific documentation requirement for § 482.43(e) is not needed since it is subsumed by our revision of the general opening statement in § 482.43. We will also reinforce the need for documentation of § 482.43(e) in our interpretive guidelines.

Comment: One commenter believed it would be helpful if the new hospital condition of participation for discharge planning had built into it measures or parameters for ascertaining when additional discharge planning features and responsibilities should be added.

Response: Although we do not agree that such measures or parameters should be specified in the regulation at this time, or that they could be all inclusive, we do believe it is appropriate to mention some factors suggested by commenters to the regulations that will be included in the interpretive guidelines for § 482.43(e). The guidelines will include assuring—

(1) The effectiveness of the identification criteria;

(2) The quality and timeliness for discharge planning evaluations and discharge plans;

(3) That the hospital discharge personnel maintain complete and accurate information on community long-term care services and facilities and use this information to advise patients and their representatives of appropriate options; and

(4) That the hospital has a coordinated discharge planning process that integrates discharge planning with other functional departments, including the quality assurance and utilization review activities of the institution, and involves the various disciplines responsible for patient care.

Also, in reviewing this and other comments, we believe § 482.43(e) can be strengthened by clarifying that, although a review of discharge plans must be part of the reassessment requirement, we are not restricting a hospital to that mechanism alone. For example, a hospital might wish to review a sample of patients who were not identified as likely to suffer adverse health consequences upon discharge if there was no adequate discharge planning as a means to reassess the effectiveness of their identification criteria. This clarification of the regulation will remove an unnecessary restriction on the means used to accomplish reassessment and increase hospital flexibility in meeting the reassessment standard. Section 482.43(e) is revised to read:

> The hospital must reassess its discharge planning process on an ongoing basis. This reassessment must include a review of discharge plans to ensure that they are responsive to discharge needs.

Miscellaneous

Comment: One commenter thought it unfortunate that the two interrelated processes (the development of uniform needs assessment instruments and discharge planning) have been separated.

Response: Although these two statutory provisions both appear in section 9305 of OBRA '86, they are separate provisions (section 9305(c) is the hospital discharge planning process and section 9305(h) is the development of uniform needs assessment instrument(s)) with different implementation requirements. The legislation does not specify that implementation of the hospital discharge planning process is contingent upon development of a uniform needs assessment instrument. Further, implementation of the hospital discharge planning process requires regulations only while section 9305(h) required the appointment of and public hearings by a Secretary's Advisory Panel on the Development of Uniform Needs Assessment Instrument(s), which was to send a report to Congress with its recommendations. The 18-member

panel completed its work, and the recommendations were forwarded to Congress in a report on June 30, 1992. The recommendations to Congress include recognition of the need for field testing and possible further refinement of the uniform needs assessment instrument before adoption. Certainly, patients have a current need for an expanded discharge planning process under the hospital conditions of participation and we do not believe an additional delay of this rule would serve a useful purpose.

The commenter may be assured that, although these are separate statutory provisions with separate implementation requirements, HCFA has and will continue to coordinate these two activities, The discharge planning process has been structured so that any future instrument requirements can be incorporated by regulation into the discharge planning requirements. Similarly, the Advisory Panel drafted the framework of the uniform needs assessment instrument that they believe is compatible with this rule on discharge planning. It is premature, however, to include a requirement for usage of the instrument in the condition of participation before the instrument's utility is evaluated through field testing.

Comment: One commenter believed we should mandate the training of all discharge planning personnel in the use of the uniform needs assessment instrument when it is developed.

Response: The Secretary submitted a report on the uniform needs assessment instrument to Congress on June 30, 1992. The report includes recommendations on the appropriate use of the instrument. At the present time it would be premature to require such training.

Comment: One commenter thought we should include direction on how to determine whether someone has been authorized to act on the patient's behalf, as there may be disputes concerning post-hospital care.

Response: We believe it is best left to the hospital and physician to handle these disputes within the limits of an applicable State statute. It would be very difficult for us to draft guidelines that are flexible enough to allow all appropriate hospital procedures to be approved and, since the Federal interest is in the result rather than the process, we elected to leave this to hospital discretion.

Comment: We received comments from three entities concerning the "Important Message from Medicare." All three thought the Message to be inadequate for purposes of informing patients of discharge planning. One commenter believed the Message should have been released at a time that did not preclude public input on the contents of the revised Message concerning discharge planning. Another commenter thought that patients should, in addition to written notification, be informed orally of their discharge planning rights.

Response: The statute does not require notice to patients concerning their right to discharge planning. It does require unconditionally that the hospital provide the service when needed. Moreover, we do not agree that the Message is inadequate for bringing discharge planning to the attention of patients or their representatives. Although it does not contain the specifics of the proposed rule as one commenter recommended, its purpose is to emphasize the availability of discharge planning and the need to consult one's physician or appropriate hospital staff for assistance. To add more detail would, we believe, add confusion; the Message is already full of other important information and could become overwhelming.

Comment: Three commenters believe we should provide more specific guidelines.

Response: There is a need, recognized by Congress, to provide for sufficient flexibility in the requirements for them to be applied to both small rural facilities and complex urban hospital centers. This approach is also consistent with the focus of the June 17, 1986 revision of the conditions of participation for hospitals, which eliminated unnecessary regulations and replaced specific details on maintaining adequate and safe facilities with general comprehensive statements.

We will implement this regulation through interpretive guidelines, which are the survey tools used by surveyors to determine Federal compliance with the regulation. These guidelines will contain a degree of specificity and clarification that is impractical and unwarranted for inclusion in the Federal regulation.

Comment: Two commenters thought we should adopt the more detailed and strict discharge planning requirements of a particular State or locality in the regulations at 42 CFR 483.43.

Response: There is nothing in the regulations to prevent a hospital from complying with stricter State or local requirements. In fact, our regulations at 42 CFR 482.11 would require such compliance. However, we believe that the statutory provision on discharge planning, because it is so detailed, reflects the level of effort intended by the Congress to be required by HCFA and so we do not believe it is appropriate to go beyond Federal statutory provisions.

Comment: One commenter believed that the regulations should clearly state that if a patient does not want a discharge evaluation or plan, his wishes should prevail over the hospital's need to comply with the condition of participation.

Response: As with other services offered by hospitals, patients may refuse to accept discharge planning or to comply with a discharge plan just as they may refuse medical treatment. When a patient exercises this choice, however, we suggest that the hospitals document the patient's refusal. The interpretive guidelines will mention this type of situation.

Comment: One commenter believed the condition of participation for discharge planning needs to reflect more comprehensively the purposes of discharge planning, among them—

(1) to ensure that patients are not discharged prematurely and to provide evidence on that point;

(2) to facilitate appropriate outplacement;

(3) to document the need for post-hospital care for purposes of prior concurrent authorization by fiscal intermediaries to pay for such services;

(4) to document the need for administratively necessary days; and

(5) to help ensure continuity of cases in a fragmented delivery system.

Response: As defined in the legislation, the purpose of the discharge planning process is to ensure a timely and smooth transition to the most appropriate type and setting for post-hospital or rehabilitative care. The regulations include requirements to achieve this result. We do not believe a more detailed discussion of its purpose would enhance its effect.

Comment: One commenter believed that we should require that each hospital have an integrated discharge planning process.

Response: Assuring that the process is complete and functions properly is a hospital's responsibility. The interpretive guidelines for § 482.43(e) contain procedures for determining a hospital's success in meeting this requirement. We believe that a separate regulatory requirement for "coordination" would be redundant.

Comment: One commenter thought we should include a requirement that discharge planning be placed within the hospital's social services department.

Response: We do not agree. One of our stated objectives of the revised conditions of participation for hospitals, which became effective September 15, 1986, was to permit maximum

flexibility in hospital administration and they do not contain a requirement for a social services department into which this requirement could be placed. We will continue to encourage that flexibility in implementing the discharge planning requirement by not requiring that it be placed in a particular hospital department.

Comment: One commenter stated that there is a need for careful monitoring and vigorous enforcement of the discharge planning process.

Response: We agree. As with the other conditions of participation, the new 42 CFR 482.43 will be monitored through the survey and certification process. We will be developing detailed guidelines for our hospital surveyors to use in determining whether the discharge planning process results in the development of appropriate plans; whether the individual plans are adequate; and whether the plans are appropriately executed as required by this regulation.

V. Summary of Revisions to Proposed Rule

We are adopting the proposed rule as final with the changes described above. These changes include the following:

- Section 482.43, Introductory paragraph: We are revising this section to specify that the hospital discharge planning condition of participation applies to all patients, and we are adding a requirement that the hospital must specify its discharge planning policies and procedures in writing.
- Section 482.43 (b)(2) and (c)(1)—We are omitting the phrase "(consistent with available community and hospital resources)."
- Section 482.43(b)(5)—We are omitting the qualifier, ", to the greatest extent possible," from the requirement that appropriate arrangements be made before discharge.
- Section 482.43(c)(3)—We are requiring the hospital to arrange for the initial implementation of the discharge plan rather than requiring that a hospital assist in implementing a discharge plan.
- Section 482.43(c)(4)—We are requiring the hospital to reassess a patient's discharge plan if there are factors that may affect continuing care needs or the appropriateness of the discharge plan, rather than requiring the proposed periodic reassessment.
- Section 482.43(e)—We are revising the proposed requirement that a hospital reassess its discharge planning process by reviewing discharge plans to instead include review of the plans as part of the reassessment.

Also, as noted in section III. B of this preamble, we are not adopting the proposed changes in §§ 405.2135 and 405.2137 to the ESRD conditions for coverage.

VI. Other Revisions

A. Medical Director

1. Background

Section 1861(e)(3) of the Act requires a hospital participating in Medicare to have by-laws in effect concerning its staff of physicians. The staff of physicians is also a matter of health and safety for the hospital's patients; therefore, section 1861(e)(9) of the Act, which gives the Secretary the authority to promulgate health and safety standards, serves as a basis for governing the appointment of a medical director.

Among the conditions of participation a hospital participating in Medicare must meet is one at § 482.22 concerning medical staff. One of the standards, concerning medical staff organization and accountability (see § 482.22(b)(3)), requires that the responsibility for the organization and conduct of the medical staff be assigned only to an individual doctor of medicine or osteopathy. This person is the medical director.

On December 19, 1989, the Omnibus Budget Reconciliation Act of 1989 (OBRA '89) (Pub. L. 101–239) was enacted. Section 6025 of that law permits a Medicare-participating hospital the flexibility to consider and assign a doctor of dental surgery or dental medicine when naming a medical director, if permitted by State law of the State in which the hospital is located.

2. Revision

As a result of section 6025 of OBRA '89, we are revising standard (b)(3), Medical staff organization and accountability, of § 482.22, Condition of participation: Medical staff. We are requiring that the responsibility for organization and conduct of the medical staff may be assigned only to an individual doctor of medicine or osteopathy, except when State law of the State in which the hospital is located permits a hospital to have a doctor of dental surgery or dental medicine as its medical director.

We are revising our regulations to conform to the OBRA '89 provision. Doing so will give hospitals flexibility in some States, eliminate conflicts between State and Federal laws in some instances, and acknowledge changing practices in the delivery of medical care.

B. Accrediting Program Name Change

The name of the entity accrediting programs for x-ray technologists in § 405.1413, Conditions for Coverage—qualifications, orientation and health of technical personnel, paragraph (a)(1), has been changed from "the Council on Medical Education" to "the Committee on Allied Health Education and Accreditation." We are making the necessary conforming change to our regulations.

VII. Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all hospitals and ESRD facilities as small entities.

We do not have the data to assess accurately the magnitude of the change in procedures that will result from the new condition of participation on discharge planning. However, we believe that adequate planning is already done in most hospitals for the following reasons:

- The prospective payment system has created an incentive for hospitals to have good discharge planning procedures; and
- The conditions of participation have a standard requiring each hospital to do discharge planning.

In the absence of positive evidence to the contrary, we believe that this final rule will have little effect. We wish to point out, however, that incorporating the statutory requirements as a condition, instead of a standard, could result in graver consequences for those hospitals that do not engage in adequate planning in the event that a routine or complaint survey establishes noncompliance. However, we do not expect this to happen often.

If it were correct to presume that a lack of planning leads to systematic underservice of beneficiary needs, then the requirement for discharge planning, especially early assessment of the need for planning, should:

- Ensure that needs are identified and appropriate transfers and referrals are made; and
- Result in some increase in health care utilization by patients who might otherwise not have received needed care.

We do not believe that all patients receive all needed care. However, factors other than the lack of planning affect whether or not patients receive

needed services. Even when planning is available, patients sometimes defer or avoid recommended referrals or follow-up care.

The other provisions of this rule will have no significant effect.

We have determined and the Secretary certifies that this final rule will not have a significant economic impact on a substantial number of small entities. We have therefore not prepared a regulatory flexibility analysis.

Section 1102(b) of the Social Security Act requires the Secretary to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We are not preparing a rural impact statement since we have determined, and the Secretary certifies, that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was not reviewed by the Office of Management and Budget.

VIII. Paperwork Reduction Act

Section 482.43 of this rule contains information collection requirements that are subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3504, *et seq.*). The reporting burden for the collections of information in § 482.43 is comparable to the burden for § 482.21(b), which it replaces (and which is currently approved under OMB approval number 0938–0328).

IX. Waiver of Proposed Rulemaking

The Administrative Procedure Act (5 U.S.C. 553) requires us to publish a general notice of proposed rulemaking in the **Federal Register** and afford prior public comment on proposed rules. Such notice includes a statement of the time, place and nature of rulemaking proceedings, reference to the legal authority under which the rule is proposed rule or a description of the subjects and issues involved. However, this requirement does not apply when the agency finds good cause that such a notice and comment procedure is impracticable, unnecessary, or contrary to the public interest, and incorporates its reasons in the rules issued.

We have in this final rule published our intent to conform our requirements on medical director qualifications to those of section 6025 of Public Law 101–239 and to change the name of an accrediting program. Since this final rule merely conforms our regulations regarding medical director qualifications to the statute without interpretation, and the change of name of an accrediting program only amends the regulations to reflect the new name, we believe it to be unnecessary and not in the public interest to publish a proposed rule to obtain public comment.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 482

Administrative practice and procedure, Certification of compliance, Contracts (Agreements), Health care, Health facilities, Health professions, Hospitals, Laboratories, Medicare, Onsite surveys, Outpatient providers, Reporting requirements, Rural areas, X-rays.

42 CFR Chapter IV is amended as set forth below:

A. Part 405, subpart N, is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

1. The authority citation for subpart N continues to read as follows.

Authority: Secs. 1102, 1861(s)(3), (11) and (12), 1864, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(s)(3), (11), and (12), 1395aa and 1395hh).

Subpart N—Conditions for Coverage of Portable X-ray Services

§ 405.1413 [Amended]

2. Section 405.1413(a)(1) is amended by revising the name of "the Council on Education" to "the Committee on Allied Health Education and Accreditation."

B. Part 482 is amended as follows:

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

1. The authority citation for part 482 continues to read as follows:

Authority: Secs. 1102, 1136, 1138, 1814(a)(6), 1861 (e), (f), (r), (v)(1)(G), (z), and (ee), 1864, 1871, 1883, 1886, 1902(a)(30), and 1905(a) of the Social Security Act (42 U.S.C. 1302, 1320b–6, 1338, 1395f(a)(6), 1395x (e), (f), (k), (r), (v)(1)(G), (z), and (ee), 1395aa, 1395hh, 1395tt, 1395ww, 1396a(a)(30), and 1396(a)).

2. Section 482.21(b) is revised as follows:

§ 482.21 Condition of participation: Quality assurance.

* * * * *

(b) *Standard: Medically-related patient care services* The hospital must have an ongoing plan, consistent with available community and hospital resources, to provide or make available social work, psychological, and educational services to meet the medically-related needs of its patients.

3. In § 482.22(b), the introductory text is republished and paragraph (b)(3) is revised to read as follows:

§ 482.22 Conditions of participation: Medical staff.

* * * * *

(b) *Standard: Medical staff organization and accountability.* The medical staff must be well organized and accountable to the governing body for the quality of the medical care provided to patients.

* * * * *

(3) The responsibility for organization and conduct of the medical staff must be assigned only to an individual doctor of medicine or osteopathy or, when permitted by State law of the State in which the hospital is located, a doctor of dental surgery or dental medicine.

4. A new § 482.43 is added as follows.

§ 482.43 Condition of participation: Discharge planning.

The hospital must have in effect a discharge planning process that applies to all patients. The hospital's policies and procedures must be specified in writing.

(a) *Standard: Identification of patients in need of discharge planning* The hospital must identify at an early stage of hospitalization all patients who are likely to suffer adverse health consequences upon discharge if there is no adequate discharge planning.

(b) *Standard: Discharge planning evaluation.*

(1) The hospital must provide a discharge planning evaluation to the patients identified in paragraph (a) of this section, and to other patients upon the patient's request, the request of a person acting on the patient's behalf, or the request of the physician.

(2) A registered nurse, social worker, or other appropriately qualified personnel must develop, or supervise the development of, the evaluation.

(3) The discharge planning evaluation must include an evaluation of the

likelihood of a patient needing post-hospital services and of the availability of the services.

(4) The discharge planning evaluation must include an evaluation of the likelihood of a patient's capacity for self-care or of the possibility of the patient being cared for in the environment from which he or she entered the hospital.

(5) The hospital personnel must complete the evaluation on a timely basis so that appropriate arrangements for post-hospital care are made before discharge, and to avoid unnecessary delays in discharge.

(6) The hospital must include the discharge planning evaluation in the patient's medical record for use in establishing an appropriate discharge plan and must discuss the results of the evaluation with the patient or individual acting on his or her behalf.

(c) *Standard: Discharge plan.*

(1) A registered nurse, social worker, or other appropriately qualified personnel must develop, or supervise the development of, a discharge plan if the discharge planning evaluation indicates a need for a discharge plan.

(2) In the absence of a finding by the hospital that a patient needs a discharge plan, the patient's physician may request a discharge plan. In such a case, the hospital must develop a discharge plan for the patient.

(3) The hospital must arrange for the initial implementation of the patient's discharge plan.

(4) The hospital must reassess the patient's discharge plan if there are factors that may affect continuing care needs or the appropriateness of the discharge plan.

(5) As needed, the patient and family members or interested persons must be counseled to prepare them for post-hospital care.

(d) *Standard: Transfer or referral.* The hospital must transfer or refer patients, along with necessary medical information, to appropriate facilities, agencies, or outpatient services, as needed, for followup or ancillary care.

(e) *Standard: Reassessment.* The hospital must reassess its discharge planning process on an on-going basis. The reassessment must include a review of discharge plans to ensure that they are responsive to discharge needs.

(Catalog of Federal Domestic Assistance Programs No. 93 778, Medical Assistance Program, No. 93 773, Medicare—Hospital Insurance Program; No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 23, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration

Approved: December 5, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94–30555 Filed 12–12–94, 8:45 am]

BILLING CODE 4120–01–P

42 CFR Parts 412 and 413

[BPD–802–CN]

RIN 0938–AG46

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1995 Rates; Correction

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

ACTION: Final rule; correction.

SUMMARY: In the September 1, 1994 issue of the **Federal Register** (59 FR 45330), we published a final rule with comment period revising the Medicare hospital inpatient prospective payment systems for operating costs and capital-related costs to implement necessary changes arising from our continuing experience with the system. In the addendum to that final rule with comment period, we announced the prospective payment rates for Medicare hospital inpatient services for operating costs and capital-related costs applicable to discharges occurring on or after October 1, 1994, and set forth update factors for the rate-of-increase limits for hospitals and hospital units excluded from the prospective payment systems. This notice corrects errors made in that document.

EFFECTIVE DATE: October 1, 1994

FOR FURTHER INFORMATION CONTACT: John Davis—Wage Index (410) 966–5654, Nancy Edwards—Other Issues (410) 966–4531.

SUPPLEMENTARY INFORMATION: In the September 1, 1994 final rule with comment period (59 FR 45330), we indicated that if a hospital believes its wage index value is incorrect as a result of an intermediary or HCFA error, the hospital must notify HCFA no later than September 23, 1994. As a result of this process, we have identified several corrections to the wage data. Accordingly, the wage index values for several areas have been changed.

The final rule also contained other technical and typographical errors. The revised wage index values, and other changes affecting prospective payment rates, reflect corrections that were made between publication of the FY 1995 prospective payment system final rule with comment period on September 1, 1994, and implementation of the FY 1995 prospective payment rates on October 1, 1994. Therefore, we are making the following corrections to the September 1, 1994 final rule with comment period:

1. On page 45361, the chart at the top of the page is corrected as follows:

Percentage change in area wage index value	Number of labor market areas		Corrected number of labor market areas	
	FY 1995	FY 1994	FY 1995	FY 1994
Increase more than 10 percent	2	13	5	13
Increase between 5 and 10 percent	4	24	17	24
Decrease between 5 and 10 percent	13	58	13	58
Decrease more than 10 percent	10	14	10	14

2. On pages 45421 through 45436, the following entries in Table 3C—Hospital Case Mix Indexes for Discharges Occurring in Federal Fiscal Year 1993; Hospital Average Hourly Wage for Federal Fiscal Year 1995 Wage Index—are corrected as follows:

Provider	Case mix index	Avg. hour wage	Corrected avg. hour wage
050030	01.3478	17.25	17.31
050153	01.6323	26.54	26.63
050183	01.1897	18.72	19.77

Provider	Case mix index	Avg. hour wage	Corrected avg. hour wage
050194	01.2188	23.01	23.15
050457	01.9263	27.09	27.16
050688	01.2086	25.13	25.25
110162	00.8663	.....	12.98
140010	01.3097	18.77	20.61
170037	01.1331	15.60	15.31
170080	01.0304	11.67	11.23
170110	00.9268	12.68	12.61
180005	01.0444	14.66	15.54
180138	01.2598	17.78	17.30
190005	01.4454	14.98	13.28
190006	01.1903	13.93	14.22
190009	01.2947	13.88	13.73
190011	01.1190	12.19	12.11
190040	01.4197	17.30	17.28
190098	01.4469	16.69	16.44
190122	01.2075	13.84	13.57
190176	01.5428	17.76	17.42
220107	01.1159	16.97	17.91
230197	01.2661	17.75	19.21
240036	01.4910	17.88	18.16
250001	01.5597	13.55	13.71
310009	01.1537	19.28	20.11
440049	01.6483	15.27	15.47
450002	01.4852	15.52	18.57
510047	01.1688	15.81	15.86
520100	01.2514	14.46	14.74

3. On pages 45437 through 45444, in Table 4A—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas—the wage index value and GAF in the following entries are corrected as follows:

Urban area	Wage index	GAF	Changed wage index	Changed GAF
0220 Alexandria, LA	0.8302	0.8804	0.8284	0.8790
0600 Augusta-Aiken, GA–SC	0.8638	0.9046	0.8634	0.9043
0760 Baton Rouge, LA	0.8617	0.9031	0.8582	0.9006
1123 *Boston-Brockton-Nashua, MA–NH	1.1733	1.1157	1.1732	1.1156
1600 *Chicago, IL	1.0666	1.0451	1.0689	1.0467
1620 Chico-Paradise, CA	1.0434	1.0295	1.0441	1.0300
2320 El Paso, TX	0.8618	0.9032	0.9057	0.9344
2640 Flint, MI	1.0252	1.0172	1.0423	1.0288
3560 Jackson, MS	0.7551	0.8250	0.7569	0.8264
3620 Janesville-Beloit, WI	0.8541	0.8976	0.8606	0.9023
3880 Lafayette, LA	0.7975	0.8565	0.7996	0.8580
4520 Louisville, KY–IN	0.9485	0.9644	0.9480	0.9641
4920 *Memphis, TN–AR–MS	0.8508	0.8953	0.8535	0.8972
5170 Modesto, CA	1.1348	1.0905	1.1415	1.0949
5200 Monroe, LA	0.7723	0.8378	0.7707	0.8366
5560 *New Orleans, LA	0.9499	0.9654	0.9311	0.9523
5640 *Newark, NJ	1.1128	1.0759	1.1156	1.0778
6323 Pittsfield, MA	1.1313	1.0882	1.1413	1.0947
6980 St. Cloud, MN	0.9549	0.9689	0.9680	0.9780
7360 *San Francisco, CA	1.4120	1.2665	1.4122	1.2666
7400 *San Jose, CA	1.4272	1.2758	1.4276	1.2761
7680 Shreveport-Bossier City, LA	0.9036	0.9329	0.8992	0.9298

4. On page 45444, in Table 4B—Wage Index and Capital Geographic Adjustment Factor (GAF) for Rural Areas—the wage index value and the GAF in the following entries are corrected as follows:

Non-urban area	Wage index	GAF	Changed wage index	Changed GAF
Alaska	1.2592	1.1710	1.2591	1.1709
Kansas	0.7270	0.8039	0.7267	0.8036
Kentucky	0.7487	0.8202	0.7498	0.8210
West Virginia	0.8120	0.8671	0.8121	0.8672

5. On pages 45444 through 45445, in Table 4C—Wage Index and Capital Geographic Adjustment Factor (GAF) for Hospitals that are Reclassified—the wage index value and the GAF in the following entries are corrected as follows:

Area reclassified to	Wage index	GAF	hanged wage index	Changed GAF
Alexandria, LA	0.8302	0.8804	0.8284	0.8790
Baton Rouge, LA	0.8617	0.9031	0 8582	0 9006
Boston-Brockton-Nashua, MA–NH	1 1733	1.1157	1.1732	1 1156
Chicago, IL	1.0666	1.0451	1 0689	1.0467
Des Moines, IA	0.8533	0.8971	0.8510	0.8954
El Paso, TX	0.8618	0.9032	0.9057	0.9344
Flint, MI	1.0252	1 0172	1 0423	1.0288
Jackson, MS	0 7551	0.8250	0 7569	0.8264
Lafayette, LA	0.7975	0.8565	0 7996	0 8580
Louisville, KY	0.9485	0.9644	0.9480	0 9641
Memphis, TN–AR–MS	0.8386	0 8864	0.8410	0.8882
Middlesex-Somerset-Hunterdon, NJ	1.0770	1.0521	1.0715	1.0484
Modesto, CA	1 1348	1.0905	1.1415	1.0949
Monroe, LA	0.7723	0.8378	0 7707	0.8366
New Orleans, LA	0.9499	0 9654	0.9311	0.9523
Newark, NJ	1.0848	1.0573	1.0870	1.0588
St Cloud, MN	0.9549	0.9689	0.9535	0.9679
San Francisco, CA	1.4120	1.2665	1.4122	1.2666
San Jose, CA	1.4272	1.2758	1 4276	1.2761
Rural West Virginia	0.8120	0.8671	0 8121	0.8672

6. On pages 45445 through 45447, Table 4D—Average Hourly Wage for Urban Areas—the following entries are corrected as follows

Urban area	Average hourly wage	New average hourly wage
Alexandria, LA	15.1620	15 1288
Augusta-Aiken, GA–SC	15.7746	15.7680
Baton Rouge, LA	15.7376	15.6738
Chicago, IL	19 4782	19 5206
Chico-Paradise, CA	19.0544	19.0673
El Paso, TX	15.7386	16.5401
Flint, MI	18.8129	19.0521
Jackson, MS	13.6437	13.6854
Janesville-Beloit, WI	15.5973	15.7175
Lafayette, LA	14.4264	14 4675
Lake Charles, LA	15.0433	15 0427
Louisville, KY–IN	17.3214	17.3129
Memphis, TN–AR–MS	15.5377	15.5871
Modesto, CA	20.7245	20.8463
Monroe, LA	13.9777	13 9494
New Orleans, LA	17.3485	17.0048
Newark, NJ	21.9178	21.9471
Pittsfield, MA	20.6597	20.8427
St. Cloud, MN	17.4385	17.6778
San Francisco, CA	25.7496	25.7537
San Jose, CA	26.0635	26.0709
Santa Cruz-Watsonville, CA	24.7020	24 7441
Shreveport-Bossier City, LA	16.5027	16.4215

7. On page 45447, Table 4E—Average Hourly Wage for Rural Areas—the following entries are corrected as follows:

Non-urban area	Average hourly wage	New average hourly wage
Kansas	13.2765	13.2707
Kentucky	13 6733	13.6938
West Virginia	14.7441	14.7464

8 On page 45497, in Table I—Impact Analysis of Changes for FY 1995 Operating Prospective Payment System—under Bed Size (Rural), the rows and corresponding figures for Pacific and Puerto Rico are moved to page 45498 under Rural by Region, and inserted under the row and corresponding figures for Mountain.

9. On page 45498, also in Table I, under Disproportionate Share Hospitals (DSH), Other Rural DSH Hosp., the rows and corresponding figures for 100–149 Beds, 150–199 Beds, and 200 or more Beds are moved to page 45497 under Bed Size (Rural), and inserted under the row and corresponding figures for 50–99 Beds.

10. On page 45518, the sentence beginning seven lines from the bottom of the first column and continuing to the second line of the second column is corrected to read as follows: "However, measuring the actual expected price per unit of real capital, independently of any evaluation of the propriety of any actual purchase decisions, is essential to recognize that the industry has some control over the amount of capital it purchases but little or no control over the price it pays for capital."

11. In the outlier example that begins on page 45368, Footnote 1a on page 45370 is corrected to read as follows: "If hospital X were a hold harmless hospital, it should use the hospital-specific ratio of new to total capital."

12. On page 45457, in Table 6A—New Diagnosis Codes—the following code is added:

Diagnosis code	Description	CC	MDC	DRG
305.1	Tobacco use disorder.	N	23	467

13. On page 45461, Table 6C—Invalid Diagnosis Codes—the following entry is corrected to read as follows:

Diagnosis code	Description	CC	MDC	DRG
V65.4	Other counseling.	N	23	467

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: December 6, 1994.

Michael W. Carleton,

Acting Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 94–30556 Filed 12–12–94; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7119]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

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

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

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

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

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

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

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

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

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

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

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

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

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

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

State and country	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community no.
Maryland: Unincorporated Areas.	Prince George's	May 23, 1994, May 31, 1994, *Prince George's Journal.*	Mow-Soung Cheng, Ph.D., P.E., Section Head, Flood Management Section, Division of Environmental Management, Prince Georges' County Department of Environmental Resources, 9400 Peppercorn Place, Sixth Floor, Landover, Maryland 20785.	Nov. 16, 1994 ...	245208C
North Carolina: Unincorporated Areas.	Dare County	September 20, 1994, September 27, 1994, *The Coastland Times.*	Mr. Kermit W. Skinner, Jr., Manteo Town Manager, P.O. Box 246, Manteo, North Carolina 27954.	Dec. 26, 1994 ...	375348C
North Carolina: Haywood County.	Town of Waynesville.	September 9, 1994, September 16, 1994 *The Mountaineer.*	The Honorable Henry B. Foy, Mayor of the Town of Waynesille, 106 South Main Street, Waynesville, North Carolina 28786–0100.	Sept. 1, 1994	370124B

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

Dated: December 5, 1994.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 94–30568 Filed 12–12–94; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

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

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

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

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

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

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

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

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

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

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Ohio: Franklin and Delaware (FEMA Docket No. 7085).	City of Westerville	December 23, 1993, December 30, 1993, *The Public Opinion.*	Mr. David Lindimore, Manager of the City of Westerville, 21 South State Street, Westerville, Ohio 43081.	Dec. 15, 1993	390179 F

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

Dated: December 5, 1994.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 94–30566 Filed 12–12–94; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

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

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

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

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
NORTH CAROLINA	
Dare County (unincorporated areas) (FEMA Docket No. 7097)	
Atlantic Ocean:	
Approximately 100 feet east of intersection of Balm Trail on North Balm Trail	#1
At northern terminus of Martin Lane	#1
Currituck Sound: At intersection of Balm Trail and North Balm Trail	*7
Atlantic Ocean: Approximately 400 feet east of intersection of unnamed access road to Station Bay Drive and State Route 1200	*18
Maps available for inspection at the Dare County Administration Building, 211 Budleigh Street, 3rd Floor, Manteo, North Carolina.	
TEXAS	
Carrollton (city), Dallas, Denton, and Collin Counties (FEMA Docket No. 7082)	
Stream 6D–5:	
Approximately 300 feet upstream of the confluence with Hutton Branch	*494
Approximately 0.6 mile upstream of Carmel Drive	*546
Elm Fork of Trinity River:	
Just downstream of Beltline Road	*440
Approximately 200 feet upstream of the confluence of Denton Creek	*446
Maps available for inspection at the City Engineering Department, 1945 Jackson Road, Carrollton, Texas.	

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

Dated: December 5, 1994.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 94–30567 Filed 12–12–94; 8:45 am]

BILLING CODE 6718–03–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43–CFR Public Land Order 7106

[MT–930–1430–01; MTM 41533]

Partial Revocation of Executive Order Dated January 12, 1911; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive order insofar as it affects 15 acres of public land withdrawn for the Bureau of Land Management's Phosphate Reserve No. 7. The land is no longer needed for the purpose for which it was withdrawn. The revocation is needed to permit disposal of the land through exchange. This action will open the land to surface entry and nonmetalliferous mining. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: January 12, 1995.

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. The Executive Order dated January 12, 1911, which withdrew public land for the Bureau of Land Management's Phosphate Reserve No. 7, is hereby revoked insofar as it affects the following described land:

Principal Meridian, Montana

T. 1 S., R. 9 W.,
Sec. 32, SW¼SW¼NW¼ and W½SE¼SW¼NW¼.

The area described contains 15 acres in Beaverhead and Silver Bow Counties.

2. At 9 a.m. on January 12, 1995, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on January 12, 1995, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on January 12, 1995, the land will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempting adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: December 1, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–30561 Filed 12–12–94; 8:45 am]

BILLING CODE 4310–DN–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[PP Docket No. 93–253, FCC 94–295]

Implementation of Section 309(j) of the Communications Act—Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission modifies its rules pertaining to three aspects of auction design for the broadband PCS auctions: Procedures triggering the close of an auction, timing of the auctions for the entrepreneurs' blocks, and anti-collusion rules. These actions are intended to speed the conclusion of the auctions, thus facilitating rapid introduction of service to the public; to improve the administrative efficiency of the auction process; and to foster competition and widespread participation in the auctions.

EFFECTIVE DATE: December 13, 1994.

FOR FURTHER INFORMATION CONTACT: Jonathan Cohen, 202/418–2040, or Florence Setzer, 202/418–2038.

SUPPLEMENTARY INFORMATION: This Memorandum Opinion and Order in PP Docket No. 93–253, adopted November 16, 1994, and released November 17, 1994, 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 be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street NW., Suite 140, Washington, DC 20037, telephone (202) 857–3800.

I. Introduction

1. By this action, we reconsider, on our own motion, decisions made in the Fourth Memorandum Opinion and Order in this proceeding, which addressed petitions for reconsideration of the Fifth Report and Order concerning auction design and procedures for the auction of licenses to

provide personal communications services in the 2 GHz band ("broadband PCS").[1] In light of our experience in the national and regional narrowband PCS license auctions, we find it desirable to modify our rules pertaining to three aspects of auction design for the broadband PCS auctions: procedures triggering the close of an auction, timing of the auctions for the entrepreneurs' blocks, and anti-collusion rules.

II. Stopping Rules

2. In the Fifth Report and Order we stated that a simultaneous multiple round auction with a simultaneous stopping rule will close when a single round has passed in which there is no new acceptable bid on any license and no activity rule waiver is submitted.[2] In the Fourth Memorandum Opinion and Order we allowed for two types of activity rule waivers, "proactive" waivers, which will keep an auction open in a round in which no new valid bids are submitted, and "automatic" waivers, which will not keep an auction open.[3] We also reaffirmed our decision to use a simultaneous stopping rule, which holds bidding open on all licenses until no new acceptable bid is offered on any license.[4] These same rules were applied in the regional and national narrowband auctions. The nationwide narrowband PCS auction (with 10 licenses) was completed after 47 rounds of bidding, and the regional narrowband PCS auction (with 30 licenses) took 105 rounds to complete. In the broadband PCS auctions 99 MTA licenses will be auctioned in the first auction and a total of 1,972 BTA licenses in subsequent auctions. Although the number of rounds to complete a simultaneous multiple round auction is not necessarily directly proportional to the number of licenses put up for bid, we are concerned that, without changes in procedures, it may take an excessively long period of time to conduct these auctions, thus creating a significant delay in providing service to the public.[5] Thus our recent experience with simultaneous multiple round auctions suggests that the Commission should consider additional measures to ensure that future auctions are completed within a reasonable period of time.

3. We believe that retaining the discretion to keep an auction open even if no new acceptable bids and no proactive waivers are submitted will allow the Commission to complete the broadband PCS auctions in a timely manner without sacrificing efficiency or revenue. Providing the auction staff with the discretion to keep an auction open will permit the Commission to use larger minimum bid increments early in the auction (to move the auction along quickly) without incurring the risk that the auction will close while some bidders are willing to pay significantly more for certain licenses than the current high bid but not more than the relatively large minimum bid increments. The Commission will be able to permit additional bidding at lower bid increments subsequent to a round with no bids, thereby increasing the likelihood that licenses will be awarded to the bidders that value them most highly and facilitating efficient aggregations of licenses.

4. Retaining the discretion to keep an auction open will also allow the Commission to continue to accept bids on a license for which a bid was withdrawn late in an auction, especially in the last round of an auction. Without the option of keeping an auction open, a license for which a bid was withdrawn in the last round would have to be put up for bid in a subsequent auction.

5. Accordingly, we retain the discretion to keep an auction open even if no new acceptable bids and no proactive waivers are submitted in a single round. Under this minor modification of our procedures, the Commission would in essence have the ability to submit its own proactive waiver, thus keeping the auction open. This rule modification will facilitate the rapid completion of future auctions because it will permit the Commission to use larger bid increments, which speed the pace of the auction, without risking a premature auction close.

III. Timing of Auctions in the Entrepreneurs' Blocks

6. In the Fifth Report and Order, the Commission chose to divide broadband PCS licenses into three groups and to hold a simultaneous multiple round auction for the licenses in each group. The license group to be auctioned first consisted of blocks A and B, each with 30 MHz of spectrum and MTA geographic scope. The next group consisted of blocks C and F (the entrepreneurs' blocks), which have been reserved for bidding by smaller entrepreneurial firms. The group to be auctioned last consisted of blocks D and E, with 10 MHz of spectrum each and BTA geographic scope.[6] We concluded that in order to promote efficient license allocation, highly interdependent licenses should be grouped together and put up for bid at the same time in a multiple round auction. Doing so, we concluded, would provide bidders information about the prices of complementary and substitutable licenses while such licenses were still up for bid, and thus would facilitate awarding licenses to the bidders who value them most highly. Nevertheless, we noted that the cost and complexity of auctioning a very large number of interdependent licenses simultaneously might outweigh the informational and bidding flexibility advantages.[7] In the Fourth Memorandum Opinion and Order we reaffirmed our decision concerning the sequence of auctions.[8]

7. We now believe that we may wish to hold two separate auctions for the C and F block licenses.[9] In light of our experience with the narrowband auctions, we are concerned that auctioning simultaneously the 986 licenses in the two entrepreneurs' blocks may create excessive administrative complexity for the Commission and for bidders, particularly when neither will have had experience with more than 99 licenses in a single auction. In addition, we have found that as we gain experience with license auctions we identify certain modifications that are necessary to improve the efficiency and administration of the auction process. We may wish to benefit from such experience in administering the highly complex designated entity provisions that apply to competitive bidding for licenses on the C and F blocks. Further, it appears now that few, if any, potential applicants have any interest in aggregating block C and block F licenses, so that the interdependence between license values in the two blocks may be less than we initially believed. Consequently, we reserve the discretion to hold two separate simultaneous multiple round auctions for the entrepreneurs' block licenses, one auction for block C and one for block F. We will announce by Public

---

[1] *Fourth Memorandum Opinion and Order* in PP Docket No. 93–253, 59 FR 37566 (October 24, 1994) (*Fourth Memorandum Opinion and Order*); *Fifth Report and Order* in PP Docket No. 93–253, 59 FR 37566 (July 22, 1994) (*Fifth Report and Order*).

[2] *Fifth Report and Order* at ¶¶ 46, 56.

[3] *Fourth Memorandum Opinion and Order* at ¶ 15.

[4] *Id.* at ¶ 16.

[5] *Fifth Report and Order* at ¶ 50.

[6] *Id.* at ¶ 36.

[7] *Id.*

[8] *Fourth Memorandum Opinion and Order* at ¶ 29.

[9] Potential bidders or their representatives have requested that the Commission auction the C and F blocks separately. See *ex parte* comments of the National Association of Black Owned Broadcasters, Inc., filed November 3, 1994 at 2; *ex parte* comments of North American Wireless, Inc., filed November 3, 1994 at 3–4; *ex parte* comments of National Association of Investment Companies, filed November 4, 1994 at 7.

Notice in advance of the application deadline whether one or two entrepreneurs' block auctions will be held and the date of those auctions.

IV. Anti-Collusion Rules

8. We have become aware of some confusion regarding the definition of the terms "applicant" and "bidder" as they are used in our anti-collusion rules, and we wish to clarify our rules on this issue.[10] Section 1.2105(c)(1) of the Commission's Rules prohibits "bidders" from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies, but § 1.2105(c)(2) and (3) provide exceptions to this rule so as to allow "applicants" to make changes in ownership that do not result in a change in control of the applicant, or to bid jointly with other applicants, as long as they have not applied for licenses in any of the same geographic license areas.[11] Though we intended the terms "bidder" and "applicant" to be used interchangeably, we now recognize that it would be less confusing simply to use the term "applicant," and we are amending the rules accordingly.

9. In addition, it has been suggested that § 1.2105(c)(1) of our rules should be interpreted to mean that parties holding attributable interests in bidders are not prohibited from engaging in the discussions addressed in that section.[12] We wish to make clear that this interpretation is an incorrect reading of our rules. For purposes of our anti-collusion rules, therefore, we clarify that the term "applicant" will include all holders of attributable interests in an applicant. For this purpose, "attributable interest" shall have the same definition as that used in § 24.204(d)(2)(i) of our Rules for purposes of defining interests subject to the spectrum aggregation limits: "[p]artnership and other ownership interests and any stock interest amounting to 5 percent of more of the equity, or outstanding stock, or outstanding voting stock of a broadband PCS licensee or applicant will be attributable."[13] In addition "[o]fficers and directors of a broadband PCS licensee or applicant * * * shall be considered to have an attributable interest in the entity with which they are so associated."[14] This is entirely consistent with the intent of the anti-collusion rules. Indeed, if holders of attributable interests were not considered applicants, collusive arrangements would be possible simply through the creation of a separate entity to act as the "applicant." Further, this clarification conforms with other Commission rules regarding the competitive bidding process. For example, § 24.813(a) requires parties applying to participate in broadband PCS auctions to provide, among other things, information with respect to "any person holding five percent or more of each class of stock, warrants, options or debt securities * * *."[15]

10. We believe, however, that allowing holders of non-controlling attributable interests in an applicant greater flexibility to form agreements with other applicants may enable applicants to acquire the capital necessary to bid successfully for licenses. Our anti-collusion rules are intended to protect the integrity and robustness of our competitive bidding process. In pursuit of that goal, however, we do not wish to restrict unreasonably the formation of non-collusive bidding consortia. For example, in the *Fourth Memorandum Opinion and Order*, we added to our Rules § 24.833, which provides that parties that after the auction hold non-controlling ownership interests in more PCS spectrum than a single entity is entitled to hold may divest sufficient properties to come into compliance with the spectrum aggregation limits.[16] Section 24.833 clearly contemplates entities holding ownership interests in two applicants for licenses in the same markets. Nevertheless, when one entity holds an attributable interest in more than one applicant for licenses in the same geographic license area, the potential for collusion is present because of the opportunity for the common owner to influence the bidding of the applicants. Thus, our rules permit applicants to change their ownership, enter into joint bidding arrangements and form consortia after the filing of short-form applications only if the parties to such arrangements have not applied for licenses in any of the same geographic areas.[17]

11. We believe that so long as collusive conduct can be reliably prevented, the public interest favors allowing holders of non-controlling attributable interests in one applicant for a particular license to obtain ownership interests in or enter into consortium arrangements with a second applicant for licenses in the same geographic area(s). Accordingly, we will amend the anti-collusion rules to permit a holder of non-controlling attributable interests in an applicant to obtain an ownership interest in or enter into a consortium arrangement with another applicant for a license in the same geographic area, provided that the attributable interest holder certifies to the Commission that it has observed and will observe certain restrictions on communication concerning the applicants in which it holds an attributable interest or with which it has entered into a consortium arrangement. The attributable interest holder must certify that it has not communicated and will not communicate, with the applicant or anyone else, concerning the bids or bidding strategies (including which licenses an applicant will or will not bid on) of more than one applicant for licenses in the same geographic area in which it holds an ownership interest or with which it has a consortium arrangement. As described above, "applicant" for this purpose includes all holders of attributable interests in an applicant. Thus, if the attributable interest holder has discussed the bidding strategy of the applicant in which it holds an attributable interest (Company A), or of any other entity that also holds an attributable interest in Company A, the attributable interest holder may not acquire an attributable interest in another applicant for a license in a geographic area in which Company A (or any other attributable interest holder in Company A) has applied for a license unless it certifies that it has not communicated concerning the bids or bidding strategies of the applicant in which it wishes to acquire an attributable interest.

12. We believe that this revision will facilitate the flow of capital to applicants by enabling parties to make investments in multiple applicants for licenses in the same geographic license areas while ensuring that these investments will not lead to collusion among bidders. We recognize that some potential for collusion exists whenever an entity is permitted to hold an interest in more than one applicant for licenses in the same geographic license area. We expect that the certification requirement will adequately prevent collusion from occurring. However, we intend to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring, and we wish to emphasize that all applicants

[10] See November 4, 1994 letter from Kathy L. Shobert, Director, Federal Affairs, General Communication Incorporated, to William E. Kennard, FCC General Counsel.

[11] See 47 CFR 1.2105(c).

[12] See November 4, 1994 letter from James L. Lewis, Vice President, Regulatory Affairs, MCI Telecommunications Corporation to William E. Kennard, FCC General Counsel.

[13] 47 CFR 24.204(d)(2)(i).

[14] 47 CFR 24.204(d)(2)(vii).

[15] 47 CFR 24.813(a)(3).

[16] 47 CFR 24.833.

[17] 47 CFR 1.2105(c)(2), (3).

and their owners continue to be subject to existing antitrust laws. Applicants should note that conduct that is permissible under the Commission's Rules may be prohibited by the antitrust laws.[18] Thus, applicants should proceed with extreme caution in situations involving consortia and joint bidding arrangements. We also wish to make clear that communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly. If applicants enter into new or modified consortia or bidding arrangements, or if changes are made in an applicant's ownership, the applicants must timely modify their short-form applications to reflect these changes.

V. Ordering Clauses

13. Accordingly, *it is ordered* That part 1 of the Commission's rules is amended as set forth below.

14. *It is further ordered* That the rule amendments made herein will become effective immediately upon publication in the **Federal Register**. This action is taken pursuant to sections 4(i), 303(r) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 309(j).[19]

List of subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Final Rules

Part 1 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 1—COMMISSION ORGANIZATION

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

Authority: Secs. 1, 4(i), 303, 309(j), 48 Stat. 1066, 1082, as amended; 47 U.S.C. 151, 154, 303, and 309(j), unless otherwise noted.

2. Section 1.2105(c) is revised to read as follows:

§ 1.2105 [Amended]

* * * * *

(c) *Prohibition of collusion.* (1) Except as provided in paragraphs (c)(2), (c)(3) and (c)(4) of this section, after the filing of short-form applications, all applicants are prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies, or discussing or negotiating settlement agreements, with other applicants until after the high bidder makes the required down payment, unless such applicants are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application pursuant to § 1.2105(a)(2)(viii).

(2) Applicants may modify their short-form applications to reflect formation of consortia or changes in ownership at any time before or during an auction, provided such changes do not result in a change in control of the applicant, and provided that the parties forming consortia or entering into ownership agreements have not applied for licenses in any of the same geographic license areas. Such changes will not be considered major modifications of the application.

(3) After the filing of short-form applications, applicants may make agreements to bid jointly for licenses, provided the parties to the agreement have not applied for licenses in any of the same geographic license areas.

(4) After the filing of short-form applications, a holder of a non-controlling attributable interest in an entity submitting a short-form application may acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with, other applicants for licenses in the same geographic license area, provided that:

(i) The attributable interest holder certifies to the Commission that it has not communicated and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has a consortium or joint bidding arrangement, and which have applied for licenses in the same geographic license area(s); and

(ii) The arrangements do not result in any change in control of an applicant.

(5) Applicants must modify their short-form applications to reflect any changes in ownership or in the membership of consortia or joint bidding arrangements.

(6) For purposes of this paragraph:

(i) The term "applicant" shall include the entity submitting a short-form application to participate in an auction (FCC Form 175), as well as all holders of partnership and other ownership interests and any stock interest amounting to 5 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application, and all officers and directors of that entity; and

(ii) The term "bids or bidding strategies" shall include capital calls or requests for additional funds in support of bids or bidding strategies.

Example for paragraph (c): Company A is an applicant in area 1 Company B and Company C each own 10 percent of Company A. Company D is an applicant in area 1, area 2, and area 3. Company C is an applicant in area 3. Without violating the Commission's Rules, Company B can enter into a consortium arrangement with Company D or acquire an ownership interest in Company D if Company B certifies either

(1) That it has communicated with and will communicate neither with Company A or anyone else concerning Company A's bids or bidding strategy, nor with Company C or anyone else concerning Company C's bids or bidding strategy, or

(2) That it has not communicated with and will not communicate with Company D or anyone else concerning D's bids or bidding strategy

[FR Doc. 94–30447 Filed 12–12–94; 8:45 am]

BILLING CODE 6712–01–M

[18] See *Fourth Memorandum Opinion and Order* at n.125.

[19] Pursuant to 5 U.S.C. 553(d)(3), we conclude that "good cause" exists to have the rule changes take effect immediately because a delay would not provide applicants with sufficient time to finalize their bidding strategies and business plans for the upcoming broadband PCS auctions. Immediate implementation of the rule changes set forth herein also provides applicants with the required certainty to proceed with their bidding and business strategies, alleviating concerns that last-minute modifications to our rules would impede the success of their auction plan. See 5 U.S.C. 553(d)(1).

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 501

[Docket No. 94–95; Notice 1]

Organization and Delegation of Powers and Duties

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

ACTION: Final rule.

SUMMARY: This notice amends the organization and delegation of powers and duties within NHTSA to delegate to the Associate Administrator for Rulemaking the authority to grant or deny inconsequentiality petitions submitted pursuant to 49 CFR part 556, reserving to the Administrator the authority to grant or deny appeals from the determinations made by the Associate Administrator under such authority.

DATES: The final rule is effective December 13, 1994.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA (202–366–5263).

SUPPLEMENTARY INFORMATION: Title 49 U.S.C. 10118 and 10120 provide the Secretary of Transportation with authority to exempt a manufacturer from any responsibility to notify or to remedy any defect or failure to comply upon a determination that such defect or failure to comply is inconsequential as it relates to motor vehicle safety. This authority has been delegated to the Administrator of the National Highway Traffic Safety Administration (NHTSA) as part of the Secretary's general delegation to administer the National Traffic and Motor Vehicle Safety Act (49 CFR 1.50). Regulations implementing 49 U.S.C. 10118 and 10120 (at that time 15 U.S.C. 1417) were issued in 1977: 49 CFR part 556 *Exemption for Inconsequential Defect or Noncompliance.* NHTSA Order 800–2 (November 20, 1978) established the agency's "*Procedures for Processing Petitions for Inconsequential Defect or Noncompliance*", and assigned the Office of Rulemaking the primary responsibility for processing inconsequentiality petitions. Part 566 is silent as to signatory authority for inconsequential notices. Under Order 800–2, "the Decision Package is submitted to the Administrator for approval and signature."

In practice, determinations of grant or denial have been signed by the Associate Administrator for Rulemaking after approval by the Administrator. Thus, notwithstanding any formal delegation of power, the Administrator has made a de facto delegation of such power. The agency is now amending Part 501 to make a de jure delegation of this power.

Forty-nine U.S.C. 10118 and 10120 are silent on whether a determination may be appealed. However, 49 CFR 556.7 expressly permits any interested person to do so, and, under 49 CFR 556.8, "the Administrator" may grant or deny such appeals. In practice, the same procedure has been followed with respect to the infrequent appeals from inconsequentiality determinations. Because appeals are generally made to a higher authority than the decision maker, the Administrator has decided to reserve this power, and Part 501 is amended to reflect this decision.

Finally, NHTSA has noted that the titles of two Associate Administrators as set forth in the Code of Federal Regulations lack the underlining accorded the other Associate Administrators in 49 CFR 501.8. NHTSA is amending these sections to add the underlining for consistency of treatment.

Effective Date

Because the final rule relates to internal administrative procedures, clarifies existing agency practice, and imposes no additional burden upon any person, prior notice and comment upon are unnecessary and it may be made effective upon publication in the **Federal Register.**

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking has not been reviewed under Executive Order 12866. It has been determined that the rulemaking is not significant under Department of Transportation regulatory policies and procedures. The purpose of the rule is to clarify existing agency policy and procedures. Since the rule does not have any significant cost or other impacts, preparation of a full regulatory evaluation is not warranted.

National Environmental Policy Act

NHTSA has analyzed this rule for the purposes of the National Environmental Policy Act. The rule will not have a significant effect upon the environment simply because of the clarifications made to existing requirements.

Regulatory Flexibility Act

The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. Based on the discussion above, I certify that this rule will not have a significant economic impact upon a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. No person is affected by an amendment regarding the internal procedures of the agency.

Executive Order 12612 (Federalism)

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

Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103 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. Section 30161 of Title 49 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 or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 501

Administrative practice and procedure, Motor vehicles, Motor vehicle safety.

In consideration of the foregoing, 49 CFR part 501 is amended as follows:

PART 501—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

1. The authority citation for part 501 continues to read as follows:

Authority: 49 U.S.C. 105, 322; delegation of authority at 49 CFR 1.50.

2. Section 501.7 is amended by revising paragraphs (a)(2) and (a)(3) and adding new paragraph (a)(4), to read as follows:

§ 501.7 Administrator's reservations of authority.

* * * * *

(a) * * *

(2) Make final determinations concerning violations of the Act and regulations issued thereunder;

(3) Grant or renew temporary exemptions from federal motor vehicle safety standards; and

(4) Grant or deny appeals from determinations upon petitions for inconsequential defect or noncompliance.

* * * * *

3. Section 501.8 is amended by revising the introductory text of paragraph (f) and the heading of paragraph (g), to read as follows:

§ 501.8 Delegations.

* * * * *

(f) *Associate Administrator for Rulemaking.* Except for those portions that have been reserved to the Administrator or delegated to the Associate Administrator for Enforcement, the Associate Administrator for Rulemaking is delegated authority to exercise the powers and perform the duties of the Administrator with respect to the setting of motor vehicle safety and theft prevention standards, average fuel economy standards, the granting or denying of petitions for determination of inconsequential defect or noncompliance, procedural regulations, and the development of consumer

information and regulations authorized under:

* * * * *

(g) *Associate Administrator for Enforcement.*

* * * * *

Issued on: December 7, 1994.

Ricardo Martinez,

Administrator.

[FR Doc. 94–30589 Filed 12–12–94; 8:45 am]

BILLING CODE 4910–59–P

---

49 CFR Part 541

[Docket No. 93–50; Notice 3]

RIN 2127–AE85

Federal Motor Vehicle Theft Prevention Standard

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

ACTION: Final rule.

SUMMARY: In this final rule implementing the Anti Car Theft Act of 1992, NHTSA defines "light duty truck" ("LDT") and "multipurpose passenger vehicle" ("MPV") for purposes of the Theft Prevention Standard, specifies the LDT and MPV parts considered major parts for the purpose of parts marking, and specifies the LDT and MPV lines that are to be marked. NHTSA also specifies marking of selected lines with below-median theft rates.

DATES: Effective date: This final rule takes effect on October 25, 1995. The changes made in this final rule apply beginning with model year 1997.

Petitions for Reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA no later than January 12, 1995.

ADDRESSES: Petitions for reconsideration of this rule must refer to the docket number and notice number cited in the heading of this final rule and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590. It is requested, but not required, that 10 copies be submitted.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, D.C. 20590. Ms. Gray's telephone number is (202) 366–1740.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Anti Car Theft Act of 1992
II. Notice of Proposed Rulemaking
1. Definitions of "Light Duty Truck" and "Multipurpose Passenger Vehicle"
2. Specifying "Major Parts"
3. Motor Vehicle Glazing as "Major Parts"
4. Parts Marking for Non-High Theft Lines
III. Public Comments on the NPRM
1. Definitions of "Light Duty Truck" and "Multipurpose Passenger Vehicle"
2. Specifying "Major Parts"
3. Marking of Motor Vehicle Glazing Parts
4. Parts Marking of Non-High-Theft Lines
5. Definition of "1990/91 Median Theft Rate"
IV. Effective Date
V. Regulatory Impacts
1. E.O. 12866 and DOT Regulatory Policies and Procedures
2. Regulatory Flexibility Act
3. National Environmental Policy Act
4. Paperwork Reduction Act
5. Federalism
6. Civil Justice Reform

I. Anti Car Theft Act of 1992

The "Anti Car Theft Act of 1992" (ACTA) amended the law relating to the labelling of major parts on high theft and other motor vehicles that is now codified as 49 U.S.C. chapter 331 Theft Prevention. At 49 U.S.C. 33101(10), "passenger motor vehicle" is defined to include "a multipurpose passenger vehicle or light duty truck when that vehicle or truck is rated at not more than 6,000 pounds gross vehicle weight." Since "passenger motor vehicle" was previously defined to include passenger cars only, the effect of ACTA is that certain multipurpose passenger vehicle (MPV) and light-duty truck (LDT) lines may be determined to be high theft vehicles, subject to the Motor Vehicle Theft Prevention Standard (49 CFR part 541).

The purpose of the Theft Prevention Standard is to reduce the incidence of motor vehicle theft by facilitating the tracing and recovery of parts from stolen vehicles. The standard seeks to facilitate such tracing by requiring that vehicle identification numbers (VINs), VIN derivative numbers, or other symbols be placed on major motor vehicle parts. Each vehicle in a high theft line must have its major parts and major replacement parts marked unless the line is exempted from parts marking pursuant to 49 CFR part 543.

To conform the Theft Prevention Standard to ACTA, NHTSA issued on July 7, 1993, an advance notice of proposed rulemaking (ANPRM) (58 FR 36376). NHTSA sought comments on definitions of multipurpose passenger vehicles (MPVs) and light-duty trucks (LDTs) for the Theft Prevention Standard, and on which parts of these vehicles should be considered major parts and therefore subject to parts marking. After considering the public comments on the ANPRM, NHTSA published a notice of proposed rulemaking (NPRM) on July 8, 1994 (59 FR 35082), to amend the Theft Prevention Standard. The issues that were raised in the NPRM, and the public comments addressing them are discussed below.

II. Notice of Proposed Rulemaking

1. Definitions of "Light Duty Truck" and "Multipurpose Passenger Vehicle"

In the NPRM, NHTSA noted that since the statutory requirements for "multipurpose passenger vehicles" differ from those for "light duty trucks," these two terms must be clearly defined to make it possible to determine whether a particular vehicle is an MPV or an LDT. Under ACTA, since NHTSA must require some MPV's with below-median theft rates to be marked, but the Act exempts LDTs with below-median theft rates from coverage, NHTSA must ensure that a distinction between LDTs and MPVs is made.

ACTA limits "multipurpose passenger vehicles" to those vehicles rated at 6,000 pounds gross vehicle weight or less. Thus, NHTSA's proposed definition of "multipurpose passenger vehicle" was:

> A passenger motor vehicle which is constructed either on a truck chassis or with special features for occasional off-road operation and which is rated at 6,000 pounds gross vehicle weight or less.

ACTA does not define "light-duty truck," and ACTA's legislative history provided no guidance as to which vehicles to include in a "light-duty truck" definition for theft prevention purposes.

In the NPRM, NHTSA proposed to base its definition of "light-duty truck" for Theft Prevention Standard purposes on NHTSA's definition of "truck" at 49 CFR 571.3: "a motor vehicle with motive power, except a trailer, designed primarily for the transportation of property or special purpose equipment." After taking into account ACTA's 6,000 pound gross vehicle weight rating limitation, NHTSA proposed to define "light-duty truck" as:

> A motor vehicle with motive power, except a trailer, designed primarily for the transportation of property or special purpose equipment, that is rated at 6,000 pounds gross vehicle weight or less.

2. Specifying "Major Parts"

NHTSA also sought public comments on major parts for MPVs and LDTs. 49 U.S.C. 33101(6)(A) through (K) specifies parts that are "major parts." Under section 33101(6)(L), NHTSA has authority to specify as "major parts" other parts that it specifies are "comparable in design or function to any of the parts listed."

At 49 CFR 541.5, NHTSA has specified the major parts on high theft passenger car lines that must be marked. With a few exceptions, § 541.5 lists all major parts specified in 49 U.S.C. 33101(6). The agency did not use its authority to add additional parts to the list.

After passage of ACTA, there is no longer a statutory limit on the number of parts per vehicle that may be marked. However, the costs of marking a vehicle may not exceed $15 (in 1984 dollars).

In discussing the proposal for marking major parts for LDTs and/or MPVs, NHTSA applied the same criteria used to select the current 14 major parts specified in the Theft Prevention Standard at § 541.5(a). The selection criteria are whether the parts are among those most frequently repaired or most costly to replace. (See 50 *FR* 19728, at 19732; May 10, 1985.)

Relying on public comments in response to the ANPRM, NHTSA proposed that parts listed in the Theft Prevention Standard at § 541.5(a)(1) through (11) should, if present on a vehicle, be treated as major parts for MPVs and LDTs also. Since the 11 parts listed are among the most frequently repaired and costly to replace, NHTSA tentatively found that the parts, if present on MPVs and LDTs, should be major parts.

In the NPRM, NHTSA also proposed to designate additional parts as major parts for MPVs and LDTs. Although right and left rear quarter panels (designated as major parts in 49 CFR 541.5(a)(12) and (13)), are not necessarily present on MPVs or LDTs, NHTSA proposed that for MPVs, in lieu of quarter panels, side-panels should be designated as major parts, and for LDTs, pickup boxes or cargo boxes should be designated as major parts. NHTSA stated its belief that the side panels and pickup or cargo boxes are among the parts most frequently repaired. NHTSA also proposed to include cargo doors on an LDT or MPV, as major parts.

3. Motor Vehicle Glazing as "Major Parts"

In response to the ANPRM, certain commenters recommended that windows and other pieces of motor vehicle glazing be specified as major parts for all high theft vehicles. One company, Prospective Technologies, cited the relative ease with which vehicle glazing could be marked, and the low cost of marking (which Prospective estimated to be $5.00 per vehicle). Prospective also cited Nissan's success in lowering theft rates of the Nissan 300ZX by as much as 26 per cent after the windows of all 300ZX models were etched with the vehicle identification number beginning in model year 1992.

Based in part on this favorable information, NHTSA proposed to specify marking of passenger motor vehicle parts. NHTSA tentatively agreed that specifying pieces of glazing as major parts to be marked pursuant to the Theft Prevention Standard would further the statutory purpose. Since the markings on glazing would be in plain view, all types of motor vehicle theft, not just theft for the purposes of chop shop operations or other trafficking in stolen motor vehicle parts, might be deterred.

NHTSA sought comment whether lower theft rates would result if only some glazing parts were specified for marking and if so, which parts could be excluded. NHTSA also sought comment on three additional issues arising from the proposal to require marking of glazing parts.

4. Parts Marking for Non-High Theft Lines

49 U.S.C. 33103 requires NHTSA, by October 25, 1994, to promulgate a parts marking standard applicable to major parts installed by manufacturers of "passenger motor vehicles (other than light duty trucks) in not to exceed one-half of the lines not designated under section 33104 as high theft lines." In carrying out section 33103, NHTSA began by reviewing theft rates of the 231 vehicle lines that were listed in the 1990/91 theft data. (See 59 *FR* 12400, March 16, 1994) A total of 116 vehicle lines (any line rated at number 116 or lower) was in the eligible pool of lines potentially subject to parts marking pursuant to section 33103.

Pursuant to the statutory mandate, NHTSA removed all light duty truck lines from the eligible pool. Section 33103(a) further directs NHTSA to select only lines "not designated under section 33104 of this title as high theft lines." Thus, NHTSA removed any passenger motor vehicle line that NHTSA had previously determined to be high theft. NHTSA tentatively applied the definition of "light duty truck" proposed in the NPRM, and stated it would make appropriate changes if a different definition were adopted in the final rule.

After removing the ineligible lines, NHTSA determined that there were 57 below-median lines still eligible for selection under section 33103. Out of the 57 below-median lines left, NHTSA designated the 28 lines with the highest theft rates to be marked pursuant to section 33103.

NHTSA proposed to list each of the selected lines in appendix B to part 541 Pursuant to section 33103, NHTSA proposed that parts marking for these below-median lines begin with MY 1996, the first model year that begins at least six months after October 1994. Since section 33103 did not specify marking of replacement parts for below-median lines, NHTSA did not propose to require marking for replacement parts.

III. Public Comments on the NPRM

In response to the NPRM, NHTSA received comments from 15 commenters: Advocates for Highway and Auto Safety (Advocates), the American Automobile Manufacturers' Association (AAMA), Automark, Chrysler, Ford, Honda, General Motors (GM), the International Association of Auto Theft Investigators (IAATI), Isuzu, the National Automobile Dealers Association (NADA), Nissan, Prospective Technologies, Toyota, and Volkswagen. The commenters discussed the issues raised in the NPRM as follows:

1. Definitions of "Light Duty Truck" and "Multipurpose Passenger Vehicle"

NHTSA received five comments on the definition of "light duty truck" (LDT). Four commenters stated that NHTSA's proposed definition of LDT was consistent with the Anti Car Theft Act of 1992, and should not be changed Advocates for Highway and Auto Safety on the other hand, stated that since ACTA was intended to expand the number and types of vehicles subject to parts marking, the LDT definition should be "drawn as narrowly as reasonable under the circumstances." Advocates recommended that LDTs be defined as those vehicles: "built and intended for use exclusively for the transportation of property or special purpose equipment." Thus, Advocates appears to urge that LDT be defined to make as many low theft vehicle lines as possible subject to parts marking.

In the agency's view, this outcome would be inconsistent with Congress's action in exempting low-theft LDTs from the requirement. Moreover, after reviewing the 1990/91 final theft data for LDT lines, NHTSA found few LDT lines with below-median theft rates. If NHTSA included all below-median LDT lines, only four additional vehicle lines (the Nissan, Toyota, Isuzu, and Ford Ranger pick ups) would be added to the 28 lines that were proposed for inclusion in appendix B.

Furthermore, since Advocates' definition would result in vehicles being classified as MPVs for theft

purposes that are classified as trucks for vehicle identification number (VIN) purposes under the vehicle safety standards, adopting Advocates' definition of LDT would make it difficult for NHTSA to track and monitor the theft history of these LDT lines through the use of VINs.

Since there were no other comments addressing the definition of LDT, this final rule adopts the definition of "light-duty truck" proposed in the NPRM.

Since only Ford addressed the definition of "multipurpose passenger vehicle" and it concurred with the definition discussed in the NPRM, NHTSA is adopting the NPRM's definition of "multipurpose passenger vehicle."

2. Specifying "Major Parts"

Two commenters suggested specifying additional parts as "major parts." Advocates recommended the addition of airbag modules. IAATI recommended that for LDTs and MPVs, the vehicle frame and radiator support assemblies be added. NHTSA will not adopt these recommendations because it does not determine that at present, airbag modules, frames, and radiator support assemblies are among those parts most frequently repaired or most costly to replace, the criteria NHTSA has used to determine whether a part should be specified a "major part." However, since air bags will be mandatory for all passenger motor vehicles by model year 1999, the determination for airbag modules may be changed.

Toyota stated that no additional parts should be specified until there are "positive results" from a Justice Department study on the efficacy of parts marking. This study is mandated at 49 U.S.C. 33103(d). NHTSA is not adopting Toyota's recommendation because the Justice Department's findings are not due until December 1999. The ACTA directs NHTSA, well before 1999, to extend coverage of the parts marking requirements of the Theft Prevention Standard to LDTs and MPVs. In order to effectively extend parts marking requirements to LDTs and MPVs, NHTSA must specify parts unique to LDTS or MPVs that must be marked.

For these reasons, NHTSA adopts as final the following as major parts for passenger cars, LDTs, and MPVs: engine, transmission, right and left front fenders, hood, right and left front doors, right and left rear doors, sliding or cargo door(s), front and rear bumpers, and the rear door (both doors in case of double doors), decklid, tailgate, or hatchback (whichever is present). In addition, for passenger cars, the right and rear quarter panels are major parts. For MPVs, the right-side and left-side assemblies are major parts. For LDTs, the pickup box, and/or cargo box are major parts.

3. Marking of Motor Vehicle Glazing Parts

Although NHTSA proposed specifying vehicle glazing parts as major parts, the final rule does not specify any vehicle glazing parts as major parts. Except for the Advocates and IAATI, all other commenters opposed specifying glazing parts as major parts, and thus making glazing subject to parts marking. Among the reasons cited was that NHTSA does not have authority to require marking of parts that are not among the "major parts" specified in 49 U.S.C. 33101(6) (A) through (K), or are (under (L)) "comparable in design or function to any of the parts listed in subparagraphs (A) through (K)."

While NHTSA believes the statute gives the agency ample discretion to determine that glazing parts are "major parts," it has concluded that the cost of such marking would make the cost per vehicle of marking parts likely to exceed the statutory maximum. An important rationale for NHTSA's proposal in the NPRM to require marking of glazing parts was that it perceived the cost of marking glazing as relatively low, when considering the lower theft rates shown in certain vehicles with marked glazing. 49 U.S.C. 33105(a) limits the per vehicle cost of parts marking to $15 (in 1984 dollars). In 1993 dollars, the per vehicle costs of marking may not exceed $20.86 (see 59 FR 8021, February 17, 1994). Since the experience of Prospective Technologies appeared to show that marking of glazing would cost about $5.00 per vehicle, NHTSA believed that even if it specified marking of glazing parts, the per vehicle cost of marking would not exceed $20.86.

The public comments, however, questioned whether marking of glazing could be done for as little as $5.00 per vehicle. GM noted that marking glazing would add approximately $6.25 to the cost of marking each GM vehicle, "nearly doubling" the per vehicle costs of parts marking. GM further noted that the $6.25 costs do not include items such as accidental glass breakage or glass replacement due to inadvertent VIN error, or the costs of stencil cutter maintenance or stencil cutter replacement. Although Toyota did not provide specific dollar figures, it stated the $5.00 per vehicle cost of marking glazing was not feasible, and that "it is certain" that the cost increase to mark Toyota lines would be more than $15.00.

Nissan, the company which manufactures the Nissan 300ZX, whose windows were marked by Prospective Technologies, estimated that the current costs of marking vehicle parts (not including glazing) is between $14 to $20. In contrast to Prospective's figure of $5.00 per vehicle, Nissan estimated that the present cost of marking glazing on its 300ZX line (at the port of entry, and using a chemical treatment process) is $25.00 per vehicle.

Volkswagen stated that the 1990 cost of marking a Volkswagen vehicle was 25.02 Deutsche marks, or approximately $15.77, to label all parts, except for the engine and transmission. NHTSA notes that if the cost of inflation since 1990, the cost of marking the engine and transmission, and (using Prospective Technologies' figure of $5.00 per vehicle) the cost to mark glazing were all added to the $15.77 figure, Volkswagen's cost of marking a vehicle would exceed the $20.86 limit specified in section 33105(a).

Based on the public comments received, NHTSA believes specifying glazing parts as major parts, may make the costs of parts marking for some manufacturers exceed the $20.86 limit specified in section 33105(a). Additionally, Ford noted that windows are rarely stolen as replacement parts. NADA stated there is no evidence in the record suggesting that vehicles are stolen for their glazing materials. Thus, in this final rule, NHTSA is not specifying any glazing as a "major part" under 49 CFR 541.5(a).

4. Parts Marking of Non-High-Theft Lines

Ford disagreed with the agency over how to distribute vehicle lines between appendix A (high-theft lines) and the new appendix B (non-high-theft lines that must now be marked). In Ford's view, appendix B should include up to half of the vehicle lines that fall below the median, regardless of whether such lines had previously been listed in appendix A. The agency had proposed to exclude from appendix B any below-median vehicle line that had been previously listed in appendix A, and to base appendix B on up to half of the remaining below-median vehicle lines.

Under Ford's proposed method, up to 54 car lines would be listed in appendix B, but many of these would be lines already included in appendix A and therefore already required to have their parts marked. Under the agency's method, 28 vehicle lines were proposed to be listed in appendix B, none of which had previously had their parts marked.

After considering Ford's comment, NHTSA has concluded that the agency's proposed method carries out ACTA's purpose more faithfully than does Ford's method. As codified, section 33103(a) directs the marking of parts on "not more than 50 percent of the lines not designated under section 33104 of this title as high theft lines." Section 33104, in turn, states that vehicle lines that were subject to marking under the pre-ACTA law (i.e., the lines listed in appendix A) continue to be subject to the requirements of the section. Read together, the provisions support the agency's view that vehicle lines previously listed in appendix A should continue to be listed in that appendix and not in appendix B. The agency has adopted the procedure as proposed and has determined the vehicle lines in appendix B accordingly. However, Ford's comments have caused NHTSA to reexamine the lines it proposed for inclusion in appendix B. The agency found 6 vehicle lines placed in the bottom quartile of the 1990/91 final theft data. The 6 lines, the Ford Aerostar and Explorer, the General Motors Oldsmobile Cutlass Cruiser, the Volvo 240 and 940, and the Volkswagen Audi 80/90, will be removed from appendix B. NHTSA will also remove the Daihatsu Rocky MPV from appendix B, since the Rocky is no longer sold in the United States. The final rule lists the 21 remaining vehicle lines.

5. Definition of "1990/91 Median Theft Rate"

In addition to the foregoing, NHTSA proposed to include a definition of "1990/91 median theft rate." Based on 231 vehicle lines, the 1990/91 median theft rate was 3.5826 thefts per thousand vehicles produced. Since NHTSA received no comments on "1990/91 median theft rate," it is adopting the definition proposed in the NPRM.

In determining high or low theft lines, pursuant to 49 CFR part 542, *Procedure for Selecting Lines to be Covered by the Theft Prevention Standard*, NHTSA proposed to apply the 1990/91 median theft rate to passenger motor vehicle lines to be introduced for model year (MY) 1996 and thereafter. However, as explained below, since this final rule does not begin to apply to affected vehicle lines until MY 1997, NHTSA will continue to apply the 1983/84 median theft rate to passenger car lines introduced before MY 1997.

IV. Effective Date

In the NPRM, NHTSA proposed that the changes described in the NPRM, if made final, would take effect beginning with model year 1996. With the possible exception of Honda, all commenters requested a longer leadtime than the April 25, 1995 proposed in the NPRM. The longer leadtimes requested ranged from a year after publication of the final rule (Mazda and Nissan) to September 1, 1996, almost two years after publication of the final rule (Chrysler and General Motors).

As reasons for requesting the longer leadtime, the commenters stated that extra time was needed to buy new equipment or to change manufacturing processes. In particular, Chrysler stated that production of its "pull-ahead" MY 1996 Chrysler Town and Country MPVs (already selected by NHTSA as a high theft line) will begin in January 1995, only two months after publication of the final rule. Since the changes prescribed in this final rule take effect "at least 6 months after the date the standard is prescribed" (49 U.S.C. 33103(e)), if the final rule were to take effect on April 25, 1995, NHTSA could not require marking of the Town and Country line.

After considering the comments, NHTSA has decided the new parts marking procedures for LDTs, MPVs, and vehicle lines listed in appendix B will take effect with MY 1997. NHTSA decided the extra lead time is necessary because manufacturers are being required to mark new vehicle types (MPVs and LDTs) and to mark low theft lines never before subject to parts marking. Extra time is needed for manufacturers to buy equipment, determine vehicles' target areas for parts marking, and to decide whether to submit a petition for exemption from parts marking.

NHTSA also believes that all manufacturers should begin the new procedures in the same model year. MY 1997 is the earliest model year for which all manufacturers can ensure that their lines comply.

V. Regulatory Impacts

1. Executive Order 12866 and DOT Regulatory Policies and Procedures

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impact of this rulemaking action and has determined the action not to be "significant" under the Department of Transportation's regulatory policies and procedures. This action defines "light-duty truck" (LDT) and "multipurpose passenger vehicle" (MPV) and specifies LDT and MPV parts that should be considered "major parts." As a result of defining LDT and MPV, those lines are now included as "passenger motor vehicle" lines subject to the Theft Prevention Standard. In this final rule, the definition of LDT affects low theft lines that are selected for parts marking, pursuant to 49 U.S.C. section 33103. Since section 33103(a) excludes LDTs from its coverage, any passenger motor vehicle with a low theft rate (other than an LDT) would be subject to parts marking. The definition clarifies which vehicles Congress intended to be subject, as LDTs, to the marking of high theft passenger motor vehicle lines, but excluded from the potential rules for marking of low theft passenger motor vehicle lines.

Similarly, the selection of the MPV and LDT parts to be marked is already, in large part, decided by Congress in 49 U.S.C. 33101, since the term "major parts" is defined at 49 U.S.C. 33101(6). However, the agency has authority under section 33101(6)(L) to make modifications to the statutory list, and for major parts of LDTs and MPVs, has exercised this authority. The overall cost of marking the MPVs and LDTs would, in any event, be limited to the $15 (in 1984 dollars), or $20.86 (in 1993 dollars, based on the U.S. Department of Labor's United States City Average All Items Consumer Price Index for All Urban Consumers (See 59 FR 8021, February 17, 1994)) per vehicle maximum specified in section 33105(a).

In this final rule, high theft MPVs and LDTs, and lines listed in Appendix B must add parts marking for a total of $5.06 per vehicle. Based on 1991 production figures, an additional 7.4 million would need to be marked, making the approximate cost of marking high theft MPVs, LDTs, and lines listed in Appendix B, $37 million. However, NHTSA believes the $37 million estimate is high because many manufacturers will petition for approval to use an antitheft device, in lieu of parts marking.

Thus, NHTSA estimates that the total cost of this final rule would be approximately $37 million, considerably less than the $89 million estimated in the NPRM, which included costs to mark glazing.

NHTSA cannot estimate the benefits of this final rule. The average value of a stolen vehicle is approximately $6,100. Thus, this final rule would have to result in the prevention of about 6,100 vehicle thefts ($37 million divided by $6,100) to break even with the costs imposed.

2. Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action under the Regulatory Flexibility Act. I certify that this proposed rule, if made final, will not have a significant economic impact on a substantial number of small entities. As already noted, this final rule

defines "light duty truck" and "multipurpose passenger vehicle," and specifies parts for MPVs and LDTs that should be designated as "major parts." The final rule itself will have minimal effects on small manufacturers of passenger motor vehicles, as almost none of the manufacturers of passenger motor vehicles that may be subject to this rule is considered a small business. This final rule will have no effect on small organizations or governmental units that purchase passenger motor vehicles. Accordingly, the agency has not prepared a regulatory flexibility analysis.

3. National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this proposed rule and determined that if made final, it will not have a significant impact on the quality of the human environment.

4. Paperwork Reduction Act

The procedures in this rule for manufacturers to mark vehicle identification numbers on specified parts of high theft passenger motor vehicle lines, are considered to be information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. The information collection requirements for part 541 have been submitted to and approved by the OMB, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This collection of information has been assigned OMB Control No. 2127–0510, (Consolidated Vehicle Identification Number Requirements) and has been approved for use through June 30, 1996.

5. Federalism

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

6. Civil Justice Reform

This final rule would not have any retroactive effect, and it does not preempt any State law. 49 U.S.C. 33117 provides that judicial review of this rule may be obtained pursuant to 49 U.S.C. 32909. Section 33117 does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 541

Administrative practice and procedure, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 541 is amended as follows:

PART 541—FEDERAL MOTOR VEHICLE THEFT PREVENTION STANDARD

1. The authority citation for part 541 is revised to read as follows:

Authority: 49 U.S.C. 33101, 33102, 33103, 33105; delegation of authority at 49 CFR 1.50.

2. Section 541.3 is revised to read as follows:

§ 541.3. Application.

This standard applies to the following:

(a) Passenger motor vehicle parts identified in § 541.5(a) that are present:

(1) In the passenger motor vehicle lines listed in Appendix A of this part;

(2) Beginning with model year 1997, in passenger motor vehicle lines which NHTSA has finally determined, pursuant to 49 CFR part 542, to be high theft based on the 1990/91 median theft rate; and

(3) Beginning with model year 1997, in passenger motor vehicle lines listed in Appendix B of this part.

(b) Replacement parts for passenger motor vehicle lines described in § 541.3(a) (1) and (2), if the part is identified in § 541.5(a).

3. Section 541.4 is revised to read as follows:

§ 541.4. Definitions.

(a) *Statutory terms.* All terms defined in 49 U.S.C. chapter 331 are used in accordance with their statutory meanings unless otherwise defined in paragraph (b) of this section.

(b) *Other definitions.* (1) *Interior surface* means, with respect to a vehicle part, a surface that is not directly exposed to sun and precipitation.

(2) *Light-duty truck (LDT)* means a motor vehicle, with motive power, except a trailer, designed primarily for the transportation of property or special purpose equipment, that is rated at 6,000 pounds gross vehicle weight or less.

(3) *Line* means a name which a manufacturer applies to a group of motor vehicles of the same make which have the same body or chassis, or otherwise are similar in construction or design. A "line" may, for example, include 2-door, 4-door, station wagon, and hatchback vehicles of the same make.

(4) *1990/91 median theft rate* means 3.5826 thefts per thousand vehicles produced.

(5) *Multipurpose passenger vehicle (MPV)* means a passenger motor vehicle which is constructed either on a truck chassis or with special features for occasional off-road operation and which is rated at 6,000 pounds gross vehicle weight or less.

(6) *Passenger car* is used as defined in § 571.3 of this chapter.

(7) *VIN* means the vehicle identification number required by part 565 and § 571.115 of this chapter.

4. Section 541.5 is revised to read as follows:

§ 541.5 Requirements for passenger motor vehicles.

(a) Each passenger motor vehicle subject to this standard must have an identifying number affixed or inscribed on each of the parts specified in paragraphs (a)(1) through (a)(18) inclusive, if the part is present on the passenger motor vehicle. In the case of passenger motor vehicles not originally manufactured to comply with applicable U.S. vehicle safety and bumper standards, each such motor vehicle subject to this standard must have an identifying number inscribed in a manner which conforms to paragraph (d)(2) of this section, on each of the parts specified in paragraphs (a)(1) through (a)(18), inclusive, if the part is present on the motor vehicle.

(1) Engine.
(2) Transmission.
(3) Right front fender.
(4) Left front fender.
(5) Hood.
(6) Right front door.
(7) Left front door.
(8) Right rear door.
(9) Left rear door.
(10) Sliding or cargo door(s).
(11) Front bumper.
(12) Rear bumper.
(13) Right rear quarter panel (passenger cars).
(14) Left rear quarter panel (passenger cars).
(15) Right-side assembly (MPVs).
(16) Left-side assembly (MPVs).
(17) Pickup box, and/or cargo box (LDTs).
(18) Rear door(s) (both doors in case of double doors), decklid, tailgate, or hatchback (whichever is present).

(b) (1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, the number required to be inscribed or affixed by paragraph (a) shall be the VIN of the passenger motor vehicle.

(2) In place of the VIN, manufacturers who were marking engines and/or

transmissions with a VIN derivative consisting of at least the last eight characters of the VIN on October 24, 1984, may continue to mark engines and/or transmissions with such VIN derivative.

(3) In the case of passenger motor vehicles not originally manufactured to comply with U S vehicle safety and bumper standards, the number required to be inscribed by paragraph (a) of this section shall be the original vehicle identification number assigned to the motor vehicle by its original manufacturer in the country where the motor vehicle was originally produced or assembled.

(c) The characteristics of the number required to be affixed or inscribed by paragraph (a) of this section shall satisfy the size and style requirements set forth for vehicle certification labels in § 567 4(g) of this chapter

(d) The number required by paragraph (a) of this section must be affixed by means that comply with paragraph (d)(1) of this section or inscribed by means that comply with paragraph (d)(2) of this section.

(1) *Labels.* (i) The number must be printed indelibly on a label, and the label must be permanently affixed to the passenger motor vehicle's part.

(ii) The number must be placed on each part specified in paragraph (a) of this section in a location such that the number is, if practicable, on an interior surface of the part as installed on the vehicle and in a location where it.

(A) Will not be damaged by the use of any tools necessary to install, adjust, or remove the part and any adjoining parts, or any portions thereof;

(B) Is on a portion of the part not likely to be damaged in a collision, and

(C) Will not be damaged or obscured during normal dealer preparation operations (including rustproofing and undercoating).

(iii) The number must be placed on each part specified in paragraph (a) of this section in a location that is visible without further disassembly once the part has been removed from the vehicle

(iv) The number must be placed entirely within the target area specified by the original manufacturer for that part, pursuant to paragraph (e) of this section, on each part specified in paragraph (a) of this section.

(v) Removal of the label must—

(A) Cause the label to self-destruct by tearing or rendering the number on the label illegible, and

(B) Discernibly alter the appearance of that area of the part where the label was affixed by leaving residual parts of the label or adhesive in that area, so that investigators will have evidence that a label was originally present.

(vi) Alteration of the number on the label must leave traces of the original number or otherwise visibly alter the appearance of the label material.

(vii) The label and the number shall be resistant to counterfeiting.

(viii) The logo or some other unique identifier of the vehicle manufacturer must be placed in the material of the label in a manner such that alteration or removal of the logo visibly alters the appearance of the label.

(2) *Other means of identification.* (i) Removal or alteration of any portion of the number must visibly alter the appearance of the section of the vehicle part on which the identification is marked.

(ii) The number must be placed on each part specified in paragraph (a) of this section in a location that is visible without further disassembly once the part has been removed from the vehicle

(iii) The number must be placed entirely within the target area specified by the original manufacturer for that part, pursuant to paragraph (e) of this section, on each part specified in paragraph (a) of this section.

(e) *Target areas* (1) Each manufacturer that is the original producer who installs or assembles the covered major parts on a line shall designate a target area for the identifying numbers to be marked on each part specified in paragraph (a) of this section for each of its lines subject to this standard. The target area shall not exceed 50 percent of the surface area on the surface of the part on which the target area is located.

(2) Each manufacturer subject to paragraph (e)(1) of this section shall, not later than 30 days before the line is introduced into commerce, inform NHTSA in writing of the target areas designated for each line listed in Appendix A The information should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

(3) The target areas designated by the original vehicle manufacturer for a part on a line shall be maintained for the duration of the production of such line, unless a restyling of the part makes it no longer practicable to mark the part within the original target area. If there is such a restyling, the original vehicle manufacturer shall inform NHTSA of that fact and the new target area, in accordance with the requirements of paragraph (e)(2) of this section.

5. The heading of appendix A to part 541 is revised to read as follows:

Appendix A—High Theft Passenger Motor Vehicles Lines Subject to the Requirements of This Standard

6 Appendix B to part 541 is revised to read as follows·

Appendix B—Passenger Motor Vehicle Lines (Except Light Duty Trucks) With Theft Rates Below the 1990/91 Median Theft Rate, Subject to the Requirements of This Standard

Manufacturer	Subject lines
Chrysler	Dodge Ramcharger (MPV)
	Dodge Ram Wagon/Van B150.
Ferrari	Testarossa.
Ford	Crown Victoria.
	Festiva.
	Mercury Grand Marquis.
	Mercury Sable.
	Taurus.
General Motors	Chevrolet Astro (MPV).
	Chevrolet Celebrity.
	Chevrolet Sprint.
	GMC Safari (MPV).
	Oldsmobile Custom Cruiser
Honda	Civic.
Mazda	Navajo.
Nissan	Axxess.
Porsche	944.
Rover Group	Range Rover (MPV)
Volvo	760.
Volkswagen	Fox.
	Passat.

Issued on· December 6, 1994

Ricardo Martinez,

Administrator

[FR Doc 94–30588 Filed 12–12–94, 8.45 am]

BILLING CODE 4910–59–P

49 CFR Part 567

[Docket No. 91–24; Notice 2]

Certification

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

ACTION: Technical amendments; final rule.

SUMMARY: This notice corrects a citation to the motor vehicle importation regulation that was in effect until January 31, 1990 (19 CFR 12 80) and which has been superseded by a new regulation (49 CFR part 591).

EFFECTIVE DATES: The amendment is effective on December 13, 1994.

FOR FURTHER INFORMATION CONTACT· George Shifflett, Office of Enforcement, NHTSA (202) 366–5307

SUPPLEMENTARY INFORMATION: On May 15, 1991, NHTSA made several technical amendments to conform the language of part 567 *Certification,* to

new regulations, issued in September 1989, regarding the importation of motor vehicles not originally manufactured in compliance with the Federal motor vehicle safety standards (56 FR 22355). The reader is referred to that notice for further information on this subject.

Inadvertently, the agency neglected to include paragraph 567.4(k) in the amendments to part 567 Paragraph (k) applies to those "passenger cars admitted to the United States under 19 CFR 12.80(b)(1)" which lack an original manufacturer's certification of compliance with the Federal motor vehicle safety standards. The correct citation is to Paragraph 591.5(f). This notice effects that correction. The notice also revises the authority citations to reflect the recodification in Title 49 of the agency's authorities previously in Title 15.

Because the amendment is technical in nature and has no substantive impact, it is hereby found that notice and comment thereon are unnecessary, and that good cause is shown that an effective date earlier than 180 days after issuance of the rule is in the public interest. Therefore, the amendment is effective upon publication in the **Federal Register**. As the amendment makes no substantive change, it does not affect any of the impacts previously considered in the promulgation of part 567.

List of Subjects in 49 CFR Part 567

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, part 567 of 49 CFR is amended as follows:

PART 567—[AMENDED]

1. The authority citation for part 567 is revised to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115 30117, 30166, 49 U.S.C. 32502 and 32504; 49 U.S.C. 33101–33104, and 33109; delegation of authority at 49 CFR 1.50.

§ 567.4 [Amended]

2. The introductory text to paragraph 567.4(k) is amended by removing the phrase "19 CFR 12.80(b)(1)" and adding, in its place, the phrase "49 CFR 591.5(f)".

Issued on: December 7, 1994.

Ricardo Martinez,

Administrator

[FR Doc. 94–30590 Filed 12–12–94; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 59, No. 238
Tuesday, December 13 1994

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

FEDERAL RESERVE SYSTEM

12 CFR Part 211

[Regulation K; Docket No. R–0862]

International Banking Operations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System (Board or Federal Reserve) is seeking public comment on a proposal to amend its regulations to include criteria to be used in evaluating the operations of any foreign bank in the United States that the Board has determined is not subject to comprehensive supervision or regulation on a consolidated basis. The Board is required to develop such criteria, in consultation with the Secretary of the Treasury (Treasury), and to publish them for public comment pursuant to section 202(e)(7) of the Foreign Bank Supervision Enhancement Act (the FBSEA or Act).

DATES: Comments must be received by February 13, 1995.

ADDRESSES: Comments should refer to Docket No. R–0862 and may be mailed to William W Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551 Comments also may be delivered to Room B–2222 of the Eccles Building between 8.45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles building courtyard on 20th Street, N.W (between Constitution Avenue and C Street, N W.) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9·00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Kathleen M. O'Day, Associate General Counsel (202/452–3786), Sandra L. Richardson, Managing Senior Counsel 202/452–6406), Margaret E. Miniter, Attorney (202/452–3900), Legal Division; Michael G. Martinson, Assistant Director (202/452–3640), Betsy Roberts, Manager (202/452–3846), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf [TDD], Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW , Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

The Statute

Section 202(e)(7) of the FBSEA amended section 7 of the International Banking Act of 1978 (IBA) by adding a requirement that the Board, in consultation with the Treasury, develop and publish criteria to be used in evaluating the operation of any foreign bank in the United States that the Board has determined is not subject to comprehensive supervision or regulation on a consolidated basis. In developing such criteria, the Board is required to allow reasonable opportunity for public review and comment. 12 U.S.C. 3105(e)(7). In order to implement this statutory provision, the Board is issuing this notice of proposed rulemaking pursuant to 12 CFR part 211 of its regulations governing international banking operations.

The Congress in enacting the FBSEA recognized the importance of the comprehensive, consolidated supervision of banks operating internationally. The FBSEA strengthened the role of U S banking supervisors as the *host* country supervisors of foreign banks operating in this country The Act also recognized the importance of *home* country supervision in assuring the overall safety and soundness of foreign banks that conduct operations in the United States by requiring the Board:

1 To determine that a foreign bank is subject to comprehensive supervision on a consolidated basis by its home country supervisor in order to establish a new banking presence in this country; and

2. To establish, in consultation with the Secretary of the Treasury, these criteria in order to evaluate the operation of any foreign bank in the United States that the Board has determined is not subject to such supervision.

As provided in sections 7(e) (1) and (5) of the IBA, as amended, a determination by the Board that a foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis is a sufficient ground, in and of itself, for the Board to require or, in respect of federal branches or agencies, to recommend, termination of the foreign bank's U.S. operations. 12 U.S.C. 3105(e)(1),(5). Termination of a foreign bank's U.S. operations in these circumstances is not mandatory, however. Instead, in enacting section 7(e)(7) of the IBA, Congress recognized that there may be factors in particular cases that militate against termination of a foreign bank's U.S. operations. 12 U.S.C. 3105(e)(7).

All determinations with regard to whether a foreign bank is subject to comprehensive supervision or regulation on a consolidated basis will be made in the context of the supervision and regulation of the foreign bank's existing U.S. operations. Just as is the case with other supervisory or regulatory determinations, a foreign bank generally will have an opportunity to provide its views and any information it considers to be relevant in advance of any decision being made with regard to question of comprehensive, consolidated supervision, unless expeditious action is necessary to protect the public interest.

The proposed criteria set out below reflect the factors the Board considers will be relevant for purposes of evaluating the operations of any foreign bank the Board determines is not subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisors in accordance with 12 CFR 211.24(c)(1).

Criteria

Following a determination by the Board that a foreign bank is not subject to comprehensive, consolidated supervision by its home country supervisor in accordance with § 211.24(c)(1) of Regulation K, the Board proposes to take into account a number of criteria in reaching a view regarding whether the foreign bank's U S. operations should be terminated or permitted to continue, and, if the latter, whether any supervisory constraints should be placed upon the bank in

connection with those operations. These criteria are:

1, The proportion of the foreign bank's total assets and total liabilities that are located or booked in its home country, as well as the distribution and location of its assets and liabilities that are located or booked elsewhere,

2. The extent to which the operations and assets of the foreign bank and any affiliates are subject to supervision by its home country supervisor;

3 Whether the foreign bank has effective and reliable systems of internal controls and management information and reporting, which enable management properly to oversee the bank's worldwide operations;

4. Whether the foreign bank's home country supervisor has any objection to the bank continuing to operate in the United States;

5. Whether the foreign bank's home country supervisor and the home country supervisor of any parent of the foreign bank share material information regarding the operations of the foreign bank with other supervisory authorities;

6. The relationship of the U S. operations to the other operations of the foreign bank, including whether the foreign bank maintains funds in its U.S. offices that are in excess of amounts due from the foreign bank's non-U S. offices;

7 The soundness of the foreign bank's overall financial condition,

8. The managerial resources of the foreign bank, including the competence, experience, and integrity of the officers and directors and the integrity of its principal shareholders;

9. The scope and frequency of external audits of the foreign bank,

10. The operating record of the foreign bank generally and its role in the banking system in its home country;

11. The foreign bank's record of compliance with relevant laws, as well as the adequacy of its money laundering controls and procedures, in respect of its worldwide operations,

12. The operating record of the U.S. offices of the foreign bank and any affiliates;

13. The views and recommendations of the Office of the Comptroller of the Currency ("OCC") or the relevant state banking regulator regarding the U S. offices of the foreign bank,

14. Whether the foreign bank, if requested, has provided the Board with adequate assurances that such information will be made available on the operations or activities of the foreign bank and any of its affiliates as the Board deems necessary to determine and enforce compliance with the IBA, the BHC Act, and other applicable federal banking statutes, and

15. Any other information relevant to the safety and soundness of the U.S operations of the foreign bank.

These criteria address factors relating both to the operations of the foreign bank as a whole and to its U.S. operations in particular. Evaluations of both of these facets of a foreign bank's operations are necessary in order to determine whether the bank's U.S. operations should be permitted to continue and, if so, whether these operations should be subject to supervisory constraints.

As subsection (c) of proposed § 211.30 of Regulation K provides, any foreign bank that the Board determines is not subject to comprehensive, consolidated supervision may be required to enter into an agreement to conduct its U.S. operations subject to such restrictions as the Board, having taken into account the criteria, determines to be appropriate in order to assure the safety and soundness of the bank's U S. operations. Where appropriate, such an agreement could require a suitable degree of insulation between the foreign bank's U.S. operations and its operations (or those of its affiliates) in other countries. For example, one means of accomplishing this would be to require the bank to conduct its U.S. banking operations in a "net due to" position vis-a-vis the rest of the organization. Other restraints also could be imposed where appropriate (*e.g.*, restricting transactions with other parts of the organization or requiring that international transactions of the U.S. offices be conducted through a correspondent acceptable to the Board). Prior to imposing such restrictions, the Board will consult with the OCC or the appropriate state banking authority.

If any requirements imposed in such an agreement were not adhered to, the U.S. banking operations of the foreign bank would be subject to further enforcement action, including issuance of an order terminating the activities of the U.S. offices or transmittal of a recommendation to the OCC for such termination, as appropriate in the circumstances.

Request for Comment

The Board believes that the proposed criteria will be sufficient to evaluate the safety and soundness of the U S. operations of a foreign bank, to determine whether its U.S. operations should be permitted to continue in the absence of comprehensive, consolidated supervision by the home country authority, and, if so, on what basis. At the same time, the Board does not wish to impact unduly the existing operations of foreign banks, the vast majority of which are operated in a safe and sound manner by banks that are subject to a significant degree of supervision by their home country authorities. The Board, therefore, considers it to be appropriate, in developing the proposed criteria, to take into account the panoply of tools available to the Board and other banking regulators to regulate the operations of foreign banks that are not yet subject to full consolidated supervision, which fall short of the ultimate sanction of termination of their U.S. operations.

As required by the Act, the Board has consulted with the Treasury in the development of the proposed criteria and the Treasury has agreed that the criteria may be published for comment. Further consultation will take place with the Treasury following the analysis by both agencies of the comments received The Board requests comment on all aspects of the proposed criteria.

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S C. 3501 *et seq.*) are contained in the proposed rule

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub L. 96–354, 5 U S.C. 601 *et seq*), the Board certifies that the proposed criteria would not have a significant economic impact on a substantial number of small entities that are subject to its regulation.

List of Subjects in 12 CFR Part 211

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Board proposes to amend 12 CFR part 211 as set forth below

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

1 The authority citation for Part 211 is revised to read as follows:

Authority: 12 U S C. 221 *et seq* , 1818, 1841 *et seq* , 1843 *et seq* , 3100 *et seq* , 3901 *et seq*.

2 A new § 211 30 is added to subpart B to read as follows

§ 211.30 Criteria for evaluating the U.S. operations of foreign banks not subject to consolidated supervision.

(a) *General* Pursuant to the Foreign Bank Supervision Enhancement Act, Public Law 102–242, 105 Stat 2286 (1991), (the FBSEA) the Board shall develop and publish criteria to be used

in evaluating the operations of any foreign bank in the United States that the Board has determined is not subject to comprehensive supervision or regulation on a consolidated basis.

(b) *Criteria.* Following a determination by the Board that a foreign bank is not subject to comprehensive, consolidated supervision by its home country supervisor in accordance with § 211.24(c)(1) of this subpart, the Board shall consider the following criteria in determining whether the foreign bank's U.S. operations should be permitted to continue and, if so, whether any supervisory constraints should be placed upon the bank in connection with those operations:

(1) The proportion of the foreign bank's total assets and total liabilities that are located or booked in its home country, as well as the distribution and location of its assets and liabilities that are located or booked elsewhere;

(2) The extent to which the operations and assets of the foreign bank and any affiliates are subject to supervision by its home country supervisor;

(3) Whether the foreign bank has effective and reliable systems of internal controls and management information and reporting, which enable management properly to oversee the bank's worldwide operations;

(4) Whether the foreign bank's home country supervisor has any objection to the bank continuing to operate in the United States;

(5) Whether the foreign bank's home country supervisor and the home country supervisor of any parent of the foreign bank share material information regarding the operations of the foreign bank with other supervisory authorities;

(6) The relationship of the U.S. operations to the other operations of the foreign bank, including whether the foreign bank maintains funds in its U.S. offices that are in excess of amounts due to its U.S. offices from the foreign bank's non-U.S. offices;

(7) The soundness of the foreign bank's overall financial condition;

(8) The managerial resources of the foreign bank, including the competence, experience, and integrity of the officers and directors and the integrity of its principle shareholders;

(9) The scope and frequency of external audits of the foreign bank;

(10) The operating record of the foreign bank generally and its role in the banking system in its home country;

(11) The foreign bank's record of compliance with relevant laws, as well as the adequacy of its money laundering controls and procedures, in respect of its worldwide operations;

(12) The operating record of the U S. offices of the foreign bank;

(13) The views and recommendations of the Office of the Comptroller of the Currency or the relevant state banking regulator regarding the U.S. offices of the foreign bank;

(14) Whether the foreign bank, if requested, has provided the Board with adequate assurances that such information will be made available on the operations or activities of the foreign bank and any of its affiliates as the Board deems necessary to determine and enforce compliance with the International Banking Act, the Bank Holding Company Act, and other applicable federal banking statutes; and

(15) Any other information relevant to the safety and soundness of the U.S. operations of the foreign bank.

(c) *Restrictions on U.S. operations*— (1) *Terms of agreement.* Any foreign bank that the Board determines is not subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor pursuant to § 211,24(c)(1) of this subpart, may be required to enter into an agreement to conduct its U S. operations subject to such restrictions as the Board, having considered the criteria set forth in paragraph (b) of this section, determines to be appropriate in order to assure the safety and soundness of its U.S. operations.

(2) *Failure to enter into or comply with agreement* A foreign bank that is required by the Board to enter into an agreement pursuant to paragraph (c)(1) of this section and either fails to do so or fails to comply with the terms of such agreement may be subject to enforcement action in order to assure safe and sound banking operations under 12 U.S C. 1818, or to termination or a recommendation for termination of its U.S. operations under § 211.25(a) and (e) of this subpart and section (7)(e) of the IBA (12 U S C. 3105(e)).

By order of the Board of Governors of the Federal Reserve System, December 7, 1994.

William W. Wiles,

Secretary of the Board

[FR Doc. 94–30549 Filed 12–12–94; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1915

[Docket No. S–045]

Personal Protective Equipment for Shipyard Employment

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Proposed Rule; Request for public participation in public meeting.

SUMMARY: The Occupational Safety and Health Administration (OSHA) announces an informal public meeting to provide an opportunity for oral and written presentations regarding specific issues raised through the reopening of the Shipyard Employment Personal Protection Equipment (PPE) rulemaking record (59 FR 34586, July 6, 1994) and the incorporation of the general industry PPE rulemaking docket (S–060).

DATES: Notices of intention to appear at the public meeting must be postmarked by January 11, 1995. The public meeting will be held on January 25, 1995 in Washington, D.C.

Any written information or comments must be received by OSHA no later than January 25, 1995.

ADDRESSES: Submit all notices of intention to appear and written comments to Ms. Audrey K. Best, Directorate of Safety Standards Programs, Room N–3609, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW , Washington, DC 20210. Telephone (202) 219–7225, FAX (202) 219–7477 Please submit four copies of all written information.

Persons with disabilities, who need special accommodations, should contact Ms. Audrey Best, by January 11, 1995 at the address above.

The public meeting will be held in the Frances Perkins Building, U.S. Department of Labor, Conference Room N3437(A and B), 200 Constitution Avenue, NW , Washington, DC.

FOR FURTHER INFORMATION CONTACT: Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, room N–3647, 200 Constitution Avenue, N.W , Washington, D C. 20210. Telephone (202) 219–8148.

SUPPLEMENTARY INFORMATION:

Background

On November 29, 1988, OSHA proposed to revise the personal

protective equipment (PPE) requirements in the shipyard employment standards (part 1915, subpart I)(53 FR 48150). This proposal updated references to national consensus standards and added requirements for hazard assessment, proper selection and care of PPE, training, lifesaving equipment and personal fall protection. The written comment period ended on February 27, 1989. The Agency received 10 comments on the proposed rule, and one hearing request, which was withdrawn.

On August 16, 1989, OSHA proposed to update the existing general industry standards (part 1910, subpart I, Docket S–060) for eye and face (§ 1910.133), head (§ 1910.135) and foot (1910 136) PPE and to add generic requirements for hazard assessment, proper selection of PPE, prohibition on use of damaged or defective PPE and training in the proper use of PPE, §§ 1910.132(d) through (f) (54 FR 33832).

On April 10, 1990, the Agency proposed to add criteria for personal fall arrest equipment (§ 1910.128, 1910.129 and 1910.131) and positioning device equipment (§§ 1910.128 and 1910.130) to the general industry PPE standards (part 1910, subpart I, Docket S–057)(55 FR 13423).

The two general industry rulemakings generated extensive rulemaking records, including hundreds of comments and several thousand pages of hearing testimony

On April 6, 1994, OSHA issued a final rule (59 FR 16334) which completed Agency action in the general industry PPE proceeding. Based on the rulemaking record, (59 FR 16334, Docket S–050), OSHA made some changes to the proposed rule in drafting the final rule. In particular, OSHA revised the proposed training requirements to provide clear requirements for what is adequate training and what circumstances trigger retraining. In addition, the final rule added requirements for certification that the required hazard assessment (§ 1910.132(d)(2)) and training (§§ 1910.132(f)(4)) had been performed

Also, based on the general industry rulemaking record (Docket S–057), the Agency is considering whether it should revise the proposed rule for general industry fall protection PPE to further limit or to prohibit the use of body belts and non-locking snap hooks in personal fall arrest systems. In a related rulemaking for fall protection in the construction industry, OSHA recently issued a final rule (59 FR 40672, August 9, 1994) which prohibits the use of body belts and nonlocking snap hooks in personal fall arrest systems after December 31, 1997.

The Agency believes that the substance of the OSHA standards for general industry (part 1910), shipyard (part 1915) and construction employment (part 1926) should be consistent where possible. OSHA believes that PPE used in shipyard employment does not differ markedly from PPE used in general industry, and that the standards covering PPE use should not differ markedly either

While the Agency recognizes that work activities in shipyard employment often differ from those in other industries, the Agency believes that much of the information generated in the general industry rulemakings will help the Agency draft the final rule for shipyard PPE. To this end, OSHA formally incorporated the general industry PPE rulemaking records (Dockets S–057 and S–060) into the record for the shipyard employment PPE rulemaking (59 FR 34586, July 6, 1994).

In that same notice, OSHA reopened the written comment period for the shipyard employment PPE rulemaking to provide the public with an opportunity to comment on the newly incorporated general industry materials and on five specific issues (certification of hazard assessment; certification of training; training elements; body belts and body harnesses; and locking and non-locking snaphooks). The comment period, which ended August 22, 1994, elicited 13 comments, including one hearing request. These comments generally opposed any revision to proposed 1915 subpart I based on the 1910 subpart I records.

Based on these submissions, OSHA is convening a public meeting to seek additional input regarding all issues raised therein with emphasis on the issues set out below OSHA solicits further input regarding how the incorporation of the provisions discussed in the July 6, 1994 notice of reopening would impact the shipyard industry The Agency also requests that interested parties provide input regarding any experience they have had with the implementation of such provisions.

Issues

Issue 1—Certification of Hazard Assessment

Proposed part 1915 subpart I would require that employers select PPE for their employees based on an assessment of the pertinent workplace hazards (proposed § 1915 152(b)) For example, shipyard maintenance workers, in general, are required to wear hard hats, safety glasses and safety shoes. Maintenance workers who are exposed to airborne concentrations of asbestos that exceed the PELs, are also required to wear full-body clothing, gloves and foot coverings.

The proposed provision did not specifically address documentation of the hazard assessment. The revised PPE standard for general industry requires that affected employers verify that they have assessed workplace hazards through a written certification. As discussed in the July 6, 1994 notice, the Agency has been considering whether it would be appropriate to require written certification of hazard assessments in shipyards, as well

One commentor (Ex. 9–2) said that such a certification provision required the approval of the Office of Management and Budget (OMB), pursuant to the Paperwork Reduction Act and the implementing regulations. Other comments (Exs. 9–3, 9–7, 9–8 and 9–10) stated that OSHA should take a performance-oriented approach to documentation of hazard assessments, instead of adopting the general industry written certification requirement In particular, a commentor (Ex. 9–7) stated "certification of hazard assessment requirements should be based on employees' duties that tend to be constant rather than on the shipyard work place that is neither fixed, nor constant, nor readily quantifiable like work places in all other industries."

In addition, one commentor (Ex. 9–11) stated that hazard certification is unnecessary, because that company has "a good hazard assessment program that addresses PPE. A properly trained Compliance Officer can make a fair determination concerning PPE."

Those commentors indicated that requiring hazard assessments for each job, if followed literally, would create considerable costs for shipyard employers, without increasing employee safety Those commentors also stated that requiring employers to certify their hazard assessment activities would increase shipyard operational costs and paperwork burdens, with no safety benefit.

Based on those comments, OSHA requests input regarding the appropriateness of a documentation requirement, the manner in which shipyards currently document their hazard assessments, and suggested language for a verification requirement that would address concerns specific to shipyard employment In particular, the Agency solicits information regarding hazard assessment programs currently in use in shipyards and experience

concerning the effectiveness of such programs.

In addition, the Agency is considering the extent to which current hazard assessments performed by trade or occupation provide the necessary information for selection of appropriate PPE. The following are examples of typical trade-based hazard assessment formats that OSHA may consider to be acceptable:

Example 1: Welder

Based on an assessment of the workplace hazards to which welders are exposed, the equipment listed below is the basic PPE required for this occupation. This does not take into account a job location in which additional PPE may be required such as where the welder works from an elevated platform without guard rails. In this situation the welder must wear the proper fall protection equipment, such as a body harness.

—Hard hat
—Welding Shield (Face)
—Welding Gloves
—Safety Glasses
—Safety Shoes
—Welding Sleeves (welding in the overhead position)

(Signed and dated)

Example 2: Yard Maintenance Worker

Based on an assessment of the workplace hazards to which shipyard maintenance workers are exposed, the equipment listed below is the basic PPE required for this occupation. Where maintenance workers are exposed to other hazards, such as asbestos exposure where the insulation on a pipe is being repaired, the maintenance worker must be provided with the appropriate supplemental PPE (requirements for asbestos PPE are set out in § 1915.1001).

—Hard Hat
—Safety Glasses
—Work Gloves
—Safety Shoes

(Signed and dated)

Issue 2—Certification of Training and Training Elements

Proposed § 1915.152(d) required that employees be trained in the proper use of their personal protective equipment. The proposal did not address certification of training nor did it address specific training elements. The revised PPE standard for general industry requires employees to be trained and retrained, as necessary, in at least the following:

When PPE is necessary;
What PPE is necessary;
How to properly don, doff, adjust, and wear PPE;
The limitations of the PPE; and,
Useful life and disposal of the PPE

This training may be provided in a variety of ways, such as through tool box training or at safety meetings. Once this training has been completed, § 1910.132(f)(4) requires employers to verify through a written certification that each affected employee has received and understood the required training. This certification requirement may be satisfied through a training log or other document that the employer has already been using to keep track of its training activities. For compliance purposes, a record which provides the names of the employees who have successfully completed the training, the date of the training, the type of certification (that is, completion of PPE training), and the signature of a supervisor or trainer would be sufficient. OSHA solicits additional information concerning whether it is appropriate to clarify the requirements of proposed § 1915.152(d) by incorporating the above-noted training elements and whether the Agency should add a new requirement for written certification of training.

In response to the notice of reopening, OSHA received comments (Exs. 9–6, 9–8 and 9–9) which stated that training can be satisfied during new employee orientation. Another commentor (Ex. 9–7) supported OSHA's intent for general requirements for training. The commentor also believed that "documentation of all training should be in the form of training logs, which would be the equivalent of "written certification" to avoid the non-value added redundance of record keeping." In addition, a commentor (Ex. 9–9) stated that most shipyards are already complying with the OSHA PPE training standard under consideration. Most of the shipyards that responded to the notice of reopening stated that they already have a written certification program and a new hire training program in effect. One commentor (Ex. 9–11) stated that requiring employers to certify their training activities would increase shipyard operational costs and paperwork burdens, with no safety benefit.

Issue 3—Body Belts and Body Harnesses

Proposed part 1915 subpart I would allow the use of personal fall arrest systems with either body belts or body harnesses, but would limit the impact load allowed for body belts to one-half of that allowed for body harnesses (900 pounds as opposed to 1800 pounds). The July 6, 1994 notice stated that OSHA was considering whether the part 1915 subpart I final rule should bar the use of body belts for fall protection. Some commentors (Exs. 9–1, 9–3, 9–7 and 9–8) suggested that there is no basis for barring the use of body belts for fall arrest and that the load limits set in the proposed rule were appropriate. In particular, the South Tidewater Association of Ship Repairers and Newport News Shipbuilding (Exs. 9–3 and 9–11) stated that requiring employers to dispose of body belts and to purchase body harnesses would impose unreasonable financial burdens. Those commentors also stated that a review of their records showed no injuries that would have been prevented by having employees wear body harnesses instead of body belts; that belts had greater ease of use; and that the cost of harnesses was approximately double that of body belts. On the other hand, Tampa Shipyard (Ex. 9–8), Atlantic Marine (Ex. 9–9), and General Dynamics (Ex. 9–10) stated that they already employ body harnesses in their personal fall arrest systems. Tampa Shipyards and Atlantic Marine stated that the use of body harnesses was cost effective, even though harnesses could cost twice as much as body belts, because the additional safety factor provided by harnesses was worth the investment. In addition, General Dynamics (Ex. 9–10) stated that its systems already comply with the general industry criteria.

Subsequently, OSHA promulgated a revised fall protection standard for construction, part 1926 subpart M (59 FR 40672, August 9, 1994), which prohibits the use of body belts in personal fall arrest systems after December 31, 1997. After that time, construction employees may use body belts only with positioning device systems. The Agency has found, as follows:

> The evidence in the record clearly demonstrates that employees who fall while wearing a body belt are not afforded the level of protection they would be if the fall occurred while the employee was wearing a full body harness. In addition, [a commentor] presented evidence of injuries resulting from the use of body belts. The best available evidence the Agency has at this time indicates that the Agency should ban the use of body belts after a reasonable period. This will allow employers to phase out their existing inventory.

OSHA seeks input regarding the extent to which a phased in ban on the use of body belts in personal fall arrest systems would be appropriate for shipyard employment. Please provide information on the useful life of body belts currently in use or on the market, the impact loads imposed on employees who fall while wearing such body belts,

the cost of the body belts and body harnesses that are currently available, along with other data which would help OSHA address this issue

Public Participation

Public Meeting

OSHA has scheduled a public meeting in the Frances Perkins Building, U.S. Department of Labor, Conference Room N-3437 (A and B), 200 Constitution Avenue, NW., Washington, DC, on January 25, 1995 to provide an informal forum in which interested persons can present oral and written comments and information regarding issues raised in the July 6, 1994 notice of reopening.

The meeting will begin at 9 a.m. The presiding officer, who will be a representative of OSHA's Directorate of Safety Standards Programs, will have the necessary authority to regulate the conduct of the meeting.

OSHA requests that any person wishing to make oral presentations notify OSHA in advance. The notice should identify the person and organization, the amount of time needed for oral presentation, the subject matter, and a brief summary of the intended oral presentation. All persons giving written advance notice will have time reserved for their oral presentations.

Persons who wish to make oral presentations, but who have not notified OSHA of their intention to appear, may ask for an opportunity to speak at the time of the meeting. While the Agency will attempt to accommodate "walk-on" participants, priority will be given to those who submitted timely notices of intention to appear.

All persons desiring to participate in the public meeting must file a notice of intention to appear postmarked by January 11, 1995, addressed to Ms. Audrey K. Best, Directorate of Safety Standards Programs, Room N3609, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC 20210.

All written submissions must be received by OSHA no later than the date of the public meeting, January 25, 1995. A subsequent period for the submission of additional written materials may be set at the public meeting, at the discretion of the presiding officer. The materials submitted will be available for inspection and copying at the above address. All written and oral submissions, and other information gathered by the Agency, will be considered in any action taken.

Authority and Signature

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), Secretary of Labor's Order No. 1-90 (55 FR 9033), and 29 CFR part 1911.

Signed at Washington, DC, this 7th day of December 1994.

Joseph A. Dear,

Assistant Secretary of Labor

[FR Doc. 94-30518 Filed 12-12-94; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Missouri Abandoned Mine Lands Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Missouri Abandoned Mine Lands (AML) State Reclamation Plan (hereinafter, the "Missouri Plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to Missouri statute, regulations, and reclamation plan provisions of the AML program pertaining to powers of the commission, AML reclamation fund, AML reclamation general requirements, identification and establishment of reclamation priority of sites, elimination of selected priority sites, project evaluation and ranking, and purchasing and procurement. The amendment is intended to revise the State AML Plan to be consistent with the corresponding Federal standards, clarify ambiguities, and improve operational efficiency.

This notice sets forth the times and locations that the Missouri AML Plan and proposed amendment to that Plan are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., c.s.t. January 12, 1995. If requested, a public hearing on the proposed amendment will be held on January 9, 1995. Requests to present oral testimony at the hearing must be received by 4:00 p.m., c.s.t. on December 28, 1994.

ADDRESSES: Written comments should be mailed or hand delivered to Michael C. Wolfrom at the address listed below.

Copies of the Missouri AML Plan, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Kansas City Field Office.

Michael C. Wolfrom, Acting Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 934 Wyandotte, Room 500, Kansas City, MO 64105, Telephone: (816) 374-6405.

Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102, Telephone: (314) 751-4041

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, telephone: (816) 374-6405

SUPPLEMENTARY INFORMATION:

I. Background

Title IV of SMCRA established an Abandoned Mine Land Reclamation (AMLR) program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. As enacted in 1977, lands and waters eligible for reclamation were those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there was no continuing reclamation responsibility under State or Federal law. The AML Reclamation Act of 1990 (Pub. L. 101-508, Title VI, Subtitle A, Nov. 5, 1990, effective Oct. 1, 1991) amended SMCRA, 30 U.S.C. 1231 *et seq* to provide changes in the eligibility of project sites for AML expenditures. The Secretary adopted AML regulations (59 FR 28136, May 31, 1994) at 30 CFR Subchapter R, Parts 795, 870, 872, 873, 874, 875, 876, and 886 to implement this act. Title IV of SMCRA now

provides for reclamation of certain mine sites where the mining occurred after August 3, 1977 These include interim program sites where bond forfeiture proceeds were insufficient for adequate reclamation and sites affected any time between August 4, 1977, and November 5, 1990, for which there were insufficient funds for adequate reclamation due to the insolvency of the bond surety. Title IV provides that a State with an approved AMLR program has the responsibility and primary authority to implement the program.

The Secretary of the Interior approved the Missouri AMLR Plan on January 29, 1982. Information pertinent to the general background of the Missouri AMLR Plan submission, as well as the Secretary's findings and the disposition of comments can be found in the January 29, 1982, **Federal Register** (47 FR 4253). Subsequent actions concerning Missouri's AMLR Plan and Plan amendments can be found at 30 CFR 925.25.

The Secretary adopted regulations at 30 CFR Part 884 that specify the content requirements of a State reclamation plan and the criteria for plan approval. The regulations provide that a State may submit to the Director proposed amendments or revisions to the approved reclamation plan. If the amendments or revisions change the scope of major policies followed by the State in the conduct of its reclamation program, the Director must follow the procedures set out in 30 CFR 884.14 in approving and disapproving an amendment or revision.

II. Proposed Amendment

By letter dated November 29, 1994, (Administrative Record No. AML–MO–89) Missouri submitted a proposed amendment to its AML Plan pursuant to SMCRA. Missouri submitted the proposed amendment in response to a letter from OSM dated September 26, 1994 (Administrative Record No. AML–MO–88), in accordance with 30 CFR 884.15(b) concerning revisions to the AML regulations at 30 CFR Chapter VII, Subchapter R (59 FR 28136, May 31, 1994).

Missouri proposes to amend its statutes at RSMo Section 444.810, Powers of Commission-abandoned mine reclamation fund created, purpose as well as RSMo Section 444.915, Abandoned mine reclamation fund-deposits and expenditures. Missouri proposes to amend its regulations at 10 CSR 40–9.020 (1) and (3), Reclamation-General Requirements. Missouri proposes to amend its AML Plan at Section 884.13(c)(2), project ranking and selection procedures and Section 884.13(d)(3), purchasing and procurement.

(1) 10 CSR 40–9.020(1) (D) and (E) and (3) General Requirements

The addition of subsections (D) and (E) make additional lands eligible for reclamation activities where the coal mining site was left: (1) either unreclaimed or inadequately reclaimed between August 4, 1977, and November 21, 1980, where funds or other financial guarantees are not sufficient to provide or adequate reclamation or abatement at the site; (2) either unreclaimed or inadequately reclaimed between August 4, 1977, and November 5, 1990, and the surety of such mining operator became insolvent during such period, and as of November 5, 1990, remaining funds or other financial guarantees are not sufficient to provide for adequate reclamation or abatement at the site; (3) the site meets priority objectives stated in subsections (4) (A) and (B) of this rule. Priority will be given to those sites which are in the immediate vicinity of a residential area or which have an adverse economic impact upon a community; and (4) monies available from sources outside the fund or which are ultimately recovered from responsible parties involving lands eligible pursuant to (1)(D) of this rule, shall either be used to offset the cost of the reclamation or transferred to the fund if not required for further reclamation activities at the permitted site The definition of left and abandoned in either an unreclaimed or inadequately reclaimed condition is revised to be consistent with these changes.

(2) Section 884 13(c)(2) Project Ranking and Selection Procedures

The AMLR Plan is revised to require the submittal of the Abandoned Mine Land Problem Area Description Form (OSM 76). This form will be utilized in identifying problem area priorities and submitted to OSM upon project completion to report actual reclamation accomplishments.

The AMLR Plan is revised to ensure that certain interim sites and insolvent surety sites mined after August 3, 1977, may be eligible for AML funding. Additional ineligible sites would include sites and areas designated for remedial action pursuant to the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S C. 7901 *et seq.*) or that have been listed for remedial action pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U S C. 9601 *et seq.*)

(3) Section 884.13(d)(3), Purchasing and Procurement

Missouri is adding provisions that restrict the eligibility of bidders and their subcontractors on AML contracts (1) to any bidder or equipment supplier whose firm or affiliate is not listed in the General Services Administration publication entitled Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs; and (2) must be eligible to receive a permit or conditional permit to conduct surface coal mining operations as confirmed by OSM's Applicant/Violator System.

Missouri also adds a provision that AML State Share funds may be requested annually for the Future Reclamation Set-Aside Program. The funds would only be utilized to accomplish the purposes of P.L. 95–87 and only withdrawn after September 30 1995 A separate accounting system would be utilized for these funds.

(4) RSMo 444.810.2–8 Joint Committee on Administrative Rules

Missouri requires that any rules promulgated under the authority of the Land Reclamation Commission shall not become effective until it has been approved by the joint committee on administrative rules. Missouri adds these subsections to provide the procedures necessary for this review and approval process.

(5) RSMo 444.915.2(4), AML Reclamation Fund Expenditures

Missouri eliminates as a priority, expenditures for research and demonstration projects relating to the development of surface mining reclamation and water quality control program methods and techniques.

(6) RSMo 444 915.3, AML Reclamation Fund Eligibility

Missouri revises this subsection to require that AML fund monies may be used if there is no continuing reclamation responsibility under State or Federal laws for lands or water Eligibility is defined in one of three ways: (1) as lands and water affected by coal mining, wastebanks, coal processing or other coal mining processes and abandoned or left in an inadequate reclamation status prior to September 28, 1979; (2) A finding must be made that the mining operation occurred between August 4, 1977, and November 21, 1980, and that available funds are insufficient for adequate reclamation or abatement; or (3) A finding may also be made that the mining operation occurred between August 4, 1977, and October 1, 1991 and that the surety became insolvent

during that period and that available funds are not sufficient for adequate reclamation or abatement.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.14, OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 884.14 for the approval of reclamation plan amendments. If the amendment is deemed adequate, it will become part of the Missouri AMLR Plan.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Kansas City Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.s.t. December 28, 1994. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Any disabled individual who has a need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

Compliance With the National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Compliance With Executive Order No. 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Therefore, preparation of a Regulatory Impact Analysis is not necessary and OMB regulatory review is not required.

Compliance With the Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Compliance With Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR Parts 730, 731, and 732 have been met.

Compliance With the Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

List of Subjects in 30 CFR Part 916

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 5, 1994.

Charles E. Sandberg,

Acting Assistant Director, Western Support Center

[FR Doc. 94–30505 Filed 12–12–94, 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–94–032]

RIN 2115–AE47

Drawbridge Operation Regulation; Lafourche Bayou, LA

AGENCY: Coast Guard, DOT

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Greater Lafourche Port Commission, the Coast Guard is considering a change to the regulation governing the operation of the following two drawbridges across Lafourche Bayou, in Lafourche Parish, Louisiana:

The State Route 1 (Galliano-Tarpon) vertical lift span bridge, mile 30.6 at Cutoff, Louisiana; and

The State Route 1 (Cote Blanche) pontoon bridge, mile 33.9 at Cutoff, Louisiana.

The proposed regulation would require that the bridges open on signal; except that from 2 to 3 p.m. and from 4:30 to 5:30 p.m., Monday through Friday, other than Federal holidays, the bridges would be permitted to remain closed to navigation for the uninterrupted crossing of peak vehicular and school bus traffic.

Presently, the draws of the bridges are required to open on signal at all times.

This action would relieve traffic congestion on the bridges during these periods and permit the timely return of school children to their homes while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before February 13, 1995.

ADDRESSES: Comments should be mailed to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396, or may be delivered to Room 1313 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, at the address given above, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested parties are invited to participate in the proposed rulemaking by submitting written views, comments, or arguments. Persons submitting comments should include their names and addresses, identify the bridge and give reasons for concurrence with or any recommended change in this proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Eighth Coast Guard District at the address under **ADDRESSES.** The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in the light of comments received.

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and LT Elisa Holland, project attorney.

Background and Purpose

The Greater Lafourche Port Commission has requested the regulation because vehicular traffic crossing the bridges during the proposed closure periods has increased dramatically during recent years and school children are delayed from returning home from their classes in a timely manner. The new proposed regulation would allow for the free flow of vehicular traffic, while still serving the reasonable needs of navigational interest.

Discussion of Proposed Rules

The Galliano "Tarpon" bridge is a vertical lift span structure. Navigational clearances provided by the bridge are 3.0 feet vertical above mean high water in the closed to navigation position and 73 feet above mean high water in the open to navigation position. Horizontal clearance is 80.0 feet. Navigation on the waterway consists of tugs with tows, fishing vessels, occasional small oil field work boats and recreational craft. Data provided by the Greater Lafourche Port Commission show that from August 1993 through August 1994, the number of vessels that passed the bridge totaled 1141 for the year. This breaks down to about 95 vessels per month or 3.1 vessels per 24-hour period. Vehicular traffic that passes over the bridge during the proposed closure period from 2 p.m. to 3 p.m. averages about 750 vehicles including 4 school busses. An additional 4 school busses cross the bridge between 3 p.m. and 3:15 p.m. and these busses will be able to adjust their schedule to arrange to cross the bridge during the 2 p.m. to 3 p.m. closure. Vehicular traffic that crosses the bridge during the proposed closure period of 4:30 p.m. to 5:30 p.m. averages approximately 780.

The Cote Blanche bridge is a pontoon bridge. There is no vertical clearance in the closed to navigation position and unlimited clearance in the open to navigation position. The same type of navigation that passes the Galliano "Tarpon" bridge, also passes the Cote Blanche bridge. The average vessel passage per 24 hour period is 3.1. Vehicular traffic that passes over the Cote Blanche Bridge during the proposed closure period from 2 p.m. to 3 p.m. average about 380, including 3 school busses. An additional 10 school busses cross the bridge between 3 p.m. and 3:15 p.m. and these busses will be able to adjust their schedule to cross during the 2 p.m. to 3 p.m. closure. Vehicular traffic that crosses the bridge during the proposed closure period of 4:30 p.m. to 5:30 p.m. averages approximately 485.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

Since the proposed rule also considers the needs of local commercial fishing vessels, the economic impact is expected to be minimal. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism Implications

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

Environment

The Coast Guard considered the environmental impact of this proposal

and concluded that under paragraph 2.B.2. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. In section 117.465 paragraphs (a) through (e) are redesignated as (b) through (f) and a new paragraph (a) is added to read as follows:

§ 117.465 LaFourche Bayou.

(a) The draws of the SR1 bridge, mile 30.6 and the SR1 bridge, mile 33.9, both near Cutoff, shall open on signal; except that, from 2 p.m. to 3 p.m. and from 4:30 p.m. to 5:30 p.m. Monday through Friday except Federal holidays, the draws need not be opened for the passage of vessels.

* * * * *

Dated: November 7, 1994.

R.C. North,

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

[FR Doc. 94–30583 Filed 12–12–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT22–1–6399b, MT9–3–6561b, & MT13–2–6560b; FRL–5118–4]

Clean Air Act Approval and Promulgation of State Implementation Plan for Montana; Missoula; PM_{10} and CO Contingency Measures and Local Regulations; Disapproval of Missoula Variance Provision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State implementation plan (SIP) revisions submitted by the State of Montana with a letter dated March 2, 1994. This submittal addresses the Federal Clean Air Act requirement to submit contingency measures for both particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}) and for carbon monoxide (CO) for the areas in Missoula designated as nonattainment for the PM_{10} and CO National Ambient Air Quality Standards (NAAQS). Further, this submittal satisfies several commitments made by the State in a previous PM_{10} SIP submittal. Due to the completion of those commitments, EPA is proposing to approve the related rules of the Missoula City-County Air Pollution Control Program, as adopted by the Montana Board of Health and Environmental Sciences on June 28, 1991 and amended on March 20, 1992 and November 19, 1993, and submitted by the Governor in letters dated August 20, 1991, June 4, 1992, and March 2, 1994. These rules include regulations regarding inspections, emergency procedures, minor source construction permits, open burning, and wood waste burners. EPA also proposes to approve minor revisions to previously approved Missoula City-County Air Pollution Control Program Chapters VII and VIII, as included in the March 2, 1994 submittal. Further, EPA declines to take action on Missoula's minor source operating permit regulations. Finally, EPA proposes to disapprove Missoula City-County Air Pollution Control Program's Chapter X, Variances.

In the final rules section of this **Federal Register**, EPA is acting on the State's SIP revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for EPA's actions is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated and the direct final rule will become effective. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received in writing by January 12, 1995.

ADDRESSES: Written comments on this action should be addressed to Amy Platt, 8ART-AP, at the EPA Regional Office listed below. Copies of the State's submittal and documents relevant to this proposed rule are available for inspection during normal business hours at the following locations: Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2405; and Montana Department of Health and Environmental Sciences, Air Quality Bureau, Cogswell Building, Helena, Montana 59620–0901.

FOR FURTHER INFORMATION CONTACT: Amy Platt at (303) 293–1769.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of this **Federal Register**.

Dated: November 29, 1994.

William P. Yellowtail,

Regional Administrator.

[FR Doc. 94–30513 Filed 12–12–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7120]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base flood elevation modifications for the communities listed below. The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base (100-year) flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of Flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Indiana	Fort Wayne (City) Allen County.	Maumee River	Approximately 2 miles downstream of U.S. Route 24.	*752	*751
			At confluence with St. Joseph River	*758	*757
		St. Joseph River	At confluence with Maumee River	*758	*757
			Approximately 0.7 mile upstream of confluence of Becketts Run.	*769	*768
		St. Marys River	At confluence with St. Joseph River	*758	*757
			Approximately 1.6 miles upstream of Bluffon Road.	764	*763
		Spy Run Creek	At confluence with St. Marys River	*758	*757
			Approximately 0.2 mile downstream of State Boulevard.	*758	*757
		Junk Ditch	At confluence with St. Marys River	*760	*759
			Approximately 0.4 mile upstream of confluence with St. Marys River.	*760	*759
Maps available for inspection at the City County Building, One Main Street, Fort Wayne, Indiana. Send comments to The Honorable Paul Helmke, Mayor of the City of Fort Wayne, One Main Street, Room 900, Fort Wayne, Indiana 46802.					
Indiana	New Haven (City) Allen County.	Maumee River	Approximately 3.7 miles downstream of U.S. Route 24.	*751	*750
			Approximately 2.6 miles downstream of U.S. Route 24.	*751	*750
Maps available for inspection at the City Administration Building, 1235 Lincoln Highway East, New Haven, Indiana. Send comments to The Honorable Lynn H. Shaw, Mayor of the City of New Haven, P.O. Box 570, New Haven, Indiana 46774.					
Minnesota	Olmsted County (Unincorporated Areas).	South Fork Zumbro River	Approximately 1.1 miles downstream of 37th Street NW.	None	*969
			At Mayowood Road SW	None	*1,036
		Cascade Creek	Approximately 0.6 mile upstream of U.S. Highway 52.	*1,008	*1,007
			At County Road 34	*1,018	*1,019

State	City/town/county	Source of Flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Middle Fork Zumbro River	Approximately 0.7 mile upstream of southbound lane U.S. Highway 52.	None	*964
			Approximately 0.8 mile upstream of southbound lane U.S. Highway 52.	None	*964
		North Branch Root River ..	Approximately 700 feet downstream of abandoned Chicago and North Western Railway.	None	*1 185
			At County Road 6 (6th Street SW) at Lake Florence.	None	*1,202
		South Fork Whitewater River.	Appriximately 0.5 mile downstream of Chicago and North Western Railway	None	*1 136
			At confluence of Tributary B	None	*1 145
		West Tributary to Willow Creek.	Approximately 630 feet downstream of Chicago and North Western Railway.	*1,022	*1 023
			Approximately 950 feet upstream of Chicago and North Western Railway.	*1,030	*1 03*
		West Fork of Willow Creek	Approximately 400 feet upstream of the confluence with Willow Creek.	*1,067	*1 066
			Approximately 470 feet upstream of the confluence with Willow Creek.	*1,067	*1,066
		South Run of the North Fork of Cascade Creek.	Approximately 0.9 mile upstream of Chicago and North Western Railway.	*1,034	*1,035
			Approximately 1.3 miles upstream of Chicago and North Western Railway	*1,042	*1,04*
		East Fork of Willow Creek	At confluence with Willow Creek	*1,021	1,022
			At County Road #101	*1,077	*1,075
		South Fort of Willow Creek	At confluence with Willow Creek	*1,041	*1,040
			Approximately 1,075 feet upstream of confluence with Willow Creek	*1,042	*1,043
		South Branch Middle Fork Zumbro River.	Approximately 0.6 mile upstream of southbound lane U.S. Highway 52.	None	*964
			Approximately 1.1 mile upstream of southbound land U.S. Highway 52.	None	*965
		Willow Creek	Approximately 250 feet downstream of the confluence of East Fork Willow Creek.	*1,021	*1,022
			At 48th Street SW	*1,077	*1,075

Maps available for inspection at the County Auditor's Office Government Center, 151 4th Street, S.E., Rochester, Minnesota.

Send comments to Ms. Carol Kamper, Chairperson of the Olmsted County Board, Government Center, 151 4th Street, S.E., Rochester Minnesota 55904.

Minnesota	Rochester (City) Olmsted County.	Bear Creek	At confluence with South Fork Zumbro River.	*993	*986
			Approximately 200 feet upstream of the confluence of Willow Creek.	*1,013	*1,012
		Cascade Creek	At confluence with South Fork Zumbro River.	*983	*979
			Approximately 50 feet downstream of County Road 34.	*1,018	1,017
		Silver Creek	At confluence with South Fork Zumbro River.	*988	*981
			At Silver Creek Road	*1,017	*1,015
		South Fork of Willow Creek.	Approximately 1,650 feet upstream of confluence with Willow Creek.	*1,044	*1,045
			Approximately 500 feet downstream of St. Bridget Road.	*1,046	*1,047
		South Fork of Willow Creek.	Approximately 1.1 miles downstream of 37 Street NW.	*968	*969
			Approximately 0.6 mile downstream of Mayowood Road.	None	*1,027
		West Tributary to Willow Creek.	Approximately 630 feet downstream of Chicago and North Western Railway	*1,022	*1,023
			Approximately 400 feet downstream of Chicago and North Western Railway	*1,023	*1,025
		Willow Creek	At confluence with Bear Creek	*1,013	*1,012
			Approximately 0.7 mile upstream of County Road 147.	*1,093	*1,094
		West Fork of Willow Creek	At confluence with Willow Creek	*1,067	*1,066
			Approximately 400 feet upstream of confluence with Willow Creek.	*1,067	*1 066

State	City/town/county	Source of Flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Cascade Creek	Approximately 300 feet upstream of 16th Avenue.	*1,000	*1,001
		Split Flow	Approximately 0.5 mile downstream of U.S. Highway 52.	*1,003	*1,004

Maps available for inspection at the City Clerk's Office, Government Center, 224 1st Avenue, S.W., Rochester, Minnesota.

Send comments to Mr. Gary Neumann, Assistant Administrator for the City of Rochester, Government Center, 224 1st Avenue, S.W., Rochester, Minnesota 55902–3163.

Mississippi	Lauderdale County (Unincorporated Areas).	Sowashee Creek	Approximately 4.3 miles downstream of U.S. Highway 49.	None	*286
			Approximately 2.4 miles upstream of U.S. Highway 45 Bypass.	None	*383
		Okatibbee Creek	Approximately 1.6 miles downstream of the confluence of Burwell Creek.	*288	*289
			Approximately 1.03 miles downstream of the confluence of burwell Creek.	*288	*289

Maps available for inspection at the Lauderdale County Courthouse, Tax Assessor's Office, 500 Constitution Avenue, Meridian, Mississippi.

Send comments to Mr. Ray Boswell, President of the Lauderdale County Council Board, 410 Constitution Avenue, Meridian, Mississippi 39301.

Mississippi	Meridian (City) Lauderdale County.	Sowashee Creed	Approximately 3 miles downstream of U.S. Highway 49.	*288	*289
			Approximately 0.9 mile downstream of confluence of Nanabe Creek.	*341	*340
		Gallagher Creek	At confluence with Sowashee Creek	*309	*307
			Approximately 0.2 mile upstream of the confluence with Sowashee Creek.	*309	*308
		Robbins Branch	At confluence with Sowashee Creek	*332	*330
			At U.S. Highway 45 bridge	*332	*330
		Magnolia Branch	At confluence with Sowashee Creek	*325	*321
			Approximately 400 feet on the downstream side of the Illinois Central Railroad bridge.	*330	*329
		Okatibbee Creek	Approximately 1.16 miles downstream of the confluence of Burwell Creek.	*288	*289
			Approximately 1.03 miles downstream of the confluence of Burwell creek.	*288	*289

Maps available for inspection at the Meridian City Hall, 601 24th Avenue, Meridian, Mississippi.

Send comments to The Honorable John Robert Smith, Mayor of the City of Meridian, Lauderdale County, P.O. Box 1430 Meridian, Mississippi 39302–1430

Mississippi	Philadelphia (City) Neshoba County.	Stream #1	Downstream corporate limit	None	*417
			Upstream corporate limits	None	*438
		Stream #2	Downstream corporate limits	None	*416
			Upstream corporate limits	None	*440
		Stream #3	Downstream corporate limits	None	*420
			Approximately 1,100 feet upstream of State Route 19.	None	*432

Maps available for inspection at the Building Official's Office, 525 Main Street, Philadelphia, Mississippi.

Send comments to The Honorable Harlan Majure, Mayor of the City of Philadelphia, Neshoba County, 525 Main Street, Philadelphia, Mississippi 39350.

New York	Ballston (Town) Saratoga County.	Larue Creek	Approximately 1.39 miles downstream of Jenkins Road.	None	*352
			Approximately 1.02 miles downstream of Jenkins Road.	None	*362

Maps available for inspection at the Ballston Town Office, 323 Charlton Road, Ballston Spa, New York 12020.

Send comments to Mr. Ray Callanan, Supervisor of the Town of Ballston, Sartoga County, P.O. Box 67, Burnt Hills, New York 12027

New York	Ballston Spa (Village).	Kayaderosseras Creek	1,700 feet downstream of Ralph Road	*230	*232
	Saratoga County	(Lower Reach	Upstream side of Ralph Road	*236	*237

State	City/town/county	Source of Flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Ballston Spa Village Office, 66 Front Street, Ballston Spa, New York. Send comments to The Honorable James Capasso, Mayor of the Village of Ballston Spa, Saratoga County, 66 Front Street, Ballston Spa, New York 12020.					
New York	Greenfield (Town) Saratoga County.	Kayaderosseras Creek	Approximately 100 feet downstream of downstream corporate limits.	None	*523
		(Upper Reach)	Approximately 150 feet upstream of the downstream corporate limits.	*522	*523
Maps available for inspection at the Greenfield Town Hall, Corner of 9N and Walton Road, Greenfield Center, New York. Send comments to Mr. James S. Major, Supervisor of the Town of Greenfield, Saratoga County, P.O. Box 10/Greenfield Town Hall, Greenfield Center, New York 12833.					
New York	Malta (Town) Saratoga County.	Kayaderosseras Creek	Approximately 1,00 feet downstream of the upstream corporate limits.	*227	*228
			At upstream corporate limits	*228	*229
Maps available for inspection at the Malta Town Hall, 2840 Route 9, Malta, New York. Send comments to Mr. David R. Meager, Supervisor of the Town of Mala, Saratoga County, P.O. Box 395, Round Lake, New York 12151					
New York	Northumberland (Town). Saratoga County	Snook Kill	Approximately 50 feet downstream of Mott Road.	None	*132
			At Strong Road	None	*244
Maps available for inspection at the Northumberland Town Office, Catherine Street, Northumberland, New York. Send comments to Mr. Edgar King, Supervisor of the Town of Northumberland, Saratoga County, P.O. Box 128, Ganseioort, New York 12831.					
New York	Waterford (Town) Saratoga County.	Hudson River	At downstream corporate limits	*34	*36
			Approximately 300 feet upstream of the downstream corporate limits.	*35	*36
		Fourth Branch Mohawk River (Left Channel).	Approximately 1,140 feet upstream of confluence with Fourth Branch Mohawk River.	*39	*44
			Approximately 1,400 feet upstream of confluence with Fourth Branch Mohawk River.	*39	*48
Maps available for inspection at the Waterford Town Clerk's Office, 65 Broad Street, Waterford, New York. Send comments to Mr. John Lawler, Supervisor of the Town of Waterford, Saratoga County, 65 Broad Street, Waterford, New York 12188.					
Pennsylvania	Marion Center (Borough) Indiana County.	Unnamed Tributary to Pine Run.	Approximately 1,300 feet downstream of South Manor Street (State Route 403).	None	*1,257
			Approximately 1,240 feet upstream of State Route 1025.	None	*1,324
		Tributary to Unnamed	At the confluence with Unnamed Tributary to Pine Run.	None	*1,271
		Tributary to Pine Run	Approximately 0.6 mile upstream of confluence with Unnamed Tributary to Pine Run.	None	*1,317
Maps available for inspection at the Marion Center Milling Company, 101 South Manor, Marion Center, Pennsylvania. Send comments to Mr. Ronald G. Hood, President of the Borough of Marion Center Council, P.O. Box 158, Marion Center, Pennsylvania 15759.					

(Catalog of Federal Domestic Assistance No. 83 100, "Flood Insurance")

Dated: December 5, 1994.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 94–30565 Filed 12–12–94; 8:45 am]

BILLING CODE 6718–03–P

DEPARTMENT OF DEFENSE

48 CFR Parts 219 and 252

Defense Federal Acquisition Regulation Supplement; Small Business and Small Disadvantaged Business Concerns

DEFENSE LOGISTICS AGENCY

48 CFR Part 5452

DLA Acquisition Regulation; Small Business and Small Disadvantaged Business Concerns

AGENCY: Defense Logistics Agency, Defense.

ACTION: Proposed rule and requests for comments.

SUMMARY: The Defense Federal Acquisition Regulation Supplement (DFARS) 48 CFR Parts 219 and 252 provide regulatory coverage incorporating two standard clauses giving small disadvantaged business (SDB) concerns a ten percent evaluation preference in competitive acquisitions where award is based on price and price related factors. The Defense Logistics Agency Regulation (DLAR) 48 CFR parts 5419 and 5452, as proposed in the **Federal Register** of April 28, 1994 (59 FR 21954) would provide regulatory coverage incorporating two nonstandard clauses in domestic bulk petroleum solicitations and contracts concerning small business set-asides and evaluation preference for SDB concerns into DLAR on a permanent basis. These two DFARS and two DLAR clauses concern preferential consideration for SDBs under small business set-asides and the ten percent evaluation preference for SDB concerns on unrestricted procurements. Comments are hereby requested on the proposed DFARS and DLAR coverage, which reduces the SDB preference from ten to five percent. The proposed coverage is being published in the **Federal Register** because it is expected to have an effect beyond the internal operating procedures of DLA, and in some cases, may have a modest impact on contractors.

DATES: Comments on the proposed DFARS and DLAR rules must be submitted in writing to the address shown below on or before January 12, 1995 to be considered in the formulation of the final rules.

ADDRESSES: Interested parties should submit written comments to Defense Logistics Agency, Directorate of Procurement, Contract Policy Team (AQPLL), Ms. Melody Reardon, Cameron Station, Alexandria, Virginia 22306–6100. FAX: (703) 274–0310.

FOR FURTHER INFORMATION CONTACT: Ms. Melody Reardon, Defense Logistics Agency, AQPLL (703) 274–6431.

SUPPLEMENTARY INFORMATION:

A. Background

Section 1207 of Public Law 99–661, as amended, sets a goal for the Department of Defense to award five percent of contract performance dollars to SDB concerns, historically black colleges, and universities, and minority institutions. To achieve this goal, the law permits the payment of contract prices up to 10 percent above fair market price. The implementing DFARS coverage includes an across-the-board evaluation factor of 10 percent. Offers from non-SDB concerns on unrestricted procurements are increased by adding an evaluation factor of ten percent to their offers (evaluation preference). On partial small business set-asides, the DFARS permits award to SDB concerns at prices up to ten percent above the highest non-set-aside award price (preferential consideration). Decreasing the percentage from ten to five percent will save taxpayers at least $3 million a year, while continuing to provide SDB firms an opportunity to participate in fuel procurements and allowing DLA to continue meeting the 5 percent SDB award goal.

B. Regulatory Flexibility Act

This deviation may have a modest impact on a few SDB fuel suppliers. However, the proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* since the projected SDB award percentages in the two most affected fuels programs should only be decreased by one-tenth of a percent or less. An initial regulatory flexibility analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS sections will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite this case in correspondence

C. Paperwork Reduction Act

The proposed rules do not impose any reporting or record keeping requirements that require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 219, 252, 5419, and 5452

Government procurement.

Therefore, it is proposed that 48 CFR chapter 2 and proposed chapter 54 (as proposed in the **Federal Register** of April 28, 1994 (59 FR 21954)) be amended as follows:

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

1. The authority citation for part 219 continues to read as follows:

Authority: 41. U.S.C. 421 and FAR subpart 1.3.

2. Section 219.7002 is amended by revising paragraphs (a) introductory text, (b), (c), and (d) to read as follows:

219.7002 Procedures.

(a) Give offers from small disadvantaged business concerns a preference in evaluation by adding a factor on ten percent, except five percent for Defense Fuel Supply Center procurements, to the price of all offers, except—

* * * * *

(b) Apply the factor on a line item by line item basis or apply it to any group of items on which award may be made. Add other evaluation factors such as transportation costs or rent free use of Government facilities to the offers before applying the ten percent factor, except use a five percent factor for Defense Fuel Supply Center procurements.

(c) Do not evaluate offers using the preference when it would cause award to be made at a price that exceeds fair market price by more than ten percent, except five percent for Defense Fuel Supply Center procurements.

(d) In partial small business set-aside, use the evaluation preference procedures set forth in the clause at 252.219–7001, Notice of Partial Small Business Set-Aside with Preferential Consideration for Small Disadvantaged Business Concerns, instead of the procedures in paragraphs (a) through (c) of this section. For Defense Fuel Supply Center procurements only, use the clause with its Alternate II.

3. Section 219.7003 is revised to read as follows:

219.7003 Solicitation provisions and contract clauses.

Use the clause at 252.219–7006, Notice of Evaluation Preference for Small Disadvantaged Business Concerns, in solicitations and Contracts involving the evaluation preference, except those that include the clause at 252.219–7001, Notice of Partial Small Business Set-Aside with Preferential Consideration for Small Disadvantaged Business Concerns. Use the clause with its Alternate I when the contracting officer determines that there are no small disadvantaged business manufacturers that can meet the requirement of the solicitation. Defense Fuel Supply Center shall also use Alternate II.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. The authority citation for Part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and FAR subpart 1.3.

5. Section 252.219–7001 is amended by adding Alternate II as follows:

215.219–7001 Notice of partial small business set-aside with preferential consideration for small disadvantaged business concerns.

* * * * *

Alternate II (Jun 1994)

As prescribed in 219.7003, substitute the following paragraph (c)(2)(i)(B) for paragraph (c)(2)(i)(B):

(B) A price that does not exceed the award price on the non-set-aside portion by more than 5 percent.

6. Section 252.219–7006 is amended by adding Alternate II as follows:

252.219–7006 Notice of evaluation preference for small disadvantaged business concerns.

* * * * *

Alternate II (Jun 1994)

As prescribed in 219.7002(d), substitute the following paragraph (b) for paragraph (b) of the clause:

(b) Evaluation Preference:

(1) Offers will be evaluated by adding a factor of 5 percent to the price of all offers, except—

(i) Offers from small disadvantaged business concerns, which have not waived the preference;

(ii) Offers from historically black colleges and universities or minority institutions, which have not waived the preference;

(iii) Otherwise successful offers of—

(A) Eligible products under the Trade Agreements act when the dollar threshold for application of the Act is exceeded;

(B) Qualifying country end products (as defined in the Defense Federal Acquisition Regulation Supplement clause at 252.225–7001, Buy American Act and Balance of Payments Program); and

(iv) Offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government.

(2) The 5 percent factor will be applied on a line item by line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation will be applied before application of the 5 percent factor. The 5 percent factor will not be applied if using the preference would cause the contract award to be made at a price which exceeds the fair market price by more than 5 percent.

[The following amendments are to part 5452, which was proposed to be added on April 28, 1994 (59 FR 21954)]

PART 5452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. The authority citation for Part 5452 continues to read as follows:

Authority: 5 U.S.C. 301, U.S.C. 2202, 48 CFR part 1, subpart 1.3, and 48 CFR part 201, subpart 201.3.

8. The clause heading is revised and paragraphs (b) and (c) of the clause at 5452.219–9F05 are redesignated as paragraphs (c) and (d) and revised to read as follows:

5452.219–9F05 Notice of evaluation preference for small disadvantaged business concerns (Jul 1994).

* * * * *

5452.219–9F05—Notice of Evaluation Preference for Small Disadvantaged Business Concerns (Jul 1994) (DFSC) (Deviation)

* * * * *

(c) *Evaluation Preference.*

(1) After all other evaluation factors described in this solicitation are applied, offers will be evaluated by adding a factor of 5 percent to the price of all offers, except—

(i) Offers from SDB concerns that have not waived the preference;

(ii) Otherwise successful offers of eligible products under the Trade Agreements Act when the dollar threshold for application of the Act is exceeded.

(2) The 5 percent factor will be applied on a line item by line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation will be applied before application of the 5 percent factor. However, in no event may award be made to an SDB concern at a price that exceeds fair market price (as determined under FAR 19.806–2) by more than 5 percent.

(d) *Waiver of Evaluation Preference.* An SDB may elect to waive the preference, in which case the 5 percent factor will be added to its offer for evaluation purposes.

[ ] Offeror elects to waive the preference in paragraph (c) above.

[End of Clause]

9. The clause heading and paragraph (c)(2) of the clause of section 5452.219–9F06 are revised to read as follows:

5452.219–9F06 Notice of partial small business set-aside with preferential consideration for small disadvantaged business concerns.

* * * * *

5452.219–9F06—Notice of Partial Small Business Set-Aside with Preferential Consideration for Small Disadvantaged Business concerns (Jul 1994) (DFSC) (Deviation)

* * * * *

(c) * * *

(2) Offers from SDB concerns will be reviewed first to determine if an award can be made to an SDB concern at its offered price, beginning with the SDB concern offering the lowest evaluated price for that item. Awards to SDB concerns on the set-aside portion of this procurement will be made at the price offered by the SDB concern if that evaluated price does not exceed the highest award price on the non-set-aside portion by more than 5 percent, as adjusted for transportation charges and other factors. If the SDB price exceeds the highest non-set-aside price by more than 5 percent, the SDB offer will be treated as a small business and the procedures set forth in (d) below will apply.

[End of Clause]

* * * * *

Margaret J. Janes,

Assistant Executive Director (Procurement Policy).

[FR Doc. 94–30558 Filed 12–12–94; 8:45 am]

BILLING CODE 5000–04–M

Notices

Federal Register
Vol. 59, No. 238
Tuesday, December 13, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 94–122–1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that three environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance or renewal of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are encouraged to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessments and findings of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assesses the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance or renewal of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date Issued	Organisms	Field test location
93–340–01, renewal of permit 93–214–01, issued on 09–10–93.	PanAmerican Seed	09–27–94	Carrot plants genetically engineered to express modified nutritional value.	Illinois.
94–207–01, renewal of permit 93–190–01, issued on 10–05–93.	Calgene, Incorporated	09–29–94	Canola plants genetically engineered to express oil modification genes.	Alabama, South Carolina.
94–168–01	Calgene, Incorporated	10–12–94	Canola plants genetically engineered to express oil modification genes.	Arizona, California, Florida, Georgia.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 7th day of December 1994.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–30571 Filed 12–12–94; 8:45 am]

BILLING CODE 3410–34–P

[Docket No. 92–127–4]

Availability of Determination of Nonregulated Status for Virus Resistant Squash

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that a genetically

engineered, virus resistant yellow crookneck squash line designated ZW–20 squash is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by the Upjohn Company in its petition for a determination of the regulatory status of ZW–20 squash, an analysis of other scientific data, and our review of comments received from the public regarding the Upjohn petition. This notice also announces the availability of the written determination document and its associated environmental assessment and finding of no significant impact.

EFFECTIVE DATES: December 7, 1994.

ADDRESSES: The determination, an environmental assessment and finding of no significant impact, the petition, and all written comments received regarding the petition 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 those documents are requested to call in advance of visiting at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. James White, Chief, Plants Branch, Biotechnology Permits, BBEP, APHIS, USDA, P.O. Drawer 810, Riverdale, MD 20738. The telephone number for the agency contact will change when agency offices in Hyattsville, MD, move to Riverdale, MD, during January. Telephone: (301) 436–7612 (Hyattsville); (301) 734–7612 (Riverdale). To obtain a copy of the Upjohn determination or the accompanying environmental documents, contact Ms. Kay Peterson at (301) 436–7601 (Hyattsville) or (301) 734–7601 (Riverdale).

SUPPLEMENTARY INFORMATION:

Background

On July 13, 1992, the Animal and Plant Health Inspection Service (APHIS) received a petition from the Upjohn Company (Upjohn) and its subsidiary, Asgrow Seed Company, of Kalamazoo, MI, seeking a determination that the ZW–20 virus resistant squash line no longer be considered a regulated article under APHIS' regulations in 7 CFR part 340.

On September 4, 1992, APHIS announced the receipt of the Upjohn petition in the **Federal Register** (57 FR 40632–40633, Docket No. 92–127–1) and announced its intent to issue an interpretive ruling that the ZW–20 virus resistant squash does not present a plant pest risk and, therefore, would no longer be considered a regulated article. That notice also requested comments on APHIS' proposed interpretive ruling. After considering the 17 comments submitted during the 45-day comment period, of which 7 were in support of the petition and 10 in opposition, APHIS determined that it was in the public interest to reopen the comment period to seek additional comment on several scientific and technical issues raised by the commenters. The commenters expressed concerns in three major areas: (1) Will the introduction of the two viral coat protein genes increase the likelihood of the creation of new plant viruses; (2) could the introduction of two virus resistance genes cause squash to become a weed; and (3) would the virus resistance genes move to wild squash relatives and would this have a detrimental impact on these wild plants? A notice was published in the **Federal Register** on March 22, 1993 (58 FR 15323, Docket No. 92–127–2), to reopen the comment period for an additional 60 days. Twelve comments were received, of which 10 were in support and 2 were in opposition. The same major areas of concern expressed during the first comment period were again reflected in the two comments in opposition to the petition, with the addition of a statement that an environmental impact statement should be prepared in connection with commercial scale growth of the ZW–20 squash.

Since the date of the original submission of Upjohn's petition, APHIS has formalized, under a "Petition for Determination of Nonregulated Status" (*See* 58 FR 17044–17059, Docket No. 92–156–2), the interpretive ruling procedure that was in place when the original petition for the ZW–20 squash was submitted.

On May 23, 1994, APHIS published a third notice in the **Federal Register** (59 FR 26619–26620, Docket No. 92–127–3) to announce the availability of an environmental assessment (EA) and preliminary finding of no significant impact (FONSI) related to the proposed determination of nonregulated status for the ZW–20 squash, a public meeting in Washington, DC, on July 21, 1994, and a 45-day comment period ending July 7, 1994. The notice included the text of the preliminary FONSI that had been prepared by APHIS.

At the public meeting on June 21, 1994, two speakers presented comments. One commenter supported the EA and preliminary FONSI; the other did not support the EA and preliminary FONSI. Both speakers also submitted written comments. During the 45-day comment period, APHIS received an additional 52 written comments from private individuals, universities, agricultural experiment stations, the cooperative extension service, public interest groups, industry, a trade association, and a Federal research laboratory. Twenty-three comments supported APHIS' findings in the EA and preliminary FONSI. Twenty-nine comments disagreed with APHIS' proposal to approve the Upjohn petition, while 23 were in favor of approval. The commenters in opposition to the petition again stressed concerns about the ecological safety of commercial scale growth of the ZW–20 squash, citing such risks as gene glow to wild squash, potential impacts on squash centers of diversity, the potential for increased weediness in wild squash, and the risk of creating new viruses. APHIS has prepared a detailed technical analysis of, and response to, those comments in the determination document, which is available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Analysis

The crookneck squash (*Cucurbita pepo* L. cultivar YC77E ZW–20) (ZW–20) developed by Upjohn resists infection by two plant viruses, zucchini yellow mosaic virus (ZYMV) and watermelon mosaic virus, type II (WMV2). ZW–20 squash was developed by engineering two plant virus genes, the coat protein (CP) genes of ZYMV and WMV2, into a line of yellow crookneck squash. In addition, the vector system used to transfer the viral CP genes into the recipient squash was derived from the bacterial plant pathogen *Agrobacterium tumefaciens*. Certain noncoding regulatory sequences were derived from plant pathogens, i.e. from *A. tumefaciens* and from cauliflower mosaic virus and cucumber mosaic virus.

The ZW–20 squash has been considered a regulated article under the APHIS regulations in 7 CFR part 340 in part because of the use of CP genes, in part because of the derivation of the vector system, and in part because of use of noncoding regulatory sequences from plant pathogens. Field testing of the ZW–20 squash has been conducted since 1990 at approximately 46 field sites in 10 States under 14 permits issued by APHIS. All field trials have been performed under conditions of reproductive confinement. Field data reports indicate no deleterious effects on plants, nontarget organisms, or the environment from these field tests.

Determination

Based on an analysis of the information and data submitted by Upjohn, a review of scientific literature, and comments received from the public, APHIS has concluded that the ZW–20 squash is as safe to grow as traditionally bred virus resistant squash. The available evidence indicates that ZW–20 squash: (1) Exhibits no plant pathogenic properties; (2) is no more likely to become a weed than a virus resistant squash plant developed by traditional breeding techniques; (3) is unlikely to increase the weediness potential for any other cultivated plant or native wild species with which it can interbreed; (4) should not cause damage to processed agricultural commodities; (5) should not increase the likelihood of the emergence of new plant viruses; and (6) is unlikely to harm other organisms, such as bees, which are beneficial to agriculture. The basic findings of the preliminary FONSI are therefore adopted in support of the determination that Upjohn's ZW–20 squash does not present a plant pest risk and therefore will no longer be considered a regulated article under APHIS' regulations in 7 CFR part 340. The effect of this determination is that the permit requirements of 7 CFR part 340 will no longer apply to the field testing, importation, or interstate movement of ZW–20 squash or its progeny. Importation of ZW–20 squash and nursery stock or seeds capable of propagation is still, however, subject to any restrictions found in the Foreign Quarantine Notice regulations at 7 CFR part 319.

National Environmental Policy Act

The EA has been prepared in accordance with: (1) The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*); (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508); (3) USDA Regulations Implementing NEPA (7 CFR part 1b); and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979). Based on that EA, APHIS reached a FONSI with regard to its determination that the virus resistant squash line designated as ZW–20 and its progeny are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and FONSI are available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 7th day of December 1994.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–30570 Filed 12–12–94; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

Thunderbolt Wildfire Recovery, Boise and Payette National Forests, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Thunderbolt Wildfire burned a total of 27,000 acres of Boise and Payette National Forest system lands in the fall of 1994. The Forests intend to prepare an Environmental Impact Statement for the Thunderbolt wildfire area to assess and disclose the environmental effects of opportunities designed to improve long-term fish habitat, rehabilitate existing sediment sources, improve hydrologic conditions of affected watersheds, and protect long-term soil productivity. These objectives would be accomplished through road surfacing, revegetation of road cut and fill slopes, and drainage improvements on existing roads; planting of conifers and shrubs; and salvaging dead and dying trees as a means to finance the preceding opportunities. Timber harvest would be done by helicopter, and designed to result in minimal ground disturbance and risk of erosion and no sediment delivery to streams.

All proposals within the Thunderbolt Wildfire Recovery Area would protect visual resources on river segments eligible for classification under the Wild and Scenic rivers Act, provide for wildlife habitat, and improve fisheries habitat.

SUPPLEMENTARY INFORMATION: In the fall of 1994, the Chicken, Thunderbolt, and portions of the Corral and Blackwell wildfires burned in excess of 150,000 acres in the South Fork Salmon River drainage of the Payette and Boise National Forests in central Idaho. A broadscale analysis team and several landscape analysis teams are using an ecosystem based approach to assess the fires' effects and identify management opportunities that could be implemented to move the postfire landscapes toward a desired ecological condition. The Payette National Forest is currently assessing the impacts and potential opportunities associated with the Corral, Blackwell and Chicken wildfires which may result in separate Notices of Intent to prepare an Environmental Impact Statement.

The primary management emphasis in the South Fork Salmon River drainage is restoration of harvestable, robust, self-sustaining populations of naturally reproducing salmon and trout. The South Fork Salmon River was historically the single largest producer of summer chinook salmon in the Columbia River Basin. Since the 1950's this run has declined significantly, partially due to habitat degradation caused by management-induced sediment. The species is currently listed as endangered. Prime spawning habitat occurs within and/or adjacent to the Thunderbolt wildfire landscape. Numerous road-related sediment sources continue to deliver sediment to streams. Annual sediment delivery is expected to increase as a result of the fires.

Burn intensities in the Thunderbolt wildfire area varied considerably. Within the fire perimeter, approximately 6,000 acres burned at high intensity, 9,000 acres at moderate intensity, and 4,000 acres at low intensity. Approximately 8,000 acres inside the fire perimeter did not burn.

There are an estimated 18,000 acres burned within Inventoried Roadless Areas (IRAs). The IRAs affected are Caton Lake and Meadow Creek.

The fire burned adjacent to or within the river corridors of Johnson Creek (eligible for Recreation classification) and South Fork Salmon River, which are both pending Wild and Scenic River study

Proposed Action

The objective for the Proposed Action is to improve long-term fish habitat, rehabilitate existing sediment sources, improve hydrologic conditions of affected watersheds, protect long-term soil productivity, promote regeneration of trees on burned acres, and recover the economic value of fire-killed and imminently dead trees as a means of financing activities related to the preceding objectives.

The Proposed Action includes the following components:

Activities designed to rehabilitate existing sediment sources.

Johnson Creek Road (#413)—Surface (gravel) 5 miles, surface (asphalt) at several stream crossings, armor ditchlines, install culverts, revegetate cut and fill slopes, construct fill structures.

Cabin Creek Road (#467)—Install gates and restrict wet-season traffic, construct waterbars, install culverts.

Roaring Creek Road (#474E)—Surface (gravel) 1 mile, construct waterbars, revegetate cut and fill slopes.

Penny Springs Road (#401)—Install gate and restrict wet-season traffic, revegetate cut and fill slopes, improve drainage, surface (gravel) at several stream crossings, and obliterate 0.6 miles.

Ditch Creek Road (#410)—Relocate gate and seasonally restrict traffic for wildlife purposes, improve drainage, and revegetate cut and fill slopes.

Plant conifers and shrub species on about 4,000 acres of moderate and high intensity burn areas where natural regeneration is not expected within the next five to ten years.

Harvest economically feasible fire-killed timber and imminently dead trees from areas outside of the Riparian Habitat Conservation Areas (draft PACFISH criteria) and the Wild and Scenic eligible corridor of the South Fork Salmon River. Large snags would be retained in varying amounts thoughout the harvest areas for dependent wildlife, long-term soil productivity, large woody debris recruitment, shade to assist tree regeneration, and aesthetics. To protect watersheds and fish habitat, helicopter yarding systems are proposed for use in the salvage effort of 3,500 acres. Four helicopter landings would need to be constructed to supplement the existing roads and landings needed to facilitate harvest activities. No new road construction is proposed. Additional road reconstruction may be identified during analysis as necessary to improve watersheds or fish habitat.

Salvage harvest would occur in the Caton Lake and Meadow Creek IRAs.

Visual quality objectives would be met on trails, the South Fork Salmon River and Johnson Creek roads, and the Wild and Scenic River eligible Johnson Creek and South Fork Salmon River corridors.

Cultural resource sites, riparian areas, and sensitive fish, plant, and animal habitats would be protected.

Protection measures for streams would be based on the science utilized to develop the interim direction contained in the draft PACFISH EA. The direction issued with the final PACFISH EA and Decision Notice would be incorporated as necessary.

Methodologies, rationale and findings associated with the landscape analysis and site specific environmental analysis would be reviewed by a proposed panel of experts elected from Forest Service research and system branches, and other federal agencies. Recommendations made by this panel could be used by line officers in directing the environmental analysis, formulating alternatives, disclosing environmental consequences, developing a monitoring plan and making the final decision. This may include the option of not moving ahead with any or part of the action alternatives if conclusive information shows that the action would be damaging to anadromous fish.

Forest Plan Amendment

The Boise and Payette National Forest Land and Resource Management Plans have specific management direction for the South Fork Salmon River Area. The overall goal is to restore harvestable, robust, self-sustaining populations of naturally reproducing salmon and trout. The Thunderbolt Wildfire Recovery Proposed Action is designed to improve fish habitat and is consistent with the objectives and goals of both Forest Plans. Prior to making a NEPA decision, a thorough examination of all standards and guidelines of both Forest plans would be completed and if necessary, plan amendments would be addressed in the EIS.

Preliminary Issues

Anticipated concerns with the Proposed Action are; (1) Ground disturbing activities may increase sediment delivery to streams and degrade fish habitat, and (2) salvage harvesting in IRAs and the potential effect it may have on the wilderness attributes of the area.

Possible Alternatives to the Proposed Action

Two alternatives to the Proposed Action have been identified. A No Action alternative, and an alternative that would exclude salvage harvesting in the IRAs. Other alternatives may be developed as issues are raised and information is received.

Decisions To Be Made

The Boise and Payette National Forest Supervisors will decide the following:

What amount, type, and distribution of sediment reduction projects and riparian habitat conservation measures would be implemented,

If Forest Plan amendments are necessary to proceed with the proposed actions within the Thunderbolt Wildfire Recovery project area,

Should dead and imminently dead trees within fire areas, not needed to maintain ecological functions, be harvested and if so how, and

What burned areas need to be planted.

Public Involvement Meetings

Scoping meetings will be held in McCall (Smokejumper Loft, Dec. 12, 1994, 7:00 PM), Boise (Red Lion Inn Downtowner, Dec. 13, 1994, 7:00 PM) and Cascade (Ranger District Office, Dec. 14, 1994, 7:00 PM). Additional presentations will be made upon request.

Agency/Public Contacts

A summary of the Proposed Action and methodologies to be used in the analysis, will be mailed in early December to key individuals, groups and agencies for comments and issue identification. This mailing list will include about 350 people who are generally interested in the Boise and Payette National Forests' NEPA projects and people who were interested in the Boise National Forest's Foothills Wildfire Timber Recovery Project in 1992.

Schedule

Draft Environmental Impact Statement, February, 1995. Final EIS, April, 1995. Implementation, July, 1995

Past experience with wildfire timber recovery efforts on the Boise and Payette National Forests have proven that prompt action is required to recover the economic value of fire-killed trees. The trees, mostly Douglas-fir, subalpine fir and lodgepole pine, are expected to lose more than half of their economic value by the fall of 1995. Recovered timber values would be used to finance beneficial watershed improvement projects designed to improve fish habitat.

Comments

Comments concerning the proposed project and analysis should be received in writing on or before January 13, 1994. Mail comments to Cindy Tencick, Cascade Ranger District, Boise National Forest, PO Box 696, Cascade, ID 83611, Telephone, (208) 382–7400. Further information can be obtained at the same location.

The comment period on the Draft Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of Draft Environmental Impact Statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v *NRDC* 435 U.S. 519, 553 (1978), Also

environmental objections that could be raised at the Draft Environmental Impact Statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1002 (9th Cir,. 1986) and *Wisconsin Heritages. Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed Action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the Proposed Action, comments on the Draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the Draft Environmental Impact Statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Officials

Cathy Barbouletos, Forest Supervisor, Boise National Forest, 1750 Front Street, Boise, ID 83702; and Dave Alexander, Forest Supervisor, Payette National Forest, 106 West Park, McCall, ID 83638.

Dated: December 6, 1994.

Cathy Barbouletos,

Boise Forest Supervisor.

Dated: December 6, 1994.

David F. Alexander,

Payette Forest Supervisor.

[FR Doc. 94–30548 Filed 12–12–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 717]

Grant of Authority for Subzone Status; Zeneca Inc. (Pharmaceuticals) Newark, DE

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Delaware Development Office, on behalf of the State of Delaware, grantee of Foreign-Trade Zone 99, for authority to establish special-purpose subzone status at the pharmaceutical manufacturing plant of Zeneca Inc., in Newark, Delaware, was filed by the Board on June 22, 1994, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 26–94, 59 FR 35095, 7–8–94); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 99D) at the plant site of Zeneca Inc., in Newark, Delaware, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 2nd day of December 1994.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 94–30580 Filed 12–12–94; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–570–834]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 13, 1994.

FOR FURTHER INFORMATION CONTACT: Julie Anne Osgood or Todd Hansen, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–0167 or 482–1276, respectively.

Preliminary Determination

We preliminarily determine that disposable pocket lighters from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930 (the "Act"), as amended. The estimated margins of sales at less than fair value are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on May 31, 1994 (59 FR 29412, June 7, 1994), the following events have occurred:

On June 23, 1994, the United States International Trade Commission ("ITC") issued an affirmative preliminary injury determination (see ITC Investigation No. 303–TA–25).

On June 13, 1994, we sent a letter to the China Chamber of Commerce for Machinery and Electronic Products Import and Export ("CCCME") requesting names and addresses of PRC producers and exporters of disposable pocket lighters ("lighters") sold in the United States. On June 22, 1994, we received a list of producers and exporters of lighters from the CCCME. A questionnaire was presented on July 1, 1994, to the CCCME and to the Ministry of Foreign Trade and Economic Cooperation ("MOFTEC") for distribution to PRC producers and exporters of lighters.

On September 20, 1994, we postponed the preliminary determination until December 5, 1994 (59 FR 48284).

On September 9, 1994, responses to the Department's questionnaire were received from the following exporters of lighters: China National Overseas Trading Corporation (Ningbo) ("COTCO"), Guangdong Light Industrial Products Import and Export ("GLIP"), Gao Yao (Hong Kong) Hua Fa Industrial Company, Ltd. ("Gao Yao"), PolyCity Industrial, Ltd. ("PolyCity"), and Cli-Claque Company Limited ("Cli-Claque"). On October 12 and 18, 1994, we sent supplemental/deficiency questionnaires to the respondents. Responses to the supplemental questionnaires were received on November 14, 1994. On November 23,

1994, petitioner alleged critical circumstances.

Scope of the Investigation

The products covered by this investigation are disposable pocket lighters, whether or not refillable, whose fuel is butane, isobutane, propane, or other liquified hydrocarbon, or a mixture containing any of these, whose vapor pressure at 75 degrees fahrenheit (24 degrees celsius) exceeds a gage pressure of 15 pounds per square inch. Non-refillable pocket lighters are imported under subheading 9613.10.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Refillable, disposable pocket lighters would be imported under subheading 9613.20.0000. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this proceeding is dispositive.

Windproof refillable lighters, as described in a memorandum to Barbara R. Stafford, dated December 5, 1994, are excluded from the scope of this investigation.

Period of Investigation

The period of investigation ("POI") is December 1, 1993 through May 31, 1994.

Nonmarket Economy Country Status

The Department has treated the PRC as a nonmarket economy country ("NME") in all past antidumping investigations (see, e.g., Notice of Final Determination of Sales at Less than Fair Value: Saccharin from the PRC (59 FR 58818, November 15, 1994). No information has been provided in this proceeding that would lead us to overturn our former determinations. Therefore, in accordance with section 771(18)(c) of the Act, we have treated the PRC as an NME for purposes of this investigation.

Where the Department is investigating imports from an NME, section 773(c)(1) of the Act directs us to base foreign market value ("FMV") on the NME producers' factors of production, valued in a market economy that is at a level of economic development comparable to that of the NME under investigation and that is a significant producer of comparable merchandise. Section 773(c)(2) of the Act alternatively provides that where available information is inadequate for using the factors of production methodology, FMV may be based on the export prices for comparable merchandise from market economy countries at a comparable level of economic development.

For purposes of the preliminary determination, we have relied on the methodology provided by section 773(c)(1) of the Act to determine FMV. The sources of individual factor prices are discussed in the FMV section below.

Separate Rates

All five respondents have requested separate antidumping duty rates. In cases involving non-market economies, the Department's policy is to assign a separate rate only when an exporter can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities. In determining whether companies should receive separate rates, we focus our attention on the exporter rather than the manufacturer, as our concern is manipulation of export prices, and we examine PRC government control of the exporter. In this case, two of the five respondents are Hong Kong exporters that are involved in joint ventures in the PRC that manufacture lighters. Since PolyCity and Cli-Claque are located outside the PRC, the PRC government does not have jurisdiction over them. Moreover, the PRC government does not have any ownership interest in these exporters and, therefore, it cannot exercise control through ownership of these companies. Further, we have no evidence on the record indicating that the PRC government exerts control over these exporters. (See, business proprietary memorandum to the file dated December 5, 1994.) On this basis, we preliminarily determine that there is no need to apply our separate rates analysis and that PolyCity and Cli-Claque are entitled to individual rates.

In contrast to PolyCity and Cli-Claque, Gao Yao is a 50/50 joint venture between a Chinese company and Hong Kong company. The joint venture owns both the production and export facilities used to manufacture and export the lighters it sells to the United States. Given the direct PRC ownership in Gao Yao's export facilities, we have preliminarily determined that it is appropriate to apply our separate rates analysis to this company.

COTCO's and GLIP's business licenses indicate that they are owned "by all the people." As stated in the Final Determination of Sales at Less than Fair Value: Silicon Carbide from the PRC (59 FR 22585, May 2, 1994) ("Silicon Carbide"), "ownership of a company by all the people does not require the application of a single rate." Accordingly, these companies are eligible for consideration for a separate rate under our criteria.

To establish whether a firm is entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the Final Determination of Sales at Less Than Fair Value: Sparklers from the PRC (56 FR 20588, May 6, 1991) ("Sparklers") and amplified in Silicon Carbide. Under the separate rates criteria, the Department assigns separate rates only where respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

The respondents submitted a number of documents to demonstrate absence of *de jure* control, including two PRC laws indicating that the responsibility for managing enterprises owned by "all the people" is with the enterprises themselves and not with the government. These are the "Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People," adopted on April 13, 1988 ("1988 Law"); and the "Regulations for Transformation of Operational Mechanism of State-Owned Industrial Enterprises," approved on August 23, 1992 ("1992 Regulations"). Respondents' submission also included the "Temporary Provisions for Administration of Export Commodities," approved on December 21, 1992 ("Export Provisions").

The 1988 Law and 1992 Regulations shifted control from the government to the enterprises themselves. The 1988 Law provides that enterprises owned by "all the people" shall make their own management decisions, be responsible for their own profits and losses, choose their own suppliers and purchase their own goods and materials. The 1988 Law contains other provisions which indicate that enterprises have management independence from the government. The 1992 Regulations provide that these same enterprises can, for example, set their own prices (Article IX); make their own production decisions (Article XI); use their own retained foreign exchange (Article XII); allocate profits (Article II); sell their own products without government interference (Article X); make their own investment decisions (Article XIII); dispose of their own assets (Article XV); and hire and fire employees without government approval (Article XVII).

The Export Provisions indicate those products subject to direct government control. Lighters do not appear on the Export Provisions list and are not, therefore, subject to export constraints.

Consistent with Silicon Carbide, we determine that the existence of these laws demonstrates that COTCO, GLIP, and Gao Yao are not subject to *de jure*

central government control with respect to export sales and pricing decisions. However, there is some evidence that the provisions of the above-cited laws and regulations have not been implemented uniformly among different sectors and/or jurisdictions in the PRC (see "PRC Government Findings on Enterprise Autonomy," in Foreign Broadcast Information Service-China-93–133 (July 14, 1993)). Therefore, the Department has determined that a *de facto* analysis is critical to determine whether COTCO, Gao Yao and GLIP are subject to governmental control over export sales and pricing decisions.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by, or subject to the approval of, a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (see Silicon Carbide).

In response to our questionnaire, COTCO, GLIP, and Gao Yao have each asserted that they:

- Are able to borrow at market rates from commercial banks;
- Maintain their own bank accounts, including foreign exchange earnings;
- Are not restricted in their access to their bank accounts;
- Operate at a profit,
- Make independent business decisions, including what to export;
- Set their own prices independently and that the prices are not subject to review by trading companies or government authorities;
- Base their relationships with suppliers and customers on arm's length negotiations without governmental interference;
- Are not subject to foreign exchange targets set by either the central or provincial governments;
- Have the ability to sell, transfer, or acquire assets; Exporter-Specific Information:

The following is a summary of additional information provided by the exporters:

Gao Yao has stated that.

- It is a Sino-Hong Kong 50–50 joint venture;
- It has no legal relationship with either the local, regional and/or national government;
- It maintains a bank account in Hong Kong where all monies received from Gao Yao's foreign sales are deposited and that the allocation of foreign currency is not subject to governmental review or approval;
- Chinese joint venture and other laws confirm Gao Yao's independence (Gao Yao submitted an exhibit consisting of laws pertaining to Sino-Foreign joint ventures in its response);
- Management is selected by the board of directors, without any governmental interference;
- Profits are divided evenly between the joint venture partners according to the shares invested;
- The managing director of Gao Yao is a Hong Kong resident; and
- All contracts are negotiated and signed by the officials of Gao Yao's Hong Kong sales office.

GLIP has stated that:

- Management is selected by its board of directors;
- Current ownership of the company is by "all the people." The company received authorization to privatize on March 5, 1993, and "is in the process of totally privatizing;" and
- It is independently managed and operated (a statement to this effect from CCCME was included in the response as an exhibit).

COTCO has stated that:

- It is a limited liability company, owned by COTCO Beijing, which, in turn, is an "all the people" company;
- It is independently managed and operated (a statement to this effect from CCCME was included in the response as an exhibit);
- Its manager is hired following a public notice of vacancy, screening, and hiring negotiations; the manager then selects the company's management committee; the decisions regarding the selection and promotion of management are not subject to any entity's review or approval.

The information submitted on behalf of each of the three companies supports a preliminary finding that there is a *de facto* absence of governmental control of export functions of each of the three companies.

Consequently, COTCO, Gao Yao and GLIP have preliminarily met the criteria for the application of separate rates. We will examine this issue in detail at verification and determine whether the questionnaire responses are supported by verifiable documentation.

Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producers' factors of production, to the extent possible, in one or more market economies that (1) are at a level of economic development comparable to that of the NME country and (2) are significant producers of comparable merchandise. The Department has determined that Indonesia is the most suitable surrogate for purposes of this investigation. Based on available statistical information, Indonesia is at a level of economic development comparable to that of the PRC, and Indonesian export statistics indicate that the country is a significant producer of lighters. Based on available information, Indonesia is the only surrogate country, of those identified by our Office of Policy, that meet both of these criteria. (See, memorandum to the file from Todd Hansen to Carole Showers, dated December 5, 1994, Surrogate Country Selection and memorandum from David Mueller, Director, Office of Policy to Susan Kuhbach, Director, Office of Countervailing Investigations, dated September 8, 1994, Lighters from the People's Republic of China, Non-Market Economy Status and Surrogate Country Selection.)

Fair Value Comparisons

To determine whether sales of lighters from the PRC by COTCO, Gao Yao, GLIP, PolyCity and Cli-Claque were made at less than fair value, we compared the United States price ("USP") to FMV, as specified in the "United States Price" and "Foreign Market Value" sections of the notice.

United States Price

For all respondents, we based USP on purchase price, in accordance with section 772(b) of the Act, because lighters were sold directly to unrelated parties in the United States prior to importation into the United States, and because exporter's sales price ("ESP") methodology was not indicated by other circumstances.

We calculated purchase price based on packed, FOB foreign-port prices to unrelated purchasers in the United States, and packed, CIF prices, where appropriate. We made deductions for foreign inland freight, containerization, loading, port handling expenses, and marine insurance, as indicated. Generally, costs for these items were valued in the surrogate country. However, where inland freight was purchased from market economy suppliers and paid for in a market economy currency, we used the cost actually incurred by the exporter

Foreign Market Value

In accordance with section 773(c) of the Act, we calculated FMV based on factors of production reported by the factories in the PRC which produced the subject merchandise for the five responding exporters. The factors used to produce lighters include materials, labor and energy. To calculate FMV, the reported factor quantities were multiplied by the appropriate surrogate values from Indonesia for those inputs purchased domestically from PRC suppliers. Where inputs were imported from market economy countries and paid for in a market economy currency, we used the actual costs incurred by the producers to value those factors (see, *e.g.*, Final Determination of Sales at Less Than Fair Value: Oscillating Ceiling Fans From the People's Republic of China, 56 FR 55271, October 25, 1991). Where a respondent failed to provide certain factor information in a usable form, we have used publicly available information from the petition and other respondents as best information available in valuing these factors.

Cli-Claque has argued that since it purchases certain input parts produced in the PRC from a Hong Kong reseller, the Department should accept these prices as market-determined and use them when calculating FMV. We disagree with this argument and have not used the prices for these inputs in calculating FMV. For purposes of valuing factors of production, it is the Department's practice not to use prices from one PRC producer to an unrelated PRC producer because those prices are distorted. In the present case, the two Hong Kong companies negotiated prices for inputs produced in the PRC on behalf of their related production facilities located in the PRC. Therefore, we have determined that these input prices should not be used to value the factors of production in this case. We have only used prices for imported inputs which were produced in market-based economies to value those factors.

In determining which surrogate value to use for each factor of production which was not sourced from a market-economy country, we selected, where possible, from publicly available, published information ("PAPI") which was: (1) an average non-export value; (2) representative of a range of prices within the POI if submitted by an interested party, or most contemporaneous with the POI; (3) product-specific; and (4) tax-exclusive.

With the exception of butane, we used the Indonesian import price taken from the Indonesian Foreign Trade Statistical Bulletin—Imports, November 1993. For butane, however, the amount imported into Indonesia was negligible compared to the amount exported from that country. Therefore, for those PRC producers that did not import butane from market economy sources, we relied on Indonesian export statistics, as reported in the Indonesian Foreign Trade Statistical Bulletin—Exports, November 1993.

We used Indonesian transportation rates taken from a September 18, 1991, U.S. State Department cable from the U.S. Embassy in Indonesia to value inland freight between the source of the production factor and the disposable lighter factories.

To value electricity, we used public information from the Electric Utilities Data Book for the Asian and Pacific Region (January 1993) published by the Asian Development Bank. To value labor amounts, we used labor rates published by the Bureau of International Labor Affairs, U.S. Department of Labor, in Foreign Labor Trends-Indonesia.

We adjusted the factor values, when necessary, to the POI using wholesale price indices ("WPIs") published by the International Monetary Fund ("IMF").

To value factory overhead, we calculated percentages based on a December 2, 1994 U.S. State Department cable from the U.S. Embassy in Jakarta giving elements of industry group income statements.

For general expense percentages, we used the statutory minimum of 10 percent of materials, labor, and overhead costs calculated for each factory. For profit we used the statutory minimum of eight percent of materials, labor, factory overhead, and general expenses. We did not have Indonesian values for either general expenses or profit.

We added packing based on Indonesian values obtained from the Indonesian Foreign Trade Statistical Bulletin—Imports, November 1993.

Cli-Claque argues that since it makes all of its sales/exports from Hong Kong, has all of its management, administrative and selling operations in Hong Kong, and is wholly-owned and operated as a market-economy producer, we should treat Cli-Claque as a market-economy producer and base FMV on Hong Kong home market prices. Failing this, Cli-Claque maintains that since the PRC production facility does not know Cli-Claque's customers or the ultimate destination of the merchandise and since the products enter the commerce of Hong Kong, we should, at a minimum, consider Cli-Claque as a third country reseller and consider Hong Kong a viable home market on which to base FMV.

We disagree with Cli-Claque on both accounts. First, its related production facility is located in a non-market economy country and, therefore, the FMV of the subject merchandise must be determined using the factors of production methodology. Second, given the relationship between Cli-Claque and the PRC production facility, we do not consider that there is a "purchase" from the PRC production facility by Cli-Claque within the meaning of section 773(f) of the Act. Therefore, Cli-Claque is not considered a "reseller" within the meaning of that provision.

Best Information Available

Potential exporters identified by MOFTEC failed to respond to our questionnaire. In the absence of responses from these and other PRC exporters during the POI, we are basing the PRC country-wide rate on best information available (BIA). When a company refuses to provide information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to the company the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation (see Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Belgium, 58 FR 37083, July 9, 1993) ("Belgium Steel"). Since some PRC exporters failed to respond to our questionnaire, we are assigning to all other PRC exporters the highest margin in the May 27, 1994, amendment to the petition.

Critical Circumstances

On November 23, 1994, petitioner alleged that "critical circumstances" exist with respect to imports of disposable pocket lighters from the PRC. We did not receive the allegation in time to make a critical circumstance determination in this preliminary determination. However, we will make a preliminary determination with respect to critical circumstances no later than December 23, 1994, pursuant to 19 CFR 353.16(b)(2)(ii).

Verification

As provided in section 776(b) of the Act, we will verify information used in making our final determination.

Suspension of Liquidation

For Gao Yao, we calculated a zero margin. Consistent with Notice of Final Determination of Sales at Less Than Fair

Value: Certain Cased Pencils from the People's Republic of China (59 FR 55625, November 8, 1994), merchandise that is sold by Gao Yao but manufactured by other producers will not receive the zero margin. Instead, such entries will be subject to the "All Others" margin.

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of disposable pocket lighters from the PRC, as defined in the "Scope of the Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacture/producer/exporter	Margin (Percent)
China National Overseas Trading Corp	37.48
Cli-Claque Company Ltd	7.03
Gao Yao (HK) Hua Fa Industrial Co., Ltd	[1] 0.10
Guangdong Light Industrial Products Import and Export Corp	35.08
PolyCity Industrial, Ltd	63.09
All others	197.85

[1] *De minimus.*

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry within 75 days after our final determination.

Public Comment

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed.

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than January 20, 1995, and rebuttal briefs no later than January 27, 1995. A hearing, if requested, will be held on Friday, February 3, 1995, at 10:00 am at the U.S. Department of Commerce in Room 1412. Parties should confirm by telephone the time, date, and place of the hearing 48 hours prior to the scheduled time. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

We will make our final determination not later than 75 days after of this preliminary determination.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated; December 5, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–30581 Filed 12–12–94; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of initiation of process of revoke export trade certificate of review No. 92–00008.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to International EXIM Corporation. Because this certificate holder has failed to file an annual report as required by law, the Department is initiating proceedings to revoke the certificate. This notice summarizes the notification letter sent to International EXIM Corporation.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") [15 U.S.C. 4011–21] authorized the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III ["the Regulations"] are found at 15 CFR part 325. Pursuant to this authority, a certificate of review was issued on September 8, 1992 to International EXIM Corporation.

A certificate holder is required by law (Section 308 of the Act, 15 U.S.C. 4018) to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate. The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review [Sections 325.14(a) and (b) of the Regulations]. Failure to submit a complete annual report may be the basis for revocation [Sections 325.10(a) and 325.14(c) of the Regulations].

The Department of Commerce sent to International EXIM Corporation on August 29, 1994, a letter containing annual report questions with a reminder that its annual report was due on October 23, 1994. Additional reminders were sent on October 24, 1994, and on November 16, 1994. The Department has received no written response to any of these letters.

On December 7, 1994, and in accordance with § 325.10(c)[2] of the Regulations, a letter was sent by certified mail to notify International EXIM Corporation that the Department was formally initiating the process to revoke its certificate. The letter stated that this action is being taken for the certificate holder's failure to file an annual report.

In accordance with § 325.10(c)(2) of the Regulations, each certificate holder has thirty days from the day after its receipt of the notification letter in which to respond. The certificate holder is deemed to have received this letter as of the date on which this notice is published in the **Federal Register**. For good cause shown, the Department of Commerce can, at its discretion, grant a thirty-day extension for a response.

If the certificate holder decides to respond, it must specifically address the Department's statement in the notification letter that it has failed to file an annual report. It should state in detail why the facts, conduct, or circumstances described in the notification letter are not true, or if they are, why they do not warrant revoking the certificate. If the certificate holder does not respond within the specified period, it will be considered an admission of the statements contained in the notification letter (Section 325.10(c)[2] of the Regulations).

If the answer demonstrates that material facts are in dispute, the Department of Commerce and the Department of Justice shall, upon request, meet informally with the certificate holder. Either Department may require the certificate holder to provide the documents or information that are necessary to support its contentions (Section 325.10(c)[3] of the Regulations).

The Department shall publish a notice in the **Federal Register** of the revocation or modification or a decision not to revoke or modify (Section 325.10(c)[4] of the Regulations). If there is a determination to revoke a certificate, any person aggrieved by such final decision may appeal to an appropriate U.S. district court within 30 days from the date on which the Department's

final determination is published in the Federal Register (Sections 325.10(c)(4) and 325.11 of the Regulations).

Dated: December 7, 1994.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 94–30535 Filed 12–12–94; 8:45 am]

BILLING CODE 3510–DR–P

Arizona State University, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 94–108. *Applicant:* Arizona State University, Tempe, AZ 85387-1504. *Instrument:* Toroidal Electrostatic Analyzer. *Manufacturer:* High Voltage Engineering Europa, The Netherlands. *Intended Use:* See notice at 59 FR 52288, October 17, 1994.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides simultaneous measurement of energy (resolution of $> E/E = 4.0 \times 10^{-3}$) and incident angle (resolution = 0.3° over a 30° acceptance angle) to provide ultimate depth resolution to about 0.5 nm. Oak Ridge National Laboratory and a private research laboratory advised on November 17, 1994 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Pamela Woods

Acting Director, Statutory Import Programs Staff

[FR Doc. 94–30582 Filed 12–12–94; 8:45 am]

BILLING CODE 3510–DS–F

Patent and Trademark Office

Grant of Certificate of Interim Extension of the Term of U.S. Patent No. 4,062,848; Remeron

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of Interim Patent Term Extension.

SUMMARY: The Patent and Trademark Office has issued a certificate under 35 U.S.C. 156(d)(5) for a one-year interim extension of the term of U.S. Patent No. 4,062,848 that claims the human drug product known as Remeron.

FOR FURTHER INFORMATION CONTACT: Gerald A. Dost by telephone at (703) 305–9282; or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Office of the Deputy Assistant Commissioner for Patent Policy and Projects, Office of Special Programs, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: Section 156 of Title 35, United States Code, generally provides that the term of a patent may be extended for a period of up to 5 years if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review. Under section 156, a patent is eligible for term extension only if regulatory review of the claimed product was completed before the original patent term expired.

On December 3, 1993, section 156 was amended by Pub. L. No. 103–179 to provide that if the owner of record of the patent or its agent reasonably expects the applicable regulatory review period to extend beyond the expiration of the patent, the owner or its agent may submit an application to the Commissioner of Patents and Trademarks for an interim extension of the patent term. If the Commissioner determines that, except for permission to market or use the product commercially, the patent would be eligible for a statutory extension of the patent term, the Commissioner shall issue to the applicant a certificate of interim extension for a period of not more than one year.

On November 25, 1994, the patent owner Akzona Incorporated filed an application under 35 U.S.C. 156(d)(5) for interim extension of the term of U.S. Patent No. 4,062,848. The application states that the patent claims the active ingredient mirtapazine in the human drug product Remeron. The application indicates that the product is currently undergoing a regulatory review before the Food and Drug Administration for permission to market or use the product commercially. The original term of the patent is set to expire on December 13, 1994. Applicant requests an interim extension of the term of the patent for a period of one year.

Review of the application indicates that, except for permission to market or use the product commercially, the subject patent would be eligible for an extension of the patent term under 35 U.S.C. 156. Since it is apparent that the regulatory review period may extend beyond the expiration of the original patent term, an interim extension of the patent term under 35 U.S.C. 156(d)(5) is appropriate. Accordingly, an interim extension under 35 U.S.C. 156(d)(5) of the term of U.S. Patent No. 4,062,848 has been granted for a period of one year from the original expiration date of the patent.

Dated: December 5, 1994.

Michael K. Kirk,

Acting Assistant Secretary of Commerce and Acting Commissioner of Patents and Trademarks.

[FR Doc. 94–30545 Filed 12–12–94; 8:45 am]

BILLING CODE 3510–16–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program Between the Office of Personnel Management and the Department of Defense

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Defense.

ACTION: Notice of a new computer matching program between the Office of Personnel Management (OPM) and the Department of Defense (DoD) for public comment.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The DoD, as the matching agency under the Privacy Act, is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between OPM and DoD that their records are being matched by computer. The objective is to identify individuals who are improperly receiving military retired pay and (1) credit for military service in their civil service annuities, or (2) annuities based on the 'guaranteed minimum' disability formula. This match will identify and/or prevent

erroneous payments under the Civil Service Retirement Act (CSRA), the Federal Employees' Retirement System Act (FERSA), and the Joint Uniform Military Retired Pay System. This agreement replaces all existing data exchange agreements that pertain to the disclosure of beneficiary payment data between DMDC and OPM.

DATES: This proposed action will become effective January 12, 1995, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502. Telephone (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the OPM and DoD has concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies for identification of individuals who are improperly receiving military retired pay. The match will yield the identity and location of those individuals within the Federal government so that OPM can make more timely and accurate adjustments in benefits, and prevent or correct overpayments, fraud and abuse, thus assuring proper benefit payments. Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between OPM and DoD is available upon request to the public. Requests should be submitted to the address caption above or to the Quality Assurance Division, Retirement and Insurance Group, 1900 E Street, NW, Washington, DC 20415.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published in the **Federal Register** at 59 FR 37906 on July 25, 1994.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on December 1, 1994, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records about Individuals," dated July 15, 1994 (59 FR 37906, July 25, 1994). The matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

Dated: December 6, 1994.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Computer Matching Program Between the Office of Personnel Management and the Department of Defense for Retired Military Pay

A. *Participating agencies:* Participants in this computer matching program are the Quality Assurance Division, Retirement and Insurance Group, Office of Personnel Management (OPM) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The OPM is the source agency, i.e., the agency disclosing the records for the purpose of the match. The DMDC is the specific recipient agency or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match:* The purpose of the match is to identify and locate individuals who are improperly receiving military retired pay and (1) credit for military service in their civil service annuities, or (2) annuities based on the 'guaranteed minimum' disability formula. This match will identify and/or prevent erroneous payments under the Civil Service Retirement Act (CSRA), the Federal Employees' Retirement System Act (FERSA), and the Joint Uniform Military Retired Pay System.

C. *Authority for conducting the match:* The legal authority for conducting the matching program is contained in Title 5 U.S.C. 8331 (CSRA) and Title 5 U.S.C. 8401 (FERSA), et. seq. Title 5 U.S.C. 8332 is the legal authority for CSRA and Title 5 U.S.C. 8411 is the legal authority for FERSA for determining creditability of military service for civil service retirement purposes. DoD's legal authority for monitoring retired pay is Title 10 U.S.C. 1401.

D. *Records to be matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

1. OPM will use the record system identified as OPM/CENTRAL–1, Civil Service Retirement and Insurance Records, last published at 58 FR 19170, April 12, 1993, and revised at 58 FR 41300, August 3, 1993.

2. DoD will use the record system identified as S322.10 DMDC, Defense Manpower Data Center Data Base, 59 FR 55462, November 7, 1994.

The categories of records in the OPM and DoD records are personnel employment records. The categories of individuals in the OPM system consists of active, separated and retired civilian employees. The DMDC database, established under an interagency agreement between DoD, OPM, OMB, and the Department of the Treasury, consists of employment records of Federal employees and military members, active, and retired. Both record systems involved contain an appropriate routine use disclosure provision required by the Privacy Act permitting the interchange of the affected personal information between OPM and DoD. These routine uses are compatible with the purpose for collecting the information and establishing and maintaining the record systems.

E. *Description of computer matching program:* The tape extract provided by OPM, the source agency, will contain the names, addresses, social security numbers, dates of birth, retirement claim numbers, provision retired codes and payment and service data of individuals currently receiving benefits from OPM. DoD, the matching agency, data will contain names, social security numbers, branches of service and dates of retirement.The OPM file will contain the information for approximately 1.5 million CSRA and FERSA retirees. DoD retired files contain approximately 1.6 million records.

F. *Inclusive dates of the matching program:* This computer matching program is subject to a 40-day review period by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination,

then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and will be repeated on an annual basis, unless OMB or the Treasury Department request a match twice a year. Under no circumstances shall the matching program be implemented before this 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between OPM and DoD, the matching program will be in effect and continue for 18 months with an option to extend for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *Address for receipt of public comments or inquiries:* Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 94–30595 Filed 12–12–94; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before January 12, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: December 8, 1994.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: New.

Title: Application for the North American Trilateral Education Initiative (A Special Focus Competition of the Fund for the Improvement of Postsecondary Education).

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting Burden: Responses: 300, Burden Hours: 6,000.

Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0.

Abstract: The North American Trilateral Initiative is a one state competitive application process to award grants to groups to U.S. institutions of higher education, represented by one of their number that will serve as lead institution for the U.S. members of the consortium, for an experimental program that will support cooperation and exchange among U.S., Mexican, and Canadian institutions of higher education. Funding will be multi-year with projects lasting up to three years.

Office of the Under Secretary

Type of Review: Revision.

Title: National Evaluation of the Set-Aside for Teacher Training and Innovation in Adult Education.

Frequency: One time.

Affected Public: State or local governments; non-profit institutions; small businesses or organizations.

Reporting Burden: Responses: 3,900 Burden Hours: 1,510.

Recordkeeping Burden: Recordkeepers: 0, Burden Hours: 0.

Abstract: These surveys of adult education training providers, recipients, and developers of special projects are part of a comprehensive evaluation of the Section 353 of the National Literacy Act. The evaluation is designed to provide the Department with a description of how these funds are administered and the nature and effectiveness of the training and special project activities they support.

[FR Doc. 94–30574 Filed 12–12–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award: Custom Electronics Incorporated

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.6(a)(2) it is making a financial assistance award under grant Number DE-FG01–95EE15617 to Custom Electronics, Incorporated. The proposed grant will provide funding in the amount of $99,945 by the Department of Energy for the purpose of saving energy through development of a gas broiler control to automatically limit gas flow to cooking equipment when it is not in use.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(e)(1) that the unsolicited application for financial assistance submitted by Custom Electronics, Incorporated is meritorious based on the general evaluation required by 10 CFR 600.14(d) and the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. The co-inventor, William Garceau, who will be assisted by Thomas Speakman, has many years of experience performing advanced research work in the fields of electronics and material sciences. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy Related

Invention program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy Office of Placement and Administration, Attn: Rose Mason, HR–531.23, 1000 Independence Ave., S.W , Washington, D.C. 20585.

The anticipated term of the proposed grant is 18 months from the date of award.

Issued in Washington, D.C. on December 5, 1994.

Richard G. Lewis,

Contracting Officer, Office of Placement and Administration.

[FR Doc. 94–30576 Filed 12–12–94; 8:45 am]

BILLING CODE 6450–01–P

Financial Assistance Award: University of Central Florida

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.6(a)(2) it is making a discretionary financial assistance award based on the acceptance of an unsolicited proposal meeting the criteria of 10 CFR 600.14(e)(1) under Grant Number DE-FG01–95DP00102 to the University of Central Florida. The proposed grant will provide funding in the estimated amount of $619,883 by the Department of Energy for experimental investigation on the interaction of high intensity ultrashort laser pulses with dense plasmas.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the unsolicited application for financial assistance submitted by University of Central Florida, is meritorious based on the general evaluation required by 10 CFR 600.14(d) and the results of these studies have potential payoff to both direct and indirect—drive internal fusion. The proposed project is technically sound and attractive. It describes research that would produce laser—plasma interaction data in a regime of great interest and current applicability to the Inertial Confinement Fusion (ICF) Program. The Secretary's recent declassification of much of the ICF research adds significantly to the feasibility of funding for this program. The program has never issued and has no plans to issue a competitive solicitation.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, Attn: Dennis Roth, HR–531.23, 1000 Independence Ave., S.W., Washington, D.C. 20585.

The anticipated term of the proposed grant is 36 months from the date of award.

Issued in Washington, D.C. on December 5, 1994.

Richard G. Lewis,

Contracting Officer, Office of Placement and Administration.

[FR Doc. 94–30501 Filed 12–12–94; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

[Docket No. FE C&E 94–13—Certification Notice—141]

LSP-Whitewater Limited Partnership; Notice of Filing of Coal Capability Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: On November 18, 1994, LSP-Whitewater Limited Partnership submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of Energy. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of a proposed new baseload powerplant has filed a self-certification in accordance with section 201(d).

Owner: LSP-Whitewater Limited Partnership Boseman, MT.

Operator: LSP-Whitewater I, Inc., Bozeman, MT.

Location: Jefferson County northeast of Whitewater, Wisconsin.

Plant Configuration: Topping cycle cogeneration.

Capacity: 248.5 megawatts.

Fuel: Natural gas.

Purchasing entities: Wisconsin Electric Power (WEPCO)—95%, WEPCO or other utilities—5%.

In-service date: Summer of 1996.

Issued in Washington, DC, December 6, 1994.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy

[FR Doc. 94–30577 Filed 12–12–94; 8:45 am]

BILLING CODE 6450–01–M

Bonneville Power Administration

Notice of Wetlands Involvement for the Amazon/Willow Creek Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of wetlands involvement.

SUMMARY: This notice announces BPA's proposal to develop a management plan for the Willow Creek Wildlife Mitigation Project that would include wetland habitat enhancement. The project is located in Lane County, Oregon. In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR Part 1022), BPA will prepare a wetland assessment and will perform this proposed action in a manner that will avoid or minimize adverse impacts to the wetland.

The assessment will be included in the environmental assessment being prepared for the proposed project in accordance with the requirements of the National Environmental Policy Act.

DATES: Comments are due to the address below no later than January 16, 1995.

ADDRESSES: Submit comments to the Public Involvement Manager, Bonneville Power Administration—CKP, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT:

Nancy Weintraub—ECN–6, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621, phone number 503–230–5373, fax number 503–230–5211.

SUPPLEMENTARY INFORMATION: As part of the Willow Creek Wildlife Mitigation Project, BPA proposes to revegetate an emergent wetland with native wet meadow grasses and herbs. The proposal is to plow a wetland site in order to disrupt the seed bank of non-native grasses and re-plant the area with native wet meadow grasses and herbs. The project is expected to expand native habitat in the Willow Creek Natural Area by providing native wetlands, improve storm water runoff quality, and providing additional flood protection. The proposed project would occur in sections 4 and 9 of T18S–R4W. The wetlands occur on land that would be acquired by BPA and are adjacent to the Willow Creek Natural Area.

Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on December 5, 1994.

John M. Taves,

NEPA Compliance Officer, Environment, Fish, and Wildlife.

[FR Doc. 94–30499 Filed 12–12–94; 8:45 am]

BILLING CODE 6450–01–P–M

Federal Energy Regulatory Commission

[Docket No. EC95–4–000]

Midwest Power Systems Inc., et al.; Electric Rate and Corporate Regulation Filings

December 2, 1994.

Take notice that the following filings have been made with the Commission:

1. Midwest Power Systems Inc. and Iowa-Illinois Gas and Electric Company

[Docket No. EC95–4–000]

Take notice that on November 14, 1994, Midwest Power Systems Inc. (Midwest Power) and Iowa-Illinois Gas and Electric Company (Iowa-Illinois) (collectively, the Applicants), pursuant to Section 203 of the Federal Power Act (FPA), 16 U.S.C. § 824b and Part 33 of the Rules and Regulations of the Federal Energy Regulatory Commission, filed an application for authorization and approval of a merger with Midwest Resources Inc. (Midwest Resources) and MidAmerican Energy Company (MidAmerican). In accordance with the merger agreement, Midwest Resources, Midwest Power (a wholly-owned subsidiary of Midwest Resources) and Iowa-Illinois will merge with, and into, MidAmerican which will become the surviving utility company. The merger will be accomplished by a conversion of the common stock of Midwest Resources and Iowa-Illinois into the right to receive common stock of MidAmerican at the conversion rate provided by the merger agreement. Upon completion of the merger, there will be no utility holding company created as a result of the merger.

Midwest Power, a combination electric and gas utility, provides retail electric service to over 400,000 customers in Iowa and southeast South Dakota. It also provides wholesale requirements service to 14 Iowa municipalities. In addition, Midwest Power owns transmission facilities in Iowa and southeast South Dakota.

Iowa-Illinois, a combination electric and gas utility, provides retail electric service to approximately 200,000 customers in Iowa and western Illinois. It also provides wholesale requirements service to three Iowa municipalities. In addition, Iowa-Illinois owns transmission facilities in Iowa and western Illinois.

Applicants state that concurrently with the filing of the application in this proceeding MidAmerican has tendered for filing pursuant to Section 205 of the FPA in a separate proceeding open access transmission tariffs to be effective upon effectuation of the merger. Applicants submit that the merger will be consistent with the public interest and, accordingly, request authorization to consummate the merger without a hearing.

In addition, on November 29, 1994 Midwest tendered for filing supplemental information to its November 14, 1994 filing in this docket.

Comment date: December 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Power and Light Company

[Docket No. ER94–475–000]

Take notice that on November 23, 1994, Wisconsin Power and Light Company (WP&L), tendered for filing a signed Service Agreement under WP&L's T–2 Transmission Tariff between itself and AES Power, Inc. WP&L respectfully requests a waiver of the Commission's notice requirements, and an effective date of November 10, 1994.

Comment date: December 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Power and Light Company

[Docket No. ER94–1204–000]

Take notice that on November 23, 1994, Wisconsin Power and Light Company (WP&L) tendered for filing a signed Service Agreement under WP&L's Bulk Power Sales Tariff between itself and AES Power, Inc. WP&L respectfully requests a waiver of the Commission's notice requirements, and an effective date of November 10, 1994.

Comment date. December 16, 1994, in accordance with Standard Paragraph E at the end of this notice

4. Wisconsin Power and Light Company

[Docket No. ER95–22–000]

Take notice that on November 23, 1994, Wisconsin Power and Light Company (WP&L), tendered for filing an amendment in the above designated docket. WP&L respectfully requests a waiver of the Commission's notice requirements, and an effective date of October 1, 1994.

Comment date December 16, 1994, in accordance with Standard Paragraph E at the end of this notice

5. Wisconsin Power and Light Company

[Docket No. ER95–24–000]

Take notice that on November 23, 1994, Wisconsin Power and Light Company (WP&L), tendered for filing an amendment in the above designated docket. WP&L respectfully requests a waiver of the Commission's notice requirements, and an effective date of October 1, 1994.

Comment date December 16, 1994, in accordance with Standard Paragraph E at the end of this notice

6. San Diego Gas & Electric Company

[Docket No. ER95–214–000]

Take notice that on November 21, 1994, San Diego Gas & Electric Company (SDG&E), tendered for filing and acceptance, pursuant to 18 CFR 35.12, an Interchange Agreement (Agreement) between SDG&E and M–S–R Public Power Agency, (M–S–R)

SDG&E requests that the Commission allow the Agreement to become effective on the 1st day of February, 1995 or at the earliest possible date

Copies of this filing were served upon the Public Utilities Commission of the State of California and M–S–R.

Comment date December 16, 1994, in accordance with Standard Paragraph E at the end of this notice

7. San Diego Gas & Electric Company

[Docket No. ER95–217–000]

Take notice that on November 21 1994, San Diego Gas & Electric

Company (SDG&E), tendered for filing and acceptance, pursuant to 18 CFR 35.12, an Interchange Agreement (Agreement) between SDG&E and the City of Farmington, (Farmington).

SDG&E requests that the Commission allow the Agreement to become effective on the 1st day of February, 1995 or at the earliest possible date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Farmington.

Comment date: December 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Koch Power Services, Inc.

[Docket No. ER95–218–000]

Take notice that on November 21, 1994, Koch Power Services, Inc. (Koch), a Kansas corporation, petitioned the Commission for acceptance of Koch's Rate Schedule FERC No. 1, providing for the sale of electricity at market-based rates; the granting of certain blanket approvals; and the waiver of certain Commission regulations. Koch is a wholly-owned subsidiary of Koch Industries, Inc., and is affiliated with Koch Gateway Pipeline Company, an interstate natural gas pipeline company.

Comment date: December 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. American Electric Power Service Corporation

[Docket No. ER95–219–000]

Take notice that on November 21, 1994, the American Electric Power Service Corporation (AEPSC), tendered for filing, as initial Rate Schedules, four agreements, dated November 1, 1994, between AEPSC, an agent for the AEP System Operating Companies and (1) Rainbow Energy Marketing Corporation, (2) AES Power, Inc., (3) Louis Dreyfus Electric Power Inc., and (4) Enron Power Marketing, Inc. (collectively Marketers).

The Agreements provide the Marketers access to the AEP System for short-term transmission service. The parties request an effective date of December 1, 1994.

A copy of the filing was served upon the Public Utility Commissions of Ohio, Indiana, Michigan, Virginia, West Virginia, Kentucky, Tennessee, and each of the Marketers.

Comment date: December 16, 1994, in accordance with Standard Paragraph E at the end of this notice

10. Mississippi Power Company

[Docket No. ER95–220–000]

Take notice that on November 21, 1994, Mississippi Power Company, tendered for filing a Transmission Facilities Agreement between Mississippi Power Company and Alabama Power Company concerning proposed transmission facilities between Mississippi Power Company's Daniel Electric Generating Plant in Jackson County, Mississippi and the Mississippi-Alabama state line.

Comment date: December 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. New England Power Company

[Docket No. ER95–227–000]

Take notice that on November 25, 1994, New England Power Company, tendered for filing a revised Service Agreement between New England Power Company and Fitchburg Gas & Electric Light Company for transmission service under NEP's FERC Electric Tariff, Original Volume No. 3.

Comment date: December 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Citizens Utilities Company

[Docket No. ES95–15–000]

Take notice that on November 29, 1994, Citizens Utilities Company (Citizens) filed an abbreviated application under § 204 of the Federal Power Act requesting an order: (a) disclaiming jurisdiction over a proposed assumption by Citizens as guarantor or otherwise of lease obligations of a subsidiary relating to non-jurisdictional equipment with a cost of up to $110 million; or (b) in the alternative and without prejudice to any determination of jurisdiction, authorizing the assumption by Citizens as guarantor or otherwise of said lease obligations. Also, Citizens seeks an exemption for the Commission's competitive bidding requirements.

Comment date: December 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection

Lois D. Cashell,

Secretary

[FR Doc. 94–30528 Filed 12–12–94, 8:45 am]

BILLING CODE 6717–01–P

[Docket No. GP94–18–000]

State of Louisiana Office of Conservation—Geopressured Brine Gas Well Determinations (FERC Nos. JD94–04615, et al.); Order Granting Withdrawal Request and Notice of Preliminary Finding

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F Santa, Jr

Issued: December 6, 1994

On August 2, 1994, in Docket No. GP94–16–000, the Commission preliminarily found that five well determinations by the Office of Conservation for the State of Louisiana (Louisiana) are not supported by substantial evidence.[1] Louisiana's determinations find that gas produced from the five wells qualifies as natural gas produced from geopressured brine under section 107(c)(2) of the Natural Gas Policy Act of 1978 (NGPA).[2]

On September 6, 1994, WRT Energy Corporation (WRT), the applicant before Louisiana, filed a letter withdrawing its applications for the five wells. By letter dated September 9, 1994, the Commission advised WRT that the withdrawal nullified the applications and Louisiana's determinations and terminated the proceeding in Docket No GP94–16–000.

On September 19, 1994, WRT asked the Commission to allow it to withdraw its letter filed on September 6, 1994, and, if necessary, to reinstate the proceeding in Docket No. GP94–16–000. WRT states that it withdrew its applications because it believed that it would not have sufficient time to effectively respond to the preliminary finding but that after it withdrew its applications, it became aware that staff would allow WRT additional time to file comments.

Subsequently, WRT and Louisiana filed comments urging the Commission to reverse the preliminary finding on October 5, 1994. In addition, an informal conference was held on October 26, 1994, and WRT, Louisiana

[1] 68 FERC ¶ 61,186 (1994).

[2] The five wells are the Edna Delcambre #1 (JD94–04615), the Exxon Fee #13 (JD94–06209), the Exxon Fee #16–Alt (JD94–06208), the Exxon Fee #18–Alt (JD94–06207), and the Exxon Fee #24 (JD94–06206)

and the Interstate Oil and Gas Compact Commission (IOCC) filed comments urging the Commission to find that gas from the five wells qualify as geopressured brine gas on November 4, 1994, November 8, 1994, and November 4, 1994, respectively.

Pursuant to § 275.202(d) of the regulations, the letter WRT filed on September 6, 1994 nullified both the determinations and the underlying applications on that date.[3] However, since WRT states that it withdrew the applications due to a misunderstanding and has filed additional comments to support the applications, for good cause shown, we grant WRT's request to withdraw the letter filed on September 6, 1994, so as to reinstate its applications and Louisiana's determinations as of the date of this order. However, inasmuch as the proceeding in Docket No. GP94–16–00 has been terminated, the Commission will process the determinations, and underlying applications, in a new proceeding and hereby makes a preliminary finding in Docket No. GP94–18–000, pursuant to the procedures previously set forth in section 275.202(a) of the regulations, that Louisiana's determinations for the five wells are not supported by substantial evidence in the records upon which they were made for the reasons stated in our August 2, 1994 Notice of Preliminary Finding. In addition, the record in Docket No. GP94–16–000 is included in new Docket No. GP94–18–000.

The Commission will issue a final order in Docket No. GP94–18–000 no later than 120 days from the date hereof. Since the final order will consider the comments filed on the August 2, 1994 preliminary finding and the comments filed after the informal conference, WRT, Louisiana and the IOCC need not file additional comments.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 94–30533 Filed 12–12–94; 8:45 am]

BILLING CODE 6717–01–M

[3] Order No. 567, issued on July 28, 1994, rescinded the Commission's NGPA's regulations, including Section 275 as of that date (68 FERC ¶ 61,135). The Commission stated, however, that rescission of Part 275 is prospective only and that timely filed applications for well determination proceedings still pending before the Commission will continue to be subject to the requirements of Part 275 as that section existed before July 28, 1994.

[Docket No RP88–44–051]

El Paso Natural Gas Co.; Notice of Compliance Tariff Filing

December 7, 1994.

Take notice that on December 5, 1994, El Paso Natural Gas Company (El Paso), tendered for filing, pursuant to Part 154 of the Federal Energy Regulatory Commission (Commission) Regulations Under the Natural Gas Act and in compliance with the Commission's Order on Remand issued November 4, 1994 (November 4, 1994 order), at Docket No. RP88–44–045, certain tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1–A.

El Paso states that it is adding a new section 4.2(e) to its Capacity Allocation Procedure in compliance with the November 4, 1994, order in which the Commission ordered El Paso to revise its tariff to include provisions giving relief to any Shipper serving high priority end-users when that Shipper has exhausted all other self-help remedies in times of bona fide emergencies. Accordingly, section 4.2(e) provides for the allocation of capacity required to meet an emergency for firm Shippers serving high priority end-users in cases of a bona fide emergency that would result in irreparable injury to life or property, absent the availability of additional pipeline capacity.

El Paso respectfully requests that the Commission accept the tendered tariff sheets for filing and permit them to become effective January 4, 1995, which is not less than thirty (30) days following the date of the filing.

El Paso states that copies of the filing were served upon all of El Paso's interstate pipeline system transportation customers and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before December 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–30532 Filed 12–12–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–83–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 7, 1994

Take notice that on December 5, 1994, National Fuel Gas Supply Corporation (National), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, certain revised tariff sheets enumerated in Appendices A, B and C attached to the filing. The tariff sheets are proposed to be effective as set forth in Appendices A, B and C

National states that the purpose of the filing is to make certain corrections, clarifications and updates to its post-restructuring tariff.

In accordance with the revised filing requirements in Commission Order No 568, and the provisions of § 154.63(b)(1)(v) of the Commission's Regulations, National submits a "redlined" version of the tariff sheets submitted in the filing.

National states that it is serving copies of the filing to its customers, State Commissions, and other interested parties.

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, N.E., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 14, 1994 Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant 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.

Linwood A. Watson, Jr.,

Acting Secretary

[FR Doc 94–30529 Filed 12–12–94, 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–6–001]

Northwest Pipeline Corp.; Notice of Proposed Change in FERC Gas Tariff

December 7, 1994

Take notice that on December 5, 1994, Northwest Pipeline Corporation (Northwest), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets with a proposed effective date of November 6, 1994

Substitute Third Revised Sheet No. 232
Substitute Original Sheet Nos. 232–A through 232–D

Northwest states that the purpose of this filing is to comply with a Commission order issued on November 4, 1994 in Docket No. RP95–6–000. On October 6, 1994, Northwest made a filing with the Commission that proposed tariff language to provide for operational flow orders (OFOs) on Northwest's system, to enumerate the circumstances under which OFOs will be invoked, to impose penalties on parties who fail to abide by such OFOs, to limit a party's liability for actions taken in accordance with an OFO and to limit Northwest's liability for issuing OFOs, provided Northwest acts reasonably and in good faith. The Commission accepted and suspended these tariff sheets, subject to refund and conditions, to be effective November 6, 1994. The Commission directed Northwest to make six revisions of its tariff and specified certain other issues which will be discussed further at a technical conference with results being reported to the Commission within 120 days of the issuance of the November 4, 1994 Order.

Northwest states that a copy of this filing has been served upon all intervenors in Docket No. RP95–6–000, upon Northwest's jurisdictional customers and upon affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before December 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–30530 Filed 12–12–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–100–003]

Texas Gas Transmission Corp.; Notice of Refund Report

December 7, 1994.

Take notice that on October 14, 1994, Texas Gas Transmission Corporation (Texas Gas), tendered for filing with the Federal Energy Regulatory Commission (Commission) a report summarizing refunds disbursed on September 30, 1994, pursuant to its Order No. 528 Take or Pay settlement in Docket Nos. RP92–100, *et al.* The settlement was approved by the Commission's order issued August 4, 1994, and became effective as of September 6, 1994. The settlement between Texas Gas and its former direct jurisdictional firm sales customers resolves all proceedings involving the flowthrough of take or pay buydown or buyout costs from upstream pipeline suppliers pursuant to Order Nos. 500, 528, and 528A. The amounts refunded are as described in Article II of the settlement and in schedules attached to the refund report.

Pursuant to Article II of the Settlement, Texas Gas states that it refunded the following amounts, plus interest: the Koch Settlement Amount of $16,500,000; $15,444,679 from Texas Gas; the Texas Eastern Settlement Amount of $4,706,991; and the Tennessee Flowthrough Settlement Amount of $2,318,632. Texas Gas also states that the refunds were distributed based on the appropriate allocation factors, which were filed with the Commission on September 20, 1994.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before December 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–30531 Filed 12–12–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research

Energy Research Financial Assistance Program Notice 95–08: Electron Beam Irradiation of Medical Waste

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research (ER), U.S. Department of Energy (DOE), announces its interest in receiving applications for support of the research and development of technology for commercial exploitation of electron beam sterilization of infectious hospital waste in preparation for disposal. It is essential that the research be conducted at a public, urban teaching hospital affiliated with a comprehensive medical school and research center with an active electron beam program and documentable experience in operating a functional machine. In recent years, the practice of handling medical infectious waste by incineration or autoclaving has resulted in public controversies in terms of environmental and public health issues. Irradiation of medical infectious waste by electrons might provide an environmentally safe and publically acceptable method for disposing of this waste. Applications should also address: (a) Monitoring and validating the treatment efficacy; (b) pre-irradiation processing of waste, and (c) economic feasibility of this approach.

Before preparing a formal application, potential applicants are encouraged to submit a brief preapplication, in accordance with 10 CFR 600.10(d)(2), which consists of two to three pages of narrative describing research objectives and methods of accomplishment. The preapplications will be reviewed relative to the scope and research needs for the commercial exploitation of electron irradiation technology for medical waste disposal. Preapplications referencing program Notice 95–08 should be received by January 1, 1995, and sent to Dr. Matesh N. Varma, Office of Health and Environmental Research, ER–73, U.S. Department of Energy, GTN, Washington, D.C. 20585, telephone: (301)903–3209. Telephone and telefax numbers are required to be a part of the preapplication. A response to the preapplications discussing potential relevance of a formal application will be communicated by January 15, 1995.

DATES: Formal applications submitted in response to this notice must be received by 4:30 p.m., E.S.T., March 8, 1995, to be accepted for a May review and to permit timely consideration for award in Fiscal Year 1995.

ADDRESSES: Formal applications referencing Program Notice 95–08 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, (GTN), Washington, D.C. 20585. Attn: Program Notice 95–08. The following address must be used when submitting applications by U.S. Postal Service Express Mail, any commercial mail

delivery service, or when hand-carried by the applicant: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER INFORMATION CONTACT: Dr. Matesh N. Varma, Office of Health and Environmental Research, ER–73, U.S. Department of Energy, GTN, Washington, D.C. 20585, telephone: (301)903–3209.

SUPPLEMENTARY INFORMATION: DOE is interested in receiving research applications focused on the study of electron irradiation for treatment of medical waste. Additional information can be obtained by contacting Dr. Matesh N. Varma at (301)903–3209.

It is anticipated that approximately $1 million will be available for one award during Fiscal Year 1995, contingent upon availability of funds. Information about development and submission of applications, eligibility, limitations, evaluation and selection processes, and other policies and procedures may be found in the Application Guide for the Office of Energy Research Financial Assistance Program and 10 CFR Part 605. The Application Guide is available from the U.S. Department of Energy, Office of Health and Environmental Research, ER–73, GTN, Washington, D.C. 20585. Telephone requests may be made by calling (301)903–5349.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, D.C. on November 28, 1994.

D.D. Mayhew,

Director, Office of Management, Office of Energy Research.

[FR Doc. 94–30578 Filed 12–12–94; 8:45 am]

BILLING CODE 6450–01–P

Energy Research Financial Assistance Program Notice 95–07; Energy Biosciences

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant preapplications.

SUMMARY: The Office of Basic Energy Sciences of the Office of Energy Research (ER), U.S. Department of Energy (DOE) announces its interest in receiving preapplications from potential applicants for research funding in the Energy Biosciences program area. The intent in asking for a preapplication is to save the time and effort of applicants in preparing and submitting a formal project application that may be inappropriate for the program. The preliminary screening of research ideas is aimed also at relieving some of the burden of the scientific community in peer reviewing an excessive number of research applications. The preapplication should consist of a two to three page concept paper about the research being contemplated as a potential, formal application to the Energy Biosciences program. The concept paper should focus on the objectives of the planned research, its scientific goals and their significance, an outline of the approaches planned, and any other information that relates to the planned research. No budget information or biographical data need be included; nor is an institutional endorsement necessary. The preapplication gives DOE the opportunity to evaluate the technical suitability of submitting a formal application for support of research ideas. A response indicating the appropriateness of submitting a formal application will be sent from the Division of Energy Biosciences office in time to allow for an adequate preparation period for a formal application.

DATES: For timely consideration, all preapplications should be received by February 22, 1995. Earlier submissions are encouraged and fax submissions are acceptable (Fax Number [301] 903–1003). A response to timely preapplications will be communicated by April 20, 1995. The deadline for receipt of formal applications is June 7, 1995.

ADDRESSES: Preapplications referencing Program Notice 95–07 should be forwarded to: U.S. Department of Energy, Office of Basic Energy Sciences, ER–17, Division of Energy Biosciences, Washington, D.C. 20585, Attn: Program Notice 95–07. The following address must be used when submitting preapplications by U.S. Postal Service Express, any commercial mail delivery service, or when handcarried by the applicant: U.S. Department of Energy, Division of Energy Biosciences, ER–17, 19901 Germantown Road, Germantown, MD 20874. Fax submissions are acceptable (Fax Number [301] 903–1003).

FOR FURTHER INFORMATION CONTACT: Ms. Pat Snyder, Division of Energy Biosciences, Office of Basic Energy Sciences, ER–17, Washington, D.C. 20585, telephone: (301) 903–2873.

SUPPLEMENTARY INFORMATION: Before preparing a formal application, potential applicants should submit a brief preapplication in accordance with 10 CFR 600.10(d)(2), which consists of two to three pages of narrative describing research objectives. These will be reviewed relative to the scope and the research needs of the Energy Biosciences program. The Energy Biosciences program has the mission of generating *fundamental* biological information about plants and non-medical related microorganisms that can provide support for future energy related biotechnologies. The objective is to pursue *basic* biochemical, genetic and physiological investigations that may contribute towards providing alternate fuels, petroleum replacement products, energy conservation measures as well as other technologies, such as phytoremediation, related to DOE programs. Areas of interest include bioenergetic systems, including photosynthesis; control of plant growth and development, including metabolic, genetic, and hormonal and ambient factor regulation, metabolic diversity, ion uptake, transport and accumulation, stress physiology and adaptation; genetic transmission and expression; plant-microbial interactions, plant cell wall structure and function; lignocellulose degradative mechanisms; mechanisms of fermentations, genetics of neglected microorganisms, energetics and membrane phenomena; thermophily (molecular basis of high temperature tolerance); microbial interactions; and one-carbon metabolism, which is the basis of biotransformations such as methanogenesis. The objective is to discern and understand basic mechanisms and principles.

Funds are expected to be available for new grant awards in FY 1996. The magnitude of these funds available and the number of awards which can be made will depend on the budget process. The new awards made during FY 1994 averaged about $87,000 per year. Most awards are funded for a three-year period. The principal purpose in using preapplications at this time is to reduce the expenditure of time and effort of all parties. Information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures may be found in the Application Guide for the Office of Energy Research Financial Assistance Program and 10 CFR Part 605. The Application Guide for the Office of Energy Research Financial Assistance Program for formal submissions and copies of 10 CFR Part 605 are available from U.S. Department of Energy, Office of Basic Energy Sciences, ER–17,

Division of Energy Biosciences, Washington, D.C. 20585. Telephone requests may be made by calling (301) 903–2873. Instructions for preparation of a formal application are number for this program is 81.049.

Issued in Washington, D.C., on November 28, 1994.

D.D. Mayhew,

Director, Office of Management, Office of Energy Research.

[FR Doc. 94–30500 Filed 12–12–94; 8:45 am]

BILLING CODE 6450–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SES Performance Review Board Members

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the SES Performance Review Board of EEOC.

FOR FURTHER INFORMATION CONTACT: Patricia Cornwell Johnson, Director, Human Resources Management Services, Equal Employment Opportunity Commission, 1801 L Street, N.W., Washington, D.C., 20507, (202) 663–4306.

SUPPLEMENTARY INFORMATION: Pursuant to the requirement of Section 4314 (c)(1), Chapter 43 Title 5 U.S.C., membership of the SES Performance Review Board is as follows: Ms. Ronnie Blumenthal, Director, Office of Federal Operations, Equal Employment Opportunity Commission (Chairperson); Mr. Bland Brockenborough, Assistant Commissioner, Financial Management Service, Department of Treasury; Ms. Jeanette Lim, Director, Policy Enforcement and Program Services, Department of Education; Ms. Elizabeth Thornton, Deputy Legal Counsel, Equal Employment Opportunity Commission (Alternate). Signed at Washington, D.C. on this 7th day of December 1994.

For the Commission.

Gilbert F. Casellas,

Chairman.

[FR Doc. 94–30523 Filed 12–12–94; 8:45 am]

BILLING CODE 6570–06–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2045]

Petition for Reconsideration of Actions in Rulemaking Proceedings

December 8, 1994.

Petition for reconsideration have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to these petitions must be filed December 28, 1994. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Duluth, Minnesota).

Petition Filed: 1.

Subject: Implementation of Section 309(j) of the Communications Act—Competitive Bidding. (PP Docket No. 93–253).

Petition Filed: 1.

Subject: Amendment of the Amateur Service Rules to Change Procedures for Filing an Amateur Service License Application and to make other Procedural Changes.

Petition Filed: 1.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–30541 Filed 12–12–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

[Fact Finding Investigation No. 21]

Activities of the Trans-Atlantic Agreement and its Members; Notice of Hearing in Washington DC

December 7, 1994.

Pursuant to Commission Order issued July 27, 1994, instituting Fact Finding Investigation No. 21 ("the Fact Finding Order"), notice is hereby given that the Investigative Officers will conduct a hearing concerning various activities and practices by the Trans-Atlantic Agreement ("TAA") and its members which are alleged to be anticompetitive or otherwise violative of the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.*. The Investigative Officers will take testimony under oath, and receive documents in evidence, as appropriate In the discretion of the Investigative Officers, portions of this hearing may be conducted in non-public session, as authorized by the Fact Finding Order

Hearings in Fact Finding Investigation No. 21 will be conducted in Washington DC, at the following location:

Federal Maritime Commission, Hearing Room No. 1, 800 North Capitol St., NW., Washington, DC 20573

The hearings will commence in public session at 10 a.m. on January 11, 1995, and may be conducted on subsequent days at the same location, as appropriate.

Charles L. Haslup, III,

Investigative Officer.

[FR Doc. 94–30539 Filed 12–12–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Crestar Financial Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has 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.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the

evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 2, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Crestar Financial Corporation, Richmond, Virginia; to acquire TideMark Bancorp, Inc., Newport News, Virginia, and thereby indirectly acquire TideMark Bank, Newport News, Virginia, and engage in operating a savings and loan association, pursuant to § 225.25(b)(9) of the Board's Regulation Y. Crestar also has applied to acquire 19.9 percent of TideMark Bank, Newport News, Virginia.

Board of Governors of the Federal Reserve System, December 7, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-30550 Filed 12-12-94; 8:45 am]

BILLING CODE 6210-01-F

IBW, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 6 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. IBW, Inc., Washington, D.C.; to become a bank holding company by acquiring 100 percent of the voting shares of Industrial Bank of Washington. Washington, D.C.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Regions Financial Corporation, Birmingham, Alabama; to merge with First Commercial Bancshares, Inc., Chalmette, Louisiana, and thereby indirectly acquire First National Bank of St. Bernard Parish, Chalmette, Louisiana.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Boatmen's-Illinois, Inc, St. Louis, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Boatmen's Bank of South Central Illinois, Mt. Vernon, Illinois.

2. Boatmen's Bancshares, Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of Salem Community Bancorp, Inc., Salem, Illinois, and thereby indirectly acquire Community State Bank, Salem, Illinois.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Cheyenne Banking Corporation, Cheyenne, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Security State Bank, Cheyenne, Oklahoma.

E. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. The ANB Corporation, Terrell, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of The ANB Delaware Corporation, Terrell, Texas, and thereby indirectly acquire The American National Bank of Terrell, Terrell, Texas. In connection with this application, The ANB Delaware Corporation, Terrell, Texas; also has applied to become a bank holding company by acquiring 100 percent of the voting shares of The American National Bank of Terrell, Terrell, Texas.

2. Paladon Management Company, Inc., Panhandle, Texas; also has applied to become a bank holding company by acquiring 1 percent of the voting shares, and voting authority for 100 percent of Panhandle Investments, Ltd., Panhandle, Texas, and thereby indirectly acquire Panhandle Bancshares, Inc., Panhandle, Texas, and First National Bank of Panhandle, Panhandle, Texas. In connection with this application, Paladon Investments, Ltd., Panhandle, Texas; to become a bank holding company by acquiring 41.29 percent of the voting shares of Panhandle Bancshares, Inc., Panhandle, Texas, and thereby indirectly acquire Panhandle National Bank of Panhandle, Panhandle, Texas, and First National Bank of Panhandle, Panhandle, Texas.

Board of Governors of the Federal Reserve System, December 7, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-30551 Filed 12-12-94; 8:45 am]

BILLING CODE 6210-01-F

Keystone Financial; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 94-29458) published on page 61335 of the issue for Wednesday, November 30, 1994.

Under the Federal Reserve Bank of Phildelphia heading, the entry for Keystone Financial, Inc., is revised to read as follows:

1. Keystone Financial, Inc., Harrisburg, Pennsylvania; to acquire Frankford Trust Company, Philadelphia, Pennsylvania, and thereby engage directly and indirectly in trust activities of the former Frankford Trust Company, Philadelphia, Pennsylvania, to be renamed Key Trust Company, pursuant to section 225.25(b)(3) of the Board's Regulation Y.

Comments on this application must be received by December 13, 1994.

Board of Governors of the Federal Reserve System, December 7, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-94-30552 Filed 12-12-94; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Performance Review Board; Membership; Senior Executive Service

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT:

Gail T. Lovelace, Director of Personnel, General Services Administration, 18th & F Streets NW., Washington, DC 20405, (202) 501–0398.

SUPPLEMENTARY INFORMATION: Section 4313(c) (1) through (5) of Title 5 U.S.C. requires each agency to establish in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Board(s). The Board(s) shall review the performance rating of each senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Members of the Review Board are:

1. Julia M. Stasch, (Chairperson) Deputy Administrator
2. Karen R. Adler, Regional Administrator, Northeast and Caribbean Region (New York)
3. Paul E. Chistolini, Regional Administrator, Mid-Atlantic Region (Philadelphia)
4. Thurman M. Davis, Regional Administrator, National Capital Region (Washington, DC)
5. Dennis J. Fischer, Chief Financial Officer
6. Marlene M. Johnson, Associate Administrator for Management Services and Human Resources
7. Kenneth R. Kimbrough, Commissioner, Public Buildings Service
8. Frank P. Pugliese, Commissioner, Federal Supply Service
9. Joe M. Thompson, Commissioner, Information Technology Service

Dated: December 6, 1994.

Gail T. Lovelace,

Director of Personnel.

[FR Doc. 94–30564 Filed 12–12–94; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on State and Community Health Statistics: Meeting

Pursuant to Public Law 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following meeting.

Name: NCVHS Subcommittee on State and Community Health Statistics.

Time and Date: 9 a.m.–5 p.m., January 19, 1995.

Place: Room 303A, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, D.C. 20201.

Status: Open.

Purpose: The subcommittee will meet to discuss issues related to State and community statistics and to develop a work plan for the coming year.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Dated: December 1, 1994.

William H. Gimson,

Acting Associate Director for Policy Coordination, Center for Disease Control and Prevention (CDC).

[FR Doc. 94–30538 Filed 12–12–94; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

[Docket No. 94F–0152]

Roquette America, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Roquette America, Inc., has filed a petition proposing that the food additive regulations be amended to permit the manufacture of mannitol by fermentation of sugars or sugar alcohols such as glucose, sucrose, fructose, or sorbitol by the action of the yeast *Zygosaccharomyces rouxii.*

DATES: Written comments on the petitioner's environmental assessment by January 12, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857

FOR FURTHER INFORMATION CONTACT: Rosalie M. Angeles, Center for Food Safety and Applied Nutrition (HFS–207), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3107

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 4A4412) has been filed by Roquette America, Inc., c/o Keller and Heckman, 1001 G St. NW., Washington, DC 20001 The petition proposes that the food additive regulations in § 180.25 *Mannitol* (21 CFR 180.25) be amended to permit the manufacture of mannitol by fermentation of sugars or sugar alcohols such as glucose, sucrose, fructose, or sorbitol by the action of the yeast *Zygosaccharomyces rouxii.*

As part of FDA's comprehensive safety review of substances on the list of substances generally recognized as safe (GRAS), the safety of mannitol as a food ingredient was evaluated in 1972 by the Select Committee on GRAS Substances (SCOGS) from the Life Sciences Research Office of the Federation of American Societies for Experimental Biology (FASEB). SCOGS concluded that mannitol was safe when used in food at current or reasonably expected future levels. In the **Federal Register** of July 26, 1973 (38 FR 20046), FDA proposed to affirm the GRAS status of mannitol that was manufactured by the process then known to the agency.

In response to the proposal, the agency received a comment stating that mannitol was also commonly manufactured by a process different from that set out in the proposed GRAS affirmation. The agency also received information raising questions about the safety of mannitol. Data from studies on mannitol demonstrated a significant (but not dose related) incidence of benign thymomas, and an abnormal growth of thymus gland tissue, in female rats fed mannitol.

As a result of these findings, the agency concluded that additional data were necessary to evaluate the safety of mannitol. Thus, in the **Federal Register** of September 23, 1974 (39 FR 34178), the agency declined to affirm the use of mannitol as GRAS and, instead, established an interim food additive regulation for use of mannitol at existing levels. The interim regulation, § 121.4005 (21 CFR 121.4005) (redesignated as § 180.25 (21 CFR 180.25)) required that mannitol be manufactured by either the process FDA had proposed to affirm as GRAS or the process described in the comment.

Following the publication of the interim food additive regulation, the agency received data that showed an increased combined incidence of medullary hyperplasia and pheochromocytoma of the adrenal glands in Fischer rats fed a diet of 10 percent mannitol. No such mannitol-treatment effect, however, was observed in Sprague-Dawley and Wistar rats.

In 1985, FASEB, under contract with FDA, established an ad hoc Expert Panel on Sugar Alcohols and Lactose to study certain effects that had been observed in animal experiments in which the test animals were fed sugar alcohols and lactose. In a report submitted to FDA in 1986, "Health Aspects of Sugar

Alcohols and Lactose," FASEB concluded that there was a statistically significant increased incidence of adrenal medullary hyperplasia and pheochromocytoma in rats fed high levels of sugar alcohols, including mannitol. The report further concluded that the existing data provided no satisfactory mechanistic explanations of these adrenal medullary lesions, which are commonly found in aged rats maintained on standard laboratory diets.

FDA is continuing to evaluate the FASEB report on sugar alcohols, including mannitol, as well as other data from animal studies of these substances to determine whether any regulatory action is appropriate for any or all of the sugar alcohols. During this period of continuing evaluation, mannitol continues to be listed, on an interim basis, for food use.

Roquette America's petition to amend the interim food additive regulation on mannitol, if granted, would not change the allowed uses of mannitol; it would simply permit a new method of manufacture of the additive. The subject regulation on mannitol specifies manufacturing procedures that do not include the fermentation process used in Roquette's production of mannitol. To permit a new manufacturing method, Roquette's petition proposes to amend the interim food additive regulation (§ 180.25) to provide for the use of *Zygosaccharomyces rouxii* in the fermentation process of producing mannitol from sugars and sugar alcohols.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before January 12, 1995, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: November 28, 1994.

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–30585 Filed 12–12–94; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Program Announcement and Proposed Minimum Percentages for "High Rate" and "Significant Increase in the Rate" for Implementation of the General Statutory Funding Preference for Grants for Podiatric Primary Care Residency Training Programs

The Health Resources and Services Administration (HRSA) announces that applications will be accepted for fiscal year (FY) 1995 Grants for Podiatric Primary Care Residency Training Programs under the authority of section 751, title VII of the Public Health Service Act, as amended by the Health Professions Education Extension Amendments of 1992, Pub. L. 102–408, dated October 13, 1992. Comments are invited on the proposed minimum percentages for "high rate" and "significant increase in the rate" for the implementation of the general statutory funding preference.

Approximately $600,000 will be available in FY 1995 for this program. It is anticipated that the $600,000 will support approximately 7 competing awards averaging $86,000.

Purpose

Section 751 authorizes the award of grants for the purpose of planning and implementing projects in primary care training for podiatric physicians in approved or provisionally approved residency programs which shall provide financial assistance in the form of traineeships to residents who participate in such projects and who plan to specialize in primary care.

Eligibility

Eligible entities for this program are schools of podiatric medicine and public and nonprofit private hospitals. As noted above, the authorizing legislation limits eligibility to residency programs that are approved or provisionally approved. The Council on Podiatric Medical Education (CPME), the recognized accrediting body for podiatric medicine, uses the term "candidate status" in lieu of "provisional approval." For the purposes of this program "candidate status" will be accepted as meeting the statutory requirement for "provisional approval."

Applicants to this program that are planning to initiate a new podiatric primary care residency program are expected to apply to CPME for candidate status. Grants will only be awarded to applicants that can demonstrate the attainment of candidate status by July 1, 1995. The application for Federal funding must demonstrate, through responses to the program specifications, that an adequate emphasis will be placed on podiatric primary care.

The period of Federal support should not exceed 3 years.

National Health Objectives for the Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Podiatric Primary Care Residency Training Program is related to the priority area of Educational and Community-Based Programs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

The following project requirements and review criteria were established in FY 1989, after public comment and are

being extended by the Administration in FY 1995.

Project Requirements

Each project must have:

a. A project director who is employed by the grantee institution and has completed at least one year of podiatric residency training and has at least one year of clinical teaching experience; or is board certified in a recognized specialty area in podiatric medicine and has at least 5 years of clinical teaching experience;

b. An appropriate administrative and organizational plan and appropriate faculty, staff and facility resources for the achievement of stated objectives;

c. A systematic evaluation of the educational program, including the performance and competence of trainees and faculty, the administration of the program, and the degree to which program and educational objectives are met;

d. Use of ambulatory care settings where podiatric primary care is practiced and where an adequate portion of the clinical training is conducted;

e. A curriculum which:

1. Is appropriate for the academic level of the trainees and the specific length and nature of the educational program;

2. Supplements any practical (including clinical) experiences with related educational activities; and

3. Includes: A minimum of 20 percent of curriculum time devoted to supervised instruction in ambulatory clinical settings; instruction in behavioral sciences and the development of psychosocial skills and topics; and a supervised clinical experience in a family medicine or general internal medicine ambulatory care setting;

f. A sufficient number of residents to assure an adequate collegial environment for the educational program and to enhance cost-efficiency;

g. An adequate number of qualified faculty with training and experience in podiatric medicine, and behavioral sciences and liaison faculty in related program areas for the number of residents in the program. The faculty in the program must be engaged in periodic faculty development activities to improve their teaching skills;

h. Adequate facilities for the conduct of the educational activities and, in particular, have ambulatory care space sufficient to provide an adequate clinical experience for the residents; and

i. A sufficient number of patients with a variety of health care needs to provide the resident with a broad clinical experience.

Review Criteria

The HRSA will review applications based on an analysis of the following factors:

(1) The degree to which the proposed project provides for the project requirements;

(2) The administrative and management capability of the applicant to carry out the proposed project in a cost effective manner;

(3) The degree to which the proposed training program emphasizes training in podiatric primary care settings; and

(4) The potential of the project to continue on a self sustaining basis.

Other Considerations

In addition, the following funding factors may be applied in determining funding of approved applications.

A funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories or groups of approved applications.

It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

General Statutory Funding Preference

As provided in section 791(a) of the PHS Act, preference will be given to qualified applicants that:

(1) have a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or

(2) have achieved, during the 2-year period preceding the fiscal year for which an award is sought, a significant increase in the rate of placing graduates in such settings.

This preference will only be applied to applications that rank above the 20th percentile of proposals recommended for approval by the peer review group.

"High rate" is defined as a minimum of 25 percent of the combined Podiatric Primary Care Residency graduates in academic years 1991–92, 1992–93 and 1993–94, who spend at least 50 percent of their worktime in clinical practice in medically underserved communities.

"Significant increase in the rate" means that, between academic years 1992–93 and 1993–94, the rate of placing graduates in medically underserved communities has increased by at least 50 percent and that not less than 15 percent of graduates from the most recent year are working in medically underserved communities.

Additional information concerning the implementation of this preference has been published in the **Federal Register** at 59 FR 15743, dated April 4, 1994.

Program Specific Statutory Funding Preference

Under section 751(b) of title VII, preference will be given to qualified applicants that "provide clinical training in podiatric medicine in a variety of medically underserved communities."

Information Requirements Provision

Under section 791(b) of the Act, the Secretary may make an award under the Grants for Podiatric Primary Care Residency Training Programs only if the applicant for the award submits to the Secretary the following information

1. A description of rotations of preceptorships for students, or clinical training programs for residents, that have the principal focus of providing health care to medically underserved communities.

2. The number of faculty on admissions committees who have a clinical practice in community-based ambulatory settings in medically underserved communities.

3. With respect to individuals who are from disadvantaged backgrounds or from medically underserved communities, the number of such individuals who are recruited for academic programs of the applicant, the number of such individuals who are admitted to such programs, and the number of such individuals who graduate from such programs.

4. If applicable, the number of recent graduates who have chosen careers in primary health care.

5. The number of recent graduates whose practices are serving medically underserved communities.

6. A description of whether and to what extent the applicant is able to operate without Federal assistance under this title. Additional details concerning the implementation of this information requirement have been published in the **Federal Register** at 58 FR 43642, dated August 17, 1993, and will be provided in the application materials.

Additional Information

Interested persons are invited to comment on the proposed minimum percentages for "high rate" and "significant increase in the rate" for implementation of the general statutory funding preference. The comment period is 30 days. All comments received on or before January 12, 1995,

will be considered before the final minimum percentages for "high rate" and "significant increase in the rate" for implementation of the general statutory funding preference are established. Written comments should be addressed to: Marc L. Rivo, M.D., M.P.H., Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 9A–05, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays, (Federal holidays excepted), between the hours of 8:30 a.m. and 5:00 p.m.

Requests for application materials, questions regarding grants policy and business management aspects should be directed to: Ms. Judy Bowen (D31), Grants Management Specialist, Residency and Advanced Grants Section, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6960, FAX (301) 443–6343.

Completed applications should be returned to the Grants Management Officer at the above address.

If additional programmatic information is needed, please contact: Ms. Helen Lotsikas, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 9A–27, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1467, FAX (301) 443–8890.

Paperwork Reduction Act

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB Clearance Number is 0915–0060.

The deadline date for receipt of applications is February 17, 1995. Applications will be considered to be "on time" if they are either:

(1) Received on or before the established deadline date, or

(2) Sent on or before the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant.

This program, Grants for Podiatric Primary Care Residency Training Programs, is listed at 93.181 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: December 6, 1994.

Ciro V. Sumaya,

Administrator.

[FR Doc. 94–30442 Filed 12–12–94; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–7122–03–8534]

Proposed Reestablishment of the Little Rock Mine in Grant County, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an environmental impact statement (EIS) and notice of scoping meeting.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Land Management (BLM), Las Cruces District Office, will be directing the preparation of an EIS to be prepared by a third party contractor. The EIS will describe the potential impacts of the proposed reestablishment of the Little Rock open-pit copper mining project located approximately 10 miles southwest of Silver City in Grant County, New Mexico. The proposed Little Rock Project would reestablish an open-pit copper mining operation at a site that was developed and operated sporadically between the 1950′ and 1972. The proposed Little Rock Project would resume mining operations at the site and would have a projected operating life of between 2 and 4 years.

The public is invited to participate in the planning process. A public scoping meeting will be held at the following time and location:

Time/Date	Location
7:00 p.m., Jan. 5, 1995	Western New Mexico University, Light Hall Building, College Avenue (no street address), Silver City, New Mexico.

DATES: Written comments on the scoping process will be accepted through January 17, 1995.

ADDRESSES: Comments should be sent to Juan Padilla, Bureau of Land Management, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Juan Padilla, BLM Las Cruces District Office, at (505) 525–4376.

SUPPLEMENTARY INFORMATION: In 1993, Phelps Dodge Mining Company submitted a Plan of Operations (POO) to reestablish mining activities at the Little Rock mine. Since it was indicated by the BLM that the preparation of an EIS would likely be required, no Environmental Assessment (EA) was done. Instead, Phelps Dodge agreed to proceed in preparing an EIS and completed a Memorandum of Agreement (MOA) between themselves, the BLM, and the United States Forest Service (USFS) outlining the responsibilities of each party to the agreement.

Phelps Dodge and the current owner, MM Holdings of San Jose, California, have entered into a lease-purchase agreement whereby Phelps Dodge has an option to purchase the Little Rock property pending a successful effort on its part to obtain the necessary environmental and operating permits and approvals.

The Little Rock mine is a small oxide copper deposit located approximately 1 mile west of the existing Phelps Dodge mining operation at Tyrone, New Mexico. It has operated sporadically, most recently between 1970 and 1972, producing copper via leaching and subsequent copper cementation.

As proposed in the POO, the project would be a conventional open-pit mining operation with a daily production rate of as high as 160,000 tons for a period of between 2 and 4 years. No processing or waste disposal facilities are planned for the project area. All material mined will be transported to the existing Tyrone mine facilities via a haul road to be constructed from the Tyrone mine to the project site. Overburden or other inert, non-mineralized materials will be transported to the existing Tyrone tailing dams for use as cover material for tailing dam closure or stockpiled for reclamation of the site. All leachable material will be processed at existing permitted processing sites at the Tyrone mine. All solid wastes generated at the Little Rock mine will be transported to and disposed of at existing permitted facilities at the Tyrone mine.

No permanent facilities will be constructed for the operations proposed

under this Plan, with the possible exception of dewatering facilities if required by the New Mexico State Engineer or the New Mexico Environment Department. Minimal associated facilities specific to future mining of this site will be required and will consist of a temporary office trailer, a dewatering system, a water pipeline and fill station to provide water for dust suppression, a 46kV power distribution system, and a fuel dock. All these facilities will be transported or aligned along the proposed haul road or existing routes and will be removed upon completion of mining.

All mine overburden (waste) will be hauled off-site to be stockpiled on private property on top of existing, permitted Phelps Dodge tailing piles located northeast of the site. All suitable leach material mined from the site will be hauled to existing, permitted leach facilities on Phelps Dodge property. Existing leach and waste stockpiles from prior mining activities on the site would also be removed to these sites or remediated in-place, as required.

Remaining waste products from the mining operations will be negligible since maintenance, office, and managerial functions will be located at the Tyrone mine. The Little Rock mine and associated facilities will be provided with trash dumpsters and will utilize the existing Tyrone solid waste landfill.

Reclamation of some items (e.g., removal of existing foundations, stockpiles and trash) would be done prior to, or concurrent with, mining activities. All existing debris would be transferred to the Tyrone mine for recycling or disposal. All non-recyclable materials will be disposed of at Tyrone's existing solid waste landfill. Reclamation of the majority of the site will follow mining to allow final limits of disturbance to be determined.

The EIS will address issues of geology and minerals, soils, water resources, vegetation, wildlife, range management, air quality, visual resources, reclamation, land use, access, recreation, wilderness, cultural resources, social and economic values, transportation and noise.

The BLM has identified the following potentially significant impacts as requiring additional analysis: The quality and quantity of post-mining water generated by the open pit; the effect on surface water quality and riparian areas of the proposed haul road to the Little Rock site; and the effect on surface water quality and riparian areas of the proposed diversion of California Gulch around the Little Rock site.

Because these issues were determined to require special investigation, it is anticipated that the majority of work for other resources will be limited to summarizing and incorporating by reference data and analyses from existing environmental studies as prescribed in 40 CFR 1500.4 and 1500.5. Additional investigation may be indicated for other resources after review of existing data and comments received during the scoping process.

BLM's scoping process for the EIS will include: (1) Identification of issues to be addressed; (2) identification of viable alternatives; and (3) notifying interested groups, individuals, and agencies so that additional information concerning these issues can be obtained. The scoping will consist of a news release announcing the start of the EIS process; letters of invitation to participate in the scoping process; and a scoping document which further clarifies the proposed action and significant issues being considered to be distributed to those on the mailing list and available upon request.

Dated: December 7, 1994.

Linda S.C. Rundell,

District Manager, Las Cruces.

[FR Doc. 94–30536 Filed 12–12–94; 8:45 am]

[NM–930–1310–01; NMNM 68086]

Notice of 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 NMNM 68086, Roosevelt County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from May 1, 1994, 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 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 effectively May 1, 1994, 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: Becky Olivas, BLM, New Mexico State Office, (505) 438–7609.

Dated: December 1, 1994.

Becky C. Olivas,

Acting Chief, Lease Maintenance Unit.

[FR Doc. 94–30560 Filed 12–12–94; 8:45 am]

BILLING CODE 4310–FB–M

[MT–070–05–1430–01; MT82585]

Notice of Realty Action; Exchange

AGENCY: Bureau of Land Management, USDI.

ACTION: Correction.

SUMMARY: In notice document 94–27335 on page 55281 in the issue of Friday, November 4, 1994, make the following corrections:

The paragraph which follows the legal description of the public lands should read: "In exchange for some of these lands, the Untied States will acquire the following described land from Mr. Jack Thomas:"

The legal description of the private land to be acquired should have T11S, R11W included in the description.

In the last paragraph the estimated completion date should be April 1995 rather the December 1994.

Dated: December 5, 1994.

Orval L. Hadley,

Associate District Manager.

[FR Doc. 94–30562 Filed 12–12–94; 8:45 am]

BILLING CODE 4310–DN–M

Fish and Wildlife Service

Availability of a Final Supplemental Programmatic Environmental Impact Statement on the Federal Aid in Sport Fish Restoration (SFR) and Federal Aid in Wildlife Restoration (WR) Programs

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Fish and Wildlife Service has reviewed the operation of the SFR and WR Programs into the next century and has completed a Supplemental Programmatic Environmental Impact Statement (SPEIS) to the Program Environmental Impact Statement (EIS) published in 1978. The data, analyses, and conclusions of the 1978 EIS, where still valid, are incorporated by reference

ADDRESSES: Copies are available from the US Fish and Wildlife Service, Division of Federal Aid, Arlington Square 140, 4401 North Fairfax Drive,

Arlington, Virginia, 22203, during normal working hours.

FOR FURTHER INFORMATION CONTACT: Columbus H. Brown, Chief, Division of Federal Aid, (703) 358–2156.

SUPPLEMENTARY INFORMATION: Since the 1978 EIS, continued population growth has resulted in intensified resource use; values, interests, and leisure-time activities have increased demand for non-consumptive uses; and natural resources management priorities, Federal laws and funding patterns have altered the Program.

No change to the existing Program direction has been selected as the SPEIS preferred alternative. Overwhelming support of the existing program was indicated by respondents to the draft document issued in November 1993. The majority of comments urged that the Program remain unchanged and cited examples of successful cooperative projects that have been undertaken. Most comments expressed belief that States are the best qualified to assess the needs of their citizens for the management of fish and wildlife resources. The view was also expressed that the Federal government should not become more involved in establishing priorities for State projects.

The WR Program will continue to provide positive benefits for game species, non-game wildlife species/biodiversity, threatened endangered species, wetland/floodplain habitat, terrestrial habitat, recreation, local economies, social values, and cultural resources. The SFR Program will continue to provide positive benefits for sport fish, non-game fish species and diversity, threatened and endangered species, recreation, local economies, and social values.

Dated: December 5, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–30579 Filed 12–12–94; 8:45 am]

BILLING CODE 4310–55–M

Geological Survey

National Digital Cartographic Data Base

SUMMARY: The U.S. Geological Survey (USGS) needs to obtain Digital Line Graphs (DLG), Digital Elevation Models (DEM), Digital Raster Graphics (DRG), and Digital Orthophotoquads (DOQ) captured from or registered to USGS primary series topographic maps for entry into the National Digital Cartographic Data Base (NDCDB) as part of the public domain. The USGS recognizes the public benefit of obtaining DLG, DEM, DLG, and DOQ data prepared by State and local government agencies, public utilities, and private firms. The USGS seeks to identify other sources of digital map data for areas now lacking DLG, DEM, DRG, or DOQ coverage, and to obtain technically acceptable data through cooperative agreements. When it is in the Government's interest, and subject to the availability of appropriated funds, the USGS will assist qualified organizations in preparing digital map data to USGS standards for NDCDB archiving and public distribution in non-proprietary formats.

DATES: Program Announcement 8080 is expected to be available in December 1994. Prospective applicants are requested to state in writing their interest.

ADDRESSES: Letters should be addressed to Nedra Stallone, Mail Stop 205A, Contracting Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive, Reston, VA 22092 (703) 648–7364.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Attn. Richard L. Kleckner, 590 National Center, 12201 Sunrise Valley Drive, Reston, VA 22092, (703) 648–5741, email rkleckne@usgs.gov.

SUPPLEMENTARY INFORMATION: This notice does not solicit contract support for specific USGS digital mapping requirements, nor does it encourage speculative ventures by any potential cooperator. The intent is to identify accurate primary digital map data being prepared by non-Federal organizations to support their own mapping needs, and to determine whether the data can be obtained in DLG, DEM, DRG, and DOQ formats (or converted to these formats by USGS) through cooperative agreements. All data obtained under this initiative will be archived by USGS as part of the public domain.

Acceptable data must meet general requirements for source, content, accuracy, and format as detailed in USGS National Mapping Program Technical Instructions: *Standards for Digital Line Graphs; Standards for Digital Elevation Models; Standards for Digital Raster Graphics;* and *Standards for Digital Orthophotos* (Internet FTP nmdpow9.er.usgs.gov/public). The USGS may support acceptable proposals by providing any of the following: funds; source materials; public domain software; data validation; technical assistance; other materials and services. Assistance will be offered to the applicant(s) offering the greatest technical benefits at a fair and reasonable cost relative to the amount of USGS funds available. All proposed cooperative agreements must be determined by the USGS to serve the public interest, and to comply with applicable public law. Authority for this Program is contained in the Department of the Interior, U.S. Geological Survey Fiscal Year 1994 appropriation bill.

Dated: November 29, 1994.

William Gossmann,

Acting Assistant Director for Administration.

[FR Doc. 94–30563 Filed 12–12–94; 8:45 am]

BILLING CODE 4310–31–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The U.S. Agency for International Development (U.S.A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Records Management Officer, Renee' Poehls, (202) 736–4743, M/FA/AS/TSS, Room B930, NS, Washington, D.C. 20523–0097.

Date Submitted: December 5, 1994.

Submitting Agency: U.S. Agency for International Development.

OMB Number: None.

Type of Submission: New Collection.

Title: Grant Administration by ASHA.

Purpose: The U.S. Agency for International Development (A.I.D.) in Office of American Schools and Hospital Abroad (ASHA) is responsible for Grants Financed Program, which consist of multiple program (or major investment activities) implemented on a cost sharing basis. Accordingly, ASHA is responsible to periodically monitor the financial status, the progress made on each program, and to assure the Grant Financed Programs meet authorized objectives within the terms of agreements between USAID and United States sponsoring organizations (USOs).

Annual Reporting Burden: Respondents: 70; annual responses: 1,470; average hours per response: 21, annual burden hours: 1,491.

Reviewere: Jeffery Hill (202) 395-7340, Office of Management and Budget.

Room 3201, New Executive Office Building, Washington, D.C. 20503.

Dated: December 6, 1994.

Jerry Manolatos,

Bureau for Management, Information Support Servies.

[FR Doc. 94–30521 Filed 12–12–94; 8:45 am]

BILLING CODE 6116–01–M

Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of a meeting of the Task Force on Community Colleges on January 12, 1995, from 1:30 to 4:30 p.m. The Task Force was established by the Board for International Food and Agricultural Development and Economic Cooperation.

The purpose of the meeting is to review and discuss the findings and recommendations of the draft report entitled: "Seeking a New Partnership: A Report of the Task Force on Community Colleges."

This meeting will be held in room 1105 in the Department of State, located at 2201 C Street, NW, Washington, D.C. Any interested person may attend and may present oral statements in accordance with procedures established by the Chair and to the extent time available for the meeting permits.

Please call Valerie Price (telephone 703/875–4134) no later than December 29, 1994, if you plan to attend this meeting. She will need your full name, name of employing company or organization, address, phone number and social security number to acquire your pass for entering the Department of State. On the day of the meeting, she will meet you at the diplomatic entrance of the Department of State (2201 C Street, NW., Washington, D.C.) with your pass.

Those desiring further information may write to Gary W. Bittner in care of USAID, room 608F, SA–18, Washington, D.C. 20523 or telephone him on (703) 875–4656.

Dated: December 5, 1994.

Norman Rifkin,

Director, Office of Policy and Programs Center for Human Capacity Development.

[FR Doc. 94–30522 Filed 12–12–94; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

OSHA Training Institute Education Centers

AGENCY: Occupational Safety and Health Administration (OSHA), Labor

ACTION: Request for proposals.

SUMMARY: The Occupational Safety and Health Administration (OSHA) conducts short-term technical training in occupational safety and health through the OSHA Training Institute in Des Plaines, Illinois. In recent years, the number of private sector personnel and Federal personnel from agencies other than OSHA requesting training has increased beyond the capacity of the OSHA Training Institute to meet the demand. In October 1992, OSHA began a project to test the feasibility of using other training or educational institutions to conduct OSHA Training Institute courses for private sector personnel and for Federal personnel from agencies other than OSHA. Based on the success to date of this project, OSHA is expanding the program.

This notice announces the opportunity for interested organizations to submit applications to become OSHA Training Institute Education Centers. Applications will be rated on a competitive basis and two organizations will be selected to participate in the project. Complete application instructions are contained in this notice.

Authority for this program may be found in sections 21 (b) and (c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670).

DATES: Applications must be received by February 24, 1995.

ADDRESSES: Applications must be submitted to the Division of Training and Educational Programs, Office of Training and Education, Occupational Safety and Health Administration, U.S. Department of Labor, 1555 Times Drive, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Ronald Mouw, Chief, Division of Training and Educational Programs, or Zigmas Sadauskas, Director, OSHA Training Institute, Office of Training and Education, Occupational Safety and Health Administration, U.S. Department of Labor, 1555 Times Drive, Des Plaines, Illinois 60018, telephone (708) 297–4810.

SUPPLEMENTARY INFORMATION:

Background

The OSHA Training Institute conducts 82 short-term technical training courses in OSHA standards, policies and procedures for persons responsible for enforcing or directly supporting the OSH Act, private sector employers and employees, and Federal personnel from agencies other than OSHA. Its primary responsibility is to the first group: Federal and State compliance officers and State consultation program staff. Private sector and Federal personnel from agencies other than OSHA receive training on an "as available" basis.

In recent years the demand for training has increased from all three groups. Resources of the OSHA Training Institute have not increased at a rate that can keep up with the demand. As the number of Federal and State personnel engaged in enforcement or consultation being trained has increased, opportunities for training for private sector personnel and Federal personnel from agencies other than OSHA have remained static or decreased.

In order to meet the increased demand for its courses, the OSHA Training Institute has selected eight educational institutions to conduct OSHA Training Institute courses for private sector personnel and Federal personnel from agencies other than OSHA.

These OSHA Training Institute Education Centers, which were selected through nationwide competitive processes, are: Keene State College, Manchester, New Hampshire; Niagara County Community College, Lockport, New York; West Virginia University/ National Resource Center for Construction Safety and Health, Morgantown, West Virginia; Georgia Tech Research Institute, Atlanta, Georgia; Texas Engineering Extension Service/Texas Safety Association, Arlington, Texas; Maple Woods Community College, Kansas City, Missouri; Red Rocks Community College/Trinidad State Junior College, Lakewood, Colorado; and the University of California, San Diego, California.

The OSHA Training Institute now proposes to expand the number of OSHA Training Institute Education Centers from eight to ten.

Scope

OSHA will enter into nonfinancial agreements with two colleges, universities or other nonprofit training organizations to conduct OSHA courses for private sector personnel and Federal personnel from agencies other than OSHA. The two new OSHA Training Institute Education Centers will be located in two OSHA Regions, one per region. The two OSHA Regions contain the following states.

1. Region V: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

2. Region X: Alaska, Idaho, Oregon, and Washington.

The new OSHA Training Institute Education Centers will be selected through a competitive process. This notice solicits applications from organizations interested in participating in the project.

Applicants selected to participate as OSHA Training Institute Education Centers will be expected to present six courses: four general industry OSHA courses: Course 204A, Machinery and Machine Guarding Standards; Course 501, A Guide to Voluntary Compliance in Safety and Health; Course 521, OSHA Guide to Voluntary Compliance in the Industrial Hygiene Area; and Course 600, Collateral Duty Course for Other Federal Agencies; and two constructions industry course: Course 500, Instructor Course in Occupational Safety and Health Standards for the Construction Industry and Course 510, Occupational Safety and Health Standards for the Construction Industry. Additional information about each of these courses is in the appendix to this notice.

Applicants will be selected based upon their occupational safety and health experience, their nonacademic training background, the availability of classroom and lodging facilities, and access to transportation. OSHA will support the program by providing curriculum outlines, masters of student handouts, and orientation to OSHA course presentation. OSHA also will provide assistance in presenting and/or answering questions on OSHA policy.

The project will be fifteen months in duration. OSHA will monitor each of the new OSHA Training Institute Education Centers to evaluate the effectiveness of their programs. If performance is satisfactory at the end of the fifteen-month period, OSHA will enter into a new agreement for a two-year period. Continuation of this agreement will be dependent on continued satisfactory performance and mutual interest of the parties in continuing the OSHA Training Institute Education Center program. OSHA may initiate modifications to agreements to increase or decrease the number of different OSHA courses offered by the OSHA Training Institute Education Centers.

Eligibility

Any nonprofit public or private college or university is eligible to apply. Any other nonprofit organization that can demonstrate that training or education is part of its mission and that more than 50 percent of its staff and dollar resources is devoted to training or education is also eligible to apply.

In addition to meeting the eligibility criteria, applicants must have a physical presence in the Region for which they are applying. For example, an eligible national organization based in San Francisco that has a training facility in Chicago would have a physical presence in Region V. On the other hand, a national organization based in New York City that rents hotel space to provide training at multiple sites around the county would be considered to have a physical presence only in New York and would not be qualified to apply.

A training or educational institution may elect to apply for this program in partnership with a safety and health organization that is not primarily a training organization. For example, a university could enter into an agreement with a labor union that provides for the use of university classrooms and faculty supplemented by union safety and health professionals.

If two or more organizations wish to apply as a consortium, a training or educational member of the consortium must be designated as the lead organization. OSHA will only enter into a nonfinancial agreement with the lead organization.

Financial Considerations

Organizations selected as OSHA Training Institute Education Centers will not be provided funding by OSHA to support this effort. The Centers will be expected to support their OSHA training through their normal tuition and fee structures.

Length of Project

The project will start July 1, 1995, and will run for fifteen months.

OSHA Training Institute Education Center Responsibilities

Each OSHA Training Institute Education Center will be responsible for the following.

1. Arranging to have instructors assigned to teach OSHA courses attend OSHA orientation.

2. Scheduling courses. Courses are to be scheduled on a year-round basis, with each course being offered more than once a year.

3. Publicizing the availability of courses.

4. Registering students.

5. Purchasing, or otherwise obtaining, audiovisual materials for use in courses.

6. Reproducing handouts for students.

7. Conducting courses in accordance with materials and instruction provided by OSHA.

8. Monitoring courses to ensure that OSHA course outlines are being followed.

9. Collecting course evaluation data from students in accordance with OSHA procedures.

10. Maintaining student registration and attendance records.

11. Issuing course completion certificates to students. These certificates, which must be approved by OSHA, certify that a student has completed training in a particular course.

12. Providing the OSHA Training Institute with registers of successful course completers.

13. Providing the OSHA Training Institute with a schedule showing the dates, times, and locations of every OSHA course to be offered.

14. Maintaining clearly identifiable records of tuition and/or fees collected from OSHA course students.

15. Arranging for the availability of appropriate accommodations for students.

OSHA Training Institute Responsibilities

The OSHA Training Institute will be responsible for the following.

1. Providing OSHA Training Institute Education Center instructors with orientation on how the OSHA Training Institute teaches OSHA courses.

2. Providing a detailed course outline for each OSHA course to be presented by the OSHA Training Institute Education Center.

3. Providing a master copy of the student handouts for each course to be presented.

4. Providing answers for and technical assistance on questions of OSHA policy

5. Monitoring the performance of OSHA Training Institute Education Centers through on-site visits, including unannounced attendance at courses, and examining records of registrations, course attendance, tuition collections and personnel records concerning qualifications of staff assigned as instructors.

6. Evaluating the effectiveness of the OSHA Training Institute Education Centers.

In addition to these responsibilities, which will be included in the agreement between OSHA and the OSHA Training Institute Education Center, OSHA will make every effort to have an OSHA staff member, usually from an OSHA Regional or Area Office, available for a portion of each OSHA Training Institute Education Center training session to answer questions of OSHA policy.

Application and Selection Procedures

Eligible organizations wishing to be considered for selection as an OSHA Training Institute Education Center should prepare an application in accordance with the instructions contained in this notice.

Applications are to be submitted to the OSHA Office of Training and Education, Division of Training and Educational Programs, 1555 Times Drive, Des Plaines, Illinois 60018. The submission is to consist of one original and two copies of the application. Applications should not be bound or stapled and should only be printed on one side of the page. All applications must be received no later than 4:30 p.m. Central Standard Time, February 24, 1995.

OSHA will convene a panel of OSHA staff to review and rate the applications. Following the panel review, OSHA staff may conduct an on-site review of highly rated applicants before making a selection. The final selections will be made by the Assistant Secretary.

All applicants will be notified in writing of their selection or nonselection. It is anticipated that final selections will be made by May 26, 1995. OSHA will enter into a nonfinancial agreement with each successful applicant. The agreement will cover the responsibilities of both parties.

Appeals

There is no appeal procedure for unsuccessful applicants. Any applicant may request a copy of the documentation of its own review by writing to the OSHA Office of Training and Education, Division of Training and Educational Programs, 1555 Times Drive, Des Plaines, Illinois 60018.

Content of Applications

Each application must address each of the following points.

1. *Identifying Information.* Provide the name and address of the applicant organization. If the mailing address is a post office box, also provide the street address. Provide the name, title, and telephone number of the contact person who can answer questions about the application.

2. *Authority to Apply.* Provide a copy of the resolution by the Board of Directors, Board of Regents, or other governing body of the applicant organization approving the submittal of an application to OSHA to become an OSHA Training Institute Education Center.

3. *Nonprofit Status.* Include evidence of the nonprofit status of the applicant organization. A letter from the Internal Revenue Service or a statement included in a recent audit report is preferred. In the absence of either of these, a copy of the articles of incorporation showing the nonprofit status will be accepted.

4. *Status as a Training Organization.* This section applies only to applicants that are not colleges or universities. Show that training or education is a principal activity of the applicant organization. Through audit reports, annual reports, or other documentation, demonstrate that for the last two years more than 50 percent of the applicant's funds have been used for training and education activities and that more than 50 percent of its staff resources have also been used for this purpose.

5. *Occupational Safety and Health Experience.* Describe the applicant's relevant course offerings for the last two years. Include copies of catalogs and other recruitment materials that provide descriptive material about courses. For each course, include the dates the course was offered and the number of students who completed the course. Also include descriptive material similar to the information contained in the appendix: course description, objectives, topic outline, number of hours, and laboratories or other practical hands-on exercises included in the course.

6. *Staff Qualifications.* Describe the qualifications of staff teaching occupational safety and health courses. Indicate the professional qualifications of each, such as Certified Safety Professional (CSP), Professional Engineer (PE), or Certified Industrial Hygienist (CIH). Also describe staff knowledge of and/or experience with Federal OSHA standards and their application to hazards and hazard abatement. Include resumes of current staff and position descriptions and minimum hiring qualifications for all positions, whether filled or vacant, that may be assigned to conduct OSHA classes.

7. *Classroom Facilities.* Describe classroom facilities available for presentations of the courses. Include number of students accommodated, desk arrangements, and availability of audiovisual equipment. Also describe appropriate laboratory facilities and other facilities available for hands-on exercises. Indicate provisions for accessibility for persons with disabilities.

8. *Recruitment and Registration.* Explain procedures for recruiting students from Federal agencies other than OSHA and from the private sector. Describe registration procedures including provisions for cancellation, furnishing enrollees with hotel information, and tuition or fee collection.

9. *Accomodations.* Provide a representative listing of hotels available for student accommodation and give sample room rates. Explain how students will be transported between the hotels and classes. Also describe the food service and restaurants available both in the area in which the classes will be held and the area where the hotels are located.

10. *Location.* Describe the accessibility of the training facility for students. Include such items as distance from a major airport, number of airlines serving the airport, transportation from the airport to hotels, and distance from the interstate system. Also describe the proximity of the training facility to the nearest OSHA Regional or Area Office, including the distance, and giving the approximate driving or other travel time.

11. *Tuition.* Provide a copy of the applicant organization's tuition and fee schedule. Explain how tuition and/or fees will be computed for each course, referencing the schedule.

12. *Nondiscrimination.* Provide copies of the applicant organization's nondiscrimination policies covering staff and students. In the absence of a written policy, explain how the applicant will ensure that staff and students are selected without regard to race, color, national origin, sex, age or disability.

13. *Off-site Courses.* Successful applicants will be expected to conduct courses at sites other than their own facilities at the request of organizations sponsoring training. Explain the procedures that will be used to assure that classroom facilities and accommodations, if appropriate, are adequate and that instructional staff, if different from those individuals included in item 6 above, Staff Qualifications, meet the hiring standards included in that item.

Review Criteria

A panel of OSHA staff will review the applications. It will consider each of the factors listed below.

1. *Occupational Safety and Health Training Experience*

a. Evidence that occupational safety and health training or education has been an ongoing program of the applicant organization. Reviewers will examine the number of different occupational safety and health courses offered by the applicant organization over the past two years, the length of the courses, the number of students

completing each course, and the number of times each course was offered. Successful applicants will also include samples of course announcements.

b. Qualifications of personnel teaching occupational safety and health courses. These include academic training in occupational safety and health subjects, experience with the application of Federal OSHA standards to hazards and hazard abatement, professional certification, practical experience in the field of occupational safety and health, and training experience. Training experience is defined as experience in training workers or managers in nonacademic situations.

2. *Adequacy of Training Facilities.* Potential for accommodating classes of 25 to 40 students on a year-round basis in settings comparable to those of the OSHA Training Institute. Items considered will include classroom layout, e.g., desks or tables for students, availability of audiovisual equipment, reproduction facilities for handouts, and availability of appropriate laboratory and/or hands-on facilities. Accessibility for persons with disabilities will also be considered.

3. *Recruitment and Registration Procedures.* Reasonableness of the applicant's procedures for recruiting and registering students. Methods of reaching potential students, ease of registration, provisions for cancellations, and system for informing students of available accommodations and materials necessary for the course, if any, are among the items that will be reviewed.

4. *Accommodations and Location.* Availability of lodging and restaurant facilities, access to nationwide transportation and proximity to an OSHA Area or Regional Office. Accommodations, preferably national hotel/motel chains, and restaurants should be reasonably prices and should be within a few miles of the training facility. A major airport with regular service to all parts of the Region should be within a reasonable driving time from the hotel and training locations. Interstate highways should also be within reasonable distance. The nearest OSHA Office should be within one hour's travel time of the principal training site to facilitate OSHA participation in training sessions.

5. *Tuition.* Conformance of proposed tuition and/or fees with the established policies of the applicant and reasonableness of the charges.

6. *Nondiscrimination.* Adherence of the applicant's policies with Federal requirements.

7. *Off-site Courses.* Experience and/or ability of the applicant to conduct courses at sites other than its own facility.

Proposal Conferences

The OSHA Office of Training and Education will hold two proposal conferences. These are intended to provide potential applicants with information about the OSHA Training Institute, OSHA Training Institute courses and methods of instruction, and administrative requirements for OSHA Training Institute Education Centers. The conference in Des Plaines, Illinois, will also include a tour of the OSHA Training Institute. The conferences will also feature question and answer sessions about the documentation expected in applications.

The proposal conferences will be held from 10:00 a.m. to 12:00 noon. One conference will be held on January 17, 1995, at the OSHA Office of Training and Education, 1555 Times Drive, Des Plaines, Illinois 60018. The other conference will be held on January 19, 1995, at the OSHA Regional Office, Room 850, 1111 Third Avenue, Seattle, Washington 98101. Persons interested in attending one of these conferences should contact Ronald Mouw, Chief, Division of Training and Educational Programs, or Helen Beall, Training Specialist, at (708) 297–4810 to obtain information about local hotel accommodations and transportation. It is not necessary to register for the conferences.

Signed at Washington, DC, this 7th day of December, 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

Appendix

Course 204A, Machinery and Machine Guarding Standards

1. Course description. The course provides the student with an overview of various types of common machinery and related safety standards. The course provides guidance in recognizing hazards such as those created by points of operation, ingoing nip points, rotating parts, and flying chips or sparks, and provides some options to achieve abatement. A field trip is provided to enhance students' knowledge of machine guarding standards. The OSHA Training Institute awards 2.5 CEU's for this course.

2. Course objectives. Students completing this course should be able to:

a. Identify various machines and their functions;

b. Identify common machinery hazards;

c. Recommend selected abatement methods; and

d. Select the appropriate OSHA standard that applies to a hazard.

3. Course topics:

a. Introduction, pretest and pretest review, posttest and posttest review—2 hours.

b. Hazards and standards workshop and review—2 hours. In this workshop written hazard conditions are researched, and standards are reviewed and referenced. Oral review also incorporates policy relating to specific conditions.

c. Inspection field trip to machine shop operations and inspection writeup—6 hours.

The class is taken to facilities with extensive and varied metalworking and woodworking operations following the discussions of machinery, terminology and 29 CFR 1910.211–1910.219. It exposes the students to operations including lathes, mills, boring machines, screw machines, woodworking machines, mechanical power presses, and power transmission apparatus. Students are given an opportunity to apply hazard recognition concepts on a site inspection at an operating facility with a variety of machine operations. They evaluate and document any machinery and machine guarding hazards, then return to the classroom to research the standards for citation references. They present an oral report on their findings.

d. Review of 29 CFR part 1910, subpart O, machinery and machine guarding concepts—1 hour.

e. Review of 29 CFR 1910.211 and 29 CFR 1910.312, definitions, guarding and devices, general requirements—2 hours

f. 29 CFR subpart J, 1910.147, control of hazardous energy sources (lockout/tagout), and 29 CFR subpart S, 1910.332–1910.335, electrical safety-related work practices—2 hours.

g. 29 CFR subpart P, 1910.242–1910.244, portable powered tools—1 hour.

h. 29 CFR 1910.212 and section 5(a)(1) of the OSH Act, robotic safeguarding—1 hour

i. 29 CFR 1910.213, woodworking machinery requirements—2 hours.

j. 29 CFR 1910.215, abrasive wheel machinery—1 hour.

k. 29 CFR 1910.216, mills and calenders—1 hour.

l. 29 CFR 1910.217, mechanical power presses—2 hours.

m. 29 CFR 1910.218, forging machines—1 hour.

n. 29 CFR 1910.219, power transmission apparatus—1 hour.

Course 500, Basic Instructor Course in Occupational Safety and Health Standards for the Construction Industry

1. Course description. The course is designed for students in the private sector who are interested in teaching the 10- and 30-hour construction safety and health outreach program to their employees and other interested groups. Special emphasis is placed upon those topics that are required in the 10- and 30-hour programs as well as on those that are the most hazardous, using OSHA standards as a guide. Course participants are briefed on effective instructional approaches and the effective use of visual aids and handouts. This course allows the student to conduct both a 10-hour and a 30-hour construction safety and health course and to issue OSHA cards to participants certifying course completion. The OSHA Training Institute awards 2.5 CEU's for this course.

2. Course objectives. Students completing this course should be able to:

a. Define construction terms found in OSHA standards;

b. Present effective safety and health training programs in accordance with OSHA construction standards, regulations, and guidelines;

c. Identify hazards and determine appropriate standards;

d. Prepare reports citing the conditions found; and

e. Identify methods to abate hazards.

3. Course topics:

a. Introduction, pretest and pretest review, overview of the OSH Act and OSHA, introduction to OSHA standards, posttest and posttest review—4 hours.

b. Safety programs, inspections, targeting and penalties—1 hour.

c. Training techniques—2 hours.

d. 29 CFR part 1904, recordkeeping—1 hour.

e. 29 CFR part 1926, subpart D, hazard communication—1 hour.

f. 29 CFR part 1926, subpart E, health hazards in construction and personal protective equipment—3 hours.

g. 29 CFR part 1926, subpart F, fire protection and prevention—1 hour.

h. 29 CFR part 1926, subparts G, O and W, motor vehicles—1 hour.

i. 29 CFR part 1926, subpart H, rigging—1 hour.

j. 29 CFR part 1926, subpart I, tools—1 hour.

k. 29 CFR part 1926, subpart K, electrical—2 hours.

l. 29 CFR part 1926, subpart L, scaffolds—2 hours.

m. 29 CFR part 1926, subparts M and X, walking and working surfaces and ladders—1 hour

n. 29 CFR part 1926, subpart N, cranes—1 hour.

o. 29 CFR part 1926, subpart P, trenching—2 hours.

p. 29 CFR part 1926, subpart Q concrete—1 hour

Course 501, A Guide to Voluntary Compliance in Safety and Health

1. Course description. This course is intended for private sector personnel from all types of industries. It presents detailed information on how the provisions of the OSH Act may be implemented in the workplace. The primary focus is on the basics of the Act. The course includes an introduction to general industry standards and provides an overview of the requirements of the more frequently referenced standards. Segments of the course cover rights and responsibilities under the Act, contested citations, recordkeeping, and Voluntary Protection Programs. Successful completion of the course qualifies the student to conduct both a 10-hour and a 30-hour voluntary compliance course and to issue OSHA cards to participants certifying course completion. The OSHA Training Institute awards 2.5 CEU's for this course.

2. Course objectives. Students completing this course should be able to:

a. Locate OSHA safety and health standards, policies, and procedures;

b. Describe the use of OSHA standards and regulations to supplement an on-going safety and health program;

c. Identify common violations of OSHA standards;

d. Describe appropriate abatement procedures for selected safety hazards; and

e. Describe how to conduct internal training on OSHA regulations.

3. Course topics:

a. Pretest and review, posttest and review, and overview of the training outreach program—2 hours.

b. Introduction to OSHA standards and hazard violation workshop—2 hours.

The hazard violation workshop introduces the students to the format of the OSHA standards. They are shown how the numbering system works, then must identify the applicable standard for approximately 40 hazardous conditions.

c. Overview of the OSH Act and 29 CFR 1903, inspections, citations and proposed penalties—2 hours.

d. 29 CFR part 1904—recordkeeping—1 hour.

e. 29 CFR part 1910, subpart D, walking and working surfaces—2 hours.

f. 29 CFR part 1910, subparts E and L, means of egress and fire protection—2 hours.

g. 29 CFR part 1910, subpart H, hazardous materials—2 hours.

h. 29 CFR part 1910, subpart I, personal protective equipment—1 hour.

i. 29 CFR part 1910, subpart J, lockout/tagout—½ hour.

j. 29 CFR part 1910, subpart N, material handling—1 hour.

k. 29 CFR part 1910, subpart O, machine guarding—2 hours.

l. 29 CFR part 1910, subpart Q, welding—2 hours.

m. 29 CFR part 1910, subpart S, electrical standards and work practices—2½ hours.

n. 29 CFR part 1910, subpart Z, hazard communication—1½ hours.

o. 29 CFR part 1910, subpart Z, introduction to industrial hygiene—1½ hours.

Course 510, Occupational Safety and Health Standards for the Construction Industry

1. Course description. This course for private sector personnel covers OSHA policies, procedures, and standards, as well as construction safety and health principles. Topics include scope and application of the OSHA construction standards. Special emphasis is placed on those areas that are the most hazardous, using OSHA standards as a guide. Upon successful course completion, the student will receive an OSHA construction safety and health 30-hour course completion card. The OSHA Training Institute awards 2.5 CEU's for this course.

2. Course objectives. Students completing this course should be able to:

a. Recognize various construction processes, materials, and equipment;

b. Identify the common hazards found in many areas of construction;

c. Find the correct OSHA standards in 29 CFR part 1926; and

d. Recommend abatement techniques for hazards found in construction.

3. Course topics:

a. Introduction, pretest and pretest review, overview of the OSH Act and OSHA, introduction to OSHA standards, posttest and posttest review—3 hours.

b. Confined space entry—1 hour.

c. 29 CFR part 1904, recordkeeping—1 hour.

d. 29 CFR part 1926, subpart C—general safety and health provisions—1 hour.

e. 29 CFR part 1926, subpart D, hazard communication—1 hour.

f. 29 CFR part 1926, subpart E, health hazards in construction and personal protective equipment—2 hours.

g. 29 CFR part 1926, subpart F, fire protection and prevention—1 hour.

h. 29 CFR part 1926, subparts G, O and W, motor vehicles—1 hour.

i. 29 CFR part 1926, subpart H, rigging—1 hour.

j. 29 CFR part 1926, subpart I, tools—1 hour.

k. 29 CFR part 1926, subpart J, welding—1 hour.

l. 29 CFR part 1926, subpart K, electrical—1 hour.

m. 29 CFR part 1926, subpart L, scaffolds—1 hour.

n. 29 CFR part 1926, subparts M and X, walking and working surfaces and ladders—2 hours.

o. 29 CFR part 1926, subpart N, cranes—1 hour.

p. 29 CFR part 1926, subpart P, trenching—1 hour.

q. 29 CFR part 1926, subpart Q, concrete—1 hour.

r. 29 CFR part 1926, subpart R, steel erection—1 hour.

s. 29 CFR part 1926, subpart S, underground construction—1 hour.

t. 29 CFR part 1926, subparts T and U—demolition and blasting—2 hours.

Course 521, OSHA Guide to Voluntary Compliance in the Industrial Hygiene Area

1. Course description. This course is designed for private sector personnel who are interested in increasing their knowledge of industrial hygiene practices and related OSHA regulations and procedures. Topics covered include permissible exposure limits, OSHA health standards, respiratory protection, engineering controls, hazard communication, sampling instrumentation, and workplace health program elements. There are workshops in health hazard recognition, safety and health program elements, and the use of OSHA standards. The OSHA Training Institute awards 2.5 CEU's for this course.

2. Course objectives. Students completing this course should be able to:

a. Interpret requirements of OSHA health standards;

b. Recognize potential health hazards in the workplace;

c. Perform basic health hazard evaluation using OSHA sampling procedures;

d. Recommend acceptable strategies for controlling hazardous conditions; and

e. Describe the elements required for an effective workplace health protection program.

3. Course topics:

a. Course opening and course closing—1 hour.

b. Air contaminant sampling—2 hours.

c. Compliance with air contaminant standards—2 hours.

d. Compliance with hazard communication—1½ hours.

e. Compliance with hazardous waste standards—2 hours.

f. Compliance with the asbestos standard—1 hour.

g. Compliance with the bloodborne disease standard—1 hour.

h. Compliance with the confined space standard—1 hour.

i. Compliance with the noise standard—2 hours.

j. Compliance with the respirator standard—2 hours.

k. Compliance with ventilation standards—2 hours.

l. Detector tube sampling—1 hour.

m. Elements of a workplace health program and safety and health program workshop—1½ hours.

Students are presented with the elements of a workplace health program and draft a safety and health program for their own workplaces.

n. Hazard violation workshop—1 hour.

Students are presented written workplace scenarios describing hazards and are to determine which OSHA health standards apply and why.

o. Health hazard recognition—1 hour.

p. Health hazard slide workshop—1 hour.

Students are shown slides depicting health hazards and asked to identify the hazards.

q. OSHA ergonomic guidelines—1 hour.

r. OSHA recordkeeping for health—1 hour.

Course 600, Collateral Duty Course for Other Federal Agencies

1. Course description. This course introduces Federal agency collateral duty (part-time) safety and health personnel to the OSH Act, Executive Order 12196, 29 CFR part 1960, and 29 CFR part 1910. It enables them to recognize basic safety and health hazards in their own workplaces, and to effectively assist agency safety and health officers with inspection and abatement efforts. A mock workplace inspection is conducted and student findings are reviewed. The OSHA Training Institute awards 2.2 CEU's for this course.

2. Course objectives. Students completing this course should be able to:

a. Describe the OSH Act, 29 CFR 1960, and 29 CFR 1910;

b. Describe major provisions of Executive Order 12196;

c. Identify selected safety and health hazards and the corresponding OSHA standards;

d. Describe abatement methods for selected safety and health hazards; and

e. Explain and apply workplace inspection procedures consistent with established OSHA policies, procedure, and directives.

3. Course topics:

a. Course opening, pretest and review, posttest and review, and course closing—1 hour.

b. Hazard communication—1 hour.

c. Inspection field trip, writeup and review—5 hours.

Students are introduced to the process of site inspection, i.e., what hazardous conditions or activities may be observed in the work environment. They are taken to an active government facility, and evaluate and document any observed hazards. After returning to the classroom, they research and select the standards applicable to the observed hazards. Presentations of findings are made to the class.

d. Introduction to accident investigation—1 hour.

e. Introduction to the OSH Act, Executive Order 12196, and 29 CFR part 1960—2 hours.

f. Introduction to OSHA standards and hazard violation workshop and review—2 hours.

The hazard violation workshop introduces the students to the format of the OSHA standards. They are shown how the numbering system works, then must identify the applicable standard for approximately 40 hazardous conditions.

g. Office safety—1 hour.

h. 29 CFR part 1910, subpart D, walking and working surfaces—1 hour

i. 29 CFR part 1910, subparts E and L, means of egress and fire protection—1 hour.

j. 29 CFR part 1910, subpart H, hazardous materials—1 hour.

k. 29 CFR part 1910, subpart I, personal protective equipment—1 hour

l. 29 CFR part 1910, subpart N, material handling—1 hour.

m. 29 CFR part 1910, subpart O, machine guarding and portable tools—1 hour

n. 29 CFR part 1910, subpart Q, welding, cutting and brazing—1 hour

o. 29 CFR part 1910, subpart S, electrical standards—1 hour

p. 29 CFR part 1910, subpart Z, introduction to industrial hygiene—1 hour.

[FR Doc. 94–30572 Filed 12–12–94, 8 45 am]

BILLING CODE 7500–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Public Meeting With Interested Vendors on a Proposal for Ordering Reproductions of Still Photographs, Aerial Film, Maps, and Drawings

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of meeting.

SUMMARY: NARA will hold a public meeting with vendors to discuss a proposal to change procedures for ordering reproductions of archival still photographs, aerial film, maps, and drawings from the Still Picture Branch, Cartographic and Architectural Branch, and other units of the National Archives. The proposal would privatize the reporudction of these archival materials by allowing customers to place their order directly with vendors. In addition, NARA would assign work space to the vendors in its new building in College Park, MD, in order that the materials can be copied on its premises. The proposed procedures, which will be tested for a one-year trial period, are intended to expedite the reproduction ordering process and to ascertain the extent to which digital scanning can satisfy customer requirements.

DATES: The meeting will be held on Wednesday, December 21, 1994, at 10 a.m.

The trial period is proposed to begin on March 6, 1995, and end on March 6, 1996.

ADDRESSES: The meeting will be held in Archives II, lecture rooms D and E, located at 8601 Adelphi Road, College Park, MD.

FOR FURTHER INFORMATION CONTACT: William T. Murphy, Nontextual Archives Division, at 301–713–7083.

Dated: December 7, 1994.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 94–30670 Filed 12–9–94; 10:57 am]

BILLING CODE 7515–01–M

Public Meeting With Interested Researchers on a Proposal for Ordering Reproductions of Still Photographs, Aerial Film, Maps, and Drawings

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of meeting.

SUMMARY: NARA will hold a public meeting with researchers to discuss a proposal to change procedures for ordering reproductions of archival still photographs, aerial film, maps, and drawings from the Still Picture Branch, Cartographic and Architectural Branch, and other units of the National Archives. The proposal would privatize the reproduction of these archival materials by allowing customers to place their orders directly with vendors. In addition, NARA would assign work space to vendors in its new building in College Park, MD, in order that the materials can be copied on its premises. The proposed procedures, which will be tested for a one-year trial period, are intended to expedite the reproduction ordering process and to ascertain the extent to which digital scanning can satisfy customer requirements.

DATES: The meeting will be held on Thursday, December 22, 1994, at 10 a.m.

The trial period is proposed to begin on March 6, 1995, and end of March 6, 1996.

ADDRESSES: The meeting will be held in Archives II, lecture rooms D and E, located at 8601 Adelphi Road, College Park, MD.

FOR FURTHER INFORMATION CONTACT: William T. Murphy, Nontextual Archives Division, at 301–713–7083.

Dated: December 7, 1994.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 94–30671 Filed 12–9–94; 10:57 am]

BILLING CODE 7515–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94–100]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. A copy of the proposed questionnaire is attached. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by December 28, 1994. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Donald J. Andreotta, NASA Agency Clearance Officer, Code JTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700–NEW), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Bessie Berry, NASA Reports Officer, (202) 358–1368.

Reports

Title: Landsat Advisory Process Survey Questionnaire.

OMB Number: 2700–New.

Type of Request: New.

Frequency of Report: On occasion.

Type of Respondent: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.

Number of Respondents: 100.

Responses Per Respondent: 1.

Annual Responses: 100.

Hours Per Response: 2.

Annual Burden Hours: 200.

Number of Recordkeepers: 0.

Annual Hours Per Recordkeeping: 0.

Annual Recordkeeping Burden Hours: 0.

Total Annual Burden Hours: 200.

Abstract-Need/Uses: NASA is required by law to seek advice and comments on the effectiveness of Landsat to improve its utility from US Government agencies, State and local government agencies, academic institutions, non-profit organizations, value-added companies, industry, and the public.

Dated: December 6, 1994.

Donald J. Andreotta

Chief, IRM Policy and Acquisition Management Office.

Landsat Advisory Process Survey

November 1994.

Respondent Information Form

Date: _____

Name: _____

Salutation (e.g., Dr., Prof.), First, Last, Suffix (e.g., III, Sr.)

Institutional affiliation: _____

Mailing address: _____

_____

_____

City: _____

State/province: _____ _____

Zip/mail code: _____
Country: _____
Communications:
Phone: _____
FAX: _____
Primary E-Mail; _____
Secondary E-Mail: _____
Telex: _____

Landsat Advisory Process Survey

(1) How did you learn about the Landsat Advisory Process?
- ○ The Internet
- ○ A government publication
- ○ A professional journal or other publication
- ○ A professional meeting
- ○ From a colleague
- ○ Other (please specify) _____

(2) Which of the following user categories best describes your area of interest in the use of Landsat data products? (choose one only)
- ○ National security
- ○ University research
- ○ Post-secondary education
- ○ Primary or secondary education
- ○ Consultant services
- ○ News media
- ○ State/local government
- ○ Federal civil agency
- ○ Private industry
- ○ Public interest (non-profit) organization
- ○ International (Non-US) organization
- ○ Private citizen
- ○ Other (please specify) _____

(3) In which of the following fields do you now use, plan to use, or would like to use *Landsat data products?* (please check all that apply)
- ○ Agriculture
- ○ Cartography
- ○ Coastal studies
- ○ Cold regions research
- ○ Construction
- ○ Engineering
- ○ Environmental monitoring
- ○ Forestry
- ○ Geology
- ○ Global change funded research
- ○ Hydrology
- ○ Land cover classification
- ○ Land use classification
- ○ Ocean studies
- ○ Transportation
- ○ Vegetation analysis
- ○ Wetlands
- ○ Wildlife studies
- ○ Other(s) (please specify) _____

(4) Which of the following best describes the most frequent spatial domain of your application of Landsat data? (choose one only)
- ○ Local area, e.g. within state or province
- ○ US national (including Alaska and Hawaii)
- ○ National, non-US
- ○ Regional, non-US
- ○ Global

(5) How long have you been using Landsat data?
- ○ 0 to 3 years
- ○ 3 to 7 years
- ○ More than 7 years
- ○ Not a current user of Landsat data

(6) How important is Landsat or Landsat-type data to the accomplishment of your objectives?
- ○ Essential
- ○ Very important
- ○ Moderately important
- ○ Marginal

(7) On what type(s) of media do you *currently receive* Landsat data?
- ○ Hard copy image
- ○ Electronic file transfer
- ○ Magnetic tape
- ○ CD–ROM
- ○ Tape cartridge
- ○ Other (please specify)_____

(8) On what type(s) of media would you *prefer to receive* Landsat data?
- ○ Hard copy image
- ○ Electronic file transfer
- ○ Magnetic tape
- ○ CD–ROM
- ○ Tape cartridge
- ○ Other (please specify)_____

(9) What other types of remotely-sensed data *of the Earth* do you use? (check all that apply)
- ○ Ground-based measurements
- ○ Aerial photography
- ○ Non-photographic data from airborne platforms
- ○ Space photography
- ○ Non-photographic data from space-based platforms

(10) What types of remotely-sensed data do you use, or plan to use, in concert with Landsat or Landsat-type data? (check all that apply)
- ○ Laboratory measurements/observations
- ○ Ground-based measurements
- ○ Aerial photography
- ○ Non-photographic data from airborne platforms
- ○ Space photography
- ○ Very high spatial resolution (1–5 meters), non-photographic data from space-based platforms
- ○ High spatial resolution (5–80 meters), non-photographic data from space-based platforms
- ○ Moderate to low spatial resolution (>80 meters), non-photographic data from space-based platforms

(11) How do you currently rate the ease of obtaining Landsat data?
- ○ Readily obtainable
- ○ Somewhat difficult to obtain
- ○ Very difficult to obtain

(12) What is the *primary* difficulty you encounter with the use of Landsat data?
- ○ Cost
- ○ Data characteristics (spatial/spectral resolution)
- ○ Data availability
- ○ Other (please specify)_____

(13) In the past 6 months, have you used any commercial or public on-line service to search for, or browse Landsat data?
- ○ Yes
- ○ No

(a) If "Yes," which one(s)_____
(b) Did the service meet your needs?
- ○ Yes
- ○ No
- ○ If "No," please explain_____

_____

(14) How many full Landsat scene equivalents did you obtain in calendar year 1994 (to date)?
- ○ <1
- ○ 1–5
- ○ 6–10
- ○ 11–20
- ○ 21–100
- ○ >100

(15) For Landsat data you *purchased since 1/1/93,* please indicate the number of scenes acquired for each period.

	MSS	TM
1/1/93 to present		
1/1/87–12/31/92		
1/1/82–12/31/86		
Before 12/31/81		

(16) The cost of Enhanced Thematic Mapper Plus (ETM+) data from Landsat 7 is expected to be substantially less than the current cost of TM data. Assuming a per scene cost for ETM+of $500–1000, will you plan to use
- ○ More Landsat data/year than now
- ○ Less Landsat data/year than now
- ○ About the same number of scenes per year as now
- ○ Don't know

(17) Over the last five years, the number of Landsat scenes you have used has
- ○ Increased steadily
- ○ Decreased steadily
- ○ Remained about the same
- ○ Varied from year to year
- ○ Not applicable—not a data user in that period

(18) If the same data were available through a domestic station at double the price but with a substantially shorter delivery time than through a foreign station, which of the following would be true?
- ○ More likely to buy data from domestic station
- ○ More likely to buy data from foreign station
- ○ Make no difference
- ○ Data source may vary dependent on other requirements
- ○ No opinion

(19) How important to your utilization of Landsat data is continued direct transmission of local data to ground stations?
- ○ Very important
- ○ Somewhat important
- ○ Not very important
- ○ Unimportant
- ○ Don't know

(20) Have you ordered Landsat data from a ground station outside the US within the past three years?
- ○ Yes
- ○ No

(a) If "Yes," how would you rate the experience?
- ○ Completely satisfactory
- ○ Satisfactory
- ○ Somewhat unsatisfactory
- ○ Completely unsatisfactory

○ No basis to judge

(21) Indicate which of the following describe(s) your experience with ground stations. (check all that apply)

○ The ground station provided local expertise that was of value
○ The ground station had data from my area of interest
○ Metadata and/or browse files from the data at the ground station were readily available
○ The ground station provided training and assistance in applications and other user services
○ The ground station was difficult to use
○ Data prices were too high
○ Not applicable
○ Other comments _____

(22) Currently, the Landsat system is unable to acquire data from all land areas because of the absence of recording capability and TDRSS link. In regard to your work, this limitation

○ Makes the current Landsat system of no value
○ Substantially limits the value of Landsat
○ Has no impact on the work
○ No opinion

(23) If Landsat data were available as a raw data stream from a location in the US for use without restriction, and for only a modest fee to cover government costs, would your organization be interested in accessing it for distribution to others on a commercial or public service basis?

○ No
○ Yes for commercial development (value-added)
○ Yes for public service (noncommercial) distribution
○ Not applicable
○ Depends on following conditions/ circumstances:

_____
_____
_____

ETM+Instrument Characteristics

Band	Wavelength (um)	Ground resolution (m)
Pan	0.50–0.90	15
Band 1	0.45–0.52	30
Band 2	0.52–0.60	30
Band 3	0.63–0.69	30
Band 4	0.76–0.90	30
Band 5	1.55–1.75	30
Band 7	2.08–2.35	30
Band 6	10.4–12.5	60

- Swath width=185 km
- 5% absolute radiometric calibration
- Revisit time=16 days
- Best 8 of 9 bits
- Data transmitted via two 75 Mbps data streams

(24) Given the above description of the ETM+instrument on Landsat 7, how likely are you to use ETM+data?

○ Very likely
○ Somewhat likely
○ Not likely
○ Will not use ETM+data
○ Don't know

(25) Please rank the following features of ETM+in order of their importance to you. (1—very important; 2—important; 3—nice to have; 4—not important)

____ 185 km swath width
____ 5% absolute radiometric calibration
____ revisit intérval 16 days
____ panchromatic band
____ thermal infrared band
____ 30m resolution
____ The suite of sensor characteristics
____ Other (specify) _____

(26) Distribution of ETM+data is scheduled to begin by late 1998. How many scenes of ETM+data do you (i.e., your organization) expect to purchase the first year they are available? *Assume cost per scene is not a factor in your decision.*

○ Less than 5 scenes
○ 5–10 scenes
○ 11–20 scenes
○ More than 20 scenes
○ I don't expect to purchase any scenes the first year
○ Don't know

How many scenes per year do you expect to purchase in subsequent years?

○ Same as above
○ More than above
○ Less than above
○ Don't know

(27) Several commercial satellite systems are being built that will supply very high spectral and spatial resolution data. How will the advent of such systems affect your use of Landsat data?

○ Landsat data purchases will likely increase
○ Landsat data purchases will likely decrease
○ No impact on Landsat data purchases
○ Don't know

(28) Regarding planning for future Landsat missions, please rank the following capabilities in ascending order (1 to 7: 1 being the most important) of their importance to you.

__ Maintaining ETM+image characteristics
__ Improved spatial resolution in the Pan band
__ Improved spatial resolution in the spectral bands
__ Shorter revisit interval
__ Imroved spectral resolution (more bands)
__ Active sensing (radar capability)
__ Other (please specify) _____

(29) Utilizing Landsat data in the future may require improved technological capability in your organization, e.g., ability to apply radiometric and/or geometric corrections to raw data. Such a requirement

○ Would be a major difficulty
○ Would be a minor difficulty
○ Would be no difficulty
○ No opinion

(30) What other types of land remote sensing data acquired from space-borne platforms are you currently using or plan to use?

○ Spot
○ Resours
○ ASTER
○ IRS
○ Other(s) (please specify) _____

(31) Please provide your recommendations to the Landsat Program Management regarding the status, effectiveness and operation of the Landsat system.

[FR Doc. 94–30515 Filed 12–12–94; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–424–OLA–3; 50–425–OLA–3; ASLBP No. 96–671–01–OLA–3]

Atomic Safety and Licensing Board; In the Matter of Georgia Power Company, et al. (Vogtle Electric Generating Plant, Units 1 and 2); Evidentiary Hearing

December 7, 1994.

The public evidentiary hearing scheduled for December 28, 1994, will begin at 9 am on January 4 at the Hearing Room (T 3 B45), Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

The purpose of the hearing is to receive evidence concerning alleged misrepresentations about an alleged illegal transfer of operating authority for the Vogtle Plant. The hearing is expected to last up to three weeks. Most sessions will be in Washington, DC, but there may also be some sessions in Atlanta, Georgia, at a place to be announced.

Rockville, Maryland.

For the Atomic Safety and Licensing Board.

Peter B. Bloch,

Chair.

[FR Doc. 94–30544 Filed 12–12–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–461]

Illinois Power Company, et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 95 to Facility Operating License No. NPF–62 issued to Illinois Power Company (the licensee), which revised the Technical Specifications for operation of the Clinton Power Station, Unit 1, located in Dewitt County, Illinois. The amendment is effective as of the date of issuance.

The amendment modified the Technical Specifications by replacing the existing Technical Specifications in their entirety with a new set of Technical Specifications based on NUREG–1434, "Improved BWR–6

Technical Specifications," dated September 1992. This amendment was based on the licensee's submittal of October 26, 1993, and supplemented by letters dated April 26, October 31, November 18, and November 28, 1994.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on April 14, 1994 (59 FR 17800). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment (59 FR 55864, dated November 9, 1994).

For further details with respect to the action see (1) the application for amendment dated October 26, 1993, and supplemented by letters dated April 26, October 31, November 18 and November 28, 1994, (2) Amendment No. 95 to License No. NPF–62, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland, this 2nd day of December 1994.

For the Nuclear Regulatory Commission.

Douglas V. Pickett,

Senior Project Manager, Project Directorate III–3, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–30543 Filed 12–12–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–277 and 50–278]

In the Matter of: Philadelphia Electric Company, et al. Exemption

I.

Philadelphia Electric Company, et al. (PECo, the licensee) is the holder of Facility Operating License Nos. DPR–44 and DPR–56, which authorize operation of the Peach Bottom Atomic Power Station, (PBAPS) Units 2 and 3. The licenses provide, among other things, that the license is subject to all rules, regulations, and orders of the Commission now or hereinafter in effect.

The facility consists of two boiling water reactors located in York County, Pennsylvania.

II.

It is stated in 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," paragraph (a), that "The licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety."

It is specified in 10 CFR 73.55(d), "Access Requirements," paragraph (1), that "The licensee shall control all points of personnel and vehicle access into a protected area." It is specified in 10 CFR 73.55(d)(5) that "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort * * *" It also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual "receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area * * *"

The licensee propose to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve badges at each entrance/exit location and would allow all individuals with unescorted access to keep their badge with them when departing the site.

An exemption from 10 CFR 73.55(d)(5) is required to allow contractors who have unescorted access to take their badges offsite instead of returning them when exiting the site. By letter dated September 8, 1994, the licensee requested an exemption from certain requirements of 10 CFR 73.55(d)(5) for this purpose.

III.

Pursuant to 10 CFR 73.5, "Specific exemptions," the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest. Pursuant to 10 CFR 73.55, the Commission may authorize a licensee to provide measures for protection against radiological sabotage provided the licensee demonstrates that the measures have "the same high assurance objective" and meet "the general performance requirements" of the regulation, and "the overall level of system performance provides protection against radiological sabotage equivalent" to that which would be provided by the regulation.

At the PBAPS site, unescorted access into protected areas is controlled through the use of a photograph on a combination badge and keycard. (Hereafter, these are referred to as badge). The security officers at the entrance station use the photograph on the badge to visually identify the individual requesting access. The badges for both licensee employees and contractor personnel who have been granted unescorted access are issued upon entrance at the entrance/exit location and are returned upon exit. The badges are stored and are retrievable at the entrance/exit location. In accordance with 10 CFR 73.55(d)(5), contractor individuals are not allowed to take badges offsite. In accordance with the plant's physical security plan, neither licensee employee nor contractors are allowed to take badges offsite.

Under the proposed system, each individual who is authorized for unescorted access into protected areas would have the physical characteristics of their hand (hand geometry) registered with their badge number in the access control system. When an individual enters the badge into the card reader and places the hand on the measuring surface, the system would record the individual's hand image. The unique characteristics of the extracted hand image would be compared with the previously stored template in the access control system to verify authorization for entry. Individuals, including licensee employees and contractors, would be allowed to keep their badges with them when they depart the site and thus eliminate the process to issue,

retrieve and store badges at the entrance stations to the plant. Badges do not carry any information other than a unique identification number.

All other access processes, including search function capability would remain the same. This system would not be used for persons requiring escorted access, i.e., visitors.

Based on a Sandia report entitled, "A Performance Evaluation of Biometric Identification Devices" (SAND91—0276 US–906 Unlimited Release, Printed June 1991), and on the licensee's experience with the current photo-identification system, the licensee stated that the false accept rate for the hand geometry system is comparable to that of the current system. The biometric system has been in use for a number of years at several sensitive Department of Energy facilities. The licensee will implement a process for testing the proposed system to ensure continued overall level of performance equivalent to that specified in the regulation. The Physical Security Plan for PBAPS, Units 2 and 3, will be revised to include implementation and testing of the hand geometry access control system and to allow licensee employees and contractors to take their badges offsite.

The licensee will control all points of personnel access into a protected area under the observation of security personnel through the use of a badge and verification of hand geometry. A numbered picture badge identification system will continue to be used for all individuals who are authorized unescorted access to protected areas. Badges will continue to be displayed by all individuals while inside the protected area.

Since both the badges and hand geometry would be necessary for access into the protected areas, the proposed system would provide for a positive verification process and the potential loss of a badge by an individual, as a result of taking the badge offsite, would not enable an unauthorized entry into protected areas.

For the foregoing reasons, pursuant to 10 CFR 73.55, the NRC staff has determined that the proposed alternative measures for protection against radiological sabotage meet "the same high assurance objective," and "the general performance requirements" of the regulation and that "the overall level of system performance provides protection against radiological sabotage equivalent" to that which would be provided by the regulation.

IV.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, an exemption is authorized by law, will not endanger life or property or common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants an exemption from those requirements of 10 CFR 73.55(d)(5) relating to the returning of picture badges upon exit from the protected area such that individuals not employed by the licensee, i.e., contractors, who are authorized unescorted access into the protected area, may take their picture badges offsite.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant adverse environmental impact (59 FR 62753).

This exemption is effective upon issuance.

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

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Acting Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–30542 Filed 12–12–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–286]

Power Authority of the State of New York; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License No. DRP–64, issued to the Power Authority of the State of New York (the licensee), for operation of Indian Point Nuclear Generating Unit No. 3 (Indian Point 3) located in Westchester County, New York.

The proposed amendment would revise Section 4.4 of the Indian Point 3 Technical Specifications. Specifically, TS 4.4.E.1 would be revised to allow a one-time extension to the 30-month interval requirement for leak rate testing of Residual Heat Removal (RHR) containment isolation values AC–732, AC–741, AC–MOV–743, AC–MOV–744, and AC–MOV–1870. This one-time extension for leak rate testing of the RHR valves would be deferred until prior to return to power following the current outage, which defined as prior to T_{avg} exceeding 350 °F.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facilities in accordance with the proposed amendment would not (1) involve a siginificant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Consistent with the criteria of 10 CFR 50.92, the enclosed application is judged to involve no significant hazards based on the following information:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: The proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change is limited to a one-time extension of the containment isolation valve leak rate test for RHR valves, AC–732, AC–741, AC–MOV–743, AC–MOV–744, and AC–MOV–1870. Testing the RHR containment isolation valves while T_{avg} is above 200 °F and below 350 °F is considered to be a more practical time to test the valves because, in this configuration, the reactor coolant pumps and steam generators can be used to remove decay heat. Additionally, the revised testing procedure required to test the RHR containment isolation valves with T_{avg} above 200 °F and below 350 °F can be performed in accordance with the current Technical Specifications. Therefore, the probability of a previously evaluated accident is not significantly increased. The consequences of a previously evaluated accident would not be significantly increased because each of the three RHR lines associated with valves AC–732, AC–741, AC–MOV–743, AC–MOV–744, and AC–MOV–1870 has redundant isolation barriers and is supplied by the IVSWS [isolation valve seal water system] which would minimize any leakage past the isolation barriers. Further, due to the periodic surveillance

that ensures that leakage from RHR components located outside containment does not exceed two gallons per hour, even if significant leakage past the RHR containment isolation valves occurred, this would not significantly affect off-site exposures.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not introduce new accident initiators or failure mechanisms since the change does not alter the physical characteristics of any plant system or component. The change is limited to a one-time extension to the leak rate test interval for RHR valves AC–732, AC–741, AC–MOV–743, AC–MOV–744, and AC–MOV–1870.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: The proposed amendment does not involve a significant reduction in a margin of safety. Testing the RHR containment isolation valves while T_{avg} is above 200 °F and below 350 °F is considered to be a more practical time to test the valves because, in this configuration, the reactor coolant pumps and steam generators can be used to remove decay heat. Additionally, the revised testing procedure required to test the RHR containment isolation valves with T_{avg} above 200 °F and below 350 °F can be performed in accordance with the current Technical Specifications. Therefore, there is not a significant reduction in a margin of safety. With respect to containment integrity, there is not a significant reduction in a margin of safety because each of the three RHR lines associated with valves AC–732, AC–741, AC–MOV–743, and AC–MOV–744, and AC–MOV–1870 has redundant isolation barriers and is supplied by the IVSWS which would minimize any leakage past the isolation barriers. The most recent test results associated with valves AC–732, AC–741, AC–MOV–743, AC–MOV–744, and AC–MOV–1870 show that the leak rates of the valves were well within the acceptance criteria of the tests. Further, due to the periodic surveillance that ensures that leakage from RHR components located outside containment does not exceed two gallons per hour, even if significant leakage past the RHR containment isolation valves occurred, this would significantly affect off-site exposures.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facilities, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 12, 1995, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention

and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Michael J. Case: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 8, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Dated at Rockville, Maryland, this 8th day of December 1994.

For the Nuclear Regulatory Commission.

Donald S. Brinkman,

Acting Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–30673 Filed 12–13–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35054; File No. SR–NASD–94–70]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by The National Association of Securities Dealers, Inc. Relating to Consolidation of the Level 1 and Last Sale Information Services and Subscriber Fees

December 6, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 1, 1994 the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder, the following is the full text of a proposed rule change that will effectuate a consolidation of the Nasdaq Level 1 and Last Sale Information services and of the corresponding subscriber charges. The proposed language would modify Sections A(1) and (5) of Part VIII of Schedule D to the NASD By-Laws. (New language is italicized and deletions are bracketed.)

PART VIII

SCHEDULE OF NASD CHARGES FOR SERVICES AND EQUIPMENT

A. System Services

1. Level 1 Service

The charge to be paid by the subscriber for each terminal receiving NASDAQ Level 1 Service is [$9.25] *$19* per month. This Service includes *the following data:* (i) inside bid/ask quotations calculated for securities [quoted in] *listed on* [t]*The Nasdaq Stock Market* [Nasdaq System] and securities quoted in the OTC Bulletin Board ("OTCBB") service; [and] (ii) the individual quotations or indications of interest of broker-dealers utilizing the OTCBB service*; and (iii) last sale information on securities classified as designated securities in Schedule D to the NASD By-Laws, Parts X, XI, and XIII and securities classified as over-the-counter equity securities in Part XII of Schedule D.*

* * * * *

5. *Rescinded and reserved for future use.*

[Last Sale Information

a. The charge to be paid by the subscriber for each terminal receiving Last Sale Information through a vendor shall be determined by the total number of securities classified by the Corporation (i) as designated securities under Part X and XI and (ii) those classified as OTC Equity Securities under Part XII of Schedule D to the NASD By-Laws. The following schedule of charges shall apply to the receipt of last sale information for such securities.

Number of securities	Charge per terminal per month
250 or less	$2.50
251 or 500	5.00
501 or 1,000	7.50
1001 or more	9.75

b. The rate for each month shall be determined by the total number of designated securities and OTC Equity Securities at the start of business on the first day of that month.]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule change is to establish a single service offering comprised of the existing Nasdaq Level 1 ("Level 1") quotation and Last Sale Information ("Last Sale") services. The monthly charge to be levied for the consolidated service will be $19/terminal, the sum of the monthly charges currently assessed for receipt of the Last Sale and Level 1 services on an authorized terminal device. Hence, this rule proposal does not entail an increase in the subscriber charges for the individual constituent services; however, its implementation will result in higher fees for some Level 1 subscribers who do not currently pay for receipt of last sale data.

The two services covered by this proposal are distributed by commercial vendors of market data pursuant to contracts with The Nasdaq Stock Market, Inc. ("NSMI"), a wholly-owned subsidiary of the NASD.[1] Vendors distribute the data via their respective networks to the end users who pay the established charge levied by NSMI for receipt of the quotation and transaction information. The existence of separate service categories for quotation and transaction data traces to the evolution of The Nasdaq Stock Market ("Nasdaq"). From its inception in 1971, Nasdaq provided quotation information on a real-time basis for vendor distribution. In 1982, the NASD implemented rules requiring member firms to report individual transactions in the top tier of Nasdaq listings within 90 seconds of execution. Later, this reporting regime was extended to Nasdaq SmallCap issues, Nasdaq convertible debt issues, and equity issues traded exclusively over-the-counter ("OTC"). In 1991, the universe of quotation data available to Level 1 subscribers was expanded to include real-time quotations entered by OTC market makers utilizing the OTCBB service. The instant proposal would combine the real-time quotation and transaction data for Nasdaq and OTC issues, respectively, into a single service distributed by vendors for which their subscribers will pay a single monthly charge of $19/terminal.

The NASD posits that this proposal will produce benefits to vendors as well as their customers. First, it will simplify the billing process by eliminating the need to separately identify and track those terminals receiving one or the other covered service. This should minimize the potential for billing disputes between vendors and their customers, and simplify the process by which vendors authorize (or deauthorize) subscriber devices for receipt of real-time quotation and transaction information on Nasdaq and OTC issues, Second, it will increase market transparency by ensuring that all subscribers to NSMI's comprehensive quotation data (*i.e.*, the quotations on Nasdaq and OTCBB issues that Level 1 subscribers currently receive) will receive trade-by-trade information for the same universe of quoted securities. Thus, the vendors' customers will automatically have access to more expansive data that can be used to gauge market trends and facilitate investment decisions. And third, implementation of this proposal will materially advance NSMI's efforts to simplify and update its fee structure, with a view toward reducing the administrative burdens and costs incurred by vendors that distribute quotation and transaction data from the Nasdaq and OTC markets, respectively.[2] In this regard, the NASD notes that the SEC previously approved a similar initiative that linked the subscription of quotation and transaction data services for New York Stock Exchange ("NYSE") listed issues and established unified subscriber fees. This was accomplished by certain amendments to the Consolidated Tape and Consolidated Quotation Plans.[3]

The NASD and NSMI believe that that proposed rule change is consistent with the requirements of Section 15A(b)(5) of the Act. Section 15A(b)(5) specifies that the rules of a national securities association shall provide for the equitable allocation of reasonable dues, fees and other charges among members, issuers and other persons using any facility or system that the association operates or controls. The proposed change in fee structure effects the consolidation of two existing services into a single service, priced at the current levels of the constituent services. As such, the proposal does not constitute a fee increase for those subscribers receiving the most comprehensive service. However, its implementation will require that Level 1 subscribers who had not previously received last sale data also pay for receipt of complete last sale data. In terms of the universe of Level 1 terminals currently supported, this segment accounts for about 6.5% of the terminal population. It should be noted that this percentage has been declining in recent years, apparently reflecting the enhanced value of last sale data that now includes all Nasdaq-listed securities and thousands of OTC equity securities. The NASD believes that the additional cost of $9.75 that some subscribers will incur will be partially offset by the administrative savings.[4] In particular, large subscribers will no longer have to verify the accuracy of billings by tracking terminals that receive only one of the covered services. Administrative savings should also accrue to vendors with large populations of subscribers receiving Nasdaq market data. Moreover, the

[1] NSMI operates and maintains the facilities that collect and validate market data prior to broadcasting the data to vendors for redistribution.

[2] The action proposed in this filing is one of a number of steps contemplated in the process of responding to vendor and subscriber concerns respecting the administration of information display, utilization and entitlement.

[3] *See* Release No. 34–24130 (February 20, 1987); 52 FR 6413 (March 3, 1987). While the NYSE initiative resulted in decreased payments for a majority of subscribers with one display device, the Commission noted that some subscribers with one display device would pay increased charges and that certain smaller firms that had currently received transaction information only would experience a fee increase. The Commission, in its approval order encouraged the CTA and CQ Plan participants to monitor the operation of its revised structure to determine if relief for smaller firms is practicable. *Id.*

[4] To the extent that some small volume subscribers to the current Level 1 service do not wish to receive the consolidated service they may subscribe to a vendor service offering the same categories of information on a delayed basis. NSMI imposes no subscriber charge for delayed market data.

instant proposal will effect a simplification in the fee structure applicable to receipt of two major data services supported by NSMI.

The NASD and NSMI also believe that this proposal is consistent with certain national market system objectives expressed by Congress in adopting Section 11A(a)(1) of the Act in 1975. Specifically, the Congress found that the efficiency of the nation's securities markets would be advanced by the broad dissemination of reliable quotation and transaction information to brokers, dealers, and investors. In other words, the Congress sought to increase market transparency by fostering opportunities for electronic delivery of current market data to the constituencies served by the various securities markets. The NASD submits that its proposal is consistent with Section 11A(a)(1) because it will optimize the distribution of real-time quotation and transaction data from the Nasdaq and OTC markets to market professionals handling customer orders. As a result, registered representatives using desk-top terminals to supply current market data on Nasdaq or OTC equities will automatically be able to furnish their customers with insider bids/offers as well as last sale prices for these securities. Hence, consolidation of the Level 1 and Last Sale services translates to expanded access to market data for retail investors who depend on their brokers for current market information Finally, the NASD notes that the Commission previously approved amendments to the Consolidated Tape and Consolidated Quotation Plans that effected a bundling of quotation and last sale data services (and the establishment of unified subscriber fees) respecting NYSE-listed securities covered by these national market system plans. Based on these factors, the NASD reiterates its belief that the instant proposal is fully consistent with the data distribution objectives contained in Section 11A(a)(1) of the Act.

B Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The NASD did not solicit or receive written comments on this rule proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) by order approve such proposed rule change, or; (B) institute proceeding to determine whether the proposed rule change should be disapproved.

IV Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by January 3, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority [5]

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 94–30517 Filed 12–12–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before January 12, 1995. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3rd Street, S.W., 5th Floor, Washington, D.C. 20416, Telephone: (202) 205–6629

OMB Reviewer: Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503

Title: SBIC Financial Reports

Form No.: SBA Forms 461.1, 468.2, 468.3, 468.4

Frequency: Annual

Description of Respondents: Small Business Investment Companies

Annual Responses: 305

Annual Burden: 5,185

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 94–30546 Filed 12–12–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 2137]

United States International Telecommunications Advisory Committee (ITAC); Postponement of Meeting and Notice of New Date and Place

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), previously planned to be held December 14, 1994, (published in Federal Register Volume 59, No. 228, Pg. 61021) will now be held January 5, 1995, in Room 1107, 10:00 a.m. to 1:00 p.m. at the Department of State, 2201 "C" Street, N.W., Washington, D.C. This meeting is being postponed because of the absence of key officials at international meetings during December.

As previously announced, the agenda of this first formal meeting of the full

[5] 17 C.F R. 200.30–3(a)(12)

ITAC committee includes: (1) presentation and discussion of the ITAC structure, working methods, and priorities; (2) a review of the ITU Plenipotentiary Conference held recently in Kyoto, to identify follow-on tasks; (3) status report on preparations for the 1998 Plenipotentiary, to be hosted by the United States; and (4) the establishment of ad hoc groups to deal with specific areas of interest (such as, to provide advice on participation in OECD, APEC and CITEL).

Members of the general public may attend the meetings and join in the discussions, subject to the instructions of the chair and seating availability. In this regard, entry to the building is controlled. All persons planning to attend should advise the Department by leaving a message on 202–647–0201, no later than two days before the meeting. Enter through the main lobby on C Street. A picture ID will be required for admittance.

Dated: December 8, 1994.

Richard E. Shrum,

ITAC Executive Secretary.

[FR Doc. 94–30624 Filed 12–12–94; 8:45 am]

BILLING CODE 4710–45–M

TENNESSEE VALLEY AUTHORITY

Land Between The Lakes Natural Resources Management Plan, Lyon and Trigg Counties, Kentucky and Stewart County, Tennessee; Record of Decision

AGENCY: Tennessee Valley Authority.

ACTION: Issuance of Record of Decision.

SUMMARY: This notice is provided in accordance with the National Environmental Policy Act and § 5.4.9 of TVA's implementing procedures, 48 FR 19264 (1983). TVA has decided to adopt the modified preferred alternative (Alternative E) identified in its "Final Environmental Impact Statement (EIS) on the Natural Resources Management Plan (NRMP) at Land Between The Lakes (LBL)." The Final EIS was made available to the public on October 17, 1994. Under Alternative E (modified), natural resource management will be used to enhance recreation and environmental education, with emphasis on scenic beauty, sightseeing, wildlife viewing, and a more natural appearance of the forest. Multiple use of resources will be allowed, including hunting, fishing and timber harvesting. The final NRMP also identifies measures to integrate LBL's designation as a United Nations Man and the Biosphere Reserve into resource planning and management.

FOR FURTHER INFORMATION CONTACT: Dale V. Wilhelm, Manager, National Environmental Policy Act, Environmental Management, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8C, Knoxville, Tennessee 37902–1499; telephone (615) 632–6693.

SUPPLEMENTARY INFORMATION: LBL is a 170,000-acre tract of federal land in western Kentucky and Tennessee. It is located between Kentucky Reservoir and Lake Barkley. The area was established in 1963. TVA manages LBL to promote recreation and environmental education. Management of the area's natural resources is a very important element in the fulfillment of these goals. Natural resources which are managed include forests, open lands (*e.g.*, agricultural fields, wildlife openings), wildlife, and water.

TVA first developed an NRMP in 1964 and subsequently revised it several times. The NRMP was last revised in 1985. Since then, a number of new resource management issues have arisen and there have been changes in public desires for resource management. In addition, LBL was designated an international biosphere reserve by the United Nations in 1991. The UN's biosphere reserve program identifies examples of the world's major managed and preserved ecosystems and emphasizes resource conservation and research at those areas. LBL was designated a UN biosphere reserve "to provide a research demonstration of how preserved lands, managed lands, and man can coexist."

To obtain the public's views on new resource issues and possible changes to the management plan, TVA decided to prepare an EIS in concert with its consideration of possible revisions to the NRMP. Following scoping, TVA released a draft EIS and NRMP on November 10, 1993. A public hearing was held on December 14, 1993, and a 60-day period was provided for receipt of written comments. TVA received approximately 2,900 letters and 64 statements were made at the public hearing. After considering all comments, TVA revised the EIS appropriately. The Final EIS was distributed to commenting agencies and the public on October 17, 1994.

Alternatives Considered

In light of LBL's broad goals, a number of management philosophies and plans could be implemented. Consequently, TVA purposefully formulated alternatives for the EIS that captured a reasonable range of appropriate management approaches. Certain of the alternatives were then modified, first in response to comments received during the scoping stage and then in response to comments received on the draft EIS. As presented in the Final EIS, the alternatives evaluated and considered included:

Alternative A: No Action

Under Alternative A, there would be no change in the basic management guidance provided by the 1985 Natural Resources Management Plan. Since 1985, there have been several modifications in management practices used at LBL as knowledge has improved and new management techniques were developed. These modifications will be formally incorporated into a revised NRMP. Aside from these modifications, choosing Alternative A would essentially mean taking no action because it represents current management objectives and guidelines for LBL's natural resources. The basic management approach for forest resources would continue commercial forest management (the removal and sale of merchantable timber) by even-aged management, including shelterwood and clearcut harvests. However, harvest levels would be substantially lower than annual growth, with a rotation age for hardwoods of 276 years. Approximately 13,150 acres would be designated as biosphere reserve core area. TVA would protect water resources through use of silvicultural and agricultural best management practices (BMPs), would manipulate water levels on selected interior ponds, and would construct artificial wetlands to benefit shorebirds and waterfowl.

Alternative B: Emphasis on Wildlife Management for Game Species

Even-aged forest management practices would continue to be used, including shelterwood and clearcut harvests but the volume of trees cut would be increased. Increasing even-aged practices would retard shade-tolerant hardwood encroachment into LBL's forests and maintain a higher proportion of oak-hickory forest types. Oak-hickory forests produce more mast (seeds and nuts such as acorns and hickory nuts) than other forest types. Increasing even-aged practices also would increase the amount of young plant growth and edge communities. Both changes would benefit wildlife, especially game species, and associated recreational activities such as hunting and wildlife viewing. Timber harvest levels would still be less than annual growth (less wood volume would be removed than grows each year). However, the rotation age for hardwoods would decrease to

approximately 100 years. Biosphere reserve core areas would total 20,650 acres. Water resource and wetland management would be the same as in Alternative A.

Alternative C. No Active Natural Resource Management

Under Alternative C, commercial forest management would not be practiced, and natural succession would be allowed to convert approximately 40 to 50 percent of the forest to shade-tolerant hardwoods such as maple and beech. In addition, open land management for the purposes of creating wildlife habitat would cease, and hunting and other consumptive recreation would not be allowed. The biosphere reserve core area would total 161,500 acres, essentially all of LBL except those areas devoted to the interior highway system and facilities. Water level manipulation on interior ponds would benefit waterfowl and shorebirds, but no artificial wetlands would be constructed.

Alternative D: No Active Forest Management, Hunting Allowed

Under Alternative D, commercial forest management would cease as in Alternative C. However, open land management would continue as in the past, and hunting would be allowed. Biosphere reserve core area would total 151,050 acres. Water and wetland management would be the same as under Alternative A.

Alternative E (modified): Combination of Even-Aged and Uneven-Aged Forest Management With Expansion of Biosphere Reserve Core Area

Under Alternative E, even-aged forest management would be used on moist, lower slopes and bottomland habitats where conversion to shade-tolerant species through natural succession is most likely. Uneven-aged forest management practices would be used on upper slopes and ridges where conversion is less likely to occur The goal of both management systems would be to maintain a high proportion of healthy, vigorous oak-hickory forest stands. For aesthetic reasons, clearcuts would not be used. To further reduce aesthetic impacts, final shelterwood harvests would be deferred for 20 to 40 years following the initial harvest. The rotation age for forests under even-aged management would be 150 years. Group selection harvests under the uneven-aged system would be limited to about one acre or less in size. Although set rotations would not apply to uneven-aged management, hardwood trees would be allowed to reach an age of 150 to 200 years. Open land management would continue as in the past; however, any open lands within biosphere reserve core areas would be allowed to revert to forest. Biosphere reserve core areas would be increased to a total of 42,500 acres. Water level and wetland management would be the same as under Alternative A.

Preferred Alternative

The Final EIS identified Alternative E as TVA's preferred alternative. In TVA's opinion, Alternative E represents an environmentally balanced approach which best provides for the recreational and educational goals of LBL. This approach is largely consistent with and builds upon the management approach currently in use at LBL (Alternative A). It provides for increased outdoor recreation and environmental education opportunities but does so in the context of ecologically sound natural resource management.

Under Alternative E, active forest and wildlife management would occur at reduced level's compared to the no action alternative (Alternative A). However, the forest should have a more natural appearance compared to alternatives A and B—a difference which TVA's analyses indicate is preferred by the general public. A larger biosphere reserve core area would enhance conditions for those species which benefit from unfragmented forest blocks and closed canopies. This would include forest interior neotropical migratory birds which are of current concern. There are a number of other attributes that make Alternative E preferable:

- Scenic beauty would be emphasized—timber harvesting methods would be employed that decrease the visual impact of tree removal. Areas along roadways and adjacent to facilities would be planted to native prairie grasses, native wildflowers and native flowering trees and shrubs;
- Timber harvesting would continue but at a level of 5.3 million board feet annually, a 20 percent decrease from prior levels of 6.6 million board feet;
- Wildlife management activities would continue to support hunting and wildlife viewing activities;
- The combination of forest management activities used, in conjunction with a large biosphere reserve area, would enhance site-level, landscape-level, and regional biological diversity;
- Hiking, horseback riding, and bicycle riding experiences would be enhanced; and
- A slight increase in tourism spending would be expected, while the loss of timber-related jobs would be minimized.

As finally formulated, Alternative E reflects modifications which were made to it in response to public comments on the Draft EIS. Specific comments and responses were:

Comment: The biosphere reserve core acreage should be increased to address concerns about forest fragmentation, habitat for forest interior neogropical migratory birds, and regional biological diversity.

Response: The biosphere reserve core acreage was increased from 20,650 acres to 42,500 acres (approximately 25 percent of LBL).

Comment: Silvicultural recommendations (*e.g.*, timber harvesting methods) should be based on specific site conditions; therefore, even-aged management should not be eliminated as a management tool.

Response: Even-aged management was added to the alternative as an appropriate practice on moist and bottomland sites.

Comment: Management actions should provide for improved forest health and vigor (especially in light of anticipated future gypsy moth infestations).

Response: Even-aged and uneven-aged management practices were included with a goal of maintaining a healthy and vigorous forest.

Comment: Aesthetic resources should continue to be protected and improved through resource management activities.

Response: Silvicultural practices such as shelterwood with a delay in the final shelterwood harvest were included as an alternative to clearcutting.

Comment: The use of pesticides and other chemicals should be reduced.

Response: The alternative was modified to establish as a target a 25 percent reduction in the amount of pesticides used at LBL by the year 2000.

TVA received a substantial number of comments that supported the more aggressive timber harvesting activities allowed under Alternatives A and B. TVA agrees that Alternative A has been a successful management strategy in the past at LBL, particularly in the area of enhancing wildlife habitat. As a result, even-aged forest management, a critical component of Alternative A, has been included in Alternative E although at reduced levels. Even-aged forest management will help to meet the long-term needs of early successional wildlife species by increasing the amount of young plant growth. Even-aged management is more effective in maintaining the oak-hickory forest of

the area. However, the public's perception of even-aged management is generally negative and there is less acceptance of this than in the past, particularly on public lands. The reduced use of even-aged management under Alternative E attempts to strike a balance between the ecological benefits of even-aged management and the public's perceptions.

TVA also agrees with commenters that Alternative B would represent sound resource management from a biological standpoint. However, increasing the level of even-aged timber management would have negative visual impacts and is not desirable for that reason. In addition, as pointed out by a number of commenters, LBL offers the opportunity to maintain a large block of mature forest in a region where most private forests are fragmented and other tracts of public land are small in size.

A number of comments were received that supported an end to commercial forest management activities (the harvesting of commercially-usable timber) on all of LBL. This would occur under Alternatives C and D. As stated in TVA's EIS, Alternative C or D would be consistent with and help advance LBL's broad goals. However, over the long term, these alternatives are expected to change 40 to 50 percent of the stands in LBL's forests from oak-hickory to beech-maple. Oak-hickory species are better mast producers and many wildlife species rely on mast for food. In addition, wildlife species which depend on early-successional vegetative habitats would be adversely impacted by the change to mature, old-growth forest. There is also likely to be a decline in overall visitation under Alternatives C and D because of adverse effects on hunting. Under Alternative C, hunting would be eliminated. Under Alternative D, the habitats preferred by certain game species would be reduced and hunting opportunities would be adversely affected. The diversity of habitats and associated recreational opportunities offered by Alternative E better support LBL's recreational and education goals.

Environmentally Preferable Alternative

Because of LBL's goals of recreation and environmental education, none of the alternatives would be environmentally destructive and none of the alternatives would likely result in significant environmental impacts.

There are environmental differences among alternatives. Depending on the alternative, there could be greater or lesser impacts on certain resources and certain species. For example, Alternative C would eliminate future commercial timber harvesting and likely eventually result in an old growth forest. This would benefit species which prefer such habitat such as some neotropical birds. However, those neotropical birds which favor early successional vegetation would be adversely impacted. In contrast, Alternative B, which would allow the most timber harvesting, would result in more early successional habitat and benefit game species, such as deer, that prefer such habitats.

Consequently, depending on the habitat or species one wants to enhance or foster, any one of the alternatives evaluated in TVA's EIS could be characterized as environmentally preferable.

Environmental Consequences and Commitments

In choosing Alternative E, all practical means to avoid or minimize environmental harm have been adopted. Site-specific environmental reviews will be conducted prior to implementation of natural resource management actions that could potentially impact the environment. Typically, mitigation will be accomplished by avoiding sensitive areas, changes in intensity or method of management, or providing off-setting resource enhancement or replacement at other localities.

Common mitigation measures include silvicultural and agricultural BMPs to ensure that minimal amounts of soil and nutrients enter any water course. Other mitigation measures include archaeological and historic surveys, use of integrated pest management techniques, and implementation of visual quality zones. Wildlife management mitigation includes bat management zones and eagle nest management zones. To address the issues of fragmentation and biological diversity, large blocks of biosphere reserve core acreage are an integral part of Alternative E.

The results of implementing Alternative E will be continuously monitored to determine if management objectives are being achieved. The results of forest and open land management activities will be monitored through the use of forest inventories, logging inspections, annual mast surveys, and use of gypsy moth traps among other activities. Management impacts on wildlife are monitored through periodic surveys of bats, breeding and wintering birds, eagles, grouse, turkeys, and deer, as well as through hunter harvest data and wildlife disease surveillance activities. Water and soil will also be monitored through testing and survey activities.

Innovative natural resource management is crucial to the fulfillment of LBL's mission and to TVA's role in environmental leadership. TVA believes this plan will further the recreation and environmental education mission of LBL. At the same time, this plan will maintain and enhance a nationally significant tract of public land in western Kentucky and Tennessee.

Dated: December 6, 1994.

Kathryn J. Jackson,

Senior Vice President, Resource Group, Tennessee Valley Authority.

[FR Doc. 94–30559 Filed 12–12–94; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 94–112]

New York Harbor Traffic Management Advisory Committee; Meeting

AGENCY: Coast Guard, DOT

ACTION: Notice of meeting.

SUMMARY: A meeting of the New York Harbor Traffic Management Advisory Committee will he held in January 11, 1995, in the Conference Room, second floor, U.S. Coast Guard Marine Inspection Office, Battery Park, New York, beginning at 10:00 a.m.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander D.S. Hill, USCG, Executive Secretary, NY Harbor Traffic Management Advisory Committee, Vessel Traffic Service, Building 108, Governors Island, New York, NY 10004–5070; or by calling (212(668–7429.

SUPPLEMENTARY INFORMATION: Authority for conducting NYHTMAC meetings is granted pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463;5 USC App. I).

The New York Harbor Traffic Management Advisory Committee has been established by Commander, First Coast Guard District to provide information, consultation, and advice with regard to port development, maritime trade, port traffic, and other maritime interests in the harbor Members of the Committee serve voluntarily without compensation from the Federal Government.

Topics for this meeting include a report on upcoming marine events, dredging operations in New York Harbor, update on Vessel Traffic Service and Coast Guard regulatory initiatives, environmental monitoring initiatives, charger renewal update, and topics from the floor.

Attendance is open to the interested public. With advance notice to the Chairperson, members of the public may make oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director no later than one day before the meeting. Any member of the public may present a written statement to the Committee at any time.

T.H. Gilmour,

Captain, Coast Guard, Captain of the Port New York, NYHTMAC Executive Director

[FR Doc. 94–30584 Filed 12–12–94; 8:45 am]

BILLING CODE 4910–14–M

National Highway Traffic Safety Administration

[Docket No. 94–38; Notice 2]

Chrysler Corporation; Decision on Petition for Determination of Inconsequential Noncompliance

Chrysler Corporation (Chrysler) of Auburn Hills, Michigan, determined that some of its vehicles failed to comply with the outside mirror requirements of 49 CFR 571.111, Federal Motor Vehicle Safety Standard (FMVSS) No. 111, "Rearview Mirrors," and filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Chrysler also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) (now 49 U.S.C. 30118, 30120) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on May 17, 1994, and an opportunity afforded for comment (59 FR 25699). This notice grants Chrysler's petition with respect to some of the noncomplying motor vehicles and denies it with respect to the remainder

Paragraph S7.1 of FMVSS No. 111 requires that trucks with a gross vehicle weight rating (GVWR) of more than 10,000 pounds have outside mirrors of unit magnification.

During the 1989 through early-1994 model years, Chrysler manufactured an estimated total of 26,700 Dodge Ram 350 and 3500 pickup trucks and cab/chassis with convex, passenger-side, outside, rearview mirrors.

Chrysler supported its petition for inconsequential noncompliance with the following (Chrysler also submitted two figures which compared the fields of view of the noncompliant mirrors to two types of compliant mirrors. This material is available in the NHTSA docket):

(1) The affected vehicles are also equipped with a driver side outside rear view mirror of unit magnification and, except for the less than 100 cab/chassis models, an inside rear view mirror of unit magnification.

(2) The installed 6″ × 9″ convex passenger side mirror meets all requirements of S5 of FMVSS 111 [passenger car requirements], and provides increased field of view capability when compared to the same size mirror of unit magnification or the optional 10″ × 7″ unit magnification mirror

(3) Other than the passenger side mirror being convex rather than unit magnification, the rear view mirror system on the affected vehicles meets or exceeds all performance and location requirements of FMVSS 111. The system capability is adequate in all regards, specifically including provision for both overall system and passenger side field of view

(4) Chrysler is not aware of any owner complaints, field reports or allegations of hazardous circumstances relating to performance of the passenger side mirror on the affected vehicles.

(5) The subject condition occurred as the result of the upgrading of a model for the 1989 model year to more than 10,000 pounds GVWR. That model for prior model years had been equipped with a convex passenger side mirror and unit magnification driver side and inside rear view mirrors. The same mirror system was carried over on the vehicles for which the GVWR was upgraded. Rear view adequacy of the convex mirror was not affected by the GVWR increase, and the need to instead release a unit magnification mirror for compliance to the FMVSS 111 requirement at the upgraded GVWR was inadvertently overlooked at the time and thereafter

(6) From a practical vehicle operation and motor vehicle safety standpoint, the mirror system which fully complied to all FMVSS 111 requirements on earlier model year vehicles was equivalently effective and capable on the upgraded GVWR vehicles.

(7) Existence of the variance was detected during an engineering analysis resulting from a question of mirror size adequacy on certain 1994 subject models. Size was determined to not be a concern, but the analysis uncovered the convex mirror issue. Chrysler then took immediate, expedited action to correct the condition by specifying and installing the optional 10″ × 7″ unit magnification mirrors on affected vehicles.

Chrysler summarized its rationale for granting its petition with the following.

Existence of the subject condition was totally inadvertent and not a deliberate attempt to evade Federal Motor Vehicle Safety Standard requirements. Therefore, in spite of good faith and due care efforts by Chrysler, some vehicles with a GVWR of more than 10,000 pounds were manufactured and shipped with a convex passenger side outside rear view mirror Upon discovery of the condition, Chrysler took immediate action to correct it in production and minimize the number of vehicles produced with the convex mirror

No comments were received on the petition.

NHTSA has reviewed FMVSS No. 111 and Chrysler's arguments. The reason that convex magnification mirrors are permitted for passenger side mirrors on vehicles whose GVWR is less than 10,000 pounds and not for heavier vehicles is that when a vehicle is very large it is important for its operator to be able to look in the mirrors to see the vehicle and its immediate surroundings when in motion. For example, if an operator is attempting to back a longer vehicle into a confined space, a mirror of unit magnification will give a view which is undistorted, thus reducing the chances that the vehicle will collide with anything in its path due to an error in perception by the operator. A convex mirror yields a slightly distorted perspective of the surroundings in order to obtain a larger field of view. This distortion could produce adverse effects if the vehicle is very long.

Chrysler stated that the rearview adequacy of the convex mirrors was not affected by the upgrade in GVWR. This change consisted of adding an extra wheel to the rear axle on each side of the vehicle in order to give it a greater load capacity. While this does increase the width of the vehicle to 93 inches, the modification adds nothing to the length of the truck, and should not affect the ability of the operator to judge the driving environment to the rear and side of the truck. NHTSA has concluded, therefore, that safety does not require that the vehicles be refitted with a convex mirror on the passenger side. However, this conclusion applies to the completed vehicles only. With respect to the 90 cab/chassis that have been produced with the noncompliant mirror, NHTSA notes that these incomplete vehicles could have a number of types of bodies added by a final stage manufacturer, such as ambulance, cargo compartment, and cherry picker. Because of the variance in possible equipment which could be added to the chassis, there is no way to assess the effect on safety of the noncompliance on the completed vehicle. Because these vehicles could be completed in a way which could significantly obstruct a vehicle operator's view, it is impossible to decide that the noncompliance is inconsequential with respect to them, and NHTSA believes that they should be equipped with a unit magnification mirror as the standard requires.

In consideration of the foregoing, the Administrator has decided that Chrysler has met its burden of persuasion with respect to the 26,610 completed pickup trucks described in its petition, and that the noncompliance of these vehicles with FMVSS No. 111 is inconsequential

as it relates to safety. Accordingly, with respect to the completed pickup trucks, the Administrator exempts Chrysler from the notification requirements of 49 U.S.C. 30118 and the remedy requirements of 49 U.S.C. 30120. The Administrator has further decided that Chrysler has not met its burden of persuasion with respect to the 90 cab/chassis incomplete vehicles described in the petition, and denies Chrysler's petition with respect to these motor vehicles.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: December 8, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–30591 Filed 12–12–94; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 94–61; Notice 2]

Uniroyal Goodrich Tire Company; Grant of Petition for Determination of Inconsequential Noncompliance

The Uniroyal Goodrich Tire Company (Uniroyal) of Greenville, South Carolina, determined that some of its tires failed to comply with 49 CFR 571.109, Federal Motor Vehicle Safety Standard (FMVSS) No. 109, "New Pneumatic Tires," and filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Uniroyal also petitioned to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—Motor Vehicle Safety on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the petition was published on July 19, 1994, and an opportunity afforded for comment (59 FR 36832). This notice grants Uniroyal's petition.

Paragraph S4.3.3(b) of FMVSS No. 109 specifies that each tire be labeled with an identification number, the last three digits of which represent the week and year of manufacture. During the period of the 17th through the 20th week of 1994, Uniroyal manufactured approximately 2,800 P175/70R13 MOTOMASTER LE tires with an incorrect week and year of manufacture contained in the tire identification number. The last three digits in the identification numbers on the subject tires are incorrectly marked "167," "168," "169," and "120." The last three digits in the identification numbers for these tires should be "174," "184," "194," and "204" signifying the 17th, 18th, 19th, and 20th weeks of 1994. All tires are sold only in the replacement market.

Uniroyal supported its petition for inconsequential noncompliance with the following:

[Uniroyal does] not believe that this error will impact motor vehicle safety since only the week and year of manufacture is incorrect.

Uniroyal offered further rationale in its Part 573 Report.

The dates marked on these tires could be interpreted as the year 1987 through 1990 or 1997 through 2000. This tire line was introduced during the fourth quarter of 1992; therefore, there would not be pre-existent tires with these numbers. In the event a recall is necessary prior to the week and year (years 1997 through 2000) marked on these tires, there will be no tires that were actually manufactured during these weeks. If it is necessary to recall these tires during or after the weeks marked, the recall population would comprise both the mismarked and properly marked tires.

No comments were received on the petition.

NHTSA has reviewed FMVSS No. 109 and the petitioner's arguments. The primary purpose that the identification number serves is to facilitate identification of tires that are the subject of notification and remedy campaigns. The erroneous date code marking does not affect the ability to identify the tires in the event a campaign is conducted either before or after the erroneously indicated manufacture date. If a recall campaign is required on the tires before the 16th week of 1997, their date code, like any tire's conforming date code, permits instant identification of a tire in the recall population. Should a campaign be required on tires of this tire line manufactured during the 16th weeks of 1997, 1998, and 1999, and the 12th week of 2000, or on the tires in question, the petitioner will have to campaign both sets of tires, compliant tires as well as noncompliant ones, but this is a burden to be borne by the petitioner and does not affect safety in a negative way.

In consideration of the foregoing, the Administrator has decided that Uniroyal has met its burden of persuasion and that the noncompliance herein described is inconsequential to motor vehicle safety. Accordingly, the Administrator exempts Uniroyal from the notification requirements of 49 U.S.C. 30118, and the remedy requirements of 49 U.S.C. 30120.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on December 8, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–30592 Filed 12–12–94; 8:45 am]

BILLING CODE 4910–59–P

UNITED STATES INFORMATION AGENCY

Binational Teacher Training Project

ACTION: Notice—request for proposals.

SUMMARY: The Executive Office of the United States Information Service (USIS) at the American Embassy in Brasilia announces an open competition for an assistance award. Public or private non-profit organizations meeting the provisions described in IRS regulation 501(c)(3) may apply to plan and conduct a three-week seminar in English-language teaching and American culture for approximately 30 Brazilian Binational Center teachers selected by USIS.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through Reorganization Plan No. 2 of March 1978, E.O. 12048 dated March 27, 1978 and the Federal Grants and Cooperative Agreements Act of 1977 (P.L. 95–224).

Programs and projects must conform with Agency requirements and guidelines outlined herein. USIS projects and programs are subject to the availability of funds.

ANNOUNCEMENT NAME AND NUMBER: All communications with USIS concerning this announcement should refer to the above title and reference number USIS/BSB–94–001.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Service, American Embassy (Bsb), Unit 3500, APO AA 34030, by 5 p.m. Washington, D.C. time on 3rd day February, 1995. Faxed documents will not be accepted, nor will documents postmarked on 3rd day of February but received at a later date. U.S. Postal Service can take up to ten days for mail to be delivered. Proposals received after February 3, 1995 will not be accepted. Is the responsibility of each grant

applicant that proposals are received by the above deadline.

FOR FURTHER INFORMATION CONTACT: Executive Officer, USIS, American Embassy, Brasilia, Brazil at fax number 55–61–321–2833 or telephone 55–61–321–7272, Ext. 324 to request a Solicitation Package, which includes more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify the Binational Teacher Training Project on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Executive Officer or submitting their proposals. Once the RFP deadline has passed, the Executive Office may not discuss this competition in any way with applicants until after the proposal review process has been completed.

ADDRESSES: Applicants must follow all instructions given in the Application Package and send only complete applications to: U.S. Information Service, American Embassy (Bsb), Unit 3500, APO AA 34030 Attn: Executive Officer Ref.: USIS/BSB–94–001.

SUPPLEMENTARY INFORMATION: Pursuant to the authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

Overview

Participants should receive advanced training in EFL: course and curriculum design, teacher training and management skills, evalution and testing, with an intensive American Studies component. Special emphasis should be placed on incorporating American Studies materials into an intercultural curriculum. Since this will be the first U.S. experience for many of the participants, the program should introduce the participants to U.S. life, institutions, values, and culture through classes, field trips, contacts with Americans, and community activities. The program should maintain a relative balance among discussion sessions, workshops, and practical experience and promote interaction among the participants. The project should also include an individual research project for each participant.

Approximately 30 Brazilian nationals who are full time employees at a Binational Center in Brazil will participate in this program. Each participant is nominated by his/her institution for final selection by United States Information Service (USIS). Participants either teach English as a Foreign Language, administer English or American Studies programs, or provide teacher training in either English or American Studies. Participants will come on "B1–B2" visas issued by U.S. Consular Officers at American Embassy or Consulates in Brazil. USIS Brasilia will provide the university with biographical and professional data on each candidate.

The proposal should specifically address the following technical requirements:

U.S. Pre-Program Activities

After receiving the final participant list, the university is expected to do the following: send USIS a pre-departure information packet containing welcome and general information with practical suggestions for preparing the participants for their stay at the university. The participants will arrive directly at the program site from their home cities. The university program staff will be expected to make arrangements to have participants met upon arrival at the airport nearest the university campus. A substantive orientation should be provided shortly after all the participants' arrival at the university. The purpose of the orientation is to provide detailed information concerning the program, university, community, etc. It should also acquaint participants with one another, the university program, and the administrative staff. During this orientation a brief needs assessment is to be conducted to determine individual learning needs and to identify the topic of the individual research project. The Institute Director should be prepared to adjust program content, emphasis, and schedule as necessary to respond to participants' concerns.

The Educational Development

The educational development program should be a non-credit, intensive program of approximately 40 hours a week designed to meet the stated program objectives through interactive lectures and discussions, workshops, and hands-on learning experiences using university and community resources and opportunities. This course should not only emphasize EFL teaching skills, teacher training and management skills, but also American culture and most importantly, how to integrate the teaching of American culture in EFL classrooms. The curriculum should be designed to challenge the participants to grow professionally. In addition, it should provide them with practical, hands-on learn-by-doing experiences. The students should receive materials that they can immediately adapt to their BNC classes in Brazil. Time should be allowed for students informally to pursue topics of personal interest.

The Brazilian teaches participating in this program are among the best English teachers in Brazil. Most already have a highly developed background in EFL based on years of teaching experience and exposure to materials and specialists from the U.S. Thus, the entire program should reflect the high academic level, sophistication and professional development of the participants.

Proposal should contain evidence of on-going evaluation and ability to make program adjustments, as well as evaluation of the entire program.

The Cultural Enrichment Program

The two goals of the Cultural Enrichment Program are to: 1) strengthen the participants' knowledge of U.S. life and culture through carefully designed interactive classes and community cultural activities and 2) provide an insight into the use of "cultural material" in the classroom. The relationship between language and culture should be explored. The cultural component of the program should allow students to explore the variety of American culture in both small towns and larger cities, experience the richness of the visual and performing arts in the U.S., and interact with local citizens.

Program Administration

All Institute programming and administrative logistics, the management of the Educational Development Program and the Cultural Enrichment Program, local transportation, on-site university arrangements (including housing, host-families, ordering and shipping of educational materials, general program support, etc.) and maintaining current information regarding Internal Revenue Service regulations will be the responsibility of the Institute grantee.

Participants should be housed in the same facility, preferably a modern dormitory with no more than two persons to a room, adequately climate-controlled for the area and sufficient bathroom facilities. Three hot meals a

day must be provided. Extra-curricular activities such as field trips, Fourth of July celebrations, brief homestays and other social and recreational activities should be provided. Each participant will arrive with valid U.S. health insurance. Describe the available health and/or local health care system and plan to provide health care access. Transportation to and from the airport and local transportation between the cultural activities must be provided.

Timing

Grant will begin May 15, 1995. Note: the participants will arrive in July, 1995. The grant start date allows for time to prepare for the students' arrival. No funds may be expended until the grant agreement is signed.

Goals

The goals of the program include providing an overview of the state of the art of American EFL, identifying sources of information for materials and curriculum development, and designing a challenging individualized academic program for each participant which will promote an increased understanding of U.S. culture and society

Funding

This project is a cost-share program with USIS paying for the course curriculum, tuition, faculty costs and course materials. Participants pay their international travel and Binational Centers cover their meals and lodging.

Proposed Budget

A comprehensive line-item budget to include academic program and administrative fees, transportation, course fees, materials, fees for meals and lodging and cultural activities must be submitted with the proposal by the application deadline.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget. For better understanding or further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIS decisions on funding. Allowable costs for the program include the following:

(1) Academic Fees
(2) Administrative Costs
(3) Materials
(4) Course Fees
(5) Transportation
(6) Meals for Participants
(7) Lodging for Participants
(8) Cultural Activities

USIS will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein. Eligible proposals will be forwarded to a review panel consisting of the Deputy Public Affairs Officer, the Country Cultural Affairs Officer, the Regional English Teaching Officer and the Executive Officer. Funding decisions are at the discretion of the USIS Country Public Affairs Officer. Final technical authority for grant awards resides with the USIS Contracting Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

Overall Quality—Proposals should exhibit originality, creativity, substance and relevance to stated goals. This includes a high level of institutional commitment and flexibility, the quality of the program plan, adherence of the activity to the criteria and conditions described previously, and creative design in all program areas.

Program Planning—Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described herein.

TEFL Programs—Demonstrated experience with TEFL programs and teacher training; familiarity with Brazil and its network of binational centers is desirable.

American Studies—A well-planned proposal for an American cultural content of the program to include field trips, cultural experiences such as festivals, holiday celebrations and/or tourism.

Ability to Achieve Program Objectives—Appropriateness of proposed syllabus to goals and objectives stated herein; proposals should clearly demonstrate how the institution will meet the stated goals and objectives.

Administrative and Managerial Capabilities—Evidence of strong on-site administrative and managerial capabilities for hosting international visitors with specific discussion of how managerial and logistical arrangements will be undertaken.

Institutional Capacity—Proposed institutional resources should be adequate and appropriate to achieve the program's goals. Proposals should demonstrate potential for program excellence and/or track record of applicant institution. USIS will consider the past performance of prior grantees and the demonstrated potential of new applicants. Brief resumes of key personnel should be included.

Institution's Record/Ability—Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past USIA/USIS grants.

Project Evaluation—Proposals should include a plan to evaluate the success of the program from beginning to end. USIS recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use to link outcome to original project objectives. Award-receiving organizations/institutions will be expected to submit a detailed evaluation at the conclusion of the program.

Cost Effectiveness—The overhead and administrative components, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

Notice

This RFP incorporates one or more clauses from the Federal Acquisition Regulations by reference with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

Clause No.	Clause title	Date
52.222-21	Certification of Nonsegregated Facilities	Apr 84.
52.222-26	Equal Opportunity	Sept 78.
52.223-5	Certification Regarding a Drug Free Work Place	Jul 90.

Further, successful Grantee must certify that granted funds will be not used for lobbying or propaganda which is directed at influencing public policy decisions of the Government of the United States or any State or locality thereof.

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute and award commitment on the part of the Government. The needs of the program may require the award to be reduced, revised, or increased. Final awards cannot be made until funds have been appropriated by Congress, allocated and

committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about February 22, 1995. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: November 25, 1994.

Carl D. Howard,

Country Public Affairs Officer, USIS Brazil.

[FR Doc. 94–30526 Filed 12–12–94; 8:45 am]

BILLING CODE 8230–01–M

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on December 14 in Room 600, 301 4th Street, S.W., Washington D.C. from 10:00 a.m.-12:30 p.m.

The Commission will visit the Voice of America for a briefing by Christopher Kern, Chief of Computer Services, on VOA's use of the internet for text and audio programming. The Commission will also meet with Dr. Barry Fulton, Associate Director, Information Bureau, U.S. Information Agency; Steven N. Goldstein, Program Director, Interagency & International Networking Coordination, National Science Foundation; and Dr. Ross Stapleton-Gray, Independent Consultant and Adjunct Professor, Georgetown University. Participants will discuss global information infrastructure and the implications of digital technologies in public diplomacy.

FOR FURTHER INFORMATION: Please call Betty Hayes, (202) 619–4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: December 7, 1994.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 94–30525 Filed 12–12–94; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Medical Care Reimbursement Rates for FY 95

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In accordance with provisions of OMB Circular A–11 section 12.5(a), revised reimbursement rates have been established by the Department of Veterans Affairs for inpatient and outpatient medical care furnished to beneficiaries of other Federal agencies during FY 1995. These rates will be charged for such medical care provided at health care facilities under the direct jurisdiction of the Secretary on and after December 1, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Walter J. Besecker, Director, Medical Care Cost Recovery Office (165), Veterans Affairs Central Office, 810 Vermont Avenue NW., Washington, DC 20420, (202) 219–4242.

SUPPLEMENTARY INFORMATION: The Interagency Billing Rates for FY 1995 are as follows:.

Medicine	$767
Surgery	$1,228
Spinal Cord Injury	$692
Neurology	$683
Blind Rehabilitation	$599
Psychiatry	$367
Intermediate Medicine	$288
Rehabilitation Medicine	$544
Substance Abuse	$259
Nursing Home	$218
Prescription—Refill	$20
Outpatient*	$177
Emergency Dental Outpatient	$108

*Rate includes Dialysis treatment.

Prescription refill charges in lieu of the outpatient visit rate will be charged when the patient receives no service other than the Pharmacy outpatient service. These charges apply if the patient receives the prescription refills in person or by mail.

When medical services for beneficiaries of other Federal agencies are obtained by the Department of Veterans Affairs from private sources, the charges to the other Federal agencies will be the actual amounts paid by the Department of Veterans Affairs for such medical services.

Inpatient charges to other Federal agencies will be at the current Interagency per diem rate for the type of bed section or discrete treatment unit providing the care.

Dated: December 6, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 94–30519 Filed 12–12–94; 8:45 am]

BILLING CODE 8320–0–M

Sunshine Act Meetings

Federal Register

Vol. 59, No. 238

Tuesday, December 13, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting, Thursday, December 15, 1994

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, December 15, 1994, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No., Bureau, and Subject

1—Mass Media—Title: Review of the Commission's Regulations Governing Television Broadcasting (MM Docket No. 91–221). Summary: The Commission will consider a variety of television station multiple ownership issues.

2—Mass Media—Title: Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities (MM Docket No. 91–140). Summary: The Commission will consider initiatives aimed at increasing minority and female ownership of broadcast stations, cable systems and other mass media facilities.

3—Mass Media—Title: Review of the Commission's Regulations Governing Attribution of Mass Media Interests (MM Docket Nos. 87–154 and 92–51). Summary: The Commission will consider issues involving its mass media attribution rules, which govern the cognizability of media interests under its multiple ownership rules.

4—Common Carrier—Title: Transport Rate Structure and Pricing (CC Docket No. 91–213). Summary: The Commission will consider petitions for reconsideration of its interim transport rate structure and pricing policies.

5—Cable Services—Title: Implementation of the Cable Television Consumer Protection and Competition Act of 1992—Development of Competition and Diversity in Video Programming Distribution and Carriage (MM Docket 92–265). Summary: The Commission will consider a petition for reconsideration of the cable television program access rules filed by the National Rural Telecommunications Cooperative, which relates to exclusive contracts with non-cable multichannel video programming distributors.

Additional information concerning this meeting may be obtained from Audrey Spivack, or Susan Lewis Sallet, Office of Public Affairs, telephone number (202) 418–0500.

Dated: December 8, 1994.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–30752 Filed 12–9–94; 3:23 pm]

BILLING CODE 6712–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:00 noon, Monday, December 19, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed acquisition of check sorter equipment within the Federal Reserve System.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 9, 1994

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–30770 Filed 12–9–94; 3:24 pm]

BILLING CODE 6210–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 12, 19, 26, 1994 and January 2, 1995

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland

STATUS: Public and Closed

MATTERS TO BE CONSIDERED:

Week of December 12

There are no Commission meetings scheduled for the Week of December 12.

Week of December 19—Tentative

Monday, December 19

10:00 a.m.

Briefing on Status of High Level Waste Program (Public Meeting)

2:30 p.m.

Briefing by International Programs (Closed—Ex. 1)

Tuesday, December 20

10:00 a.m.

Briefing on Progress of Design Certification Review and Implementation (Public Meeting)

(Contact: Dennis Crutchfield, 301–504–1199)

Wednesday, December 21

2:00 p.m.

Briefing by Nuclear Energy Institute (NEI) on Their Nuclear Regulatory Review Study (Public Meeting)

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting)

a. Final Amendments to 10 CFR Parts 20 and 61 on Low-Level Waste Shipment Manifest Information and Reporting (Tentative)

(Contact: William Lahs, 301–415–6756)

Week of December 26—Tentative

There are no Commission meetings scheduled for the Week of December 26.

Week of January 2—Tentative

There are no Commission meetings scheduled for the Week of January 2.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: Dr. Andrew Bates (301) 504–1963.

Dated: December 8, 1994.

Andrew L. Bates,

Chief, Operations Branch, Office of the Secretary.

[FR Doc. 94–30672 Filed 12–9–94; 12:11 pm]

BILLING CODE 7590–01–M

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Meeting Notice

TIME AND DATES: 9:00 a.m., January 23, 1995.

PLACE: Wilford Hall Medical Center, Lackland Air Force Base, San Antonio, Texas.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

9:00 a.m. Meeting—Board of Regents

(1) Approval of Minutes—November 7, 1994; (2) Faculty Matters; (3) Departmental Reports; (4) Financial Report; (5) Report—President, USUHS; (6) Report—Dean, School of Medicine; (7) Comments—Chairman, Board of Regents.

New Business.

CONTACT PERSON FOR MORE INFORMATION:

Bobby D. Anderson, Executive Secretary of the Board of Regents. 301/295–3116

Dated: December 9, 1994.

Linda Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–30751 Filed 12–9–94; 3:22 pm]

BILLING CODE 5000–04–M

federal register

Tuesday
December 13, 1994

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 201

Specific Requirements on Content and Format of Labeling for Human Prescription Drugs; Revision of "Pediatric Use" Subsection in the Labeling; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 92N–0165]

Specific Requirements on Content and Format of Labeling for Human Prescription Drugs; Revision of "Pediatric Use" Subsection In the Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations governing the content and format on labeling for human prescription drug products. The final rule revises the current "Pediatric use" subsection of the professional labeling requirements for prescription drugs to provide for the inclusion of more complete information about the use of a drug in the pediatric population (ages birth to 16 years). The final rule, which applies to prescription drug products (including biological prescription drug products), recognizes several methods of establishing substantial evidence to support pediatric labeling claims, including relying, in certain cases, on studies carried out in adults. This final rule also requires that if there is not substantial evidence to support any pediatric use or use in a particular pediatric population, the labeling shall state this. Sponsors must reexamine existing data to determine whether the "Pediatric use" subsection of the labeling can be modified based on adequate and well-controlled studies in adults, and other information supporting pediatric use, and, if appropriate, submit a supplemental application to comply with new § 201.57(f)(9)(iv) by December 13, 1996. This action responds to concerns in FDA and elsewhere that current prescription drug labeling often does not contain adequate information about the use of drugs in the pediatric population. This action promotes safer and more effective use of prescription drugs in the pediatric population.

DATES: Effective January 12, 1995. The agency will accept "pediatric use" information based on revised § 201.57(f)(9) (21 CFR 201.57(f)(9)) after January 12, 1995. Sponsors must reexamine existing data, and, if appropriate, submit a supplemental application to comply with new § 201.57(f)(9)(iv) by December 13, 1996

FOR FURTHER INFORMATION CONTACT: Erica L. Keys, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1046.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of October 16, 1992 (57 FR 47423), FDA proposed to amend its regulations pertaining to the content and format of prescription drug labeling in § 201.57 by revising the current "Pediatric use" subsection (§ 201.57(f)(9)) to allow a broader basis for the inclusion of information about use of a drug in the pediatric population. The proposal would have allowed pediatric claims based not only on adequate and well-controlled studies in the pediatric population but also, in some cases, on such trials in adults. The proposed regulation described other data needed when pediatric claims are based on trials in adults and indicated specific labeling language and the location of various kinds of information.

FDA issued the current pediatric labeling requirements in 1979 (44 FR 37434, June 26, 1979). The current regulation, codified at § 201.57(f)(9), requires that specific pediatric indications, if any, be described under the "Indications and Usage" section of the labeling, with appropriate pediatric dosage provided under the "Dosage and Administration" section. The current regulation also requires that recommendations for pediatric use be based on substantial evidence derived from adequate and well-controlled studies in the pediatric population, unless that requirement is waived. If a drug's safety and effectiveness in the pediatric population cannot be established or if the drug's use in the pediatric population is associated with a specific hazard, the current regulation requires appropriate statements or details.

By establishing a "Pediatric use" subsection and describing its content and format, the 1979 regulation was intended to encourage drug labeling that would regularly provide adequate information about use of prescription drugs in pediatric patients. As stated in the preamble to the proposed rule on which this final rule is based, however, most prescription drug products still lack adequate information about their use in pediatric populations. For example, an informal survey done in 1990 by the American Academy of Pediatrics examined labeling of all new molecular entities approved between 1984 and 1989 and found that 80 percent had no information on pediatric use. Other surveys have shown that the labeling for many prescription drugs states that safety and effectiveness in children have not been established and contains no information on pediatric use, even for drugs that are commonly prescribed for pediatric patients.

FDA continues to be concerned that, without adequate information, practitioners may be reluctant to prescribe certain drugs for their pediatric patients, or may prescribe them inappropriately, choosing dosages, for instance, that are arbitrarily based on the child's age, body weight, or body surface area without specific information as to whether this is appropriate. As a result, pediatric patients may be exposed to an increased risk of adverse reactions, or decreased effectiveness of the drugs prescribed, or may be denied access to valuable therapeutic agents.

The continuing absence of pediatric use information in prescription drug labeling may be due in part to the impression, perhaps conveyed by the existing regulation, that pediatric claims must always be based on adequate and well-controlled studies conducted in the pediatric population. Given the many problems associated with the testing of drugs in the pediatric population (e.g., obtaining informed consent for tests not directly of benefit to the child, use of placebo controls in a vulnerable population), studies meeting this standard are often difficult to obtain. Existing FDA regulations do not, in fact, require that controlled trials always be conducted in the pediatric population to support a pediatric use. Under current § 201.57(f)(9), the need for such studies may be waived where other data can satisfy the requirements of law. The basis for granting such a waiver is not, however, clear in the existing regulation. Section 201.57(f)(9)(iv) of this final rule clarifies how the agency will determine that data from adequate and well-controlled studies with adult subjects can provide substantial evidence of effectiveness in the pediatric population.

In summary, this rule is intended to provide practitioners with more pediatric use information in the labeling of human prescription drug products so that practitioners will have more reliable information upon which to base a decision to prescribe a drug for use in their pediatric patients. The rule does this by encouraging manufacturers to provide more information on drug labels upon which practitioners can base their decisions. The rule does not, however, limit the manner in which a practitioner may prescribe an approved drug.

II. Highlights of the Final Rule

The final rule revises the current "Pediatric use" subsection of the professional labeling requirements for prescription drugs to provide for the inclusion of more comprehensive information about use of a drug in the pediatric population. Under the final rule, products may be labeled for pediatric use based on adequate and well-controlled studies in adults together with other information supporting pediatric use (e.g., pharmacokinetic data, safety data, pharmacodynamic data). Such reliance on studies in adults was possible under the waiver provision in the existing rule, but the waiver provision was not often used. Of course, products may also be labeled for pediatric use based on adequate and well-controlled studies in the pediatric population. The pediatric age group, birth to 16 years, includes pediatric age groups often called neonates, infants, children, and adolescents. In the final rule, because the term "children" can be interpreted as referring only to a particular subset of the pediatric population (ages 2 to 12 years), and to make clear that the provisions of this rule apply to the entire pediatric population, references to "children" in the proposed rule have been deleted and replaced by "pediatric population" or "pediatric patients."

The major provisions of the final rule are summarized as follows:

The final rule continues to permit a specific pediatric indication (i.e., an indication different from those approved in adults) supported by adequate and well-controlled studies in the appropriate pediatric population, to be described under the "Indications and Usage" section of the labeling, with the appropriate pediatric dosage given under the "Dosage and Administration" section of the labeling. The "Pediatric use" subsection of the labeling must include any limitations on the pediatric indication, need for specific monitoring, specific hazards of the drug, differences between pediatric and adult responses to the drug, and other information related to the safe and effective use of the drug in pediatric patients.

If there are specific statements on pediatric use of the drug for an indication also approved for adults that are based on adequate and well-controlled studies in the pediatric population, they must be summarized in the "Pediatric use" subsection of the labeling and discussed in more detail, if appropriate, under the "Clinical Pharmacology" and "Clinical Studies" sections. Appropriate pediatric dosage must be given under the "Dosage and Administration" section of the labeling. This subsection of the labeling must also cite any limitations on the pediatric use statement, need for specific monitoring, specific hazards associated with use of the drug in any subsets of the pediatric population (e.g., neonates), differences between pediatric and adult responses to the drug, and other information related to the safe and effective pediatric use of the drug.

A pediatric use statement may also be based on adequate and well-controlled studies in adults, provided that the agency concludes that the course of the disease and the drug's effects are sufficiently similar in the pediatric and adult populations to permit extrapolation from the adult efficacy data to pediatric patients. Where needed, pharmacokinetic data to allow determination of an appropriate pediatric dosage, and additional pediatric safety information must also be submitted.

Where the requirements for a finding of substantial evidence to support a specific pediatric indication or a pediatric use statement have not been met for a particular pediatric subgroup, the "Pediatric use" subsection of the labeling must contain a statement that appropriately characterizes the limitation, such as "Safety and effectiveness in pediatric patients [below the age of (—) (years/months/weeks)] have not been established." If use of the drug is associated with a specific hazard in this pediatric subgroup, the "Pediatric use" subsection must contain information about this hazard, or, where appropriate, refer to a more complete description of the hazard in the "Contraindications" or "Warnings" section of the labeling.

Where the requirements for a finding of substantial evidence to support a pediatric indication or a pediatric use statement have not been met for any pediatric population, the "Pediatric use" subsection of the labeling must contain the following statement: "Safety and effectiveness in pediatric patients have not been established." If use of the drug in premature or neonatal infants, or other pediatric subgroups, is associated with a specific hazard, the "Pediatric use" subsection must contain information about this hazard, or, where appropriate, refer to a more complete description of the hazard in the "Contraindications" or "Warnings" section of the labeling.

Any sponsor who believes that no "Pediatric use" subsection is appropriate or relevant to the labeling of its particular drug product must provide FDA with reasons justifying its omission, and may propose alternative statement(s).

Finally, recognizing the hazards that inactive ingredients can pose to the pediatric population, the final rule requires that prescription drug labeling contain statements about inactive ingredients that might be toxic to the neonate or other pediatric subgroup.

III. General Comments on the Proposed Rule

FDA received 11 comments on the proposed rule from prescription drug manufacturers, prescribers, professional societies, organizations with special interests in the pediatric population, the lay public, and others. Most supported the proposed labeling change, calling it "timely and important," "an important * * * step to facilitate the inclusion of information about use of drugs in children in the approved labeling," "a significant step toward the goal of including infants and children in the drug approval process," and a way "to fill the gap of information that currently exists in the area of appropriate drug usage in children."

One comment, for example, stated that providing pediatric use information in labeling will help health professionals reach rational drug therapy decisions for pediatric patients. The comment added "any information that can be used by pharmacists to assure rational drug therapy in special populations will be a positive addition to drug information. * * * Such labeling will enhance the likelihood of positive outcomes in pediatric patients."

However, some comments were less supportive, including one that stated: "While * * * [we] commend the FDA on its initiatives to improve information available to physicians and their pediatric patients regarding prescription drug use, we remain concerned that this approach will not measurably assist physicians."

Most comments also raised specific issues for consideration by the agency. These issues are described below.

A. Definition of "Pediatric"

1. Several comments suggested that age breakdowns within the pediatric population might be appropriate. The pediatric age range begins at birth, and may cover individuals as old as 18 years to 21 years, encompassing the subspecialties of neonatology and adolescent medicine. One comment suggested that the rule define "pediatric" as children under 12 years, because "it has been commonly accepted that ages 12 years to 18 years may be included without previous clinical work in that age group." The

comment also suggested that the rule state the age group when pharmacokinetic studies should be done in order to extrapolate the results from infancy through adolescence, or state whether the age range will be broken into subgroups with testing required for each. Another comment said that a definition of "pediatric" would have to consider drug metabolism, pharmacokinetics, and interaction with various organs and other body systems. The comment suggested that a system by which distinct classes of drugs are considered differently may be more logical and appropriate.

Another comment noted that pediatric patients are not homogeneous, and that age groups show significant differences in functional and physiological functions. The comment suggested that information from clinical studies be subdivided by age groups and their respective responses to drugs, suggesting age categories of premature infant, newborn, children under 2 years of age, children 2 years to 13 years, and adolescents 13 years to 18 years.

Another comment said that individuals 16 years to 18 years of age pose particular problems and suggested consultation with the American Academy of Pediatrics' Committee on Drugs to consider defining age categories or groups for pediatric labeling.

The "Pediatric use" subsection of labeling is where information about use of a drug in pediatric patients is located, and § 201.57(f)(9) describes in general terms the kind of information that should be included. The "Pediatric use" subsection does not attempt to resolve the many difficult issues related to use of drugs in this population. What appears in this subsection (e.g., age groups covered) will depend on the data available, and the ability to define results for specific subgroups. As a general matter, however, the agency offers the following guidance and useful breakdowns. The following age categories for the pediatric population are commonly distinguished, although the distinctions are inevitably arbitrary: (1) Birth up to 1 month (neonates), (2) 1 month up to 2 years of age (infants), (3) 2 years up to 12 years (children), and (4) 12 years up to 16 years (adolescents). Where possible, data should be analyzed by these groups, but it should not usually be necessary to establish a drug product's effectiveness in each group. It may, on the other hand, be important to have some pharmacokinetic information in each group, especially the younger age groups, to guide dosing and additional information, such as a specific study in neonates, to establish safety.

Although the agency has determined that the term "pediatric patients" refers to individuals from birth to 16 years of age, the agency recognizes that for some drugs, adult studies may be applicable to pediatric patients under the age of 16 years who have passed puberty; indeed, a primary purpose of this rule is to allow pediatric labeling based on adult studies, when appropriate. Although in many cases, additional pharmacokinetic and safety data may be needed to support pediatric use statements, in other cases, particularly for pediatric patients in the 12-to 16-year age group, there may be less additional data needed.

B. Applicability of the Rule to Biological Drug Products

2. One comment said that it was unclear whether the rule applies to biological drug products.

The rule (as well as § 201.57 in general) applies to biological drug products.

C. Pediatric Studies

3. One comment noted that about 80 percent of drug labeling currently contains language excluding use of the drug in pediatric patients or limiting use only to specific age groups. The comment asked FDA to encourage sponsors to include pediatric patients in their clinical studies when the drug is likely to be effective for an indication in this population.

As stated in the preamble to the proposed rule, FDA encourages sponsors to include pediatric patients in their clinical studies, and analyzes investigational new drug applications and new drug applications (NDA's) to determine whether studies in this population should be done before the drug is approved (57 FR 47423 at 47424). Under certain circumstances, the agency may require that clinical studies in the pediatric population be conducted before marketing approval (see response to comment number 4 in section III.C. of this document). If a drug is likely to be effective for pediatric use, the agency is making it clear that labeling for pediatric use may sometimes be based on adequate and well-controlled studies in adults, with additional pediatric data. FDA intends that this rule will call further attention to the need for creating and reviewing data on pediatric use.

4. One comment asked whether FDA intended to require a sponsor to submit information for a specific pediatric indication or use if there are available data suggesting that such an indication or use would be permitted under the regulation. The comment said that there may be "good reasons" why a sponsor might not wish to seek a pediatric indication or use for a drug even when available evidence would support such a use. For example, the drug's benefit/risk ratio in the pediatric population might be different from that in adults, or there might be sufficient and better alternative therapies available for the pediatric use. Additionally, the comment expressed concern that a drug that has been tested in adults may not provide a sufficient legal defense against a claim for injury of a child. The comment said that a sponsor should not be forced to assume or be placed in the position of having to defend such an action unless the sponsor believes the data in support of the pediatric use are sufficient, and that a sponsor should not be mandated or forced by the rule to seek a pediatric use if the sponsor, for whatever reason, does not wish to do so.

Another comment expressed concern that FDA might delay approval of products that have good existing available data for safety and efficacy in adults while acceptable pediatric information is developed.

This rule does not add a new requirement that sponsors carry out new pediatric studies, nor does it require that sponsors submit labeling with claims that are inadequately supported. New § 201.57(f)(9)(iv) provides that a pediatric use statement may be based on adequate and well-controlled studies in adults, provided that the course of the disease and the drug effects are sufficiently similar in the pediatric and adult populations to permit extrapolation from the adult efficacy data to pediatric patients. Sponsors are required to reexamine existing data to determine whether the "Pediatric use" subsection of the labeling can be modified based on adequate and well-controlled studies in adults, and other information supporting pediatric use, and, if safety and effectiveness for pediatric use have been demonstrated, submit a supplemental application to comply with new § 201.57(f)(9)(iv) by December 13, 1996. A sponsor who does not believe that the disease and drug effects are similar in the pediatric and adult populations, or who believes that use in pediatric patients is otherwise not adequately supported by data, should not propose revised labeling under this provision. Under new § 201.57(f)(9)(vi), the sponsor may propose labeling stating that safety and effectiveness in pediatric patients have not been established.

Additionally, under new § 201.57(f)(9)(vii), if the sponsor

believes that none of the statements described in paragraphs (f)(9)(ii) through (f)(9)(vi) of that section is appropriate or relevant to the labeling of a particular drug, the sponsor must provide reasons for omission of the statements and may propose alternative statement(s). In response to such a proposal, FDA may permit use of an alternative statement if FDA determines that no statement described in those paragraphs is appropriate or relevant to the drug's labeling and that the alternative statement is accurate and appropriate. Section 201.57(f)(9)(vii) has been modified to make this explicit.

Although this rule does not add new requirements for conducting pediatric studies, various provisions of the Federal Food, Drug, and Cosmetic Act (the act), the Public Health Service Act (the PHS act), and existing regulations authorize FDA to require such studies under certain circumstances.

Under section 505(k) of the act (21 U.S.C. 355(k)), FDA may require NDA holders to establish records and submit reports to the agency on data relating to clinical experience or other data or information in order to determine whether there may be grounds for revoking the NDA approval. Such a requirement may be established either through regulation or through an order regarding the NDA (21 U.S.C. 355(k)(1)).

Existing regulations require application holders to report to the agency adverse experiences occurring in the course of use of the product in professional practice, as well as during clinical investigations (21 CFR 312.32, 314.80). In addition, approved application holders must submit as part of the annual report a summary of significant new information that might affect the safety, effectiveness, or labeling of the product, as well as copies of unpublished and published reports of studies of the drug (21 CFR 314.81(b)(2)(i), (b)(2)(v), and (b)(2)(vi)). The report also must contain a description of the action the company has taken or intends to take because of the new information, such as submission of a supplement, addition of a warning, or initiation of a new study (21 CFR 314.81(b)(2)(i)).

Section 505(e) of the act specifies grounds on which the agency may withdraw or suspend approval of an NDA. If there is an imminent hazard to the public health, approval of the NDA may be suspended immediately by the Secretary of the Department of Health and Human Services. In addition to other circumstances, approval of an NDA is to be withdrawn if clinical experience or other data show that the product is unsafe or not shown to be safe under the conditions of use upon the basis of which the application was approved. Moreover, the approval may be withdrawn if the labeling is false or misleading and not corrected within a reasonable time after notice of the matter.

Under section 502(a) of the act (21 U.S C. 352(a)), a drug is considered misbranded if its labeling is false or misleading. Section 201(n) of the act (21 U.S.C. 321(n)) makes it clear that the "misleading" determination is to be based not only on representations made or suggested in the labeling, but also on failure to reveal material facts. Material facts include those which concern consequences which may result from use of the product under the labeled conditions of use or under customary or usual conditions of use. These conditions of use may include off-label uses prescribed by practitioners for their patients.

In addition, drugs are considered misbranded under section 502(f) of the act if the labeling fails to bear adequate directions for use. FDA regulations define adequate directions for use as directions under which the lay person can use a drug safely and for the purposes for which it is intended (21 CFR 201.5). "Intended uses" are further defined in the regulations to include uses other than the ones on the labeling (21 CFR 201.128). If a manufacturer knows that a drug is used for an off-label use, the manufacturer may be required to provide adequate labeling for that use (21 CFR 201.128).

Prescription drugs for human use are exempt from the requirement to carry adequate directions for lay use under certain circumstances, if labeled with the prescription legend (21 CFR 201.100). Among the exemption criteria is the requirement that the drug carry adequate labeling for the prescriber, as authorized by an approved application, for the intended use. In summary, the drug product is misbranded if the intended use is not approved in an NDA.

Drug products are also misbranded, under section 502(f)(2) of the act, if the labeling does not carry adequate warnings against unsafe use. Such unsafe use may include use by pediatric patients where the use may be dangerous to their health, or unsafe dosage or methods or duration of administration in the pediatric population.

Biological drug products are approved under authority of section 351 of the PHS act (42 U.S.C. 262). This provision authorizes the promulgation of regulations designed to ensure the continued safety, purity, and potency of the products (42 U.S.C. 262(d)(1)). An approved product license application (PLA) may be revoked if the product does not conform to applicable requirements in the regulations or is not safe and effective for all of its intended uses or is misbranded with respect to any such use (21 CFR 601.5(b)(4) through (b)(6)). If there is a danger to health, the Commissioner may suspend the product license (21 CFR 601.6). Under section 351(b) of the PHS act, no one may falsely label a biological product. Biological drug products are also subject to the applicable drug provisions of the Federal Food, Drug, and Cosmetic Act, as previously discussed.

Moreover, the agency has stated that an application for marketing approval should contain data on a reasonable sample of the patients likely to be given a drug once it is marketed (58 FR 39406 at 39409, July 22, 1993). This conclusion, stated explicitly in a guideline on the need for data in both genders, applies equally to age subgroups, including pediatric and geriatric populations. FDA may refuse to approve an application that fails to contain sufficient information to determine whether the product can be safely and effectively used in populations likely to receive it. In addition, for an approved drug, in certain cases (e.g., where the drug is widely used, represents a potential hazard, or is therapeutically important in pediatric patients), FDA may require further studies in pediatric populations and appropriate labeling changes. As previously discussed, an already approved drug may be considered illegally marketed if adequate information on safe and effective use in pediatric patients is not obtained and included in the labeling.

The agency thus expects sponsors to seek supplemental claims for pediatric uses that are supported by adequate data. This does not imply, however, that a sponsor should seek a claim for a pediatric use if the benefits of that use do not outweigh its risks; the determination of whether to include a pediatric use statement must be based on clinical data, and other use information, not on a vague concern about liability.

5. One comment said that although the desire to use potentially relevant data in the "Pediatric use" subsection of the labeling was "understandable," such data should not take the place of adequate and well-designed controlled studies in the pediatric population, and that FDA ultimately may have to require such studies. The comment stated that FDA should require manufacturers to

fund research projects regarding drug safety and efficacy, including short-term and long-term side effects, in pediatric patients.

FDA agrees that clinical studies regarding a drug's safety and effectiveness in pediatric patients are desirable, and the agency encourages such studies in appropriate cases. As discussed in comment 4 in section III.C. of this document, the agency has the authority to require such studies under certain circumstances. In some cases, such studies may be required prior to approval where pediatric use is important and where the adult and pediatric diseases cannot be considered sufficiently similar. In other cases, the controlled trials in adults, with pharmacokinetic and other data as needed, may support valid pediatric labeling.

6. One comment stated that FDA should consider other alternatives to the rule, including a formal review process that collects and analyzes available safety and efficacy data on a drug's use in the pediatric population both before and after marketing approval, which, through committee review, could recommend further testing of the drug after it is marketed if specific pediatric safety or efficacy concerns are found.

FDA believes that the comment has misinterpreted the purpose of the rule. The rule describes the kind of data and information that can be included in labeling for the pediatric population. In general, it is the sponsor's responsibility to collect, on a continuing basis, available data on safety and efficacy, propose revised labeling, and carry out needed studies. In some circumstances, FDA has required pediatric studies prior to approval, elicited agreement by drug sponsors at the time of marketing approval to carry out additional pediatric studies after approval, or stimulated conduct of pediatric studies after approval. When appropriate, FDA makes use of its standing advisory committees to help decide whether and when pediatric studies are needed.

7. One comment stated that FDA should revise the rule to specify what data must be provided by manufacturers. The comment asked what number of pediatric patients would be sufficient to determine if there is a difference in age-related response, and how FDA will determine that all available information about the pediatric use of all available drugs has been included, including epidemiologic studies.

FDA declines to accept the comment's suggestion. The agency believes that specifying an exact number of pediatric patients to be studied would be impractical due to variations in the pediatric population and responses to different drugs. This is particularly true, given the various kinds of data that can be used under the rule to support pediatric labeling.

D. Drugs Currently Under Review

8. One comment suggested that drugs currently under development or under review by FDA should be given special consideration to avoid delays in development and approval associated with implementation of the rule.

FDA does not expect delays in review or approval as a result of this rule. FDA already examines available pediatric data under current labeling regulations. The principal change created by the revised regulation is the ability to rely on studies in adults to support pediatric efficacy in some situations.

E. Supplements for Drugs Already Approved

9. One comment suggested that FDA work with manufacturers of approved drugs to develop a method that allows the manufacturers to update their labeling in a quick and cost-effective manner. The comment also said that package inserts do not generally reflect current scientific literature because of the problems with current methods of updating labeling. The comment said that this had created situations where prescribers are making decisions on treatment modalities without the benefit of timely information.

FDA does not believe that changes in regulations are needed to allow timely updating of labeling. Under the current regulations, applicants can propose changes in their approved labeling. FDA normally reviews supplements subject to prior approval in the order received. Effectiveness supplements are rated as priority or standard and are subject to performance goals set in connection with the Prescription Drug User Fee Act of 1992.

10. One comment said that the filing and approval of pediatric labeling supplements from different sponsors on different timetables could mean that some labels for products considered to be substantially similar might be silent with regard to pediatric usage, while others might be detailed. The comment suggested that FDA and the American Academy of Pediatrics' Committee on Drugs could identify therapeutic classes to be relabeled first, so that FDA could review and approve pediatric use labeling for products from different companies and coordinate implementation of labeling changes for similar agents.

With respect to effectiveness claims, pharmacokinetics, and safety data, much information is drug specific and will be reviewed as it is submitted. Therefore, the agency is not adopting the comment's suggestions. The agency advises, however, that, in general, when a class of drug products is involved, FDA examines labeling as it applies to the class.

F. Impact on Industry

11. One comment claimed that the rule places NDA holders at a competitive disadvantage relative to abbreviated new drug application (ANDA) holders. The comment stated that the rule would give NDA holders the burden and responsibility for pediatric studies and literature searches, but not impose a similar burden and responsibility on ANDA holders.

FDA disagrees with the comment in part. The rule is directed to anyone marketing a prescription drug and is intended to encourage the inclusion of more complete information about use of a drug in the pediatric population and about hazards associated with this use The rule permits a new basis for reference to pediatric uses, but it does not impose a new requirement to conduct studies in pediatric populations. To the extent that NDA holders have access to data not available to ANDA holders, they will have more data to examine and more likelihood of having a basis for proposing changes to the "Pediatric use" subsection of labeling. The agency believes this represents only a modest burden and, in any event, sees no other way to gain further pediatric information in labeling. ANDA holders cannot be required to examine data they do not possess. ANDA holders are not precluded from providing pediatric use data, and are expected to do so under this rule, if data are available. An ANDA applicant who believes new safety or effectiveness information should be added to a product's labeling should provide adequate supporting information to FDA, and FDA will determine whether the labeling for the generic and listed drugs should be revised.

G. Minor Editorial Changes

12. One comment said that labeling revisions that are editorial in nature and are used to reformat existing pediatric use labeling information to conform to the rule should be made in accordance with § 314.70(d) (21 CFR 314.70(d)) (changes described in the annual report). The comment said that this would also facilitate the agency's processing of minor changes.

FDA agrees with the comment. As stated in the preamble to the proposed rule, "[m]inor editorial changes may be made in accordance with § 314.70(d)" (57 FR 47423 at 47426). To comply with this rule, references to "children" in the "Pediatric use" subsection of the insert labeling of products already being marketed must be changed, where appropriate, to "pediatric population" or "pediatric patients." For products other than biological products, such changes are considered minor editorial changes.

As stated in the preamble to the proposed rule, for biological products, such changes are to be submitted in accordance with the procedures outlined in § 601.12 (21 CFR 601.12) (57 FR 47423 at 47426).

H. Format of Proposed Labeling

13. One comment said that it is impractical and impossible to list on the labeling all dosages and hazards for the pediatric population. The comment suggested placement of a general label on all adult prescription drugs stating that the medication should not be given to pediatric patients without a physician's instructions. The comment said that requiring overly complicated and lengthy information on labeling would discourage the prescribing of needed medications.

FDA believes that the comment misinterprets the proposed rule and the purpose of pediatric use labeling. The purpose of the rule is to encourage more pediatric use information in labeling and to provide practitioners with more information on pediatric use.

14. One comment said that for certain products, e.g., corticosteroids, where class labeling has been in effect, the agency will have to decide and communicate how the pediatric wording will be addressed.

In most cases, pediatric labeling will be drug specific. Where class labeling exists, FDA generally examines the labeling for those products as a whole.

IV. Specific Comments on the Proposed Rule

A. Section 201.57(f)(9)(i)

FDA, on its own initiative, has added a definition in § 201.57(f)(9)(i) to indicate that under paragraphs (f)(9)(ii) through (f)(9)(viii), the terms "pediatric population(s)" and "pediatric patient(s)" are defined as the pediatric age group, from birth to 16 years, including age groups often called neonates, infants, children, and adolescents.

B. Proposed § 201.57 (f)(9)(i) and (f)(9)(ii)

FDA received no comments on these provisions (renumbered as § 201.57(f)(9)(ii) and (f)(9)(iii)), and has finalized them without change.

C. Proposed § 201.57(f)(9)(iii)

Proposed § 201.57(f)(9)(iii) (renumbered as § 201.57(f)(9)(iv)) states, in part, that "FDA may approve a drug for pediatric use based on adequate and well-controlled studies in adults, with other information supporting pediatric use. In such cases, the agency will have concluded that the course of the disease and the effects of the drugs are sufficiently similar in children and adults to permit extrapolation from the adult data to children. The additional information supporting pediatric use must include data on the pharmacokinetics of the drug in children for determination of pediatric dosage. Other information, such as data from pharmacodynamic studies of the drug in children, controlled or uncontrolled studies confirming the safety or effectiveness of the drug in children, pertinent premarketing or postmarketing studies or experience, may be necessary to establish the applicability of the adult data to children."

15. One comment said FDA should revise proposed § 201.57(f)(9)(iii) to indicate that pharmacokinetic data are not mandatory in some situations. Another comment stated that pharmacokinetic data may not be the most appropriate way to determine pediatric dosing because the differences in metabolism or in distribution in pediatric patients may support dosing that will not necessarily be related to blood levels. Both comments stated that dosing for inhalation products should not be based on pharmacokinetics.

Another comment said that difficulties in obtaining informed consent, use of placebo controls, and obtaining adequate blood samples for pharmacokinetic analysis in pediatric patients are not serious impediments to performing studies necessary for appropriate pediatric labeling. The comment said there is a well-established ethical structure within which informed consent may be obtained and placebo controls used in the pediatric population, and that current technology requires only very small blood samples for measurement of most compounds. According to the comment, the primary impediments to doing adequate clinical trials in the pediatric population are the absence of a regulatory mandate and the existence of economic disincentives.

The agency recognizes that pharmacokinetic data are important sources of information, but may not always be the most appropriate method for determining pediatric dosing schedules and may be infeasible, unnecessary, or insufficient. Other types of data or experience may sometimes substitute for pharmacokinetic data, and other data or experience in the pediatric population may be needed in addition to pharmacokinetic data. The agency has modified the rule to state that the additional information supporting pediatric use must *ordinarily* include data on the pharmacokinetics of the drug in the pediatric population for determination of pediatric dosage.

As discussed in response to comment 4 in section III.C. of this document, this rule does not create a new requirement for pediatric studies, but the authority for requiring pediatric studies already exists. There are situations in which data on safe and effective use in pediatric patients may be necessary for approval or for continued marketing of a drug. Revised § 201.57(f)(9) does not create the requirement for pediatric studies, but is intended to encourage the inclusion of more comprehensive labeling about pediatric use by permitting use of adult data in establishing pediatric efficacy. Specifically, the rule allows the pediatric use statement to be based on adequate and well-controlled studies in adults when additional information exists to show that the course of the disease and the effects of the drug are sufficiently similar in adults and pediatric patients to permit extrapolation from the adult efficacy data to pediatric populations.

FDA has, on its own initiative, amended proposed § 201.57(f)(9)(iii) to indicate that FDA's determination whether the effects of a drug are sufficiently similar in adults and pediatric patients will include an examination of the drug's beneficial and adverse effects. FDA has also amended § 201.57(f)(9)(iii) to make clear that other information besides pharmacokinetic data may be necessary not simply to "establish the applicability of the adult data to pediatric patients," but, more generally, "to show that the drug can be used safely and effectively in pediatric patients." Section 201.57(f)(9)(iii) has also been modified to remove any potential misimpression that uncontrolled studies could demonstrate effectiveness.

16. One comment questioned the rule's language about extrapolating adult data to pediatric patients. The comment said that the exact mechanism

by which many psychiatric drugs work is not known, so that, for these drug products, extrapolation between adult and pediatric populations may be inaccurate and potentially hazardous. The comment noted that randomized controlled studies of tricyclic antidepressants in pediatric patients have raised questions regarding efficacy, while safety issues have been raised based on noncontrolled data indicating a potential risk, which might not have been clear based on adult data, of sudden cardiac death in pediatric patients using tricyclics.

FDA agrees that extrapolation from adult experience is inappropriate, and thus unacceptable, in some cases. Extrapolation is not necessary under the rule, but is an alternative to the conduct of adequate and well-controlled studies in pediatric patients. In those cases where the pediatric use statement is based primarily on adequate and well-controlled studies in adults, additional information supporting pediatric use is usually needed, ordinarily including data on the pharmacokinetics of the drug in the pediatric population for determination of pediatric dosage. Other information, such as data from pharmacodynamic studies of the drug in pediatric patients, data from other studies supporting the safety or effectiveness of the drug in pediatric patients, pertinent premarketing or postmarketing studies or experience, may be necessary to show that the drug can be used safely and effectively in the pediatric population.

17. One comment said that the preamble to the final regulation should clarify that "other information" supporting pediatric use in proposed § 201.57(f)(9)(iii) need not be limited to data developed or sponsored by the NDA holder, but may include data such as reports of studies by academic researchers in peer-review journals that were prepared by persons who are not related to the NDA sponsor.

The agency believes that no change is needed in revised § 201.57(f)(9)(iv) because the section does not suggest that the data must have been developed or sponsored by the NDA holder.

D. Proposed § 201.57(f)(9)(iv)

FDA received no comments on this provision (renumbered as § 201.57(f)(9)(v)), and has finalized it without change.

E. Proposed § 201.57(f)(9)(v)

Proposed § 201.57(f)(9)(v) (renumbered as § 201.57(f)(9)(vi)) provides, in part, that "[i]f the requirements for a finding of substantial evidence to support a pediatric indication or a pediatric use statement have not been met for any pediatric population, this subsection of the labeling shall contain the following statement: 'Safety and effectiveness in children have not been established.'"

18. One comment expressed concern that this provision may create disincentives for sponsors to develop better information on pediatric use of their drugs. The comment suggested that FDA require mandatory phased-in safety testing and appropriate clinical studies of pharmaceuticals in the pediatric population. Alternatively, the comment recommended that FDA and manufacturers work to develop agreements whereby the manufacturer consents to carry out additional postapproval pediatric studies.

FDA believes that the comment suggests actions beyond the scope of this rule. FDA encourages pediatric testing, and, as discussed in comment 4 in section III.C. of this document, has the authority to require pediatric studies. In some cases, FDA will require pediatric studies for approval or continued marketing. This rule, however, does not add new requirements for pediatric studies, but rather describes the kind of data that can be used to support labeling claims.

F. Proposed § 201.57(f)(9)(vi)

Proposed § 201.57(f)(9)(vi) (renumbered as § 201.57(f)(9)(vii)) provides "[i]f the sponsor believes that none of the statements described in paragraphs (f)(9)(i) through (f)(9)(v) (renumbered as (f)(9)(ii) through (f)(9)(vi)) of this section is appropriate or relevant to the labeling of a particular drug, the sponsor shall provide reasons for omission of the statements and may propose alternative statement(s). FDA may permit use of an alternative statement."

19. One comment asserted that the proposal did not adequately address the problem of a large number of drugs that have been approved and marketed for years without pediatric usage information in their labeling, which are widely used in pediatric patients and for which there is substantial published literature regarding their pediatric use. The comment noted that proposed § 201.57(f)(9)(vi) would impose on the sponsor the responsibility for providing information that would promote the safe and effective use of prescription drugs in pediatric patients and noted that the sponsor may have complex reasons for not necessarily wanting to include pediatric information in the labeling. The comment recommended that the final rule include a mechanism that would allow summary information from authoritative published literature to be added to the labeling of currently marketed drugs so this information would be available to the pediatric prescriber. It suggested that the rule should provide an option permitting "recognized authoritative medical experts or groups of experts" to provide information to support pediatric information in the labeling in lieu of the sponsor.

Another comment urged the agency to provide for the incorporation of supplemental indications into drug labeling based solely on information submitted by persons other than the sponsor. The comment said that changes should be made based on studies reported in peer-reviewed medical literature, rather than relying on submissions by the sponsor. The comment stated that this was necessary to make the labeling of certain drugs, particularly anticancer agents, conform to the current state of medical knowledge. The comment noted that FDA restricts promotion of off-label uses, and third-party payers often take the position that agents that have no labeled indication for treatment of cancers in pediatric patients are experimental and therefore nonreimbursable, even though they may be safe and effective.

The sponsor is primarily responsible for bringing forth evidence to support labeling changes. A third party could, however, provide evidence to persuade the agency to direct the sponsor to submit a labeling supplement. A study need not have been conducted by or on behalf of the sponsor in order to support a labeling change. The evidence to support labeling should continue to be of the type and quality that would ordinarily support labeling statements. Published literature on pediatric use may contribute to this evidence, and authoritative groups may suggest approaches, but the views of authoritative groups do not themselves represent sufficient evidence of effectiveness. With respect to the comment concerning reimbursements, the agency advises that reimbursements to patients are beyond the scope of the rule and FDA authority. However, FDA agrees with the underlying concern that appropriate indications be on the label so that practitioners understand how best to prescribe the drug for the patient's medical benefit.

G. Proposed § 201.57(f)(9)(vii)

Proposed § 201.57(f)(9)(vii) (renumbered as § 201.57(f)(9)(viii)) states "[i]f the drug product contains one or more excipients that present an increased risk of toxic effects to

neonates or other pediatric subgroups, a special note of this risk, generally in the 'Contraindications,' 'Warnings,' or 'Precautions' section, shall be made."

20. Four comments expressed concern about this proposed requirement. One comment said that the data relating to the toxicity of excipients, including preservatives, are inconclusive, making the requirement inappropriate. The comment stated that FDA should encourage collection and analysis of data to enable specific determinations on the use of excipients and preservatives.

Another comment asked FDA to clarify whether the proposed requirement that labeling contain statements about excipients that present an increased risk of adverse effects to the neonate or other pediatric subgroups was intended to reflect published literature or to be based on studies designed to show whether an increased risk exists. It added that it was not clear how or by whom a determination of increased risk would be established. The comment suggested that the final rule state that a sponsor can rely on existing information and is not required to conduct additional studies. The comment also suggested that, if additional studies were necessary, animal data be used rather than requiring clinical studies in neonates. It suggested that a standardized list could be developed jointly by industry and FDA.

A third comment suggested that a requirement that any labeling identify any increased risk of toxic effects to neonates or other pediatric groups should not be interpreted as establishing a requirement that sponsors conduct toxicology or other studies to identify or quantify such risks. The comment also stated that the preamble to the final regulation should state whether the increased risk of toxic effects is limited to those established by human data or experience, or would also include those based on animal or in vitro models.

A fourth comment noted that ANDA holders may use excipients different from those used by the reference listed drug. The comment suggested that ANDA holders should be required to provide specific information regarding excipients used.

The final rule requires the labeling for a drug product containing one or more inactive ingredients that present an increased risk of toxic effects to neonates or other pediatric subgroups to note such risks in the "Contraindications," "Warnings," or "Precautions" section of the labeling. If toxicity data for the inactive ingredient(s) do not exist or are inconclusive, revised § 201.57(f)(9)(viii) would not require the labeling to contain a statement about an increased risk to neonates or other pediatric subgroups. However, in such cases, FDA encourages applicants to collect and analyze data on inactive ingredients and preservatives that could represent a pediatric risk. These data may include human data, animal data, or data derived from in vitro models.

FDA also notes that current regulations already require ANDA applicants whose inactive ingredients differ from those used in the reference listed drug to identify and characterize the inactive ingredients in a proposed drug product and to provide information demonstrating that such inactive ingredients do not affect the safety of the proposed drug product (see 21 CFR 314.94(a)(9)). Given these provisions, there is no reason to believe that the inactive ingredients used in a generic drug product are any less safe than those in the reference listed drug.

The agency has determined that, for the purposes of this final rule, the terms "excipient" and "inactive ingredient" have the same meaning. However, because the agency generally uses the term "inactive ingredient," the agency has, on its own initiative, amended proposed § 201.57(f)(9)(vii) to refer to "inactive ingredients" instead of "excipients."

V. Legal Authority

FDA's revision to the "Pediatric use" subsection of prescription drug labeling is authorized by the Federal Food, Drug, and Cosmetic Act (the act) and by the Public Health Service Act (the PHS act). Section 502(a) of the act prohibits false or misleading labeling of drugs, including, under section 201(n) of the act, failure to reveal material facts relating to potential consequences under customary conditions of use.

Section 502(f) of the act requires drug labeling to have adequate directions for use and adequate warnings against use by the pediatric population where its use may be dangerous to health, as well as adequate warnings against unsafe dosage or methods or duration of administration, as are necessary to protect users.

Section 502(j) of the act prohibits use of drugs that are dangerous to health when used in the manner suggested in their labeling. Drug products that do not meet the requirements of any paragraph of section 502 of the act are deemed to be misbranded.

In addition to the misbranding provisions, the premarket approval provisions of the act authorize FDA to require that prescription drug labeling provide the practitioner with adequate information to permit safe and effective use of the drug product. Under section 505 of the act, FDA will approve an NDA only if the drug is shown to be both safe and effective for its intended use under the conditions set forth in the drug's labeling. Section 701(a) of the act (21 U.S.C. 371(a)) authorizes FDA to issue regulations for the efficient enforcement of the act.

Under § 201.100(d) (21 CFR 201.100(d)) of FDA's labeling regulations, prescription drug products must bear labeling that contains adequate information under which licensed practitioners can use the drug safely for their intended uses. Section 201.57 describes specific categories of information, including information for drug use in selected subgroups of the general population, which must be present to meet the requirements of § 201.100.

In addition, under 21 CFR 314.125, FDA will not approve an NDA unless, among other things, there is adequate safety and effectiveness information for the labeled uses and the product labeling complies with the requirements of part 201 (21 CFR part 201).

Section 351 of the PHS act provides legal authority for the agency to regulate the labeling and shipment of biological products. Licenses for biological products are to be issued only upon a showing that they meet standards "designed to insure the continued safety, purity, and potency of such products" prescribed in regulations (42 U.S.C. 262(d)). The "potency" of a biological product includes its effectiveness (21 CFR 600.3(s)). Section 351(b) of the PHS act prohibits false labeling of a biological product. FDA's regulations in part 201 apply to all prescription drug products, including biological products.

A drug product that is not in compliance with § 201.57(f)(9) would be considered misbranded and an unapproved new drug under the act. A noncomplying product that is a biological product would, in addition, be considered falsely labeled and an unlicensed biological product under the PHS act.

VI. Implementation

The primary purpose of the proposed rule was to revise the existing pediatric labeling requirements by expanding the basis on which information about use of a drug in the pediatric population may be included. The proposed rule would have required sponsors to comply with the pediatric use provisions 1 year after the date of publication of a final rule in the **Federal Register**.

21. Several comments said that the proposed 1-year implementation period was too short. The comments claimed that extrapolating and reviewing data would be time consuming and that the agency would be unable to approve pediatric use labeling within 1 year. The comments suggested that the agency cooperate with industry to establish a 3–year implementation schedule, only require sponsors to submit revised labeling in 1 year, or make the rule effective in 2 years.

The agency has carefully considered the comments and has revised the implementation schedule for the final rule. The agency will accept pediatric use information based on revised § 201.57(f)(9) after January 12, 1995.

Sponsors have a continuing obligation to maintain labeling that is truthful and comprehensive in accordance with § 201.57, including § 201.57(f)(9). Section 201.57(f)(9) requires labeling to contain at least one of the statements under § 201.57(f)(9)(ii) through (f)(9)(vi), or to propose an alternative statement under § 201.57(f)(9)(vii). The statement must accurately describe available data.

Sponsors must, therefore, reexamine existing data to determine whether the "Pediatric use" subsection of the labeling can be modified based on adequate and well-controlled studies in adults and other information supporting pediatric use, and, if appropriate, submit a supplemental application to comply with new § 201.57(f)(9)(iv) by December 13, 1996. A sponsor who does not believe that the disease and drug effects are similar in the pediatric and adult populations, or who believes that use in pediatric patients is otherwise not adequately supported by data, should not propose revised labeling under new § 201.57(f)(9)(iv), and need not inform the agency of this conclusion.

Therefore, FDA expects sponsors to examine available information and update pediatric labeling for their products, if appropriate. Sponsors should also examine data on the extent and nature of use of their products in pediatric patients. If FDA concludes that a particular drug is widely used, represents a safety hazard, or is therapeutically important in the pediatric population, and the drug sponsor has not submitted any pediatric use information, then the agency may require that the sponsor develop and/or submit pediatric use information.

If FDA has made a specific request for the submission of pediatric use information because of expected or identified pediatric use, and the sponsor fails to provide such information, the agency may consider the product to be a misbranded drug under section 502 of the act, or a falsely labeled biological product under section 351 of the PHS Act, as well as an unapproved new drug or unlicensed biological product. (See 21 U.S.C. 355 and 42 U.S.C. 262).

Under the final rule, any new or revised pediatric indications, or statements on pediatric indications, or statements on pediatric use under the provisions of § 201.57(f)(9)(ii) through (f)(9)(iv) would require FDA approval of a supplemental application in accordance with § 314.70(b) or § 601.12. Other changes to proposed § 201.57(f)(9)(ii) through (f)(9)(iv) to add or strengthen precautions, contraindications, warnings, or adverse reactions or to add or strengthen dosage and administration instructions to increase a product's safety (for products other than biological products) could be put into effect at the time a supplement covering the change is submitted to FDA in accordance with § 314.70(c). Minor editorial changes to products other than biological products may be made in accordance with § 314.70(d).

To comply with this rule, references to "children" in the "Pediatric use" subsection of the insert labeling of products already being marketed must be changed, where appropriate, to "Pediatric population" or "pediatric patients." The agency advises that after January 12, 1995, such changes must be made, no later than the first time that labeling is sent to the printers or ordered for reprinting to replenish old stocks of labeling. Such changes for products other than biological products are considered minor editorial changes and may be submitted in an annual report in accordance with § 314.70(d).

Any new or revised statement under § 201.57(f)(9)(viii) regarding inactive ingredients that may be toxic to the neonate or other pediatric subgroup should be made in accordance with the provisions of § 314.70(c) or § 601.12 (21 CFR 601.12), as appropriate.

All supplements containing pediatric use information and their mailing covers should be plainly marked "Pediatric supplements."

For those products subject to section 351 of the PHS act, labeling changes should be made in accordance with § 601.12. Persons who have questions regarding such changes and need guidance on whether a supplement is necessary should contact one of the following three divisions as appropriate: Office of Therapeutics Research and Review, Division of Application Review and Policy (HFM–585), 301–594–5109; Office of Vaccine Research and Review, Division of Vaccine and Related Product Applications (HFM–475), 301–594–2090; or Office of Blood Research and Review, Division of Blood Applications (HFM–370), 301–594–2012; at the following address: Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852.

22. One comment suggested that the rule would have a substantial economic impact, particularly if the agency adheres to the proposed 1-year implementation period. The comment said that there are cost factors arising from the extensive resources required to reevaluate the available clinical study data and literature to extrapolate adult safety data to the pediatric age group or groups. The comment noted that drug studies in pediatric patients have additional costs not experienced with the adult population, and may, in some cases, require inpatient studies. The comment also claimed that encouraging pediatric studies prior to approval or as a Phase 4 commitment could lengthen the development process, slow drug approval, and thereby have an additional economic impact.

The agency has considered the comment and has revised the implementation schedule for this final rule. The implementation schedule is discussed in section VI. of this document.

The agency stresses that this rule does not require sponsors to conduct pediatric studies. The authority to require studies is found in the act and regulations already promulgated. Rather, this rule recognizes alternative methods of establishing substantial evidence to support pediatric labeling claims. Where a finding of substantial evidence to support a pediatric indication or a pediatric use statement has not been met for a specific subgroup or for any pediatric population, the sponsor must instead indicate that no data are available. If a sponsor believes that a pediatric use statement would be inappropriate or irrelevant to the labeling of a particular drug, it must provide a reason for omitting the statement. This rule does not affect any determination by the agency that pediatric studies are needed before or after approval for a new drug.

VII. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) 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.

VIII. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the principles set out in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the final rule does not impose additional requirements for sponsors to conduct pediatric studies, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

List of Subjects in 21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 201 is amended as follows:

PART 201—LABELING

1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 508, 510, 512, 530–542, 701, 704, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 358, 360, 360b, 360gg–360ss, 371, 374, 379e); secs. 215, 301, 351 361 of the Public Health Service Act (42 U.S.C. 216, 241, 262, 264).

2. Section 201.57 is amended by revising paragraph (f)(9) to read as follows:

§ 201.57 Specific requirements on content and format of labeling for human prescription drugs.

* * * * *

(f) * * *

(9) Pediatric use:

(i) Pediatric population(s)/pediatric patient(s): For the purposes of paragraphs (f)(9)(ii) through (f)(9)(viii) of this setion, the terms "pediatric population(s)" and "pediatric patient(s)" are defined as the pediatric age group, from birth to 16 years, including age groups often called neonates, infants, children, and adolescents.

(ii) If there is a specific pediatric indication (i.e., an indication different from those approved for adults) that is supported by adequate and well-controlled studies in the pediatric population, it shall be described under the "Indications and Usage" section of the labeling, and appropriate pediatric dosage information shall be given under the "Dosage and Administration" section of the labeling. The "Pediatric use" subsection shall cite any limitations on the pediatric indication, need for specific monitoring, specific hazards associated with use of the drug in any subsets of the pediatric population (e.g., neonates), differences between pediatric and adult responses to the drug, and other information related to the safe and effective pediatric use of the drug. Data summarized in this subsection of the labeling should be discussed in more detail, if appropriate, under the "Clinical Pharmacology" or "Clinical Studies" section. As appropriate, this information shall also be contained in the "Contraindications," "Warnings," and elsewhere in the "Precautions" sections.

(iii) If there are specific statements on pediatric use of the drug for an indication also approved for adults that are based on adequate and well-controlled studies in the pediatric population, they shall be summarized in the "Pediatric use" subsection of the labeling and discussed in more detail, if appropriate, under the "Clinical Pharmacology" and "Clinical Studies" sections. Appropriate pediatric dosage shall be given under the "Dosage and Administration" section of the labeling. The "Pediatric use" subsection of the labeling shall also cite any limitations on the pediatric use statement, need for specific monitoring, specific hazards associated with use of the drug in any subsets of the pediatric population (e.g., neonates), differences between pediatric and adult responses to the drug, and other information related to the safe and effective pediatric use of the drug. As appropriate, this information shall also be contained in the "Contraindications," "Warnings," and elsewhere in the "Precautions" sections.

(iv) FDA may approve a drug for pediatric use based on adequate and well-controlled studies in adults, with other information supporting pediatric use. In such cases, the agency will have concluded that the course of the disease and the effects of the drug, both beneficial and adverse, are sufficiently similar in the pediatric and adult populations to permit extrapolation from the adult efficacy data to pediatric patients. The additional information supporting pediatric use must ordinarily include data on the pharmacokinetics of the drug in the pediatric population for determination of appropriate dosage. Other information, such as data from pharmacodynamic studies of the drug in the pediatric population, data from other studies supporting the safety or effectiveness of the drug in pediatric patients, pertinent premarketing or postmarketing studies or experience, may be necessary to show that the drug can be used safely and effectively in pediatric patients. When a drug is approved for pediatric use based on adequate and well-controlled studies in adults with other information supporting pediatric use, the "Pediatric use" subsection of the labeling shall contain either the following statement, or a reasonable alternative: "The safety and effectiveness of (*drug name*) have been established in the age groups — to — (note any limitations, e.g., no data for pediatric patients under 2, or only applicable to certain indications approved in adults). Use of (*drug name*) in these age groups is supported by evidence from adequate and well-controlled studies of (*drug name*) in adults with additional data (insert wording that accurately describes the data submitted to support a finding of substantial evidence of effectiveness in the pediatric population)." Data summarized in the preceding prescribed statement in this subsection of the labeling shall be discussed in more detail, if appropriate, under the "Clinical Pharmacology" or the "Clinical Studies" section. For example, pediatric pharmacokinetic or pharmacodynamic studies and dose-response information should be described in the "Clinical Pharmacology" section. Pediatric dosing instructions shall be included in the "Dosage and Administration" section of the labeling. Any differences between pediatric and adult responses, need for specific monitoring, dosing adjustments, and any other information related to safe and effective use of the drug in pediatric patients shall be cited briefly in the "Pediatric use" subsection and, as appropriate, in the "Contraindications," "Warnings," "Precautions," and "Dosage and Administration" sections.

(v) If the requirements for a finding of substantial evidence to support a pediatric indication or a pediatric use statement have not been met for a particular pediatric population, the

"Pediatric use" subsection of the labeling shall contain an appropriate statement such as "Safety and effectiveness in pediatric patients below the age of (—) have not been established." If use of the drug in this pediatric population is associated with a specific hazard, the hazard shall be described in this subsection of the labeling, or, if appropriate, the hazard shall be stated in the "Contraindications" or "Warnings" section of the labeling and this subsection shall refer to it.

(vi) If the requirements for a finding of substantial evidence to support a pediatric indication or a pediatric use statement have not been met for any pediatric population, this subsection of the labeling shall contain the following statement: "Safety and effectiveness in pediatric patients have not been established." If use of the drug in premature or neonatal infants, or other pediatric subgroups, is associated with a specific hazard, the hazard shall be described in this subsection of the labeling, or, if appropriate, the hazard shall be stated in the "Contraindications" or "Warnings" section of the labeling and this subsection shall refer to it.

(vii) If the sponsor believes that none of the statements described in paragraphs (f)(9)(ii) through (f)(9)(vi) of this section is appropriate or relevant to the labeling of a particular drug, the sponsor shall provide reasons for omission of the statements and may propose alternative statement(s). FDA may permit use of an alternative statement if FDA determines that no statement described in those paragraphs is appropriate or relevant to the drug's labeling and that the alternative statement is accurate and appropriate.

(viii) If the drug product contains one or more inactive ingredients that present an increased risk of toxic effects to neonates or other pediatric subgroups, a special note of this risk shall be made, generally in the "Contraindications," "Warnings," or "Precautions" section.

* * * * *

Dated: November 15, 1994.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 94–30238 Filed 12–12–94; 8:45 am]

BILLING CODE 4160–01–F

federal register

Tuesday
December 13, 1994

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Designated Housing for Disabled Families; Funding Availability for Fiscal Year 1994; Invitation for Applications; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3718; FR–3751–N–01]

Notice of Funding Availability for FY 1994; Invitation for Applications: Designated Housing for Disabled Families

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1994 for public housing development and major reconstruction of obsolete public housing (MROP) activities designated for disabled families; invitation for applications.

SUMMARY: Section 624 of the Housing and Community Development Act of 1992 (HCD Act of 1992) requires the Department to set aside not less than 5 percent of amounts approved for public housing development and MROP activities in the FY 1993 and 1994 appropriations acts for designated housing for disabled families. Section 622 of the 1992 Act amends section 7 of the U.S. Housing Act of 1937 (USHA), and sets forth the requirements for designating housing for elderly families, disabled families, and elderly *and* disabled families. (The final rule to implement the provisions of section 7 of the USHA was published on April 13, 1994.) These set-asides are to be used only for the costs of development of, or MROP activities in connection with, housing designated for occupancy under section 7 The competition for these set-aside funds will be based upon (1) the need of the PHA for assistance (taking into consideration the allocation plan submitted), and (2) the extent to which the projects/buildings meet the requirements of section 7(e) (i.e., the allocation and supportive service plans). Note: Pursuant to section 624(B) of the HCD Act of 1992, no building selected by the PHA for designated housing for disabled families under this NOFA may contain more than 25 units unless the applicant demonstrates a need for a building with more than 25 units that cannot otherwise be met by a building with 25 units or less. Designation of a portion of a project does not require that the buildings, floors or units be contiguous; PHAs are encouraged to place units in the most integrated setting possible. In general, HUD will approve designated projects for disabled families only if there is a clear demonstration that there is both a need and a demand by disabled families for such designation.

Attached as Appendices A and B to this NOFA are the 1994 NOFA for Public Housing Development (published on May 24, 1994) and the NOFA for 1993 and 1994 MROP activities (published on May 20, 1994). The requirements set forth in these NOFAs that are applicable to public housing development and MROP activities apply to designated housing for disabled families unless otherwise indicated in this NOFA.

This NOFA announces the availability of the set-asides for public housing development and/or MROP activities applications for designated housing for disabled families pursuant to section 7 of the USHA. The objective of development/MROP activities funding for designated housing for disabled families is to assist PHAs to meet the goals set forth in their allocation plans.

A PHA's project(s) for disabled families must be designated before the development/MROP applications can be selected for funding under this NOFA. Thus, the PHA must have an approved allocation plan that includes the designated project as a housing resource. The PHA also must have an approved supportive service plan for the project(s) that has been designated for disabled families.

Allocation plans (including those with supportive service plans) may be submitted at any time. However, if a PHA anticipates responding to this NOFA, it should submit its allocation plan and supportive service plan in sufficient time for them to be approved before the PHA files its development/MROP application.

This NOFA is not applicable to the Indian housing program.

DATES: APPLICATION SUBMISSION: This NOFA is open-ended and applications will be accepted at the HUD Field Office Public Housing Division any time after publication of this NOFA until all available set-aside funds for both development and MROP activities are utilized. Applications will be considered in the order received. When an application is submitted to the Field Office, the PHA must clearly write "PUBLIC HOUSING (DISABLED) APPLICATION" on the outside of the envelope.

FOR FURTHER INFORMATION CONTACT: Kevin Emanuel Marchman, Deputy Assistant Secretary, Distressed and Troubled Housing Recovery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4138, Washington, DC 20410. Telephone (202) 401–8812 (voice) or (202) 708–4594 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Authority

Sections 5 and 23 of the United States Housing Act of 1937 (USHA) (42 U.S.C. 1437c and 1437u); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); and sections 622 and 624 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (HCD Act of 1992).

Public housing development regulations are codified in 24 CFR part 941, and the designated housing final rule was published in the **Federal Register** on April 13, 1994 (59 FR 17652). The rule will be codified at 24 CFR part 945 ("Designated Housing" regulations).

B. Fund Availability

The HCD Act of 1992 required the Department to set aside not less than 5 percent of public housing development and MROP activities amounts approved in the FY 1993 and 1994 appropriations acts for designated housing for disabled families. Accordingly, $20 million was set aside in FY 1993 and a maximum of $21.78 million was set aside in FY 1994 for public housing development; a maximum of $8.96 million was set aside from the FY 1993 and 1994 appropriations for MROP activities. Thus, a maximum of $50.74 million may be made available under this NOFA.

C. Fund Assignments

Section 213(d) of the Housing and Community Development Act of 1974 (HCD Act of 1974) requires that funds be allocated on a fair share basis, except for (a) amounts retained in a Headquarters Reserve and (b) appropriations determined incapable of geographic allocation. Since the purpose of the allocation is to encourage PHAs to designate units for occupancy by disabled families and the extent of interest is not predicable by formula, the Department does not intend to fair share these funds. This determination was made on the basis of statutory set-aside, pursuant to 24 CFR 791.403(b)(1)(ii)(C).

II. Regulations and NOFA Requirements

A. Conformity

While conformity with 24 CFR part 941 is required, this funding effort is also subject to the additional specific requirements, consistent with the part 941 regulations, that are set forth in this

NOFA, the Designated Housing final rule (59 FR 17652), and the FSS interim and final regulations published on May 27, 1993 at 58 FR 30858 and 58 FR 30906, respectively, codified at 24 CFR part 962. Applicants also should consult Handbook 7417.1 REV–1.

A PHA preparing an application for public housing development or MROP activities for designated housing for disabled families must (1) review Appendices A and B to this NOFA for requirements pertaining to the application process, threshold approvability, Field Office processing, rating panel and criteria, checklist, and (2) follow the applicable instructions.

In addition to the requirements set forth in Appendices A and B, the following provisions are applicable to applicants:

1. Applications may be submitted to the HUD Field Office anytime after publication of this NOFA, as provided in the "Application Submission" section of this NOFA.

2. The PHA application cover letter must indicate the date the PHA's allocation and supportive services plans for housing for disabled families have been or will be submitted to the Field Office for approval. If the allocation and supportive service plans have not been filed, the Field Office shall advise the PHA that the development/MROP activities application cannot be approved unless the plans are approved.

3. Applications will be determined approvable if they successfully pass the minimum approvable score of 182 points for development applications and 140 points for MROP applications. Section 624 requires that applications be selected competitively based on (1) the PHA's need for funds to meet the goals expressed in its allocation plan; and (2) the extent to which applications meet the requirements of 24 CFR part 945 (which contains the Designated Housing regulations).

Field Offices will prepare analyses of allocation and supportive service plans and of applications by furnishing narrative responses to the following items:

a. Need of the PHA for assistance, taking into account the number of disabled families who are potential residents of the project based on waiting lists, local surveys of accessible housing needs, the needs assessment (see 24 CFR 8.25), a housing survey, a survey of agencies providing services to persons with disabilities, the average length of vacancy for accessible units and the length of time a disabled family has to wait for a dwelling unit.

b. Extent that appropriate supportive services will be provided, indicating that prospective residents want the supportive services, that the services are adequately designed to meet the needs of disabled residents, and the experience of the service provider(s) in administering an effective service delivery program for disabled families. If residential supervision is required, the Field Office shall indicate that a written commitment has been obtained for such service.

c. Field Office Reports. The Field Office Public Housing Division shall forward each approvable application to the Headquarters Panel within two weeks of the end of the deficiency "cure" period. The Field Office report will include the project number, total number of units and units by bedroom size, structure type(s), cost areas, funding required, the metropolitan/non-metropolitan designations for each application, and the rating score sheets; in addition, the report is to describe how the application supports the PHA allocation and supportive service plans, and whether the PHA intends to develop the housing for disabled families on scattered sites or in a manner designed to obtain the most integrated setting possible.

4. Approvable applications will be referred to the Headquarters Review Panel, which will be convened on an ad hoc basis. This Panel will be comprised of Headquarters staff and will retain the same individuals, to the extent possible, each time the Panel convenes to ensure continuity. The Headquarters Review Panel will review and rank applications based on Field Office rating score sheets, analyses, comments and recommendations. The Assistant Secretary will select applications based on the Headquarters Review Panel's rankings and recommendations, up to the amounts available under the two set asides.

B. Rating Criteria

1. *General.* All threshold-approvable applications shall be rated by the Field Offices on the established rating criteria listed in Appendices A and B, which still apply to corresponding designated public housing development and MROP activities plus the additional rating criteria point factors listed as follows:

Criteria	Points
a. The local survey provided by the PHA of accessible housing needs indicates that there is a shortage of housing for low-income disabled families	20
b. The Field Office's determination, based on documentation submitted, that the PHA's allocation plan and the supportive service plan fulfill the requirements and provisions detailed in 24 CFR 945.205; compliance includes a description of the activities the PHA undertook to carry out the provisions of 24 CFR 945.205(b)(2) "Public review and comment on the supportive service plan"	20
c. Appropriate supportive services will be provided that are designed to meet the special needs of disabled residents	10
d. The supportive service provider is experienced and capable of administering an effective service delivery program as evidenced by compliance with any licensing requirements imposed by State or local law for the type of service or services to be provided	10
e. If residential supervision is required, a written commitment was included in the allocation plan	10
f. The application proposes housing "in the most integrated setting possible" . . . i.e., units are not concentrated in a few locations (see 24 CFR 945.205)	10
g. There is evidence of active involvement of the applicable duly-elected resident council(s) in planning for, as well as implementing this initiative	10
h. The extent to which the PHA has demonstrated that it can train, hire or contract with residents in this initiative	10

The selection criteria specified in the attached appendices and this NOFA may not be added to or modified.

2. *Total Possible Points.* The total possible points for designated public housing applications is 260; the total for designated MROP activities is 200.

3. *Reservation of Funds and Partial Funding.* See Appendices A and B to this NOFA for applicable provisions.

III. Other Matters

See Appendices A and B to this NOFA with regard to other matters; all provisions as stated in the "Other Matters" sections of Appendices A and B apply to this NOFA, including the Finding of No Significant Impact.

Dated: November 23, 1994

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing

Appendix A—FY 1994 NOFA for Public Housing Development

The applicable provisions of the notice of funding availability entitled "Funding Availability for FY 1994; Invitation for Applications; Public Housing Development" are published in the **Federal Register** on May 24, 1994 (59 FR 26902) is republished for informational purposes. The provisions in this NOFA concerning application due date are not republished in order not to confuse the reader.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3763; FR–3676–N–01]

Notice of Funding Availability for FY 1994; Invitation for Applications: Public Housing Development

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1994 for public housing development; invitation for applications.

SUMMARY: This NOFA announces the availability of FY 1994 funding, and invites eligible public housing agencies (PHAs) to submit applications for public housing development. Applications are limited to:

(1) Replacements for demolition/disposition subject to section 18 of the United States Housing Act of 1937 (USHA);

(2) Replacements for homeownership transfers under the HOPE I Program, and homeownership sales under section 5(h) of the USHA;

(3) Unforeseen housing needs resulting from natural and other disasters; housing needs resulting from emergencies, as certified by the Secretary, other than such disasters; housing needs resulting from the settlement of litigation; and housing in support of desegregation efforts; and

(4) "Other" applications.

All successful applicants will be required to participate in the Family Self-Sufficiency (FSS) program, unless granted an exception. This NOFA also provides instructions regarding the preparation and processing of applications. The Department is also encouraging applicants to form "partnerships" consisting of cooperative arrangements with community-based entities to provide housing, and is encouraging PHAs to engage in "mixed income" development (wherein public housing units are integrated within market-rate developments). This is being done by providing additional points for such efforts (see sections III.E.5 and IV.E. of this NOFA).

This NOFA is not applicable to the Indian housing program.

* * * * *

SUPPLEMENTARY INFORMATION: Paperwork Reduction Act Statement. The information collection requirements contained in this NOFA have been approved by the OMB under the Paperwork Reduction Act of 1980 and have been assigned OMB control numbers 2577–0033, 2577–0036, and 2577–0044.

I. Introduction

A. Authority

Sections 5 and 23 of the United States Housing Act of 1937 (USHA) (42 U.S.C. 1437c and 1437u); and sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Public housing development regulations are published at 24 CFR part 941; demolition/disposition regulations are published at 24 CFR part 970; section 5(h) regulations are published at 24 CFR part 906.

The interim and final regulations for the public housing FSS program were published on May 27, 1993, at 58 FR 30858, and 58 FR 30906, respectively, and will be codified at 24 CFR part 962. (The FSS final rule simply adopts the FSS interim rule as the FSS final regulations.)

The Notice of Program Guidelines for the HOPE–1 program was published on January 14, 1992 at 57 FR 1522. The Catalog of Federal Domestic Assistance Program number is 14.850.

B. Fund Availability

The Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriation Act of 1994 (Pub.L. 103–124, approved October 28, 1993) (1994 Appropriations Act) makes available up to $598 million of budget authority (grants) for public housing development/Major Reconstruction of Obsolete Public Housing (MROP) under section 5(a)(2) of the USHA. Since some of the appropriated funds are to be derived from the recapture of prior year obligations, the actual amount available may be less. At the beginning of Fiscal Year (FY) 1994, the available amount was $542,796,616, which included $149,534 in available carryover funds. As recaptures of funds within the Annual Contributions account occur during the fiscal year, these amounts will be made available for allocation to public housing development up to the fully appropriated amount, plus carryover.

In accordance with section 624 of the Housing and Community Development Act of 1992 (Pub.L. 102–550, approved October 28, 1992) (HCD Act of 1992), HUD has established a set-aside of five percent of appropriated funds (up to $29,900,000 depending on recaptures) for the development of housing designated for disabled families, and up to $119,200,000 (depending on recaptures) for activities involving MROP activities. Applications for designated housing for disabled families and for MROP activities will be the subject of separate NOFAs to be published by the Department.

The use of funds for replacement housing subject to section 18 of the USHA is limited to the lesser of 30 percent of the amount appropriated for development or $150 million. One half of one percent of the appropriated amount (up to $2 990,000) has been set aside for technical assistance and inspections. Units transferred or sold to residents under HOPE I or section 5(h) are subject to replacement in accordance with section 304(g) of the USHA. Based on experience, the Department will provide up to $76,059,534 for such replacements. The balance of funds will be fair shared.

The following table illustrates the distribution of grant authority

Purpose	Amount	
	(Maximum)	(Minimum)
Housing for Disabled	$29,900,000	$26,635,460
MROP Activities	119,200,000	116,139,686
Sec 18 Replacement Units	150,000,000	150,000,000
Technical Assistance/Inspections	2,990,000	2,663,547
HOPE I and Sec 5(h) Replacement	76,059,534	63,546,250
Fair-Share .	220,000,000	183,811,673
	598,149,534	542,796,616

C. Fund Assignments

Section 213(d) of the Housing and Community Development Act of 1974 (HCD Act of 1974) requires that funds be allocated on a fair share basis, except for (a) amounts identified as Headquarters Reserve and (b) amounts determined incapable of geographic allocation. The amounts identified by category below are maximums.

1. Headquarters Reserve

Threshold-approvable applications for housing resulting from unforeseen housing needs resulting from natural and other disasters; housing needs resulting from emergencies, as certified by the Secretary, other than such disasters; housing needs resulting from the settlement of litigation; and housing in support of desegregation efforts shall be assigned Headquarters Reserve funding. (Headquarters Reserve amounts are limited in accordance with section 104 of the Department of Housing and Urban Development Reform Act of 1989 (Pub.L. 101–235, approved December 15, 1989), to five percent of the financial assistance that becomes available under the USHA and section 101 of the HUD Act of 1965. Thus, Headquarters Reserve funding decisions will be made by Headquarters and may affect the distribution of grant authority shown above.)

2. Fair Share

Depending on recaptures, up to $220 million will be fair shared to approve category 4 ("other") applications. These fair share funds will be distributed to Areas (formerly Regions) on the basis of the following fair share factors, which reflect the most recent decennial census data as to population, poverty, housing overcrowding,

housing vacancies, amount of substandard housing, and other measurable conditions.

Because of errors in FY 1993 in calculating category 4 scores under the June 28, 1993, NOFA (58 FR 34670) for the Laconia Housing and Redevelopment Authority (LHRA) in New Hampshire and the Nahunta Housing Authority (NHA) in Georgia, fair share funds in the amounts of $753,400 and $759,400, respectively, will be awarded from the fair share amounts provided to the New England and Southeast Area before making FY 1994 selections, and assigned to the LHRA and NHA applications. The correction of these errors shall not adversely affect their participation in the FY 1994 rating and ranking process. If a new application is filed by the LHRA or NHA under this NOFA, they will be rated and ranked on the same basis as other applications, as if no error had been made. Any unused assignments will be redistributed, proportional to need, among remaining Areas with approvable unfunded "other" applications.

Fair share and Headquarters Reserve funds are also subject to the requirement of section 213 of the HCD Act of 1974 that not less than 20 percent nor more than 25 percent of the HUD aggregate program funds covered by the statute be allocated for use in nonmetropolitan areas. Therefore, public housing development fund allocations to select "other" applications may be modified before assignment in order to ensure Departmental compliance with this statutory and regulatory requirement (see 24 CFR 791.403(a)).

Area	Fair-share factors (%)
New England	7.2
New York/New Jersey	18.3
Mid-Atlantic	9.4
Southeast	13.8
Midwest	15.1
Southwest	7.7
Great Plains	3.6
Rocky Mountain	2.5
Pacific/Hawaii	18.7
Northwest/Alaska	3.7
Total	100.0

3. Non-Fair Share

Thirty percent of the appropriated amount, up to $150 million, will be made available for applications for replacement housing subject to section 18 of the USHA. Up to $76,059,534 will be made available for approvable applications for replacement units for HOPE 1 or section 5(h) homeownership transfers or sales.

4. Remaining Balances

Any residual funds not reserved under categories 1, 2, and 3 will be added to the funds to be fair shared for "other" approvable applications.

D. Conformity to Regulations and NOFA Requirements

While conformity with 24 CFR part 941 is required, this funding effort is also subject to the additional specific requirements, consistent with the regulations, that are set forth in this NOFA. Applicants also should consult Handbook 7417 1 REV–1, the FY 1994 detailed Processing Notice, and the FSS interim and final regulations published on May 27, 1993 at 58 FR 30858 and 58 FR 30906, respectively, which will be codified at 24 CFR part 962 The selection criteria specified in this NOFA may not be added to or modified.

II. Application Process Overview

A General

All applications shall be submitted to the appropriate Field Office by the application deadline date. The Field Office shall screen each application for completeness and will provide the PHA a 14-day opportunity to furnish missing technical information or exhibits, or to correct technical mistakes. Each application will then be subjected to a "pass/fail" threshold examination. Approvable category 1, 2, and 3 applications will be reported to Headquarters for further action.

Category 4 passing applications will be forwarded for rating to Rating Panel(s). One or more Rating Panels, comprised of HUD Field representatives appointed by Headquarters, shall be convened for the purpose. Category 4 applications will be rated by the Rating Panel(s) based on Field Office analyses. Headquarters will determine the funds required to approve category 1, 2, and 3 applications and select category 4 applications based on Rating Panel ratings and recommendations.

B. Categories of Applications

Each application must be for one of the following categories:

1. Replacement units for demolition/disposition approvals, subject to section 18 of the USHA (Category 1)

2 Replacement units for HOPE I or section 5(h) home-ownership transfers or sales (Category 2);

3. Public housing to be funded from Headquarters Reserve (Category 3); or

4. "Other" development applications intended to increase the public housing stock (Category 4). Category 4 applicants are limited to no more than one application per locality.

C. Application Approval

1 Up to the available amount for category 1 applications (see Section I.B. of this NOFA) and all category 3 approvable applications will be funded.

2. Up to $76,059,534 will be made available for approvable category 2 applications.

3. Category 4 (other) applications will be funded up to the fair share amounts for each Area.

4. Funds not required for categories 1, 2, or 3 will be added to the funds to be fair shared for "other" approvable applications.

D. Disclosure of Information

The Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) prohibits advance disclosure of funding decisions (see 24 CFR part 4); civil penalties related to advance disclosure are set out in 24 CFR part 30. Application approval/non-approval notifications shall not occur until the Congressional notification process is completed.

E. Records Retention

Applications and materials related to applications (e.g., Field Office analyses, application scoring sheets, and notifications of selection/non-selection) will be retained in the appropriate Field Office for five years, and be available for public inspection in accordance with 24 CFR part 12.

III. Application Requirements

A. All Applicants

Each application must specify the housing type (new construction, rehabilitation, or acquisition), development method (conventional, turnkey, or acquisition), and community for which the project is proposed. No more than one housing type, development method, and locality may be proposed for an application. Each application shall consist of an original and two copies, and must include the following:

1. Cover Letter

The cover letter must identify the category of application (see Section II.B. of this NOFA for a description of the categories; see also subparagraph 6 of Section III.A of this NOFA).

2. Application-Form HUD 52470

The application must be signed by the person authorized and dated and include the information as specified in the form.

3. Evidence of Legal Eligibility

If it has not previously done so, the PHA must document that it is legally organized. A current General Certificate (Form HUD 9009) must be submitted.

4. Cooperation Agreement (Form HUD 52481)

The PHA must document that the number of units requested, along with units in management and other units in development, are covered by Cooperation Agreements.

5. PHA Resolution In Support of the Application (Form HUD–52471)

Under this resolution, the PHA agrees to comply with all requirements of 24 CFR part 941 (see also paragraph 6 of this Section III.A). By executing the PHA Resolution, the PHA also certifies that it will comply with Title II of the Americans with Disabilities Act (42 U.S.C. 12131) and the implementing regulations at 28 CFR part 35.

6. Front-end Funds

If front-end funds are being requested, the PHA must so state in its cover letter; should the PHA desire the project only if front-end funds can be approved, the PHA must so state. The Form HUD–52471 (PHA Resolution) must refer to the request, and include Form HUD–52472 (Local Governing Body Resolution/Transcript of Proceedings) approving the request.

7. Drug-Free Workplace

The PHA must submit the Certification for a Drug-Free Workplace (Form HUD–50070) in accordance with 24 CFR 24.630.

8. Certification for Contracts, Grants, Loans and Cooperative Agreement (Form HUD–50071)

In accordance with section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87, the PHA must certify that no federally appropriated funds have been paid or will be paid, by or on behalf of the PHA for influencing or attempting to influence an officer or employee of any agency, or a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modifications of any Federal contract, grant, loan, or cooperative agreement.

9. Form SF–LLL, Disclosure of Lobbying Activities

Also in accordance with the Byrd Amendment and the regulations at 24 CFR part 87, the PHA must complete and submit Form SF–LLL if funds other than federally appropriated funds have been paid or will be paid by or on behalf of the PHA for influencing or attempting to influence an officer or employee of any agency, or a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modifications of any Federal contract, grant, loan, or cooperative agreement.

10. Disclosure of Government Assistance and Identity of Interested Parties (Form HUD 2880)

The PHA must submit the Applicant/Recipient Disclosure/Update Report (Form HUD–2880) in accordance with the requirements of 24 CFR part 12, subpart C.

11. Family Self-Sufficiency (FSS)

Section 23 of the USHA requires PHAs that are awarded new public housing units to implement an FSS program. Applicants must certify that they will comply with 24 CFR part 962, which requires successful applicants to initiate or expand an FSS program for the number of families that equals the total number of units they have been awarded (unless otherwise excepted).

B. Applications for New Construction

In accordance with section 6(h) of the USHA, new construction may be engaged in only if the PHA demonstrates to the satisfaction of the Secretary that the cost of new construction in the neighborhood where the PHA determines the housing is needed is less than the cost of acquisition or acquisition and rehabilitation in such neighborhood. Therefore, every application for a new construction project (conventional or turnkey) must be accompanied by either the information described in paragraphs B.1 and B.3 of this section, or, at the applicant's option, the information described in paragraphs B.2 and B.3 of this section:

1. A PHA comparison of the costs of new construction (in the neighborhood where the PHA proposes to construct the housing) and the costs of acquisition of existing housing or rehabilitation in the same neighborhood (including estimated costs of lead-based paint testing and abatement); or

2. A PHA certification, accompanied by supporting documentation, that there is insufficient existing housing in the neighborhood to develop housing through acquisition of existing housing or rehabilitation; *and*

3. A statement that:

(a) Although the application is for new construction, the PHA will accept acquisition of existing housing or rehabilitation, if HUD determines the PHA cost comparison or certification of insufficient housing does not support approval of new construction; *or*

(b) The application is for new construction only. (In any such case, if HUD cannot approve new construction under section 6(h) of the USHA, the application will be rejected.)

C. Replacement Housing Applications

1. Cover Letter

For both category 1 and category 2 applications, the cover letter must state whether the demo/dispo or transfer/sale application (to demolish/dispose of units, or to transfer/sell units) (hereinafter referred to as the "underlying application") has been approved; the date of approval; the project number and the name of the project being replaced; and whether it is being replaced in whole or in part. If the underlying application was not approved at the time the replacement housing application is filed, the cover letter must state the date the underlying application was submitted for consideration. Category 1 or 2 applications will not be funded unless the underlying application is approved by the time funding selections are made.

2. Section 5(j) Certification

The PHA must certify that the units requested are specifically required in FY 1994 either to meet the one-for-one replacement requirement of section 18 of the USHA to replace public housing demolition/disposition; or to meet the requirements of section 304(g) of the USHA to replace existing public housing approved in FY 1994 or earlier for homeownership transfer under HOPE 1, or for sale under section 5(h) of the USHA.

3. Replacement Application Under Section 18

A PHA submitting a replacement housing application under section 18 (category 1) must demonstrate that the replacement units, alone or together with other identified replacement units:

a. Will implement the PHA's Replacement Housing Plan submitted and approved under 24 CFR 970.11;

b. Are for no fewer units (or portion thereof approved by HUD) than the number of units to be demolished or disposed of; and

c. Will house at least the same number of individuals and families that could be served by the housing to be demolished or disposed.

D. Applications for Units to be Funded From Headquarters Reserve

1. Cover Letter

A PHA submitting a category 3 application shall identify the purpose of the application (see Section I.C.1 of this NOFA).

2. Section 5(j) Certification

The PHA must certify that the units requested are required to comply with court orders or directions of the Secretary. Court orders must be identified.

E. "Other" Applications

Applicants are encouraged to review the rating criteria (IV.E.) to ensure rating factors have been addressed in the application. "Curable technical deficiencies" (Section IV.B. of this NOFA) relate only to items that would not improve the substantive quality of applications relative to rating factors. A PHA may file only one application per locality under this category.

1. Cover Letter

Applicants for "other" public housing development units (category 4), must state whether they will accept fewer units than applied for. Refusal to accept fewer units may result in an application not being selected if funds are not sufficient for the full number of units.

2. Section 5(j) Certification

The PHA must certify to one of the following, pursuant to section 5(j) of the USHA (select E.2.a or E.2.b.):

a. The units requested (limited to 100 or fewer) are needed for family housing to satisfy demands not being met by the section 8 existing or voucher rental assistance programs; *or*

b. 85 percent of the PHA's dwelling units (select (1), (2), or (3)):

(1) Are maintained in substantial compliance with the section 8 housing quality standards (24 CFR 882.109); *or*

(2) Will be so maintained upon completion of modernization for which funding has been awarded; *or*

(3) Will be so maintained upon completion of modernization for which applications are pending that have been submitted in good faith under section 14 of the USHA (or a comparable State or local government program), and that there is a reasonable expectation, as determined in writing by HUD, that such application would be approvable; or will be so maintained upon completion of modernization under the Comprehensive Grant program.

3. Funding Preference in Accordance With Section 6(p)

Section 6(p) of the USHA requires HUD to provide a funding preference for applications in areas with an inadequate supply of housing for use by low-income families (i.e., a "tight" housing rental market). The implementation of this preference shall be in accordance with the process described in Section V.A.2 of this NOFA.

a. The PHA must furnish data relative to rental vacancy rates in the market area where the project is proposed. This data should include a description of the data sources and methods used to obtain survey information.

(It is recommended that PHAs consult with local community development agencies relative to their housing needs before submitting applications under this NOFA, since most of these agencies will have participated in the development of a Comprehensive Housing Affordability Strategy (CHAS).)

b. Factors such as the following will provide evidence of conditions which, when taken together, will demonstrate a pattern of inadequate supply (generally, no one factor, taken alone, is conclusive);

(1) The current rental housing vacancy rate is at a low level (typically six percent or lower) which results in housing not being available for families seeking rental units (unless the housing market area is not growing and, as a result, is experiencing low levels of demand);

(2) The annual production of rental housing units is insufficient to meet the demand arising from the increase in households, or, where there is little or no growth, is insufficient to meet the demand arising from net losses to the available inventory;

(3) The shortage of housing is resulting in rent increases exceeding those increases commensurate with rental housing operating costs; *and*

(4) A significant number or proportion of section 8 certificate/voucher holders are unable to find adequate housing because of the shortage of rental housing, as evidenced by PHA data showing a lower-than-average percentage of units under lease and a longer-than-average time required to find units (typically, less than 85 percent lease up within 60 days).

4. Documentation To Demonstrate Need

The PHA must submit documentation, such as waiting list description or PHA vacancy rate data, to demonstrate need for the proposed public housing, to assist the HUD Field Office in its determination of need and market in accordance with Section IV.C.8.b of this NOFA.

5. Additional Rating Points

Category 4 (other) applications may obtain additional rating points (see Section IV.E.8 of this NOFA) if the PHA furnishes additional data regarding any of the following:

a. "Partnerships." PHAs are encouraged to form "partnerships" consisting of cooperative or contractual arrangements with community-based entities for the purpose of developing housing so that the housing fits into the community and is seen as an integral part of it. "Community-based entities" include private non-profit or for-profit entities with experience in the development of low and moderate income housing, or that are skilled in the delivery of services to families who are residents of public housing. "Cooperative or contractual arrangements" include those that will facilitate development (including management of the units) that will enhance the long-term viability of the development; and those arrangements that the PHA has for the delivery of services (such as child care, education, and economic opportunities) made available to residents of public housing. The PHA should indicate who the entity (or entities) are, the qualifications of the entity and its principals, and the role they play or will play in the development, management, or service delivery process which will lead to better acceptance of public housing in the community. Such cooperative arrangements require substantive involvement by the non-PHA partner in at least one of the following areas: design, management, site selection, representation to the community, or service delivery. If the PHA proposes to use public housing development funds to pay an entity for its role in the arrangement, a justification for sole-source contracting in accordance with 24 CFR 85.36(d)(4) must be provided for consideration by HUD. With respect to the delivery of services, costs for such services are not eligible to be paid from public housing development funds. The PHA must also certify that its selection of the cooperative entity (or entities) was in compliance with State and local law. [Note: If State/local procurement requirements cannot be complied with before the application deadline date, the PHA may submit a statement with its application indicating that it is in the processing of arranging such a cooperative relationship and certifying that such a relationship will comply with State and local law. In such case, *within 60 days of the date of publication of this NOFA,* the PHA must: (1) identify the entity(ies) proposed to be part of the cooperative relationship; (2) describe the qualifications of the entity(ies) and of its principals, and the role they will play in the development, management, or service delivery process that will lead to better acceptance of public housing in the community; (3) submit a justification for sole source contracting in accordance with 24 CFR 85.36(d)(4) (if the PHA proposes to use public housing development funds to pay the entity for its role in the cooperative arrangement), and a certification that the selection of the entity(ies) was in compliance with State and local law.]

b. Mixed Income Development. In order to encourage the development of public housing in metropolitan areas that will be less identifiable as public housing, PHAs are encouraged to develop units whereby public housing would be mixed with market-rate dwellings so that they are indistinguishable. Specifically, in order to receive points for this factor, a PHA must propose to acquire units in developments where the units require incomes that, on average, are at or above 80 percent of median, or to acquire sites in developments where the units require incomes that, on average, are at or above 80 percent of median.

c. Past compliance with section 3. The PHA may submit evidence that over the past five years it has met any commitments made under the provisions of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C., 1701u), as amended from time to time, and the implementing regulations for section 3 at 24 CFR part 135. If the PHA does not have development experience, it may instead submit evidence related to such experience with the modernization program.

d. Proposed compliance with section 3. The PHA may submit its goals for complying with Section 3 employment and training with regards to the public housing development application.

e. Support for local initiatives. If the application proposes a project which, as evidenced by a letter from local officials, actively supports an area of local initiative such as a Community Development Block Grant, urban revitalization, Enterprise Zone, or other similar local activity, or includes a commitment for a donation to the project in the event it is selected for funding, the PHA should describe the activity.

f. Resident Initiatives. If the PHA is working with residents to establish and/or foster resident empowerment activities (such as establishing Resident Corporations or Resident Management Corporations), the activities should be described.

F. Ineligible Applications

Applications for intermediate care facilities and nursing homes may not be approved under this NOFA. Applications for housing designated for the disabled and for MROP activities will be the subject of separate NOFAs and may not be applied for under this NOFA.

IV. Field Office Processing of Applications

A. Submission of Applications

The cover letter of all applications must be marked with the date and time of receipt, along with the initials of the Field Office employee accepting the application. Applications received after the date and time specified at the beginning of this NOFA will be returned to the applicant. The PHA should obtain a "Return receipt" or similar evidence of delivery when applications are delivered via other means (U.S. Mail, private mailing firms, etc.).

B. Initial Screening

1. Immediately after the deadline for receipt of applications, the Field Office will screen each application to determine whether all information and exhibits have been submitted.

a. If any application lacks any technical information or exhibit, or contains a technical mistake, the PHA will be advised in writing and will have 14 calendar days from the date of the issuance of HUD's notification to deliver the missing or corrected information or documentation to the Field Office.

b. Curable technical deficiencies relate only to items that would not improve the substantive quality of a category 4 application, relative to the ranking factors.

c. If Form HUD 52470 (Application) is missing, the PHA's application will be considered substantively incomplete, and therefore ineligible for further processing. If other forms are missing, such as Form HUD 50070 (Drug Free Workplace Certification) or if there is a technical mistake, such as no signature, or an unauthorized signatory on a submitted form, the PHA will be given an opportunity to correct the deficiency.

2. An application that does not meet the applicable threshold and NOFA requirements after the 14-day technical deficiency period will be rejected from processing and determined to be unapprovable.

3. Applications proposing housing in areas also served by the Farmers Home

Administration (FmHA) are subject to coordination with FmHA to assure that assisted housing resources to be provided are not duplicative. The State FmHA office shall be advised that an application for public housing has been received and is being considered for funding, and be provided an opportunity to comment on the application.

4. The responsibility for submitting a complete application rests with the PHA. The failure of the Field Office to identify and provide a notice of deficiency to the PHA shall not relieve the PHA of the consequences of failure to submit a complete application.

C. Application Threshold Approvability

After initial screening and upon expiration of the deficiency "cure" period, complete applications will be examined for threshold approvability. Applications that fail one or more of the threshold criteria will be rejected from processing and determined to be unapprovable. All applications for public housing development funds must meet the following thresholds to be determined approvable:

1. The PHA may not have any litigation pending which would preclude approval of the application. The PHA must be legally eligible to develop, own, and operate public housing under the USHA and have:

a. Approved and current PHA organization documents;

b. Local cooperation agreements to cover units under management, in development, and the units requested (Form HUD 52481), and any other required local authority;

c. A properly executed and complete PHA Resolution (Form HUD 52471), referring to the need for front-end funding, if requested, and a Local Governing Body Resolution (HUD 52472) which approves the request for front-end funds, if front-end funds are requested. (Note: By executing the PHA Resolution, the PHA certifies that it will comply with Title II of the Americans with Disabilities Act (42 U.S.C. 12131) and the implementing regulation at 28 CFR part 35. The PHA Resolution also certifies to the PHA's intent to comply with all requirements of 24 CFR part 941. These requirements include: Nondiscrimination under the applicable civil rights laws; the requirements imposed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655); the accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's implementing regulations at 24 CFR part 8; and section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u), and HUD's implementing regulations at 24 CFR part 135.)

2. The category of application is eligible under this NOFA (see Section II.B of this NOFA).

3. If new construction (conventional or turnkey) has been applied for, the PHA has provided a cost comparison or a certification with documentation (see Section III.B. of this NOFA), and has stated what is to be done with the application if new construction is not approvable.

4. No application shall be determined to be approvable if the PHA has failed to return excess advances received during development or modernization, or amounts determined by HUD to constitute excess financing based on a HUD-approved Actual Development Cost Certificate (ADCC) or Actual Modernization Cost Certificate (AMCC), unless HUD has approved a pay-back plan.

5. There are no environmental factors, such as sewer moratoriums, precluding development in the requested locality.

6. The following certifications are included in the application and have been executed by the appropriate person(s):

a. Form HUD–50070, Drug-Free Workplace;

b. Form HUD–50071, Certification for Contracts, Grants, Loans and Cooperative Agreements;

c. Form SF–LLL, Disclosure of Lobbying Activities, if applicable;

d. Form HUD–2880, Applicant/Recipient Disclosure/Update Report;

e. FSS certification;

f. Section 5(j) certification appropriate to the category of application.

7. The PHA must be in compliance with civil rights laws and equal opportunity requirements. A PHA will be considered to be in compliance if:

a. As a result of formal administrative proceedings, there are no outstanding findings of noncompliance with civil rights laws unless the PHA is operating in compliance with a HUD-approved compliance agreement designed to correct the areas(s) of noncompliance;

b. There is no adjudication of a civil rights violation in a civil action brought against it by a private individual, unless the applicant demonstrates that it is operating in compliance with a court order designed to correct the area(s) of noncompliance;

c. There is no deferral of Federal funding based upon civil rights violations;

d. There is no pending civil rights suit brought against the PHA by the Department of Justice; or

e. There is no unresolved charge of discrimination against the PHA issued by the Secretary under section 810(g) of the Fair Housing Act, as implemented by 24 CFR 103.400.

8. For "other" applications only:

a. The Field Office must determine that the PHA has or will have the capability to develop and manage the proposed housing. The Field Office shall determine capability based upon the PHA's overall score under the Public Housing Management Assessment Program (PHMAP) (see 24 CFR part 901), the PHA's most recent fiscal audit, and outstanding HUD monitoring findings. A PHA shall not be determined to lack administrative or development capability simply because it has no recent experience in developing or managing public/assisted housing.

b. The Field Office must determine that there is a need and a market for the proposed household type and bedroom sizes, taking into consideration the documentation submitted by the PHA on housing supply and demonstration of need, any local plans, and other assisted housing (e.g., HUD or FmHA) existing and proposed (including housing funded but not completed).

D. Threshold Approvable Applications

Applications in categories 1, 2, and 3 will be determined approvable if they successfully pass the threshold review. Threshold-approvable applications in category 4 ("other") will be reviewed and analyzed by the Field Office.

E. "Other" Development Applications

Threshold approvable "Other" applications will have points assigned by a Rating Panel(s) on the basis of Field Office analysis and PHA documentation relating to the following criteria.

Criteria	Points
1. *Relative Need.* The application proposes a project for a locality which has been previously under-funded for the household type (family or elderly) requested, relative to the need for housing for the same household type in the respective metropolitan or non-metropolitan portion of the Field Office's jurisdiction. [Select (a), (b) or (c)]:	
(a) Housing need in the locality specified in the application has been severely under-funded. (A locality with a percentage of need served that is equal to or less than one-half the Field Office percentage will be determined to be severely under-funded.); or	20
(b) Housing need in the locality specified in the application has received a proportionate share of funding or has been moderately under-funded. (A locality with a percentage of need served that is equal to or less than the Field Office percentage, but greater than one-half that percentage will be determined to be moderately under-funded.); or	10
(c) Housing need in the locality specified in the application has been over-funded. (A locality with a percentage that is greater than the Field Office percentage will be determined to have been over-funded.)	0
2. *Vacancy Rate.* [Select (a) or (b)]:	
(a) The vacancy rate in public housing projects under management is not greater than 5 percent, indicating that the PHA will and can fully utilize the units for which it applied; or	20
(b) The vacancy rate in public housing projects under management is greater than 5 percent but less than 6 percent (or two units if that is greater)	10
3. *Large-Family Housing.* The application is for a project comprising 51 percent or more three bedroom or larger units	20

Criteria	Points
4. *Relocation.* The proposed project would primarily assist households displaced or to be displaced by Federal action or a natural disaster in a Federally declared disaster area	10
5. *Low Density Family Housing.* The application proposes scattered site development to expand housing opportunities	10
6. *PHA Development Experience.*[1] [Select (a), (b), or (c)]:	
(a) The PHA scored at least 90 percent ("A") in Indicator 12 (Development) of PHMAP; or	20
(b) The PHA's latest PHMAP score for Indicator 12 (Development) is between 80 and 89 percent; or the Field Office has no information on the PHA's previous development experience to rate the PHA under paragraph (a) above; however, the application demonstrates the capability for, and the expectation of, expeditious quality or other development experience, or submitted a development management contract with an experienced PHA); or	15
(c) The PHA's latest PHMAP score for Indicator 12 (Development) is between 60 and 79 percent; or the PHA has no development experience under either paragraph (1) or (2) above, but the PHA has evidenced staff capability and organization that demonstrates the PHA has the capability for, and the expectation of, expeditious quality development or has submitted a proposed development management contract	5
7. *PHA Management Experience.*[2] [Select (a), (b), or (c)]:	
(a) The PHA's latest PHMAP score (excluding development) is 90 percent or better; and there were no Inspector General audit findings during the PHA's last fiscal audit; and there are no outstanding HUD monitoring findings; or	20
(b) The PHA's latest PHMAP score (excluding development) is between 80 and 89; and Inspector General audit findings (if any) have been addressed; and outstanding HUD monitoring findings have been resolved; or	10
(c) Choose (1) or (2):	
(1) The PHA's latest PHMAP score (excluding development) is between 60 and 79; and Inspector General audit findings (if any) have been addressed; and outstanding HUD monitoring findings have been resolved; or	5
(2) The PHA has no public housing in management, but has management experience in the section 8 program and management reviews or Inspector General audit findings (if any) are being addressed satisfactorily	5
8. *Other Criteria.* [Select any that apply]:	
(a) The PHA indicated that it has formed a "partnership" (i.e., a cooperative relationship) with an entity that will play a substantive role in design, management, selection, or representation to the community; or the PHA has submitted evidence that it has formed a "partnership" with an entity that plays a substantive role in the delivery of services and that these services will be available to residents of the project under development	5
(b) The PHA has certified that it will acquire units in developments where the non-public housing units require incomes that, on average, are at or above 80 percent of median, or that it will acquire sites in developments where the units require incomes that, on average, are at or above 80 percent of median	5
(c) The PHA has submitted evidence that over the past five years it has met any commitments made under the provisions of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C., 1701u), as amended from time to time, and the implementing regulations for section 3 at 24 CFR part 135. If the PHA does not have development experience, it may instead submit evidence related to its experience with the modernization program	5
(d) The PHA has submitted its goals for complying with section 3 employment and training with regards to this application	5
(e) The application proposes a project which, as evidenced by a letter from local officials, actively supports an area of local initiative such as a Community Development Block Grant, urban revitalization, Enterprise Zone, or other similar local activity, or includes a commitment for a donation to the project in the event it is selected for funding	15
(f) The Field Office, based on documentation submitted by the PHA, has determined that the PHA is working with residents to establish and/or foster resident empowerment activities (such as establishing Resident Corporations or Resident Management Corporations)	5
Total Possible Points	160

[1] The Department reserves the right to require contracted oversight of the administration of the project's development where it deems necessary.

[2] The Department reserves the right to require contracted oversight of the administration of the project implementation where it deems necessary.

F. Field Office Reports

1. Category 1, 2, and 3 Applications

Each Field Office shall forward its lists (by category) of fair-share exempt threshold-approvable applications to Headquarters within two weeks of the deficiency "cure" period. The lists shall include the project number, total number of units and units by bedroom size, structure type(s), cost areas, funding required and the metropolitan/non-metropolitan designations for each application. Category 1 and 2 applications shall also identify the underlying project and its current status (e.g., approved (date), under review in Field Office, etc.).

2. Category 4

All Field Office reports to Rating Panels on threshold-approvable "other" applications shall be submitted within four weeks of the deficiency "cure" period and include the information described in F.1., above, the analysis of each application, and Field Office recommendations for funding.

V. Rating Panels

A. Rating Panels

1. General

The Rating Panel(s) shall ensure that all category 4 applications have been properly determined to be threshold-approvable. The Rating Panel(s) shall compile data furnished by Field Offices for category 4 (other) applications, and rate each application based on Field Office analyses, comments, and recommendations.

A list of rated applications shall be forwarded to Headquarters, with copies of Field Office reviews and recommendations, and justifications for Rating Panel rankings. Headquarters shall not modify ratings of category 4 ("other") applications unless a gross error has occurred.

Examples of "gross errors" include, but are not limited to, errors in calculating the vacancy rate in the proposed community, or assigning points for development/management experience based on a PHMAP score that was successfully appealed, or simple errors of arithmetic.

Changes in ratings shall be fully documented, and a copy of the memorandum authorizing the change (and the basis thereof) shall be sent to the Rating Panel and to the Field Office for inclusion in the file and be made available for public inspection. Category 4 applications shall be approved within Areas, to the extent fair share funds are assigned, as follows:

2. "Tight Market" Determination

Headquarters will separate "other" applications (category 4) on the basis of "tight rental housing market" and Rating Panel ratings and Headquarters rankings, and approve them (in the following order) to the extent fair share funds are assigned to their respective Area:

a. Applications within the same Area in tight rental housing markets which receive 80 or more rating points;

b. All other applications in the same Area, in rank order, depending on "metropolitan" or "non-metropolitan" funding available.

B. Reservation of Funds

Funds will be reserved in an amount equal to the total development cost limit for the number, structure type, and size of units being approved, "trended" to take into consideration the anticipated cost of construction at the time the construction/rehabilitation contract is expected to be executed; acquisition reservations will be trended to take into account anticipated cost variations between fund reservation and Date of Full Availability (DOFA). The trend shall be calculated by multiplying the project total development cost limit by 6 percent (1.06), rounded to the nearest $50. No amendment funds will be available for these projects in the future.

C. Partial Funding

Partial funding of highly ranked "other" applications within an Area may occur (so long as such projects are determined viable and the PHA has indicated willingness to accept fewer units) to facilitate the funding in rank order of additional applications for highly ranked projects.

VI. Checklist of Application Submission Requirements—All Programs

A. Submission Requirements

PHAs may use the following application checklist, which enumerates the submission requirements of Section III of this NOFA.

1. Cover letter.
2. Form HUD 52470, Application for Public Housing Development;
3. Evidence of legal eligibility (if not previously evidenced) with a current General Certificate (HUD 9009);
4. Evidence that the number of units in management, in development, and being requested in this application are covered by Cooperation Agreements (HUD 52481) and any other State/local requirements have been met;
5. HUD 52471, PHA Resolution in Support of Public Housing;
6. HUD 52472, Local Governing Body Resolution, if front-end funds are being requested by the PHA. (Note: If front-end funds are requested, the HUD 52471 must be appropriately modified. See Section III.A.6. of this NOFA);
7. PHA statement identifying its funding preferences if more than one application is being submitted for category 4 (see Section II.B of NOFA). (Note, however, that no more than one application per locality may be filed under category 4.);
8. PHA statement whether it will accept fewer "other" units than applied for (category 4);
9. HUD 50070, PHA Certification for a Drug-Free Workplace;
10. HUD–50071, Certification for Contracts, Grants, Loans and Cooperative Agreements;
11. Form SF–LLL, Byrd Amendment Disclosure and Certification Regarding Lobbying, only if the applicant determines it is applicable;
12. Form HUD 2880, Disclosure of Government Assistance and Identity of Interested Parties;
13. Section 5(j) certification appropriate to the category of application;
14. Evidence of inadequate housing supply (i.e., a "tight" rental housing market), for category 4 ("Other") units;
15. Evidence (such as waiting list information or PHA vacancy rate data) of need and market for the units requested for category 4 applications;
16. Section 6(h) cost comparison justification, if new construction is requested;
17. FSS program certification;
18. Replacement housing exhibits, if applicable (see section III.C).
19. (Optional) For "other" applications, documentation to address the rating factors (see section IV.E.).

B. Application Packets

Forms comprising the application package may be obtained from the HUD Field Office.

VII. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410.

B. Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal government, or on the distribution of power and responsibilities between them and other levels of government. The NOFA will provide PHAs with funding for public housing development.

C. Family Impact

The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that the provisions of this NOFA do not have the potential for significant impact on family formation, maintenance and general well-being within the meaning of the Order. To the extent that the funding provided through this NOFA results in additional or improved housing, the effects on the family will be beneficial.

D. Prohibition Against Lobbying Activities: The Byrd Amendment

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. (See Section II of this NOFA.) These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and sub-recipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

E. Prohibition Against Lobbying of HUD Personnel

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

HUD's regulation implementing section 13 is codified at 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of the rule. Appendix A of this rule contains examples of activities covered by this rule.

F. Section 112 of the HUD Reform Act of 1989

A final rule published in the **Federal Register** on September 7, 1993, amended the definition of "person" to exclude from coverage a State or local government, or the officer or employee of a State or local government or housing finance agency thereof who is engaged in the official business of the State or local government.

Any questions concerning the rule should be directed to the Office of Ethics, Room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3815 (voice/TDD). This is not a toll-free number. Forms necessary for compliance with the rule may be obtained from the local HUD office.

G. Prohibition Against Advance Disclosure of Funding Decisions

Section 103 of the HUD Reform Act proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance. HUD's regulation implementing section 103 is codified at 24 CFR part 4. HUD employees involved in the review of applications and in the making of funding decisions are restrained by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of

HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted by 24 CFR part 4. Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.)

H. Accountability in the Provision of HUD Assistance

HUD's regulations at 24 CFR part 12 implement section 102 of the HUD Reform Act. Section 102 contains a number of provisions designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. The following requirements concerning documentation and public access disclosures are applicable to assistance awarded under this NOFA.

1. Documentation and Public Access

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

2. Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than three years. All reports, both applicant disclosures and updates, will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in **Federal Register** on January 16, 1992 (52 FR 1942), for further information on these disclosure requirements.)

Appendix B—FY 1993 an FY 1994 NOFA for Public Housing Development—MROP Activities

The applicable provisions of the notice of funding availability entitled "Notice of Funding Availability (NOFA) for FY 1994; Invitation for Applications; Public Housing Development—MROP Activities" are published in the **Federal Register** on May 20, 1994 (59 FR 26577) is republished for informational purposes. The provisions in this NOFA concerning application due date are not republished in order not to confuse the reader.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3758; FR–3637–N–01]

Notice of Funding Availability (NOFA) for FY 1993 and 1994; Invitation for Applications: Public Housing Development—MROP Activities

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1993 and FY 1994 for Public Housing Development—MROP Activities; Invitation for Applications.

SUMMARY: This NOFA announces the availability of FY 1993 and 1994 funding, and invites eligible public housing agencies (PHAs) to submit development applications for MROP activities. Because the number of applications for FY 1993 funding which received perfect scores was in excess of available funding (funding of all applications receiving a perfect score of 90 would only have permitted funding at 40 percent of the amount requested), this NOFA withdraws the FY 1993 NOFA published on September 13, 1993 (58 FR 47940).

The FY 1993 funding is being combined and re-announced with the FY 1994 funding under this Public Housing Development—MROP Activities NOFA (MROP Activities NOFA).

All unfunded MROP activities applications submitted in response to the FY 1993 NOFA will be returned to the PHAs for resubmission in response to this combined FY 1993 and FY 1994 NOFA. At the option of the PHA, an application may be amended and resubmitted, or a new MROP activities application may be submitted. No other types of applications will be accepted under this NOFA.

A separate NOFA applicable to the public housing development program will be published in the **Federal Register**.

This MROP Activities NOFA provides instructions regarding the preparation and processing of applications.

This NOFA is NOT applicable to the Indian housing program.

* * * * *

SUPPLEMENTARY INFORMATION: Paperwork Reduction Act Statement: The information collection requirements contained in this NOFA have been approved by the OMB under the Paperwork Reduction Act of 1980 and have been assigned OMB control numbers 2577–0033, 2577–0036, and 2577–0044.

I. Introduction

A. Authority

Section 5 of the United States Housing Act of 1937 (42 U.S.C. 1437c); and sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Public housing development regulations are published at 24 CFR part 941. The Catalog of Federal Domestic Assistance Program number is 14.850.

B. Fund Availability

In accordance with the FY 1994 HUD Appropriations Act (Pub.L. 103–124, approved October 28, 1993), the Department is making available, through this NOFA, up to $119.2 million of the FY 1994 public housing development funds for MROP activities consistent with section 111 of the Housing and Community Development (HCD) Act of 1992 (Pub.L. 102–550, approved October 28, 1992). Because some of the appropriated funds are to be derived from recapture of prior year obligations, a lesser amount may be available under this NOFA, unless actual recaptures during the current Fiscal Year return the amount to the appropriated level.

In addition, the $60 million of FY 1993 public housing development funds provided in the FY 1993 HUD Appropriations Act (Pub.L. 102–389, approved October 6, 1992) for MROP activities consistent with section 111 of the HCD Act of 1992, is also being made available.[3]

Consistent with section 624 of the HCD Act of 1992, HUD has established a set-aside of five percent of the total of up to $179.2 million (which provides up to $8,950,000 depending on recaptures) for MROP Activities for housing designated for disabled families, which will be the subject of a separate NOFA to be published by the Department.

C. Fund Assignments

Funding for MROP activities is provided for the reconstruction of existing public housing, the extent of which is not predictable by formula. Therefore, the funds provided under this NOFA will not be fair-shared. This determination was made on the basis of the exclusion of funds as incapable of geographic allocation pursuant to 24 CFR 791.403(b) published in the **Federal Register** on August 4, 1993 (58 FR 41426).

Field Offices will ascertain threshold-approvability and, after Joint Review, send the threshold-approvable applications to a review selection panel(s) comprised of representatives from various Field Offices (hereafter referred to as "panel(s)").

The panel(s) shall rate and rank the threshold-approvable applications based on the criteria in Section IV.E. of this NOFA, and provide Headquarters with a list, in rank order, reflecting the ratings. The Department, in its discretion, may choose to select or partially fund a lower-rated application in order to increase national geographic diversity, and/or to increase the diversity of development types (high-rise buildings of five or more stories and those which include only low-rise buildings).

D. Eligibility

Applications for public housing development—MROP activities must be submitted by PHAs eligible for development

[3] As noted in the September 13, 1993 FY 93 MROP Activities NOFA, the FY 1993 funds are being made available for MROP activities in accordance with the Joint Statement of the Managers in Explanation of the Conference Agreement (see H.R. Rep. 103–165, pg. 31) on the Supplemental Appropriations Act of 1993 (Pub.L. 103–50, approved July 2, 1993).

funding which have the required local cooperation and legal authority to develop, own and operate public housing projects.

PHAs eligible under the Comprehensive Improvement Assistance Program (CIAP) (CIAP-eligible PHAs) and under the Comprehensive Grant Program (CGP) (CGP-eligible PHAs) may apply for these funds. CIAP and CGP are hereinafter referred to as "modernization." Applications will be determined eligible using the modernization procedures outlined in Public Housing Modernization rule 24 CFR part 968, as amended by the interim rule for Public and Indian Housing, Revised Comprehensive Improvement Assistance Program, published on March 15, 1993 (58 FR 13916), (as modified by this NOFA).

Applications must meet the threshold approvability requirements in Section IV.B of this NOFA, including the following requirements which must be addressed in the PHA's Narrative Statement accompanying its application, and will be rated by a panel(s) on the Technical Review Factors listed in Section IV.E. of this NOFA.

1. A project proposed for MROP activities must have long-term viability after reconstruction and the annual contributions contract (ACC) for the project must remain in effect for 40 years. In determining viability, the PHA must have a comprehensive plan (funded from other sources such as CIAP, CGP, donations, etc.) for the project for which the funds for MROP activities are being requested. The comprehensive plan for the project may be part of the PHA's comprehensive plan for modernization. The comprehensive plan must demonstrate a strategy which will assure that the entire development will be viable for a minimum period of 20 years. This strategy may include, but not be limited to, an estimate of the required amount needed for rehabilitation of the remaining portion of the development to the extent any additional rehabilitation is required; sources of funding for the additional work; any proposed demolition/disposition that may be planned; and written evidence of local government and resident support for the strategy.

2. A proposed MROP activities project must be a rental (not homeownership) project.

3. An "obsolete project or building" is one that has design or marketability problems that have resulted in:

a. Current vacancies of more than 25 percent of the units available for occupancy; or

b. (1) Estimated costs of the project (including any costs for lead-based paint abatement activities) that exceed 70 percent of the total current development cost limits for new construction of similar units in the area; and

(2) The project or building has:

(a) An occupancy density or a building height that is significantly in excess of that which prevails in the neighborhood; or

(b) A bedroom configuration that could be altered to better serve the needs of families seeking occupancy to public housing; or

(c) Significant security problems in and around the project; or

(d) Significant physical deterioration or inefficient energy and utility systems.

4. The deficiencies must be determined correctable under the CGP or the CIAP procedures (see 24 CFR part 968 and related issuances), to ensure long-term viability (a useful life with full occupancy) of more than 20 years after completion of reconstruction; the ACC for the project must remain in effect for 40 years.

5. Existing projects which consist of more than one building may have MROP activities funding in any single year limited to one or more (less than all) of a project's buildings. Where separate portions of an existing project receive MROP funding in different fiscal years, each portion must be given a separate MROP project number and the funds reserved must be sufficient to complete all of the reconstruction needed to make the portion viable; in such cases, the funds for each MROP project must be kept separate and may not be commingled.

6. A combination of MROP activities and modernization funds may be used within a project, but may not be used within the same units (or buildings, as applicable). For example, if an existing project consists of low-rise, row, and elevator buildings, an MROP activities project could be approved to include all or some of the row units, with the balance of units included in a modernization project. MROP funds may, however, be used in conjunction with Urban Revitalization Demonstration funds (HOPE VI) without limitation.

7. Management improvements are an eligible cost under MROP activities to the extent that such improvements are necessary for the viability of the project (i.e., to maintain the physical improvements resulting from the proposed redesign, reconstruction, or redevelopment MROP activities).

E. Restrictions

1. If partial demolition/disposition is required:

a. A demolition/disposition application must have been approved before the MROP activities application may be approved; or

b. The application must have been submitted along with evidence of approval by the unit of general local government in which the project is located. This approval may be obtained from the Chief Executive Officer.

2. Conversion of units (by combining small units to make larger units or vice versa) must either be approved before an MROP activities application involving conversion may be approved, or an application for said conversion must have been submitted, and the cost of any conversion must be considered in the MROP activities application.

3. Funding provided for MROP activities at a project may not be used for total demolition/disposition of that project, but may be used for partial demolition/disposition if required to meet long-term viability; however, 75 percent of the units in the project or portion of the project which comprises the MROP application must be reconstructed.[2]

II. Application Process Overview

A. PHA Application

A PHA applying for development funds for MROP activities shall prepare a CIAP application, as modified by this NOFA. The initial review process shall follow the CIAP procedures; however, once selected, the application shall be processed under public housing development procedures.

B. Application Processing

The Field Office will screen each application for completeness and will provide the PHA with a 14 calendar-day opportunity to furnish any missing technical information or exhibits, or to correct technical mistakes. Each application will then be subjected to a "pass/fail" threshold examination by the Field Office. Each passing application will be rated as to the Technical Review Factors listed in Section IV.E. of this NOFA by a panel(s).

C. Application Approval

Panels comprised of representatives from various Field Offices will prepare rankings based on the panels' ratings and Headquarters will select applications for approval to the extent funds are available

D. Disclosure of Information

The Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) prohibits advance disclosure of funding decisions. (See 24 CFR part 4.) Civil penalties related to advance disclosure are set out in 24 CFR part 30. Application approval/non-approval notifications shall not occur until the Congressional notification process is completed. (See Section VIII.F of this NOFA for more detailed information.)

E. Records Retention

Applications and materials related to applications (e.g., application scoring sheets, and notifications of selection/non-selection) will be retained in the appropriate Field Office for five years, and be available for public inspection in accordance with 24 CFR part 12. (See Section VIII.G of this NOFA for more detailed information.)

III. Application Requirements

A. All Applicants

No more than one project (or portion of a project) may be proposed for MROP activities per application, although more than one application may be submitted by a PHA. Each application shall consist of an original and two copies, and must include the following:

1. *Cover letter.* The cover letter must identify the project proposed for MROP activities by its original project number (e.g., WY 22–2), and its total number of units (and buildings, if applicable). If fewer than the total number of units are being proposed, the cover letter shall summarize the PHA's plans for the remaining units. If more than one application is submitted, the cover letter must state the PHA's priorities for funding. The PHA must include a statement of whether the PHA will accept funding for the reconstruction of fewer units.

2. *CIAP Application and Budget—Forms HUD 52822 and 52825.* The application and budget forms must each be signed and dated

and include the information as specified in the forms. No more than one original project number shall be included in each application submission.

3. *Narrative Statement.* The narrative statement must address each of the technical review factors under Section IV.E. of this NOFA, each of the eligibility criteria under Section I.D. of this NOFA and each of the restriction criteria under Section I.E. of this NOFA.

4. *Demolition/Disposition or Conversion of Units.* If, as part of the MROP activities, the PHA intends to demolish/dispose (demo/dispo) of some of the units or to convert units (combine small units to make larger ones, or vice versa), the PHA shall provide the date the demo/dispo or conversion was approved by HUD or the date the demo/dispo or conversion application was submitted. If the demo/dispo application has not yet been approved, the application for MROP activities that involves the demo/dispo of units must be accompanied by evidence of approval by the unit of general local government in which the project is located (it can be provided by the Chief Executive Officer). Development funds for MROP activities may not be used for total demo/dispo (see Section I.E.3. of this NOFA).

5. *PHA Resolution In Support of the Application (Form HUD–52471).* Under this resolution, the PHA agrees to comply with all requirements of 24 CFR part 941. These requirements include, among others: nondiscrimination under the applicable civil rights laws; the requirements imposed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655); the accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and HUD's implementing regulations at 24 CFR part 8; and section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and HUD's implementing regulations at 24 CFR part 135. By executing the PHA resolution, the PHA also certifies that it will comply with the accessibility requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131), and its implementing regulation at 28 CFR part 35.

6. *Local Governing Body Resolution (Form HUD–52472).* If front-end funds are requested, the PHA must submit a Local Governing Body Resolution/ Transcript of Proceedings (Form HUD–52472).

7. *Drug-Free Workplace.* The PHA must submit the Certification for a Drug-Free Workplace (Form HUD–50070) in accordance with 24 CFR 24.630.

8. *Certification for Contracts, Grants, Loans and Cooperative Agreements (Form HUD–50071).* In accordance with section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the regulations at 24 CFR part 87, the PHA must certify that no federally appropriated funds have been paid or will be paid, by or on behalf of the PHA for influencing or attempting to influence an officer or employee of any agency, or a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modifications of any Federal contract, grant, loan, or cooperative agreement. (See also Section VIII.D of this NOFA.)

9. *Form SF–LLL, Disclosure of Lobbying Activities.* Also, in accordance with the Byrd Amendment and the regulations at 24 CFR part 87, the PHA must complete and submit Form SF–LLL if funds other than federally appropriated funds have been paid or will be paid by or on behalf of the PHA for influencing or attempting to influence an officer or employee of any agency, or a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modifications of any Federal contract, grant, loan, or cooperative agreement. (See also Section VIII.D of this NOFA.)

10. *Disclosure of Government Assistance and Identity of Interested Parties (Form HUD 2880).* The PHA must submit the Applicant/ Recipient Disclosure/Update Report (Form HUD–2880) in accordance with the requirements of 24 CFR part 12, subpart C.

IV. Field Office Processing of Applications

A. Initial Screening

1. Immediately after the deadline for receipt of applications, the Field Office will screen each application to determine whether all information and exhibits have been submitted; no qualitative evaluation will be made at this time.

a. If an application lacks any technical information or exhibit, or contains a technical mistake, the PHA will be advised in writing and will have 14 calendar days from the date of the issuance of HUD's notification to deliver the missing or corrected information or documentation to the Field Office. For example, the PHA Narrative Statement must address each of the technical review factors under Section IV.E., the eligibility criteria under Section I.D. and the restriction criteria under Section I.E. of this NOFA.

b. Curable technical deficiencies relate only to items that would not improve the substantive quality of the application, relative to the ranking factors.

c. If Forms HUD 52822 (Application) or HUD 52825 (Budget) are missing, the PHA's application will be considered substantively incomplete, and therefore ineligible for further processing. However, if other forms [for example, Form HUD 50070 (Drug Free Workplace Certification), Form HUD 50071 (Certification for Contracts, Grants, Loans and Cooperative Agreements), Form SF LLL (Disclosure of Lobbying Activities), if applicable, or Form HUD 2880 (Application/ Recipient Disclosure/Update Report)] are missing, or if there is a technical mistake, such as no signature or the wrong signature on a submitted form, the PHA will be given an opportunity to correct the deficiency.

2. The responsibility for submitting a complete application rests with the PHA. Failure of the Field Office to identify and provide a notice of deficiency to the PHA shall not relieve the PHA of the consequences of submitting an incomplete application.

3. An application that does not meet all of the NOFA requirements after the 14-day technical deficiency period will be removed from processing and determined to be unapprovable. If the PHA fails to correct deficiencies or fails to submit missing forms or certifications, or any certification is incomplete or not executed by the appropriate person(s), or the PHA Narrative Statement fails to address each of the Section IV.E. technical review factors, and each of the Section I.D. eligibility criteria and the Section I.E. restriction criteria, the application will not be examined for threshold approvability.

B. Application Threshold Approvability

After initial screening and upon expiration of the deficiency "cure" period, applications for which all the information, certifications, and documentation required by the NOFA have been received by HUD will be examined for threshold approvability. Applications that fail one or more of the threshold criteria will be removed from processing and determined to be unapprovable. Applications which successfully pass the threshold review (threshold-approvable applications) will, following Joint Review, be submitted by the Field Office to a panel(s) which will rate applications, using the criteria set out in Section IV.E. of this NOFA. All applications must meet the following thresholds to be determined threshold-approvable:

1. The MROP activities application must meet the eligibility criteria of Section I.D. and the restriction criteria of Section I.E.

2. The PHA may not have any litigation pending which would preclude approval of the application. The PHA must have the required local cooperation and be legally eligible to develop, own, and operate public housing under the U.S. Housing Act of 1937 and the application must have a properly executed and complete PHA Resolution (Form HUD 52471) referring to the need for front-end funding, if requested, and a Local Governing Body Resolution (HUD 52472) which approves the request for front-end funds, if front-end funds are requested. (NOTE: The PHA Resolution certifies to the PHA's intent to comply with all requirements imposed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655); the accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's implementing regulations at 24 CFR part 8; and section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and HUD's implementing regulations at 24 CFR part 135. By executing the PHA resolution, the PHA also certifies that it will comply with the accessibility requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131), and its implementing regulation at 28 CFR part 35.)

3. The Field Office must determine that the PHA has or will have the capability (as defined by Section IV.E.(1)(c)) to complete the MROP reconstruction activities and manage the resulting housing. The Field

Office shall determine capability based upon the PHA's overall performance, which includes the PHA's total score under the Public Housing Management Assessment Program (PHMAP) (see 24 CFR part 901), and the PHA's most recent fiscal audit.

a. A PHA shall not be determined to lack administrative or development capability simply because it has no recent experience in developing or managing public/assisted housing.

b. No application shall be determined to be approvable if the PHA has failed to return excess advances received during development or modernization, or amounts determined by HUD to constitute excess financing based on a HUD-approved Actual Development Cost Certificate (ADCC) or Actual Modernization Cost Certificate (AMCC), unless HUD has approved a pay-back plan.

4. There are no environmental factors precluding the MROP activities.

5. The PHA must be in compliance with civil rights laws and equal opportunity requirements. A PHA will be considered to be in compliance if (1) as a result of formal administrative proceedings, there are no outstanding findings of noncompliance with civil rights laws unless the PHA is operating in compliance with a HUD-approved compliance agreement designed to correct the area(s) of noncompliance; (2) there is no adjudication of a civil rights violation in a civil action brought against it by a private individual, unless the applicant demonstrates that it is operating in compliance with a court order designed to correct the area(s) of noncompliance; (3) there is no deferral of Federal funding based upon civil rights violations; (4) there is no pending civil rights suit brought against the PHA by the Department of Justice; or (5) there is no unresolved charge of discrimination against the PHA issued by the Secretary under section 810(g) of the Fair Housing Act, as implemented by 24 CFR 103.400.

C. Joint Review

In accordance with the designation of projects requiring Joint Reviews, the Field Office will conduct a (either on-site or off-site) Joint Review for each threshold-approvable MROP activities application as early as possible pursuant to the interim rule for the revised CIAP program, published on March 15, 1993 (58 FR 13916). The purpose of the Joint Review is to allow the Field Office to more thoroughly understand the goals of the proposed MROP so it can prepare written comments summarizing the results of the Joint Review; in contrast to the CIAP procedures, the PHA's MROP application shall not be modified as a result of the Joint Review in any way.

D. Field Submissions

For each threshold-approvable application, the following must be prepared and submitted by the Field Office to the panel(s):

1. Copy of each application, narrative description of the number of units and units by bedroom size, structure type(s), cost area, funding required, metro/non-metro designation, results of the eligibility determinations made under Section I.D. of this NOFA and the restriction determinations under Section I.E. of this NOFA, as well as the results of the Joint Review pursuant to Section IV.C. of this NOFA; and

2. Review sheet summarizing critical information about the project, including a brief description of proposed MROP activities and their proposed cost including any management improvements and a statement of the determination made as to the extent such improvements are necessary to maintain the physical improvements resulting from the proposed MROP activities, the applicable total development cost limitation, a discussion of the relationship and approval date of any demolition/disposition or conversion, and the feasibility of MROP activities compared to demolition/disposition.

E. Panel Review Criteria

The panel(s) will review and rate each application on the basis of the following Technical Review Factors; the panel(s) may request information from the Field Office, or make site visits, as needed:

MROP Activities Panel Technical Review Factors	Points
(1) PHA's management capability to carry out the proposed MROP activities: (Maximum of 30 points)	
(a) PHMAP Overall Rating 60–100 and	15
(b) PHMAP (# 12) Development & (# 1) Modernization Scores A–B Average or	15
(c) PHMAP Overall Rating < 60, but contingent contract is included meeting procurement requirements with qualified entity to act as project administrator on PHA's behalf	30
(2) The expected term of useful life of the project or building after completion of MROP activities: (Maximum of 30 points)	
(a) The plan/strategy is comprehensive and demonstrates that the rehabilitation will result in a useful life of at least 20 years; e.g., management deficiencies are addressed; all physical deficiencies are addressed; local and resident support are integrated throughout the project improvement effort	1–10
(b) Degree of Resident Involvement and degree of PHA activity in resident initiatives, including resident management, economic development, and drug elimination efforts	1–5
(c) Degree of local government and private sector involvement and support	1–5
(d) Evidence of satisfactory maintenance of other developments in the PHA's inventory	1–10
(3) The likelihood of achieving full occupancy of the reconstructed units comprising the project or building after completion of MROP activities: (Maximum of 40)	
(a) Need—The PHA's needs for CIAP/CGP/URD are so great that there is little or no likelihood this project, which has demonstrated need, will be modernized in the foreseeable future without MROP funds	1–30
(b) Adequate occupancy systems/procedures are in place or will be in place to achieve full occupancy once modernized	1–10
MROP Activities Panel Total Possible Points	100

V. MROP Activities Funding and Further Processing

A. Each MROP activities application selected for funding by Headquarters shall:

1. Have funds reserved in an amount of at least 70 percent of the development cost limitation for the area and:

a. The reservation amount will be "trended" to preclude the need for amendment funds;

b. The trend will be calculated by multiplying the percent of development cost by 5.4 percent (1.054), rounded to the nearest $50;

2. Be assigned a development project number and entered into the appropriate HUD data systems; and

3. During and after fund reservation, development procedures shall be followed (24 CFR part 941 and Handbook 7417.1 REV–1) *except*:

a. MROP activities work may only be accomplished by:

(1) Sealed bid procurement method with award to the lowest responsible bidder; or

(2) Competitive proposal method as permitted for modernization projects under Notice PIH 93–50 (HA), whereby the PHA would execute a fixed price contract in which the contractor would be responsible for design of specific work items identified in the Request for Proposals, soliciting and contracting for construction work, contract administration and construction inspection; the contract could either provide for progress payments, as in the sealed bid method, or a lump sum payment after successful completion of all work;

b. CIAP modernization standards set forth in Handbook 7485.2 REV–1 must be used;

c. The PHA must incorporate its approved MROP activities application into a PHA Proposal (Form HUD–52483A);

d. The special MROP Annual Contributions Contract (Form HUD–53010–I), included in Notice PIH 89–41(HUD), must be used;

e. There will be no amendment funds to increase the original amount of the MROP activities fund reservation.

VI. Checklist of Application Submission Requirements

A. Application Checklist

PHAs may use the following application checklist, which enumerates the submission requirements of Section III of this NOFA.

1. Forms HUD–52822 and HUD–52825, CIAP Application and CIAP Budget;

2. Narrative statement addressing each of the eligibility criteria under Section I.D. of this NOFA, each of the restriction criteria under Section I.E. of this NOFA, and each of the Technical Review Factors under Section IV.E. of this NOFA;

3. Information/certification, as applicable, if the application involves demo/dispo or conversion of units;

4. HUD–52471, PHA Resolution in Support of Public Housing;

5. HUD–52472, Local Governing Body Resolution, if front-end funds are being requested by the PHA. [Note: If front-end funds are requested, the HUD 52471 must be appropriately modified.];

6. PHA statement identifying its funding preferences if more than one application is being submitted;

7. HUD–50070, PHA Certification for a Drug-Free Workplace;

8. HUD–50071, Certification for Contracts, Grants, Loans and Cooperative Agreements;

9. Form SF-LLL, Byrd Amendment Disclosure and Certification Regarding Lobbying, only if the applicant determines it is applicable;

10. Form HUD–2880, Disclosure of Government Assistance and Identity of Interested Parties.

B. Application Packets

Forms comprising the application package may be obtained from the HUD Field Office.

VII. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, S.W., Room 10276, Washington, D.C. 20410.

B. Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal government, or on the distribution of power and responsibilities between them and other levels of government. The NOFA will provide PHAs with funding for public housing development MROP activities.

C. Family Impact

The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that the provisions of this NOFA do not have the potential for significant impact on family formation, maintenance and general well-being within the meaning of the Order. To the extent that the funding provided through this NOFA results in additional or improved housing, the effects on the family will be beneficial.

D. Prohibition Against Lobbying Activities: The Byrd Amendment

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying.

Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. A certification is required, at the time the application for funds is made, that Federally appropriated funds are not being or have not been used in violation of section 319 and that *disclosure* will be made of payments for lobbying with other than Federally appropriated funds. Also, there is a standard disclosure form, SF-LLL, "Disclosure Form to Report Lobbying," which must be used to disclose lobbying with other than Federally appropriated funds.

E. Prohibition Against Lobbying of HUD Personnel

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

HUD's regulation implementing section 13 is codified at 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule. Appendix A of this rule contains examples of activities covered by this rule.

Any questions concerning the rule should be directed to the Office of Ethics, Room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington DC 20410. Telephone: (202) 708–3815 (voice/TDD). This is not a toll-free number. Forms necessary for compliance with the rule may be obtained from the local HUD office.

F Prohibition Against Advance Information on Funding Decisions

Section 103 of the HUD Reform Act proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance. HUD's regulation implementing section 103 is codified at 24 CFR part 4. That regulation applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted by 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters Counsel for the program to which the question pertains.

G. Accountability in the Provision of HUD Assistance

HUD's regulations at 24 CFR part 12 implement section 102 of the HUD Reform Act. Section 102 contains a number of provisions designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. The following requirements concerning documentation and public access disclosures are applicable to assistance awarded under this NOFA.

1. *Documentation and public access.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing

regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

2. *Disclosures.* HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

[FR Doc. 94–30569 Filed 12–12–94; 8:45 am]

BILLING CODE 4210–33–P

federal register

Tuesday
December 13, 1994

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 31, 37, 42, 52
Federal Acquisition Regulation; Implementation of Various Cost Principle Provisions; Proposed Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 31, 37, 42 and 52

[FAR Case 94–754]

RIN 9000–AG21

Federal Acquisition Regulation; Implementation of Various Cost Principle Provisions

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This proposed rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 to implement the requirements for unallowable costs and adds to the list of costs to be clarified in the cost principles. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before February 13, 1995 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405.

Please cite FAR case 94–754 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr Clarence Belton, Cost Principles Team Leader, at (703) 602–2357, in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAR case 94–754.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994 (the Act), Pub. L. 103–355, provides the authority to streamline the acquisition process and minimize burdensome requirements unique to the Federal Government. Major changes that can be expected in the acquisition process as a result of the Act's implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network.

This notice announces FAR revisions developed under FAR case 94–754, based on Section 2101 of the Act that (1) adds to the list of unallowable costs found at 10 U.S.C. 2324(e)(1), the costs of lobbying the legislative body of a political subdivision of a state; (2) adds to the list found at 10 U.S.C. 2324(f)(1) of costs to be clarified in the cost principles, the cost of "conventions"; and (3) expands the coverage to the Coast Guard and the National Aeronautics and Space Administration. Section 2151 amends 41 U.S.C. 256 to include all the provisions of 10 U.S.C. 2324, as amended by Section 2101. Therefore, the provisions are made generally applicable to all other executive agencies. The new FAR language, with only minor variations, was transferred from the current coverage in the Defense Federal Acquisition Regulations (DFARS).

The FAR Council is interested in an exchange of ideas and opinions with respect to the regulatory implementation of the Act. For that reason, the FAR Council is conducting a series of public meetings. However, the FAR Council has not scheduled a public meeting on this rule (FAR case 94–754) because of the clarity and non-controversial nature of the rule. If the public believes such a meeting is needed with respect to this rule, a letter requesting a public meeting and outlining the nature of the requested meeting shall be submitted to and received by the FAR Secretariat (see **ADDRESSES** caption, above) on or before January 12, 1995. The FAR Council will consider such requests in determining whether a public meeting on this rule should be scheduled.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small businesses are awarded through sealed bidding on a firm fixed price basis. The cost principles apply only to contracts which are not firm fixed price. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 94–754), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 31, 37, 42, and 52

Government procurement.

Dated: December 6, 1994.

Capt. Barry L. Cohen, SC, USN,

Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, it is proposed that 48 CFR Parts 31, 37, 42, and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 31, 37, 42, 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 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205–1 [Amended]

2. Section 31.205–1(f)(3) is amended by adding "conventions," after "meetings,".

3. Section 31.205–6 is amended in paragraph (g)(2) by adding a sentence at the end of the introductory text and adding paragraph (g)(3) to read as follows:

31.205–6 Compensation for personal services.

* * * * *

(g) * * *

(2) * * * In addition, paragraph (g)(3), of this subsection, applies if the severance cost is for foreign nationals employed outside the United States.

* * * * *

(3) Notwithstanding the reference to geographical area in 31.205–6(b)(1), under 10 U.S.C. 2324(e)(1)(M) and 41 U.S.C. 256(e)(1)(M), the costs of severance payments to foreign nationals employed under a service contract or subcontract performed outside the United States are unallowable to the extent that such payments exceed amounts typically paid to employees providing similar services in the same industry in the United States. Further, under 10 U.S.C. 2324(e)(1)(N) and 41 U.S.C. 256(e)(1)(N), all such costs of severance payments which are otherwise allowable are unallowable if the termination of employment of the foreign national is the result of the

closing of, or the curtailment of activities at, a United States facility in that country at the request of the government of that country; this does not apply if the closing of a facility or curtailment of activities is made pursuant to a status-of-forces or other country-to-country agreement entered into with the government of that country before November 29, 1989. 10 U.S.C. 2324(e)(3) and 41 U.S.C. 256(e)(2) permit the head of the agency, or designee, to waive these cost allowability limitations under certain circumstances (see 37.113 and the clause at 52.237–XXX).

* * * * *

31.205–22 [Amended]

4. Section 31.205–22 is amended in paragraphs (a) (3) and (4) by revising the phrase "Federal or state" to read "Federal, state, or local" each time it appears.

31.205–43 [Amended]

5. Section 31.205–43 is amended in the introductory text of paragraphs (c) and (c)(3)(ii) by inserting "convention" after "meeting" and in paragraph (c)(1) by inserting "conventions" after "meetings".

6. Section 31.603(b) is revised to read as follows:

31.603 Requirements.

* * * * *

(b) Agencies are not expected to place additional restrictions on individual items of cost. However, under 10 U.S.C. 2324(e) and 41 U.S.C. 256(e), the following costs are unallowable—

(1) Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).

(2) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State.

(3) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

(4) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, state, local, or foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or specific written instructions from the contracting officer authorizing in advance such payments in accordance with applicable regulations in the FAR or an executive agency supplement to the FAR.

(5) Costs of any membership in any social, dining, or country club or organization.

(6) Costs of alcoholic beverages.

(7) Contributions or donations, regardless of the recipient.

(8) Costs of advertising designed to promote the contractor or its products.

(9) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.

(10) Costs for travel by commercial aircraft which exceed the amount of the standard commercial fare.

(11) Costs incurred in making any payment (commonly known as a "golden parachute payment") which is—

(i) In an amount in excess of the normal severance pay paid by the contractor to an employee upon termination of employment; and

(ii) Is paid to the employee contingent upon, and following, a change in management control over, or ownership of, the contractor or a substantial portion of the contractor's assets.

(12) Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship.

(13) Cost of severance pay paid by the contractor to foreign nationals employed by the contractor under a service contract performed outside the United States, to the extent that the amount of the severance pay paid in any case exceeds the amount paid in the industry involved under the customary or prevailing practice for firms in that industry providing similar services in the United States, as determined by regulations in the FAR or in an executive agency supplement to the FAR.

(14) Costs of severance pay paid by the contractor to a foreign national employed by the contractor under a service contract performed in a foreign country if the termination of the employment of the foreign national is the result of the closing of, or curtailment of activities at a United States facility in that country at the request of the government of that country.

(15) Costs incurred by a contractor in connection with any criminal, civil, or administrative proceedings commenced by the United States or a State, to the extent provided in 10 U.S.C. 2324(k) or 41 U.S.C. 256(k).

7. Section 31.703(b) is revised to read as follows:

31.703 Requirements.

* * * * *

(b) Agencies are not expected to place additional restrictions on individual items of cost. However, under 10 U.S.C. 2324(e) and 41 U.S.C. 256(e), the costs cited in 31.603(b) are unallowable.

PART 37—SERVICE CONTRACTING

8. Section 37.113 and subsections 37.133–1 and 37.113–2 are added to read as follows:

37.113 Severance payments to foreign nationals.

37.113–1 Waiver of cost allowability limitations.

(a) The head of any agency, or designee, may waive the 31.205–6(g)(3) cost allowability limitations on severance payments to foreign nationals for contracts that—

(1) Provide significant support services for (i) members of the armed forces stationed or deployed outside the United States, or (ii) employees of an executive agency posted outside the United States; and

(2) Will be performed in whole or in part outside the United States.

(b) Waivers can be granted only before contract award.

(c) Waivers cannot be granted for—

(1) Military banking contracts, which are covered by 10 U.S.C. 2324(e)(2); or

(2) Severance payments made by a contractor to a foreign national employed by the contractor under a DoD service contract in the Republic of the Philippines, if the discontinuation of the foreign national is the result of the termination of basing rights of the United States military in the Republic of the Philippines (section 1351(b) of Public Law 102–484).

37.113–2 Contract clauses.

(a) Use the clause at 52.237–XXX, Restriction on Severance Payments to Foreign Nationals, in all solicitations that meet the criteria in 37.113–1(a), except for those excluded by 37.113–1(c).

(b) When the head of an agency, or designee, has granted a waiver pursuant to 37.113–1, use the clause at 52.237–YYY, Waiver of Limitation on Severance Payments to Foreign Nationals.

PART 42—CONTRACT ADMINISTRATION

9. Section 42.703(c)(2) is revised to read as follows:

42.703 Policy.

* * * * *

(c) * * *

(2) Pursuant to 10 U.S.C. 2324(a) and 41 U.S.C. 256(a), use established final indirect cost rates in negotiating the final price of fixed-price incentive and fixed-price redeterminable contracts and in other situations requiring that indirect costs be settled before contract prices are established.

10. Section 42.705–1 is amended by revising paragraph (b)(4) and adding (b)(5)(v) to read as follows:

42.705–1 Contracting officer determination procedure.

* * * * *

(b) * * *

(4) The Government negotiating team shall develop a negotiation position. Pursuant to 10 U.S.C. 2324(f) and 41 U.S.C. 256(f), the contracting officer shall—

(i) Not resolve any questioned costs until obtaining—

(A) Adequate documentation on the costs; and

(B) The contract auditor's opinion on the allowability of the costs.

(ii) Whenever possible, invite the contract auditor to serve as an advisor at any negotiation or meeting with the contractor on the determination of the contractor's final indirect cost rates.

(5) * * *

(v) Notify the contractor of the individual costs which were considered unallowable and the respective amounts of the disallowance.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

11. Section 52.237 is amended by adding 52.237–XXX and 52.237–YYY to read as follows:

* * * * *

52.237–XXX Restriction on Severance Payments to Foreign Nationals.

As prescribed in 37.113–2(a), use the following clause:

Restriction on Severance Payments to Foreign Nationals (XXX 1994)

(a) The FAR at 31.205–6(g)(3) limits the cost allowability of severance payments to foreign nationals employed under a service contract or subcontract performed outside the United States unless the head of the agency, or designee, grants a waiver pursuant to FAR 37.113–1 before contract award.

(b) In making the determination concerning the granting of a waiver, the head of the agency, or designee, will determine that—

(1) The application of the severance pay limitations to the contract would adversely affect the continuation of a program, project, or activity that provides significant support services for (i) members of the armed forces stationed or deployed outside the United States, or (ii) employees of an executive agency posted outside the United States;

(2) The contractor has taken (or has established plans to take) appropriate actions within its control to minimize the amount and number of incidents of the payment of severance pay to employees under the contract who are foreign nationals; and

(3) The payment of severance pay is necessary in order to comply with a law that is generally applicable to a significant number of businesses in the country in which the foreign national receiving the payment performed services under the contract or is necessary to comply with a collective bargaining agreement.

(End of clause)

52.237–YYY Waiver of Limitation on Severance Payments to Foreign Nationals.

As prescribed in 37.113–2(b), use the following clause;

Waiver of Limitation on Severance Payments to Foreign Nationals (XXX 1994)

(a) Pursuant to 10 U.S.C. 2324(e)(3)(A) or 41 U.S.C. 256(e)(2)(A), as applicable, the cost allowability limitations in FAR 31.205–6(g)(3) are waived.

(b) This clause may be incorporated into subcontracts issued under this contract, if approved by the Contracting Officer.

(End of clause)

[FR Doc. 94–30524 Filed 12–12–94; 8:45 am]

BILLING CODE 6820–34–M

Federal Register

Tuesday
December 13, 1994

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121 and 135
Air Carrier and Commercial Operator Training Programs; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. 27993; Notice No. 94–35]

RIN: 2120–AC79

Air Carrier and Commercial Operator Training Programs

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The FAA proposes to revise the training and qualification requirements for certain air carriers and commercial operators by: (1) Requiring certain certificate holders operating under part 135, and permitting certain others, to comply with part 121 training, checking, and qualification requirements, and (2) mandating Crew Resource Management (CRM) training requirements for part 121 and certain part 135 operators. The FAA has proposed these rules in order to make some part 135 training requirements as comprehensive as part 121 requirements and to incorporate recent knowledge about human performance factors. The proposed rule would also allow certain part 135 certificate holders to take advantage of sophisticated aircraft simulator training technologies presently available to part 121 certificate holders. By increasing the training and qualification requirements for certain operators, the proposed rule is expected to reduce the risk of accidents and incidents. By mandating CRM training for certificate holders required to comply with part 121 training requirements, the proposed rule is expected to reduce the number of accidents and incidents that could be attributed to a lack of crew communication and coordination.

DATES: Comments must be received on or before March 14, 1995.

ADDRESSES: Send or deliver comments on this notice in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Room 915G, Docket No. 27993, 800 Independence Avenue, SW, Washington, DC 20591. Comments must be marked Docket No. 27993. Comments may be examined in the Rules Docket between 8:30 a.m. and 5 p.m. on weekdays, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Youngblut, Project Development Branch (AFS–240), Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267–8096.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of this proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking further rulemaking action. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27993." The postcard will be dated and time stamped and returned to the commenter. 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 substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center (APA–230), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Requests must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

Federal Aviation Regulations in parts 121 and 135 of Title 14 of the Code of Federal Regulations contain rules which specify training program requirements for air carriers and certain commercial operators. Those rules specify the qualification requirements of crewmembers, flight and simulator instructors, check airmen, aircraft dispatchers, and other operations personnel. The most detailed and rigorous training and qualification requirements are those contained in subparts N and O of part 121. Although subparts N and O have been amended a number of times in recent years, most of the amendments concern the use of simulators, training devices, or specific training requirements such as security and the transportation of hazardous materials. No comprehensive changes have been made to these subparts since December 1969.

The FAA's most immediate concerns regarding the training and qualification regulations in part 121 and part 135 are twofold. First, compared to part 121 training regulations, part 135 training regulations do not provide a balanced mix of training and checking. Second, current parts 121 and 135 training regulations do not incorporate recent knowledge about the significance of human performance factors (e.g., communication, decision-making, leadership, management) in safe flight operations.

In December, 1986, in response to a Safety Recommendation from the National Transportation Safety Board (NTSB), the FAA specifically addressed the human factors training issue by initiating an aviation behavioral technology program. This ongoing program consists of projects that, among other things, increase the use of line operational simulations (LOS) to improve cockpit/cabin communication and coordination skills, and pilot decision-making skills.

In June 1988, the NTSB issued Safety Recommendation A–88–71 concerning CRM training. The NTSB issued the recommendation as a result of a Northwest Airlines crash on August 16, 1987, in which 148 passengers, 6 crewmembers, and 2 people on the ground were killed. The NTSB noted that both pilots had received single-crewmember training during their last simulator training and proficiency checks and the last CRM training they had both received was 3.5 hours of ground school (general) CRM training in 1983. The NTSB implied that the accident might have been prevented had the flight crew received adequate CRM training.

After soliciting ideas from other government agencies and from the aviation community, the FAA published a proposed Special Federal Aviation Regulation (SFAR) and accompanying draft advisory circular (AC) in the **Federal Register** (54 FR 7670, February 22, 1989). These documents proposed a voluntary, alternative method of complying with the training requirements in current regulations. The voluntary alternative training is called an "advanced qualification program" (AQP). After considering comments received, the FAA issued a final SFAR

58, Advanced Qualification Program, and an accompanying advisory circular (55 FR 40262, October 2, 1990). This voluntary program applies to certificate holders operating under part 121 or part 135 who elect the alternative requirements of AQP which includes CRM training and evaluation, increased use of LOS, use of training centers, and the evaluation of flight training devices and flight simulators.

To date, the larger and more sophisticated air carriers have taken advantage of the voluntary program. The FAA expects this to be the case for the foreseeable future. The FAA recognizes that many operators, particularly smaller operators, may be unable to take advantage of the voluntary program. Since these operators will elect not to participate in the voluntary AQP program and will instead comply with current training requirements in parts 121 and 135, the FAA proposes to amend the current training requirements of parts 121 and 135 to address the most immediate concerns regarding improved aircrew training and qualification standards. In particular, all certificate holders operating under part 121, and those certificate holders operating under part 135 who are authorized or required to follow part 121 training and qualification requirements, would be required to include CRM in their training programs.

Another recommendation from other government agencies and the aviation community was that commuter air carriers conducting operations under part 135 with airplanes that require two pilot crewmembers should also be required to comply with the training, checking, and qualification requirements of part 121. Many regional air carriers operate under both parts 121 and 135. The Regional Airline Association, on December 10, 1991, petitioned the FAA for an exemption to allow its members to train, check, and qualify their pilots under part 121 rather than under part 135. The FAA granted exemption No. 5450 on May 8, 1992, and now over 60% of those certificate holders that operate under both parts 121 and 135 have obtained approval to train, check, and qualify their pilots pursuant to part 121.

The FAA has issued two NPRM's that are relevant to this rulemaking. Notice No. 92–10 (57 FR 35888, August 11, 1992) relates to the use of training centers by certificate holders who do not elect to come under an AQP. The second NPRM, Notice No. 93–1 (58 FR 15730, March 23, 1993), is of particular importance to those certificate holders who operate under part 135 that would be affected by the mandatory requirements of this proposal. If the pilot operating and experience requirements proposed in Notice No. 93–1 are adopted, the new crew pairing and consolidation of knowledge and skills requirements would apply to those part 135 operators who are required or who elect to comply with the requirements of subparts N and O of part 121. Therefore, affected part 135 certificate holders are invited to consider the applicability of Notice No. 92–10 and Notice No. 93–1 to their operations when commenting on this notice. By this notice, the FAA is not reopening the comment period for those NPRM's. The FAA could adopt the proposals in those NPRM's and still consider whether to apply those provisions to part 135 certificate holders in this proposed rulemaking.

The Proposed Rule

General Applicability

The proposed amendments to part 121 would apply to all certificate holders operating under part 121 and to certain certificate holders operating under part 135 who would be required to comply with the part 121 training qualification requirements. The proposed requirements would also apply to certain part 135 certificate holders if they apply for and receive FAA authorization to comply with the part 121 training and qualification requirements.

Commuter Operations Conducted Under Part 135

Part 135 commuter operations serving small and medium sized communities carry millions of passengers every year. The Regional Airline Association (RAA), whose membership consists primarily of commuter air carriers, estimates that more than 61 million passengers will be carried by RAA member airlines in 1997. Comprehensive training requirements, including CRM training, are important to the safety of these operations. Part 121 training would benefit these operations because it provides more emphasis on training, whereas current part 135 rules rely more heavily on the testing and checking requirements set forth in subparts G and H of part 135. Part 121 also allows greater use of simulators resulting in two benefits:

(1) Under § 121.407(c), simulator training can be substituted for repetitive proficiency checks (§ 121.441) and certain recency requirements (§ 121.439). This allows for greater flexibility and a more effective mix of training and checking activities.

(2) Simulator training may include hazardous scenarios that would be imprudent to be included in inflight training. This also increases pilot proficiency.

The proposed amendments to §§ 121.431, 135.3, 135.241, 135.291, and 135.321(a) require the following certificate holders conducting commuter operations under part 135 to comply with the training, checking, and qualification requirements of part 121 subparts N and O, in place of the requirements of subparts E, G, and H of part 135: (1) Those that conduct commuter operations with airplanes for which two pilots are required by aircraft type certification rules, and (2) those that conduct commuter operations with airplanes having a passenger seating configuration, excluding any pilot seat, of 10 seats or more.

The term "commuter operations" will apply to both intrastate and interstate operations with the frequency of operations set forth in the definition of "Commuter Air Carrier" in SFAR 38–2. Thus, intrastate operations as described above with a frequency of operations described in SFAR 38–2's definition of "commuter air carrier" would also be subject to the proposals in this NPRM.

The proposed rule also allows the Administrator to authorize any other certificate holders that conduct operations under part 135 to comply with the training, checking, and qualification requirements of subparts N and O of part 121. These operations would include commuter operations using aircraft that do not meet the criteria outlined above and all unscheduled operations conducted under part 135. However, because of the size and scope of these operations, the FAA proposes to permit these certificate holders to comply with the operating experience requirements in § 135.244 instead of those in § 121.434.

Each certificate holder operating under part 135 that would be required under proposed § 135.321(b) to comply with the training and qualification requirements of part 121, subparts N and O, would also be required to submit and obtain FAA approval of a transition plan converting from part 135 to the part 121 training and checking requirements. In the proposed plan the certificate holder should address issues such as: (1) whether currently employed crewmembers need additional training to meet minimum part 121 training and qualification requirements; and (2) whether and how the certificate holder's training curriculum will be modified to meet part 121 requirements.

Although not part of the transaction plan, the proposed change to § 121 405

would also require certain part 135 certificate holders to modify their training program manual contents. Under proposed § 121.405(g) a certificate holder may request a reduction in the programmed hours of ground training from the minimum hours required under present § 121.419. A reduction may be warranted in cases where a certificate holder shows that the airplanes it operates under part 135 are less complex than those generally operated under part 121.

Crew Resource Management (CRM) Training

A major objective of this proposed rule is to require all certificate holders operating under part 121 and certain certificate holders operating certain airplanes under part 135 to provide CRM training. Over the last decade, a number of air carrier incidents and accidents have been attributed, in part, to the lack of CRM skills (e.g., communication, decision-making, leadership, management). Over the last decade 24 part 121 accidents were reported by the NTSB as having resulted, in part, from CRM-related causes. National Aeronautics and Space Administration (NASA) studies over the last ten years indicate more than 60% of fatal air carrier accidents were not directly linked to mechanical failure or lack of pilot skills, but rather to human error. These NASA studies emphasize a training deficiency in areas related to human performance factors, such as poor group decisionmaking, ineffective communication, inadequate leadership, and poor task and resource management. The NTSB's study, "A Review of Flightcrew-involved Major Accidents of U.S. Air Carriers 1978 through 1990," states "a comprehensive CRM program is one tool an air carrier can use to improve both decisionmaking and monitoring/challenging by crewmembers." Since 1990 the NTSB has issued two safety recommendations (A–89–124 and A–93–37) that recommend that CRM training be added to crewmember training programs. For a list of FAA and NASA publications and reports and related research findings and publications, see AC 120–51A, as amended, "Crew Resource Management Training."

In addition, certain events may occur during flight where the activities of flight crewmembers and flight attendants must be coordinated. One of the prerequisites for crew coordination is effective communication between all crewmembers. In a 1986 survey of safety representatives and flight attendants, only 37% of the flight attendants and 60% of the pilots said that they thought communication between the flight crew and cabin crew was adequate.

Similarly, clear communication between aircraft dispatchers and flight crewmembers is essential to flight safety. Poor communication between dispatchers and the flight crew may jeopardize flight safety.

CRM training teaches crewmembers and aircraft dispatchers to use effectively all resources available to the crew (e.g. hardware, software, and all persons involved in aircraft operation) to achieve safe and efficient flight operations. Proposed amendments to §§ 121.404, 121.419(a)(1), 121.421(a)(1), 121.422(a)(1), and 121.427(b)(4) require that each ground training portion of an approved training program provide approved CRM training to flight crewmembers, flight attendants, and aircraft dispatchers. If this NPRM becomes a final rule, part 135 certificate holders who would be required or who successfully obtain FAA authorization to conduct training under part 121 would also be required to provide CRM training as part of their approved training programs.

The FAA anticipates that for a CRM training program to be approved it would include three distinct components: (1) An indoctrination/awareness component during which CRM issues are defined and discussed; (2) a recurrent practice and feedback component during which trainees gain experience with CRM techniques; and (3) a continuing reinforcement component which ensures that CRM principles are addressed throughout the trainee's employment with the certificate holder. Advisory Circular (AC) 120–51, as amended, "Crew Resource Management Training," and AC 121–XX, "Dispatcher Resource Management Training" provide basic guidance in establishing approved CRM training. (In this notice, the term "CRM" includes both crew resource management and dispatcher resource management.) DOT/FAA/RD–92–26, "Crew Resource Management: An Introductory Handbook," goes into further detail.

Proposed § 121.404 includes initial CRM training for persons already employed by the certificate holder, and for new employees of the certificate holder, unless a new employee has completed the applicable initial CRM training from another certificate holder. The FAA anticipates that this component will be very similar for all certificate holders.

CRM initial indoctrination/awareness training is a curriculum segment with a variety of instructional methods, which can include lectures, discussions, films, practice in an operational setting or a LOS session, and feedback with a facilitator. CRM initial indoctrination/awareness training must be provided to all crewmembers, including flight attendants, and to aircraft dispatchers; this training is in addition to existing training. Under proposed § 121.406, the FAA may credit some CRM/DRM training received before the compliance date in the proposed rule. Some operators have been providing CRM/DRM training under AQP or under voluntary programs. In appropriate circumstances, the FAA may credit part or all of such training toward the initial ground CRM/DRM training which would be required by proposed sections 121.419, 121.421, and 121.422.

The recurrent practice and feedback component of CRM training is best accomplished through the use of simulators and video equipment. However, if the use of simulators is not practical, CRM scenarios can be created without simulators and practice can be tape recorded to provide feedback. Feedback should be directed by a facilitator who has had appropriate CRM training. Practice and feedback provide participants with self and peer critiques to improve communication, decision-making, and leadership skills.

The FAA would approve a recurrent training program under proposed § 121.427 that included CRM recurrent practice and feedback and continuing reinforcement training components, and a refresher curriculum segment in the principles of CRM. Ideally, for flight crewmembers continuing reinforcement may be accomplished, as authorized in proposed § 121.427(b)(4), during an approved simulator line operational flight training (LOFT) session. This could include use of special purpose operational training (SPOT) which is a type of line operational simulation (LOS) that may be used to train coordinated crew performance in specific subjects such as windshear training, use of special navigation equipment, etc. CRM reinforcement may be incorporated into existing SPOT scenarios. It may also be incorporated into LOS-like scenarios that do not use simulators. Advisory Circular (AC) 120–35B, Line Operational Simulators: Line Oriented Flight Training, Special Purpose Operational Training, Line Operational Evaluation, provides suggested guidelines for the design and implementation of LOS. Recurrent CRM training will be provided to all crewmembers and aircraft dispatchers.

The FAA estimates that the proposed CRM training requirement will increase the present minimum programmed hours of instruction for initial and

recurrent training. For initial training for pilots and flight engineers, the FAA estimates that CRM training will add 12 hours to present requirements. For initial training for flight attendants and aircraft dispatchers, the increase is estimated to be 8 hours. For recurrent training, the estimated increase is 4 hours for pilots and flight engineers and 2 hours for flight attendants and aircraft dispatchers. To reflect these estimated increases in programmed hours of training, changes are proposed to §§ 121.419(b) (1) and (2), 121.421(c) (1) and (2), 1212.422(c) (1) and (2) and 121.427(c). The FAA invites comments on these estimates and, if adequate justification is received, will consider reducing the increases in minimum required hours in the final rule. In this regard, the FAA points out that under existing regulations (i.e., § 121.405(d)) individual certificate holders may be granted reductions in programmed hours when justified under that paragraph. When the Administrator approves a request to reduce programmed hours of training, a copy of the Administrator's statement is included in the training program curriculum pursuant to § 121.403(b)(6).

Editorial Change

A proposed change to § 121.135(b)(15) would make it clear that the certificate holder's manual must include the entire training program curriculum required under § 121.403, not just the program affecting airmen.

Effective Date and Compliance Dates

The FAA is proposing an effective date of 90 days after these proposals are published as a final rule. By that date certificate holders operating under part 135 who are required to comply with applicable part 121 training and qualification requirements, would have to submit the transition plan required under proposed § 135.321(b). The proposed compliance date in § 135.10 for training and qualifying under part 121 rules is 1 year after the effective date of the final rule.

For initial CRM training, the FAA proposes a compliance date 2 years after the effective date of the final rule for flight crewmembers, and 3 years after the effective date of the final rule for flight attendants and aircraft dispatchers. After the applicable date, a certificate holder would be prohibited from using a crewmember or dispatcher unless that person has completed approved crew or dispatcher resource management initial training. Since a large number of certificate holder employees are required to have this training, the delayed compliance date will allow sufficient time to train instructors conducting CRM training, and then, in turn, provide this training to all crewmembers and dispatchers.

The FAA requests comments on the appropriateness of the proposed effective and compliance dates.

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this proposed rule would generate benefits that justify its costs and does not meet the criteria of "a significant regulatory action" as defined in the Executive Order but is significant under the Department of Transportation Regulatory Policies and Procedures. The proposal would not have a significant impact on a substantial number of small entities. And, the proposal would not constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

Costs

This section discusses costs of the new requirements that this NPRM would impose on parts 121 and 135 operators. The regulatory evaluation assumes a 7 percent discount rate as mandated by the Office of Management and Budget (OMB). The analysis also uses a 6 percent growth rate for commuters and a 4 percent growth rate for air carriers for the next decade.

The new hire rate affects the amount of initial training required. This rate varies widely within the industry depending on economic cycles, birth and death of airline companies, and long-term industry growth. The FAA has developed two cost estimates. The first uses a 10 percent and the second a 20 percent new hire rate. Costs for a single year refer to those using a 20 percent new hire rate (the higher of the two costs), while for the total 10 year costs the analysis shows a range representing the difference between the 10 percent and 20 percent new hire rates.

Each operator will incur a small administrative effort related to establishing these new requirements within its existing training program. The FAA estimates that operators on average will incur a one time burden of about 8 hours of administrative time. This relatively small burden is subsumed in the non-wage training costs.

Part 121 Training for Part 135 Crews

The proposed rule would require part 121 training standards for part 135 crewmembers of airplanes either certificated for two pilots or having 10 or more passenger seats. The amendment exempts currently employed part 135 pilots and flight attendants from initial and transitional part 121 training. However, it imposes a recurrent training requirement on currently employed crewmembers to meet part 121 qualifying standards during their first recurrent training. New crewmembers under part 135 would receive initial part 121 training.

Many commuter airlines already train their cockpit crew at a level comparable to part 121 operators. Primarily, this group consists of those airlines where the carrier operates aircraft under both parts 121 and 135. The FAA estimates that the proposed rule would affect 3,400 employees: 1,100 pilots-in-command (PICs), 1,400 second-in-command officers (SICs), and 900 flight attendants who work for strictly part 135 operators. The hourly wage rate (including benefits) equals $43 for PICs, $28 for SICs, and $23 for flight attendants who work for the regional airlines. Travel and per diem expenses equal $250 per round trip and training expense totals $90 a day.

For 1995, initial and transitional training costs for part 135 crewmembers would increase by about $1.9 million; first year recurrent cost of training (expected to be more extensive than later recurrent training) would increase by $3.0 million. Recurrent training cost after the first year would increase by $2.1 million. For the period 1994 through 2003, the discounted incremental cost to part 135 operators ranges from $27.1 (10 percent new-hire rate) to $35.7 million (20 percent new-hire rate).

CRM Training

The NPRM would require parts 121 and 135 operators affected by the proposal to train all crewmembers in cockpit resource management (CRM). Although the proposed rule would provide some flexibility in curricula design, an FAA-approved CRM training program would include: (1) Awareness of CRM issues where aspects of the problem are discussed; (2) practice and feedback where crewmembers learn

CRM techniques; and (3) reinforcement where CRM principles are strengthened.

Part 121 CRM Training Costs

The FAA estimates that part 121 personnel requiring CRM equals about 32,600 pilots-in-command; 33,900 copilots, 10,000 flight engineers, 84,000 flight attendants; and 1,100 dispatchers. Under the proposed rule, the FAA projects that PICs, SICs, and flight engineers would receive 12 hours of CRM awareness training and 4 hours annually of CRM refresher training. Flight attendants and dispatchers would receive 8 hours initial and 2 hours of recurrent training.

For PICs, SICs, and flight engineers, the proposal would require CRM awareness training within two years of the effective date of the proposed rule; for flight attendants and dispatchers, it would require completion within three years. All crewmembers would receive recurrent CRM training annually.

The number of pilots undergoing initial training in the two-year phase-in equals the total number of pilots plus new hires. The hourly wage rate (including benefits) used in this analysis equals $55 for PICs, $38 for SICs, $38 for flight engineers, $27 for flight attendants, and $18 for dispatchers. The initial training during the first two years would cost approximately $55 million each year. Initial training would amount to about $10 million annually after the two-year phase-in period. Recurrent training would total about $32 million annually.

Initial training for flight attendants and dispatchers over the three-year phase-in period would total $17 million. Initial and recurrent training for flight attendants and dispatchers after the third year would be $4 million and $17 million, respectively

Over the period 1995 through 2004, the discounted cost for part 121 CRM training ranges from $473 (10 percent new hire rate) to $569 million (20 percent new hire rate).

Part 135 CRM Training

The FAA estimates that the NPRM would require CRM for 3,360 commuter airline flight crewmembers. CRM awareness training would cost $300 for 12 hours of PIC and SIC training and $200 for 8 hours of flight attendant training.

As in the case of the part 121 CRM training, the proposed rule would require CRM awareness flight crew training within two years of the effective date of the rule; for flight attendants, the proposed rule would require completion within three years. All crewmembers would receive annual recurrent CRM training. The hourly wage rate (including benefits) used in this analysis equals $43 for PICs, $28 for SICs, and $14 for flight attendants.

Part 135 CRM awareness training for the two-year phase-in period under the NPRM would cost $1.6 million, and after the second year the training would cost $0.5 million annually. Recurrent CRM commuter pilot instruction would cost $0.7 million annually.

CRM awareness training for part 135 flight attendants would cost $0.4 million annually for the three-year phase-in period. The cost would total $64,000 per year, thereafter. Recurrent training would cost approximately $137,000 annually. Over the decade, CRM training would the industry cost would range from $9.5 (10 percent new hire rate) to $11.8 million (20 percent new hire rate).

Total Costs

The total discounted cost of the proposed rule would range from $510 to $616 million over the next 10 years. The cost of CRM for part 121 personnel makes up the largest portion of the cost estimate ranges from $473 to $569 million. The discounted 10-year cost for commuter personnel CRM would vary from $9 to $12 million. The training upgrade for large commuter aircraft would range from $27 to $36 million.

Benefits

The proposed rule would improve aviation safety by upgrading training standards for pilots flying part 135 aircraft either certified for two pilots or having 10 or more passenger seats. Also, the NPRM would instruct air carrier (part 121) and commuter (part 135) crews in CRM techniques. This summarizes the analysis of benefits from this training.

Part 135 Pilot Training Upgrade

During 1982 through 1992, pilot error was a probable cause in 39 accidents involving part 135 aircraft of the type affected by this proposal. These accidents caused 93 fatalities and 55 serious injuries. During this same period, commuter operators flew 41.15 million flights resulting in a commuter accident rate due to pilot error of .9478 accidents per million commuter flights.

Projected benefits equal the product of the accident rate times projected flights times the average cost of pilot-error accidents. For instance, in 1994 the estimated value of benefits equals:

[.9478 ACCIDENTS/MILLION FLIGHTS]×[5.0 MILLION FLIGHTS]×[$7.838 MILLION]=$37.144 MILLION

If the proposed rule could reduce the pilot-error accident rate to zero, the total value over the period 1995 through 2004 would total $418 million. The discounted value of these benefits equals $289 million. However, at most the rule would reduce the part 135 pilot-error accident rate down to the rate sustained by part 121 operators.

The FAA estimates the pilot-error accident rate for part 121 pilots to equal 0.7 accidents per million flights. Since the pilot-error accident rate for part 135 operators equals 0.9478 accidents per million, the proportion of available benefits for part 135 flights equal just over one-fourth accident per million flights [((0.9478 − 0.7)/0.9478))=0.26]. Also reducing the available benefits, the commuter operators would not complete training for two years. Hence, the estimated value of the benefits of this proposed rule totals $62 million.

Part 135 Crew Resource Management Training

During the period 1982 through 1992, 13 part 135 accidents resulted from crew coordination problems, resulting in an accident rate of 0.158 per million flights. These accidents resulted in 85 fatalities, 35 serious injuries, and 43 minor injuries. The average benefit value of avoiding an accident including fatalities, injuries, value of aircraft, and accident investigation costs equals $19.545 million.

The FAA estimated the value of potential benefits by multiplying the average value of a part 135 CRM-related accident ($19.545 million) by the number of potential accidents (accident rate times projected flights). For 1995, the estimate equals:

[.158 ACCIDENTS/MILLION FLIGHTS] × [5.0 MILLION FLIGHTS] × [$19.545 MILLION] = $15.411 MILLION

The discounted benefits over the next decade equal $98 million.

Part 121 Crew Resource Management Training

Between 1982 and 1992, there were 23 part 121 air carrier accidents reported by NTSB that resulted, in part, from CRM-related causes. These accidents caused 324 fatalities and 91 serious injuries. The part 121 CRM accident rate equals 0.3938 accidents per million flights.

The FAA estimated the value of potential benefits by multiplying the part 121 CRM accident rate by the number of flights times the average value per accident. The CRM benefits for 1995, for instance, equal:

[.3938 ACCIDENTS/MILLION FLIGHTS] × [6.6 MILLION FLIGHTS] × [$35.527 MILLION] = $87.139 MILLION

Over the next 10 years, the FAA projects the discounted value of benefits is $619 million. However, about one-third of part 121 pilots (those not in AQP) will begin training in 1995 and airlines would finish training in late 1996. The estimated potential benefits for part 121 CRM training equals $581 million.

Benefit-Cost Comparison

Part 135 Training Upgrade

Benefits from upgrading part 135 flight crew training to the part 121 level would result in a reduction in pilot-error commuter accidents. The FAA estimates that the expected benefits of this provision would total $62 million over the next decade. This evaluation estimates that the discounted training costs for large part 135 operators would increase anywhere from $27 to $36 million. Hence, the FAA concludes that the benefits of this provision exceed its costs.

CRM Training for Part 121 Operators

The FAA calculates the discounted benefits from requiring CRM training for part 121 personnel to equal $581 million. The estimated additional cost to airlines would range from $473 to $569 million over the decade. Hence, the FAA determines that this proposed provision is cost beneficial.

CRM Training for Part 135 Operators

The FAA estimates the benefits from requiring CRM training for part 135 personnel to equal $98 million over the next decade. The cost of training would range from an additional $9 to $12 million for part 135 operators. Hence, the FAA determines that this requirement is cost beneficial.

Each provision of this proposal has potential benefits in excess of expected costs. Hence, the FAA concludes that the proposal is cost beneficial.

International Trade Impact

The NPRM would have small impact on U.S. air carriers that foreign air carriers would not have to bear. The FAA estimates a total of 6.2 billion total enplanements with a total of CRM training over the next 10 years of about $581 million. Hence, the per emplanement cost over the next 10 years for part 121 carriers increases by about $0.09 per enplanement.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress 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 proposed rule would affect those small entities regulated by parts 121 and 135. The FAA's criteria for "a substantial number" are a number that is not less than 11 and which is more than one-third of the small entities subject to the proposed rule. For air carriers, a small entity has been defined as one who owns, but does not necessarily operate, 9 aircraft or less. The relevant FAA criteria for "a significant impact" is an incremental cost of $61,000 per year for a scheduled air carrier with a fleet size of 60 seats or fewer, and $110,100 for a scheduled air carrier with aircraft fleet size of more than 60 seats.

The FAA has identified 35 part 121 operators who operate 9 or fewer aircraft. The FAA assumes that an average crew size consists of one pilot-in-command, one second-in-command, and three flight attendants. The FAA also assumes that operators employ two crews per plane.

The FAA estimates that annualized CRM training for each aircraft would amount to $6,120 annually. This estimate includes initial training and recurrent training averaged over the decade for a crew of two pilots (PIC and SIC) and four flight attendants. The analysis assumes three crews per aircraft and a 20 percent turnover. Hence, the expected CRM training cost will not exceed $55,080 (9 times $6,120). This cost falls below the "significant impact" threshold cost of $110,100. Hence, CRM training costs would not impose a significant burden on a substantial number of small part 121 operators.

Seventy-three part 135 scheduled operators affected operate 9 or fewer aircraft. The FAA estimates an annualized cost of $13,180 for part 135 training upgrade for crewmembers for one aircraft; CRM would carry an annualized cost of $4,000. The total training costs equal $17,180 ($13,180 + $4,000). This estimate assumes three crews per aircraft with each crew consisting of a PIC, a SIC, and two flight attendants. This estimate includes initial training and recurrent training averaged over the decade and a 20 percent markup for turnover. Training costs for small entities with 4 to 9 aircraft would exceed the threshold (4 × $17,180 = 68,720). However, FAA data shows 16 scheduled part 135 operators of the type affected by this NPRM that operate between 4 and 9 aircraft. Since the number of companies represents about 22 percent of the 73 operators affected by this proposed rule, the FAA concludes that the proposed rule would not have a significant economic impact on a significant number of small part 135 scheduled operators.

Federalism Implications

The proposed regulations do 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 various levels of government. Thus, in accordance with Executive Order 12612, it is determined that such a regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Paperwork Reduction Act

The reporting and recordkeeping requirement associated with this proposed rule is being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. Chapter 35 under the following:

OMB No: New;

Administration: FAA;

Title: Air Carrier Training Programs;

Need for Information: If adopted, this NPRM requires each part 121 and each part 135 certificate holder that conducts scheduled operations to develop a CRM training program and a transition plan to the training and qualification requirements of part 121;

Proposed Use of This Information: The FAA requires this information to evaluate each certificate holder's proposed CRM training program and to ensure certificate holders are providing the highest possible level of training and qualification standards;

Frequency: One-time;

Burden Estimate: 1,760 total hours;

Respondents: Parts 121 and 135 certificate holders;

Form(s): None;

Average Burden Hours Per Respondent: 8;

For further information contact: The Information Management Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4735 or the Office of Management and Budget, Office of Information and Regulatory Affairs, Desk Office for the FAA, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395–7340. It is requested that the comments sent to OMB also be sent to the FAA rulemaking docket for this proposed action.

Conclusion

For the reasons set forth under the heading "Regulatory Analysis," the FAA has determined that this proposed

regulation: (1) is a significant rule under Executive Order 12866; and (2) is a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Also, for the reasons stated under the headings "Trade Impact Statement" and "Regulatory Flexibility Determination," the FAA certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. A copy of the full regulatory evaluation is filed in the docket and may also be obtained by contacting the person listing under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

14 CFR part 121

Air carriers, Aircraft, Airmen, Air safety, Air transportation, Aviation safety, Drug abuse, Drug testing, Narcotics, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR part 135

Air carriers, Aircraft, Airmen, Air taxis, Air transportation, Airworthiness, Aviation safety, Reporting and record keeping requirements, Safety.

The Proposed Amendment

The Federal Aviation Administration proposes to amend parts 121 and 135 of the Federal Aviation Regulations [14 CFR parts 121 and 135] as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; and 49 U.S.C. 106(g).

2. Section 121.135(b)(15) is revised to read as follows:

§ 121.135 Contents.

* * * * *

(b) * * *

(15) Each training program curriculum required by § 121.403.

* * * * *

3. Section 121.404 is revised to read as follows:

§ 121.404 Compliance dates: Crew and Dispatcher resource management training.

After [insert date 2 years after the effective date of the final rule], no certificate holder may use a person as a flight crewmember, and after [insert date 3 years after the effective date of the final rule], no certificate holder may use a person as a flight attendant or aircraft dispatcher unless that person has completed approved crew resource management (CRM) or dispatcher resource management (DRM) initial training, as applicable, with that certificate holder or with another certificate holder.

4. Section 121.405 is amended by adding new paragraphs (f) and (g) to read as follows:

§ 121.405 Training program and revision: Initial and final approval.

* * * * *

(f) Each certificate holder described in § 135.3(b) and (c) of this chapter must include the material required by § 121.403 in the manual required by § 135.21 of this chapter.

(g) The Administrator may grant a deviation to certificate holders described in § 135.3(b) and (c) of this chapter to allow reduced programmed hours of ground training required by § 121.419 if it is found that a reduction is warranted based on the certificate holder's operations and the complexity of the make, model, and series of the airplanes used.

5. Section 121.406 is added as follows:

§ 121.406 Reduction of CRM/DRM Programmed Hours based on Credit for Previous CRM/DRM Training

(a) For flightcrew members, the Administrator may credit CRM training received before [insert date 2 years after the effective date of the final rule] toward all or part of the initial ground CRM training required by § 121.419.

(b) For flight attendants, the Administrator may credit CRM training received before [insert date 3 years after the effective date of the final rule] toward all or part of the initial ground CRM training required by § 121.421.

(c) For aircraft dispatchers, the Administrator may credit CRM training received before [insert date 3 years after the effective date of the final rule] toward all or part of the initial ground CRM training required by § 121. 422.

(d) In granting credit for initial ground CRM or DRM training, the Administrator considers training aids, devices, methods, and procedures used by the certificate holder in a voluntary CRM or DRM program or in an AQP program that effectively meets the quality of an approved CRM or DRM initial ground training program under §§ 121.419, 121.421, or 121.422 as appropriate.

6. Section 121.419 is amended by redesignating paragraph (a)(1)(viii) as paragraph (a)(1)(ix), adding a new paragraph (a)(1)(viii), and revising paragraph (b) to read as follows:

§ 121.419 Pilots and flight engineers: Initial, transition, and upgrade ground training.

(a) * * *

(a) * * *

(viii) Approved crew resource management initial training.

* * * * *

(b) Initial ground training for pilots and flight engineers must consist of at least the following programmed hours of instruction in the required subjects specified in paragraph (a) of this section and in § 121.415(a) unless reduced under § 212.405 or § 121.406:

(1) Group I airplanes:

(i) Reciprocating powered, 76 hours; and

(ii) Turbopropeller powered, 92 hours.

(2) Group II airplanes, 132 hours.

7. Section 121.421 (a)(1) and (c) are revised to read as follows:

§ 121.421 Flight attendants: Initial and transition ground training.

(a) * * *

(1) General subjects—

(i) The authority of the pilot in command;

(ii) Passenger handling, including the procedures to be followed in the case of deranged persons or other persons whose conduct might jeopardize safety; and

(iii) Approved crew resource management initial training.

* * * * *

(c) Initial ground training for flight attendants must consist of at least the following programmed hours of instruction in the required subjects specified in paragraph (a) of this section and in § 121.415(a) unless reduced under § 121.405 or § 121.406:

(1) Group I airplanes:

(i) Reciprocating powered, 16 hours; and

(ii) Turbopropeller powered, 16 hours.

(2) Group II airplanes, 24 hours.

8. Section 121.422 is amended by revising paragraphs (a)(1)(vii) and (a)(1)(viii), by adding a new paragraph (a)(1)(ix), and by revising paragraph (c) to read as follows:

§ 121.422 Aircraft dispatchers: Initial and transition ground training.

(a) * * *

(1) * * *

(vii) Prevailing weather phenomena and the available sources of weather information;

(viii) Air traffic control and instrument approach procedures; and

(ix) Approved dispatcher resources management (DRM) initial training.

* * * * *

(c) Initial ground training for aircraft dispatchers must consist of at least the following programmed hours of instruction in the required subjects specified in paragraph (a) of this section and in § 121.415(a) unless reduced under § 121.405 or § 121.406:

(1) Group I airplanes:

(i) Reciprocating powered, 38 hours; and

(ii) Turbopropeller powered, 48 hours.

(2) Group II airplanes, 48 hours.

9. Section 121. 427 is amended by adding a new paragraph (b)(4) and by revising the introductory text of paragraph (c) and paragraphs (c)(1), (c)(3), and (c)(4) to read as follows:

§ 121.427 Recurrent training.

* * * * *

(b) * * *

(4) Approved recurrent CRM training. For flight crewmembers, this training or portions thereof may be accomplished during an approved simulator line operational flight training (LOFT) session. The recurrent CRM training requirement does not apply until a person has completed the applicable initial CRM training required by §§ 121.419, 121.421, or 121.422.

* * * * *

(c) Recurrent ground training for crewmembers and aircraft dispatchers must consist of at least the following programmed hours unless reduced under § 121.405:

(1) For pilots and flight engineers—

(i) Group I, reciprocating powered airplanes, 20 hours;

(ii) Group I, turbopropeller powered airplanes, 24 hours; and

(iii) Group II airplanes, 29 hours.

* * * * *

(3) For flight attendants)—

(i) Group I, reciprocating powered airplanes, 6 hours;

(ii) Group I, turbopropeller powered airplanes, 7 hours; and

(iii) Group II airplanes, 14 hours.

(4) For aircraft dispatchers—

(i) Group I, reciprocating powered airplanes, 10 hours;

(ii) Group I, turbopropeller powered airplanes, 12 hours; and

(iii) Group II airplanes, 22 hours.

* * * * *

10. Section 121.431(a) is revised to read as follows:

§ 121.431 Applicability.

(a) This subpart prescribes crewmember qualifications for all certificate holders except where otherwise specified. The qualification requirements of this subpart also apply to each certificate holder that conducts commuter operations under part 135 of this chapter with airplanes for which two pilots are required by the aircraft type certification rules of this chapter, or with airplanes having a passenger seating configuration, excluding any pilot seat, of 10 seats or more. The Administrator may authorize any other certificate holder that conducts operations under part 135 to comply with the qualification requirements of this subpart, except that these certificate holders may choose to comply with the operating experience requirements of § 135.244 of this chapter, instead of the requirements of § 121.434.

* * * * *

PART 135—AIR TAXI OPERATIONS AND COMMERCIAL OPERATORS

11. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g).

12. Section 135.3 is revised to read as follows:

§ 135.3 Rules applicable to operations subject to this part.

(a) Each person operating an aircraft in operations under this part shall—

(1) While operating inside the United States, comply with the applicable rules of this chapter; and

(2) While operating outside the United States, comply with Annex 2, Rules of the Air, to the Convention on International Civil Aviation or the regulations of any foreign country, whichever applies, and with any rules of parts 61 and 91 of this chapter and this part that are more restrictive than that Annex or those regulations and that can be complied with without violating the Annex or those regulations. Annex 2 is incorporated by reference in § 91.703(b) of this chapter.

(b) Each certificate holder that conducts commuter operations under this part with airplanes in which two pilots are required by the type certification rules of this chapter, or with airplanes having a passenger seating configuration, excluding any pilot seat, of 10 seats or more, shall comply with subparts N and O of part 121 instead of the requirements of subparts E, G, and H of this part.

(c) If authorized by the Administrator upon application, each certificate holder that conducts operations under this part that is not included in paragraph (b) of this section may comply with the applicable sections of subpart N and O of part 121 instead of the requirements of subparts E, G, and H of this part, except that those authorized certificate holders may choose to comply with the operating experience requirements of § 135.244, instead of the requirements of § 121.434 of this chapter.

13. Section 135.10 is revised to read as follows:

§ 135.10 Compliance dates for certain rules.

Except as provided in § 121.404 and section 135.12, after [Insert date 1 year after the effective date of the final rule], no certificate holder that conducts commuter operations under this part with airplanes for which two pilots are required by the aircraft type certification rules of this chapter or with airplanes having a passenger seating configuration, excluding any pilot seat, of 10 seats or more may use any crewmember or dispatcher in those operations unless that person meets the applicable training, checking, and qualification requirements of subparts N and O of part 121 of this chapter.

14. Section 135.12 is added:

§ 135.12 Previously trained crewmembers.

A certificate holder may use a crewmember who received the certificate holder's training in accordance with subparts E, G, and H of this part before (insert one year after effective date) without complying with initial training and qualification requirements of subparts N and O of part 121. The crewmember must comply with the applicable recurrent training requirements of part 121.

15. Section 135.241 is amended by adding the words set forth below at the end of the section:

§ 135.241 Applicability.

* * * Except as provided in § 135.12, each certificate holder that conducts commuter operations under this part with airplanes for which two pilots are required by the aircraft type certification rules of this chapter or with airplanes having a passenger seating configuration, excluding any pilot seat, of 10 seats or more shall ensure that each flight crewmember it uses in those operations is trained, checked, and qualified under the requirements of subparts N and O of part 121 of this chapter, in place of the requirements of subparts E, G, and H of this part. The Administrator may authorize any other certificate holders that conduct operations under this part to comply with the training, checking, and qualification requirements of subparts N and O of part 121 of this chapter, in place of the requirements of this part, except that these certificate holders may choose to comply with the operating experience requirements of § 135.244,

instead of the requirements of § 121.434 of this chapter.

16. Section 135.291 is amended by adding the words set forth below at the end of the section:

§ 135.291 Applicability.

* * * Except as provided in § 135.12, each certificate holder that conducts commuter operations under this part with airplanes for which two pilots are required by the aircraft type certification rules of this chapter or with airplanes having a passenger seating configuration, excluding any pilot seat, of 10 seats or more shall ensure that each crewmember or other personnel it uses in those operations is trained, checked, and qualified under the requirements of subparts N and O of part 121 of this chapter, in place of the requirements of subparts E, G, and H of this part. The Administrator may authorize any other certificate holders that conduct operations under this part to comply with the training, checking, and qualification requirements of subparts N and O of part 121 of this chapter, in place of the requirements of subparts E, G, and H of this part.

17. Section 135.321 is amended by adding the words set forth below at the end of paragraph (a), redesignating paragraph (b) as paragraph (c), and adding a new paragraph (b) as follows:

§ 135.321 Applicability and terms used.

(a) * * * Except as provided in § 135.12, each certificate holder that conducts commuter operations under this part with airplanes for which two pilots are required by the aircraft type certification rules of this chapter or with airplanes having a passenger seating configuration, excluding any pilot seat, of 10 seats or more shall ensure that each crewmember or other personnel it uses in those operations is trained, checked, and qualified under the requirements of subparts N and O of part 121 of this chapter, in place of the requirements of subparts E, G, and H of this part. The Administrator may authorize any other certificate holders that conduct operations under this part to comply with the training, checking, and qualification requirements of subparts N and O of part 121 of this chapter, in place of the requirements of subparts E, G, and H of this part.

(b) Each certificate holder described in § 135.3(b) must submit and obtain approval of a transition plan (containing a calendar of events) for moving from its present part 135 training, checking, testing, and qualification requirements to the requirements of part 121 of this chapter. Each transition plan must contain details on how the certificate holder plans to be in compliance with subparts N and O of part 121 on or before (one year after the effective date of the final rule).

* * * * *

Issued in Washington, DC on December 8, 1994.

William J. White,

Acting Director, Flight Standards Service.

[FR Doc. 94–30575 Filed 12–8–94; 4:52 pm]

BILLING CODE 4910–13–M

Reader Aids

Federal Register

Vol. 59, No. 238

Tuesday, December 13, 1994

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection announcement line	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

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

FAX-ON-DEMAND

You may access our Fax-On-Demand service. You only need a fax machine and there is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available using this service. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list will be updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE AND NOT THE ACTUAL DOCUMENT. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, N.W., Suite 700. The Fax-On-Demand telephone number is: 301–713–6905

FEDERAL REGISTER PAGES AND DATES, DECEMBER

61521–61766.....1
61767–62282.....2
62283–62550.....5
62551–62968.....6
62969–63240.....7
63241–63690.....8
63691–63880.....9
63881–64108.....12
64109–64280.....13

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6758.....61521
6759.....62281
6760.....62969
6761.....64107
Executive Orders:
October 8, 1914
(Revoked in part by PLO 7104).....62609
12941.....62545
Administrative Orders:
Memorandums:
November 30, 1994.....62549
Presidential Determinations:
November 12, 1994.....64109

5 CFR

630.....62266, 62272, 62971
890.....62283
Proposed Rules:
213.....63064
300.....62353
316.....63064
550.....62353
752.....62353
771.....62353
831.....62353
842.....62353

7 CFR

250.....62973
252.....62973
906.....63691
981.....63693
1207.....63696
1951.....63698
Proposed Rules:
271.....63265
273.....63265
275.....63265
916.....63935
917.....63935
920.....63731
930.....63273
1030.....63733
1065.....63733
1068.....63733
1076.....63733
1079.....63733

8 CFR

208.....62284
236.....62284
242.....62284
274a.....62284
299.....62284

9 CFR

92.....63698, 63881
301.....62551
318.....62551
320.....62551
Proposed Rules:
318.....62629
381.....62629

10 CFR

1.....63881
30.....61767
32.....61767
35.....61767
1004.....63882
Proposed Rules:
20.....63733
30.....63733
35.....61831
40.....63733
50.....63733
51.....63733
70.....63733
72.....63733

11 CFR

Proposed Rules:
9001.....63274
9002.....63274
9003.....63274
9004.....63274
9005.....63274
9006.....63274
9007.....63274

12 CFR

Ch. XVII.....62303
34.....62562
203.....63698
205.....61787
208.....62987, 63241, 63706
225.....62562, 62987, 63241, 63712
226.....63714
323.....62562
564.....62562
722.....62562
1609.....64111
1700.....62303
Proposed Rules:
19.....63936
211.....64171
226.....61832
509.....62354
563.....62356

14 CFR

39.....61523, 61789, 61791, 61792, 61794, 62306, 62307, 62308, 62563, 63716, 64112
71.....61523, 62310, 62311, 62312, 62313, 62314, 62315, 63718, 63884
73.....63245, 63885
95.....61524

97 .....61525, 61527, 63886, 63888, 63889
121 .....62218, 62234, 62276
Proposed Rules:
Ch. I 63274
39 .....62995, 62997, 62998, 63000, 63002, 63003, 63065, 63275, 63277, 63278, 63281, 63734
71 .....62360, 62361, 62362, 62363, 62364, 62365, 63937, 63938, 63939, 63940
107 62956
108 62956
109 62956
121 .....63158, 63868, 64272
125 63868
129 62956
135 .....63158, 63868, 64272
191 62956
255 63736
Ch. III 62359

15 CFR

701 61796
806 62566
Proposed Rules:
806 63941

16 CFR

305 63688

17 CFR

30 62315
200 63656
229 63676
239 63676
240 .....63656, 63676
Proposed Rules:
Ch. II 61843
240 63652

18 CFR

385 63245

19 CFR

141 61798

20 CFR

Proposed Rules:
625 63670

21 CFR

74 61929
101 62316
103 61529
172 .....61538, 61540, 61543
175 63893
177 62317
178 62318
182 63894
184 63894
201 .....61929, 64240
358 62569
558 62320
864 63005
866 63005
868 63005
870 63005
872 63005
874 63005
876 63005
878 63005
880 63005
882 63005
886 63005
888 63005
890 63005
892 63005
Proposed Rules:
184 .....61560, 62366
Ch. 1 62644
1307 63738
1309 63738
1310 63738
1313 63738
1316 63738

23 CFR

1205 64120

24 CFR

200 61800
203 61800
204 61800
206 61800
246 62514
266 62514
267 61800
291 63247
3282 64100
Proposed Rules:
100 64104

25 CFR

36 61764

26 CFR

1 .....62570, 63248
602 63248
Proposed Rules:
1 62644
1 .....61844, 62370

27 CFR

Proposed Rules:
9 61853

28 CFR

82 63718
91 63015
548 62968

29 CFR

2606 62571
2609 62571
Proposed Rules:
1915 64173

30 CFR

906 62574
914 64128
920 63719
Proposed Rules:
925 64176
934 63738
944 61855
950 62645

31 CFR

103 61660

32 CFR

536 64016
537 64016
Proposed Rules:
320 61858
766 61561

33 CFR

117 63897
165 .....63022, 63024, 63898
Proposed Rules:
117 .....63068, 63943, 63944, 63945, 64178
162 63947
165 63947

34 CFR

668 61716
674 61716
676 61716
682 61716
685 61664
690 61716
Proposed Rules:
75 63878

36 CFR

Proposed Rules:
800 61859

37 CFR

251 63025
252 63025
253 63025
257 63025
259 .....63025, 63043
Proposed Rules:
1 .....63951, 63966
3 63951
5 63966

38 CFR

3 62584
Proposed Rules:
3 63283

39 CFR

111 62320
265 62323

40 CFR

9 .....61801, 62585, 62896
52 .....61545, 61546, 63045, 63046, 63254, 63255, 63721, 63723, 63724, 64130, 64131, 64132, 64133
60 62896
63 .....61801, 62585
70 .....61549, 61820, 62324
82 63255
141 62456
143 62456
180 .....61552, 63256
260 62896
262 62896
264 62896
265 62896
270 62896
271 62896
Proposed Rules:
52 .....61545, 61546, 62646, 62649, 63069, 63286, 63288, 63740, 63742, 64180
63 .....62652, 62681
70 63289
91 61571
180 61859
721 63299
761 .....62788, 62875

41 CFR

101–9 62601
Proposed Rules:
201–1 62695
201–2 62695
201–3 62695
201–4 62695
201–6 62695
201–7 62695
201–9 62695
201–17 62695
201–18 62695
201–20 62695
201–21 62695
201–22 62695
201–24 62695
201–39 62695

42 CFR

57 63900
65 64139
405 64141
410 63410
412 .....64141, 64153
413 64153
414 63410
482 64141
493 62606
Proposed Rules:
1003 61571

43 CFR

Public Land Orders:
773 61656
3953 (Revoked in part by PLO 7105) 63257
4056 (Revoked in part by PLO 7105) 63257
7104 62609
7105 .....62609, 63257
7106 64159
Proposed Rules:
11 63300

44 CFR

59 63726
60 63726
64 .....62328, 63726
65 .....63726, 64156, 64157
67 64158
70 63726
75 63726
Proposed Rules:
61 61929
67 64180

45 CFR

60 61554
Proposed Rules:
1309 61575

46 CFR

16 62218
501 62329
514 63903
552 63903
560 63903
572 63903

47 CFR

1 .....63049, 64159
20 61828
24 .....61828, 63210
63 63909
73 .....62330, 62609, 62613, 63049, 63726
74 63049
76 .....62330, 62614
Proposed Rules:
21 63743

63.....63971
64.....63750
73.....62390
74.....63743
76.....62703
90.....63974

48 CFR

501.....63258
538.....63258
552.....63258

Proposed Rules:

Ch. 16.....62345
3.....61738, 61740
14.....62498
15.....62498
31.....64268
37.....64268
42.....64268
49.....61734
52.....61734, 61738, 61740, 62498, 64268
219.....64185
242.....62704
252.....64185
5452.....64185
6101.....61861

49 CFR

199.....62218, 62234, 62242
219.....62218, 62234
382.....62218, 62234
387.....63921
391.....63921
392.....63921
397.....63921
501.....64162
541.....64164
567.....64169
571.....61656
653.....62218
654.....62234
1002.....63726
1039.....63926
1160.....63726
1161.....63726
1162.....63726
1163.....63726
1166.....63726

Proposed Rules:

395.....63322
1043.....62705
1084.....62705

50 CFR

15.....62254, 62255
17.....62346, 63261
216.....63062
651.....63926
663.....62626
675.....61555, 63062
677.....61556

Proposed Rules:

17.....61744, 63162, 63975, 63987
229.....63324
285.....62391
625.....61864
678.....62391

LIST OF PUBLIC LAWS

Note: The list of Public Laws for the second session of the 103d Congress has been completed and will resume when bills are enacted into public law during the first session of the 104th Congress, which convenes on January 4, 1995.

A cumulative list of Public Laws for the second session of the 103d Congress will be published in Part II of the **Federal Register** on Monday, December 19, 1994.

Now Available Online

through

GPO Access

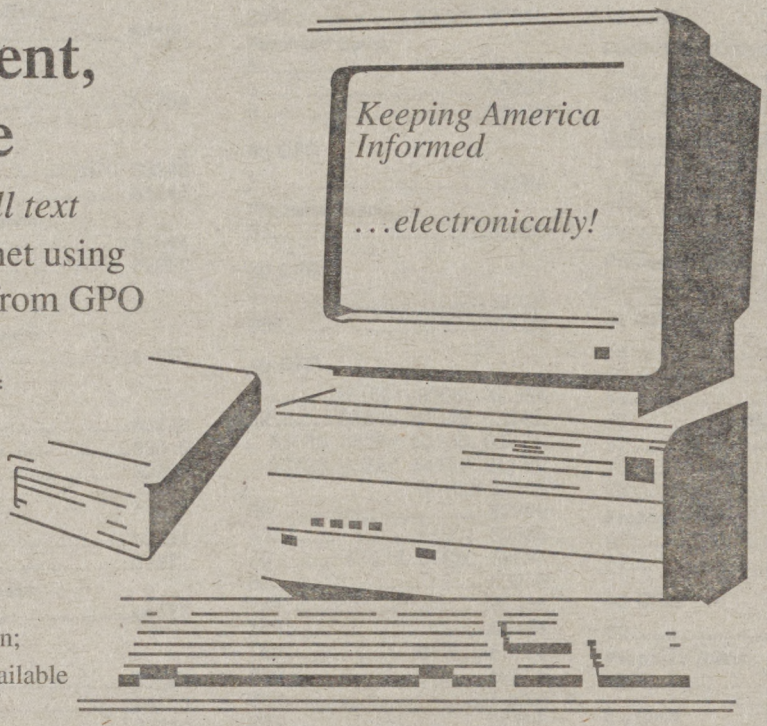
A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

Easy, Convenient, Inexpensive

On a WAIS server with *full text and graphics* through Internet using local WAIS client software from GPO



Subscription prices*

Single month	$35
6 months	$200
12 months	$375

*Prices for single work station; multiple work station discounts available

Use the Internet or Dial In

To subscribe: Telnet wais.access.gpo.gov; login as newuser, no password <enter>; or use a modem to call (202) 512-1661, type wais, <enter>; at login prompt, type newuser, <enter>

8/94

See Page II inside any issue of the Federal Register for additional information



Printed on recycled paper