10-1-92
Vol. 57 No. 191
Pages 45261-45558

federal register

Thursday
October 1, 1992

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

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Contents

Federal Register
Vol. 57, No. 191
Thursday, October 1, 1992

Separate Parts In This Issue

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.

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.

Rules and Regulations

Federal Register
Vol. 57, No. 191
Thursday, October 1, 1992

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

RIN 3206-AE53

Absence and Leave; Voluntary Leave Transfer and Voluntary Leave Bank Programs

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations that amend the use of annual leave by leave recipients under the voluntary leave transfer or leave bank programs. The regulations provide that donated annual leave used by a leave recipient under the voluntary leave transfer program or annual leave received from a leave bank under the voluntary leave bank program may be used only for the purpose of the medical emergency for which the leave recipient was approved. In addition, the regulations permit an employee's leave bank membership to transfer to another leave bank within the same agency. This eliminates the need for employees who move to another position within their employing agency to make an additional contribution to a leave bank for the year in which the move occurs.

EFFECTIVE DATE: November 2, 1992.

FOR FURTHER INFORMATION CONTACT: Lee Kara, (202) 606-2858.

SUPPLEMENTARY INFORMATION: Public Law 100-566, the "Federal Employees Leave Sharing Act of 1988," directed OPM to establish by regulation a 5-year experimental voluntary leave transfer and leave bank program. OPM published final regulations governing these programs on December 28, 1989, in the **Federal Register** (54 FR 53303). On November 27, 1991, OPM published proposed regulations in the **Federal Register** (56 FR 60075) to make clear that annual leave under this program may be used only for the purpose of the medical emergency for which the leave recipient was approved and to permit an employee's leave bank membership to transfer to another leave bank within the same agency. The original 30-day public comment period was extended administratively on March 24, 1992, for an additional 30 days because Federal Personnel Manual Bulletin 630-64, which notified agencies of the proposed regulations, did not reach agencies in a timely manner. The additional 30-day comment period ended on April 24, 1992.

OPM received a total of 10 comments from Federal agencies and departments. All of the comments from Federal agencies and departments expressed general support for the proposed changes. However, one agency expressed concern about additional recordkeeping and tracking requirements resulting from the proposed change to require that annual leave received by leave recipients be used only for the purpose of the medical emergency for which the leave recipient was approved. We do not believe the proposed change poses a serious administrative problem for agencies. Indeed, many agencies have indicated that the proposed change was already incorporated into their programs.

Two other concerns were expressed. One agency suggested changing "the" medical emergency to "a" medical emergency in 5 CFR 630.909(a) and 630.1009(a). The agency believes this change would cover situations that involve contiguous emergencies of an approved leave recipient. OPM agrees, and the final regulations have been revised accordingly.

Finally, one agency suggested that OPM revise the definitions of "medical emergency" in 5 CFR 630.902 and 630.1002 to include "normal" maternity situations. The agency believes this change would assure uniform treatment of employees by all agencies. While we do not believe it would be appropriate to make such a change at this time, we plan to comment on this suggestion in our final report to Congress on the 5-year experimental leave transfer/leave bank program, which will be submitted by April 30, 1993.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 630

Government employees.

U.S. Office of Personnel Management
Douglas A. Brook,
Acting Director.

Accordingly, OPM amends part 630 of title 5, Code of Federal Regulations, as follows:

PART 630—ABSENCE AND LEAVE

1. The authority citation for part 630 continues to read as set forth below:

Authority: 5 U.S.C. 6311; section 630.303 also issued under 5 U.S.C. 6133(a); section 630.501 and subpart F also issued under E.O. 11228; subpart G also issued under 5 U.S.C. 6305; subpart H issued under 5 U.S.C. 6326; subpart I also issue under 5 U.S.C. 6332 and Public Law 100-566; subpart J also issued under 5 U.S.C. 6362 and Public Law 100-566; subpart K also issued under Public Law 102-25.

2. In § 630.909, paragraph (a) is revised to read as follows:

§ 630.909 Use of transferred annual leave.

(a) A leave recipient may use annual leave transferred to his or her annual leave account under § 630.906 of this part only for the purpose of a medical emergency for which the leave recipient was approved.

* * * * *

3. In § 630.1004, paragraph (h) is amended by removing the word "or" at the end of paragraph (h)(1), removing the period at the end of paragraph (h)(2) and substituting ", or" in its place, and adding a new paragraph (h)(3) to read as follows:

§ 630.1004 Application to become a leave contributor and leave bank member.

* * * * *

(h) * * *

(3) Eliminate the requirement for a minimum contribution under paragraph (g) of this section when a leave bank member transfers within his or her

employing agency to an organization covered by a different leave bank.

* * * * *

4. In § 630.1009, paragraph (a) is revised to read as follows:

§ 630.1009 Use of annual leave withdrawn from a leave bank.

(a) A leave recipient may use annual leave withdrawn from a leave bank only for the purpose of a medical emergency for which the leave recipient was approved.

* * * * *

[FR Doc. 92-23773 Filed 9-30-92; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1494

Export Bonus Programs

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Commodity Credit Corporation (CCC) is issuing this final rule which establishes program operations regulations governing the payment of bonuses in connection with the export of dairy products under the Dairy Export Incentive Program (DEIP). This final rule is intended to simplify the administration of the DEIP, enhance clarity, eliminate duplication, and facilitate the use of the regulations.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: L.T. McElvain, Director, CCC Operations Division, USDA, FAS, room 4503-S, 1400 Independence Avenue, SW., Washington, DC, 20250-1000, telephone (202) 720-6211.

SUPPLEMENTARY INFORMATION:

Regulatory Requirements

This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and had been designated as "nonmajor." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

The paperwork requirements which would be imposed by this final rule were contained in the interim rule and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The OMB assigned number for those requirements is OMB No. 0551-0029. The public reporting burden imposed by this rule is estimated to average 26 minutes per response, including time for reviewing instructions, searching existing sources, gathering and maintaining the data needed, and completing and reviewing the response. Send comments regarding this burden estimate or any other aspects of the paperwork requirements, including suggestions for reducing the burden, to Department of Agriculture, Clearance Officer, OIRM, room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0551-0029), Washington, DC 20503.

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

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any state or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, the administrative appeal procedures established in 7 CFR 1494.901 must be exhausted.

Background

In the **Federal Register** of June 7, 1991 (56 FR 26323), CCC published an interim rule which established program operations regulations for the DEIP in 7 CFR part 1494, subpart D. This interim rule also published as regulations the criteria considered in evaluating and approving proposals for country and commodity initiatives under the EEP and the DEIP. The criteria for the EEP and the DEIP, as set forth in this interim rule, are found in subparts A and C, respectively, of 7 CFR part 1494. Program operations regulations for the EEP have already been codified in subpart B and published as a final rule on June 3, 1991 (56 FR 25005).

In the **Federal Register** of June 19, 1991 (56 FR 28037), CCC suspended the effective date for subpart D from June 7, 1991 to July 3, 1991. The suspension of subpart D allowed CCC time to re-qualify exporters for program participation before it implemented the new program operations regulations. In addition, subpart D was based upon the EEP operations regulations in subpart B, which were published in the **Federal Register** as a final rule on June 3, 1991 but did not become effective until July 3, 1991.

By the issuance of this final rule, CCC is acting only to finalize the portions of the interim rule published on June 7, 1991 which change the authority citation for 7 CFR part 1494 and add subpart D. Subparts A and C remain interim rules. CCC will issue a final rule with respect to subparts A and C in the future.

The DEIP is administered by the Foreign Agricultural Service (FAS), on behalf of CCC. Like the EEP, the DEIP had been administered through the issuance of "Announcements" and "Invitations for Offers" (Invitations). It has been determined that the DEIP shall be operated in a manner consistent with the published regulations for the EEP. Therefore, § 1494.1200 provides that, except as otherwise stated in subpart D, the program operations regulations set forth in subpart B for the EEP will also apply to the DEIP.

Three provisions relating specifically to the DEIP were set forth in §§ 1494.1201, 1494.1202, and 1494.1203 of the interim rule. Section 1494.1201 contained a definition of "eligible commodity" for the purposes of the DEIP which superseded the definition in § 1494.201(p). Upon further review, it has been determined that the definition of "eligible commodity in § 1494.201(p) is appropriate for the DEIP as well as for the EEP. CCC will specify in each DEIP Invitation the particular dairy product which will be the eligible commodity for the purposes of such Invitation. Because § 1494.1201 of the interim rule was unnecessary, it has been removed in the final rule.

Section 1494.1202 of the interim rule was included as the result of section 153 of the Food Security Act of 1985, as amended, which provides that, if CCC certificates furnished to an exporter as a bonus under the DEIP are exchanged for CCC-owned dairy products, regulations issued by the Secretary of Agriculture shall ensure that the exporter must sell for export such dairy products or an equal quantity of other dairy products. It

is not expected that CCC will make dairy products available to be exchanged for CCC certificates in the foreseeable future. Therefore, § 1494.1202 of the interim rule was unnecessary and it has been removed in the final rule.

Section 1494.1203 of the interim rule dealt with the Paperwork Reduction Act as it pertains to the DEIP. This section has been re-numbered as § 1494.1201 in the final rule.

FAS will continue to maintain the system of issuing Invitations for targeted countries under the DEIP. Any terms or conditions applicable to a particular DEIP Invitation, beyond those terms and conditions set forth in subparts B or D of part 1494, will be specifically provided for in such Invitation.

Comments on the interim rule which established the DEIP operations regulations were to be submitted by August 6, 1991. However, no comments pertaining to the DEIP operations regulations in Subpart D were received. Therefore, CCC has determined to make no significant changes to the DEIP operations regulations and is publishing subpart D of 7 CFR part 1494 as a final rule.

List of Subjects in 7 CFR Part 1494

Administrative practice and procedure, Agricultural commodities, Exports, Reporting and recordkeeping requirements.

Accordingly, part 1494 of 7 CFR chapter XIV, is amended as follows:

Subpart B—Export Enhancement Program Operations

1. Subpart D is revised to read as follows:

Subpart D—Dairy Export Incentive Program Operations

Sec.

Subpart D—Dairy Export Incentive Program Operations

Authority: 15 U.S.C. 713a-14, 714c.

§ 1494.1200 Program Operations.

This subpart contains the regulations governing the operation of the Dairy Export Incentive Program (DEIP) of the Commodity Credit Corporation (CCC). Under the DEIP, CCC facilitates the export of U.S. dairy products by paying bonuses to exporters which export U.S. dairy products to targeted markets in accordance with the terms and conditions of an Agreement entered into between the exporter and CCC. Except as otherwise provided in this subpart, the program operations provisions of subpart B of this part, relating to the Export Enhancement Program, will also apply to the DEIP. Any terms or conditions applicable to a particular Invitation for Offers (Invitation) under the DEIP, beyond those terms or conditions set forth in this subpart or subpart B of this part, will be specifically provided for in such Invitation.

§ 1494.1201 Paperwork Reduction Act.

The information collection requirements contained in this subpart have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control No. 0551-0029.

Signed this 25th day of Sept., 1992 at Washington, DC.

Christopher E. Goldthwait,

Acting General Sales Manager, Foreign Agricultural Service and Acting Vice President, Commodity Credit Corporation.

[FR Doc. 92-23791 Filed 9-30-92; 8:45 am]
BILLING CODE 3410-10-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064-AA37, 3064-AA96, 3064-AB14

Assessments

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Board of Directors (Board) of the Federal Deposit Insurance Corporation (FDIC) is amending its regulations on assessments to: Adopt a recapitalization schedule for the Bank Insurance Fund (BIF); increase the deposit insurance assessment rate for certain members of the BIF during the first semiannual period of calendar year 1993 and thereafter; increase the deposit insurance assessment rate for certain members of the Savings Association Insurance Fund (SAIF) during the first semiannual period of 1993 and thereafter; and adopt a transitional risk-based deposit insurance assessment system. The intended purposes of this final rule are to establish a schedule according to which the BIF will be recapitalized within 15 years, to increase the assessment rates for certain BIF and SAIF members, respectively, to recapitalize the BIF and SAIF within the respective time frames prescribed by the applicable provisions of the Federal Deposit Insurance Act (FDI Act), and to provide for a transition from a uniform rate to a risk-based insurance assessment system.

DATES: *Effective date:* The final rule is effective November 2, 1992.

Applicability dates: The respective assessment rate increases for BIF and SAIF members, as well as the risk-based assessment system, will apply to assessments that become due in the first semiannual period of 1993 and thereafter.

FOR FURTHER INFORMATION CONTACT: William R. Watson, Director, Division of Research and Statistics, (202) 898-3946, Jennifer L. Eccles, Senior Financial Analyst, Division of Research and Statistics, (202) 898-8537; on the risk-based assessment system: George French, Chief, Financial Markets Section, Division of Research and Statistics, (202) 898-3929, or William Farrell, Chief, Receipts Section, Division of Accounting and Corporate Services, (703) 516-5546; on legal issues involving the BIF recapitalization schedule and the transitional risk-based assessment system, Martha L. Coulter, Counsel, Legal Division, (202) 898-7348; on legal issues involving the BIF and SAIF rate increases, Joseph A. DiNuzzo, Senior Attorney, Legal Division, (202) 898-7349. The address for all these individuals is: Federal Deposit Insurance Corporation, 550—17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

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 any of the four components of the final rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

The Board hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It will not impose burdens on depository institutions of any size and will not have the type of economic impact addressed by the Act. Moreover, to the extent the final rule relates to the assessment rates to be paid by BIF and SAIF member institutions, the Act does not apply to a rule of particular applicability relating to rates, wages, corporate or financial

structures or reorganizations thereof. *Id.* at 601(2).

Particularly, in connection with the transitional risk-based assessment system, the assessment obligations that will result from the system will be determined by an institution's deposit base and the risk posed to the FDIC. The first element as a matter of course fulfills the primary purpose of the Regulatory Flexibility Act, which is to make sure that agencies' rules do not impose disproportionate burdens on small businesses. The second element—the risk posed to the deposit insurance fund of which the institution is a member—is clearly one intended by Congress, as evidenced by the mandate in the FDIC Improvement Act of 1991 for implementation of a risk-based assessment system.

Accordingly, the Act's requirements regarding an initial and final regulatory flexibility analysis (*Id.* at 603 & 604) are not applicable here.

The Final Rule

Background

On May 21, 1992, the Board published separately in the **Federal Register** proposed amendments to part 327 of the FDIC's regulations (12 CFR part 327) (part 327) to: (1) Increase the deposit assessment rate to be paid by BIF members from 0.23 percent to 0.28 percent starting with the first semiannual period of 1993 and thereafter (57 FR 21623 (1992)); (2) increase the SAIF deposit assessment rate to be paid by SAIF members from 0.23 percent to 0.28 percent starting with the first semiannual period of 1993 and thereafter (*Id.* at 21627); and (3) provide for a transitional assessment system under which BIF and SAIF member institutions would, beginning in January 1993, pay assessments at rates based on certain risk-related factors. (*Id.* at 21617). The comment period on the SAIF assessment rate increase and transitional risk-based assessment proposals ended on July 20, 1992. Because of an extension in the comment period provided for the BIF assessment rate increase proposal (57 FR 28810, June 29, 1992), the comment period for that proposal ended on August 13, 1992.

On June 29, 1992, the Board published in the **Federal Register** a proposed schedule according to which the BIF designated reserve ratio of 1.25 percent would be achieved within the statutory period of 15 years. 57 FR 28810. The comment period on that proposal also ended on August 13, 1992.

Explanation of the Final Rule; Approach Taken by the Board

The approach used by the Board in taking final action on the four proposed rules was to amend part 327 by adopting a BIF recapitalization schedule and a transitional risk-based assessment system. The amendments to part 327 implementing the transitional risk-based assessment system include risk-based assessment schedules reflecting increased rates for certain BIF and SAIF members, respectively. The Board's approach entailed selecting and implementing a transitional risk-based assessment schedule for each fund (as described below), instead of a target average assessment rate, as had been proposed. The actual assessment rate applicable to each institution will depend on the risk assessment classification assigned to that institution by the FDIC and reflected in the assessment rate schedules adopted by the Board for BIF and SAIF members.

The Board's goal in considering the four assessment-related proposals was to adopt a final rule that is fair and easily understood, that is not unduly burdensome to weak institutions, that maintains adequate revenue to recapitalize the funds, and that increases the financial incentive for insured institutions to maintain safety and soundness. The consolidated approach, therefore, incorporates all of the features and achieves all of the goals of the previous four proposals. It also draws upon the public comments received on the four individual proposals.

Primarily, the final rule seeks to strengthen both the BIF and the SAIF by recapitalizing each fund to the designated reserve ratio within 15 years. While the final rule will raise assessment rates for some institutions, the transitional risk-based assessment system is intended to make the deposit insurance system fairer to well-run institutions and encourage weaker institutions to improve their condition. Thus, the rule promotes safety and soundness in the banking and thrift industries.

Under a risk-based assessment system, changing conditions in the banking and thrift industries and in individual institutions will result in shifts among the rate cells of the assessment schedules. Over time, the result will be a variation in assessment revenue. For example, in the first two quarters of calendar year 1992, insured institutions have generally improved their capital ratios; under a risk-based assessment system, these improvements would have caused a migration away from higher-rate cells in the rate schedule to lower rate cells. As a result, revenues anticipated under the originally proposed schedule would have been less than the revenue anticipated using year-end 1991 data. To the extent insured institutions have increased capital and retained earnings, the risk of loss to the deposit insurance funds is reduced and it is consistent with the concept of risk-based premiums that somewhat less assessment revenue be collected. Because the assessment rate applicable to any institution will be determined by the risk-based assessment amendments and because of shifts in rate cells over time, the Board decided that it was unnecessary and confusing to issue separate regulations providing industry average assessment rates.

While assessment revenue will vary over time, it should remain consistent with the BIF recapitalization schedule and the projected recapitalization of SAIF within a reasonable period of time. As noted in the preceding example, when banking and thrift industry conditions improve, banks and thrifts will shift toward the lower-paying end of the assessment schedule, thereby generating less assessment revenue to the BIF and SAIF. Concurrently, improved conditions lower the exposure of the funds, thereby requiring a lower outflow of fund resources. The reverse is true when conditions deteriorate: Institutions pay higher assessment rates as they move into higher-paying cells, thereby supporting the greater needs of the fund. The Board will monitor and reevaluate the assessment rates and assessment revenues at six-month intervals while measuring the progress of recapitalization of both insurance funds. The Board intends to review assessment rates for BIF and SAIF members in November of this year.

As discussed below, under the transitional risk-based assessment system, the FDIC will place each insured institution in one of nine assessment risk categories based on certain capital and supervisory measures. While the proposed rule provided for a spread of six basis points between the highest and lowest rates, most of the comment letters argued for a wider premium spread. Upon consideration of this overwhelming preference, the final rule includes a spread between the highest and the lowest premiums of eight basis points. While this spread does not adequately reflect the difference in risk to the FDIC between the weakest and strongest institutions, the Board is concerned that a larger spread could create sufficient disruption and hardship

to weak institutions as to be inconsistent with the spirit of a transition rule. A wider spread may be recommended with the permanent risk-based assessment system.

Also, as discussed below, the Board is adopting a revised BIF recapitalization schedule which has been amended to incorporate mid-year BIF results and to adjust the timing of failed bank losses over the 15-year period.

Based on the applicable statutory requirements and the analyses discussed below, and in consideration of the comments received on the respective proposals, the Board is issuing this final rule.

The following is a discussion of the four separate proposals, including a discussion of the specific background of each proposal, the comments received on the proposal, and the Board's action with respect to each.

Subpart A. The BIF Recapitalization Schedule

I. The Proposed Rule

Section 7(b)(1)(C)(ii) of the FDI Act (12 U.S.C. 1817(b)(1)(C)(ii)), as amended by section 104 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102-242, 105 Stat. 2239) (FDIC Improvement act) provides:

> If the reserve ratio of the Bank Insurance Fund is less than the designated reserve ratio, the FDIC Board of Directors shall set the semiannual assessment rates—that are sufficient to increase the reserve ratio to the designated reserve ratio not later than one year after such rates are set; or in accordance with a BIF recapitalization schedule promulgated by the FDIC.

Under section 7(b)(1)(B) of the FDI Act, the BIF designated reserve ratio is 1.25 percent. BIF's actual reserve ratio (based on a mid-year 1992 fund balance of approximately negative $5.5 billion) is approximately negative 0.28 percent. Because of the extent of the difference between BIF's current reserve ratio and the designated reserve ratio, the Board determined that it would be infeasible to set an assessment rate sufficient to increase the reserve ratio from its current level to 1.25 percent within one year. Thus, pursuant to clause (II) of section 7(b)(1)(C)(ii), the Board proposed a BIF recapitalization schedule "in accordance with" which to determine semiannual assessment rates for BIF member institutions. As noted above, the Board's proposed rule was published in the **Federal Register** on June 29, 1992.

Section 7(b)(1)(C)(iii) of the FDI Act, as also amended by section 104 of the FDIC Improvement Act, requires that the BIF recapitalization schedule promulgated by the Board specify, at semiannual intervals, target reserve ratios for the Bank Insurance Fund, culminating in a reserve ratio that is equal to the designated reserve ratio no later than 15 years after the date on which the schedule becomes effective.

The recapitalization schedule proposed by the Board was designed to achieve the designated reserve ratio by the end of a 15-year period that began at year-end 1991.

Public comment on the proposed recapitalization schedule was invited for a 45-day period ending August 13, 1992. Also ending the same day was the 84-day comment period for the Board's proposal to increase the BIF assessment rate to 28 basis points per annum effective January 1, 1993. (The original 60-day comment period for the proposed rate increase was extended to provide for an overlap with the comment period for the proposed recapitalization schedule. 57 FR 28810, June 29, 1992. In proposing the rate increase, the Board relied on the same assumptions and underlying date on which the proposed recapitalization schedule was based. Because the assessment rates in effect in the early part of the period covered by the recapitalization schedule would necessarily play an important role in the revenue projections to be used in developing the schedule, it was determined that the Board should address the rate issue before completing the proposed recapitalization schedule.

As described in some detail in the **Federal Register** notice addressing the proposed recapitalization schedule, the proposal was based on a set of financial assumptions regarding the three primary factors affecting the long-term condition of the BIF; The number and size of future bank failures, the costs of resolving these failures, and the amount of assessment income received from BIF member institutions. Because future economic conditions impacting these factors cannot be predicted with certainty, for each factor the FDIC assumed values ranging from reasonably optimistic to reasonably pessimistic. Various scenarios representing a combination of values across the range were examined for each of the factors, and each scenario was assigned a probability based on the combination of the respective probabilities estimated for each of the values individually. Applying the proposed assessment rate of 28 basis points as of January 1, 1993, composite projections were derived from the various scenarios and probabilities. The proposed recapitalization schedule, which showed a positive reserve ratio beginning in the year 2000, was developed from these projections.

The Board has now adopted a recapitalization schedule which has been amended to incorporate mid-year BIF results and to adjust the timing of failed bank assets over the 15-year period. The Board has also adopted increased assessment rates for certain BIF members as indicated in the assessment rate schedule provided as part of the transitional risk-based deposit assessment system, under which institutions posing a greater risk of loss to the BIF or to the SAIF will pay deposit premiums at a higher rate than will lower-risk institutions. However, because this new system is designed to produce assessment revenue in line with the fund's needs, the recapitalization schedule is consistent with this new assessment system. The revised assumptions underlying the recapitalization schedule are listed below in Table 1.

TABLE 1.—BIF RECAPITALIZATION SCHEDULE ASSUMPTIONS

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Assumptions:															
Deposit and Asset Growth	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%
FDIC Opportunity Rate	6.0%	6.0%	6.0%	6.0%	6.0%	6.0%	6.0%	6.0%	6.0%	6.0%	6.0%	6.0%	6.0%	6.0%	6.0%
Failed Bank Assets ($B)	37	76	68	52	35	31	26	25	25	20	20	20	21	21	22
Loss Ratio	17%	17%	17%	17%	17%	17%	17%	17%	17%	17%	17%	17%	17%	17%	17%
Bank Industry Assets ($B)	3,526	3,625	3,726	3,831	3,938	4,048	4,162	4,278	4,398	4,521	4,648	4,778	4,912	5,049	5,190
Insured deposits ($B)	2,048	2,105	2,164	2,225	2,287	2,351	2,417	2,485	2,554	2,626	2,700	2,775	2,853	2,933	3,015
Assessment Base ($B)	2,560	2,632	2,706	2,781	2,859	2,939	3,022	3,106	3,193	3,283	3,374	3,469	3,566	3,666	3,769
Assessment Rate (bp)	23.0	25.4	25.4	25.9	25.9	25.9	25.9	25.9	25.9	25.9	25.9	25.9	25.9	25.9	25.9

TABLE 1.—BIF RECAPITALIZATION SCHEDULE ASSUMPTIONS—Continued

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Assessments ($B)	5.8	6.6	6.7	7.1	7.3	7.5	7.7	7.9	8.1	8.3	8.6	8.8	9.0	9.3	9.6
Net Income ($B)	(0.6)	(2.8)	(1.1)	(0.3)	0.6	1.9	2.7	3.1	4.3	4.9	5.4	5.9	6.4	7.0	7.6
Fund ($B)	(7.6)	(10.4)	(11.5)	(11.8)	(11.2)	(9.4)	(6.7)	(3.5)	0.8	5.7	11.1	17.0	23.4	30.4	38.0
Ratio	−0.37%	−0.50%	−0.53%	−0.53%	−0.49%	−0.40%	−0.28%	−0.14%	0.03%	0.22%	0.41%	0.61%	0.82%	1.04%	1.25%

II. Discussion of Comments Received

The FDIC received 15 letters commenting on the proposed BIF recapitalization schedule, 10 of which were submitted by bankers and 5 by trade groups. Two of the bankers and one trade group commenting on the proposed recapitalization schedule expressly favored the proposal, citing the need to ensure the financial stability of the BIF. Eight commenters implicitly rejected the proposal. Five commenters questioned the FDIC's assumptions underlying the schedule. One banker commented that the assumptions were not the same as those of a major trade association, which, according to the trade association, demonstrated that the designated reserve ratio could be achieved within 15 years at the present 23 basis point assessment rate. Several bankers and trade groups suggested that the FDIC's projections for the failure of BIF member institutions were too high, especially given the recent performance of the banking industry, and furthermore that the large reserve set aside for the BIF in 1991 was more than sufficient to handle a more realistic set of failure projections.

The Board agrees that recent economic conditions have contributed to improvements in banking industry profitability, especially net interest margins. However, it is not clear how long these conditions will be sustained.

Moreover, weakness in real estate markets could lead to additional failures beyond those consistent with the most conservative public forecasts.

As indicated in its proposal, the Board is well aware of the uncertainty regarding future economic conditions and their impact on the long-term condition of the BIF. To deal with this uncertainty, FDIC staff utilized a range of values for each of the major factors affecting the fund, including the size and number of future failures. For each factor, values ranged from optimistic to pessimistic. Given these assumptions, the FDIC staff projected the BIF over 15 years and determined that an increase in assessment revenue was needed to cover expenses and to recapitalize the fund within 15 years.

In its proposal, the Board clearly recognized that "[f]uture insurance losses or other conditions affecting the BIF may turn out differently than assumed for purposes of developing the proposed schedule." 57 FR 28813, June 29, 1992. For this reason, the Board further indicated that once a recapitalization schedule was adopted, it "plans to monitor relevant developments and, if circumstances warrant, to consider revision of the schedule, or assessment rate adjustments, based on such developments." *Id.* The Board reiterates this intent.

Two bankers and 4 trade groups also commented that the assessment rate increase would have a negative impact on the banking industry. It was suggested that the higher premiums would lower earnings, thereby decreasing a bank's ability to fund loans. Combined with the added expenses associated with other new regulations, the bankers believed that it would be harder to compete with non-insured institutions, and that banks in a weaker capital position would be more likely to fail.

As discussed below in connection with the BIF assessment rate increase, the FDIC staff performed an analysis of the impact of such an increase on bank capital and earnings. While the Board is concerned about the need to recapitalize the BIF without unduly burdening the industry, it believes that the impact analysis demonstrates that the schedule adopted will not result in an undue burden. Furthermore, the Board believes that the banking industry will continue to compete successfully against non-insured financial institutions by virtue of the fact that deposit insurance is valued by consumers.

Several alternatives to the proposed recapitalization schedule were suggested by commenters. One banker recommended that the BIF be recapitalized immediately through a one-time special assessment, rather than over the proposed 15-year period. As indicated in the proposal, the Board believes that, while it does have the authority under section 7(b) of the FDI Act to set the assessment rate high enough to recapitalize the BIF within one year, the difference between the current negative reserve ratio and the required 1.25 percent is so substantial that immediate recapitalization is not a feasible alternative. 57 FR 28811, June 29, 1992. The Board is concerned that such action would potentially have a significantly adverse effect on the banking industry.

Finally, one trade group recommended that the recapitalization schedule begin in 1993 with a 23 basis point assessment rate due to questions surrounding projection assumptions and the potential negative side effects of a rate increase. However, the Board has determined that an increase in assessment revenue is necessary in order to bring current revenues in line with current expenses and to begin the statutorily mandated recapitalization of BIF.

Subpart B. The BIF Member Assessment Rate Increase

I. Increase in the BIF Member Assessment Rate

As noted above, on May 21, 1992, the Board published in the **Federal Register** a proposed amendment to part 327 of the FDIC's regulations to increase the deposit assessment rate to be paid by BIF members from 0.23 percent to 0.28 percent starting with the first semiannual period of 1993 and thereafter. The comment period on the proposed rule ended on August 13, 1992.

As noted above, the Board now is increasing the BIF-member assessment rate from a uniform rate of 0.23 percent to the rates indicated in the transitional risk-based assessment schedule provided and discussed below. As explained below, the actual assessment rate to be paid by each BIF member will be based on the institution's assessment risk classification. The new rates will apply to assessments that become due in the first semiannual period of 1993 and thereafter.

As required by section 7(b) of the FDI Act (12 U.S.C. 1817(b)(1)(C)(ii)(II)) the BIF member assessment rate increase imposed by the final rule is being set in accordance with the BIF recapitalization schedule discussed above.

II. Statutory Provisions and Economic Analyses

A. Designated Reserve Ratio

Section 7(b) of the FDI Act (12 U.S.C. 1817(b)), as implemented by part 327, requires that all FDIC-insured depository institutions pay to the FDIC semiannual assessments based on the types and dollar amounts of deposits held at such institutions.

Section 7(b) of the FDA Act states, in relevant part, that if the reserve ratio of the Bank Insurance Fund is less than the designated reserve ratio, the FDIC Board of Directors shall set the semiannual assessment rates that are sufficient to increase the reserve ratio to the designated reserve ratio not later than one year after such rates are set; or in accordance with a BIF recapitalization schedule promulgated by the FDIC. *Id.* at 1817(b)(1)(C).

Section 7(b)(1)(B) of the FDI Act sets the BIF designated reserve ratio at 1.25 percent (Designated Reserve Ratio) *Id.* at 1817(b)(1)(B).

The BIF's reserve ratio (Actual Reserve Ratio) at mid-year 1992 was substantially below the 1.25 percent Designated Reserve Ratio. Because of the negative impact on the banking industry, it would be infeasible and undesirable to increase the assessment rate to achieve the Designated Reserve Ratio within one year. Thus, as required by section 7(b), the Board is hereby increasing the BIF assessment rate in accordance with the BIF recapitalization schedule discussed above.

B. Need for the Increase

As noted above, the Designated Reserve Ratio is currently set by statute at 1.25 percent, to be achieved within a fifteen-year period. *Id.* at 1817(b)(1)(B). The Actual Reserve Ratio is substantially below that level. The Actual Reserve Ratio has not approached 1.25 percent since 1981, when it was 1.24 percent. The BIF's balance peaked in 1987 at $18.3 billion, but even at that time was only 1.10 percent of insured deposits. Since 1987, the Actual Reserve Ratio has continued to decline, falling to 0.21 percent at year-end 1990 (when the BIF balance was $4.4 billion). Both the BIF reserve ratio and the BIF balance were significantly below zero at mid-year 1992.

The long-term condition of the BIF depends directly on the amount of assessment income provided by BIF members, the number and size of future bank failures and the costs of resolving failures. The level of failed bank assets combined with the assumed resolution cost rate determines insurance losses over the prescribed fifteen-year period in which to achieve the Designated Reserve Ratio. Furthermore, growth assumptions affect the analysis in three ways: Through BIF revenue, which increases for a given assessment rate as the assessment base grows; through failed bank assets, which are assumed to grow with industry assets; and by increasing the fund balance necessary to achieve the Designated Reserve Ratio as insured deposits grow.

Given a set of assumptions about these factors, it is relatively straightforward to project the BIF's balance over a fifteen-year period. However, analysis based on a single set of assumptions ignores the considerable uncertainty surrounding these factors. To deal with this uncertainty, the FDIC staff examined a range of values for failed bank assets, resolution costs, and industry growth, ranging from optimistic to pessimistic values. Each value was assigned a probability based on historical relationships and the informed judgment of staff, rather than on explicit statistical techniques applied to selective historical data.

The staff projected the BIF reserve ratio over a fifteen-year period under numerous scenarios, each scenario representing a combination of the values for each of the factors with a probability based on the combination of probabilities for each of the factors. As a result, it was possible to identify the scenarios under which the BIF would reach the Designated Reserve Ratio of 1.25 percent of insured deposits within the prescribed fifteen years. Furthermore, by adding the probabilities assigned to each scenario, it was possible to calculate the subjective probability that, for a given assessment level, the fund would meet the Designated Reserve Ratio within fifteen years.

More detail regarding this analysis is provided in the **Federal Register** notice on the proposed BIF capitalization schedule published on June 29, 1992; however, the analysis suggested that an increased assessment rate was necessary for recapitalizing the fund.

Accordingly, consistent with the assumptions underlying the BIF recapitalization schedule, the Board is raising the BIF assessment rate for the first semiannual period of 1993 and thereafter from a uniform rate of 0.23 percent to the rates provided in the transitional risk-based assessment schedule. The increase in assessment revenue is needed as part of an overall effort to bring the Actual Reserve Ratio up to the statutorily required Designated Reserve Ratio of 1.25% within fifteen years. Because of the inherent uncertainties involved in determining the appropriate assessment rate, the Board anticipates that it will reconsider the adequacy and appropriateness of the BIF assessment rate as conditions warrant.

Many of the comment letters received questioned the FDIC's assumptions given the recent improvement in banking industry profitability. While earnings results so far this year represent significant gains over recent years, it is debatable whether these short-term trends should form the basis for longer-term projections such as those used in the schedule for recapitalizing the BIF. Much of the improvement that has occurred has stemmed from favorable interest rate conditions that may not persist. Despite some encouraging signs of easing asset-quality problems, the industry remains burdened by a large inventory of nonperforming assets, and some key borrowing sectors (particularly commercial real estate) remain economically distressed. Banks on the FDIC's "Problem List" continue to comprise a historically large share of the industry.

Commerical bank earnings have shown considerable improvement in the twelve months ended June 30. One of the main factors contributing to the improvement has been the favorable interest rate conditions that have prevailed during that period. The decline in interest rates has produced wider spreads between the rates banks earn on their assets and the rates they pay for their liabilities. Low interest rates have also increased the market values of fixed-rate assets and allowed banks to realize some of these gains through sales of investment securities. Together, the wider margins and increased contributions of securities gains have produced 75 percent of the $5.5-billion year-to-year improvement in industry net income.

It is likely that the favorable interest rate conditions have also provided a temporary boost to noninterest income and have limited increases in noninterest expense; therefore, most of the recent net income gain can be traced to interest rate conditions. However, the interest rate conditions that have made these improvements possible are unprecedented in recent years, and will not persist indefinitely. This suggests that much of the recent rise in profitability may prove to be temporary, absent more fundamental improvements in asset quality and lending growth. Furthermore, the wide spread between long- and short-term interest rates have prompted a shift in bank balance sheets that could lead to narrower-than-usual

margins in the event of a sharp rise in interest rates.

At commercial and BIF-insured savings banks, noncurrent loans and other real estate owned as a percent of total assets have declined for four consecutive quarters, but the current proportion (3.08 percent at June 30, 1992) is still significantly above the levels preceding December 1990. The proportion remains high in spite of the volume of troubled assets that have been removed from the industry by the resolutions of failed commercial and savings banks, which have averaged more than 150 per year since the beginning of 1984.

For example, the 66 banks that failed during the first six months of 1992 reported troubled assets of about $2 billion. On a regional basis, the proportion of troubled assets at banks in the West has worsened over the past two years, from 2.31 percent in June 1990 to 3.65 percent in June 1992. In the Northeast, where troubled assets have improved recently, the proportion (4.19 percent) still exceeds all other regions.

Reserve coverage was 73 cents for each dollar of noncurrent loans at June 30, 1992 for commercial and BIF-insured savings banks. However, the Northeast (at 62 cents) and the West (75 cents) are the only regions below 94 cents. These two regions also have the highest proportions of noncurrent loans among the six regions: 5.06 percent for the Northeast and 3.93 percent for the West, the only regions above 2.50 percent.

Troubled real estate asset ratios—noncurrent real estate loans and other real estate owned (OREO) as a percent of total real estate loans plus OREO—at commercial banks have exceeded 7 percent nationally since December 1990.

Recent improvement in the Southwest has been offset by deterioration in the West, and the Northeast (currently 11.76 percent) has remained above the 10 percent level since late 1990.

Total assets of institutions on the FDIC's "Problem List" remain at near-record levels. While problem bank assets have declined this year (to $567.5 billion at the end of June, down from $610 billion at the end of 1991), they remain well above the levels of recent years. As of June 30, 1992, fifteen percent of the assets held by BIF-insured institutions were in "problem" banks. Problem bank assets remain at high levels despite the resolution of more than 1,200 institutions with more than $200 billion in assets since 1984, when assets of "problem" banks comprised 8.5 percent of the industry's assets.

There is considerable uncertainty regarding the health of commercial banks in the Western United States. As of March 31, 1992 the West had the second highest percentage of assets held by banks rated either a CAMEL "4" or "5" (19 percent), after the Northeast (27 percent). The percentage of assets held by banks rated CAMEL "3" has shown the first twelve-month decline since the end of 1988. In the West, however, the percentage of assets held by "3"-rated banks has increased dramatically—from 8 percent as of June 1988 to 47 percent as of March 31, 1992. Over the same period, the percentage of assets held by banks in the West rated CAMEL "4" or "5" has grown from 6 percent to 19 percent. If the economy in the Western states does not improve, the number and assets of "problem" banks are likely to continue to increase, especially in California.

The preceding discussion suggests that it would be premature to conclude that there has been a significant and permanent reduction in risks to the insurance funds. While forecasts are uncertain, recapitalization of the funds requires first that current revenues cover current expenses, and second that additional funds be set aside for recapitalization. In order to accomplish these tasks, an increase in assessment revenue is necessary.

C. Impact on Bank Capital and Earnings

1. In general.

Increases in deposit insurance assessment rates add to insured banks' operating costs. These cost increases will have a measurable effect upon banks' profitability and capitalization. Increases in deposit insurance assessment expenses do not, however, necessarily lead to equally proportionate declines in bank profits. There are at least two factors which can reduce the adverse impact of increased assessments upon banks' profits and capital.

First, some portion of the assessment increase may be passed on to customers in the form of higher borrowing rates, increased service fees, and lower deposit rates. The extent of cost sharing will be dependent upon the level of competition faced by banks. Banks facing little competition should be able to pass a larger portion of the increase in assessment costs on to customers than would banks facing greater competition. Under a risk-related assessment system, banks paying higher risk-related rates may face competition from banks paying lower risk-related rates, as well as from non-insured competitors. Such competition may reduce the ability of banks paying the higher risk-related rates to pass on costs to customers. For the purposes of this analysis, it was assumed that banks would not pass on any of the assessment increase to customers.

Second, deposit insurance assessments are a tax-deductible operating expense for banks. Therefore, the increase in assessment expenses can be used to lower taxable income, thereby reducing the effective after-tax cost of BIF assessments.[1]

The impact of the indicated assessment increase upon banks' book capital is also dependent upon assumptions about dividend policies and new capital issues. If banks maintain dividend levels, despite the increase in operating costs, book capital will decline by the full amount of the after-tax cost of the assessment borne by banks (assuming no new capital issues). That is to say, if dividends are not reduced, then increased operating costs will be reflected in lower retained earnings. For these projections, it was assumed that banks' dividend rates remained unchanged from those reported in December 1991. However, if a bank's projected equity capital was 4 percent or less, the bank was assumed to retain all earnings. It was further assumed that the only source of new capital would be additions to retained earnings.

The FDIC staff used two approaches to assess the impact of the increased deposit insurance assessment rate upon BIF-insured banks. The first approach was to project bank earnings and capital through 1996. Such projections make it possible to consider the impact of increased assessment costs in light of individual banks' projected earnings, asset quality, and tax status. Short-term projections, however, will not capture the full impact such cost increases may have upon the banking industry. In order to address this shortcoming, a second analysis was done which looked at the potential long-term implications of reductions in bank profitability.

The long-term profitability analysis revealed a number of banks which had large estimated changes in return on equity due to the rate increase. This occurred because at any point there are a number of banks earning near zero profits (or very small losses). In these situations, moderate increases in the

[1] In the event a bank is incurring losses before assessment costs, the additional assessment expense may be used to offset prior-period or future income (loss carry back or loss carry forward), thereby reducing taxes. For simplicity, this analysis assumed no loss carry forward nor loss carry back. This assumption results in a more conservative estimate of the tax benefits from higher assessments. In addition, the average tax rate paid by a bank in 1991 was assumed to apply in future periods for the purposes of projecting bank profits.

assessment rate (for example, 0.05 percent) will result in large percentage changes in profitability.[2] It is reasonable to expect, however, that banks earning near zero returns on equity will, in time, either fail or move toward higher levels of profitability. For these reasons, one should focus on the impact on the majority of banks' profitability when analyzing Table 2 (below).

2. Projected Capital and Earnings: Short-term Impact

FDIC staff estimated the impact of increasing the average assessment rate from the existing uniform rate of 0.23 percent to the rates in the transitional risk-based assessment schedule, beginning with the first assessment period in 1993. The projections indicate that the impact upon industry capital will be small.

Tangible equity capitalization of BIF-insured banks as of December 31, 1991 was approximately $232 billion.[3] FDIC staff estimates that year-end 1996 industry tangible equity capitalization would be nearly $275.7 billion if the 0.23 percent rate remained in place, and would drop by about $1,536 million—to approximately $274.1 billion—when the uniform rate is raised to the rates in the transitional risk-based assessment schedule. Under the rates in the transitional risk-based assessment schedule the $2,901 million in increased assessment costs projected over 1993 through 1996 resulted in a $1,536 million decline in capital and a $637 million total reduction in dividends. The remaining portion of the assessment costs were offset by the tax benefit of deducting assessment expenses from taxable income.

Equally important to these overall reductions in industry capital is the distribution of these reductions across banks. Projections of individual banks' tangible capitalization through 1996 indicated a small increase in the number of poorly capitalized banks under the proposed assessment rates. During 1996, the rates in the transitional risk-based assessment schedule were projected to raise the number of poorly capitalized banks—those with less than 3 percent tangible capital—by 25 banks (with average tangible assets of $268 million).

3. Long-term Changes in Profitability

If higher assessments result in a long-term reduction in bank profitability, capital will flow out of the banking industry, by way of lower retained earnings and a reduction in new stock offerings. If the flight of capital is substantial, it would result in shrinkage of the industry and have implications for credit availability.

In order to assess the impact of higher assessments upon bank profitability, estimates were made of the changes in returns on the book value of equity capital which might result under the rates in the transitional risk-based assessment schedule. Specifically, banks' 1991 returns on book value equity capital were adjusted to reflect the increase in operating costs (after-taxes) which might result from increased assessment rates. These adjustments assumed that banks would bear the full after-tax cost of the assessment increase.

The analysis indicates that an increase in the BIF assessment rate to the rates in the transitional risk-based assessment schedule will reduce bank profitability slightly. Estimates presented in Table 2 (below) show that approximately 84 percent of BIF-insured banks, with 65.2 percent of industry assets, experienced a 0 to 5 percent reduction in their return on equity. In addition, 7.4 percent of BIF-insured banks with 15 percent of industry assets were estimated to incur a 5 to 10 percent reduction in return on equity. The median percentage change in return on equity was −1.23 percent.

While it is difficult to estimate the final impact upon industry capital, a moderate amount of industry shrinkage (relative to a situation without higher assessments) may result. Consolidation in the banking industry can occur, however, without increased bank failures. Indeed, the results of this analysis indicate that the impact of the assessment rate increase upon bank earnings and capital will not be so severe as to result in a substantial increase in bank failures.

TABLE 2.—PERCENTAGE CHANGES IN RETURN ON EQUITY, BASED UPON THE TRANSITIONAL RISK-BASED ASSESSMENT SCHEDULE

[BIF-Insured Banks, $ Millions]

Percentage change in ROE[1]	Number	Assets
Below −50	192	$204,618
−25 to −50	204	78,724
−15 to −25	277	296,816
−10 to −15	346	130,675
−5 to −10	910	545,056
0 to −5	10,322	2,371,525
Missing data	37	4,495
All	12,288	$3,624,312

[1] The percentage change in ROE was defined as the adjusted ROE minus the original ROE, divided by the original ROE; (ROE'−ROE) /ROE.

III. Comments

A. Overview

The FDIC received 176 letters regarding the proposed increase in the BIF-member assessment rate. Thirteen of the letters were from banking industry trade groups, 1 was from an individual, and 162 were from financial institutions.

Seventeen of the letters favored the assessment rate increase. Of this total, 13 letters were from bankers, 3 from trade groups and 1 from an individual. Most of those favoring the increase cited the need to replenish the BIF in order to restore depositor confidence in the insurance system. Five bankers and 1 trade group favored the increase if it were necessary to keep the fund healthy.

One-hundred eight of the letters received expressly opposed the premium increase. Five of these letters came from industry trade groups; the rest were from bankers. Approximately 25 percent of those opposing the increase opposed the rate increase in general, arguing that it was unfair. Most of those citing a reason to oppose the increase doubted that the facts supported the need for an increase; instead, they believed that the 1.25 percent Designated Reserve Ratio could be achieved within 15 years at the current rate of 0.23 percent. Several bankers commented that although they recognized the importance of maintaining the fund, they opposed raising the assessment rate further in light of the current recession and other recent increases in the assessment rate. Others believed that the increase would have a serious negative effect on the banking industry.

[2] To see this, consider the example of a bank with 5 percent equity capital and a 1 percent return on equity. In addition, assume that the bank had an average tax rate of 25 percent and had assessable deposits equal to 80 percent of bank assets. In this situation, a 5 basis point increase in the assessment rate would result in a 60 percent reduction in return on equity.

[3] This excludes 15 federal savings banks and 128 commercial and mutual savings banks with combined tangible capital of about $2.1 billion at year-end 1991. The 15 federal savings banks were excluded because of differences between bank and thrift financial reports. The 128 commercial banks were excluded from the analysis due to incomplete financial information. Tangible capital was defined as total equity capital minus all intangible assets.

B. Major Issues Raised

1. Need for the Increase

Eighty bankers and 9 trade groups questioned the assumptions used by the FDIC in analyzing the need for an assessment rate increase. Comments ranged from questioning the use of specific assumptions to suggesting that FDIC assumptions were "politically inspired." Two bankers suggested that the assumptions were overall too conservative. As shown above, the FDIC staff utilized a range of assumptions for each factor which influences the long-term condition of the BIF specifically because the future cannot be predicted with accuracy. The assumptions were based on historical statistics, publicly available forecasts, and informed judgments. The FDIC acknowledges, as others must, that assumptions regarding the future are fraught with uncertainty. What is certain, however, is that for every year since 1983 the FDIC failed to take in assessment revenue sufficient to cover insurance losses. Recapitalization will not begin until this is reversed.

Most of the bankers who questioned the FDCI's assumptions argued that recapitalizing the BIF within 15 years should be achievable at a 0.23 percent assessment rate given the recent improvement in banking industry profitability. While the Board is encouraged by the recent improvements in the banking industry much of the improvement has been the direct result of the current interest rate environment, and that changing economic factors could reverse this trend. As discussed above, the industry remains burdened by a large inventory of nonperforming assets, and some key borrowing sectors remain economically distressed. Furthermore, the Board feels that it would be inappropriate for the resurgence in bank earnings to be accompanied by the continued deterioration of the insurance fund which would result if assessment revenue continues to fall short of insurance losses.

With respect to future insurance losses, 38 bankers and 4 trade groups specifically questioned the failure projections used in the FDIC's analysis. One trade group specifically questioned the long-term failed bank assumptions used, believing that the FDIC might have considered thrift loss data for its range of values. As noted above, long-term failed bank asset assumptions are based on the experience post-deregulation, and are not based on lower experiences of the earlier period. The Board does not believe that it would be prudent to be overly optimistic about continued improvements in the banking industry. As a result, analytical assumptions for the rate increase incorporated both optimistic and pessimistic values. As noted above in Table 1, however, the timing of failed bank assets over the next six years has been adjusted to reflect recent favorable market conditions which have delayed the failure of certain institutions.

A related point involved the Board's decision to reserve over $15 billion for estimated losses to the BIF in 1991. Consequently, while the BIF ended 1991 in a deficit position, the fund was not in a negative cash position. Given this level of reserves, 5 bankers believed that a rate of 0.23 percent would be sufficient to recapitalize the BIF within 15 years. The FDIC's analysis included the 1991 reserves in projecting the BIF balance over 15 years. Similarly, several letters noted that the FDIC Improvement Act increased the FDIC's borrowing authority from the Treasury. This cash flow consideration was factored into the analysis as well.

Three trade groups and 1 banker questioned that 17 percent weighted average loss ratio used in the FDIC's projections. This value approximates the fund's loss experience since the mid-1980's. A lower value, 14 percent, was included to reflect continued success in lowering resolution costs, but a higher value, 20 percent, also was included to incorporate potential negative factors. While certain provisions of the FDIC Improvement Act may result in lower future losses to the fund, the Board believes it would not be prudent to weigh these positive expectations too heavily before results are available.

A related issue was the question of whether the assessment rate should be increased now, given that the recapitalization period is 15 years. As discussed above, the results of the analysis indicated that an increase in the BIF assessment rate is necessary now to attain the Designated Reserve Ratio within the prescribed period. Two bankers believed that the 1.25 percent ratio was arbitrary and meaningless, as was the 15-year period. However, the Designated Reserve Ratio and the term of the recapitalization period are both prescribed by statute and cannot be changed without additional legislation.

As noted above in the analysis of the need for the assessment rate increase, there is considerable uncertainty surrounding each of the assumptions used in the FDIC's analysis. Future conditions affecting the BIF may turn out differently than assumed. For this reason, the Board plans to monitor relevant developments and to consider revising the BIF member assessment rate as conditions warrant.

2. Negative Effects of the Increase on the Industry

Of the 125 letters citing the negative effects of the increase on the industry, most noted that a rate increase will decrease individual bank and overall banking industry profitability. Declining profitability could hinder internal capital generation, and limit the ability of institutions to raise capital in the market. Specifically, 11 bankers and 1 trade group extended this thought to add that this potential impact would most affect those institutions least able to handle the added expense: those banks already in weak financial condition.

As discussed in the proposed rule, the FDIC analyzed the impact of a rate increase, and found that the number of poorly capitalized banks—those with tangible capital ratios below 3 percent—increased by 25 by year-end 1996. Furthermore, most banks experienced less than a 5 percent decline in return on equity as a result of the rates in the transitional risk-based assessment schedule. While the Board is concerned about the need to recapitalize the BIF without unduly burdening the industry, it believes that this impact analysis demonstrates that the banking industry can tolerate an increase of this magnitude. If current economic and profitability trends continue, the impact of this increase on the industry could be lower than projected.

Twenty-three bankers and 4 trade groups noted that premium increases are passed on to consumers in the form of lower deposit rates or higher borrowing costs. Such a cost transfer, to the extent allowed by competitive factors, would lower the impact on individual bank profitability. Competition may not allow the rates to be passed along to consumers, however. Non-competitive rates, it is feared, would cause depositors to flee commercial banks. Therefore, many bankers and 5 trade groups feared that an increase in the deposit premium rate would further decrease the ability of commercial banks to compete against non-insured financial institutions.

Financial institutions compete on a number of factors, including rate and services offered. While it seems that the recent interest rate environment may have caused some depositors to withdraw funds from commercial banks in search of higher-yielding investments, this may not be a long-term disintermediation. Each depositor will decide where to place funds based on individual preferences for product

features. Insured depository institutions pay an insurance premium for the privilege of offering depositors a federal guarantee behind their deposits. Federal deposit insurance is a feature that is valued by depositors when choosing to place funds with an insured depository institution.

Several bankers and 1 trade group extended the disintermediation argument by noting that an outflow of deposits could limit a bank's ability to fund loans. Similarly, a number of bankers suggested that lower profitability could hinder loan-making. Such a result, it was argued by 62 bankers and 8 trade groups, would be counterproductive to stimulating the economy. While these are all potential effects of the rate increase, the Board believes that the rate increase is not likely to have a significant effect on bank lending activities.

A related issue raised by a banker concerning the ability to compete was the fact that larger banks have a greater variety of funding sources than smaller banks. As a result of this difference in liability structure, smaller banks pay a higher effective assessment rate than larger banks. It was argued that this was an unfair competitive advantage for larger banks. However, other funding sources are not necessarily less expensive for a bank than core deposits, regardless of insurance premiums. [A related issue, discussed below with other proposed alternatives, is whether to broaden the assessment base, and thereby eliminate this issue.]

Finally, 20 bankers and 2 trade groups commented that the assessment rate increase will be an additional regulatory burden on banks. The Board is sensitive to the fact that the FDIC Improvement Act has created additional regulations for bankers, and that each new regulation leads to increased compliance costs. However, the Board is required by statute to recapitalize the BIF within 15 years, and as part of this recapitalization it is deemed necessary now to increase the BIF-member assessment rate.

C. Other Issues

Another issue raised by numerous bankers concerned the fact that a uniform assessment rate resulted in a subsidization of weaker institutions by healthy, well-capitalized banks. In particular, bankers in certain states felt that they had been subsidizing weak institutions in other regions of the country. The Board is aware of this historical inequity. The FDIC Improvement Act requires the FDIC to establish and implement a permanent risk-related premium system no later than January 1, 1994. The Board believes that the implementation of the transitional risk-based assessment system will begin to diminish the subsidization problem.

Nine bankers and 2 trade groups believed it was unfair for commercial banks to subsidize the failures of savings banks. One trade group argued that the premium increase was not necessary, that savings bank losses represent "a disproportionate drain on the BIF," and these losses "should not be used as a justification for continued increases in BIF premiums." In recent years, losses from bank failures have been concentrated geographically, and the FDIC has covered the losses of agriculture banks in the Farm Belt and energy banks in the Southwest. The recent real estate related problems of the Northeast have further strained the resources of BIF. The BIF peaked in 1987 and its balance has declined since then to a deficit at year-end 1991 as a result of these combined losses. The purpose of insurance is to pool risk, and there will be times when losses are concentrated in one banking sector, as illustrated above. The need for the BIF rate increase is related to the statutory requirement that the fund be recapitalized within 15 years, and is not the result of a loss in only one sector of the banking industry.

Separately, 3 bankers argued that commercial banks should not pay for the past mistakes of savings associations. In addition, 2 trade groups believed it was important to keep BIF-member assessment rates equal to SAIF-member assessment rates in order to preserve a "healthy balance" among financial institutions with different federal insurers. Thrifts are insured by the Savings Association Insurance Fund (SAIF), which derives its assessment revenue from thrifts and not commercial banks. Commercial banks are not paying for savings association losses via deposit premiums into the BIF. The savings-and-loan problem had no bearing on the Board's decision to increase BIF-member rates. Also, it is essential to note that section 7(b)(1)(A) of the FDI Act (*Id.* at 1817(b)(1)(A)) is entitled "Rate For Each Fund To Be Set Independently" and states that "[t]he [FDIC] shall fix the assessment rate of Bank Insurance Fund members independently from the assessment rate for Savings Association Insurance Fund members." Thus, the Board is statutorily required to set the SAIF and BIF assessment rates independently of each other and may not consider parity factors in establishing the respective rates.

Several bankers commented that one reason the BIF was in a deficit position was because of the "too-big-to-fail" policy. As noted above, the banking industry has sustained significant losses over the past decade because of economic and banking difficulties in different regions of the United States. The magnitude of those losses has depleted the BIF. Section 141 of the FDIC Improvement Act provides that the FDIC may not take any action, directly or indirectly, after January 1, 1995, with respect to any insured institution that would have the effect of increasing losses to any insurance fund by protecting depositors for more than the insured portion of deposits or creditors other than depositors. This provision was intended to prevent continuation of the so-called "too-big-to-fail" treatment of depository institutions.

D. Alternatives Proposed

Eleven bankers and 2 trade groups suggested that the assessment rate be broadened, particularly to include foreign deposits. Smaller banks and one regional bank commented that larger money center banks are in effect subsidized because they pay a lower effective assessment rate due to their different liability structure. Conversely, a large bank argued that it was unduly penalized by having to pay a premium on certain uninsured deposits. The deposit insurance assessment base is currently prescribed by section 7(b) of the FDI Act (12 U.S.C. 1817(b) (4), (5), and (6)). The Board believes that the nature and scope of the assessment base should be reviewed, but currently does not have the authority to change the statutorily required components of that base. As provided for in section 302(a) of the FDIC Improvement Act, however, upon the establishment of a permanent risk-based assessment system (which must be in place no later than January 1, 1994), section 7(b) of the FDI Act will be amended to exclude a statutorily prescribed assessment base. Thus, at that time the Board will be authorized to establish an assessment base different from that currently found in section 7(b) of the FDI Act.

Also, section 312 of the FDIC Improvement Act provides, in general, that the FDIC (among other federal entities) may not make any payment or provide any assistance in connection with any insured depository institution which would have the effect of satisfying any claim against the institution for obligations of foreign deposits.

Thirty-three bankers and 3 trade groups recommended that the BIF

assessment increase be delayed or raised to either 0.26 percent or 0.27 percent, rather than 0.28 percent. The delay was suggested in order to await the results of the risk-related premium system and/or an economic recovery. Section 7(b) of the FDI Act requires that the Board recapitalized the BIF within 15 years. In order to meet that statutory obligation, the Board believes that an increase in the BIF assessment rate cannot be delayed. The increased rate was chosen for reasons detailed above, and as mentioned above, the Board will continue to monitor developments and propose changes to the assessment rate (including decreases) as appropriate.

Several bankers offered suggestions on improving the current insurance system. Two bankers were concerned about the level of insurance coverage. One was concerned that the level not be lowered, while the other specifically recommended that the ceiling on coverage be lifted. Several bankers debated the mandatory nature of deposit insurance. While one banker recommended that depositors should be able to purchase insurance to the extent desired by the individual, another banker thought that deposit insurance should be eliminated. Finally, one banker suggested that deposit insurance be privatized in order to eliminate the regulatory burden. Any changes to the deposit insurance system would require amendments to the insurance-related provisions of the FDI Act. However, the FDIC Improvement Act mandates that the FDIC undertake several studies, including an analysis of private reinsurance, to determine, if the present deposit insurance system can be modified and improved.

One banker suggested that the line of credit with the Treasury established by the FDIC Improvement Act be restricted solely to use by the BIF, thereby eliminating the line of credit for the SAIF. Section 14(a) of the FDI Act (12 U.S.C. 1824(a)), as amended by the FDIC Improvement Act, provides the FDIC with a $30 billion line of credit with the United States Treasury. Section 14(a) specifies that this credit is available for "insurance purposes" and the FDIC may employ any such funds for purposes of the BIF or the SAIF. Any amendments to section 14(a) must be made by the Congress.

One final recommendation involved moving deposit reserves held by the Federal Reserve into the BIF. Such resources are not statutorily authorized as a funding resource for the BIF. Legislation would be required to use Federal Reserve deposit reserves for BIF purposes.

Subpart C. The SAIF Member Assessment Rate Increase

I. Increase in the SAIF Member Assessment Rate

On May 21, 1992, the Board published in the **Federal Register** a proposed amendment to part 327 to increase the deposit assessment rate to be paid by SAIF members from 0.23 percent to 0.28 percent starting with the first semiannual period of 1993 and thereafter. In the proposed rule the Board considered the factors required to be considered by section 7(b) of the FDI Act in connection with such an increase in the SAIF assessment rate; those are, SAIF's expected operating expenses, case resolution expenditures and income, the effect of the assessment rate on SAIF members' earnings and capital, and such other factors as the Board deems appropriate. 12 U.S.C. 1817(b)(1)(D)(ii). The Board also noted the requirement that the reserve ratio for the SAIF be increased to the "designated reserve ratio" of 1.25 percent of estimated insured deposits "within a reasonable period of time." Id. at 1817(b)(1)(D)(i). The comment period on the proposed rule ended on July 20, 1992.

As noted above, the Board is increasing the SAIF-member assessment rate to the rates provided in the transitional risk-based assessment schedule provided and discussed below. As explained below, the assessment rate to be paid by each SAIF member will be based on the institution's assessment risk classification. The new rates will apply to assessments that become due in the first semiannual period of 1993 and thereafter.

II. Statutory Provisions and Economic Analyses

As noted above, under section 7(b) of the FDI Act the Board is required to consider the following factors in setting the SAIF assessment rate: The SAIF's expected operating expenses, case resolution expenditures, and income; the effect of the assessment rate on SAIF members' earnings and capital; and such other factors as the Board deems appropriate. 12 U.S.C. 1817(b)(1)(D)(ii). The following is a discussion of those factors.

A. Designated Reserve Ratio

Section 7(b) of the FDI Act (12 U.S.C. 1817(b)), as implemented by part 327, requires that all FDIC-insured depository institutions pay to the FDIC semiannual assessments based on the types and dollar amounts of deposits held at such institutions.

Section 7(b) also states that the assessment rate for Savings Association Insurance Fund members shall be the greater of 0.15 percent or such rate as the FDIC Board of Directors, in its sole discretion, determines to be appropriate—to maintain the reserve ratio at the designated reserve ratio; or if the reserve ratio is less than the designated reserve ratio, to increase the reserve ratio to the designated reserve ratio within a reasonable period of time. *Id.* at 1817(b)(1)(D)(i).

In addition, section 7(b)(1)(D)(iv) of the FDI Act provides that from January 1, 1991, through December 31, 1993, the assessment rate shall be less than 0.23 percent. *Id.* at 1817(b)(1)(D)(iv).

The SAIF's designated reserve ratio (Designated Reserve Ratio) is 1.25 percent of estimated insured desposits. *Id.* at 1817(b)(1)(B). SAIF's current reserve ratio (Actual Reserve Ratio) is approximately zero. In accordance with the following discussion, the Board is increasing the SAIF member assessment rate from a uniform rate of 0.23 percent to the rates provided in the transitional risk-based assessment schedule discussed and provided below.

B. Need for the Increase

An noted above, the Designated Reserve Ratio is currently set by statute at 1.25 percent of estimated insured deposits. The Actual Reserve Ratio is significantly below that level. As noted above, section 7(b) requires that the SAIF reserve ratio be increased to equal the Designated Reserve Ratio within a reasonable period of time.

Under section 21 of the Federal Home Loan Bank (FHLB) Act, the Financing Corporation (FICO) has a claim of SAIF assessment income to fund the interest payments on bonds issued by FICO. 12 U.S.C. 1441(f).[4] At present, satisfying this claim requires approximately 40 percent of the FDIC's SAIF assessment income.

Section 11A(b) of the FDI Act (*Id.* at 1821a(b)) requires that, "to the extent funds are needed", the sources of funds for the FSLIC Resolution Fund (FRF)

[4] FICO was established by the Competitive Equality Banking Act of 1987 (Pub. L. 100-86, 101 Stat. 552 (1987)) (CEBA) for the purpose of providing funds to the FSLIC Resolution Fund. Assessments on SAIF members is one source of funding for certain of FICO's financial obligations. See section 21 of the FHLB Act. (12 U.S.C. 1441). Section 7(b)(1)(E) of the FDI Act (12 U.S.C. 1817(b)(1)(E)) states that notwithstanding any other provision of this paragraph, amounts assessed by the Financing Corporation and the Funding Corporation under sections 21 and 21B of the Federal Home Loan Bank Act against SAIF members, shall be subtracted from the amounts authorized to be assessed by the Corporation under this paragraph.

shall, during the period beginning on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101–73, 103 Stat. 183 (FIRREA), on December 31, 1992,[5] include amounts assessed against SAIF members by the FDIC pursuant to section 7 of the FDI Act that are not required by FICO or the Resolution Funding Corporation.[6] *Id.* at 1821a(b).

Through 1992, FICO and FRF will continue to claim all SAIF assessment income, except assessments paid on SAIF deposits by banks that have engaged in a transaction under section 5(d)(3) of the FDI Act (*Id.* at 1815(d)(3)) (Section 5(d)(3) Banks). Consequently, the only assessment income to be added to SAIF prior to the beginning of 1993 will be the assessments paid by Section 5(d)(3) Banks on approximately $60 billion in SAIF deposits. At that time, SAIF will need approximately $9.5 billion to meet the Designated Reserve Ratio, given an estimated insured deposit base of $760 billion as of year-end 1991.

In order to examine the issue of recapitalization over a period of time, staff developed projections for the SAIF balance based solely on assessments from SAIF-member institutions. As discussed below in response to comments received on this issue, although certain Treasury payments are mandated by statute to supplement the SAIF, the Board believes that Congress imposed such conditional obligations on the Treasury (and thus, the taxpayer) in order to provide a back-up in the event that the SAIF-insured industry was incapable of fulfilling its obligation to recapitalize the SAIF. Furthermore, appropriations for these supplemental funds have yet to be made, and the likelihood and timing of such appropriations are uncertain, particularly given that funding for continued operations of the Resolution Trust Corporation (RTC) is currently uncertain. Consequently, staff projections are based solely on contributions from the thrift industry, and do not consider potential Treasury contributions.

The length of time necessary for SAIF to reach the Designated Reserve Ratio depends on the performance of the thrift industry, which is uncertain for several reasons. First, despite recent improvements in aggregate thrift industry profitability, there is evidence that the industry is becoming increasingly bipolar with respect to capital adequacy. Second, the recovery of real estate markets nationwide will affect the number and timing of future thrift failures. Third, there is uncertainty surrounding the long-term competitive ability of thrifts. Finally, it is not clear what the state of the thrift industry will be once SAIF resumes resolution responsibility on October 1, 1993.[7]

The long-term condition of the SAIF depends directly on the number, size and timing of future thrift failures, the costs of resolving failures, and the amount of assessment income provided by thrifts. Given a set of assumptions about these factors, it is relatively straightforward to project the SAIF over a multi-year period. However, analysis based on a single set of assumptions ignores the considerable uncertainty surrounding these factors.

To deal with this uncertainty, the FDIC staff examined a range of values for failed thrift assets, resolution costs, total failed thrift assets resolved by the RTC (as opposed to SAIF), and deposit growth. For each of these factors, the assumptions range from what was considered to be reasonably optimistic to reasonably pessimistic values. For each value, the staff assigned a probability based on historical relationships and the informed judgment of staff rather than on explicit statistical techniques applied to historical data. The assumptions and probabilities for each factor are summarized below in Table 3.

For analytical purposes, staff projected the SAIF over a fifteen-year period under numerous scenarios. As discussed below in response to comments received on this issue, the Board believes 15 years is an appropriate time frame in which to analyze and project a SAIF recapitalization to 1.25 percent. As discussed below, under section 7(b) of the FDI Act, the Board has the combined obligations to achieve a designated reserve ratio of 1.25 percent for the SAIF within a reasonable period and to consider the statutory factors (of section 7(b) of the FDI Act) in establishing the SAIF rate, particularly the impact of the assessment rate on SAIF members. The Board believes that any significantly shorter period for achieving the designated reserve ratio would require a higher assessment rate, thereby imposing an immediate additional cost on the industry. Conversely, any period significantly longer than 15 years would delay, unnecessarily, the recapitalization of the SAIF. Thus, in line with the discretion specifically afforded to the Board under section 7(b) of the FDI Act, the Board deems 15 years to be a reasonable period of time to achieve the designated reserve ratio for the SAIF.

Each scenario chosen by the staff for purposes of this analysis represented a combination of the values for each of the factors and was assigned a probability based on the combination of probabilities for each of the factors. Staff performed this exercise for different assessment rates ranging from 23 to 35 basis points over the next 15 years.

TABLE 3.—ASSUMPTIONS FOR SAIF PROJECTIONS

[I. Failed Thrift Assets, Billions of Dollars (1992–1995)]

1992	1993	1994	1995	Total	Probability (percent)
25	15	5	5	50	15
50	35	10	5	100	20
50	50	30	20	150	30
60	60	50	30	200	20
70	70	60	50	250	15

(Assumes that SAIF assumes resolution responsibility on October 1, 1993.)

[II. Failed Thrift Assets (1996–2006)]

Percent of Total Assets	Probability (percent)
0.2	30
0.4	45
0.6	18
0.9	5
1.2	2

[III. Ratio of Resolution Costs to Failed Thrift Assets]

Ratio (percent)	Probability (percent)
14	25
17	50

[5] This date was extended from December 31, 1991 to December 31, 1992 by section 202 of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991, Public Law 102–233, 105 Stat. 1761.

[6] Section 21B(e)(7) of the FHLB Act requires that SAIF assessment income be used, if necessary, to fund REFCORP's "principal fund." *Id.* at 1441b(e)(7). Because REFCORP's principal fund is fully funded, SAIF assessment income is no longer required for REFCORP purposes.

[7] As amended by section 103 of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (Pub. L. 102–233, 105 Stat. 1761), section 21A(b)(3) of the FHLB Act (*Id.* at 1441a(b)(3) requires, in relevant part, that the Resolution Trust Corporation resolve savings associations (including those insured by the FSLIC prior to the date of enactment of FIRREA) for which a conservator or receiver is appointed after December 31, 1988 and before October 1, 1993. In general, the SAIF will be responsible for savings association failures that occur on or after October 1, 1993.

[III. Ratio of Resolution Costs to Failed Thrift Assets]

Ratio (percent)	Probability (percent)
20	25

[IV. Deposit Growth]

Rate (percent)	Probability (percent)
6	40
2	40
−2	20

The analysis identified the scenarios under which the SAIF would reach the designated ratio of 1.25 percent of insured deposits by year-end 2006. By adding the probabilities assigned to each scenario, staff calculated the subjective probability that the fund would meet the designated ratio for a given assessment level within 15 years, and determined that additional revenue was required to recapitalize the fund.

Thus, in essence, there are two reasons for increasing the SAIF member assessment rate. First, under reasonable assumptions, a 0.23 percent assessment rate has an unlikely probability of achieving a 1.25 percent reserve ratio within 15 years. The Board believes that this is not consistent with the statutory requirement to achieve the Designated Reserve Ratio "within a reasonable period of time." Second, given the uncertainty regarding the industry, it is prudent to ensure that SAIF grows toward its Designated Reserve Ratio as soon as reasonably possible, subject to the statutory considerations discussed above. In order to do so, the Board is increasing the assessment rate from a uniform rate of 0.23 percent to the rates provided in the transitional risk-based assessment schedule starting with the first semiannual period of 1993. Based on the FDIC's analysis, with these assessment rates there will be a sufficient likelihood of reaching the Designated Reserve Ratio within 15 years. In light of the aforesaid uncertainties, however, the Board anticipates that it will reconsider the adequacy and appropriateness of the SAIF assessment rate as conditions warrant.

In particular, the Board has reexamined the issue of an assessment rate increase given recent trends in thrift industry profitability. While earnings results so far this year represent significant gains over recent years, it is debatable whether these short-term trends should form the basis for longer-term projections. Much of the improvement that has occurred has stemmed from favorable interest rate conditions that may not persist.

Consequently, it would be premature to conclude that there has been a significant and permanent reduction in risks to the SAIF. While forecasts are uncertain, recapitalization of the SAIF requires first that current revenues cover current expenses (and while the SAIF is not responsible for thrift resolutions until October 1, 1993, revenues to cover such projected expenses will be limited), and second that additional funds be set aside for recapitalization. In order to accomplish these tasks, an increase in the assessment rate is necessary.

C. Impact on Industry Capital and Earnings

1. In General

Increases in deposit insurance assessment rates necessarily add to insured thrifts' operating costs. These cost increases will have a measurable effect upon thrifts' profitability and capitalization; however, there are at least two factors which can reduce the adverse impact of increased assessments.

First, some portion of the assessment increase may be passed along to customers in the form of higher borrowing rates, increased service fees, and lower deposit rates. The extent of cost sharing will be dependent upon the level of competition faced by thrifts; those facing little competition should be able to pass a larger portion of the increase in assessment costs on to customers than would thrifts facing greater competition. Under a risk-based structure, thrifts face enhanced intra-industry competition.

Institutions paying higher premiums face additional competition from other institutions paying lower premiums, further reducing the thrifts' ability to pass on costs to customers. For the purposes of this analysis, however, it was assumed that thrifts would not pass on any of the assessment increase to customers.

Second, deposit insurance assessments are a tax-deductible operating expense for thrifts. Therefore, the increase in assessment expenses can be used to lower taxable income, thereby reducing the effective after-tax cost of SAIF assessments.[8]

The impact of the assessment increase upon thrifts' book capital will also depend upon assumptions about dividend policies and new capital issues. If thrifts maintain dividend levels despite the increase in operating costs, book capital will decline by the full amount of the after-tax cost of the assessment borne by thrifts (assuming no new capital issues). That is to say, if dividends are not reduced, increased operating costs will be reflected in lower retained earnings.

For the projections presented here, it is assumed that the thrifts' average dividend rates remained unchanged from those reported for calendar year 1991.[9] However, if a thrift's projected post-dividend tangible capital was 2 percent or less, the thrift was assumed to pay dividends up to an amount that would allow it to remain at 2 percent tangible capital. Dividends were not included in the projections unless post-dividend capitalization was greater than 2 percent.

To provide meaningful results from an impact analysis, the FDIC analyzed the effect of the insurance assessment increase on the institutions that will compose the thrift industry following the completion of the RTC's mandated resolution responsibilities. To accomplish this, the projections estimated the reduction in net income and capital for a "core group" of 1,897 thrifts holding $721 billion in assets. These institutions were identified using the OTS Regulatory Monitoring System (ROMS) and supervisory evaluations.[10]

The FDIC staff used two approaches to assess the impact of the increase in deposit insurance assessment rate on SAIF-insured thrifts. The first approach was to project thrift earnings and capital through 1995 under two deposit insurance assessment rates: The present rate of 0.23 percent and the other based on the rates in the transitional risk-based assessment schedule starting in January 1993.

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[8] In the event a thrift is incurring losses before assessment costs, the additional assessment expense may be used to offset prior-period or future income (loss carry back or loss carry forward), thereby reducing taxes. For simplicity, this analysis assumed no loss carry forward nor loss carry back. This assumption results in a more conservative estimate of the tax benefits from higher assessments. In addition, the average tax rate paid by a thrift in 1991 was assumed to apply in future periods for the purposes of projecting thrift profits.

[9] For institutions paying more than 100 percent of 1991 net income in dividends the average rate was set to 98 percent of net income for the purpose of the projections.

[10] This core group is an estimate of the institutions that will not be placed into conservatorship or otherwise be resolved before October 1, 1993, the statutory deadline for the RTC's acceptance of failed savings associations. The core group is composed of SAIF-insured thrifts that are not in one of the following categories: Conservatorship, insolvent, ROMS–IV, ROMS–III: Critically Undercapitalized or Potentially Critically Undercapitalized or lowest composite supervisory rating.

Such projections make it possible to consider the impact of increased assessment costs in light of individual thrifts' projected earnings and tax status. Short-term projections, however, will not capture the full impact such cost increases may have upon the thrift industry. To address this shortcoming, a second analysis was performed that analyzed the potential long-term implications of reductions in thrift profitability, which involved an analysis of changes in return on equity.

If investors felt the reductions in profitability were long term, several results can be anticipated. First, stock market prices on thrift equity would fall as investors revise estimates of anticipated earnings. Consequently, any thrift/thrift holding company attempting to raise capital through new issues could receive less in invested capital. Assuming no other significant changes in thrift earnings or risk, share prices would have to fall in proportion to the decline in returns in order to maintain market value based profit rates (returns on market value of equity). Second, shareholders might also have less incentive to reinvest capital within the thrift, given the reduced profitability. Reduced retention rates will result in less growth in book capital over time, compared to an economy without higher SAIF assessment rates.

While it is difficult to estimate the final impact upon industry capital, a moderate amount of industry shrinkage due to a flight of capital (relative to a situation without higher assessments) may result, and credit availability may be impacted. Consolidation in the thrift industry can occur, however, without increased thrift failures. Indeed, the results from the analysis discussed below indicate that the impact of the assessment rate increase upon the core group of thrifts' earnings and capital will not result in a substantial increase in thrift failures.

In interpreting the results of the long-term impact analysis, one point must be noted. The staff's long-term profitability analysis revealed a number of thrifts which had large estimated changes in return on equity due to the assessment increase. This occurred because at any point there are a number of thrifts earning near zero profits (or very small losses). In these situations, moderate increases in the assessment rate (for example, 5 to 7 basis points) will result in large percentage changes in profitability.[11] It is reasonable to expect, however, that thrifts earning near zero returns on equity will, in time, either fail or more toward higher levels of profitability. For these reasons, one should focus on the impact on the majority of thrifts' profitability when analyzing Table 4 (below).

2. Projected Capital and Earnings: Short-term Impact

For purposes of this analysis, FDIC staff developed short-term projections on "core group" thrift earnings and capital between 1992 and 1995 under the assumptions concerning cost-sharing, tax deductibility and dividend rates described above. The analysis used 1991 data on net income, dividends and tax rates as the basis for these projections. To test the sensitivity of the results from the projection analysis to the use of 1991 as the benchmark for thrift industry returns, the staff repeated the analysis using 1990 data on the same institutions.[12]

The tangible capitalization of all SAIF-insured thrifts as of December 31, 1991 was approximately $38.7 billion.[13] FDIC staff estimates that by year-end 1995 the core thrift industry tangible capitalization will be just over $55.3 billion if the 0.23 percent rate remains in place. The FDIC staff estimates that under the rates in the transitional risk-based assessment schedule industry tangible capitalization will fall to approximately $55.0 billion, representing a 0.5 percent reduction. Under this scenario, core industry net income will fall over the period by $0.36 billion, approximately 2.0 percent of the pre-increase net income of $18.0 billion.

Under the rates in the transitional risk-based assessment schedule the FDIC staff projects the number of thinly capitalized core thrifts (defined as those with less than 2 percent tangible capital) to increase by 2 institutions through 1995. The number of core thrifts holding more than 3 percent tangible capital is projected to decrease by 3 institutions.

3. Sensitivity of the Earnings and Capital Projections to 1991 Return Data

As indicated above, there was considerable improvement in the return on average assets (ROAA) for the SAIF-insured thrift industry between 1990 and 1991. This improvement may be attributable to various factors, including the advantageous interest rate environment, the resolution of marginally solvent competitors and increased capital levels for the industry.[14]

To test the sensitivity of the thrift industry's 1991 ROAA results to reduced thrift operating margins, staff repeated the projections using the ROAAs for the core thrifts in 1990. Using 1990 ROAA as the benchmark return, FDIC staff estimates that by year-end 1995 the core thrift industry tangible capitalization will decline to approximately $50.4 billion under the rates in the transitional risk-based assessment schedule. This would reduce core industry capital by approximately 0.6 percent. Under this scenario, core thrift industry net income will fall over the period by $0.38 billion, approximately 3.1 percent of the pre-increase net income of $12.4 billion.

By the end of 1995, under the rates in the transitional risk-based assessment schedule the number of thinly capitalized core thrifts is projected to increase by 4 institutions. The number of core thrifts with more than 3 percent tangible capital is projected to decrease by 9 institutions.

4. Long-term Changes in Profitability

In order to assess the long-term impact of higher assessments on thrift profitability, estimates were made of the changes in returns on the book value of equity capital which might result under the rates in the transitional risk-based assessment schedule. Specifically, thrifts' 1991 returns on book value equity capital were adjusted to reflect the increase in operating costs (after-taxes) which might result from increased assessment rates.[15]

[11] To see this, consider the example of a thrift with a 5 percent equity capital and a 1 percent return on equity. In addition, assume that the thrift had an average tax rate of 25 percent and had assessable deposits equal to 80 percent of thrift assets. In this situation, a 7 basis point increase in the assessment rate would result in an 84 percent reduction in return on equity.

[12] For this core group of thrifts, the post-tax return on average assets (ROAA) was approximately 33 percent greater in 1991 than it was in 1990. On average, the institutions with the lowest capital-to-asset ratios showed the greater increase in ROAA over this time period.

[13] Tangible capital is reported on a consolidated basis. The number includes RTC conservationship ROAA.

[14] Another factor that may influence ROAA is any deviation from a normal level of reserving for loan losses. However, the ratio of average loan loss provisions on interest bearing assets to assets did not change significantly between 1990 and 1991 for most core institutions.

[15] A simple expression can be derived to show how these factors will affect profitability.

(1) ROA' = [ROA—(Rate Increase)×(Assessment Base/Assets)×(1—T)]

where ROA' = adjusted return on assets, reflecting an increased assessment rate

ROA = thrift's original return on assets (net income/assets)

Rate Increase = new assessment rate—old assessment rate

T = thrift's average tax rate

The resulting impact on the return on equity will vary with thrifts' financial leverage.

(2) ROE' = [(ROA') × (assets/equity)]

Equation two states that the adjusted return on equity (ROE') is the product of the adjusted return

Continued

Using 1991 return on equity (ROE) as the benchmark, moving from the current assessment rate of 0.23 to the rates in the transitional risk-based assessment schedule is expected to lower the average institution's ROE by less than 5 percent. A total of 1,516 thrifts holding $560 billion in assets would have their ROEs reduced by less than 5 percent. An additional 181 institutions with $73 billion in assets would suffer a reduction in ROE of between 5 and 10 percent. The remaining 200 institutions with $87 billion in assets would have their ROE reduced by more than 10 percent. These results are presented in Table 4.

TABLE 4.—PERCENTAGE CHANGES IN RETURN ON EQUITY ASSOCIATED WITH THE RATES IN THE TRANSITIONAL RISK-BASED ASSESSMENT SCHEDULE

[SAIF-Insured Thrifts, $ Millions]

Percentage change in ROE [1]	No.	Assets
Below −50 [2]	31	$6,583
−25 to −50 [3]	35	14,070
−15 to −25	50	20,505
−10 to −15	84	46,410
−5 to −10	181	73,367
0 to −5	1,516	560,134
All	1,897	721,069

[1] The percentage change in ROE was defined as the adjusted ROE minus the original ROE, divided by the absolute value of the original ROE; (ROE'-ROE)/abs(ROE).

[2] As noted above, thrifts with near zero earnings will experience a large percentage change in return on equity.

[3] *Id.*

III. Comments

A. Overview

The FDIC received 15 comments on the proposed rule, 7 from savings associations and 8 from industry trade groups. Four of the trade groups expressed support for the proposed increase. Two cited the need to maintain an adequately funded insurance system in order to ensure public confidence in the system. One group cited the need to recapitalize the SAIF within a reasonable period of time, as required statutorily. None of the thrifts supported the increase.

Five of the letters received opposed the assessment rate increase. Of this total, there were 3 savings associations and 2 trade groups. One of the thrift executives noted that while he opposed the increase he thought the logic behind the proposal was understandable.

B. Major Issues Raised

1. Need for the Increase

Based on the case presented in the proposed rule, 3 trade groups and 5 thrifts questioned the need for an assessment rate increase. The assumptions used by the FDIC staff were debated in these comment letters. One trade group noted that the FDIC assumptions were overall too conservative. One thrift asked where SAIF premiums had gone since the fund's inception. As noted in the proposed rule and as discussed above, as required by statute, since the creation of the SAIF in August 1989, with minor exception, all SAIF assessment revenue has been diverted to the FRF, the FICO, and the REFCORP.

Beginning January 1, 1993, SAIF assessment revenue will remain in the SAIF, except for the claims on that revenue required to fund the interest payments on bonds issued by the FICO. Given current projections, satisfying such interest payments will require approximately 35 percent of the SAIF's assessment income. Growth in assessment income is not projected to be sufficient to lower this burden significantly over the next few years.

In questioning the short-term failure projections used by the FDIC staff in determining the need for increasing the SAIF assessment rate, two thrifts noted that the thrift industry continues to improve, while another echoed this comment and added that provisions in recent legislation (*i.e.*, The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) and the FDIC Improvement Act should result in lower projected failures. Given these improvements, and given the continued clean-up of the thrift industry by the Office of Thrift Supervision (OTS), it was argued that the SAIF should inherit a "clean" industry.

The Board acknowledges the improvements noted above and is hopeful that provisions in the applicable federal statutes will help mitigate the anticipated financial obligations of the SAIF. However, as discussed above, recent improvements in thrift industry profitability have been facilitated by lower interest rates which have increased thrift net interest margins. Changing economic conditions could mitigate this effect, slow the recovery of the thrift industry, and lead to additional thrift failures.

As noted in the proposed rule and above, while the FDIC cannot predict accurately the level of thrift failures, the only certainty in the future is that there will continue to be thrift failures, which eventually will be funded by the SAIF. As a result, the FDIC analysis utilized a variety of short-term and long-term thrift failure projections, ranging from a relatively "clean" industry by the time SAIF assumes resolution responsibility in October 1993 to a depressed scenario in which a larger number of thrifts require SAIF resolution. Thus, the failure projections used by the FDIC in the proposed rule (and above) included the positive factors mentioned in these comment letters, but also allow for the recurrence of negative factors.

A related question concerned inclusion of projected 1992 thrift failures in the FDIC's analysis, when the SAIF does not assume resolution responsibility until late in 1993. Thrift failures for 1992 were included in the FDIC's analysis in order to provide a benchmark for future failure projections. They were not used to support the need for an increase in the SAIF assessment rate.

The resolution costs assumed in the analysis also were questioned. Three resolution costs were used in the FDIC's analysis: 14, 17, and 20 percent. The lowest value reflects lower resolution costs associated with the OTS's Accelerated Resolution Program. The middle value approximates the expected future experience, given current trends. The high value reflects the experience of many resolutions post-FIRREA and assumes a continued downturn in economic conditions. The Board believes that these varied assumptions provide a reasonable basis on which to analyze future resolution costs.

One trade group disagreed with the statement that the long-term condition of the SAIF depends on the "number, size and timing of future thrift failures," but depends instead on the "number and size of future surviving institutions." The SAIF depends on future thrift failures in that losses from such failures will be deducted from the fund's balance. However, the trade group is correct in stating that the SAIF depends on survivor institutions, because assessment revenue is derived from this source. Hence, FDIC projections incorporated assumptions regarding growth in the assessment base.

One trade group questioned the 15-year recapitalization period used by the FDIC in determining the current need for an assessment rate increase. The letter specifically asked: "Where is the statutory phase-in language for SAIF-

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on assets (ROA') and the equity multiplier (assets/equity).

Data on individual thrifts' 1991 average tax rates were used to adjust for the tax deductibility of assessments. In the event a thrift incurred losses in 1991 and/or received a tax credit, its tax rate was set to zero. although thrifts' earnings and hence capitalization will be reduced with higher assessments, for the purposes of this analysis, the adjusted ROEs were estimated using year-end 1991 assets-to-equity ratios in equation 2.

insured institutions?" It also inquired whether the Congress provided "additional flexibility for FDIC-SAIF premiums?" As noted above, section 7(b)(1)(D)(i) of the FDI Act (12 U.S.C. 1817(b)(1)(D)(i)) states that the assessment rate for SAIF members shall be such rate as the Board of Directors, in its sole discretion, determines to be appropriate—to increase the reserve ratio to the designated reserve ratio of 1.25 percent of estimated insured deposits within a reasonable period of time.

This provision of the FDI Act expressly authorizes the Board to use its sole discretion to determine the SAIF assessment rate in order to increase the SAIF reserve ratio to the designated reserve ratio within a reasonable period of time.

Section 7(b)(1)(D)(ii) of the FDI Act (12 U.S.C. 1817(b)(1)(D)(ii)) requires, however, that the Board consider certain factors in setting the SAIF assessment rate: the SAIF's expected operating expenses, case resolution expenditures, and income; the effect of the assessment rate on SAIF members' earnings and capital; and such other factors as the Board deems appropriate. Within these parameters the Board has significant flexibility in establishing the SAIF assessment rate. Based on its combined obligations to increase the SAIF reserve ratio to the designated reserve ratio within a reasonable period of time and to consider the above-noted statutory factors when establishing the SAIF member assessment rate, the Board believes that it is reasonable to use a 15-year period to project and achieve the designated reserve ratio of 1.25 percent. The assumptions and analyses for the projected achievement of the designated reserve ratio were discussed in the proposed rule and also are discussed above.

In a related comment letter, one thrift questioned the need for a 1.25 percent reserve ratio in a healthy industry. As noted above, in section 7(b)(1)(B)(ii) of the FDI Act (12 U.S.C. 1817(b)(1)(B)(ii)) Congress established the designated reserve ratio of 1.25 percent of estimated insured deposits.

Finally, 2 trade groups asked why the FDIC had not "demanded" the supplemental Treasury funding mandated by FIRREA. Section 11(a)(6)(E) of the FDI Act (12 U.S.C. 1821(a)(6)(E)) states that the Secretary of the Treasury shall pay to the SAIF, for each of the fiscal years 1993 through 2000, the amount, if any, by which $2,000,000,000 exceeds the amount deposited in such Fund (during such fiscal year). Section 11(a)(6)(F) of the FDI Act (*Id.* at 1821(a)(6)(F)) states that the Secretary of the Treasury shall pay to the Savings Association Insurance Fund, for each fiscal year from 1991 through 1999 any additional amount which may be necessary, as determined by the FDIC and the Secretary of the Treasury to ensure that such Fund has the minimum net worth referred to in the table provided as part of this subparagraph of the FDI Act.

Thus, under the FDI Act the Treasury is required to make available to the FDIC funds to supplement SAIF in two ways: first, as revenue supplements to SAIF annual assessments (net of FICO contributions) to ensure annual revenues of $2 billion for each of the fiscal years 1993 through 2000; and second, as payments to maintain the net worth of the SAIF according to the schedule in section 11(a) of the FDI Act. Also, section 11(a)(6)(J) of the FDI Act (*Id.* at 1821(a)(6)(J)), states that there are authorized to be appropriated to the Secretary of the Treasury, such sums as may be necessary to carry out the provisions of this paragraph 11(a)(6) of the FDI Act; however, section 11(a)(6)(J) also limits the Treasury net worth payments to $2 billion in each of the fiscal years 1992 and 1993 and to a cumulative total of $16 billion for fiscal years 1992 through 2000.

As stated in the proposed rule and discussed above, the Board believes that the Treasury funding requirements for the SAIF in section 11(a)(6) of the FDI Act are conditional upon the inability of SAIF members to pay sufficient assessments to fund the SAIF. In other words, Congress imposed these conditional funding obligations on the Treasury (and thus, the United States taxpayers) in order to provide a back-up if the SAIF-insured industry is incapable of fulfilling its obligation to recapitalize the SAIF. Section 11(a)(6)(E) of the FDI Act states that the supplemental payments must be made in an amount "if any" by which net assessments do not equal $2 billion. Likewise, section 11(a)(6)(F) of the FDI Act defines the minimum net worth maintenance funding amount as "any additional amount which may be necessary." The Board believes that this specific language in section 11(a)(6) supports the conclusion that the Treasury's funding obligations are contingent upon the amount of funding available through assessments paid by SAIF members.

As discussed above, the Board is obligated to establish SAIF assessment rates based on the requirement to achieve a designated reserve ratio within a reasonable period of time and in consideration of the factors enumerated in section 7(b) of the FDI Act, including the ability of the SAIF industry to pay the established assessment rate.

2. Negative Effects of the Increase on the Industry and Individual Thrifts

A majority of the letters received commented on the potential impact of the proposed increase on the thrift industry. Several letters suggested that the current 23 basis point assessment rate was already too burdensome for thrifts. One thrift noted that the rate should not be increased during a recession. Two trade groups suggested that the increase may hinder the lending ability of the thrift industry.

Most letters addressed the impact of an increase on thrift industry profitability, and several thrifts projected the impact on their financial statements. Earnings will be impacted, which is turn affects capital and dividend policies. A reduction in profitability and dividends could impact the ability to raise capital. Furthermore, one thrift suggested that more thrifts would fail as a result of the increased assessment rate.

The Board has considered the implications of these potential effects. As discussed in the proposed rule, the FDIC staff projected the impact of increased assessment rates on industry capital and earnings and found that an increase to the rates in the transitional risk-based assessment schedule will raise the number of thinly capitalized institutions (under 2 percent tangible capital) by 2 thrifts through 1995. These results also found that the increase will lower the average institution's return on equity by less than 5 percent. Given continued improvement in thrift industry profitability, the actual impact of the rate increase could be lower. Thus, the Board believes that the proposed rate increase will not place an undue burden on the thrift industry.

In addition to noting the possibility of reduced industry profitability, several letters commented on the competitive impact of the proposed increase. One trade group commented that the overall increase in regulatory burden puts thrifts at a competitive disadvantage. It was generally felt that the added expense from the premium increase would further erode the thrift industry's competitive position with non-insured financial institutions such as money market funds. One thrift suggested that 28 basis points approximates the total operating costs of an efficient mutual fund. Also, several letters stated that the additional costs associated with the increase could not be passed along to consumers due to competition from non-insured funds.

While it is likely that the rate increase will not be passed along to consumers in competitive markets, insured depository institutions offer a product that non-insured funds cannot offer: A federal guarantee behind depositors' money. Each investor will decide where to place funds based on individual preferences concerning factors such as the interest rate offered, additional services provided by the financial institution, and other features of the investment product, including deposit insurance. Insured depository institutions will continue to compete based on all features of their products.

C. Other Issues

One thrift and one trade group argued that banks have a competitive advantage over thrifts in the form of a lower effective assessment rate. This rate advantage exists because banks typically have a different liability structure, relying less on assessable deposits than thrifts. For this reason, three trade groups argued that the assessment rate for SAIF members should be no higher than the assessment rate for BIF members. A different liability structure does not necessarily put thrifts at a competitive disadvantage. Other funding sources are not always less costly for financial institutions than core deposits inclusive of premium expense. (A related issue, discussed below, is whether to broaden the assessment base and therefore eliminate this issue.)

In the same vein, two thrifts requested that the Board ensure that the decision to increase the SAIF premium be determined independent of the need to recapitalize the BIF. Conversely, a bank trade group argued that thrifts should pay at least as much as BIF members, because of the extensive use of taxpayers funds in covering thrift insurance losses.

In response to these comments on correlating the SAIF assessment rate with the assessment rate paid by BIF members, it is essential to note that section 7(b)(1)(A) of the FDI Act (*Id.* at 1817(b)(1)(A)) is entitled "Rate For Each Fund To Be Set Independently" and states that the FDIC shall fix the assessment rate of Bank Insurance Fund members independently from the assessment rate for Savings Association Insurance Fund members. Thus, the Board is statutorily required to set the SAIF and BIF assessment rates independently of each other and may not consider parity factors in establishing the respective rates. The SAIF and BIF assessment rates must each be set based on the respective applicable statutory requirements.

Finally, 2 thrifts asked to see a plan outlining the cost and timetable for cleaning up failed thrifts and banks. Recent legislation has provided the federal depository institution regulatory agencies with enhanced powers to facilitate the early closure of seriously weakened institutions. Resolution teams are in place, and have internal timetables. However, such confidential information is not available publicly. The costs of clean-up activities are made available to the public after resolution transactions have occurred.

D. Alternatives Proposed

The majority of letters received suggested that the assessment base be expanded to include all deposits, including foreign deposits. It was also recommended that the assessment base include off-balance sheet items and all liabilities. The reasoning behind these suggestions was that some commercial banks sustain a lower effective assessment rate because of their different liabilities structure, as discussed above. It was also suggested that by assessing all deposits the competitive advantage of institutions that are "too big to fail" would be eliminated.

The assessment base is currently prescribed by section 7(b) of the FDI Act (*Id.* at 1817(b) (4), (5) & (6)). The Board believes that the nature and scope of the assessment base should be reviewed, but currently does not have the authority to change the statutorily required components of that base. As provided for in section 302(a) of the FDIC Improvement Act of 1991, however, upon the establishment of a permanent risk-based assessment system (which must be in place no later than January 1, 1994) section 7(b) of the FDI Act will be amended to exclude a statutorily prescribed assessment base. Thus, at that time the Board will be authorized to establish an assessment base different from that currently found in section 7(b) of the FDI Act.

Also, section 141 of the FDIC Improvement Act provides that beginning January 1, 1995, the FDIC may not take any action, directly or indirectly, with respect to any insured institution that would have the effect of increasing losses to any insurance fund by protecting depositors for more than the insured portion of deposits or creditors other than depositors. This provision was intended to prevent the so-called too-big-to-fail treatment of depository institutions.

In addition, section 312 of the FDIC Improvement Act provides, in general, that the FDIC (among other federal entities) may not make any payment or provide any assistance in connection with any insured depository institution which would have the effect of satisfying any claim against the institution for obligations of foreign deposits.

Another issue raised was the extra burden shouldered by SAIF members with respect to Federal Home Loan Bank (FHLB) payments to the REFCORP. It was argued that this payment creates a competitive disadvantage for thrifts against non-FHLB member commercial banks. However, membership in the FHLB system does offer certain competitive advantages not available to non-members, such as access to long-term funding at relatively attractive rates. When the Board considered the impact of the assessment increase on overall thrift industry earnings, the Board recognized the effects of the FHLB payments. While the Board was cognizant of the need to prevent an undue burden on the industry, the assessment rate proposed was chosen in order to recapitalize the SAIF, and therefore is independent of the FHLB payments.

One thrift suggested that each thrift contribute what would amount to 1.25 percent of its deposits. Payments would be made monthly over five years. Monthly assessments would require a change in legislation. Furthermore, because the fund balance changes with time to reflect outflows due to insurance losses, 1.25 percent of thrift industry insured deposits today may not be sufficient to keep the SAIF in compliance with the designated reserve ratio five years from now.

One trade group recommended that since it questioned the FDIC staff assumptions, it would be wise to wait before raising premiums further. Statutorily, the Board is required to set premium rates in order to maintain the 1.25 percent ratio or increase the fund to this ratio within a reasonable amount of time. To be prudent in setting the SAIF on a path toward recapitalization (and, therefore, to comply with section 7(b) of the FDI Act), the Board is raising the SAIF-member assessment rate from a uniform rate of 0.23 percent to the rates listed in the transitional risk-based assessment schedule.

Subpart D. Transitional Risk-Based Assessment System

I. Statutory Background

As noted above, section 7(b) currently provides for a single, uniform assessment rate established by the FDIC for all BIF member institutions and a single, uniform rate for all institutions

that are members of the SAIF.[16] The assessment rate now in effect for members of both BIF and SAIF is 0.23 percent per annum.

Section 302(a) of the FDIC Improvement Act requires that the FDIC Board establish, by regulation, a risk-based assessment system. Section 302 of the FDIC Improvement Act also requires that regulations establishing the risk-based assessment system be published by the FDIC no later than December 31, 1992, promulgated no later than July 1, 1993, and become effective no later than January 1, 1994. Sections 302(c) and (g).

In addition to the risk-based assessment regulations required by section 302(a) of the FDIC Improvement Act, section 302(f) of that statute authorizes the FDIC to promulgate regulations governing the transition from the assessment system in effect on the date of enactment of the statute to the assessment system required under section 302(a) of the statute. Pursuant to its authority under section 302(f), the FDIC proposed regulations providing for a transitional assessment system. As noted above, that proposal was published in the Federal Register on May 21, 1992, for a 60-day public comment period ending July 20, 1992.

The transitional system was proposed as a preliminary step toward the risk-based system the Board is required to implement by January 1, 1994 (hereinafter referred to as the "permanent" risk-based assessment system). As proposed, the transitional system would become effective January 1, 1993, and remain in effect until implementation of the permanent risk-based assessment system one year later. Under this approach, the FDIC and other interested parties would have an opportunity to evaluate the impact and effectiveness of the various components of the transitional system prior to the statutory deadlines for finalizing and implementing the permanent risk-based assessment system.

II. Description of the Proposed Transitional System

Under the transitional system as proposed by the Board, the rate at which FDIC-insured institutions—both BIF and SAIF member institutions—would pay assessments and would be determined on the basis of capital and supervisory measures. For the capital measure, institutions would be assigned to one of three capital groups—"well capitalized", "adequately capitalized", or "less than adequately capitalized". The first two groups would be defined by application of the capital-ratio standards (consisting of total risk-based, Tier 1 risk-based, and leverage capital ratios) proposed for prompt corrective action (PCA) purposes under section 131 of the FDIC Improvement Act. The third group would consist of those institutions not qualifying for one of the first two groups.[17]

On July 6, 1992, the Board issued its proposed PCA regulation which included definitions of the capital categories for PCA purposes. 57 FR 29663. Based on those definitions (which were, pursuant to the Board's transitional risk-based assessment proposal, automatically incorporated into that proposal) the capital categories for transitional risk-based assessment purposes would be as follows:[18]

1. *Well Capitalized.* Total risk-based ratio, 10.0 percent or greater; AND Tier 1 risk-based ratio, 6.0 percent or greater; AND Tier 1 leverage ratio, 5.0 percent or greater.

2. *Adequately Capitalized.* Institutions that do not meet the standards for well capitalized but which do meet the following standards: Total risk-based ratio, 8.0 percent or greater; AND Tier 1 risk-based ratio, 4.0 percent or greater; AND Tier 1 leverage ratio, 4.0 percent or greater.

3. *Less Than Adequately Capitalized.* Total risk-based ratio, less than 8.0 percent; OR Tier 1 risk-based ratio, less than 4.0 percent; OR Tier 1 Leverage ratio, less than 4.0 percent.

Within each capital group, institutions would be assigned to one of three supervisory subgroups—"healthy", "supervisory concern", or "substantial supervisory concern". "Healthy" institutions would be those that are financially sound with only a few minor weaknesses. Institutions raising "supervisory concern" would be those with weaknesses which, if not corrected, could result in significant deterioration of the institution and increased risk to the BIF or SAIF. Institutions raising "substantial supervisory concern" would be those that pose a substantial probability of loss to the BIF or SAIF unless effective corrective action is taken. The proposal indicated that the FDIC would assign institutions to supervisory subgroups on the basis of supervisory evaluations provided by the institutions's primary federal supervisor and, if applicable, state supervisor, and such other information as the FDIC determines to be relevant to the institution's financial condition and the risk posed to the BIF or SAIF, including such information as call report data and analysis and debt ratings.

Under the proposal, there would be nine combinations of groups and subgroups (or assessment risk classifications), to which varying assessment rates would be applicable. The rates were expressed in the proposal in terms of deviations from an "average" rate (that is, the rate achieved by dividing total assessment income by the total assessment base), which is essentially the conceptual equivalent of what is now the uniform rate. Under the proposed schedule, set out below, institutions qualifying as both "well capitalized" and "healthy" would pay assessments at a rate 3 basis points below the "average" rate, while institutions falling into the "less than adequately capitalized" group and the "substantial supervisory concern" subgroup would pay 3 basis points above the "average" rate.

PROPOSED RISK-RELATED ASSESSMENT SCHEDULE

	Healthy	Supervisory concern	Substantial supervisory concern
Well Capitalized	a−3	a	a+2
Adequately Capitalized	a	a+2	a+2
Less than Adequately Capitalized	a+2	a+2	a+3

For the transitional risk-based assessment system, the Board proposed that the FDIC provide each institution notice of its assessment risk classification and rate for the next semiannual assessment period no later than one month before the beginning of that period. Thus, for the semiannual

[16] At present, section 7(b)(1)(D) of the FDI Act imposes on SAIF members an assessment rate of not less than 0.23 percent. However, the FDIC is authorized to increase the rate beyond this level.

[17] The use of the terms "well capitalized" and "adequately capitalized" for risk-based premium purposes are not intended as, and should not be viewed as implying, an endorsement by the FDIC of an institution's safety and soundness. There may be institutions that meet the standards for inclusion in these capital categories that are not operating in a safe and sound manner.

[18] These assessment definitions reflect only the capital-ratio standards from the proposed PCA definitions, which include other elements as well. In particular, the proposed PCA definitions include a condition that in order to be considered "well capitalized", an institution cannot be subject to any order or final capital directive to meet and maintain a specific capital level. Similarly, under the proposed PCA definitions, CAMEL-1 rated institutions not experiencing or anticipating significant growth are permitted to have a leverage capital ratio as low as 3.0 percent and, potentially, still qualify as "adequately capitalized". These elements are not incorporated in the definitions of the capital groups for risk-based assessment purposes. In the risk-based assessment context, these elements are more appropriately considered with regard to supervisory subgroup determinations.

period beginning January 1, 1993, notice would be given no later than December 1, 1992. The institution would be assigned to a capital group based on data reported in its Report of Income and Condition as of the preceding June 30 (for the assessment notice due December 1) or December 31 (for the notice due June 1) or in the Thrift Financial Report with the closest date to June 30 or December 31 that includes the relevant capital data.

The proposal contemplated an informal process by which an institution disagreeing with the assessment risk classification assigned to it by the FDIC could seek review of that classification. The contemplated procedure involved review, first at the FDIC regional level and then (if the dispute remained unresolved) at the headquarters level, within the FDIC's Division of Supervision, at least to the extent the matters in dispute involved FDIC determinations rather than determinations of the institution's primary regulator(s). Until the completion of any review, the institution would be expected to make timely assessment payment at the rate assigned, with any adjustments to be made once the review process was completed.

It was similarly proposed that, in the event an institution did not receive notice of its assessment risk classification by the first day of the assessment period, its premium would be payable at the "average" rate and any necessary adjustment would be made after notice of the institution's assessment risk classification was provided by the FDIC.

The proposal also stated that the Board was considering the imposition of broad restrictions on the disclosure of information pertaining to an institution's assessment risk classification, and required bridge banks and institutions in FDIC or Resolution Trust Corporation conservatorships to pay the "average" assessment rate.

In addition to providing for a transitional risk-based assessment system, the proposal included other, unrelated amendments to the FDIC assessment regulations. These revisions would update subpart D of part 327 to conform it to the "Oakar" provisions of section 501 of the FDIC Improvement Act, and update § 327.7 of the regulations to conform it to current Treasury Department value-of-funds policies.

The public comment period for the proposal has expired and the comments have been reviewed and analyzed. Taking into account these comments and other relevant considerations, the Board has decided to adopt the proposal largely unchanged except for a two basis-point increase in the rate spread and a revision of the review process. The comments received and the FDIC's responses are summarized below.

III. Discussion of Comments Received

The FDIC received 209 letters commenting on the proposal. Among the commenters were 133 banks, 25 thrift institutions, 23 depository institution holding companies, and 22 associations. Other commenters included state banking regulators, individuals, and law firms.

The principal issues raised in the comment letters fell into the following broad categories: The risk measures to be used; the risk classifications; the rate schedule; timing issues; disclosure restrictions; and the review process.

Each of these subjects is addressed below, together with other relevant issues.

A. Risk Measures

In its proposal, the FDIC requested comment regarding the use of capital and supervisory factors as risk measures, and on the specific measures proposed, including comment on whether premium rates should be based on solely objective factors instead of, or in addition to, the proposed capital ratios and supervisory evaluations.

A large number of commenters addressed this topic. Most of this group agreed with the use of capital to measure risk. Although many suggested other indicators—such as asset quality, earnings, asset concentration, interest rate risk, credit risk, and excessive growth—to be used in lieu of or in addition to capital ratios, no clear preference for any particular non-capital indicators emerged. The primary supervisory factors identified in the letters were CAMEL or MACRO ratings and examination reports.

A number of letters commented on whether premium rates should be based on solely objective factors. The appropriate balance between objective and subjective standards was an issue addressed by 124 commenters. Of these, 74 favored some combination of the two elements, including 20 that suggested greater emphasis on objective factors and four that preferred more emphasis on subjective factors. The remaining 51 of the 74 commenters seemed satisfied with the balance reflected in the proposal. Out of the universe of 124 commenters addressing this topic, 49 stated a preference for objective measures exclusively. The primary reason indicated for preferring a combination of objective and subjective factors was that neither one alone could be relied upon to present a full picture of the institution's condition.

A majority of commenters recommended greater reliance on objective factors. Among this group, the principal concerns expressed regarding the use of subjective measures included perceived inconsistencies among examiners; the need for clear, well-defined standards to which institutions can respond in order to reduce their premiums; the increased tension that could develop between examiners and institutions; the perception that examiners are slow to upgrade their evaluations of troubled institutions on the mend; and the relative infrequency of examinations. A number of commenters noted that if assessment rates were based on objective factors alone, the need for an appeals procedure and disclosure restrictions would be reduced or eliminated.

Among those commenters recommending a secondary role for subjective measures, a few offered specific suggestions regarding an appropriate balance. For example, several letters urging that risk classifications be determined primarily on objective measures further recommended that supervisory evaluations be taken into account only for institutions of supervisory concern. In another vein, several commenters argued that both the proposed capital and supervisory measures are lagging indicators, and recommended use of leading indicators such as asset quality, concentration, and interest rate risk.

The Board appreciates that the use of supervisory factors as a measure or risk has certain aspects. The Board also appreciates that there are negative aspects to the use of objective factors. Like a number of the commenters addressing this matter, the Board believes that a combination of the two elements is a better approach than the use of either objective or subjective measures alone.

The Board continues to believe that the ongoing supervisory monitoring process, which encompasses a variety of formal and informal contacts with insured institutions, produces more and better information concerning an institution's risk exposure than can be obtained solely from financial reports. A risk measurement system that relies solely on data stated in bank Reports of Income and Condition or Thrift Financial Reports (collectively referred to hereinafter as "financial reports") would in many cases not adequately capture important risk factors, such as loan underwriting standards,

management quality, or other operational elements that can substantially affect the FDIC's risk exposure. Accordingly, the Board believes that a risk-based insurance system in which supervisory factors play an important role is likely to lead to less inequity in the pricing of risk than one based exclusively, or almost exclusively, on reported financial data.

At the same time, the Board recognizes the value of more objective measures. As noted by some of the commenters, a desirable attribute of a risk-based premium system is to give weak institutions an immediate financial reward for improving their condition, as reflected by a quantitative, well-defined indicator. Such an immediate, financial reward is provided by a system that bases premiums in part on the institutions' capital ratios as derived from data on their financial reports; by meeting specific capital-ratio standards, weak institutions will be able to reduce their deposit insurance premiums. Greater capital increases the cushion against loss, both for the institution and for the FDIC, and increases the owners' stake in a sound operation. Thus, the Board continues to believe that capital ratios should play an important role in a risk-based premium system.

Accordingly, the Board has adopted, without revision, the risk measures used for the proposed system.

B. Risk Classifications

In its proposal, the FDIC invited comment regarding the definitions to be used for the respective assessment risk groups and subgroups included in the proposal, and on whether a separate category should be added for institutions posing minimal risk to the deposit insurance funds. With regard to the latter issue, comment was requested as to how such a category should be defined, including comment regarding the use of ratings assigned to an institution's debt by nationally recognized private firms and on any additional role appropriately played by capital ratios.

There was virtually no comment directly addressing the definitions proposed for the various assessment risk classifications. One comment letter expressed concern that there were gaps between the definitions of the three supervisory subgroups; another noted that other pending or upcoming regulatory proposals could alter an institution's capital position and that the capital definitions finally adopted could affect bankers' views of the proposed assessment system.

The Board has decided to adopt the definitions stated in the proposal.[19] However, it has also decided to redesignate as "undercapitalized" the capital group titled "less than adequately capitalized" under the proposed system. This change is intended to make the nomenclature for the risk-based insurance system more closely coincide with the capital categories for PCA purposes under the FDIC Improvement Act. In addition, the Board has decided to rename as subgroups "A", "B", and "C" the supervisory categories previously denoted respectively as "healthy", "supervisory concern", and "substantial supervisory concern". This change should simplify both oral and written references to these categories.

On September 15, 1992 (the same date on which the Board adopted this final rule), the Board adopted the final PCA rule. As indicated above in the description of the transitional risk-based assessment proposal, the PCA capital-ratio standards for "well capitalized" and "adequately capitalized" have been incorporated into this final rule on the transitional risk-based assessment system.

In addition to drawing upon capital-ratio standards and nomenclature from the PCA provisions, the Board is also incorporating into the final risk-based assessment rule a provision from the PCA regulation prohibiting the use of PCA capital-category assignments for non-PCA purposes. The primary purpose of the PCA provision is to prohibit an institution's use of its PCA capital-category assignment for advertising or other promotional purposes. The reason for the prohibition is that this information alone, when used out of context, can be easily misunderstood. For example, a prospective depositor might interpret an institution's advertisement that it is considered "well capitalized" by the FDIC as an endorsement by the FDIC of the soundness of the institution. The same risk arises with regard to capital categories assigned by the FDIC for risk-based assessment purposes.

In contrast to the definitions of the various risk classifications, the question concerning the addition of a minimal-risk category received a significant level of attention. Of the 32 commenters addressing the issue, 30 generally indicated agreement with the creation of such a category, and most opined that it should be defined in terms of capital. It was suggested by one commenter that an "extremely well capitalized" group could be established, defined in terms of capital in excess of a two percent differential above the "well capitalized" levels. Another commenter suggested defining the minimal risk group as those institutions with ten percent leverage capital and 20 percent risk-based capital.

Among those who thought a minimal-risk category should be established, seven indicated that private debt ratings could appropriately play a role in its definition, either as the sole defining factor or in conjunction with a capital threshold. Details regarding the role to be played by private debt ratings were generally not provided.

The possible use of private debt ratings as a risk factor generated a number of negative responses. A concern noted by several commenters was that such ratings are available for relatively few FDIC-insured institutions. Other concerns expressed by commenters included the incompatibility of the incentives of, and the information bases available to, the FDIC and private rating firms. Inconsistencies in the purposes of private debt ratings and federal deposit insurance were also noted. However, one commenter suggested that the value of private debt ratings was that they provide an alternative view to that of the institution's regulators.

In short, the commenters addressing this issue exhibited a clear preference for establishing a category of minimal-risk institutions based on capital measures.

While the Board recognizes the merits of this view, it believes that the establishment of such a category is more appropriately considered in connection with the permanent risk-based assessment system to be proposed by the FDIC in the near future, rather than as an element of the transitional system. Establishing a lower premium for minimal-risk institutions would require increasing premiums for riskier institutions in order to maintain adequate revenue. The Board believes such an increase could have an unduly harsh effect on weak institutions, especially in connection with the wider range of rates the Board has decided to adopt for the assessment rate schedule, as discussed below.

In light of the many negative comments concerning the use of debt ratings as a measure for defining a minimal-risk category, the Board has also decided to eliminate debt ratings as a factor to be considered in determining supervisory subgroup assignments.

[19] For purposes of assigning capital categories, risk-based ratios will be estimated by the FDIC using the method agreed upon by the Federal Financial Institutions Examination Council.

C. The Rate Schedule

In its proposal, the Board invited comment on the risk-related rate schedule, including the degree of rate gradations among the assessment risk classifications. A large portion of the comment letters received addressed the proposed six basis-point rate spread.

Of the 95 commenters that addressed the rate spread, 89 indicated that the proposed spread was too narrow—that is, that the rate differences across the various classifications are an insufficient reflection of the differences in the level of risk. It was suggested that the proposed rate spread did not provide sufficient incentives, that the differences between various classifications should be widened, or that the number of classifications should be reduced.

A variety of suggestions for widening the schedule were offered. For example, widening the schedule at both ends, by lowering the rate for the lowest risk classification and raising it for the highest risk classification, was suggested. Specific rate spreads varying from a 10 basis-point range to a 20 basis-point range were mentioned, and a number of letters suggested that the rate paid by the lowest-risk institutions should not be increased above 23 basis points or should be reduced. Several commenters suggested that the spread should be widened over time, indicating that this could be accomplished in the permanent risk-based assessment system.

The possibility of incorporating annual or semi-annual incremental increases, or "ratcheting", of premium rates for high risk institutions that do not improve their condition over time was the subject of several comments. In general, those commenting were not in favor of ratcheting. It was suggested that establishing wider spreads in the rate schedule would be a viable alternative.

Upon consideration of the overwhelming preference of commenters for a wider spread between the rates paid by the weakest and the strongest institutions, the Board has decided to increase from six to eight basis points the difference between the highest and lowest premium rates. While the Board recognizes that an eight basis-point spread does not adequately reflect the difference in risk to the FDIC between the weakest and strongest institutions, it believes that a relatively modest rate spread is appropriate at this time. Widening the spread beyond eight basis points while still maintaining adequate assessment revenue would require that the highest premium rates be very high indeed. The Board is concerned that imposing even greater rate increases for weaker institutions could, at this early stage in the development of a risk-based assessment system, cause a degree of disruption and hardship for such institutions that is inconsistent with the spirit of a transitional system. The Board anticipates that it will give serious consideration to wider increments between insurance categories, as well as ratcheting of premium rates for high-risk institutions that do not improve their condition, when it addresses a proposal for a permanent risk-based assessment system later this year.

In addition to increasing the spread between the highest and lowest premium rates, the Board has decided to adopt a rate schedule that expresses rates in terms of an actual number of basis points, rather than in deviations from an "average" rate. The shifting distribution of institutions among the various cells in the schedule (due to changes in their condition and, thus, assessment risk classifications) would tend to make a schedule stated in terms of an "average" rate internally inconsistent; it could yield in one assessment period the amount of income that would have been derived from the "average" rate, but yield a different amount in another period.

The final schedule adopted by the Board separately for both BIF and SAIF members, expressed in terms of actual basis points, is set out below.

FINAL SCHEDULE

Capital group	Supervisory subgroup		
	A	B	C
Well Capitalized	23	26	29
Adequately Capitalized	26	29	30
Undercapitalized	29	30	31

D. Timing Issues

1. Timing of Implementation of the Proposed System

Under the proposal, the transitional risk-based assessment system would take effect for the assessment period beginning January 1, 1993. The proposal requested comment as to whether the system should be put into place at a different time or, alternatively, not be implemented at all and action deferred until implementation of the permanent system.

Responses on this topic were received from 92 commenters. Of this number, 73 favored proceeding with the transitional system on the timetable proposed. Among the remaining responses, a few commenters suggested that the intervening time be spent in more thorough planning or to undertake a "dry run" in the form of a "hands-on simulation" without assessments actually being affected. Others suggested a six-month delay until July 1993.

The Board agrees with the majority of the commenters addressing the issue that a transitional system should be implemented and that it should be effective for the assessment period beginning January 1, 1993. The Board believes that there are significant benefits to be realized from having a preliminary, operational system in place while the elements of the permanent system are under consideration. One benefit which the commenters addressing the issue seem very clearly to realize, and endorse, is that the current high levels of deposit insurance premiums make desirable the timely implementation of an assessment system, even a preliminary system, with risk-related pricing.

2. Date of Determination of Risk Classification

Under the proposal, a bank's capital group would be determined on the basis of data reported in its Report of Income and Condition as of June 30 (for the assessment period beginning the next January) or December 31 (for the assessment period beginning the next July), and, for thrifts, the Thrift Financial Report data as of the date closest to June 30 or December 1 that includes the necessary capital data. Comment was requested regarding these dates and on the possibility of having a general cut-off date for all information to be considered in assigning assessment risk classifications.

Of the 21 commenters addressing these issues, 16 opined that the cut-off dates for the capital data are too early. Among these commenters, the consensus view appeared to be that the capital cut-off dates should be moved up one quarter, to September 30 and March 31, respectively. The desirability of using capital information that is as timely as possible was the principal argument cited for using later financial reports. Another argument was that if June 30, 1992, data were the basis for the capital group assignments applicable to the semiannual assessment period beginning January 1, 1993, then institutions would not have had a meaningful opportunity before June 30, 1992, to increase capital in order to reduce insurance premiums for that first assessment period.

There was less of a consensus on a general cut-off date for new information

to be considered in assigning assessment risk classifications. However, a general preference for the use of the most recent data possible was indicated.

The reasons cited in the proposal for the relatively early cut-off dates for capital data were the time needed for receiving, processing, editing, and analyzing the requisite data, and the importance of providing institutions with reasonable notice of their assessment risk classifications. Indeed, some commenters suggested that such notice should be provided earlier than proposed, in one instance up to three months before the beginning of the semiannual assessment period.

The Board is mindful that the proposed dates may present problems in some instances. This is particularly the case for institutions whose capital position will have substantially improved between July 1 and September 30 of 1992, since their capital group will be determined on the basis of June 30, 1992, data.

However, the timing constraints affecting the cut-off dates have not changed and, after consideration of the comments received, the Board continues to believe that its proposed cut-off dates reflect a reasonable balance between the desirability of considering the most recent information, properly edited and analyzed, and the importance of providing timely assessment notices. The decision to use June 30, 1992, capital data for the assessment period beginning January 1, 1993, should have no impact on the majority of institutions, which are expected to qualify for the lowest assessment rate, nor should it affect most other institutions.

E. Review Process

Another matter on which the Board requested comment involved a process by which institutions disagreeing with their assessment risk classification assignment might request review of the classification. The proposal indicated that the FDIC was contemplating an informal procedure under which institutions could first seek FDIC review at the regional level and then, provided certain standards were satisfied, by the Division of Supervision in Washington, DC.

Many of the 40 comment letters that addressed the review process outlined in the proposal expressed some concern regarding the impartiality of a review undertaken by the same offices responsible for determining the institutions' assessment risk classification assignments, with whether there would be consistency in the review process, or with the proposed standards for review at the national level. In contrast, some commenters approved of the process described or questioned whether a review procedure was needed. A number of commenters suggested that bankers or some other "independent" person(s) be involved in reviewing disputed assessment classification assignments.

In response to the comments received, the Board has decided to revise the procedure outlined in the proposal. Under the final rule, institutions disagreeing with their assessment risk classification assignment may submit a request for review of their classification directly to the FDIC Division of Supervision in Washington, DC. Requests for review must be submitted in writing within 30 days of the date of the notice informing the institution of its assessment risk classification. A request for review may include a request for an informal hearing. Institutions submitting timely requests for review will be informed in writing by the FDIC of its decision on the review.

A statement describing the review procedures will be provided by the FDIC to each institution along with its assessment risk classification notice. Also provided with the notice will be an outline of the FDIC's procedure for determination of assessment risk classifications.

The Board notes that the review process is not intended to address an institution's disagreement with the supervisory evaluations provided by its primary federal regulator. Any such disagreement should be taken up with the primary federal regulator under the appropriate procedure for reviewing such evaluations.

F. Disclosure Restrictions

In its proposal, the Board noted that because of the sensitive nature of the supervisory information underlying an institution's assessment risk classification, the Board was considering the imposition of broad restrictions on the disclosure of such information. 57 FR 21620, May 21, 1992. However, in order to avoid unnecessary regulation, the Board sought comment as to the nature and extent of appropriate disclosure restrictions, including what exemptions should be permitted.

The topic was addressed by 67 letters. Eight commenters opined that public disclosure of an institution's risk classification or premium rate was acceptable. However, the overwhelming majority of those commenting on the issue expressed the opposite view. Fifty-nine of the 67 letters indicated that confidentiality regarding risk classifications and rates should be maintained. Even so, a number of commenters expressed concern regarding the likelihood of success in attempting to keep the information confidential. Twenty of the 59 commenters who were against disclosure argued for reduced reliance on supervisory factors in determining assessment risk classifications. Only a couple of commenters offered somewhat specific suggestions regarding possible exemptions from broad disclosure restrictions.

The Board acknowledges the concerns raised in the comments regarding confidentiality and recognizes the possibility of third parties undermining such confidentiality through efforts to determine institutions' assessment risk classifications. At least for purposes of the transitional system, the Board has decided that the imposition of broad restrictions on disclosure of an institution's supervisory subgroup assignment is an appropriate course of action. However, the Board expects to consider this matter further in connection with the permanent risk-based assessment system.

Thus, with regard to the transitional system, the Board has determined that the supervisory subgroup to which an institution is assigned for assessment rate purposes is confidential information and falls within the scope of section 309.5(c)(8) of the FDIC's regulations, 12 CFR 309.5(c)(8), which generally exempts from public disclosure:

> [r]ecords contained in or related to examination, operating, or condition reports by or on behalf of, or for the use of, the FDIC or any agency responsible for the regulation or supervision of financial institutions.

As exempt information under this provision, such information would also be subject to the provisions of 12 CFR 309.6, which, except in certain specified circumstances, prohibits disclosure of the information not only by the FDIC but also by any entity to whom the information is made available, including an FDIC-insured institution or any director, officer, employee, or agent thereof.

G. Other Issues

1. Payment of "Average" Rate When Assessment Notice Not Received, and Payment of Assigned Rate Pending Appeal

Under the proposal, institutions that have not received assessment notices would be required to pay the "average" assessment rate until they receive notice of their assigned rate. Similarly, institutions seeking review of their classification assignments would be

required to pay the assigned rate until the review is completed and a determination made that the institution is eligible for a lower rate. Several commenters addressed at least one of these elements, in large part questioning the fairness of requiring institutions initially to pay what might be a higher rate, rather than permitting them to pay the lower rate first and, if necessary, make additional payment later.

Also included in the proposal was the provision that in the situations cited above, if it were determined that the institution was in fact eligible for a lower rate, the amount of overpayment would be returned by the FDIC with interest. In the Board's view, this provision substantially mitigates any unfairness that might be associated with the requirement for initial payment of a higher rate.

Accordingly, as to these matters, the Board has decided to adopt the relevant provisions of the rule as they were initially proposed, except with regard to the use of the term "average" rate. In lieu of that term, the final rule identifies the relevant rate as the rate applicable to institutions classified as adequately capitalized "A" institutions. Under the proposal, the rate applicable to such institutions was in fact the "average" rate; thus, the change in terminology does not reflect any change in the Board's approach regarding payment of assessments by institutions that have not received timely assessment notices. Instead, it reflects the Board's decision to adopt an assessment rate schedule stated in terms of specified rates rather than in terms of deviations from an "average" rate.

2. Treatment of Bridge Banks and Conservatorships

Under the Board's proposal, bridge banks (banks provided for in section 11(n) of the FDI Act, 12 U.S.C. 1821(n)) and insured institutions in FDIC or Resolution Trust Corporation (RTC) conservatorships would be required to pay the "average" assessment rate. Comments were requested on this proposed treatment of such institutions.

Seven of the 209 comment letters addressed this issue. Six of these felt that these institutions should be charged the highest assessment rate. One commenter suggested that these institutions be required to pay assessments at the last rate charged before government intervention.

While the Board recognizes that these government-controlled institutions compete for deposits with private sector firms, competitive equity considerations do not fully warrant that they pay the highest premium. Government-controlled institutions are not expected to incur any new losses arising from loans made during the period of such control. Indeed, on this account, it could be argued that they should pay the lowest premium applicable to insured institutions. In addition, resolutions of institutions under RTC conservatorship are financed by taxpayers. For the insurance funds to charge the highest premium rate to taxpayer-supported institutions would seem to the Board to be inappropriate.

Accordingly, the Board adopts the approach reflected in the proposed rule. However, as discussed above, the final rule identifies the relevant rate in terms of the rate applicable to adequately capitalized "A" institutions rather than in terms of an "average" rate.

3. Treatment of Banks in a Multi-Bank Holding Company

An issue raised by several commenters concerned the application of a single rate to all banks within a multi-bank holding company, based on consolidated holding company data. Some commenters cited the cross-guarantee provisions of the FIRREA in support of this position, arguing that because of these provisions the consolidated holding company is the most appropriate unit of analysis for measuring the FDIC's risk exposure.

This approach has certain appealing features. In order to implement this suggestion, however, the FDIC would have to become involved in evaluating the strength of holding companies. This would involve a considerable philosophical departure from the FDIC's traditional role of monitoring and insuring individual institutions. In addition, there are concerns about the practical aspects of applying a lower premium based on a holding company's obligation instead of its actual performance. If a holding company is in fact strong, then that strength should be reflected in the balance sheets and condition of its subsidiary institutions. For these reasons, the Board declines to act on the suggestion at this time, but may revisit the issue in the context of the permanent risk-based assessment system.

4. Differentiation by Size

In its proposal, the Board requested comment as to whether separate risk-related systems based on size distinctions should be established under section 302(e) of the FDIC Improvement Act with regard to the permanent risk-based assessment system, as expressly authorized by that statute. Twenty-two commenters addressed this issue. Of these, 12 indicated that separate systems based on size were not appropriate. Of the 10 commenters indicating that separate systems should be created, 9 suggested using size differences and one suggested a separate system for rural institutions. The establishment of separate systems based on affiliation in a holding company was also suggested.

At this time, the Board is not convinced of the need to establish separate systems based on size. It is not clear why two institutions with the same capital ratios and the same supervisory evaluations should pay potentially different premium rates solely because of their respective sizes.

5. Redefinition of the Assessment Base

A number of commenters made suggestions regarding the assessment base upon which BIF and SAIF assessment payments are calculated. This issue also was raised in connection with the proposed increase in the BIF member assessment rate and is addressed above.

6. Other Proposed Amendments

In its proposed amendments to the assessments regulations, the Board included revisions unrelated to the transitional risk-based assessment system. These revisions would update § 327.7 and subpart D of part 327 of the regulations.

No comment was received on these changes. Accordingly, the Board has adopted the relevant amendments as proposed, with the exception of a technical change in § 327.32(b)(1)(i) to further clarify that the transitional risk-based assessment system applies with respect to "Oakar" institutions.

List of Subjects in 12 CFR Part 327

Assessments, Bank deposit insurance, Financing Corporation, Savings associations.

For the reasons set forth in the preamble, part 327 of chapter III of title 12 of the Code of Federal Regulations is amended to read as follows:

PART 327—ASSESSMENTS

1. The authority citation for part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1441b, 1817–1819.

2. Section 327.3 is amended by adding paragraphs (d), (e), (f), (g) and (h) to read as follows:

§ 327.3 Payment of semiannual assessments.

* * * * *

(d) *Annual assessment rate*—(1) *Assessment risk classification.* For the

purpose of determining the annual assessment rate for BIF members under § 327.13(c) and the annual assessment rate for SAIF members under § 327.23(d), each insured institution will be assigned an "assessment risk classification". By the first day of the month preceding each semiannual period, each institution will be provided notice of its assessment risk classification for that period. Each institution's assessment risk classification, which will be composed of a group and a subgroup assignment, will be based on the following capital factors and supervisory evaluations:

(i) *Capital factors.* Institutions will be assigned to one of the following three capital groups on the basis of data reported in the institution's Report of Income and Condition, or Thrift Financial Report containing the necessary capital data, for the report date that is closest to the last day of the seventh month preceding the current semiannual period.

(A) *Well capitalized.* For assessment risk classification purposes, the short-form designation for well-capitalized institutions is "1".

(*1*) Except as provided in paragraph (d)(1)(i)(A) (*2*) of this section, this group consists of institutions satisfying each of the following capital ratio standards: Total risk-based ratio, 10.0 percent or greater; Tier 1 risk-based ratio, 6.0 percent or greater; and Tier 1 leverage ratio, 5.0 percent or greater.

(*2*) For purposes of assessment risk classification, an insured branch of a foreign bank shall be deemed to be well capitalized if the insured branch maintains the pledge of assets required under 12 CFR 346.19, and the eligible assets prescribed under 12 CFR 346.20 at 108 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities.

(B) *Adequately capitalized.* For assessment risk classification purposes, the short-form designation for adequately capitalized institutions is "2".

(*1*) Except as provided in (d)(1)(i)(B)(*2*) of this section, this group consists of institutions that do not satisfy the standards of "well capitalized" under this paragraph but which satisfy each of the following capital ratio standards: Total risk-based ratio, 8.0 percent or greater; Tier 1 risk-based ratio, 4.0 percent or greater; and Tier 1 Leverage ratio, 4.0 percent or greater.

(*2*) For purposes of assessment risk classification, an insured branch of a foreign bank shall be deemed to be adequately capitalized if the insured branch:

(*i*) Maintains the pledge of assets required under 12 CFR 346.19;

(*ii*) Maintains the eligible assets prescribed under 12 CFR 346.20 at 106 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities; and

(*iii*) Does not meet the definition of a well capitalized insured branch of a foreign bank.

(C) *Undercapitalized.* For assessment risk classification purposes, the short-form designation for this group is "3". This group consists of institutions that do not qualify as either "well capitalized" or "adequately capitalized" under paragraphs (d)(1)(i) (A) and (B) of this section.

(ii) *Supervisory evaluations.* Within its capital group, each institution will be assigned to one of three subgroups on the basis of supervisory evaluations by the institution's primary federal supervisor and, if applicable, state supervisor; and such other information as the Corporation determines to be relevant to the institution's financial condition and the risk posed to the BIF or SAIF. The three supervisory subgroups are:

(A) *Subgroup "A".* This subgroup consists of financially sound institutions with only a few minor weaknesses;

(B) *Subgroup "B".* This subgroup consists of institutions that demonstrate weaknesses which, if not corrected, could result in significant deterioration of the institution and increased risk of loss to the BIF or SAIF; and

(C) *Subgroup "C".* This subgroup consists of institutions that pose a substantial probability of loss to the BIF or SAIF unless effective corrective action is taken.

(2) *Classification notice not provided; applicable assessment rate.* Any institution to which notice of its assessment risk classification for the current semiannual period is not provided by the first day of the period shall preliminarily compute its assessment based on the rate applicable to the classification designated "2A" in the rate schedule set forth in § 327.13(c)(2), if the institution is a BIF member, or the schedule in § 327.23(d)(2), if the institution is a SAIF member. If such institution is subsequently assigned for that period an assessment risk classification other than that designated in the schedule as "2A", any excess assessment paid by the institution pursuant to the preceding sentence shall promptly be refunded by the Corporation, with interest, and any additional assessment owed shall promptly be paid by the institution, with interest. Interest payable under this paragraph shall be at the rate provided for in § 327.7(b).

(e) *Classification for certain types of institutions.* The annual assessment rate applicable to institutions that are bridge banks under 12 U.S.C. 1821(n) and to institutions for which either the Corporation or the Resolution Trust Corporation has been appointed conservator shall in all cases be the rate applicable to the classification designated as "2A" in the schedules set forth in §§ 327.13(c)(2) and 327.23(d)(2).

(f) *Requests for review.* An institution may submit a written request for review of its assessment risk classification. Any such request must be submitted within 30 days of the date of the assessment risk classification notice provided by the Corporation pursuant to paragraph (d)(1) of this section. The request shall be submitted to the Corporation's Director of the Division of Supervision in Washington, DC, and shall include documentation sufficient to support the reclassification sought by the institution. If additional information is requested by the Corporation, such information shall be provided by the institution within 21 days of the date of the request for additional information. A request for review may include a request for an informal hearing. Any institution submitting a timely request for review will receive written notice from the Corporation regarding the outcome of its request. Notice of the procedures applicable to reviews and hearings will be included with the assessment risk classification notice to be provided pursuant to paragraph (d)(1) of this section.

(g) *Limited use of assessment risk classification.* The assignment of a particular assessment risk classification to a depository institution under this part 327 is for purposes of implementing and operating a transitional risk-based assessment system. Unless permitted by the Corporation or otherwise required by law, no institution may state in any advertisement or promotional material the assessment risk classification assigned to it pursuant to this part.

(h) *Disclosure restrictions.* The supervisory subgroup to which an institution is assigned by the Corporation pursuant to paragraph (d)(1) of this section is deemed to be exempt information within the scope of § 309.5(c)(8) of this chapter and, accordingly, is governed by the disclosure restrictions set out at § 309.6 of this chapter.

3. Section 327.7 is amended by revising paragraphs (a)(1)(ii)(A), (a)(2), (b)(1), and (b)(2) to read as follows:

§ 327.7 Payment of interest on delinquent assessment payments and assessment overpayments.

(a) * * *

(1) * * *

(ii) * * *

(A) In the case of an assessment to be paid by the bank, the assessment is postmarked after the time for payment specified in § 327.13;

* * * * *

(2) *Payment by Corporation.* The Corporation will pay interest to an insured depository institution for any timely overpayment of an assessment from the time the assessment payment is due, as specified in § 327.13 or § 327.22, to the date of disbursement by the Corporation of the overpayment amount.

(b) * * *

(1) *Current year.* The rate as determined by the most recent, published TFRM rate.

(2) *Prior years.* The interest will be calculated based on the rate issued under the TFRM for each applicable period and compounded annually. For the initial year, the rate will be applied to the gross amount of the underpayment or overpayment. For each additional year or portion thereof, the rate will be applied to the net amount of the underpayment or overpayment after that amount has been reduced by the assessment credit, if any, for the year.

4. Section 327.13 is amended by revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 327.13 Payment of assessment.

* * * * *

(c) *Assessment rate; rate schedule.* (1) The annual assessment rate for each BIF member shall be, for the semiannual periods of calendar year 1992, 0.23 percent; and

(2) Subject to § 327.3(e), the annual assessment rate for each BIF member, shall be, for the first semiannual period of calendar year 1993 and for subsequent semiannual periods, the rate designated in the following rate schedule applicable to the assessment risk classification assigned by the Corporation under § 327.3(d)(1) to that BIF member. (The schedule utilizes the group and subgroup designations specified in § 327.3(d)(1).)

SCHEDULE

Capital Group	Supervisory Subgroup		
	A	B	C
1	23	26	29
2	26	29	30
3	29	30	31

(d) *Recapitalization schedule.* The following schedule, which begins with the semiannual assessment period ending December 31, 1991, indicates the stages by which the Corporation seeks to achieve the BIF designated reserve ratio of 1.25 percent by the end of the year 2006:

Semi-annual period	Target reserve ratio (percent)
1991.2	−0.36
1992.1	−0.28
1992.2	−0.37
1993.1	−0.44
1993.2	−0.50
1994.1	−0.52
1994.2	−0.53
1995.1	−0.53
1995.2	−0.53
1996.1	−0.51
1996.2	−0.49
1997.1	−0.45
1997.2	−0.40
1998.1	−0.34
1998.2	−0.28
1999.1	−0.21
1999.2	−0.14
2000.1	−0.06
2000.2	0.03
2001.1	0.13
2001.2	0.22
2002.1	0.32
2002.2	0.41
2003.1	0.51
2003.2	0.61
2004.1	0.72
2004.2	0.82
2005.1	0.93
2005.2	1.04
2006.1	1.15
2006.2	1.25

5. Section 327.23(d) is revised to read as follows:

§ 327.23 Manner of payment.

* * * * *

(d) *Assessment rate; rate schedule.* (1) The annual assessment rate for each SAIF member shall be, for the semiannual periods of calendar year 1992, 0.23 percent; and

(2) Subject to § 327.3(e), the annual assessment rate for each SAIF member shall be, for the first semiannual period of calendar year 1993, and for subsequent semiannual periods, the rate designated in the following schedule applicable to the assessment risk classification assigned by the Corporation under § 327.3(d)(1) to that SAIF member. (The schedule utilizes the group and subgroup designations specified in § 327.3(d)(1).)

SCHEDULE

Capital group	Supervisory subgroup		
	A	B	C
1	23	26	29
2	26	29	30
3	29	30	31

6. Subpart D of Part 327 is revised to read as follows:

Subpart D—Insured Depository Institutions Participating in Section 5(d)(3) Transactions

Sec.

Subpart D—Insured Depository Institutions Participating in Section 5(d)(3) Transactions

§ 327.31 Scope.

(a) *Affected institutions.* This subpart D applies to any insured depository institution that:

(1) Is either a BIF or SAIF member; and

(2) Is the assuming, surviving, or resulting institution in a transaction undertaken pursuant to section 5(d)(3) of the Federal Deposit Insurance Act.

(b) *Duration.* This subpart D shall cease to apply to an insured depository institution if:

(1) On or after August 9, 1994, the Corporation approves an application by an insured depository institution to treat the transaction described in paragraph (a) of this section as a conversion transaction; and

(2) The insured depository institution pays the amount of any exit and entrance fee assessed by the Corporation with respect to such transaction.

§ 327.32 Computation and payment of assessment.

(a) *Responsibility for computation.* Each insured depository institution subject to this subpart D shall compute its own assessment.

(b) *Rate of assessment*—(1) *BIF and SAIF member rates.* (i) Except as provided in paragraphs (b)(2)(i) and (b)(2)(ii) of this section, and consistent with the provisions of § 327.3 of this part, the assessment to be paid by a BIF member subject to this subpart D shall be computed at the rate applicable to BIF members and the assessment to be paid by a SAIF member subject to this subpart D shall be computed at the rate applicable to SAIF members.

(ii) Such applicable rate shall be applied to the insured depository

institution's assessment base less that portion of the assessment base which is equal to the institution's adjusted attributable deposit amount.

(2) *Rate applicable to the adjusted attributable deposit amount.* (i) Notwithstanding paragraph (b)(1)(i) of this section, that portion of the assessment base of any acquiring, assuming, or resulting institution that is a BIF member which is equal to the adjusted attributable deposit amount of such institution shall:

(A) Be subject to assessment at the assessment rate applicable to SAIF members pursuant to subpart C of this part; and

(B) Not be taken into account in computing the amount of any assessment to be allocated to BIF.

(ii) Notwithstanding paragraph (b)(1)(i) of this section, that portion of the assessment base of any acquiring, assuming, or resulting institution that is a SAIF member which is equal to the adjusted attributable deposit amount of such institution shall:

(A) Be subject to assessment at the assessment rate applicable to BIF members pursuant to subpart B of this part; and

(B) Not be taken into account in computing the amount of any assessment to be allocated to SAIF.

(3) *Adjusted attributable deposit amount.* An insured depository institution's "adjusted attributable deposit amount" for any semiannual period is equal to the sum of:

(i) The amount of any deposits acquired by the institution in connection with the transaction (as determined at the time of such transaction) described in § 327.31(a);

(ii) The total of the amounts determined under paragraph (b)(3)(iii) of this section for semiannual periods preceding the semiannual period for which the determination is being made under this section; and

(iii) The amount by which the sum of the amounts described in paragraphs (b)(3)(i) and (b)(3)(ii) of this section would have increased during the preceding semiannual period (other than any semiannual period beginning before the date of such transaction) if such increase occurred at a rate equal to the annual rate of growth of deposits of the acquiring, assuming, or resulting depository institution minus the amount of any deposits acquired through the acquisition, in whole or in part, of another insured depository institution.

(4) *Deposits acquired by the institution.* As used in paragraph (b)(3)(i) of this section, the term "deposits acquired by the institution" means all deposits that are held in the institution acquired by such institution on the date of such transaction; provided, that if the Corporation or the Resolution Trust Corporation (RTC) has been appointed as conservator or receiver for the acquired institution, such term:

(i) Does not include any deposit held in the acquired institution on the date of such transaction which the acquired institution has obtained, directly or indirectly, by or through any deposit broker;

(ii) Does not include that part of any remaining deposit held in the acquired institution on the date of such transaction that is in excess of $80,000; and

(iii) Is limited to 80 per centum of the remaining portion of the aggregate of the deposits specified in paragraph (b)(4)(ii) of this section.

(5) *Deposit broker.* As used in paragraph (b)(4) of this section, the term "deposit broker" has the meaning specified in section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f).

(c) *Procedures for computation and payment.* An insured depository institution subject to this subpart D shall follow the payment procedure that is set forth in subpart B of this part.

§ 327.33 Form of certified statement.

The certified statement to be filed by an insured depository institution subject to this subpart D shall be in the form prescribed by the Corporation.

By order of the Board of Directors.

Dated at Washington, DC, this 15th day of September, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92-23514 Filed 9-30-92; 8:45 am]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 240, 249, 259 and 274

[Release Nos. 33-6958A; 34-31197A; 35-25633A; IC-18968A; FR-40A; File No. S7-4-89]

Amendments to Rules and Forms

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission announces amendments to various rules and forms under the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, and the Investment Company Act of 1940. These amendments are being adopted to conform such rules and forms to recently adopted accounting standards.

EFFECTIVE DATE: November 2, 1992.

Registrants, however, are permitted to comply immediately after publication of this Release in the Federal Register.

FOR FURTHER INFORMATION CONTACT: John W. Albert, Office of the Chief Accountant (202-272-2130), or Robert Bayless or Teresa Iannaconi, Division of Corporation Finance (202-272-2553), Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is adopting amendments to Rules 3-02,[1] 3-03,[2] 3-09,[3] 3-12,[4] 3-18,[5] 3-19,[6] 3-21,[7] 4-08,[8] 4-10,[9] 7-04,[10] 10-01,[11] 12-04,[12] and 12-16 [13] of Regulation S-X (S-X) [14] and revisions to Schedules 13E-3 [15] and 13E-4,[16] Rule 14a-3(b)(1),[17] and Forms X-17A-5,[18] 20-F,[19] and 10-K [20] under the Securities Exchange Act of 1934 (Exchange Act), Form U5S [21] under the Public Utility Holding Company Act of 1935 (Utility Act), and Form N-4 [22] under the Investment Company Act of 1940 (Investment Company Act).

I. Executive Summary

At the request of the Office of the Federal Register, the Commission has made certain revisions to this release. Accordingly, the copy issued by the Commission on September 17, 1992 should not be relied upon. The Commission historically has looked to the private sector standard setting bodies designated by the accounting profession to establish and improve accounting principles, subject to Commission oversight.[23] The

[1] 17 CFR 210.3-02.
[2] 17 CFR 210.3-03.
[3] 17 CFR 210.3-09.
[4] 17 CFR 210.3-12.
[5] 17 CFR 210.3-18.
[6] 17 CFR 210.3-19.
[7] 17 CFR 210.3-21.
[8] 17 CFR 210.4-08.
[9] 17 CFR 210.4-10.
[10] 17 CFR 210.7-04.
[11] 17 CFR 210.10-01.
[12] 17 CFR 210.12-04.
[13] 17 CFR 210.12-16.
[14] 17 CFR 210.
[15] 17 CFR 240.13e-100.
[16] 17 CFR 240.13e-101.
[17] 17 CFR 240.14a-3(b)(1).
[18] 17 CFR 240.17a-5.
[19] 17 CFR 249.220f.
[20] 17 CFR 249.310.
[21] 17 CFR 259.5s.
[22] 17 CFR 274.11c.
[23] See Accounting Series Release No. 150 (December 20, 1973) [39 FR 1260].

Commission's rules require compliance with generally accepted accounting principles (GAAP), and the requirements of the Commission's rules and forms generally are used to interpret, supplement, or expand upon the basic GAAP requirements. The purpose of these amendments is to eliminate duplicative and obsolete disclosures and to conform reporting requirements as necessary to achieve consistency between the Commission's rules and forms and existing accounting principles.[24]

The following chart summarizes the significant amendments and provides the rationale for such changes.

Summary of Amendments

The table that follows is presented as a guide to assist the reader in understanding the amendments by presenting a brief description of the changes together with an explanation of the rationale for each change. This table should be used as a supplement to the discussion provided in later sections of this release. As used in this table, SFAS refers to Statements of Financial Accounting Standards issued by the Financial Accounting Standards Board (FASB).

Topic	Amendment	Rationale
Cash Flows/SFAS 95 as amended by SFAS 102 & 104.	Amend S-X, Rule 10-01 to permit the statement of cash flows to be provided in abbreviated form for interim reporting.	This is consistent with the previous requirement that permitted the statement of changes in financial position to be provided in abbreviated form for interim reporting.
	Amend S-X, Rule 3-19, and Items 17 and 18 of Form 20-F for foreign private issuers to substitute a requirement to present a statement of cash flows, or disclosure which is substantially similar, for the previous requirement to provide a statement of changes in financial position.	This conforms the requirements for foreign private issuers to reflect the adoption of SFAS 95.
	Amend various rules in Regulation S-X and forms filed under the Securities Act, Exchange Act, Utility Act, and Investment Company Act to revise references to "changes in financial position" and "funds flow" to refer to "cash flows."	To update technical references to be consistent with SFAS 95.
	Amend S-X, Rule 3-18, and Investment Company Act Form N-4 to require registered investment companies to provide a statement of cash flows in filings with the Commission whenever necessary to comply with GAAP.	SFAS 95, as amended by SFAS 102, requires certain investment companies to present a statement of cash flows as a component of a set of basic financial statements.
Income Taxes/SFAS 109	For companies which have adopted SFAS 109, amend S-X, Rule 4-08(h), as follows:	
	(1) delete requirement to disclose the net effects on income tax expense of significant timing differences, and	(1) A separate rule is unnecessary since paragraph 43 of SFAS 109 requires disclosure of the tax effects of principal temporary differences.
	(2) delete reconciliation between the amount of reported total income tax expense and the amount computed by multiplying the income (loss) before tax by the applicable statutory Federal income tax rate, and	(2) A separate rule is unnecessary since paragraph 47 of SFAS 109 requires a reconciliation that is similar to the reconciliation currently required by 4-08(h).
	(3) amend paragraph (j) of S-X, Rule 4-10, which applies to registrants engaged in oil and gas producing activities, to revise references to the "deferred method" of accounting for income taxes and to delete the reference to accounting for excess statutory depletion.	(3) The guidance on accounting for tax effects of excess statutory depletion is deleted since it would be either (1) redundant of the existing requirements under GAAP for applying the deferred method of income tax allocation or (2) not applicable once SFAS 109 is adopted.
Premium and other Consideration and Realized Investment Gains and Losses of Insurance Companies/FAS 97.	Amend S-X, Rule7-04, to: (a) reflect net realized investment gains and losses on a pretax basis as a separate line item and a component of pretax income from continuing operations rather than inclusion on a net of tax basis below income from operations and	(a) Conform S-X classification of realized gains and losses to classification requirements adopted in SFAS 97.
	(b) require disclosure of the manner in which investment income and realized gains and losses allocable to policyholders and separate accounts are reported in the financial statements; disclose the quantified effects of such reporting on financial statements.	(b) Accounting practices differ and therefore disclosure should enhance comparability of registrants' financial statements.
Oil and Gas Disclosure Requirements/SFAS 69	Delete paragraph (k) of S-X, Rule 4-10, since the phase-in period, during which optional application of SFAS 69 was permitted for certain prior periods, has expired.	Amendment deletes rules no longer necessary.
Accounting for the Effects of Certain Types of Regulation/ SFAS 71.	Delete paragraph (j) of S-X, Rule 4-08, that requires rate regulated enterprises which are not required to account for capital leases in accordance with SFAS 13, *Accounting for Leases*, to disclose certain balance sheet and income statement information with respect to such leases.	SFAS 71 requires rate regulated enterprises to reflect the application of the provisions of SFAS 13 in all financial statements issued for years beginning after December 15, 1986. The amendment deletes the rule which is no longer necessary.

[24] The Commission also notes that although its mandatory peer review proposal, published in Securities Act Release No. 6695 (April 1, 1987) [52 FR 11665], is being withdrawn, it continues to believe that the peer review process contributes significantly to improving the quality control systems of accounting firms auditing Commission registrants and enhances the consistency and quality of practice before the Commission. The Commission, therefore, encourages accounting firms practicing before the Commission who have not joined a peer review program to do so, and the staff will continue to monitor enrollment in and the peer review activities of the SEC Practice Section (SECPS) of the American Institute of Certified Public Accountant's Division of CPA Firms with a view to whether there is need for a direct Commission requirement.

Topic	Amendment	Rationale
Computer Software Development Costs/ SFAS 86.....	Delete S-X, Rule 3-21, which specifies the accounting to be followed with respect to capitalization of costs of internal development of computer software to be sold, leased, or otherwise marketed to others.	SFAS 86 addresses the accounting issue to which Rule 3-21 relates. Therefore, the amendment deletes the rule which is no longer necessary.

II. Proposing Release

On February 17, 1989, the Commission proposed for public comment the amendments discussed herein.[25] The Commission received 46 comment letters on the proposed amendments. The majority of letters (38) were received from representatives of industry. Letters were also received from five accounting firms and one accounting association, a law firm, and an individual. Commentators generally expressed support for the Commission's objective of conforming its rules with the requirements of GAAP; however, many commentators also expressed reservations about certain of the proposed amendments which would call for financial reporting disclosures that exceed those required under GAAP. Comments are summarized in the relevant sections of this release.

III. Statement of Cash Flows

In November 1987 the FASB issued SFAS 95, Statement of Cash Flows. SFAS 95 requires presentation of a statement of cash flows as a component of a set of basic financial statements and supersedes the previous requirement to present a statement of changes in financial position.

A. Interim Reporting

1. Abbreviated Format of Statement

Rule 10-01 of S-X is being amended as proposed to permit the use of an abbreviated form of the statement of cash flows for interim financial statements. This is consistent with the previous rule which permitted the use of an abbreviated form of the statement of changes in financial position.

Several commentators questioned the use of cash flows from operations as the criterion to trigger disclosure of cash flows from investing and financing activities. The amended rule requires such disclosure when individual types of cash flows exceed 10% of average net cash flows from operating activities for the most recent three years. Several commentators suggested use of beginning cash balances rather than the average cash flows from operating activities as the measurement criterion for disclosure of significant investing and financing activities. However, as one commentator noted, many companies do not maintain significant cash balances and any percentage test applied to cash balances could result in excessively detailed disclosure. Therefore, the amended rule is based on average operating cash flows as the appropriate measure of significance for this disclosure.

2. Disclosure of Cash Interest and Taxes Paid

The proposing release would have required that cash payments for interest and income taxes be separately disclosed in the abbreviated statement or in a footnote thereto since such information was believed to be valuable for financial statement analysis.

Opponents of this aspect of the proposed rules cited the cost and time burden required to develop the data on an interim basis. Some commentators specifically noted the difficulties that would be encountered by multinational companies where data collection on a worldwide basis and the effects of exchange rates and foreign currency hedging transactions may compound the difficulty of developing these data for interim disclosure.

Respondents argued that these data would not be particularly meaningful outside of the context of a full cash flow statement. Specifically they pointed out that disclosures about significant cash payments for interest and taxes are intended to provide comparability between cash flow statements prepared under the direct and indirect methods, and that comparability is not a factor within the interim reporting rules which do not distinguish between use of the direct versus indirect methods of reporting. It was also argued that as incremental information, such a requirement would be inconsistent with the concept of an abbreviated statement.

The rules as adopted do not require interim cash flow statements to include separate disclosure of the amounts of cash interest and taxes paid.

B. Foreign Private Issuers

The Commission is amending Regulation S-X, Rule 3-19, and Items 17 and 18 of Form 20-F[26] (which contains the general financial statement requirements applicable to foreign private issuers) to adopt a requirement to provide a statement of cash flows or substantially similar information as a component of the financial statements included in filings with the Commission in place of the previous requirement to provide a statement of changes in financial position.

The Commission's requirements provide that, while foreign issuers' financial statements may be prepared according to a comprehensive body of accounting principles other than those generally accepted in the United States, they must disclose an informational content substantially similar to financial statements that comply with United States GAAP.

Thus, the amendment requires that financial statements that are prepared in accordance with a comprehensive body of principles that does not require a statement of cash or funds flow must include a statement of cash flows that complies with the requirements of SFAS 95. If the financial statements are prepared in accordance with a body of principles that requires a cash or funds flow statement in a format that differs from the U.S. required statement, the amendment permits presentation of substantially similar information in financial statement or footnote form.

Of the respondents who commented on this proposal, a substantial majority supported the proposed amendments citing among other reasons the desirability of maintaining a "level playing field" in terms of financial reporting requirements for U.S. and foreign registrants. Opposing commentators cited the potential time and cost burden for some foreign registrants, specifically addressing the hardship of applying the SFAS 95 cash flow reporting requirements to certain foreign depository financial institutions.[27] Respondents also

[25] Release 33-6818; File No. S7-4-89 (February 17, 1989) [54 FR 8202].

[26] Form 20-F (17 CFR 249.220f) is both the registration form and the annual report form which may be filed by foreign private issuers pursuant to the requirements of the Exchange Act.

[27] In December 1989 the FASB issued SFAS 104 which amends SFAS 95 to expand the circumstances under which depository financial

Continued

detailed differences in the manner of operations of British versus U.S. depository financial institutions which compound the hardship of strict compliance with the SFAS 95 cash flow reporting requirements. However, the subsequent amendment of the U.S. cash flow standard and the recent adoption of a new U.K. standard have substantially eliminated this hardship.[28]

Both proponents and opponents recommended that flexibility be allowed in the adoption and implementation of any cash flow reporting requirement.

The Commission believes that the disclosures prescribed by SFAS 95 are useful,[29] and it is appropriate to adopt this amendment, which will continue the Commission's existing requirement that foreign issuers should provide basic financial statements that reflect information that is substantially similar to that which is required by U.S. GAAP. As adopted, the Commission's requirement for cash flow reporting by foreign private issuers is flexible in that it permits presentation of the cash flow information in alternative formats in circumstances where a registrant's home country has a cash flow or funds flow reporting requirement that differs from the U.S. requirement. Further, the Commission emphasizes that, as with other accounting issues, the Commission's staff is willing to work with individual foreign registrants to resolve any unusual difficulty or burden imposed by the Commission's rules.

C. Other Technical Amendments

Many of the amendments being adopted are "housekeeping" matters, which result from the issuance of SFAS 95. All rules and forms that contain references to the previously required statement of changes in financial position are being amended to refer to the newly adopted statement of cash flows.

SFAS 95, as amended by SFAS 102, requires certain investment companies to include a statement of cash flows as a component of a set of basic financial statements. Rule 3-18 is being amended to adopt a requirement that investment companies provide a cash flow statement as a component of a set of basic financial statements to the extent required by GAAP.

The proposing release requested comments on whether the Commission should expand the summary financial information requirements in Rule 1-02(aa) of Regulation S-X to include summary cash flow data. Commentators did not express support for inclusion of cash flow data because such information was not deemed useful or relevant in all circumstances under which the data prescribed by Rule 1-02(aa) are required. A requirement that these data be routinely provided is not being adopted.

IV. Reporting on Income Taxes

SFAS 96, Accounting for Income Taxes, established financial accounting and reporting standards for the effects of income taxes on reporting entities.[30] Subsequent to the rule proposal and attendant public comment, the FASB initiated a project to amend SFAS 96 with a standard that would, among other things, revise the criteria by which deferred tax assets are recognized and measured. In February 1992, the FASB issued SFAS 109 which is effective for fiscal years beginning after December 15, 1992. Similar to the standard it amends, SFAS 109 assumes an asset and liability approach to accounting and reporting for income taxes. Rule 4-08(h) of Regulation S-X contains the Commission's income tax disclosure requirements. Some of the disclosure requirements of Rule 4-08(h) were adopted by SFAS 109 in either the original or a modified form. Rule 4-08(h) is being amended to delete those requirements that are now duplicated for registrants complying with SFAS 109. Other income tax accounting requirements are discussed below.

A. Disclosures Relating to Significant Temporary Differences

SFAS No. 109 requires disclosure of the tax effects of the principal temporary differences that give rise to deferred tax assets and liabilities. This represents a change from the approach initially taken in SFAS 96 under which companies would be required to disclose only the nature of the temporary differences that give rise to deferred tax assets and liabilities. The proposing release focused on the lack of quantified disclosure requirements under SFAS 96. Rules were proposed to require disclosure of the amount of each significant component of deferred tax assets and liabilities based on the view that quantified disclosure would be meaningful to financial statements users in assessing the potential timing and degree of management control over the reversal of timing differences.

A separate rule is no longer considered necessary as a result of the adoption of quantified disclosures under SFAS 109.

B. Other Technical Amendment

Rule 4-10(j) of Regulation S-X, captioned Income taxes, requires registrants engaged in oil and gas producing activities to apply comprehensive interperiod tax allocation by the deferred method. Reference to the deferred method of income tax allocation is being deleted in recognition of the change to the liability method required under SFAS 109. Also, the existing guidance on the income tax accounting treatment of excess statutory depletion is being deleted since it would be either (1) Redundant of the existing requirements under GAAP for applying the deferred method of income tax allocation or (2) not applicable once SFAS 109 is adopted. The rule is revised to refer to the requirements of GAAP generally since registrants that have not already voluntarily adopted SFAS 109 presently have the option of continuing to apply the deferred method until the effective date of SFAS 109.

V. Loan Origination Fees

In December 1986, the FASB issued SFAS 91, Accounting for Nonrefundable Fees and Costs Associated with Originating or Acquiring Loans and Initial Direct Costs of Leases. Rule 9-03 of Regulation S-X, which governs the form and content of balance sheets of bank holding companies, currently requires presentation of the total loan portfolio balance with separate disclosure of related loan loss allowances and unearned income. The Commission proposed an amendment of

institutions' cash flows from deposit and lending activities may be presented on a net, rather than gross, basis. This amendment will reduce but not eliminate some of the cash flow reporting burdens of depository financial institutions.

[28] In September 1991 the recently created Accounting Standards Board of the United Kingdom published Financial Reporting Standard 1, *Cash Flow Statements*. The staff has indicated to U.K. registrants that the U.K. statement (with a few incremental disclosures) substantially satisfies the cash flow statement requirement in filings with the Commission. Additionally, FASB issued a new standard that modified the U.S. cash flow statement requirement to permit disclosures of certain cash flow items on a net basis. This revision largely addresses the concern expressed by U.K. commentators.

[29] The Commission notes that cash flows may be particularly useful in assessing the relative performance of foreign and U.S. issuers since, unlike the other statements, this information is not dependent on the differing accounting rules followed in preparing the balance sheet and income statements. Further, the Commission also notes that the International Accounting Standards Committee issued an exposure draft dated July, 1991 that would require a cash flow statement. The existing IASC standard calls for a statement of changes in financial position on either a funds or cash flow basis.

[30] In December 1989, FASB issued SFAS 103 which amends SFAS 96 to defer the effective date of that statement to fiscal years beginning after December 15, 1991. The effective date was later deferred until fiscal years beginning after December 15, 1992 in recognition of the imminent adoption of a revised accounting standard.

Rule 9–03.7 to require disclosure in the balance sheet of the net unamortized deferred loan origination fees and costs.

A majority of commentators opposed the proposal. The principal reasons cited for opposition were (1) That the balance sheet disclosure exceeds the requirements of GAAP since SFAS 91 addresses only the accounting and not the financial statement display of loan origination fees and (2) that the separate information would not necessarily be relevant or useful to financial statement users and the amount of such deferred loans and fees would be included in unearned income which is required by S–X, Rule 9–03.7, to be separately disclosed if material.

The Commission finds merit in certain of these arguments. The amended rules do not include the requirement for separate disclosure of net unamortized deferred loan fees and costs.

VI. Accounting and Reporting by Insurance Companies

In December 1987 the FASB issued SFAS 97, Accounting and Reporting by Insurance Enterprises for Certain Long Duration Contracts and for Realized Gains and Losses from the Sale of Investments. Article 7 of S–X governs the form and content of financial statements of insurance enterprises.

A. Realized Gains and Losses

SFAS 97 requires that, consistent with all other industries, net realized investment gains and losses be included in the determination of income from operations rather than being presented below operating earnings and shown net of applicable income taxes in the income statement. Consistent with this standard, the Commission is amending Rule 7–04 of Regulation S–X to present net realized gains and losses on a pretax basis in the computation of income or loss from continuing operations. A majority of commentators objected to separate income statement line item presentation. Some objected to the proposed requirement that separate line item presentation would be required regardless of size.

The requirement to disclose net realized gains and losses "regardless of size" is consistent with the language for the similar requirement for bank holding companies at Rule 9–04.13 of S–X. The net amount of realized gains and losses, together with other required information concerning investing activities, provides meaningful information to financial statement users.[31] The utility of the information is not diminished because the amounts of gains versus losses happen to offset in a particular period and therefore the net amount becomes small in relation to some other measure of performance. Consequently, the amendment is being adopted as proposed.

B. Gains and Losses Allocable to Policyholders and Separate Accounts

It is the Commission's understanding that there is diversity in practice among insurance companies with respect to inclusion of investment income and realized gains and losses allocable to policyholders and separate accounts together with other investment income and realized gains and losses reported in the financial statements.[32] The Commission is amending its rules to require disclosure of an insurance enterprise's policies with respect to the manner in which the financial statements report or include investment income and realized gains and losses allocable to separate accounts and policyholders together with disclosure of the amounts of such allocable investment income and realized gains and losses included in the financial statements. This amendment is being adopted to enable users of financial statements to identify income, gains, and losses that accrue to the benefit of shareholders as compared to the benefit of policyholders and separate accounts and to facilitate comparability of financial statements.

Certain commentators objected to the proposal on the basis that this is only one area in which there is diversity in practice among insurance companies and suggested that this should be referred to the private sector for deliberation. While Commission policy supports having the private sector consider the establishment of standards, the Commission cannot ignore dealing with divergent accounting practices when they are identified. Further, the Commission has been encouraged by the favorable response from registrants in the insurance industry to go forward with this amendment. Therefore, this amendment, as modified to clarify the disclosure to be provided, is being adopted.

C. Other Consideration

SFAS 97 addresses accounting for other consideration earned by insurance enterprises, including administrative and surrender charges on investment contracts such as universal life policies. The proposing release included a proposal to amend Rule 7–04 to include a new revenue caption, "Other Consideration."

Respondents to this proposal were evenly divided with supportive commentators suggesting that a different descriptive title be adopted. Opponents generally observed that the disclosure would not be meaningful or necessary and exceeds the requirements of GAAP. It was also observed that if this "other consideration" is not otherwise separately disclosed but is included in "other income" it, nevertheless, would be required to be presented separately pursuant to the requirements of S–X, Rule 7–04.3 (Rule 7–04.4 as amended), if it exceeds five percent of total revenue.

The Commission is persuaded by these comments that these sources of revenue may be included in "other income" with separate disclosure left to the discretion of registrants subject to the requirement for separate disclosure where such amounts exceed five percent of total revenue. Therefore, the proposed amendment is not being adopted.

VII. Oil and Gas Disclosure Requirements

The Commission is deleting Rule 4–10(k) of S–X which requires supplemental disclosures of oil and gas producing activities which are substantially similar to disclosure requirements which are contained in SFAS 69, Disclosures about Oil and Gas Producing Activities. This rule is no longer necessary because the transition period for the application of comparable rules under SFAS 69 has expire.[33] As a

[31] S–X, Rule 7–04.3 (as amended), and, previously, Rule 7–04.12 contain a requirement that the caption for realized gains or losses must be referenced to a footnote that provides an analysis of realized and unrealized gains and losses for each period for which an income statement is provided.

[32] A separate account is defined in section 2(a)(37) of the Investment Company Act of 1940, 15 U.S.C. 80a–2(a)(37), and in paragraphs 53 and 54 of SFAS 60, Accounting and Reporting by Insurance Enterprises. Although the assets of a separate account are the legal assets of the insurance company, the investment income and realized gains and losses from such assets accrue to the benefit of the separate account. Some insurance companies report the investment income and realized gains and losses on separate account assets together with the general operating accounts of the insurance enterprise and include the allocation of the separate account benefits with other insurance claims accruals. Other companies "net" the allocation against the investment income and realized gains and losses resulting in exclusion of separate account activities from the income statement of the insurance company.

[33] When SFAS 69 was adopted in 1982, it was made effective for years beginning on or after December 15, 1982 with earlier application encouraged but not required. The Commission's rules were amended in 1983 to indicate that the requirements of Rule 4–10(k) would not apply to fiscal years beginning on or after December 15, 1982, thus ensuring that supplemental disclosure requirements under Rule 4–10(k) would phase out as SFAS 69 requirements phased in.

result of the deletion of Rule 4–10(k), Rule 4–10(i)(4) (which currently refers to Rule 4–10(k)(6)) is also being amended to incorporate directly the language previously referenced. This is a change from the proposal to cross reference to certain related provisions of SFAS 69, which certain commentators argued could have the unintended effect of changing the method of applying the full cost ceiling test.[34]

Rule 4–10(i)(4) as presently being amended includes the current requirement to consider the tax effects of differences in bases of unproved properties, referred to in subparagraph (D) of existing Rule 4–10(i)(4). The provisions of subparagraph (D) were inadvertently omitted from the proposed rule printed in the **Federal Register.**

VIII. Other Technical Amendments

The Commission is adopting other technical amendments in response to public comment that certain other rules are no longer operative due to actions taken by the FASB. These amended rules include:

A. Rule 3–21 of Regulation S–X captioned, Special Provisions as to Financial Statements of Companies Engaged in Marketing Computer Software. This rule is supplemented by a note indicating that its requirements shall not apply to financial statements that reflect the adoption of a FASB pronouncement that provides guidance in this area. This rule is being deleted since SFAS 86, Accounting for the Costs of Computer Software to be Sold, Leased or Otherwise Marketed, is applicable to fiscal years beginning after December 15, 1985.

B. Rule 4–08(j) of Regulation S–X captioned, Leased assets and lease commitments of regulated enterprises subject to the rate-making process. This rule requires expanded lease-related disclosures in the financial statements of certain rate regulated registrants that are not required to follow the provisions of SFAS 13, Accounting for Leases. Consistent with the provisions of SFAS 71, Accounting for the Effects of Certain Types of Regulation, rate regulated registrants are no longer exempt from the provisions of SFAS 13. Therefore, the rule is being deleted since it is no longer necessary.

[34] One commentator indicated that a literal application of SFAS 69 would effectively eliminate use of the so-called "short-cut" method of calculating income taxes, presently permitted under Topic 12–D–1 of the staff accounting bulletin series.

Certain Findings

Section 23(a)(2) of the Securities Exchange Act ("the Act") [35] requires the Commission, in adopting rules under the Act, to consider the anti-competitive effect of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purpose of the Act. The Commission has considered the amendments and additions to Regulation S–X, Forms 10–K, X–17A–5, 20–F, Schedules 13E–3 and 13E–4, and Rule 14a–3, in light of the standard cited in Section 23(a)(2) and believes that adoption of these changes will not impose any burden on competition not necessary or appropriate in furtherance of the Act.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chairman of the Commission previously certified that the proposed amendments will not have a significant impact on a substantial number of small entities. No comments were received on this certification.

List of Subjects in 17 CFR Parts 210, 240, 249, 259 and 274

Accounting, Reporting and Recordkeeping Requirements, Securities, Utilities, Investment Companies.

Text of Amended Rules

In accordance with the foregoing, title 17, chapter II, of the Code of Federal Regulations is amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77aa(25), 77aa(26), 78*l*, 78m, 78n, 78o, 78w(a), 79e(a) (b), 79n, 79t, 80a–8, 80a–20, 80a–29, 80a–30, 80a–37, unless otherwise noted.

§ 210.3–01 [Amended]

2. The first paragraph of the introductory note preceding § 210.3–01 is amended by revising the phrase "changes in financial position" to read "cash flows".

[35] 15 U.S.C. 78w(a)(2).

§§ 210.3–02, 210.3–03, 210.3–09 and 210.3–12 [Amended]

3. By amending the following sections to revise the phrase "changes in financial position" to read "cash flows".

§ 210.3–02 (a) and (b)

§ 210.3–03(b)(2) (2 places)

§ 210.3–09(c)

§ 210.3–12(a)

4. By amending § 210.3–18 to redesignate paragraph (a)(3) as (a)(4) and by adding new paragraph (a)(3) and by revising paragraph (b) to read as follows:

§ 210.3–18 Special provisions as to registered management investment companies and companies required to be registered as management investment companies.

(a) * * *

(3) An audited statement of cash flows for the most recent fiscal year if necessary to comply with generally accepted accounting principles. (Further references in this rule to the requirement for such statement are likewise applicable only to the extent that they are consistent with the requirements of generally accepted accounting principles.)

* * * * *

(b) If the filing is made within 60 days after the end of the registrant's fiscal year and audited financial statements for the most recent fiscal year are not available, the balance sheet or statement of assets and liabilities may be as of the end of the preceding fiscal year and the filing shall include an additional balance sheet or statement of assets and liabilities as of an interim date within 245 days of the date of filing. In addition, the statements of operations and cash flows (if required by generally accepted accounting principles) shall be provided for the preceding fiscal year and the statement of changes in net assets shall be provided for the two preceding fiscal years and each of the statements shall be provided for the interim period between the end of the preceding fiscal year and the date of the most recent balance sheet or statement of assets and liabilities being filed. Financial statements for the corresponding period of the preceding fiscal year need not be provided.

* * * * *

§ 210.3–18 [Amended]

5. By amending § 210.3–18(c) to revise the phrase "statements of operations and changes in net assets" to read "statements of operations, cash flows, and changes in net assets".

§ 210.3-19 [Amended]

6. By amending § 210.3-19 (a)(2) and (d) to revise the phrase "changes in financial position" to read "cash flows".

§ 210.3-21 [Removed]

7. By removing § 210.3-21.

8. By amending § 210.4-08 to add paragraph (h)(3) to read as follows:

§ 210.4-08 General notes to financial statements.

* * * * *

(h) * * *

(3) Paragraphs (h) (1) and (2) of this section shall be applied in the following manner to financial statements which reflect the adoption of Statement of Financial Accounting Standards 109, Accounting for Income Taxes.

(i) The disclosures required by paragraph (h)(1)(ii) of this section and by the parenthetical instruction at the end of paragraph (h)(1) of this section and by the introductory sentence of paragraph (h)(2) of this section shall not apply.

(ii) The instructional note between paragraphs (h) (1) and (2) of this section and the balance of the requirements of paragraphs (h) (1) and (2) of this section shall continue to apply.

9. By removing and reserving paragraph (j) of § 210.4-08.

10. By amending § 210.4-08(k)(1) to revise the phrase "changes in financial position" to read "cash flows".

11. By revising paragraph (i)(4)(i) of § 210.4-10 to read as follows:

§ 210.4-10 Financial accounting and reporting for oil and gas producing activities pursuant to the Federal securities laws and the Energy Policy and Conservation Act of 1975.

* * * * *

(i) *Application of the full cost method of accounting.*

* * * * *

(4) *Limitation on capitalized costs.* (i) For each cost center, capitalized costs, less accumulated amortization and related deferred income taxes, shall not exceed an amount (the cost center ceiling) equal to the sum of:

(A) The present value of estimated future net revenues computed by applying current prices of oil and gas reserves (with consideration of price changes only to the extent provided by contractual arrangements) to estimated future production of proved oil and gas reserves as of the date of the latest balance sheet presented, less estimated future expenditures (based on current costs) to be incurred in developing and producing the proved reserves computed using a discount factor of ten percent and assuming continuation of existing economic conditions; plus

(B) the cost of properties not being amortized pursuant to paragraph (i)(3)(ii) of this section; plus

(C) the lower of cost or estimated fair value of unproven properties included in the costs being amortized; less

(D) income tax effects related to differences between the book and tax basis of the properties referred to in paragraphs (i)(4)(i)(B) and (C) of this section.

* * * * *

12. By amending paragraph (j) of § 210.4-10 to revise in the first sentence the phrase "income tax allocation by the deferred method" to read "income tax allocation by a method which complies with generally accepted accounting principles", and removing the second sentence of the paragraph.

13. By removing paragraph (k) of § 210.4-10.

14. By amending § 210.7-04 by removing paragraph 12 and by redesignating paragraphs 3 through 11 as paragraphs 4 through 12 and by adding paragraph 3 to read as follows:

§ 210.7-04 Income statements.

* * * * *

3. *Realized investment gains and losses.* Disclose the following amounts:

(a) Net realized investment gains and losses, which shall be shown separately regardless of size.

(b) Indicate in a footnote the registrant's policy with respect to whether investment income and realized gains and losses allocable to policyholders and separate accounts are included in the investment income and realized gain and loss amounts reported in the income statement. If the income statement includes investment income and realized gains and losses allocable to policyholders and separate accounts, indicate the amounts of such allocable investment income and realized gains and losses and the manner in which the insurance enterprise's obligation with respect to allocation of such investment income and realized gains and losses is otherwise accounted for in the financial statements.

(c) The method followed in determining the cost of investments sold (e.g., "average cost," "first-in, first-out," or "identified certificate") shall be disclosed.

(d) For each period for which an income statement is filed, include in a note an analysis of realized and unrealized investment gains and losses on fixed maturities and equity securities. For each period, state separately for fixed maturities [see § 210.7-03.1(a)] and for equity securities [see § 210.7-03.1(b)] the following amounts:

(1) Realized investment gains and losses, and

(2) The change during the period in the difference between value and cost.

The change in the difference between value and cost shall be given for both categories of investments even though they may be shown on the related balance sheet on a basis other than value.

* * * * *

15. By amending § 210.7-04 by revising newly redesignated paragraphs 11 and 12 to read as follows:

§ 210.7-04 Income statements.

* * * * *

11. *Equity in earnings of unconsolidated subsidiaries and 50% or less owned persons.* State, parenthetically or in a note, the amount of dividends received from such persons. If justified by the circumstances, this item may be presented in a different position and a different manner. (See § 210.4-01(a).)

12. *Income or loss from continuing operations.*

* * * * *

16. By revising § 210.10-01(a)(4) to read as follows:

§ 210.10-01 Interim financial statements.

(a) * * *

(4) The statement of cash flows may be abbreviated starting with a single figure of net cash flows from operating activities and showing cash changes from investing and financing activities individually only when they exceed 10% of the average of net cash flows from operating activities for the most recent three years. Notwithstanding this test, § 210.4-02 applies and *de minimis* amounts therefore need not be shown separately.

* * * * *

17. By amending § 210.10-01(c) (3) and (4) to revise the phrase "changes in financial position" to read "cash flows".

§ 210.12-04 [Amended]

18. By amending § 210.12-04(a) to revise the phrase "changes in financial position" to read "cash flows".

§ 210.12-16 [Amended]

19. By amending § 210.12-16 to revise the "Segment" heading under column H of the schedule to read "Benefits, claims, losses, and settlement expenses (caption 5)" and to revise footnote 4 to the schedule to read, "The total of columns I and J should agree with the amount shown for income statement caption 7".

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

20. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, and 80b-11, unless otherwise noted.

§§ 240.13e-100, 240.13e-101, 240.14a-3 and 240.17a-5 [Amended]

21. By amending the following sections by revising the phrase "changes in financial position" to read "cash flows".

§ 240.13e-100 Item 14(a)(2)
§ 240.13e-101 Item 7(a)(2)
§ 240.14a-3(b)(1)
§ 240.17a-5(g)(1)

§ 240.17a-5 [Amended]

22. By amending § 240.17a-5 by revising the phrase "Changes in Financial Position" to read "Cash Flows".

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

23. The authority citation for part 249 continues to read as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

24. By amending Form 20-F (referenced in § 249.220f) Item 17(c) to redesignate paragraph (2) as paragraph (3) and Item 18(c) to redesignate paragraphs (2) and (3) as paragraphs (3) and (4) and by adding new Items 17(c)(2) and 18(c)(2) both to read as follows:

§ 249.220f Form 20-F, registration of securities of foreign private issuers pursuant to section 12(b) or (g) and annual and transition reports pursuant to sections 13 and 15(d).

Form 20-F

* * * * *

(c) * * *

(2) If financial statements are prepared under a comprehensive body of accounting principles that does not include a requirement for a statement of changes in financial position or a statement of cash or funds flow, the basic financial statements shall include a statement of cash flows which meets the requirements of U.S. generally accepted accounting principles. If the financial statements are prepared under a comprehensive body of accounting principles that includes a requirement for a statement of cash or funds flow that differs from the requirements under U.S. generally accepted accounting principles, cash flow information that is substantially similar to the requirements under U.S. generally accepted accounting principles may be presented in a separate statement of cash flows or in a footnote.

§ 249.310 [Amended]

25. By amending Form 10-K (referenced in § 249.310) Item 8(a)(2) to revise the phrase "changes in financial condition" to read "cash flows".

PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

26. The authority citation for part 259 is revised to read as follows:

Authority: 15 U.S.C. 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t.

§ 259.5s [Amended]

27. By amending Form U5S (referenced in § 259.5s) ITEM 9 to revise the phrase "changes in financial position" to read "cash flows".

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

28. The authority citation for part 274 continues to read, in part, as follows:

Authority: The Investment Company Act of 1940, 15 U.S.C. 80a-1, *et seq.*, unless otherwise noted;

* * * * *

29. By amending Form N-4 (referenced in § 274.11c) to revise Item 23(a)(iii) and add new Item 23(a)(iv) to read as follows:

§ 274.11c Form N-4, registration statement of separate accounts organized as unit investment trusts.

Form N-4

* * * * *

Item 23. Financial Statements

(a) * * *

(iii) An audited statement of cash flows for the most recent fiscal year if necessary to comply with generally accepted accounting principles.

(iv) Audited statements of changes in net assets conforming to the requirements of Rule 6-09 of Regulation S-X [17 CFR 210.6-09] for the two most recent fiscal years.

* * * * *

Dated: September 24, 1992.
By the Commission.
Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 92-23834 Filed 9-30-92; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Office of Orphan Products Development

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority relating to general redelegations of authority from the Commissioner of Food and Drugs to add the Director, Office of Orphan Products Development, to those FDA officials already authorized to establish research, investigation, and testing programs and health information and health promotion programs, which relate to assigned functions, and to approve grants for these same areas.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Division of Management Systems and Policy (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: FDA is amending the regulations in § 5.25 *Research, investigation, and testing programs and health information and health promotion programs* (21 CFR 5.25) to add the Director, Office of Orphan Products Development, to those FDA officials already authorized to approve grants for research, investigation, and testing programs and health information and health promotion programs under sections 301, 307, 311, 1701, 1702, 1703, and 1704 of the Public Health Service Act. Redelegation of this authority will aid the Office of Orphan Products Development, in carrying out its responsibilities more efficiently. Accordingly, FDA is adding § 5.25(a)(7) as set forth below.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261-1282, 3701-3711a; secs. 2-12 of the Fair Packaging and

Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362; 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591.

2. Section 5.25 is amended by adding new paragraph (a)(7) to read as follows:

§ 5.25 Research, investigation, and testing programs and health information and health promotion programs.

(a) * * *

(7) The Director, Office of Orphan Products Development.

* * * * *

Dated: September 23, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–23746 Filed 9–30–92; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 310

[Docket No. 89N–0525]

Status of Certain Over-the-Counter Drug Category II and III Active Ingredients; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations regarding the status of certain over-the-counter (OTC) drug Category II and III active ingredients. This final rule makes a nonsubstantive correction to the final regulations that were published in the Federal Register of November 7, 1990 (55 FR 46914). That final rule listed the name of an active ingredient incorrectly. This document corrects that error and provides clarification of the final rule for certain OTC drug products.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8000.

SUPPLEMENTARY INFORMATION: This document amends the final rule concerning drug products containing certain active ingredients offered OTC for certain uses in 21 CFR part 310 (as set forth in the Federal Register of November 7, 1990 (55 FR 46914)). That final rule listed an active ingredient incorrectly. This final rule corrects that error in the regulations. As noted above, this amendment institutes a change that is nonsubstantive in nature. Because the amendment is not controversial and because, when effective, it provides clarification of a final rule for OTC drug products, FDA finds that the usual notice and comment procedures and delayed effective date are unnecessary.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 376); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

§ 310.545 [Amended]

2. Section 310.545 *Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses* is amended in paragraph (a)(3) by removing the entry "Carboxymethylcellulose" and adding in its place the entry "Carboxymethylcellulose sodium".

Dated: September 23, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–23949 Filed 9–30–92; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Regulatory Program; Definitions; Exemption for Coal Extraction Incidental to Extraction of Other Minerals; Coal Exploration; Kentucky Bond Pool; Backfilling and Grading; and Postmining Land Use

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with exceptions, of a proposed program amendment to the Kentucky regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of proposed modifications to a number of Kentucky rules in various subject areas for the purpose of maintaining consistency with revised Federal requirements, clarifying ambiguities, improving operational efficiency and implementing the additional flexibility afforded by Federal regulatory revisions.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone (606) 233–2896.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, Federal Register (47 FR 21404–21435). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

II. Submission of Amendments

By letter dated June 28, 1991 (Administrative Record Number KY–1059), Kentucky submitted a proposed program amendment modifying 19 regulations and incorporating two Technical Reclamation Memorandum (No. 19 and No. 20).

OSM announced receipt of the proposed amendment in the July 22, 1991, Federal Register (56 FR 33398), 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 August 21, 1991.

By letter dated November 11, 1991 (Administrative Record Number KY–1079, Kentucky resubmitted that portion

of the June 28, 1991, submission dealing with general permitting provisions at 405 KAR 8:010. OSM has separated the November 11, 1991, resubmission from Kentucky's original amendment dated June 28, 1991, and will process the resubmittal separately in a future **Federal Register** notice.

By letter dated December 31, 1991 (Administrative Record Number KY-1095), Kentucky submitted a proposed program amendment which revises the manner in which definitions of terms are reflected in Kentucky's regulatory program. The amendment deletes 405 KAR 7:020 which currently contains most of the definitions relevant to Kentucky's program, and adds new definition sections at the beginning of each Chapter of the Kentucky regulations, as follows: 405 KAR 7:001 definitions for 405 KAR chapter 7, 405 KAR 8:001 definitions for 405 KAR chapter 8, 405 KAR 10:001 definitions for 405 KAR chapter 10, 405 KAR 12:001 definitions for 405 KAR chapter 12, 405 KAR 16:001 definitions for 405 KAR chapter 16, 405 KAR 18:001 definitions for 405 KAR chapter 18, 405 KAR 20:001 definitions for 405 KAR chapter 20, and 405 KAR 24:001 definitions for 405 KAR chapter 24. The proposed amendment includes those changes to terms or additions of new terms that were part of the proposed program amendment (Administrative Record Number KY-1059) submitted on June 28, 1991. In addition, the proposed amendment deletes the definitions of several terms which are not used within Kentucky's program, and modifies several definitions by replacing the current definitions in the Kentucky Administrative Regulations with reference to definitions in Kentucky's Revised Statute.

OSM announced receipt of the December 31, 1991, submission in the January 30, 1992, **Federal Register** (57 FR 3601), 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 period closed on March 2, 1992.

By letter dated April 1, 1992 (Administrative Record Number KY-1124), Kentucky submitted modifications to the December 31, 1991, submission discussed above. The modifications represent changes to specific definitions made as a result of Kentucky's formal promulgation process under Kentucky's Revised Statute chapter 13A.

OSM announced receipt of the April 1, 1992, resubmission in the May 21, 1992, future **Federal Register** (57 FR 21637), and in the same notice, reopened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on June 5, 1992.

By letter dated January 22, 1992 (Administrative Record Number KY-1107), Kentucky submitted a proposed program amendment which modified 13 of the 19 regulations included in the State's June 28, 1991 submission. This resubmission incorporated changes made to the proposed regulations during the State promulgation process. Also included in the resubmission were two publications entitled "Kentucky Agricultural Statistics 1989–1990" and "Kentucky Agricultural Statistics 1990–1991", which were incorporated by reference in 405 KAR 16:200.

OSM announced receipt of the January 22, 1992, submission in the April 13, 1992, **Federal Register** (57 FR 12775) and in the same notice, reopened the comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on May 13, 1992. The sections of the Kentucky Administration Regulations (KAR) included in the January 22, 1992, resubmission are: 405 KAR 7:015 Documents incorporated by reference; 405 KAR 7:030 Applicability; 405 KAR 7:035 Exemption for coal extraction incidental to extraction of other minerals; 405 KAR 7:080 Small Operator Assistance; 405 KAR 8:020 Coal exploration; 405 KAR 10:200 Kentucky bond pool; 405 KAR 16:190 and 405 KAR 18:190 Backfilling and grading; 405 KAR 16:200 and 405 KAR 18:200 Revegetation; 405 KAR 16:210 and 405 KAR 18:220 Postmining land use capability; and 405 KAR 20:010 Coal Exploration.

By letter dated March 13, 1992 (Administrative Record Number KY-1119), Kentucky resubmitted that portion of the June 28, 1991, submission dealing with fish and wildlife resources regulations at 405 KAR 8:030, 8:040, 16:180 and 18:180. OSM has separated the March 13, 1992, resubmittal from Kentucky's original amendment dated June 28, 1991, and will process the resubmittal separately in a future **Federal Register** notice.

The January 22, 1992, submittal included reference to 405 KAR 7:080 which deals with Kentucky's Small Operator Assistance Program. Kentucky had previously resubmitted that regulation on December 5, 1991 (Administrative Record Number KY-1085). The December 5, 1991, resubmittal was open for public review and comment on December 31, 1991 (56 FR 67558). The public comment period closed on January 15, 1992, and a final rule was published on April 15, 1992 (57 FR 13043), approving the amendment to 405 KAR 7:080. As approved on April 15, 1992, the rules in 405 KAR 7:080, submitted on December 5, 1991, are identical to the rules in the January 22, 1992, resubmission. Therefore, no further discussion of 405 KAR 7:080 is required. In addition, 405 KAR 16:200 and 405 KAR 18:200, which deal with revegetation, are being separated from Kentucky's January 22, 1992, resubmission, along with the two publications regarding Kentucky's agricultural statistics referred to above, and will be considered separately by OSM in a future **Federal Register** notice.

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 Kentucky program.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to Kentucky's Regulations that are Substantively Identical to the Corresponding Federal Regulations

State regulations (405 KAR)	Subject	Federal counterpart (30 CFR)
7:030 sec. 3(1)(d).	Applicability	700.11(a)(4).
7:035 sec. 1.	Incidental Coal Extraction.	702.5 (Except for definition of terms).
7:035 sec. 2.	Incidental Coal Extraction.	702.11.
7:035 sec. 3.	Incidental Coal Extraction.	702.12.
7:035 sec. 4.	Incidental Coal Extraction.	702.13.
7:035 sec. 5.	Incidental Coal Extraction.	702.14.
7:035 sec. 6.	Incidental Coal Extraction.	702.15.
7:035 sec. 7.	Incidental Coal Extraction.	702.16.
7:035 sec. 8.	Incidental Coal Extraction.	702.17.
7:035 sec. 9.	Incidental Coal Extraction.	702.18.
8:020 sec. 1(2)(c).	Coal Exploration	772.11(b)(3).
8:020 sec. 4.	Coal Exploration	772.14.
16:210 sec. 1 (1) thru (1)(b).	Postmining Land Use Capability.	816.133(a).
18:220 sec. 1 (1) thru (1)(b).	Postmining Land Use Capability.	817.133(a).
20:010 sec. 4.	Coal Exploration	772.14(a).

Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, the Director finds that the proposed rules are no less effective than the Federal rules.

B. Revisions to Kentucky's Regulations that are not Substantively Identical to the Corresponding Federal Regulations

1. 405 KAR 7:021 Repeal of 405 KAR 7:020

Kentucky proposes to add 7:021 section 1 which repeals 7:020—Definitions and abbreviations, that defines certain terms used in 405 KAR chapters 7–24. As explained by Kentucky in the Necessity and Function section of 7:021, "405 KAR 7:020 is no longer necessary because a new administrative regulation is being promulgated in each chapter of 405 KAR chapter 7–24 that will contain the definitions for the chapter". The new administrative regulations being added by Kentucky to replace 7:020 are:

405 KAR 7:001—Definitions of terms used in chapter 7
405 KAR 8:001—Definitions of terms used in chapter 8
405 KAR 10:001—Definitions of terms used in chapter 10
405 KAR 12:001—Definitions of terms used in chapter 12
405 KAR 16:001—Definitions of terms used in chapter 16
405 KAR 18:001—Definitions of terms used in chapter 18
405 KAR 20:001—Definitions of terms used in chapter 20
405 KAR 24:001—Definitions of terms used in chapter 24

To the extent that Kentucky's proposal simply involves relocating existing definitions from 405 KAR 7:020 or other regulations to the appropriate new administrative regulation listed above, the Director finds that the proposal is not inconsistent with the requirements of SMCRA and the Federal regulations.

In addition to relocating definitions, Kentucky proposes to add new definitions; revise, modify or delete existing definitions; and delete certain existing definitions and replace them with a reference to previously approved definitions in Kentucky's Revised Statutes (KRS). These additional proposals are discussed below.

(a) Proposed new definitions. (1) Kentucky proposes to add at 405 KAR 7:001, definitions for "cumulative measurement period", "cumulative production", "cumulative revenue", "mining area", and "other mineral". "Other mineral" is also defined in 405 KAR 8:001. A portion of the definition of "cumulative measurement period", concerning criteria for determining the beginning of the period, is contained in 405 KAR 7:035 section 1. As noted in Finding "A" above, this portion of the rule is substantively identical to the Federal rule at 30 CFR 702.5. Each of these terms is used in proposed 405 KAR 7:035 which deals with the exemption for coal extraction incidental to the extraction of other minerals. The Director has determined that these definitions for "cumulative production", "cumulative revenue", "mining area", and "other mineral" are substantively identical to the Federal definitions at 30 CFR 702.5, and are, therefore, no less effective than the Federal counterparts.

(2) Kentucky proposes to add at 405 KAR 7:001 a definition of the term "knowingly". As proposed, the term means that a person knew or had reason to know in authorizing, ordering, or carrying out an act or omission that the act or omission constituted a violation of SMCRA, KRS chapter 350, 405 KAR chapters 7 through 24, or a permit condition, or that the act or omission constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS chapter 350, or 405 KAR Chapters 7 through 24. The Director finds that the proposed definition is substantively identical to, and no less effective than, the Federal definition at 30 CFR 846.5.

(3) Kentucky proposes to add at 405 KAR 7:001 a definition of "small operator", as used in the Small Operator Assistance Program (SOAP) regulations at 405 KAR 7:080, to mean an operator whose combined actual and attributed production of coal does not exceed 300,000 tons during any period of twelve (12) consecutive months. While there is no specific Federal definition of small operator, the proposal is consistent with the eligibility criteria for participation in Kentucky's SOAP as approved by the Director on April 15, 1992 (57 FR 13043), and with the Federal eligibility requirements contained in the Federal rule at 30 CFR 795.6.

(4) Kentucky proposes to delete the definition of "willful violation", formerly at 405 KAR 7:020, and add a new definition of "willfully and willful violation" at 405 KAR 7:001, 8:001 and 10:001. As proposed, the term means that a person acted either intentionally, voluntarily, or consciously, and with intentional disregard or plain indifference to legal requirements, in authorizing, ordering, or carrying out an act or omission that constituted a violation of SMCRA, KRS chapter 350, 405 KAR chapters 7 through 24, or a permit condition, or that constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS chapter 350, or 405 KAR chapters 7 through 24. The Federal regulations provide separate definitions for "willfully" at 30 CFR 846.5, and "willful violation" at 30 CFR 701.5 and 843.5. Unlike the Federal definition of "willful violation", Kentucky's proposed combined definition does not stipulate that the person who committed the act or omission must have intended the result that actually occurs. However, since Kentucky's proposed definition includes all intentional acts and omissions, it will necessarily include all acts and omissions specified in the Federal definitions. Because Kentucky's proposed combined definition will result in sanctions and penalties no less stringent that those resulting from the separate Federal definitions, the Director finds that the proposal is no less effective than the Federal regulations.

(5) Kentucky proposes to replace the definition of the term "fish and wildlife habitat" found at 405 KAR 7:020, with a definition of the term "fish and wildlife land use" which is being added at 405 KAR 16:001 and 18:001. As proposed, "fish and wildlife land use", as used in 405 KAR 16:210 and in similar situations when referring to a premining or postmining land use, means land dedicated wholly or partially to the production, protection, or management of fish or wildlife. Areas considered as having the fish and wildlife land use are typically characterized by a diversity of habitats in which use by wildlife is the dominant characteristic, whether actively managed or not. The Federal definition, set forth at 30 CFR 701.5 as part of the definition of "land use", provides that "fish and wildlife habitat" means "(L) and dedicated wholly or partially to the production, protection, or management of species of fish or wildlife". While Kentucky's proposed definition is similar to the Federal definition, the Federal definition contains no provisions allowing a fish and wildlife land use without active management. However, this language is consistent with the preamble to the revised Federal definition, which states that "OSM agrees that the management activities practiced on the land normally are an accurate reflection of the land's use. In general, as the intensity of the management increases, the land use becomes more well defined. However, in some instances, a specific use can be identified without active management" (48 FR 39893, September 1, 1983). Therefore, the Director finds that the proposed definition is not inconsistent

with the requirements of SMCRA and the Federal regulations.

(6) Kentucky proposes to add a definition of "ground cover" at 405 KAR 8:001, 16:001 and 18:001. As proposed, the term means the area of ground covered by the combined aerial parts of vegetation and litter produced and distributed naturally and seasonally on site, expressed as a percentage of the total area of measurement. The Director has determined that the proposed definition is substantively identical to and, therefore, no less effective than, the Federal definition at 30 CFR 701.5.

(7) Kentucky proposes to add a definition of "growing season" at 405 KAR 8:001, 16:001, 18:001 and 24:001. As proposed, growing season means the period during a one (1)-year cycle, from the last killing frost in the spring to the first killing frost in the fall, in which climatic conditions are favorable for plant growth. Kentucky identifies this period as normally extending from mid-April to mid-October. While there is no direct Federal counterpart, the Director finds that the definition adds clarity to Kentucky's program and will not render that program inconsistent with the requirements of SMCRA and the Federal regulations.

(8) Kentucky proposes to add a definition of "higher or better uses" at 405 KAR 16:001 and 18:001. As proposed, the term means postmining land uses that have a higher economic value or nonmonetary benefit to the landowner or the community than the premining land uses. The proposed definition is substantively identical to the Federal definition at 30 CFR 701.5. Therefore, the Director finds the proposal no less effective than its Federal counterpart.

(9) Kentucky proposes to add a definition of the term "valuable environmental resources" at 405 KAR 16:001 and 18:001. As proposed, the term means:

(a) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), or those species or habitats protected by similar state statutes; and

(b) Habitats of unusually high value for fish and wildlife, as determined by the cabinet in consultation with state and Federal agencies with responsibilities for fish and wildlife.

The defined term, for which there is no Federal definition, is used in 405 KAR chapters 16 and 18. Both of those regulation chapters are the subject of a separate proposed program amendment which is currently under review by OSM. Therefore, the Director is deferring final action on the proposed definition pending action by OSM on the proposed changes to 405 KAR chapters 16 and 18.

(10) Kentucky proposes to add definitions of the acronyms "RAM" and "TRM", to mean Reclamation Advisory Memorandum and Technical Reclamation Memorandum, respectively. "RAM" is proposed to be added to 405 KAR 16:001, 18:001, 20:001 and 24:001. "TRM" is proposed to be added to 405 KAR 8:001, 16:001 and 18:001. While there are no Federal counterparts, the Director finds that the proposals will not render Kentucky's program inconsistent with the requirements of SMCRA and the Federal regulations.

(b) Proposed revisions, modifications and deletions. (1) Kentucky proposes to revise the definitions of "forestland" contained in 405 KAR 8:001, 16:001 and 18:001, "industrial/commercial lands" contained in 405 KAR 16:001, 18:001 and 20:001, "pastureland" contained in 405 KAR 8:001, 16:001 and 18:001, "cropland" contained in 405 KAR 8:001, 10:001, 16:001, 18:001 and 20:001, and "residential land" contained in 405 KAR 8:001, 16:001, 18:001 and 20:001, by deleting reference to land used for support facilities and other facilities which directly relate to specific land use. The reference proposed for deletion is not part of the Federal definitions of these specific land uses as set forth in 30 CFR 701.5. The Director finds that the proposed deletions will not render Kentucky's program inconsistent with the requirements of SMCRA and the Federal regulations since the definitions, after the deletions, are substantively identical to their Federal counterparts.

In addition, Kentucky proposes to further revise the definition of "Industrial/commercial land" by deleting reference to commercial agricultural activities including pasturing, grazing, and watering of livestock, and the cropping, cultivation and harvesting of plants for sale or resale. Kentucky made this proposal in response to a 30 CFR part 732 notice from OSM dated February 8, 1990 (Administrative Record Number KY-967). In that notice, OSM found that the inclusion of commercial agricultural activities in the definition of "industrial/commercial land" renders the definition less effective than the Federal rules and less stringent than SMCRA. Therefore, the Director finds that the proposed definition is now no less effective than its Federal counterpart as set forth at 30 CFR 701.5.

(2) Kentucky proposes to revise the definition of "land use" at 405 KAR 7:001, 8:001, 16:001, 18:001, 18:001 and 20:001, by including reference to land used for support facilities that are an integral part of the specific land use. This addition is consistent with the Federal definition of "land use" set forth at 30 CFR 701.5. In addition, Kentucky proposes to add to the definition a statement that "(I)n some instances, a specific use can be identified without active management". While this statement is not part of the Federal definition, the language is consistent with the preamble to the Federal definition, which states that "OSM agrees that the management activities practiced on the land normally are an accurate reflection of the land's use. In general, as the intensity of the management increases, the land use becomes more well defined. However, in some instances, a specific use can be identified without active management" (48 FR 39893, September 1, 1983). Therefore, the Director finds that the proposed definition is no less effective than its Federal counterpart.

(3) Kentucky proposes to revise the definition of the term "incidental boundary revision" at 405 KAR 8:001 by deleting references to limitations to be applied in determining whether or not extensions for new areas will be considered incidental boundary revisions, and the reference to limitations on cumulative acreage added by successive revisions. These limitations being proposed for deletion by Kentucky are included in a separate proposed amendment (Administrative Record Number KY-1123) dealing with 405 KAR 8:010, General Provisions for Permits. That amendment is currently under review by OSM. There is no Federal definition of the term. With the understanding that limitations on incidental boundary revisions are the subject of another pending program amendment, the Director has determined that the proposed deletions will not render Kentucky's program inconsistent with the requirements of SMCRA and the Federal regulations.

(4) Kentucky proposes to revise the definition of "previously mined area" at 405 KAR 8:001, 16:001 and 18:001 by adding reference to coal mining operations conducted prior to August 3, 1977, where the land has not been reclaimed, and where there is no continuing responsibility to reclaim to the standards set by Kentucky's program. The Director has determined that the new language proposed to be added does not change the meaning of the term "previously mined area", but rather provides more specificity to the definition. In addition, the proposed language brings Kentucky's definition of

"previously mined area" into compliance with Judge Flannery's decision of February 12, 1990. *National Wildlife Federation* v. *Lujan 733* F. Supp. *419, 438* (D.D.C. 1990). In that decision, Judge Flannery ruled that a "previously mined area" must be an area mined before August 3, 1977, the effective date of SMCRA, and not reclaimed to the standards of SMCRA. Therefore, the Director finds that the proposal is no less effective than its Federal counterpart at 30 CFR 701.5.

(5) Kentucky proposes to revise the definition of "public park" at 405 KAR 8:001 and 24:001 by emphasizing that the subject area has been designated primarily for public recreational use. As revised, the definition is substantively identical to the Federal definition at 30 CFR 761.5. Therefore, the Director finds that the proposal is no less effective than its Federal counterpart.

(6) Kentucky proposes to revise the definition of "substantially disturb" at 405 KAR 8:001 and 20:001, for purposes of coal exploration, by changing the coal production threshold from "more than 250 tons" to "more than 25 tons". The Federal definition, at 30 CFR 701.5, retains the larger threshold. The proposed revision in consistent with OSM's earlier approval of Kentucky legislation that changed the tonnage limitation in connection with coal exploration as set forth in 405 KAR 8:020 (56 FR 4721, February 6, 1991). Therefore, the Director finds that the proposal is no less effective than the Federal definition.

(7) Kentucky proposes to delete the definitions of "date of primacy", "federal land program", "grazingland", "half-shrub", and "recurrence interval"; as well as the definitions of the following acronyms, "ac"—acre, "l"—liter, "mg"—milligram, "NPDES"—National Pollution Discharge Elimination System, and "USDI"—United States Department of the Interior. Kentucky proposes to delete these definitions and abbreviations, since the specific terms and acronyms are not used within Kentucky's regulations. Among the terms, only "grazingland", "half-shrub" and "recurrence interval" are defined in the Federal regulations, all at 30 CFR 701.5. However, grazingland is not an alternative post-mining land use in Kentucky; shrubs, rather than half-shrubs, are used in Kentucky to measure stocking success; and "recurrence interval", referring to the frequency of a precipitation event, is merely a descriptive term not necessary because the terms for precipitation events, such as "10 year, 24 hour" or "100 year, 24 hour", already describe the event's frequency. The Director finds that the proposed deletions will not render Kentucky's rules inconsistent with the requirements of SMCRA and the Federal regulations.

(c) Definitions replaced by reference to Kentucky Revised Statute. (1) Kentucky proposes to replace the definitions of eleven terms contained in Kentucky's Administrative Regulations (KAR) with references to the definitions of those terms as set forth in Kentucky Revised Statute (KRS) 350.010 and 350.450(4)(c).

—The regulatory definitions of "cabinet", "operator", "reclamation", "secretary", and "surface coal mining and reclamation operations" at 405 KAR 7:001, 8:001, 10:001, 12:001, 16:001, 18:001, 20:001 and 24:001, are substantively identical to the statutory definitions. ("Secretary" is not defined in 405 KAR 16:001 and 18:001). Therefore, the Director finds that the proposal to replace the regulatory definitions with references to the definitions contained in the KRS will not render Kentucky's program inconsistent with the requirements of SMCRA and the Federal regulations.

—The regulatory definition of "operations" refers to surface coal mining and reclamation operations (Emphasis added), while Kentucky's statutory definition refers only to surface coal mining operations. A reading of the definition itself, reveals that it references only activities directly related to the extraction of coal and not to any reclamation activities. There is no Federal definition of "operations". The Director finds that the references to the statutory definition of "operations" at 405 KAR 7:001, 8:001, 10:001, 12:001, 16:001, 18:001, 20:001 and 24:001, relating only to coal extraction activities and not to reclamation activities, will not render Kentucky's program inconsistent with the requirements of SMCRA and the Federal regulations.

—The definition of "surface coal mining operations" at KRS 350.010(1) was approved by the Director on February 6, 1991 (56 FR 4721). At that time, the Director noted that the regulatory definition was inconsistent with the amended statutory language and the statutory language was controlling. Thus, the proposal to replace the regulatory definition at 405 KAR 7:001, 8:001, 10:001, 12:001, 16:001, 18:001, 20:001 and 24:001 with a reference to the statutory definition is consistent with the prior approval. Therefore, the Director finds that the proposal will not render Kentucky's program inconsistent with the requirements of SMCRA and the Federal regulations.

—The statutory definition of "overburden", in addition to containing the language of the regulatory definition, expands its coverage to include the material after removal from its natural state in the process of surface coal mining. This additional data provides specificity without changing the meaning of the term. Therefore, the Director finds that the proposal to reference the statutory definition of "overburden" at 405 KAR 7:001, 8:001, 16:001, 18:001, 20:001 and 24:001 will not render Kentucky's program inconsistent with the requirements of SMCRA and the Federal regulations.

—The definition of "person" currently set forth at 405 KAR 7:020 contains a reference to governmental agencies, units or instrumentalities and publicly owned utilities or corporations of governmental units. The Federal definition at 30 CFR 700.5 contains the same reference. Kentucky's statutory definition does not contain such reference. By letter dated July 20, 1992 (Administrative Record Number KY-1169), Kentucky stated that they propose to revise the statutory definition in a program amendment to be submitted to OSM in the near future, by adding a reference to KRS 446.010(26) which provides that the term "person" may extend and be applied to the "bodies-politic". Therefore, the Director is deferring action on the proposal to replace the current regulatory definition of "person" with a reference to the statutory definition until the proposed program amendment discussed above, is submitted and approved by OSM.

—The regulatory definition of "approximate original contour" contains references to other sections of Kentucky's regulations dealing with requirements for impoundments, postmining rehabilitation of impoundments, and postmining land use. This is consistent with the Federal definition at 30 CFR 701.5. Kentucky's statutory definition does not contain similar references. By letter dated July 20, 1992 (Administrative Record Number KY-1169), Kentucky responded to an inquiry dated April 1, 1992, from OSM (Administrative Record Number KY-1122) regarding the failure to include the references in the statutory definition. Kentucky pointed out that the statutory definition is consistent with the definition contained in

section 701 of SMCRA, and contains a reference to KRS 350.455 which is the counterpart to section 515(b)(8) of SMCRA, regarding permanent impoundments. Kentucky stated that inclusion of the references in the statutory definition would be redundant, as it is in the current Federal definition, since the specific requirements by their own terms apply to impoundments, and need not be included in the definition in order to preserve their applicability. The Director finds that the proposal to reference the statutory definition of "approximate original contour", as clarified by Kentucky, will not render the program inconsistent with the requirements of SMCRA and the Federal regulations.

—Kentucky proposes to add at 405 KAR 8:001, the term "small operator", as the term is used in 405 KAR 8:030 and 8:040 sections 3(5). The proposal consists of a reference to the definition found at KRS 350.450(4)(c). Kentucky's rules at 405 KAR 8:030 and 8:040 section 3(5) currently contain the same reference to the statutory definition. In a separate program amendment currently under review by OSM, Kentucky is proposing to delete the references contained in section 8:030 and 8:040. The Director finds that the proposed addition at 405 KAR 8:001, while duplicative of the information at 8:030 and 8:040 will not render Kentucky's program inconsistent with the requirements of SMCRA and the Federal regulations.

2. 405 KAR 7:030 Applicability

a. Kentucky proposes to transfer from section 3(1) to section 3(2) the provision which allows the cabinet to make a written determination, based on a request from any person who intends to extract coal, whether the operation is exempt from title 405 chapters 7 through 24. In addition, Kentucky proposes to revise this provision and section 3(3) by limiting these provisions to extraction of coal pursuant to section 3(1)(a), (b) and (c), thereby excluding 3(1)(d) dealing with the extraction of coal incidental to extraction of other minerals. However, the incidental coal extraction exemption is subject to the provisions of 405 KAR 7:035. Therefore, the Director finds that the proposals are not inconsistent with the federal exemption provisions set forth at 30 CFR 700.11.

b. Kentucky proposes to revise section 3(1) (a) and (b) by (a) restricting the exemption for landowners who extract coal for his or her own noncommercial use to fifty (50) tons or less within twelve (12) successive calendar months, and (b) modifying the exemption for extraction of or the intent to extract coal by any person within twelve (12) successive calendar months to twenty-five tons or less rather than the current 250 tons or less. The Federal regulations at 30 CFR 700.11 (a)(1) and (2), in providing exemptions from chapter VII, place no limitation on the amount of coal extracted by a landowner for his or her own noncommercial use, and place a maximum limitation of 250 tons for a person conducting a surface coal mining and reclamation operation. This change is consistent with the legislation approved by OSM on February 6, 1991 (56 FR 4721). Therefore, the Director finds the proposals no less effective than 30 CFR 700.11(a) (1) and (2).

3. 405 KAR 8:020 Coal Exploration

a. Kentucky proposes to revise sections 1, 1(1), 2 and 2(1) by modifying the production levels from 250 tons or less to 25 tons or less for which a written notice of intent to explore is required; and from more than 250 tons to more than 25 tons for which application and written approval of the cabinet is required. The Federal regulations at 30 CFR 772.11(a) and 772.12(a) provide for a production threshold of 250 tons, similar to that provided for in the State rules before this proposed revision. The proposed rules do not expand the Federal limitations and are consistent with OSM's earlier approval of Kentucky legislation that changed the tonnage limitation (56 FR 4721). Therefore, the Director finds the proposals to be no less effective than the Federal counterparts.

b. Kentucky proposes to revise section 2(2)(g) to require the submission of justification for the necessity to remove more than 25 tons of coal during exploration, rather than the current threshold of 250 tons. The Federal rule at 30 CFR 772.12(b)(7) requires a statement of why extraction of more than 250 tons of coal is necessary for exploration. Since the proposed rule does not expand the Federal limitations and is consistent with an earlier approval, the Director finds the proposal to be no less effective than the Federal counterpart.

4. 405 KAR 16:210/18:220 Postmining Land Use Capability

a. Kentucky proposes to revise section 2 by deleting paragraphs (1), (2) and (3) which deal with postmining land uses for lands which were previously unmined, previously mined, or improperly managed. In lieu thereof, Kentucky proposes to add paragraphs (1), (2), (3), (4), (5) and (6) which provide as follows:

(1) For lands not previously mined, the postmining land use shall be compared to those uses which the land previously supported. This rule, while similar to the Federal rule at 30 CFR 816.133(b), fails to provide that a postmining land use must be compared to premined land which was properly managed, as set forth in the cited Federal rule. In the preamble to the Federal rule, a commenter objected to the phrase "and has been properly managed." OSM rejected the comment because "[t]he Act's legislative history makes clear that Congress did not intend for the postmining land use of land which had been improperly managed to be limited to its most recent premining use. Congress intended for the postmining use of land to be based on its 'potential utility' for a number of uses before mining, not some low use which may have resulted from mismanagement. (S. Rept. 95–128, 95th Cong., 1st Sess. 76–77 (1977))." 44 FR 14902, 15243 (March 13, 1979). Kentucky's rule allows for the possibility of land being returned to a condition that is below its potential, which is not what Congress intended Thus, to the extent that the proposed rule fails to require a comparison to a premining land use that was properly managed, the Director finds the amendment less effective than the Federal rules, and he is requiring Kentucky to amend its program accordingly.

The proposal further provides that premining land use shall be based on prevalent or dominant use, vegetative types, and features present at that area. It also provides that more than one land use can exist within a proposed permit boundary. There are no Federal counterparts for these provisions. A commenter to the Federal rule believed that 816.133 "tended to de-emphasize the multiple use concept of land restoration." *Id.* OSM responded to the comment by stating that multiple land uses are not prohibited by SMCRA or the regulations. Congress also recognized "that the postmining condition be consistent with the surrounding landscape." *Id.* at 15242. Thus, these Kentucky provisions are not inconsistent with the postmining land use provisions of 30 CFR 816/817.133.

(2) For lands previously mined, and not reclaimed in compliance with appropriate State regulations, the postmining land use shall be judged based on the use that existed prior to any mining or, if that is not possible because of the previously mined condition, the postmining land use shall be judged on the basis of the highest and best use that can be achieved which is comparable with surrounding areas and does not require the disturbance of

areas previously unaffected by mining. This proposed language is substantively identical to that found in the corresponding Federal rule at 30 CFR 816/817.133(b). Therefore, the Director finds the proposal to be no less effective than the Federal counterpart.

(3) Prime farmland historically used for cropland, and not exempted by 405 KAR 8:050 section 5, shall have a cropland postmining land use. There is no direct Federal counterpart. However, the definition of prime farmland at 30 CFR 701.5 defines such term as those lands that "have historically been used for cropland." Kentucky's proposed postmining land use for prime farmland is consistent with this definition and can be approved.

(4) "Undeveloped land or no current use or land management", shall not be designated a postmining land use. If such land category was the premining land use, and it is consistent with sections 2(2) and 3, forestland may be the designated postmining land use without compliance with procedures and criteria for an alternative postmining land use where trees were dominant on the land prior to mining. For all other cases, the area may be designated as fish and wildlife for the postmining land use without compliance with the procedures and criteria for an alternative postmining land use. While there is no direct Federal counterpart, under the conditions found in Kentucky, undeveloped land will always revert naturally to either woodland or fish and wildlife habitat. Since the required findings and approval criteria for designation of an alternative postmining land use all relate to the feasibility, legality and environmental impacts of the proposed use, there is little reason to apply these requirements when the land has no current or historical use and the proposed postmining use is the one which would eventually be achieved anyway through the natural process of ecological succession.

Under these conditions, there is effectively no real change in land use, and, as explained in the preamble to the definition of "land use" in 30 CFR 701.5 (44 FR 14933, March 13, 1979), alternative land use approval criteria and procedures do not apply. In addition, revegetation success standards for forestland or fish and wildlife habitat would be no less stringent than those for undeveloped land. Therefore, the Director finds that the proposed rule is not inconsistent with SMCRA and the Federal regulations.

(5) For permits issued after the effective date of this amendment, portions of the area affected by surface operations and facilities with slopes greater than twenty (20) percent (11.3 degrees) shall not be designated as cropland, including hay production. There is no direct Federal counterpart. However, as provided for at 30 CFR 816/817.133(c)(1), there must be a reasonable likelihood for achieving the proposed use; and, pursuant to 30 CFR 816/817.133(c)(3)(i) the proposed use must not be impractical or unreasonable. Inasmuch as the cropland designation for land with slopes greater than twenty percent would be neither practical nor have a reasonable likelihood of success, the Director finds that the proposal is not inconsistent with the general provisions of 30 CFR 816/817.133.

(6) Steep slope operations with variance from approximate original contour shall comply with the requirements of 405 KAR 20:060 section 3(2), and mountaintop removal operations shall comply with 405 KAR 8:050 section 4(3). The requirements of 20:060 section 3(2) and 8:050 section 4(3), set forth the criteria for postmining land uses. Therefore, the Director finds that the proposal is not inconsistent with SMCRA and the Federal regulations.

b. Kentucky proposes to revise section 4 to provide that higher or better alternative postmining land uses may be approved if (1) there is a reasonable likelihood that the land use will be achieved, (2) the use will not be impractical or unreasonable, (3) the landowner or land management agency having jurisdiction had been consulted, (4) the proposed use will not present an actual or probable hazard to public health or safety or threat of water pollution or diminution of water availability, (5) the proposed use will not involve unreasonable delays in implementation, and (6) the proposed use will not cause or contribute to violation of federal, state, or local law. As revised, section 4 is substantively identical to the Federal rule at 30 CFR 816/817.133(c). Therefore, the Director finds the proposed rule to be no less effective than the Federal counterpart.

In revising section 4, Kentucky deleted old subparagraphs (1)(b) and (1)(c) and paragraphs (2), (3), (4), (5), (6), (7), (8) and (9) (a), (b) and (c). There are no direct Federal counterparts for these deletions and, since section 4 as revised is substantively identical to the corresponding Federal rule, as discussed above, the Director finds that these deletions will not render Kentucky's rules inconsistent with the requirements of SMCRA and the Federal regulations.

5. 405 KAR 20:010 Coal Exploration

Kentucky proposes to revise section 2 by decreasing the coal production threshold from more than 250 tons to more than 25 tons consistent with OSM's earlier approval of Kentucky legislation that changed the tonnage limitation (56 FR 4721, February 6, 1991). Thus, the Director finds the proposal to be no less effective than SMCRA and the Federal regulations at 30 CFR 815.13.

C. Revisions to Kentucky's Regulations with no Corresponding Federal Regulations

1. 405 KAR 7:015 Documents Incorporated by Reference

a. Kentucky proposes to revise section 2 by deleting the reference to Technical Reclamation Memorandum (TRM) #9, "Revegetation Standards for Success", dated February 1, 1983, which will be replaced by TRM #19, "Field Sampling Techniques for Determining Ground Cover, Productivity, and Stocking Success of Reclaimed Surface Mined Lands", dated June 28, 1991. TRM #19 is currently being reviewed by OSM as part of a separate Kentucky program amendment (Administrative Record Number KY-1107) as that amendment deals with Kentucky's revegetation regulations at 405 KAR 16:200 and 18:200. Therefore, the Director is deferring action on the revision to 405 KAR 7:015 section 2 pending final action on the amendment to 16:200 and 18:200.

b. Kentucky proposes to revise section 4 by deleting, in section 4(6) and 4(7), the reference to publications entitled "Environmental Criteria for Electric Transmission Lines" and "Protection of Bald and Golden Eagles from Powerlines", neither of which is referred to in the corresponding Federal regulations. The Director finds that the proposed deletions will not render Kentucky's program less effective than the Federal regulations.

2. 405 KAR 7:030 Applicability

Kentucky proposes to revise section 3 by adding subsection (4) which provides a cross-reference to 405 KAR 7:035 for exemptions granted under 405 KAR 7:030 section 3(1)(d) regarding the extraction of coal incidental to the extraction of other minerals. While there is no direct Federal counterpart, the Director finds that this proposal provides clarity to the Kentucky rules that incidental coal extraction operations must meet the requirements of 405 KAR 7:035 and is consistent with the Federal regulations.

3. 405 KAR 8:020 Coal Exploration

Kentucky proposes to revise section 2(4)(c)5 by decreasing the production threshold from 250 tons of coal to 25 tons where the cabinet must find that the coal removal is justified, before

approving an application for coal exploration operations. There is no direct Federal counterpart for this proposal. However, 30 CFR 772.12(b)(7) requires an applicant to explain why coal extraction over 250 tons is justified. Thus, it is logical that the cabinet find such justification before approval of a permit. Therefore, the Director finds that it is not inconsistent with the Federal requirements for decisions on applications for coal exploration as set forth at 30 CFR 772.12(b)(7) and 772.12(d).

4. 405 KAR 10:200 Kentucky Bond Pool

a. Kentucky proposes to add a new section 2 which incorporates by reference two forms currently required to be filed by bond pool applicants. The proposal also identifies the location where copies of the forms may be obtained or reviewed. While there is no direct Federal counterpart, the proposal adds clarity and specificity to the bond pool application process, and the Director finds that the proposal will not render Kentucky's program inconsistent with the requirements of SMCRA and the Federal regulations.

b. Kentucky proposes to revise section 4(2) and section 9(4)(a) by deleting reference to the incorporation of the bond pool application form. However, the addition of the particular reference at sections 4(2) and 9(4)(a) was never formally submitted to OSM for consideration as a program amendment. Therefore, there is no necessity for the Director to act on the proposed deletion. In addition, the subject references, if formally added to the Kentucky program would be redundant in view of the addition of the new section 2 discussed in Finding C.4.a. above.

c. Kentucky proposes to revise section 4(4) by adding a provision for the payment of the bond pool application fee by cash, as well as by certified or cashier check or money order as currently set forth in that section. While there is no direct Federal counterpart, the Director finds that the proposal will not render the State program inconsistent with the requirements of SMCRA and the Federal regulations.

d. Kentucky proposes to revise section 5(3) to change references from "violation or cessation order", to "notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance", and additional references from "violation" or "cessation order" to "notice" or "order", respectively. These changes are being made in order to be consistent with the terminology at 405 KAR 12:020. While there is no direct Federal counterpart, the Director finds that the proposal provides clarity to Kentucky's rules and is not inconsistent with the requirements of SMCRA and the Federal regulations.

e. Kentucky proposes to revise section 6(1) by adding reference to "members" of the bond pool to the current reference to bond pool applicants. In addition, Kentucky is adding specific reference to summaries or analyses for which the applicants or members request confidentiality. While there is no direct Federal counterpart, the Director finds that the proposal adds clarity and specificity to Kentucky's program, and is not inconsistent with the requirements of SMCRA and the Federal regulations.

f. Kentucky proposes to revise sections 6(2), 7(1) and 7(2) which deal with determination of financial standing and reclamation compliance records, by expanding coverage of those sections to current members. The sections currently cover bond pool applicants only. While there is no direct Federal counterparts, the proposals add clarity to Kentucky's bond pool rules by emphasizing that the specific provisions apply to members as well as applicants. Therefore, the Director finds the proposals to be not inconsistent with SMCRA and the Federal regulations.

g. Kentucky proposes to revise sections 7(1)(d) and 7(2)(d) by deleting the term "willful" from the discussion of pattern of violations, in determining an applicant or member's reclamation compliance record. While there is no direct Federal counterpart, the Director finds that the proposed deletion will not render Kentucky's program inconsistent with the requirements of SMCRA and the Federal regulations.

h. Kentucky proposes to revise sections 7(1)(e) and 7(1)(f) to change references from "cessation orders and failure-to-abate cessation orders" to "orders for cessation and immediate compliance", in order to be consistent with terminology at 405 KAR 12:020. While there is no direct Federal counterpart, the Director finds that the proposal provides clarity to Kentucky's rules and is not inconsistent with the requirements of SMCRA and the Federal regulations.

i. Kentucky proposes to revise sections 7(1)(j) and 7(2)(i) to provide that in making determinations in regard to reclamation compliance records, the bond pool commission may take into account not only the performance of the applicant or member, but that of each person who owns or controls, is owned or controlled by, or is under common ownership and control with the applicant or member. While there is no direct Federal counterpart, the proposal gives the commission additional sources of information which may be used in order to more accurately evaluate the qualifications of an applicant or member, and is consistent with Federal rules dealing with the issue of ownership and control. The Director finds that the proposal will not render Kentucky's program inconsistent with the requirements of SMCRA and the Federal regulations.

j. Kentucky proposes to revise section 7(2)(e) to change references from "cessation order(s)" to "orders for cessation and immediate compliance" and "order", to be consistent with the terminology at 405 KAR 12:020. While there is no direct Federal counterpart, the Director finds that the proposal provides clarity to Kentucky's rules and is not inconsistent with the requirements of SMCRA and the Federal regulations.

5. 405 KAR 16:210/18:220 Postmining Land Use Capability

Kentucky proposes to revise section 3, dealing with historical land use, by deleting reference to the determination of minimum acceptable postmining land use capability. There is no direct Federal counterpart to Kentucky's historical land use rule, and the Director finds that the proposed deletion will not render Kentucky's program inconsistent with the requirements of SMCRA and the Federal regulations.

6. 405 KAR 20:010 Coal Exploration

Kentucky proposes to revise section 3 by adding a provision that whenever section 3 refers to performance standards in 405 KAR chapter 16 which cross-reference general permitting requirements in 405 KAR chapter 8, those permitting requirements shall only apply to the extent set forth in 405 KAR 8:020 and 20:010. There is no direct Federal counterpart for this proposal. However, the Director finds that the proposal, which may exclude general permitting requirements for coal exploration activities, is not inconsistent with the requirements of SMCRA and the Federal regulations because the permitting requirements for coal exploration are specifically required by 405 KAR 8:020 and 20:010.

IV. Summary and Disposition of Comment

Public Comments

The public comment periods and opportunities to request a public hearing were announced as follows: (1) For the submission dated June 28, 1991 (Administrative Record Number KY-1059), in the July 22, 1991, **Federal Register** (56 FR 33398); (2) For the submission dated December 31, 1991 (Administrative Record Number KY-

1095), in the January 30, 1992, Federal Register (57 FR 3601); (3) For the submission dated January 22, 1992 (Administrative Record Number KY-1107), in the April 13, 1992, Federal Register (57 FR 12775); and (4) For the submission dated April 1, 1992 (Administrative Record Number KY-1124), in the May 21, 1992, Federal Register (57 FR 21637). The public comment periods closed on August 21, 1991, March 2, 1992, May 13, 1992, and June 5, 1992, respectively. No one requested an opportunity to testify at the scheduled public hearings so no hearings were held.

Kentucky Resources Council Comments

The Kentucky Resources Council (KRC) filed comments, regarding the specific regulations covered by this final rule, on August 22, 1991 (Administrative Record Number KY-1074), April 14, 1992 (Administrative Record Number KY-1129), and May 19, 1992 (Administrative Record Number KY-1153). Following is a discussion of those comments.

General

KRC objected to the manner in which OSM's Lexington Field Office reviews and comments upon State program changes. KRC objected to what it perceives as pre-approval by the field office in advance of the public comment period. However, the field office is not approving the changes but, as an integral part of OSM, it is reviewing the submission in order to assist the Director in his final decision. The Director finds nothing inappropriate in the current procedures for processing State program amendments and wishes to stress that the field offices are not approving program amendments, either formally or informally. The Director finds no basis for changing current procedures for processing State program amendments.

Definitions

KRC raised concerns regarding specific definitions in Kentucky's program. Those concerns are summarized as follows:

—KRC feels that the definition of "approximate original contour (AOC)" is inconsistent with 30 CFR 701.5 to the extent that it fails to include a reference to the elimination of coal refuse piles. A review of Kentucky's approved statutory and regulatory definitions of AOC discloses that neither contains such reference. In a letter dated July 20, 1992 (Administrative Record Number KY-1169), Kentucky pointed out that in its initial submittal to OSM for approval of its permanent program, OSM questioned the definition of AOC. At that time, Kentucky responded that "the Ky. definition of AOC is not less stringent than the federal definition simply because the elimination of coal refuse piles is not explicitly mentioned in the Ky. definition. The Act's definition of AOC, like the Ky. regulatory definition, does not contain a specific reference to removal of coal refuse piles. Nonetheless, OSM obviously interprets the language of the Act to require removal of coal refuse piles as necessary to achieve AOC, or otherwise the specific reference to coal refuse piles in the federal regulations would be unauthorized. Thus the Ky. regulations should properly be construed as requiring removal of coal refuse piles (as opposed to properly constructed coal refuse disposal areas, which cannot be eliminated) as necessary to achieve AOC". As a result of that clarification, OSM approved the definition (45 FR 69947, October 22, 1980). The Director feels that no facts have been presented to cause OSM to reverse that approval.

—KRC requested clarification of the definition of "forest land". KRC felt it was not clear whether all lands that support forest cover would be treated as forest land, or if unmanaged (i.e., non-commercial) forests would be treated as undeveloped land. In its Statement of Consideration (Administrative Record Number KY-1107), prepared in response to public comments, Kentucky pointed out that "(I)f an area is in forest, just because it is not being managed does not mean that it can be treated as undeveloped land. * * *, if the land is *used* for the long term production of wood, it is forest land whether it is managed or not". The Director believes that the clarification provided by Kentucky should resolve KRC's concerns and no further action is required. In any event, as noted in Finding B.1.(b)(1), the state's definition of "forest land", as proposed, is substantively identical to the Federal definition.

—KRC expressed its concern over the deletion of the word "live" from the definition of ground cover. The term was apparently used in an earlier draft of the definition. However, the proposed definition, as submitted to OSM for approval, never contained the term, nor does the Federal definition. It would appear that no further action is required. As noted in Finding B.1.(a)(6), the Kentucky definition of "ground cover", as proposed, is substantively identical to the Federal definition.

—KRC feels that Kentucky should be required to explain its proposed deletion of the definition of "half-shrub" since the Federal regulations still contain such a definition. However, the term is not used in either the Federal regulations or in Kentucky's program. Therefore, there is no need for Kentucky to retain the definition.

—KRC correctly pointed out that the definition of "higher or better uses", as originally proposed by Kentucky, referred to "premining land use", rather than "premining land uses" as expressed in the Federal definition. Kentucky corrected this discrepancy in its December 31, 1991, resubmission.

—KRC pointed out that the definition of "historically used for cropland" was omitted from Kentucky's submittal dated December 31, 1991. However, the definition, which was inadvertently omitted from the December 31, 1991, submission, was reflected in the April 1, 1992, submission, and, in fact, was never proposed for deletion from Kentucky's regulations.

—In connection with the definition of "knowingly", KRC pointed out an apparent inconsistency in 405 KAR 7:090 section 11(4) as to whether the cabinet must consider all enforcement orders. However, 7:090 section 11(4) is not part of the program amendments under review. Therefore, no action is being taken regarding this comment.

—KRC questioned the use of the term "functions" in the definition of "land use". KRC felt that the use of the term invites further designation of land for postmining land uses that are minimum management and minimum utility land uses. KRC stated that the use of the term, as well as the deletion of the phrase "rather than the vegetation or cover of the land", indicated that Kentucky intends to approve as land uses the mere establishment of vegetation and cover. KRC also filed its comments with Kentucky on this matter, and the Commonwealth responded that "(T)he cabinet agrees with the thrust of the comment that land use establishment is more than mere establishment of vegetation. The performance standards on postmining land use capability remain applicable and no change in this definition is necessary". The Director agrees that no change is needed based on the clarification provided by Kentucky.

—KRC has requested clarification of the definition of "fish and wildlife land use". The Director has reviewed the

definition, as proposed, including the question of active management, as discussed in Finding B.1.(a)(5), and has determined that it is not inconsistent with the requirements of SMCRA and the Federal regulations.

—KRC expressed its opinion that the definition of "previously mined area" appears to conform to the decision of the District Court in *National Wildlife Federation* v. *Lujan*, Civ. Nos. 87–2051, 1814, 2788 (D.D.C. February 12, 1990).

—KRC questioned the use of the statutory definition of "operator" because it lacks a reference to removal of coal from refuse piles, and because the definition of "surface coal mining operations" no longer contains a reference to removal of coal from refuse piles. However, as noted in Finding B.1.(c), the previously approved statutory definition is substantively identical to the regulatory definition, in Kentucky's currently approved program.

—KRC pointed out that the statutory definition of "overburden" is different than the Federal definition. As discussed in the Director's Findings section at B.1.(c) herein, the Director noted the difference but determined that it does not render Kentucky's program inconsistent with the requirements of SMCRA and the Federal regulations.

—KRC noted that the statutory definition of "person" failed to include agencies as persons. As pointed out in the Director's Findings section herein, Kentucky has acknowledged the discrepancy and the Director is deferring final action on the definition.

—KRC expressed concern with the use of the statutory definition of "reclamation" since it failed to require restoration as one of the activities constituting reclamation. The regulatory definition which is being replaced, does refer to restoration of affected areas. The statutory definition does, however, require the "reconditioning of the area affected by surface coal mining operations." To "recondition" an area, according to Webster's Third New International Dictionary (1981), means "to *restore*" the area "to a good condition". (Emphasis added). Because the terms "reconditioning" and "restoration" are synonymous, the word "restoration" is not needed in the definition.

—KRC expressed its opinion that the statutory definition of "surface coal mining operations" is unclear with respect to the regulation of the aquatic operations associated with coal dredging from rivers and streams. However, this definition was previously reviewed and approved by the Director (56 FR 4721, February 6, 1991).

—KRC expressed concern regarding the merging of the two Federal definitions of "willfully" and "willful violation" into one definition in Kentucky's program. KRC feels that this merger appears to unduly restrict the instances in which civil penalty points for a willful violation will be assessed. Also, the KRC was concerned that the definition fails to include violations of the Secretary's regulations as actionable. As pointed out by Kentucky in its Statement of Consideration dated September 13, 1991, "[T]he definition encompasses violations of SMCRA and thereby encompasses violations of the federal regulations, and encompasses all enforcement orders and notices". As discussed in the Director's Findings section of this notice at B.1.(a)(4), the Director has considered these concerns and determined that Kentucky's proposed combined definition will result in sanctions and penalties no less stringent than those resulting from the separate Federal definitions.

—KRC expressed its opinion that the definition of "valuable environmental resources" being added at 405 KAR 16:001 and 18:001 is less effective in protecting environmental resources than is the federal regulation. As discussed in Finding B.1.(a)(9) herein, the Director is deferring final action on the proposed definition of "valuable environmental resources" pending final action on Kentucky's proposed changes to 405 KAR chapters 16 and 18. Therefore, KRC comments will be addressed at that time.

—KRC stated its opinion that OSM must obtain clarification from Kentucky, by way of legal opinion, that the proposed changes, in revising Kentucky's regulations to conform to the drafting requirements of KRS chapter 13A, do not curtail Kentucky's regulatory jurisdiction over surface coal mining operations, and do not diminish Kentucky's ability to implement the approved program. However, KRC has failed to cite any specific instances where Kentucky's jurisdiction or ability to implement the approved program have been jeopardized. OSM has reviewed Kentucky's submission in detail and finds no basis for seeking further clarification from Kentucky other than any already sought and obtained regarding specific definitions.

405 KAR 7:030

KRC stated that 405 KAR 7:030 section 3(2) fails to provide for public notice and comment consistent with 30 CFR 702.11(d), and further, that a cross-reference to 405 KAR 7:035 section 2(4) should be provided. It is not necessary for Kentucky to repeat in 405 KAR 7:030 section 3(2), the general requirements of public notice and comments of 30 CFR 700.11(c) for incidental coal extraction operations, when Kentucky has already provided for public notice and comment that is substantively identical to 30 CFR 702.11(d) at 405 KAR 7:035 section 2(4). In addition, Kentucky has made it clear in 405 KAR 7:030 section 3 (1)(c) and (4), through cross referencing, that incidental coal extraction operations must meet all the requirements of 405 KAR 7:035, which includes public comment. Therefore, the Director has determined that no change to the Kentucky regulations are required.

405 KAR 7:035

KRC indicated that 405 KAR 7:035 section 5(1)(b), which refers to coal produced from one or more seams, could be misconstrued to suggest that each seam could be considered separately in computing tonnage. Kentucky considered KRC's concerns and, in its Statement of Consideration (Administrative Record Number KY–1107), Kentucky stated that "Section 5(1)(a) is clear that tonnages are computed based on coal extracted from the 'mining area'. If a mining area has more than one coal seam, then all the tonnage from the different seams must be treated as a single unit". The Director has determined that 405 KAR 7:035 section 5(1)(b), as clarified by Kentucky in its Statement of Consideration, is substantively identical to 30 CFR 702.14(a)(2) and, therefore, no changes will be required.

Finally, the KRC expressed concern that the language of 405 KAR 7:035 section 8(2) would create ambiguity where Kentucky used the phrase "does meet the criteria for exemption", as opposed to the Federal rule at 30 CFR 702.17(b) which states that the mining area in question "should continue to be exempt". In response to KRC's concerns, Kentucky revised the language of the rule in the January 22, 1992, resubmissions to read "did meet and will continue to meet the criteria for exemption". In a letter to OSM dated May 11, 1992, KRC expressed its satisfaction with the revised language.

Kentucky Coal Association Comments

By letter dated August 29, 1991 (Administrative Record Number KY–1084), to the Kentucky Department for Surface Mining, the Kentucky Coal Association (KCA) filed comments

regarding the proposed program amendments submitted by Kentucky on June 28, 1991. The following discussion regarding KCA's comments relates only to those provisions of the June 28, 1991, submission covered by this final rule.

KCA felt that all documents incorporated by reference should be listed in one central place, instead of being scattered throughout Kentucky's regulations. Kentucky's choice in placing its incorporations by reference within each particular section is reasonable. This allows someone, when reading a certain section, to know if that section contains any documents that are incorporated by reference.

KCA stated that the definition of "growing season" should be distinguished from the definition of "seeding season". However, no basis for this position was given. Therefore, absent a showing that there is a need for distinguishing between the terms, no action is required.

KCA stated that the cabinet should be obligated to respond within five (5) working days to the written notice of intention to explore filed pursuant to 405 KAR 8:020 section 1(1). Kentucky's regulation does not provide for any time frame within which to respond to a written notice. This is consistent with the Federal rule at 30 CFR 772.11. Therefore, Kentucky's rule is no less effective than the Federal rule. KCA also pointed out that Federal regulations require a written notice of intention to explore when less than 250 tons of coal is involved. However, Kentucky's threshold of less than 25 tons is consistent with OSM's earlier approval of Kentucky legislation that changed the tonnage limitation (56 FR 4721, February 6, 1991). Therefore, no change to Kentucky's rules are required.

KCA requested that the operator be afforded the flexibility, by regulation and without being issued a violation, to revise the exploration map and his plan, which are required by 405 KAR 8:020 section 1(2)(c), after site work has begun. There is nothing in the Kentucky program to preclude revisions, if necessary. However, the Federal regulations at 30 CFR 772.11(b)(3) require such information at the time of permitting. As stated earlier, 405 KAR 8:020 section 1(2)(c) is substantively identical to 772.11(b)(3).

KCA requested revision to, and clarification of, 405 KAR 20:010 sections 3(3)(b) and 3(9), relating to new roads and removal of facilities and equipment in the exploration area. However, no revisions to these rules have been proposed by Kentucky. Therefore, they are not part of the amendment on which comments have been requested.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations of 30 CFR 732.17(h)(11)(i), comments were solicited from various government agencies with an actual or potential interest in the Kentucky program. The Kentucky Heritage Council, the Soil Conservation Service, Tennessee Valley Authority, Bureau of Land Management, Mine Safety and Health Administration and the U.S. Forest Service generally considered the amendment to be acceptable or submitted an acknowledgement with no comment.

In a letter dated May 5, 1992 (Administrative Record Number KY-1149), the U.S. Bureau of Mines (BOM) raised a question regarding the definition of "coal exploration". In particular, BOM pointed out that the phrase "or may cause any appreciable effect upon the land, * * * appears to leave open to speculation what "appreciable effect" may or may not constitute. However, the subject definition is not being revised by Kentucky in the amendments subject to this notice, and is a part of Kentucky's approved program. Therefore, the Director feels that no revisions are necessary at this time.

V. Director's Decision

Based on the above findings, the Director is approving the program amendment as submitted by Kentucky on June 28, 1991, and as modified and resubmitted on December 31, 1991, January 22, 1992, and April 1, 1992, with the exception of the issues discussed in Finding B.4.a.(1) above. In addition, the Director is deferring final action on the definitions of the terms "person" and "valuable environmental resources", and on the deletion of the reference to TRM #9, "Revegetation Standards for Success" in 405 KAR 7:015 section 2(2).

The Federal regulations at 30 CFR 917 codifying decisions concerning the Kentucky program are being amended to implement this decision. The Director is approving these proposed rules with the understanding that they be promulgated in a form identical to that submitted to OSM and reviewed by the public. Any differences between these rules and the State's final promulgated rules will be processed as a separate amendment subject to public review at a later date. This final rule is being made effective immediately to expedite the State program amendment process and to encourage the State to conform its program with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

Environmental Protection Agency (EPA) Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (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.

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 Kentucky 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 Kentucky of only such provisions.

VI. Procedural Determinations

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.

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.

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 which require approval by the Office of Management and Budget 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. 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 regulation.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 28, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

For the reasons set forth in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 917—KENTUCKY

1. The authority citation for part 917 continues to read as follows:

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

2. 30 CFR 917.15, is amended by adding a new paragraph (ll) to read as follows:

§ 917.15 Approval of regulatory program amendments.

* * * * *

(ll) The following amendments submitted to OSM on June 28, 1991, and resubmitted on December 31, 1991, January 22, 1992, and April 1, 1992, are approved effective October 1, 1992 with the exceptions identified herein. In addition, the proposed revision to 405 KAR 7:015 section 2 is being deferred. The amendments consist of the following modifications to the Kentucky program:

Revisions of the following provisions of the Kentucky Administrative Regulations (KAR):

7:001 section 1
Definitions for 405 KAR chapter 7 (except that final action on the definition of "person" is deferred)
7:015 section 4 (6) & (7)
Documents incorporated by reference; Documents referred to within these regulations
7:021 section 1
Repeal of 405 KAR 7:020 (except for the repeal of the regulatory definition of "person")
7:030 section 3 (1), (2), (3) and (4)
Applicability; Exemptions
7:035 section 1
Exemption for coal extraction incidental to the extraction of other minerals; Measurement and reporting period
7:035 section 2
Exemption for coal extraction incidental to the extraction of other minerals; Application requirements and procedures
7:035 section 3
Exemption for coal extraction incidental to the extraction of other minerals; Contents of application for exemption
7:035 section 4
Exemption for coal extraction incidental to the extraction of other minerals; Public availability of information
7:035 section 5
Exemption for coal extraction incidental to the extraction of other minerals; Requirements for exemption
7:035 section 6
Exemption for coal extraction incidental to the extraction of other minerals; Conditions of exemption and right of inspection and entry
7:035 section 7
Exemption for coal extraction incidental to the extraction of other minerals; Stockpiling of minerals
7:035 section 8
Exemption for coal extraction incidental to the extraction of other minerals; Revocation and enforcement
7:035 section 9
Exemption for coal extraction incidental to the extraction of other minerals; Reporting requirements
8:001 section 1
Definitions for 405 KAR chapter 8 (except that final action on the definition of "person" is deferred)
8:020 section 1,1(1) & 1(2)(c)
Coal exploration; Exploration in an area not designated unsuitable for mining and removing twenty-five tons or less of coal
8:020 section 2, 2(1), 2(2)(g) & 4(c)(5)
Coal exploration; Exploration removing more than twenty-five tons of coal and exploration in an area designated unsuitable for mining, regardless of tonnage
8:020 section 4
Coal exploration; commercial use or sale
10:001 section 1
Definitions for 405 KAR chapter 10 (except that final action on the definition of "person" is deferred)
10:200 section 1
Kentucky bond pool; Deletion of definitions
10:200 section 2
Kentucky bond pool; Forms
10:200 section 4(4)
Kentucky bond pool; Application for membership
10:200 section 5(3)
Kentucky bond pool; Review of Application
10:200 section 6 (1) & (2)
Kentucky bond pool; Determination of financial standing
10:200 section 7(1), (1)(d), (1)(e), (1)(f) & (1)(j)
Kentucky bond pool; Determination of reclamation compliance record
10:200 section 7(2), 7(2)(d), 7(2)(e) & 7(2)(i)
Kentucky bond pool; Determination of reclamation compliance record
12:001 section 1
Definitions for 405 KAR chapter 12 (except that final action on the definition of "person" is deferred)
16:001 section 1
Definitions for 405 KAR chapter 16 (except that final action on the definitions of "person" and "valuable environmental resources"

are deferred)
16:190 section 7(2)
Backfilling and grading; Deletion of definitions
16:210 section 1(1)
Postmining land use capability; General
16:210 section 2
Postmining land use capability; Premining and postmining land use (except to the extent that section 2(1) fails to provide that lands not previously mined were properly managed)
16:210 section 3
Postmining land use capability; Historic land use
16:210 section 4
Postmining land use capability; Alternative postmining land use
18:001 section 1
Definitions for 405 KAR chapter 18 (except that final action on the definitions of "person" and "valuable environmental resources" are deferred)
18:190 section 5(2)
Backfilling and grading; Deletion of definitions
18:220 section 1(1)
Postmining land use capability; General
18:220 section 2
Postmining land use capability; Premining and postmining land use (except to the extent that section 2(1) fails to provide that lands not previously mined were properly managed)
18:220 section 3
Postmining land use capability; Historic land use
18:220 section 4
Postmining land use capability; Alternative postmining land use
20:001 section 1
Definitions for 405 KAR chapter 20 (except that final action on the definition of "person" is deferred)
20:010 section 2
Coal exploration; Required documents
20:010 section 3
Coal exploration; Performance standards for coal exploration
20:010 section 4
Coal exploration; Requirements for a permit
24:001 section 1
Definitions for 405 KAR chapter 24 (except that final action on the definition of "person" is deferred)

2. In § 917.16, paragraph (g) is added to read as follows:

§ 917.16 Required program amendments.

* * * * *

(g) By April 1, 1993, Kentucky shall submit proposed revisions to its regulations at 405 KAR 16:210/18:220 Section 2(1) to provide that in determining premining uses of land not previously mined, the land must have been properly managed.

[FR Doc. 92-23844 Filed 9-30-92; 8:45 am]
BILLING CODE 4310-05-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. RM 91-5A]

Registration of Claims to Copyright; Architectural Works

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulation.

SUMMARY: The Copyright Office of the Library of Congress is issuing final regulations governing the registration and deposit of architectural works. The Judicial Improvements Act of 1990 amended the Copyright Act of 1976 and established "architectural works" as a new category of copyrightable subject matter. These new regulations establish the registration procedures for this new category of authorship, and determine the nature of the required deposit for registration and mandatory deposit.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, (202) 707-8380.

SUPPLEMENTARY INFORMATION: On December 1, 1990, the President signed into law the Judicial Improvements Act of 1990, Public Law 101-650, which contained provisions modifying portions of the federal copyright law, the Copyright Act of 1976. One of the most significant amendments established "architectural works" as copyrightable subject matter. The amendment defined "architectural work" as "the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard features."

The issue of protecting architectural works became a prominent copyright concern as a result of United States adherence to the Berne Convention, which was effective on March 1, 1989. Article 2(1) of the Berne Convention requires member countries to provide copyright for "works of architecture," that is, for the original design of buildings. The U.S. copyright law before December 1990 provided protection for "diagrams, models, and technical drawings, including architectural plans" as a species of protected "pictorial, graphic, and sculptural work." However, no federal copyright protection was provided for original designs of buildings. In 1989, the Copyright Office conducted a study of issues relating to works of architecture and concluded that the U.S. law was deficient in its protection of architectural works. The amendment passed in December of 1990 cures that deficiency.

The Copyright Office published instructions regarding registration procedures in Circular 41. On September 24, 1991, the Copyright Office published proposed regulations embodying the written registration practices which were in place and proposing some unique deposit provisions. (56 FR 48137).

1. Proposed Regulation

The proposed regulation on architectural works covered issues unique to this new category of authorship. Issues addressed in the proposed regulation included subject matter of protection and exclusions thereto; the application form; the concept of publication; the relationship with technical drawings; and deposit procedures.

In defining subject matter of protection, the proposed regulations drew upon the statute and legislative history. The term "building" was defined as habitable structures, and structures used by human beings. Stipulated as exclusions from protection were structures other than buildings; individual standard features of buildings; and building designs published or constructed before December 1, 1990.

The Office's proposed regulation designated Form VA as the appropriate form for registering building designs, and information concerning construction of the building, if any, was required to be disclosed at the title line of the application. Where dual copyright claims existed in the technical drawings and the architectural work depicted in the drawings, the claims were required to be registered separately.

On the issue of publication, the proposed regulation took the position that publication of the architectural plans also published the architectural work embodied in the plans. The definition provided in the proposed regulation was based on the definition of publication in the statute, and further provided that construction was not publication.

According to the proposed regulation, deposit for copyright registration would consist of drawings or plans, and, if the building has been constructed, photographs. The proposed regulation also specified certain preferences regarding the archival quality of the deposit. This archival preference also applied to published architectural works subject to mandatory deposit for the benefit of the Library of Congress under section 407 of the Copyright Act.

2. Comment Letters

Only three persons or entities submitted comment letters on the proposed regulation. They were Professor William Fryer of the University of Baltimore School of Law; the American Institute of Architects; and Committee 304 (Pictorial, Graphic, Sculptural and Choreographic Works) of the Patent, Trademark, and Copyright Section of the American Bar Association. This latter Comment apparently presents the views in summary form of 12 of the 36 members of the Committee. These comments are summarized as follows:

Comment Number 1: Professor Fryer asserts that the proposed regulation does not fully implement the Berne Convention due to its limitation to habitable structures and structures used by human beings. Professor Fryer notes: "There is no generally accepted Berne practice that removes 'inhabitable structures' from protection or requires that a structure be 'used by human beings' to be protected. These limitations remove from protection a wide range of structures that are architectural works."

Comment Number 2: The American Institute of Architects (AIA) requested two modifications in the proposed regulation. First, it argued for adoption of a new form specifically tailored to registering architectural works. Second, it asserted that the definition of publication was confusing, and asked that it be made clear that the filing of plans with public agencies did not constitute publication.

Comment Number 3: Twelve members of ABA Committee 304 expressed views on a wide range of issues. Some suggestions were made by one person. Divided opinions were expressed on some points. Some members criticized the proposed definition of a building on the following grounds:

(a) It was unclear whether the phrase "that are used by human beings" modified the term "habitable structures."

(b) The definition might wrongfully include tents and mobile homes.

(c) The list of examples should include museums.

(d) The definition should be expanded to cover creative designs, such as bird houses, dog houses, and zoo enclosures.

The exclusion for "certain functional structures" was criticized as indefinite and ambiguous. The Committee asserted "bridges" should not be excluded. Furthermore, the regulation should make clear that the exclusion for unregistrable matter does not affect the separate pictorial, graphic, or sculptural work that might be attached to the building.

The Committee asked why publication of the blueprints also published the architectural work, but publication of the architectural work would not necessarily publish the blueprints. They urged that the definition be modified to make it clear that distribution of plans to the limited number of people who are necessarily involved in the construction project did not publish the architectural work.

3. Final Regulations

a. Subject Matter of Protection

The primary criticism of the proposed regulation was that it took an overly restrictive view of the subject matter of protection. The standards proposed by the Copyright Office were largely based on the legislative history, which excludes structures other than buildings.

Protection for architectural works was originally proposed to cover "a building or other three-dimensional structure * * *". The hearings on the legislative proposal to recognize copyright in architectural works debated this broader proposal. Commentators are clearly correct in their assertions that proponents of protection in the legislative hearings offered broad visions of what should be protected.

On the other hand, state highway commissions objected that overbroad protection could result in higher construction costs in the nation's highway system. The House Subcommittee responded to these objections by deleting the reference to "three-dimensional structure" from the legislation. The House Subcommittee explained its action in the following words:

> The Subcommittee made a second amendment in the definition of architectural work: the deletion of the phrase "or three-dimensional structure." This phrase was included in H.R. 3990 to cover cases where architectural works (sic: are) embodied in innovative structures that defy easy classification. Unfortunately, the phrase also could be interpreted as covering interstate highway bridges, cloverleafs, canals, dams, and pedestrian walkways. The Subcommittee examined protection for these works, some of which form important elements of this nation's transportation system, and determined that copyright protection is not necessary to stimulate creativity or prohibit unauthorized reproduction.
>
> The sole purpose of legislating at this time is to place the United States unequivocally in compliance with its Berne Convention obligations. Protection for bridges and related nonhabitable three-dimensional structures is not required by the Berne Convention. Accordingly, the question of copyright protection for these works can be deferred to another day. As a consequence, the phrase "or other three-dimensional structures" was deleted from the definition of architectural work and from all other places in the bill.
>
> This deletion, though, raises more sharply the question of what is meant by the term "building." Obviously, the term encompassed habitable structures such as houses and office buildings. It also covers structures that are used, but not inhabited, by human beings, such as churches, pergolas, gazebos, and garden pavilions.
>
> (H.R. Rep. No. 735, 101st Cong. 2d Sess. 19-20 (1990)).

The Copyright Office agrees with the conclusions of the House Subcommittee that protection limited to buildings satisfies our Berne Convention obligations. In the legislative deliberations concerning whether to join the Berne Convention, international experts took the position that the sufficiency of U.S. law in respect to all Berne obligations was a matter for the United States to determine. (*See* discussion of W.I.P.O. Roundtable in Geneva, in H.R. Rep. No. 609, 100th Cong. 2d Sess. 38 (1988)). The study on architectural works conducted by the Copyright Office, moreover, confirms the many differences in approach among Berne member states in addressing protection of architectural works. Our study confirms an absence of uniform standards of protection for architectural works under the Berne Convention.

After careful reconsideration the Copyright Office finds the proposed regulation accurately implemented the policies expressed by legislative history However, in order to provide further clarification on the important matter of subject matter of protection, the Copyright Office has adopted a number of changes. With respect to the definition of "building," four changes are made in the final regulations. First, a provision is added that the term "building" applies to structures "that are intended to be both permanent and stationary." Second, a clarification is provided that the listing of examples in §202.11(b)(2) is not all inclusive. Third, the suggestion of the ABA Committee 304 that "museums" be added is adopted. Fourth, we have clarified that

the term "humanly" qualifies the phrase "habitable structures."

Three modifications have been made to works excluded in §202.11(d). First, reference to "certain functional structures" in §202.11(d)(1) is deleted and in its place is substituted "structures other then buildings." Second, the list of examples of structures other than buildings is expanded to specify the exclusion of "tents, recreational vehicles, mobile homes, and boats." Third, in the exclusion for standard features, the Copyright Office has added: "standard configuration of spaces."

The Copyright Office believes Congress intended to limit protection of architectural works to humanly habitable structures or other similar structures used by human beings. The Office has no doubt that this subject matter qualification is consistent with the Berne Convention obligations, based upon its June 1989 Report "Copyright in Works of Architecture."

b. Registration Limited to Single Work

The proposed regulation made no proposal regarding the one registration per work rule. The Copyright Office intended to apply the established principle found in 37 CFR 202.3 (b)(7). Since the proposed regulation has been pending, however, a number of applicants have attempted to register groups of architectural works on a single application form. The Copyright Office finds that accepting such group registrations would lead to confusion over the nature of copyrightable authorship that is being registered. For this reason, the Copyright Office limits registration to a single work. To avoid any uncertainty, the Office adds a specific provision confirming that a single application may cover only a single architectural work. Additionally, the Copyright Office also clarifies the concept of a single work in the case of tract housing at 37 CFR 202.11 (c)(2).

c. Publication

The proposed regulation based its definition of publication on the Copyright Act. The definition drew upon two statutory provisions: the definition of "publication" in section 101 of the Copyright Act, and the definition of "architectural work" which provides that the building design may be embodied in architectural plans or drawings.

The American Institute of Architects ("AIA") criticized the proposed definition on the grounds that it implied that limited distribution of plans to public agencies and subcontractors for purpose of construction constituted publication. The AIA believed this impression was created by the second sentence of the definition ("(t)he offering to distribute copies to a group of persons for purposes of further distribution or public display also constitutes publication"), which is taken nearly verbatim from the Copyright Act's definition of "publication." AIA contended that the majority of cases hold that filing plans with public agencies and limited distribution to subcontractors does not constitute publication.

The AIA position appears consistent with the majority line of the cases on this issue. The Copyright Office had and has no intention of mandating that filing plans with public agencies generally constitutes publication.

The Copyright Office is hesitant, however, to establish a judgmental policy on the extent of distribution necessary to constitute publication. For years, applicants registered architectural plans with the Copyright Office. Many of these applicants have chosen to designate their plans as published on the basis of public filing dates, and/or distribution to subcontractors. The Copyright Office has a natural reluctance to establish a policy that inflexibly mandates a public filing can never be considered a publication of the work.

As an alternative, the Copyright Office has chosen to delete the second sentence of the proposed definition of publication, even though the language is taken nearly verbatim from 17 U.S.C. 101. The purpose of the definition of publication in the regulations of the Copyright Office is to clarify matters that are capable of definitive policies. The applicant has special knowledge about the extent to which a set of plans has been distributed. The Copyright Office prefers a flexible policy, which allows the claimant to consider his or her work has been published on the basis of public filings. The Office does not, of course, take the position that a public filing always or generally constitutes publication of the work.

d. Application Forms

The American Institute of Architects endorsed the establishment of a separate registration form dedicated exclusively to registering architectural works.

The Copyright Office gave careful consideration to the proposal for a unique form. While the Copyright Office does not foreclose the possibility of creating such a form in the future, currently annual registrations of architectural works run to about 2,000. Moreover, the Examining Division has not experienced any undue difficulty in dealing with registration on Form VA. Due to the relatively low number of registrations and the lack of recurring problems, the Copyright Office has decided not to adopt a new form at this time. The Office will continue to monitor its experience with the use of Form VA to register architectural works.

4. Regulatory Flexibility Act

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress, which is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (5 U.S.C. 55 et seq and 5 U.S.C. 701 et seq). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[1]

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant impact on small business.

List of Subjects in 37 CFR Part 202

Copyright, Copyright registration, Architectural works.

Final Rules

In consideration of the foregoing, 37 CFR part 202 is amended in the manner set forth below.

PART 202—[AMENDED]

1. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C 702; §§202.19, 202.20 and 202.21 are also issued under 17 U.S.C. 407 and 408.

2. New § 202.11 is added to read as follows:

[1]The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act of 1976 (i.e. "all actions taken by the Register of Copyrights under this title (17), except with respect to the making of copies of copyright deposits) (17 U.S.C. 706(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

§ 202.11 Architectural works.

(a) *General.* This section prescribes rules pertaining to the registration of architectural works, as provided for in the amendment of title 17 of the United States Code by the Judicial Improvements Act of 1990, Public Law 101-650.

(b) *Definitions.* (1) For the purposes of this section, the term *architectural work* has the same meaning as set forth in section 101 of title 17, as amended.

(2) The term *building* means humanly habitable structures that are intended to be both permanent and stationary, such as houses and office buildings, and other permanent and stationary structures designed for human occupancy, including but not limited to churches, museums, gazebos, and garden pavilions.

(c) *Registration*--(1) *Original design.* In general, an original design of a building embodied in any tangible medium of expression, including a building, architectural plans, or drawings, may be registered as an architectural work.

(2) *Registration limited to single architectural work.* For published and unpublished architectural works, a single application may cover only a single architectural work. A group of architectural works may not be registered on a single application form. For works such as tract housing, a single work is one house model, with all accompanying floor plan options, elevations, and styles that are applicable to that particular model.

(3) *Application form.* Registration should be sought on Form VA. Line one of the form should give the title of the building. The date of construction of the building, if any, should also be designated. If the building has not yet been constructed, the notation "not yet constructed" should be given following the title.

(4) *Separate registration for plans.* Where dual copyright claims exist in technical drawings and the architectural work depicted in the drawings, any claims with respect to the technical drawings and architectural work must be registered separately.

(5) *Publication.* Publication of an architectural work occurs when underlying plans or drawings of the building or other copies of the building design are distributed or made available to the general public by sale or other transfer of ownership, or by rental, lease, or lending. Construction of a building does not itself constitute publication for purposes of registration, unless multiple copies are constructed.

(d) *Works excluded.* The following structures, features, or works cannot be registered:

(1) *Structures other than buildings.* Structures other than buildings, such as bridges, cloverleafs, dams, walkways, tents, recreational vehicles, mobile homes, and boats.

(2) *Standard features.* Standard configurations of spaces, and individual standard features, such as windows, doors, and other staple building components.

(3) *Pre-December 1, 1990 building designs.* The designs of buildings where the plans or drawings of the building were published before December 1, 1990, or the buildings were constructed or otherwise published before December 1, 1990.

3. Section 202.19 is amended by revising paragraph (b)(3), by removing paragraph (b)(4), and by adding new paragraph (d)(2)(viii) as follows:

§ 202.19 Deposit of published copies or phonorecords for the Library of Congress.

* * * * *

(b) *Definitions.* (3) The terms *architectural works, copies, collective work, device, fixed, literary work, machine, motion picture, phono- record, publication, sound recording useful article,* and their variant forms, have the meanings given to them in 17 U.S.C. 101.

* * * * *

(d) *Nature of required deposit.* * * *

(2) * * *

(viii) In the case of published architectural works, the deposit shall consist of the most finished form of presentation drawings in the following descending order of preference:

(A) Original format, or best quality form of reproduction, including offset or silk screen printing;

(B) Xerographic or photographic copies on good quality paper;

(C) Positive photostat or photodirect positive;

(D) Blue line copies (diazo or ozalid process). If photographs are submitted, they should be 8 x 10 inches and should clearly show several exterior and interior views. The deposit should disclose the name(s) of the architect(s) and draftsperson(s) and the building site.

* * * * *

4. Section 202.20 is amended by revising paragraph (b)(3) and by adding new paragraph (c)(2)(xviii) as follows:

§ 202.20 Deposit of copies and phonorecords for copyright registration.

* * * * *

(b) *Definitions.* * * *

(3) The terms *architectural works, copy, collective work, device, fixed, literary work, machine, motion picture, phonorecord, publication, sound recording, transmission program,* and *useful article,* and their variant forms, have the meanings given to them in 17 U.S.C. 101.

* * * * *

(c) *Nature of required deposit.* * * *

(2) * * *

(xviii) *Architectural works.* (A) For designs of unconstructed buildings, the deposit must consist of one complete copy of an architectural drawing or blueprint in visually perceptible form showing the overall form of the building and any interior arrangements of spaces and/or design elements in which copyright is claimed. For archival purposes, the Copyright Office prefers that the drawing submissions consist of the following in descending order of preference:

(*1*) Original format, or best quality form of reproduction, including offset or silk screen printing;

(*2*) Xerographic or photographic copies on good quality paper;

(*3*) Positive photostat or photodirect positive;

(*4*) Blue line copies (diazo or ozalid process).

The Copyright Office prefers that the deposit disclose the name(s) of the architect(s) and draftsperson(s) and the building site, if known.

(B) For designs of constructed buildings, the deposit must consist of one complete copy of an architectural drawing or blueprint in visually perceptible form showing the overall form of the building and any interior arrangement of spaces and/or design elements in which copyright is claimed. In addition, the deposit must also include identifying material in the form of photographs complying with §202.21 of these regulations, which clearly discloses the architectural works being registered. For archival purposes, the Copyright Office prefers that the drawing submissions constitute the most finished form of presentation drawings and consist of the following in descending order of preference:

(*1*) Original format, or best quality form of reproduction, including offset or silk screen printing;

(*2*) Xerographic or photographic copies on good quality paper;

(*3*) Positive photostat or photodirect positive;

(*4*) Blue line copies (diazo or ozalid process).

With respect to the accompanying photographs, the Copyright Office

prefers 8 x 10 inches, good quality photographs, which clearly show several exterior and interior views. The Copyright Office prefers that the deposit disclose the name(s) of the architect(s) and draftsperson(s) and the building site.

* * * * *

Dated: August 31, 1992.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington

The Librarian of Congress.

[FR Doc. 92-23793 Filed 9-30-92; 8:45 am]

Billing Code 1410-07-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[FRL-4010-8]

RIN 2050-AC26

Technical Assistance Grant Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to section 117(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), the Environmental Protection Agency (EPA or the Agency) is publishing the final rule for the Technical Assistance Grant (TAG) Program in the **Federal Register**. After extensive review and incorporation of public comments, the Agency has developed a final rule designed to streamline the TAG program by simplifying application and management procedures. The principle changes are: Procurement procedures have been simplified; application process has been simplified; allowable activities have been expanded; the administrative cap has been reinstated at 20%; and language concerning the ineligible applicants has been clarified. The intent of this final rule is to make grants for technical assistance available to local community groups and promote effective public participation in the Superfund cleanup process.

EFFECTIVE DATE: This final rule is effective October 1, 1992.

ADDRESSES: The official record for this rulemaking is maintained in the Superfund Docket, located in room 2427 at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460, telephone number 1-202-260-3046. The record is available for inspection, by appointment only, between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Diana Hammer, Office of Emergency and Remedial Response, 5203G, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460 at 1-703-603-8840 or the RCRA/Superfund Hotline from 8:30 a.m. to 7:30 p.m., Monday through Friday, toll free at 1-800-424-9346 (TDD-1-800-553-7672) or in the Washington area, 703-920-9810 (TDD-703-486-3323).

SUPPLEMENTARY INFORMATION: CERCLA section 305 provides for a legislative veto of regulations promulgated under CERCLA. Although INS v. Chadha, 462 U.S. 919, 103 S. Ct. 2764 (1983), cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives. If any action by Congress calls the effective date of this regulation into question, EPA will publish notice of clarification in the **Federal Register.**

The contents of today's preamble are listed in the following outline:

I. Introduction

A. Authority

This final rule is issued under the authority of section 117(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, hereinafter cited as CERCLA, 42 U.S.C. 9617(e). Section 117(e) authorizes the President to make available Technical Assistance Grants of up to $50,000 to groups of individuals affected by National Priorities List (NPL) sites where action has begun, to obtain assistance in interpreting and disseminating information related to site activities. Section 117(e) requires the President to promulgate rules for issuing these grants before processing any grant applications. Executive Order No. 12580 subsequently delegated to EPA the authority to implement section 117(e).

B. Background of the Rulemaking

EPA published in the June 10, 1987 **Federal Register** (52 FR 22244) an Advance Notice of Proposed Rulemaking (ANPRM), which discussed and solicited comments on several issues and various approaches that EPA was considering for accepting and evaluating applications, and for awarding and managing TAGs. After careful consideration of the public comments on the ANPRM, EPA published the interim final rule in the March 24, 1988 **Federal Register** (53 FR 9736). The interim final rule detailed the specific requirements for obtaining TAGs and enabled EPA to issue grants immediately while continuing to receive comments for consideration in the development of the final rule.

Based upon its early experience with the Technical Assistance Grant (TAG) Program, the Agency determined that certain changes were necessary while the final rule was being developed. The Agency published amendments to the interim final rule on December 1, 1989 to encourage and facilitate more participation in the TAG Program, and to elicit further input by the public regarding the development of the final rule. The principal purpose of the amendments was to reduce barriers to TAG participation, particularly those created by the matching funds requirement in the interim final rule. Public comments received regarding the amendments to the interim final rule have been carefully reviewed and taken into consideration in the development of the TAG final rule published here today.

II. Explanation of Changes to the Amended Interim Final Rule

The issues under consideration in today's rulemaking that were addressed by commentors and EPA's responses to them are described below.

A. Sole Applicant (§ 35.4035 (b) and (c))

When there is a sole applicant for a TAG at a particular Superfund site, the formal evaluation criteria are less critical, and § 35.4035 has been modified accordingly. EPA encourages prompt evaluation and, if merited and funds are available, may award a TAG. As part of the evaluation process, the applicant group must meet the management requirements and demonstrate that it will use grant funds effectively and also that it is representative of the

community affected by a release or threatened release at a facility listed on the NPL or proposed for listing under the National Contingency Plan (NCP) and where a response action has begun.

Where there are competing applicants, the Agency will continue to evaluate them as provided under § 35.4035.

B. Procurement (§ 35.4066)

In response to concerns over potential Conflict of Interest (COI), EPA believes that any person involved in writing up the specifications should be considered ineligible to compete for either the Technical Advisor or the Grant Administrator position. This action is consistent with OMB Circular A–110. However, the ineligibility does not apply to a person(s) involved in preparation of the TAG application.

In response to continued public comments and as recommended by the Administrator's Superfund Management Review (SMR), the procurement procedures contained in the TAG Program have been streamlined. One of the most often cited criticisms of the procurement process was that grant recipients were required to follow standard Federal procurement procedures rather than TAG-specific requirements more appropriate for the TAG Program's unique circumstances. In direct response to these comments, EPA developed streamlined procedures to encourage public participation in the TAG Program.

The new procurement procedures contained in today's regulation are simplified, while continuing to allow for adequate control over procurements under the grant. These procedures have been divided by dollar value: $1,000 or less, over $1,000 and less than $25,000, $25,000 to $50,000, and over $50,000. For procurements falling into the category of over $50,000, the grantee must follow the procurement rules in 40 CFR part 33.

In response to comments concerning the complexity of the TAG procurement process and to simplify procurement requirements, recipients will not have to go through the process of certifying or not certifying their procurement systems. Instead, we are providing the rules with which all recipients must comply.

C. Administrative Cap (§ 35.4085)

After several years of experience and careful review and consideration of public comments, the Agency has concluded that establishing a cap on administrative services costs at 20 percent, which is equivalent to the 20 percent matching funds requirement, allows local groups applying for TAGs to fulfill the 20 percent matching funds requirement with an "in-kind" administrative services match or with cash matching funds, and at the same time ensures that grant funds will be used primarily to obtain technical assistance and disseminate information.

A recurrent comment has been that recipient groups find the administration of the TAG difficult. This was also one of the major perceptions of the TAG Program to come out of the Superfund Management Review report. Reinstating the administrative services cap, raising it to 20 percent, and allowing the grant recipients to hire an individual(s) specifically for the purpose of administering the grant will alleviate the administrative difficulty for most groups. § 35.4085(d) has been revised to contain language on the administrative cap. It has been the Agency's stated policy that an acceptable range for administrative costs is between 10–20% of the total project costs. This change codifies that policy.

EPA will continue to encourage the use of volunteer services to manage the grant, but in cases where this is not feasible, grantees now have the option of hiring a grant administrator.

The Agency believes that the language formerly contained in § 35.4085(d) of the amended Interim Final Rule is covered adequately in § 35.4085(b), and the regulation has been revised accordingly. Section 35.4085(b) also contains language formerly found in § 35.4090(a).

D. Waivers to the $50,000 Grant Limit (§ 35.4090(a))

Commentors stated that Superfund sites are often complex and generate large quantities of technical information. At sites such as these, the $50,000 grant was often inadequate and commentors believe waivers to the $50,000 limit should be allowed in circumstances other than just in the case of application(s) for multiple sites.

EPA agrees. Due to unusually complex circumstances, large volumes of technical information are generated at some Superfund sites. TAG recipients may request that all or part of this information be interpreted for the affected community by the Technical Advisor. Therefore, it is reasonable to expect that more time will be required by the Technical Advisor to review documents associated with a complicated site than for an "average" Superfund site and that additional funds may be necessary.

The rule therefore provides for waivers at sites that are unusually complex. EPA has developed criteria by which to identify sites where additional funding may be required. The Agency has based these criteria on Program experience and believes they provide a reasonable basis for making a decision.

These criteria also will be applicable at mega-sites, which are, by definition, extraordinarily large and complex. To date, there has been very little in the way of actual TAG experience at mega-sites.

In determining whether a site is sufficiently complex to warrant additional funding, the Agency will consider whether three or more of the following are present:

1. An RI/FS costing in excess of $2 million;
2. Treatability studies or evaluation of new and innovative technologies are required at a site, as specified in the Record of Decision;
3. Reopening of the Record of Decision;
4. The site health assessment results in an epidemiological study;
5. Designation of one or more additional operable units after award of the TAG;
6. A post—TAG award legislative or regulatory change results in the generation of new site documentation or information;
7. A cleanup extending beyond eight years from initiation of the RI/FS through completion of construction;
8. Significant public concern, where large groups of people at a site require many meetings, copies, etc.;
9. Any other factor that, in the judgment of Regional officials, indicates that the site is unusually complex.

EPA also will consider the recipient's past performance, including determining whether administrative requirements have been met satisfactorily and that costs incurred under the previous award are allowable and reasonable.

The regulation published today has been changed accordingly and § 35.4090 has been revised to include in paragraph (a) language formerly contained in § 35.4085(b). A new paragraph has been added (§ 35.4090(a)(2)) to address unusually complex sites.

E. Waivers to the 20 percent Match (§ 35.4090 (b) through (d))

A commentor believes that waivers should be available to local groups through the entire Superfund cleanup process.

The Agency continues to believe that the purpose of these grant funds is to provide technical assistance that will aid community involvement in the study and decision-making processes leading to selection of site cleanup methods. Although citizen involvement can and

should continue during design and remedial action, once the Record of Decision has been signed, the decision has been made on how the cleanup for that operable unit will occur. The statute, CERCLA section 117(e), prohibits EPA from granting waivers to the required 20 percent match once the Record of Decision has been issued.

F. Other Issues

Definitions (§ 35.4010)

EPA is broadening the definition of the term "affected" individuals to include the phrase "whose health is or may be endangered by release of hazardous substances at the facility, or whose economic interests are directly threatened or harmed." The addition of new language incorporates the possibility that health effects of hazardous substances may arise from different sources, including, but not limited to contaminated air, soil and water sources.

A definition of waiver has been added to clarify these requirements. Deviations and waivers are distinct processes and should not be construed to refer to the same thing. EPA can grant waivers or excuse recipients from following certain anticipated regulatory or administrative requirements if:

1. The authority to issue a waiver is provided in the regulation itself, and

2. The Agency believes sufficient justification exists to approve such action.

The authority to issue a waiver is found at the Award Official level. Deviations, or exemptions from certain provisions of existing regulations, may be necessary in some unforeseen instances. The Director, Grants Administration Division, has been delegated the authority to approve deviations. The Agency does not have the authority to deviate from statutory or executive order requirements.

In addition, EPA feels clarification of several other definitions is necessary (i.e., application, award official, contract, contractor, grant agreement, operable unit, start of response action).

Cost Principles (§ 35.4013)

The TAG Program is like any other Federal grant, in that certain established requirements must be followed to ensure the proper administration of grant funds. The Cost Principle requirements, contained in OMB Circular A-122, state that all costs must be "reasonable, allowable and allocable" under the Program. Therefore, this section has been added, stating the applicability of these requirements.

Services in Lieu of Cash (§ 35.4015)

A commentor recommended that EPA eliminate from the final rule the States' ability to hire Technical Advisors and provide those services to a recipient group in lieu of a grant to the group.

EPA believes that the current regulation does not present a problem. Under § 35.4015(d)(2) such services will be provided by the State only with the agreement of the recipient group. Such assistance by the State can save time and expense for the group and in no way is intended to limit the access of affected individuals to independent expertise.

In addition, the title of § 35.4015 has been changed to "State Administration of the Program" to reflect its subject more accurately.

Incorporation (§ 35.4020 (b) and (c))

One commentor agrees with EPA's decision not to require groups to re-incorporate. However, the commenter disagrees with, and sees no justification for, EPA applying this provision only to incorporated groups that have a history of substantial involvement at the site. The commentor felt that there may be many other groups who are qualified and should receive grants even though they do not have a substantial history of involvement with the site.

In response to the comment that there are other groups who are qualified and should receive grants even though they do not have a substantial history of involvement with the site, EPA agrees and may award a TAG to such qualified groups, provided that they are incorporated. Moreover, what is at issue here is the requirement to reincorporate to receive a grant, not the ability to receive a grant.

Ineligible Applicants (§ 35.4030)

A commentor asserted that § 35.4030(b) does not prevent "front groups" from applying to the TAG Program.

In response to this comment, EPA has modified § 35.4030 (a) and (b) to identify PRP "front groups" early in the process. The interim final rule essentially treats all ineligible entities identically. The Agency's experience with the TAG Program demonstrates, however, that PRP involvement in the receipt of a grant raises unique problems not raised by the involvement of other ineligible entities. This follows from the fact that the TAG Program's purpose is to enable groups of individuals to obtain independent technical advice. Under Superfund a PRP, by definition, is potentially subject to liability for all response costs at a site; this would appear to give a PRP a financial interest in the cost of the remedy selected. EPA believes that there is inherent tension between this and the purpose of the TAG Program, providing objective, disinterested information. This makes it appropriate to distinguish between PRPs and other ineligible entities with regard to participation in, and support provided to, a TAG recipient.

In considering whether a group is impermissibly linked to a PRP so as to be ineligible for a grant, EPA must consider, among other things, the extent of PRP participation in the group and whether, and the extent to which, the PRP established or sustained the group. Thus, for example, where a PRP paid any person for participating in a group or for providing services which contributed to establishing and sustaining the group, the group would be ineligible; such a person would necessarily have been participating in the group because of a connection to a PRP rather than as an affected individual. Under 40 CFR 35.4030(a)(1), a group with such a member would therefore be ineligible for a grant. However, the mere fact that a group member was employed by a PRP would clearly not preclude eligibility. A recipient group might not be precluded from including even an executive or director of a PRP. However, where a group included an individual owning a significant or controlling interest in a PRP, there might be an eligibility problem unless it could be determined that such a member could, in fact, participate in the group in the capacity of an "affected individual" as distinct from its capacity as a PRP.

A related issue is the extent to which a group can receive support from an ineligible entity. Because of the special problems raised by PRP involvement with a group, the acceptance of any assistance (e.g., cash or goods) with conditions attached which might, in the judgment of the award official, limit the group's ability to represent the interest of affected individuals, or of any donation of services by a PRP would render a group ineligible. The standard for other ineligible entities, whether governments or other institutions, is whether the group has been "established or presently sustained" by an ineligible entity. The regulation has been modified to clarify that this applies where a group is established or sustained by any ineligible entity, whether or not that entity is governmental. It has also been modified to clarify that the prohibition against participation of an ineligible entity continues even after a group is awarded a grant. Finally, the regulation

uses the term "sustained" rather than "supported" to clarify that any support must be substantial.

A second issue is the extent to which a recipient group must have an identity separate and distinct from that of an ineligible group. EPA believes that where a second group has its origins in an ineligible group, special care is necessary to ensure a separate identity. The separation must be both formal (with separate incorporation, officers, finances, and membership) and substantive. A new group is not substantially identical to an older, ineligible group where there is a reasonable basis for asserting that the two have separate and distinct identities.

Evaluation Criteria (§ 35.4035)

EPA has established certain criteria by which to evaluate TAG applicants. This section now includes instructions for both sole and multiple applicants. EPA is not changing any criteria, only revising the evaluation method. EPA believes certain of these criteria to be essential and that any group scoring zero on one or more of these should be disqualified. Thus, an applicant group must score above zero on criteria 2 (representation of affected community), 3 (services to be performed by the Technical Advisor), and 4 (communication plan). In addition, the applicant must meet either criterion 1 and/or 5. The Agency believes this evaluation method will assist the Regions in identifying qualified applicants.

Since publication of the Amendments to the interim final rule (December 1, 1989), the required EPA grant form has changed from EPA Form 5700-33 to SF-424, and the regulation has been changed to reflect this.

Notification Process (§ 35.4040)

According to standard TAG application procedures, the first step for the community group is to submit a Letter of Intent (LOI) indicating the intention of applying for a TAG award. The LOI serves to document the number of interested groups and aids in tracking the applicants through the process. However, it has occasionally been the case that an applicant group has submitted an application without having submitted an LOI. In this instance, EPA believes that the group's application should fulfill the LOI requirement, thus initiating the 30-day notification process. However, EPA will not begin processing the application until the end of the 30-day period in order to notify other potentially interested groups. The Agency today is revising § 35.4040 (b)(2) to emphasize the importance of public outreach by making the public notice a requirement of the TAG Program.

Application Process (§ 35.4045)

Commentors raised concerns with the application process, stating that it is complex and cumbersome, both in terms of time and procedures. According to one commentor, the level of detail required in the Scope of Work and Budget application portions (Section IV) is unnecessary. To assist in streamlining the process, a recommendation was made to simplify the application forms and the Citizen's Guidance Manual. To address the application complexity issue, a commentor recommended that grants be awarded with the condition that the recipient submit a general scope of work and explanation of how the grant funds will be spent with the application. The detailed scope of work and budget would then be submitted after receiving the grant and hiring a Technical Advisor.

In response to this and similar comments relating to the complexity of the program, EPA has made an effort to simplify the entire application process. The regulation has been amended to delete the detailed requirements related to application submittal formerly contained in § 35.4045(a). Also deleted was paragraph (c) of the same section, concerning instructions for filing an application, instructions which, EPA believes are adequately explained in guidance. EPA has streamlined the application process, revised the Superfund Technical Assistance Grant (TAG) Handbook, and routinely holds workshops on TAG for community groups. Therefore, EPA believes the application process is much less cumbersome than when the comments were received.

Grant Availability (§ 35.4050)

A commentor stated that EPA should accept TAG applications from the time a site is proposed for or listed on the NPL. EPA agrees with this comment and will accept applications any time after the site has been listed. However, in § 35.4050, EPA states that grants will not be awarded before the start of the response action. Until such time as a response action is scheduled or underway, there are no site activities generating information for interpretation.

Ineligible Activities (§ 35.4055 (a) through (h))

A commentor stated that travel to site-related meetings held by EPA outside the site community should be an eligible activity.

After considering the comment and the intent of § 35.4055, EPA does not believe this change in the regulation is merited because TAG funds should be spent primarily in the interpretation and dissemination of technical data related to a site. EPA believes that the primary purpose of the grant is to assist affected individuals in obtaining technical assistance and not to fund ancillary activities of the grant recipient such as travel expenditures, which detract from or inhibit the recipient's ability to pay for skilled Technical Advisors.

Many requests have been made by community groups stating that EPA should allow TAG funds to be used to cover the costs of epidemiological or health studies, such as blood or urine testing. However, while EPA recognizes the public concern over issues such as these, such testing is prohibited under § 35.4055(h) of the regulation. This section has been renumbered and clarifying language added to the regulation to reflect EPA's belief that the intent of CERCLA section 117(e) is to use TAG funds for the interpretation of data and not the generation of new data.

It has been requested that TAG funds be allowed to pay for Health and Safety Training for the Technical Advisor (TA). This training is required for site access, access that would then be used to promote the TA's understanding of and access to the Superfund site, and, ultimately, assist in the interpretation of data for the community group. Superfund sites are inherently complex and involve special health and safety issues. Specialized training relating specifically to Superfund sites is not training that a TA, under normal circumstances, could be expected to have previously obtained. Therefore, EPA believes that the costs of Health and Safety training for a TA, if required specifically to allow access to the Superfund site, should be considered as an eligible activity and has changed the regulation to make this cost allowable under the TAG award.

Contract Review (§ 35.4067)

A commentor recommended that at the end of the procurement section, to ensure EPA review is completed in a timely fashion, EPA should add the statement "EPA will respond with written comments to the recipient within 14 days of receiving the contract, or notify the recipient in writing within 14 days that the contract has been approved." Another commentor stated that in many cases, EPA Regions have used the procedure of reviewing proposed contracts to demand the review of other things the commentor

feels to be inappropriate (i.e., conflict of interest and grantee's procurement process). Again, this commentor recommends a two-week review period and that EPA state specific objections to the proposed contracts, in writing, with specific reference to regulations being violated.

EPA recognizes and understands the merit of the comment and believes the purpose of EPA review of documents is intended to protect the grantees. In addition, EPA will make every effort to review contracts in a timely manner. However, in regard to establishing a time limit for review of applications by EPA, the Agency believes that this should remain as guidance and should not be included in the regulation.

Based on TAG Program experience since promulgation of the amended interim final rule, the Agency today is requiring that each applicant provide EPA with the opportunity to review the contract before it is awarded or amended only for contracts over $1,000.

Please note that this section, formerly § 35.4095, has been moved for clarity and renumbered as § 35.4067.

Pre-Award Costs (§ 35.4075)

A commentor stated that EPA should allow the costs of preparing the grant application.

EPA disagrees. The cost of applying for a grant is a pre-award cost and is not allowable for funding under any EPA grant program.

Audits (§ 35.4105)

Because TAGs are cost recoverable, the records retention period for the Superfund Program is ten years from the termination or the end of contract.

Previously, single audit requirements only applied to State and local governments. With the promulgation of OMB Circular A–133, the single audit requirements now apply to TAG recipients as well, and paragraph (c) has been added.

Contractor Liability

A commentor expressed concern over the liability of contractors. The statement was made that "Contractors to TAG Grantees are being required by some EPA Regions to accept an unreasonable risk of liability. The way the program is currently set up, it prevents firms from protecting themselves, it is unfair to small businesses. EPA's own Superfund contractors are protected from suits and many times indemnified against suits by 3rd parties, and the TAG budget is insufficient to handle issues with liability." Section 119 of CERCLA provides EPA with discretionary authority to indemnify persons engaged in CERCLA response activities. Consultants hired by recipients of TAGs are not within the definition of those who can be indemnified by EPA. Therefore, EPA does not believe that indemnification is available.

Consistency

Commentors asserted that inconsistencies exist between Regional Offices in the grant decision-making process and in their review of proposed technical assistance contracts. Commentors recommended centralizing the program in EPA Headquarters, with a few personnel devoted to TAGs on a full-time basis.

EPA disagrees. EPA recognizes the diversity and uniqueness of individual Superfund sites and believes that centralizing the management of the program not only would reduce its accessibility by groups seeking information and assistance but also would reduce EPA's flexibility in addressing unique site features and situations.

Technical Assistance Grant Implementation

A commentor indicated that EPA needs to increase public outreach to citizens affected by Superfund sites. It provided two recommendations to facilitate the implementation of the TAG Program:

(1) Development of guidance for affected individuals on hiring Technical Advisors, liability issues, record keeping, audit procedures, etc.;

(2) development of materials by the Regional EPA Offices to address regional variations in TAG implementation.

EPA recognizes the importance of public outreach and has adopted a decentralized structure to retain maximum contact with communities affected by Superfund sites. EPA has developed guidance materials such as those recommended by the commentor. The Superfund Technical Assistance Grants (TAG) Handbook serves as guidance for community groups. EPA has held training and issued guidance for Regional staff in an attempt to ensure consistency, while still allowing for unique site features, in the implementation of the TAG Program.

Corrections and Clarifications

Minor changes were made to the regulation to correct errors in the amended interim final rule and/or to clarify language in the regulation.

III. Existing Grants

TAG recipients receiving a TAG under previous regulations may request having their grant administered under the final regulation. Groups wishing to do so must seek amendments to their grant from the Award Official. However, any funds spent prior to this final rule are subject to the previous regulation. Amendments to current grants will apply only to future work.

IV. Regulatory Analysis

A. Regulatory Impact Analysis

Executive Order No. 12291 requires that regulations be classified as "major" or "non-major" for purposes of review by the Office of Management and Budget (OMB). According to Executive Order No. 12291, "major" rules are regulations that are likely to result in:

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

2. A major increase in costs or prices for consumers, individual industries, Federal, State, or local government, or geographical regions; or

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

The final rule for the TAG Program is a "non-major" rule. The final rule will have no significant annual adverse effect on the economy of $100 million or more; or a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 requires that Agencies evaluate the effects of a rule for three types of small entities:

1. Small businesses (as defined in the Small Business Administration regulations);

2. Small organizations (independently owned, nondominant in their field, non-profit); and

3. Small government jurisdictions (serving communities of less than 5,000 people).

EPA has consistently considered the interests of small entities in designing and implementing the TAG Program and continues to encourage their participation.

Since today's rule is not expected to have a significant impact on small

entities, EPA certifies that no Regulatory Flexibility Analysis is necessary.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act, U.S.C. 3501 *et seq.* and have been assigned OMB control number 2030–0020 for activities involving the grant application process.

Public reporting burden for this collection of information is estimated to average 8 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden to the Chief, Information Policy Branch, PM–223Y, U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC, 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20503, marked "Attention Desk Officer for EPA."

List of Subjects in 40 CFR Part 35

Air pollution control, Grant programs environmental protection, Hazardous waste, Indians, Intergovernmental relations, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: September 7, 1992.

F. Henry Habicht II

Acting Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended by revising part 35, subpart M (§§ 35.4000 through 35.4130) to read as follows:

PART 35—STATE AND LOCAL ASSISTANCE

* * * * *

Subpart M—Grants for Technical Assistance

Sec.

Subpart M—Grants for Technical Assistance

Authority: 42 U.S.C. 9617(e); sec. 9(g), E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp. P. 193.

§ 35.4000 Authority.

This subpart is issued under section 117(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9617(e).

§ 35.4005 Purpose and availability of referenced material.

(a) This subpart codifies policies and procedures for Technical Assistance Grants (TAGs) awarded by EPA to groups of individuals. This subpart establishes the procedures for accepting and evaluating applications, and for awarding and managing TAGs. These provisions supplement the EPA general assistance regulations 40 CFR part 30 and 40 CFR part 33 and are applicable to all applicants/recipients of TAGs.

(b) Any reference to documents made in this subpart necessary to apply for a TAG (i.e., OMB Circulars and EPA forms SF-424, 269, 270) are available through EPA Headquarters and Regional Offices listed in 40 CFR 1.7.

§ 35.4010 Definitions.

As used in this subpart, the following words and terms shall have the meaning set forth below:

Affected means subject to an actual or potential health, economic or environmental threat arising from a release or a threatened release at a facility listed on the National Priorities List (NPL) or proposed for listing under the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) where a response action under CERCLA has begun. Examples of affected parties include individuals who live in areas adjacent to NPL facilities whose health is or may be endangered by releases of hazardous substances at the facility, or whose economic interests are directly threatened or harmed.

Applicant means any group of individuals that files an application for a TAG.

Application means a completed formal written request for a TAG that is submitted to a State or the EPA on EPA form SF–424, Application for Federal Assistance (Non-construction Programs).

Award means the TAG agreement signed by both EPA and the recipient.

Award Official means the EPA official delegated the authority to sign grant agreements.

Budget means the financial plan for the spending of all Federal and matching funds (including in-kind contributions) for a TAG project as proposed by the applicant, and negotiated with and approved by the Award Official.

Budget period means the length of time specified in a grant agreement during which the recipient may spend or obligate Federal funds. The budget period may not exceed three (3) years. A TAG project period may be comprised of several budget periods.

Cash contribution means actual non-Federal dollars, or Federal dollars if expressly authorized by statute to do so, that a recipient spends for goods and services and real or personal property used to satisfy the matching funds requirement.

Contract means a written agreement between the recipient and another party (other than a public agency) for services or supplies necessary to complete the TAG project. Contracts include contracts and subcontracts for personal and professional services or supplies necessary to complete the TAG project, and agreements with consultants, and purchase orders.

Contractor means any party (e.g., Technical Advisor) to whom a recipient awards a contract.

EPA means the Environmental Protection Agency. Where a State administers the TAG Program, the term "EPA" may mean a State agency.

Federal facility means a facility that is owned or operated by a department, agency, or instrumentality of the United States.

Grant agreement means the legal document that transfers money, or anything of value, to a recipient to accomplish the purpose of the TAG project. It specifies budget and project periods, the Federal budget share of eligible project costs, a description of

the work to be accomplished, and any terms and conditions.

In-kind contribution means the value of a non-cash contribution used to meet a recipient's matching funds requirement in accordance with 40 CFR 30.307(b). An in-kind contribution may consist of charges for equipment or the value of goods and services necessary to and directly benefiting the EPA-funded project.

Matching funds means the portion of allowable project costs that a recipient contributes toward completing the TAG project using non-Federal funds or Federal funds if expressly authorized by statute. The match may include in-kind as well as cash contributions.

Operable unit means a discrete action that comprises an incremental step toward comprehensively addressing site problems.

Potentially Responsible Party (PRP) means any individual(s) or company(ies) (such as owners, operators, transporters or generators) potentially responsible under sections 106 or 107 of CERCLA for the contamination problems at a Superfund site.

Recipient means any group of individuals that has been awarded a TAG.

Recipient's project manager means the person legally authorized to obligate the organization to the terms and conditions of EPA's regulations and the grant agreement, and designated by the recipient to serve as its principal contact with EPA.

Response action means all activities undertaken to address the problems created by hazardous substances at a National Priorities List site.

Start of response action means the point in time when there is a guarantee or set-aside of funding either by EPA, other Federal agencies, States, or PRPs in order to begin response activities at a site.

Waiver means excusing recipients from following certain anticipated regulatory or administrative requirements if; the authority to issue a waiver is provided in the regulation itself; and the Agency believes sufficient justification exists to approve such action. The Award Official has the authority to issue a waiver. Deviation means an exemption from certain provisions of existing regulations, which may be necessary in some unforeseen instances. The Director, Grants Administration Division, is authorized under 40 CFR 30.1001(b) to approve deviations from the requirements of regulations (except for those that implement statutory or executive order requirements) when such situations warrant special consideration.

§ 35.4013 Cost principles.

(a) Recipients and non-profit contractors must comply with the cost principles in OMB Circular A-122.

(b) Profit-making contractors and subcontractors must comply with the cost principles in the Federal Acquisition Regulation (48 CFR part 31).

§ 35.4015 State administration of the program.

(a) Effective October 1, 1992, the Agency will accept applications for and award TAGs in consultation with the States.

(b) The TAG Program will be available at an NPL site where a State response action is scheduled to begin or is underway and a CERCLA-funded cooperative or other written agreement exists between the Agency and the State.

(c) States wishing to administer the TAG Program must inform the appropriate EPA Regional administrator. If a State elects to administer the program, it must do so in conformity with this subpart. Where States administer the program, EPA will have an oversight role.

(d) A State that chooses to administer the TAG Program will receive technical assistance funds plus administrative costs from the Agency under a cooperative agreement. A State will receive $10,000 for administrative costs for the first TAG. For each subsequent TAG, the State will receive an amount equal to eight (8) percent of the TAG. Using the criteria established under this subpart, the State may select a qualified recipient and provide assistance in either of two ways:

(1) A State will pass through technical assistance funds to a recipient group by way of a subgrant, and reimburse the recipient group for its expenditures as provided at § 35.4080. A State that elects this option is also responsible for monitoring the subgrant to ensure that recipients comply with its terms and with 40 CFR parts 30 and 33; or

(2) If a recipient group agrees, a State will use TAG funds to obtain the services of a Technical Advisor and provide those services to a grant recipient in lieu of cash. The recipient group may work closely with the State in advertising, reviewing bids and recommending a Technical Advisor, and managing the Technical Advisor. The State will make the final selection of the technical advisor. A State that elects this option becomes directly responsible for awarding the technical assistance contracts, submitting financial and progress reports, and for disbursing all TAG funds in compliance with applicable EPA regulations and requirements.

§ 35.4020 Responsibility requirements.

(a) An applicant must meet the minimum administrative and management capability requirements 40 CFR 30.301. Thus each applicant must demonstrate that it has established reliable procedures or has plans for establishing reliable procedures for record-keeping and financial accountability related to the management of the TAG. These procedures must be in effect before the recipient incurs any costs. If EPA concludes that the applicant is not capable of meeting the responsibility requirements, the application will be rejected.

(b) Each recipient of a TAG must be incorporated as a non-profit organization for the purpose of addressing the Superfund site for which the grant is provided in order to receive a grant, except as provided in paragraph (c) of this section. At the time of award, a recipient must either be incorporated or must demonstrate to EPA that the group has filed the necessary documents for incorporation with the appropriate State agency. No later than the time of the first request for reimbursement for costs incurred, a recipient must submit proof to EPA that the group has been incorporated by the State.

(c) Unless a consolidation agreement makes site-specific incorporation necessary, a previously incorporated group that includes all the individuals and groups that joined in applying for the TAG shall not be required to reincorporate for the specific purpose of representing affected individuals at the site provided that the group can demonstrate that it has a substantial history of involvement at the site.

§ 35.4025 Eligible applicants.

Eligible applicants, except as provided in § 35.4030, are any group of individuals that may be affected by a release or a threatened release at any facility that is listed on the NPL or is proposed for listing under the NCP and at which a response action has begun.

§ 35.4030 Ineligible applicants.

(a) Potentially responsible parties (PRPs) are ineligible to receive or be represented in groups receiving or using TAGs.

(1) No group established or sustained by a PRP shall be eligible for a TAG.

(2) No group that receives services provided by or paid for by a PRP shall be eligible for a TAG.

(3) For an applicant to obtain a grant it must establish an identity separate from that of an entity that is ineligible under § 35.4030 (a)(1) or (2) by making a reasonable demonstration of independence from the ineligible entity. Such a demonstration requires, at a minimum, a showing that the applicant has a formal legal identity (e.g., officers) and a substantive existence, including finances, separate and distinct from that of the ineligible entity.

(b) The following groups and organizations are also ineligible to receive or be represented in groups receiving or using TAGs.

(1) Corporations that are not incorporated for the specific purpose of representing affected individuals at the site except as provided in § 35.4020(c);

(2) Academic institutions;

(3) Political subdivisions (e.g., townships and municipalities); and

(4) Groups established or presently sustained by ineligible entities under § 35.4030 (b) through (c) (including emergency planning committees and citizen advisory boards who may be precluded from acting independently).

(c) This section shall not preclude any individual affected by a Superfund site from participating in a recipient group in his or her capacity as an individual. However, an individual whose financial involvement in a PRP (as other than an employee or contractor) is determined by the Award Official to be sufficiently substantial may be precluded from participation in a recipient group in any capacity.

§ 35.4035 Evaluation criteria.

(a) EPA will award a TAG only after it has determined that all eligibility and responsibility requirements listed in §§ 35.4020, 35.4025, and 35.4030 are met, and after review of the applicant's qualifications in the narrative section of the grant application. Each applicant will be required to provide information on how it meets the eligibility criteria in the grant application. The "Applicant Qualifications" section is Part IV of SF-424.

(b) Sole Applicant. After the Letter of Intent process (see § 35.4040), if there is still only one group, the evaluation process will consist of the Agency ensuring that the applicant meets the criteria stated in § 35.4035(c) in addition to the administrative and management capability requirements, and can demonstrate that it is representative of the community affected by a release or a threatened release at a facility that is listed on the NPL or is proposed for listing under the NCP and where a response action has begun, as demonstrated by fulfillment of the criteria in § 35.4035(c). Once these requirements have been met by the sole applicant, the Agency may award a TAG.

(c) Multiple Applicants. Where there are competing applicants EPA will evaluate the strengths and weaknesses of each applicant. EPA will rank each applicant relative to other applicants. Each criterion is assigned a weight showing its relative importance. EPA will rank each applicant by utilizing criteria described below. In order to qualify, applicants must meet criterion 1 and/or 5 and not score zero on criteria 2, 3, or 4.

(1) The presence of an actual or potential health threat posed to group members by the site (this criterion can be met by establishing a demonstrable threat to members' health or a reasonable belief that the site poses a substantial threat to their health) (30 points);

(2) The applicant best represents groups and individuals affected by the site (20 points);

(3) The identification of how the group plans to use the services of a Technical Advisor throughout the Superfund response action (20 points);

(4) The demonstrated intention and ability of the applicant to inform others in the community of the information provided by the Technical Advisor (20 points); and

(5) The presence of an actual or potential economic threat or threat of an impaired use or enjoyment of the environment to group members that is caused by the site (this criterion can be met by establishing a demonstrable economic or environmental threat to group members or a reasonable belief that the site poses a substantial economic or environmental threat) (10 points).

§ 35.4040 Notification process.

(a) Groups wishing to apply for a TAG should first submit a Letter of Intent (LOI) to EPA. EPA will respond in writing to an LOI. A grant application submitted by a community group without having first submitted an LOI will fulfill the LOI requirement, thus initiating the notification process.

(b) Upon receipt of the first LOI, EPA will undertake certain activities depending on the schedule for work at the site:

(1) If commencement of the remedial investigation or a removal action is not underway or scheduled to begin, EPA will advise the group in writing that grant applications for the site are not yet being accepted. EPA may informally notify other interested groups that it has received an LOI; or

(2) If a response action is already underway or scheduled to begin, EPA may conduct mailings and/or meetings, in addition to the required public notice, to provide formal notice to other interested parties that a grant for the site soon may be awarded. These formal notification activities will generally be conducted far enough in advance of the start of the response action to allow time for groups to consolidate, apply for and receive a grant award, and procure a Technical Advisor before work commences at the site.

(c) Other potential applicants will have 30 days to contact the original applicant to form a coalition. If the community groups are unable to form a coalition, they must notify EPA within the 30 days. EPA will then accept separate applications from all interested groups for an additional 30-day period. EPA may consider written requests for extensions of this time. If there is a qualified applicant, a grant will be awarded from among the competing applications based on the evaluation criteria described in § 35.4035. The schedule for response activities at a site will not be affected by the TAG application process.

§ 35.4045 Submission of application.

(a) After meeting the LOI requirement, the applicant must then submit a TAG application on SF-424.

(b) An applicant must submit a budget clearly showing the proposed expenditure of funds, how it will provide the cash and/or in-kind contributions to meet the "match" requirement, and how the funds and other resources, including the "match" will be used to complete the TAG project. As part of the application process, the applicant must submit the following certifications:

(1) Drug-Free Workplace,

(2) Debarment, Suspension, and Other Responsibility Matters, and

(3) Anti-Lobbying (if the grant is $100,000 or more).

§ 35.4050 Timing of award.

An award of a TAG will be made no earlier than the start of the response action. Grants to qualified applicants could be delayed depending upon the availability of funds for the Superfund program.

§ 35.4055 Ineligible activities.

The following activities are ineligible for assistance under this program:

(a) Litigation or underwriting legal actions such as paying for attorney fees or paying for the time of the Technical Advisor to assist an attorney in preparing a legal action or preparing for

and serving as an expert witness at any legal proceeding regarding or affecting the site;

(b) Political activity and lobbying in accordance with OMB Circular A-122;

(c) Other activities inconsistent with the cost principles stated in OMB Circular A-122, "Cost Principles for Non-Profit Organizations";

(d) Tuition or other expenses for recipient group members or Technical Advisors to attend training, seminars or courses, except for required Health and Safety training for the Technical Advisor to allow access to the local Superfund site, provided written permission is obtained in advance from the Regional EPA Office. Training may be approved for one time only at an amount not to exceed $1,000.00;

(e) Any activities or expenditures for recipient group members' travel;

(f) Generation of new primary data such as well drilling and testing, including split sampling;

(g) Reopening final Agency decisions such as the Records of Decision or conducting disputes with the Agency in accordance with its dispute resolution procedures set forth at 40 CFR part 30, subpart L; and

(h) Epidemiological or health studies, such as blood or urine testing.

§ 35.4060 Eligible activities.

TAGs may be used to obtain technical assistance in interpreting information with regard to the nature of the hazard, remedial investigation and feasibility study, record of decision, remedial design, selection and construction of remedial action, operation and maintenance, or a significant removal action at a facility that is listed on the NPL or proposed for listing and at which a response action has begun. TAGs shall be used to fund activities that will contribute to the public's ability to participate in the decision-making process by improving the public's understanding of overall conditions and activities.

§ 35.4065 Technical advisor's qualifications.

(a) A Technical Advisor must possess the following credentials:

(1) Demonstrated knowledge of hazardous or toxic waste issues;

(2) Academic training in a relevant discipline (e.g., biochemistry, toxicology, environmental sciences, engineering); and

(3) Ability to translate technical information into terms understandable to lay persons.

(b) A Technical Advisor should possess the following credentials:

(1) Experience working on hazardous or toxic waste problems;

(2) Experience in making technical presentations;

(3) Demonstrated writing skills; and

(4) Previous experience working with affected individuals or community groups or other groups of individuals.

§ 35.4066 Procurement.

(a) *Competition.* (1) The recipient must provide maximum open and free competition.

(2) Recipients must not unduly restrict or eliminate competition.

(3) The individual(s) developing the specifications will be excluded from competition for the Technical Advisor and/or Grant Administrator position.

(b) *Documentation.* Recipients must document all procurement activities with written records that furnish reasons for decisions.

(c) *Cost.* (1) The recipient must determine that all costs are reasonable.

(2) The recipient must conduct a cost analysis of all contracts over $25,000 and all change orders regardless of dollar value.

(d) *Debarment.* Recipients and contractors must not make any contract at any time to anyone who is on the "List of Parties Excluded from Federal Procurement or Nonprocurement Programs."

(e) *Recipient responsibility.* (1) The recipient is responsible for the settlement and satisfactory completion of all contractual and administrative issues arising out of contracts entered into under a grant.

(2) The recipient must ensure that the contractor(s) perform in accordance with the terms and conditions of the contract.

(f) *Responsible contractors.* The recipient shall award contracts only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed contract.

(g) *Disadvantaged business enterprises.* The recipient shall comply with the "Small, Minority, Women's, and Labor Surplus Area Business" requirements in § 33.240.

(h) *Illegal contracts.* Recipients may not award cost-plus-percentage-of-cost or percentage-of-construction-cost contracts.

(i) *Contract provisions.* The recipient must include the following provisions in each contract:

(1) Statement of work;

(2) Schedule for performance;

(3) Due dates for deliverables;

(4) Total cost of the contract;

(5) Payment provisions; and

(6) The following clauses from 40 CFR 33.1030, "Model contract clauses":

(i) Supersession;

(ii) Privity of Contract;

(iii) Termination;

(iv) Remedies;

(v) Audit, Access to Records;

(vi) Covenant Against Contingent Fees;

(vii) Gratuities;

(viii) Responsibility of the Contractor; and

(ix) Final Payment.

(j) *Subcontracting.* A contractor must comply with the following provisions in its award of subcontracts (these requirements do not apply to subcontractors for the supply of materials to produce equipment, materials, and subcontracts for catalog, off-the-shelf, or manufactured items.):

(1) Section 35.4066(b) Documentation;

(2) Section 35.4066(c) Cost;

(3) Section 35.4066(d) Debarment;

(4) Section 35.4066(f) Responsible contractor;

(5) Section 35.4066(g) Disadvantaged business enterprises;

(6) Section 35.4066(i) Illegal contracts; and

(7) Section 35.4066(j) Contract provisions.

(k) *Bid protests.* The recipient must establish a procedure for resolving protests which complies with the provisions of 40 CFR part 33, Subpart G— Protests.

(l) *Competitive procurements.* Recipients shall not divide any procurements into smaller parts to get under any dollar limit.

(1) If the aggregate amount of the purchase is $1,000 or less, the recipient may make the purchase as long as the recipient determines that the price is reasonable. No oral or written solicitations are necessary.

(2) If the aggregate amount of the proposed contract is over $1,000 but less than $25,000, the recipient must obtain and document oral or written price quotations from two or more qualified sources.

(3) If the aggregate amount of the proposed contract is $25,000 to $50,000, the recipient must:

(i) Solicit written bids from three or more sources who are willing and able to do the work;

(ii) Provide potential sources the scope of the work to be performed and the criteria the recipient will use to evaluate bids;

(iii) Objectively evaluate all bids submitted; and

(iv) Notify all unsuccessful bidders.

(4) If the aggregate amount of the proposed contract is greater than

$50,000, the recipient must follow the procurement rules in 40 CFR part 33.

(m) *Non-competitive procurements.* If an adequate number of potential sources cannot be identified, the recipient may request written authority from the EPA Award Official to award a contract to a sole bidder.

§ 35.4067 Contract review.

Each applicant must inform EPA of any proposed contract over $1000 and must provide EPA the opportunity to review the contract before it is awarded or amended.

§ 35.4070 Sanctions.

If EPA determines that the recipient has failed to comply with any terms of the grant agreement, EPA will initiate an appropriate measure as set forth at 40 CFR part 30, subpart I.

§ 35.4075 Pre-award costs.

(a) Grant funds may not be used to pay costs incurred prior to award of the TAG, except as provided in paragraph (b) of this section.

(b) Necessary and reasonable costs of incorporation, if incurred for the sole purpose of complying with this subpart, will be eligible pre-award costs and may be charged to the TAG or count toward the matching funds requirement described in § 35.4085(a)(2).

§ 35.4080 Method of payment.

All grant recipients shall be reimbursed for grant-related eligible, allocable, allowable, and reasonable costs up to the amount of the TAG which have been incurred and which the recipients are currently and legally obligated to pay. Recipients may submit monthly or quarterly requests for reimbursement to the Agency on SF-270—Request for Advance or Reimbursement, or the appropriate State form if the State is administering the TAG Program. Costs incurred greater than $500 may be submitted monthly.

§ 35.4085 Grant limitations.

TAGs will be awarded subject to the following limitations:

(a) The recipient must contribute 20 percent of the total costs of the TAG project, except as provided in § 35.4090(b).

(1) Absent specific statutory authority, no Federal funds may be included in the matching share.

(2) To meet the matching funds requirement, the recipient may use cash and/or in-kind contributions.

(b) The TAG award will not initially exceed $50,000 for a single recipient, except in the case of a single application covering multiple sites.

(c) Not more than one TAG may be awarded for any site.

(d) Administrative costs of the grant may not exceed 20 percent of project costs. Administrative costs may include, but are not limited to, paying an individual(s) to administer the grant.

§ 35.4090 Waivers.

(a) Waivers of the $50,000 per recipient limit may be granted under either or both of the following circumstances:

(1) *Multiple sites.* In order to reduce the administrative burden to a recipient group where there are several eligible sites geographically close to each other, the limitation that a single recipient may not receive more than $50,000 may be waived by the Agency (e.g., 3 sites x $50,000 = grant of $150,000).

(2) *Complex sites.* The Award Official may waive the $50,000 per recipient limit if the recipient group demonstrates that the site is especially complex and that the following criteria have been met:

(i) Site(s) characteristics indicate that due to the nature or volume of the site-related information for review, additional funds are necessary;

(ii) The recipient's management of any previous TAG award(s) was satisfactory and that costs incurred under the previous award are allowable and reasonable; and

(iii) No recipient group may receive more than $100,000 in TAG awards for any one site.

(b) Waivers of the Matching Funds Requirement. The Award Official may waive all or part of the recipient's matching funds requirement only after establishing that:

(1) There is a need for a waiver because providing the "match"would constitute an unusual financial hardship;

(2) A good faith effort at raising the "match," including obtaining in-kind services, has failed; and

(3) The waiver is necessary to facilitate public participation in the selection of remedial action at the facility.

(c) Where a TAG recipient subsequently obtains a waiver of the matching funds requirement, the grant agreement must be amended. (See 40 CFR part 30, subpart G.)

(d) No waivers of the matching funds requirement will be granted by the Agency once the Record of Decision has been issued at the last operable unit at the site.

§ 35.4100 Disputes.

(a) If the Agency administers the TAG Program, the Agency shall review disputes between Agency officials and the applicant or recipient in accordance with its dispute resolution procedures set forth at 40 CFR part 30, subpart L.

(b) If the State administers the TAG Program, any applicant or recipient who has been adversely affected by a State's action or omission may request Agency review of such action or omission, but must first submit a petition for review to the State agency that made the initial decision. The State must provide, in writing, normally within 45 days of the date it receives the petition, the basis for its decision regarding the disputed action or omission. The final State decision must be labeled as such and, if adverse to the applicant or recipient, must include notice of the right to request Agency review of the State decision under this section. A State's failure to address the disputed action or omission in a timely fashion, or in writing, will not preclude Agency review.

(1) Requests for Agency review must include:

(i) A copy of any written State decision;

(ii) A statement of the amount in dispute;

(iii) A description of the issues involved; and

(iv) A concise statement of the objections to the State decision.

(2) The request must be filed by registered mail, return receipt requested, within 30 days of the date of the State decision or within a reasonable time if the State fails to respond in writing to the request for review.

(c) The Agency shall determine whether the State's review is comparable to a Dispute Decision Official's (DDO) review pursuant to 40 CFR part 30, subpart L. If the State's review is comparable, the Regional Administrator will conduct the Agency's review of the State's decision. If the State's review is not comparable, an Agency DDO will review the State's decision and issue a written decision. If the Agency DDO issues a decision, the applicant or recipient may request a Regional Administrator's review of the decision. The applicant or recipient may request an EPA Assistant Administrator review of a Regional Administrator's decision pursuant to subpart L.

§ 35.4105 Record retention and audits.

(a) *Records and audit-recipient.*(1) Each recipient shall keep and preserve full written financial records accurately disclosing the amount and the disposition of any funds, whether in cash or in-kind, applied to the TAG project, and shall comply with the terms and conditions of the grant agreement.

(2) Such records shall be retained for ten (10) years from the date of the final Financial Status Report, or until any audit, litigation, cost-recovery, and/or any disputes initiated before the end of the 10-year retention period are settled, whichever is longer. A recipient must obtain EPA's prior written approval to destroy records after the record retention period.

(3) Recipients must comply with OMB Circular A-133 "Audits of Institutions of Higher Education and Other Non-profit Organizations," for all grants over $25,000.

(b) *Records and audit-contractor(s).*(1) The recipient shall require its contractor(s) to keep and preserve detailed records in connection with the contract, reflecting acquisitions, work progress, reports, expenditures, and commitments and indicating their relationship to established costs and schedules.

(2) Contractors must retain records for a period of 10 years after the termination or end of the contract.

(Approved by the Office of Management and Budget under control number 2030-0020)

§ 35.4110 Reports.

(a) *Progress reports.* Each recipient shall submit quarterly progress reports to EPA for the TAG project 45 days after the end of each calendar quarter. Progress reports shall fully describe in chart or narrative format the progress achieved in relationship to the approved schedule, budget, and the TAG project milestones. Special problems encountered must be explained.

(b) *Financial status report.* Each recipient shall submit to EPA a financial status report annually, within 90 days after the anniversary date of the start of the TAG project, and within 90 days after the end of the grant budget period and project. A recipient shall submit to the EPA a financial status report on SF-269 or on the appropriate State form if the State is administering the TAG Program.

(c) *Final report.* Each recipient shall submit to EPA a draft of the final report for review no later than 90 days prior to the end of the TAG project and a final report within 90 days of the end of the project. The report shall document TAG project activities over the entire period of grant support and shall describe the recipient's achievements with respect to stated TAG project purposes and objectives.

(Approved by the Office of Management and Budget under control number 2030-0020)

§ 35.4115 Availability of information.

Each recipient shall ensure that all final written products developed by a contractor for the recipient under its grant are disseminated by providing copies of such documents to EPA for the local Superfund information repository(ies).

§ 35.4120 Budget period.

The budget period may not exceed three years. A TAG project period may be comprised of more than one three-year budget period.

§ 35.4125 Federal facilities.

EPA will use the criteria found in § 35.4025 in evaluating the eligibility of any group of individuals who may be affected by a release or a threatened release at a Federal facility for a TAG under this subpart.

§ 35.4130 Conflict of interest and disclosure requirements.

(a) The recipient shall require each prospective contractor on any contract to provide, with its bid or proposal:

(1) Information on its financial and business relationship with all PRPs at the site, and with their parent companies, subsidiaries, affiliates, subcontractors, contractors, and current clients or attorneys and agents. This disclosure requirement encompasses past and anticipated financial and business relationships, including services related to any proposed or pending litigation, with such parties;

(2) Certification that, to the best of its knowledge and belief, it has disclosed such information or no such information exists; and

(3) A statement that it shall disclose immediately any such information discovered after submission of its bid or after award. The recipient shall evaluate such information and shall exclude any prospective contractor if the recipient determines the prospective contractor's conflict of interest is significant and cannot be avoided or otherwise resolved.

(b) Contractors and subcontractors may not be Technical Advisors to recipient groups at the same NPL site for which they are doing work for the Federal or State government or any other entity.

[FR Doc. 92-23801 Filed 9-30-92; 8:45 am]

Billing Code 6050-50-F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6944

[OR-943-4214-10; GP2-298; OR-47552]

Withdrawal of National Forest System Land for Granite Chinese Walls Historic Site; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 43.75 acres of National Forest System land in the Whitman National Forest from mining for a period of 20 years for protection of the Granite Chinese Walls Historic Site. The land has been and will remain open to such forms of disposition as may by law be made of National Forest System land and to mineral leasing.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208-2965, 503-280-7162.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

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

Willamette Meridian

Whitman National Forest

T. 8 S., R. 35½E.,
Sec. 34, SE¼SW¼NW¼NW¼, SW¼SE¼NW¼NW¼, W½SE¼SE¼NW¼NW¼, W½E½E½SW¼NW¼, W½E½SW¼NW¼, E½W½SW¼NW¼, W½E½NE¼NW¼SW¼, W½NE¼NW¼SW¼, and E½NW¼NW¼SW¼.

The area described contains 43.75 acres in Grant County.

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

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal

Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), the Secretary determines that the withdrawal shall be extended.

Dated: August 21, 1992.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 92-23787 Filed 9-30-92; 8:45 am]

BILLING CODE 4310-33-M

43 CFR Public Land Order 6946

[NM-930-4214-10; NMNM 31869]

Revocation of Public Land Order No. 5721; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes in its entirety a public land order which withdrew approximately 67,000.00 acres of public lands for use in an exchange between the Bureau of Land Management and the Navajo Indian Tribe. Of the lands withdrawn, 57,509.41 acres were patented to the Navajo Tribe of Indians. The remaining lands are no longer needed for the purpose for which they were withdrawn. This action will open 8,477.19 acres of the remaining lands to surface entry and mining, while 330.49 acres in an overlapping withdrawal will remain closed to surface entry, mining, and oil and gas leasing. Of the lands patented to the Navajo Tribe of Indians, 56,709.41 acres containing federally reserved minerals will be opened to mining. All of the lands, with the exception of the 330.49 acres within the overlapping withdrawal, and 800 acres of lands with no federally reserved mineral interest, have been and remain open to mineral leasing.

EFFECTIVE DATE: November 2, 1992.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502-7115, 505-438-7400.

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. Public Land Order No. 5721, which withdrew public lands for use by the Navajo Tribe of Indians in an exchange between the Tribe and the Bureau of Land Management, is hereby revoked in its entirety:

(a) The following described public lands that were not exchanged will return to the administration of the Bureau of Land Management, and will be open to surface entry and mining:

New Mexico Principal Meridian

T. 18 N., R. 3 W.,
sec. 16, NE¼.
T. 20 N., R. 4 W.,
sec. 18, N½NE¼, SW¼NE¼, N½SE¼NE¼, W½SW¼SE¼NE¼, and N½SE¼SE¼NE¼;
sec. 27, SW¼;
sec. 34, SE¼.
T. 19 N., R. 5 W.,
sec. 14, NE¼;
T. 20 N., R. 5 W.,
sec. 4, SW¼;
sec. 8, NE¼;
sec. 15, N½SE¼, SW¼SE¼, N½SE¼SE¼, and N½S½SE¼SE¼.
T. 17 N., R. 6 W.,
sec. 22, NW¼;
sec. 25, SE¼.
T. 20 N., R. 6 W.,
T. 19 N., R. 7 W.,
sec. 6, S½NE¼;
sec. 7, lots 3 and 4, and E½SW¼;
sec. 8, NW¼;
sec. 12, lots 1 and 2, and W½NE¼.
T. 20 N., R. 8 W.,
sec. 10, W½W½NW¼SE¼, W½NW¼SW¼SE¼, and SW¼SW¼SE¼.
T. 23 N., R. 8 W.,
sec. 22, SE¼.
T. 22 N., R. 9 W.,
sec. 9, NE¼;
T. 25 N., R. 9 W.,
sec. 10, NW¼;
sec. 23, NW¼.
T. 22 N., R. 10 W.,
sec. 16, N½ and SW¼.
T. 23 N., R. 10 W.,
sec. 6, lots 3, 4, and 5, and SE¼NW¼;
sec. 8, SE¼;
sec. 10, E½.
T. 25 N., R. 10 W.,
sec. 5, SE¼;
sec. 35, NE¼.
T. 15 N., R. 11 W.,
sec. 6, lots 3, 4, and 5, SE¼NW¼ and SE¼;
T. 16 N., R. 11 W.,
sec. 22, NE¼ and SW¼.
T. 23 N., R. 11 W.,
sec. 14, E½NE¼.
T. 25 N., R. 11 W.,
sec. 7, lots 1 and 2, NE¼ and E½NW¼;
sec. 31, lots 1 to 4, inclusive, and E½W½.
T. 26 N., R. 11 W.,
sec. 25, SE¼.
T. 28 N., R. 11 W.,
sec. 8, lots 3 and 4, and S½SW¼.
T. 13 N., R. 12 W.,
sec. 10, SW¼;
sec. 14, NW¼ and SE¼;
sec. 22, NW¼;
sec. 24, NW¼.
T. 16 N., R. 12 W.,
sec. 26, SE¼.
T. 25 N., R. 12 W.,
sec. 34, NW¼.
T. 14 N., R. 13 W.,
sec. 20, E½SE¼.
T. 23 N., R. 13 W.,
sec. 13, SE¼;
sec. 28, SW¼.
T. 28 N., R. 13 W.,
sec. 7, lots 1 to 5, inclusive.
T. 29 N., R. 13 W.,
sec. 19, lots 16, 21, 22, and 23.
T. 16 N., R. 16 W.,
sec. 26, SW¼.
T. 14 N., R. 18 W.,
sec. 24, SW¼.
T. 15 N., R. 20 W.,
sec. 16, SE¼SE¼;
sec. 19, lots 3 and 4, and E½SW¼.
T. 16 N., R. 21 W.,
sec. 10, lots 5 to 8, inclusive.

The areas described aggregate 8,477.19 acres in Sandoval, McKinley, and San Juan Counties.

(b) The following described land is within an overlapping withdrawal, Public Law 98-603, and thus remains withdrawn from settlement, sale, location, or entry under the general land laws, including the mining laws:

New Mexico Principal Meridian

T. 24 N., R. 11 W.,
sec. 7, SE¼.
T. 25 N., R. 11 W.,
sec. 34, lot 5.
T. 23 N., R. 13 W.,
sec. 3, SE¼.

The areas described aggregate 330.49 acres in San Juan County.

(c) The surface estate of the following described lands has been patented to the Navajo Tribe of Indians, with the minerals reserved to the United States. The federally reserved mineral interests will be opened to location and entry under the United States mining laws:

New Mexico Principal Meridian

T. 18 N., R. 3 W.,
sec. 4, lots 3 and 4, and S½NW¼;
sec. 5, SW¼;
sec. 7, E½;
sec. 8, N½, N½SW¼, N½SW¼SW¼, SW¼SW¼SW¼, and E½SE¼SW¼SW¼;
sec. 16, SW¼;
sec. 18, lots 3 and 4, E½SW¼, and SE¼;
sec. 20, SW¼;
sec. 21, NW¼.
T. 17 N., R. 4 W.,
sec. 3, SW¼;
sec. 5, lots 3 and 4, and S½NW¼;
sec. 7, SE¼;
sec. 11, NW¼;
sec. 18, SE¼;
sec. 19, NE¼;
sec. 20, W½.
T. 18 N., R. 4 W.,
sec. 7, lots 1 and 2, E½NW¼, and SE¼;
sec. 15, NW¼;
sec. 18, E½NE¼, N½NW¼NE¼, SW¼NW¼NE¼, W½SE¼NW¼NE¼, and SW¼NE¼;
sec. 19, SE¼;
sec. 20, NE¼;
sec. 27, N½;
sec. 29, N½;
sec. 35, SE¼.
T. 19 N., R. 4 W.,
sec. 20, NE¼;
sec. 21, NW¼;
sec. 23, SW¼;
sec. 24, SW¼;
sec. 25, SE¼;
sec. 26, NW¼;

sec. 27, SW¼;
sec. 28, NW¼ and SE¼;
sec. 31, lots 3 and 4, and E½SW¼;
sec. 34, SW¼.
T. 20 N., R. 4 W.,
sec. 6, lots 1 and 2, S½NE¼, and SE¼;
sec. 8, NW¼ and SE¼;
sec. 18, SE¼;
sec. 19, lots 1 and 2, and E½NW¼;
sec. 28, NE¼;
sec. 34, NE¼.
T. 17 N., R. 5 W.,
sec. 4, SE¼;
sec. 6, lots 1 and 2, and S½NE¼;
sec. 24, SW¼.
T. 18 N., R. 5 W.,
sec. 1, lots 1 and 2, and S½NE¼;
sec. 3, lots 3 and 4, S½NW¼, and S½;
sec. 10, SE¼;
sec. 12, NE¼;
sec. 15, SE¼;
sec. 22, NE¼.
T. 19 N., R. 5 W.,
sec. 11, SE¼;
sec. 20, NE¼;
sec. 21, NW¼;
sec. 22, SE¼;
sec. 25, SW¼;
sec. 26, NW¼;
sec. 28, NW¼ and S½;
sec. 34, NW¼.
T. 20 N., R. 5 W.,
sec. 8, SW¼;
sec. 10, SE¼;
sec. 14, SE¼.
T. 21 N., R. 5 W.,
sec. 2, lots 1 to 4, inclusive, S½N½, and SE¼;
sec. 3, lots 1 to 4, inclusive, S½N½, and SW¼;
sec. 4, lots 3 and 4, S½NW¼, and S½;
sec. 5, lots 3 and 4, and S½NW¼;
sec. 6, lots 1 and 2, and S½NE¼;
sec. 7, lots 1 to 4, inclusive, NE¼, E½NW¼, E½SW¼, and SE¼;
sec. 8, NW¼;
sec. 16, E½;
sec. 21, E½.
T. 17 N., R. 6 W.,
sec. 15, E½ and SW¼;
sec. 21, NE¼;
sec. 23, NE¼;
sec. 28, SE¼;
sec. 33, NE¼.
T. 18 N., R. 6 W.,
sec. 20, NE¼;
sec. 26, NE¼.
T. 20 N., R. 6 W.,
sec. 15, NE¼.
T. 21 N., R. 6 W.,
sec. 5, lots 1 to 4, inclusive, and S½N½;
sec. 6, lots 6 and 7, and E½SW¼;
sec. 24, W½;
sec. 31, lots 3 and 4, and E½SW¼.
T. 22 N., R. 6 W.,
sec. 4, SE¼;
sec. 5, SW¼;
sec. 6, lots 6 and 7, and E½SW¼;
sec. 7, lot 3 and 4, and E½SW¼;
sec. 8, E½ and NW¼;
sec. 9, N½ and SW¼;
sec. 10, NW¼;
sec. 15, SE¼;
sec. 22, NE¼NE¼;
sec. 23, E½;
sec. 24, NW¼;
sec. 25, W½;
sec. 26, E½ and SW¼;
sec. 29, E½;
sec. 32, E½ and SW¼;
sec. 34, NE¼;
sec. 35, E½;
sec. 36, N½ and SE¼.
T. 18 N., R. 7 W.,
sec. 14, SW¼.
T. 19 N., R. 7 W.,
sec. 1, lot 5;
sec. 6, lots 1 and 2.
T. 21 N., R. 7 W.,
sec. 1, S½;
sec. 2, lots 1 and 2, and S½NE¼;
sec. 10, NE¼;
sec. 11, E½;
sec. 14, SE¼;
sec. 18, SE¼;
sec. 22, SE¼;
sec. 28, W½;
sec. 36, SW¼.
T. 22 N., R. 7 W.,
sec. 7, lots 1 and 2, NE¼, and E½NW¼;
sec. 10, NE¼;
sec. 13, SW¼;
sec. 24, SE¼;
sec. 25, SE¼;
sec. 26, SW¼;
sec. 34, SE¼.
T. 23 N., R. 7 W.,
sec. 6, lots 3 to 7, inclusive, SE¼NW¼, E½SW¼, and SE¼;
sec. 7, NE¼;
sec. 35, NE¼.
T. 24 N., R. 7 W.,
sec. 30, lots 3 and 4, and E½SW¼.
T. 20 N., R. 8 W.,
sec. 10, E½SE¼, E½W½SE¼, E½W½NW¼SE¼, and E½NW¼SW¼SE¼.
T. 21 N., R. 8 W.,
sec. 13, NW¼;
sec. 14, SE¼.
T. 22 N., R. 8 W.,
sec. 5, SW¼;
sec. 6, lots 3, 4, and 5, and SE¼NW¼;
sec. 7, lots 3 and 4, and E½SW¼;
sec. 9, SW¼;
sec. 17, N½ and SE¼;
sec. 18, lots 3 and 4, E½SW¼, and SE¼;
sec. 21, NW¼;
sec. 32, SE¼.
T. 23 N., R. 8 W.,
sec. 1, SW¼;
sec. 2, lots 3 and 4, and S½NW¼;
sec. 17, E½;
sec. 21, NE¼;
sec. 23, SW¼;
sec. 26, NW¼;
sec. 27, N½;
sec. 30, lots 1 to 4, inclusive, NE¼, and E½W½;
sec. 31, SE¼;
sec. 34, SW¼.
T. 24 N., R. 8 W.,
sec. 6, lot 6 and NE¼SW¼;
sec. 7, lots 3 and 4, and E½SW¼;
sec. 19, NE¼;
sec. 21, E½;
sec. 29, NW¼;
sec. 35, SE¼.
T. 25 N., R. 8 W.,
sec. 4, SW¼;
sec. 6, lots 8 to 11, inclusive.
T. 22 N., R. 9 W.,
sec. 3, lots 1 to 4, inclusive, and S½N½;
sec. 13, SW¼;
sec. 14, SW¼.
T. 23 N., R. 9 W.,
sec. 1, SE¼;
sec. 15, NW¼;
sec. 27, NE¼;
sec. 34, SW¼;
sec. 35, SE¼.
T. 24 N., R. 9 W.,
sec. 3, lots 3 and 4, S½NW¼, and SW¼;
sec. 4, lots 1 and 2, S½NE¼, and SE¼;
sec. 9, SW¼;
sec. 14, W½;
sec. 15, NE¼;
sec. 22, E½;
sec. 23, NW¼;
sec. 25, NW¼;
sec. 26, SE¼;
sec. 27, NW¼.
T. 25 N., R. 9 W.,
sec. 7, N½SE¼and SW¼SE¼;
sec. 8, NW¼;
sec. 13, N½;
sec. 18, lots 1 to 4, inclusive, NE¼, and E½W½;
sec. 33, SE¼.
T. 27 N., R. 9 W.,
sec. 11, N½;
sec. 15, NE¼.
T. 28 N., R. 9 W.,
sec. 24, NE¼;
sec. 36, NW¼.
T. 16 N., R. 10 W.,
sec. 6, SE¼;
sec. 18, NE¼.
T. 23 N., R. 10 W.,
sec. 8, SW¼;
sec. 11, NW¼;
sec. 13, NE¼;
sec. 24, SE¼;
sec. 27, NE¼.
T. 24 N., R. 10 W.,
sec. 4, SW¼;
sec. 8, SE¼;
sec. 10, E½;
sec. 11, SE¼;
sec. 17, NE¼;
sec. 18, NE¼;
sec. 21, SW¼;
sec. 23, SW¼;
sec. 30, SE¼;
sec. 33, SE¼;
sec. 36, NW¼.
T. 25 N., R. 10 W.,
sec. 6, lots 1 and 2, and S½NE¼;
sec. 7, NE¼;
sec. 10, SW¼;
sec. 14, NW¼;
sec. 25, NW¼;
sec. 29, W½;
sec. 34, NW¼.
T. 15 N., R. 11 W.,
sec. 8, NW¼;
sec. 26, SE¼.
T. 16 N., R. 11 W.,
sec. 14, SW¼.
T. 24 N., R. 11 W.,
sec. 14, SE¼;
sec. 15, SE¼;
sec. 24, E½;
sec. 26, N½.
T. 25 N., R. 11 W.,
sec. 1, lots 3 and 4, and S½NW¼;
sec. 2, lots 1 and 2, and SW¼NE¼;
sec. 8, NW¼;

sec. 9, SW¼;
sec. 11, SE¼;
sec. 14, SE¼;
sec. 19, lots 1 and 2, and E½NW¼;
sec. 20, W½;
sec. 30, E½;
sec. 31, NE¼;
sec. 34, lots 1 to 4, inclusive.
T. 26 N., R. 11 W.,
sec. 23, SW¼.
T 15 N., R. 12 W.,
sec. 36, SE¼.
T. 16 N., R. 12 W.,
sec. 8, NE¼.
T 18 N., R. 12 W.,
sec. 20, N½and SW¼.
T 25 N., R. 12 W.,
sec. 12, S½;
sec. 13, NW¼ and S½;
sec. 14, SE¼;
sec. 23, NE¼;
sec. 25, SE¼;
sec. 26, SE¼;
sec. 28, NW¼;
sec. 35, W½;
sec. 36, SW¼.
T. 14 N., R. 13 W.,
sec. 20, NW¼ and S½SW¼SE¼.
T. 19 N., R. 13 W.,
sec. 18, NE¼.
T. 29 N., R. 13 W.,
sec. 19, lots 14 and 15;
sec. 28, E½SW¼SW¼ and W½SE¼ SW¼.
T. 14 N., R. 14 W.,
sec. 14, NE¼.
T 16 N., R. 14 W.,
sec. 20, S½.
T. 15 N., R. 15 W.,
sec. 2, lots 1 to 4, inclusive, and S½N½.
T. 16 N., R. 15 W.,
sec. 8, NE¼ and N½S½;
sec. 14, SE¼;
sec. 22, N½SW¼, SW¼SW¼, N½SE¼ SW¼, SW¼SE¼SW¼, and SE¼;
sec. 24, SE¼.
T. 16 N., R. 16 W.,
sec. 18, lot 1, NE¼NW¼, and SE¼;
sec. 20, N½;
sec. 28, NE¼.
T. 14 N., R. 17 W.,
sec. 30, NE¼.
T. 15 N., R. 17 W.,
sec. 6, lots 1 to 5, inclusive, S½NE¼, and SE¼NW¼;
sec. 28, NE¼.
T. 16 N., R. 17 W.,
sec. 14, NE¼.
T. 14 N., R. 18 W.,
sec. 4, SE¼;
sec. 26, E½;
sec. 32, S½.
T. 13 N., R. 19 W.,
sec. 8, NW¼;
sec. 12, S½.
T. 14 N., R. 19 W.,
sec. 8, N½;
sec. 26, NW¼.
T 15 N., R. 19 W.,
sec. 18, lots 1 and 2, and E½NW¼.
T. 11 N., R. 20 W.,
sec. 2, lots 1 to 4, inclusive, S½N½, and N½SE¼.
T. 12 N., R. 20 W.,
sec. 26, S½.
T. 15 N., R. 20 W.,
sec. 12, E½;
sec. 18, lots 3 and 4, and E½SW¼;
sec. 20, E½;
sec. 22, SW¼;
sec. 26, NW¼.

The areas described aggregate 56,709.41 acres in Sandoval, McKinley, San Juan, and Rio Arriba Counties.

(d) The surface estate of the following described lands was patented to the Navajo Tribe of Indians. The minerals are not federally owned and will not be opened to location and entry:

New Mexico Principal Meridian

T. 17 N., R. 4 W.,
sec. 2, S½.
T. 17 N., R. 6 W.,
sec. 16, SE¼.
T. 18 N., R. 7 W.,
sec. 16, NE¼.
T. 25 N., R. 11 W.,
sec. 32, SE¼.

The areas described aggregate 800 acres in Sandoval, McKinley, and San Juan Counties.

2. All of the lands, with the exception of the lands described in paragraphs 1(b) and 1(d), have been and remain open to mineral leasing.

3. At 9 a.m. on November 2, 1992, the lands described in paragraph 1(a) 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 November 2, 1992, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 9 a.m. on November 2, 1992, the lands described in paragraphs 1(a) and 1(c) 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 lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 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 Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: September 21, 1992.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 92-23788 Filed 9-30-92; 8:45 am]

BILLING CODE 4310-FB-M

43-CFR Public Land Order 6948

[ID-943-4214-10; IDI-15709A; IDI-0588401]

Partial Revocation of Secretarial Order Dated January 29, 1927, Which Established Powersite Classification No. 166, and Public Land Order No. 1567, Which Established the Forest Service Recreation Area Roadside Zone; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes one Secretarial Order and one Public Land Order insofar as they affect 0.21 acre of National Forest System land withdrawn for the Bureau of Land Management's Powersite Classification No. 166, and a Forest Service Recreation Area Roadside Zone. The land is no longer needed for these purposes, and the revocation is needed to permit disposal of the land through land exchange. This action will open 0.21 acre to surface entry and mining. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: November 2, 1992.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208-384-3166.

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 Secretarial Order dated January 29, 1927, which established Powersite Classification No. 166, and Public Land Order No. 1567, which established Forest Service Recreation Area Roadside Zones, are hereby revoked insofar as they affect the following described land:

A parcel of land situated in lot 7, Section 4, T. 32 N., R. 6 E., Boise Meridian. Being more particularly described as follows:

Commencing at the NW corner of said lot 7; thence along the West line of lot 7, S. 01°11' E., 645.40 feet to the North right-of-way line of U.S. Highway 12 and the true point of beginning; thence S. 73°45' E., 117.10 feet along the North right-of-way line of U.S. Highway 12; thence leaving said right-of-way line N. 41°25' E., 57.40 feet; thence N. 65°05' W., 167.70 feet; thence S. 01°11' E., 80.90 feet to the point of beginning.

The area described contains 9.21 acre in Idaho County.

2. At 9 a.m. on November 2, 1992, the land shall be opened to such forms of disposition as may by law be made of National Forest System land, including 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 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 attempted adverse possession under 30 U.S.C. 36 (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: September 21, 1992.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 92-23775 Filed 9-30-92; 8:45 am]

BILLING CODE 4310-GG-M

ACTION

45 CFR Part 1224

Implementation of the Privacy Act of 1974

AGENCY: ACTION.

ACTION: Final rule.

SUMMARY: On August 11, 1992, ACTION published for notice and comment a proposed rule to exempt a system of records from certain provisions of the Privacy Act of 1974, 5 U.S.C. 552a ("Privacy Act"), to the extent that the system contains investigatory material pertaining to the enforcement of criminal laws or compiled for law enforcement purposes. The system of records to be exempted contains the investigative files of the Office of the Inspector General. (See 57 FR 35775.) ACTION did not receive any comments on the proposed rule. Therefore, ACTION has exempted this system of records from certain provisions of the Privacy Act.

EFFECTIVE DATE: November 16, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas C. Buchanan, Counsel to the Inspector General, ACTION, at (202) 606-4994; or Edward F. Carey, Privacy Act Officer, at (202) 606-5242.

SUPPLEMENTARY INFORMATION: On December 31, 1991, ACTION published a "Notice of Systems of Records" in the Federal Register (56 FR 67576). Included in this notice is system number "ACTION-15," the Office of the Inspector General Investigative Files. This system contains investigatory material pertaining to the enforcement of criminal laws and compiled for law enforcement purposes.

ACTION has now exempted this system of records from specified provisions of the Privacy Act. Section (j)(2) of the Privacy Act provides that the head of an agency may promulgate rules to exempt any system of records within the agency from any part of section 552a except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i), if the system of records is—

maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws * * * and which consists of (A) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

Section (k)(2) of the Privacy Act provides that the head of an agency may promulgate rules to exempt any system of records within the agency from sections 552a (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f), if the system of records is "investigatory material compiled for law enforcement purposes."

If a system of records is not exempted from these sections, the Privacy Act generally requires the agency to: Account for disclosures; permit individuals access to their records; permit individuals to request amendment to their records; collect information directly from the subject individual; publish information in the Federal Register about access to records; and promulgate rules that establish procedures for notice and disclosure of records. The exemptions that may be asserted with respect to investigatory systems of records permit an agency to protect information when disclosure would interfere with the conduct of the agency's investigations.

The Office of the Inspector General Investigative Files contain information of the type described in the above mentioned exemptions to the Privacy Act. The Inspector General Act of 1978, as amended, 5 U.S.C. app. 3, authorizes the Inspector General of ACTION to conduct investigations to detect fraud and abuse in the programs and operations of ACTION and to assist in the prosecution of participants in such fraud or abuse. The Office of the Inspector General of ACTION maintains information in this system of records pursuant to its law enforcement and criminal investigation functions. Exemptions under section 552a (j)(2) and (k)(2) are necessary to maintain the integrity and confidentiality of the investigative files and to protect individuals from harm. Disclosure of information in these investigatory files or disclosure of the identity of confidential sources would seriously undermine the effectiveness of the Inspector General's investigations. Knowledge of such investigations also could enable subjects of the investigation to take action to prevent detection of criminal activities, conceal or destroy evidence, or escape prosecution. Disclosure of this information could lead to intimidation of, or harm to, informants, witnesses, investigative personnel, or their families. The imposition of certain restrictions on the manner in which information is collected, verified, or retained could significantly impede the effectiveness of the investigations of the Office of the Inspector General and could preclude the apprehension and successful prosecution of persons engaged in fraud or criminal activity.

Section 1224.1-14 of the ACTION regulations (45 CFR part 1224) previously was promulgated to exempt various investigatory records from certain requirements of the Privacy Act. In connection with the establishment of the system of records containing the Office of the Inspector General Investigative Files, ACTION has amended part 1224 by adding a new section, 45 CFR 1224.1-19, Inspector General Exemptions, pursuant to section 552a (j)(2) and (k)(2) of the Privacy Act.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Director of ACTION certifies that the amendments to part 1224 will not have a significant impact on a substantial number of small entities. The

Director further finds that the proposed rule is not a "major rule" under Executive Order No. 12291 since it will not have an annual effect on the economy of $100 million or more.

List of Subjects in 45 CFR Part 1224

Privacy, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, chapter XII, subtitle B, title 45, Code of Federal Regulations, is amended as follows:

PART 1224—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

1. The authority citation for part 1224 continues to read as follows:

Authority: Public Law 93–579, 5 U.S.C. 552a.

2. Section 1224.1–19 is added to read as follows:

§ 1224.1–19 Inspector General exemptions.

Pursuant to sections (j) and (k) of the Privacy Act of 1974, ACTION has promulgated the following exemptions to specified provisions of the Privacy Act:

(a) Pursuant to, and limited by, 5 U.S.C. 552a(j)(2), the system of records maintained by the Office of the Inspector General of ACTION that contains the Investigative Files shall be exempted from the provisions of 5 U.S.C. 552a, except subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i), and 45 CFR 1224.1–12, 1224.1–13, 1224.1–15, 1224.1–16, 1224.1–17, and 1224.1–18, insofar as the system contains information pertaining to criminal law enforcement investigations.

(b) Pursuant to, and limited by, 5 U.S.C. 552a(k)(2), the system of records maintained by the Office of the Inspector General of ACTION that contains the Investigative Files shall be exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f), and 45 CFR 1224.1–12, 1224.1–13, 1224.1–15, 1224.1–16, 1224.1–17, and 1224.1–18, insofar as it contains investigatory materials compiled for law enforcement purposes.

Dated: September 24, 1992.

Jane A. Kenny,

Director, ACTION.

[FR Doc. 92–23770 Filed 9–30–92; 8:45 am]

BILLING CODE 6050–28

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 214

[FRA Docket No. ROS–2, Notice No. 3]

RIN 2130–AA48

Bridge Worker Safety Rules

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Suspension of sections on fall protection.

SUMMARY: On June 24, 1992, FRA published regulations on safety standards for the protection of those who work on railroad bridges (49 CFR part 214). On July 2, 1992 (57 FR 25561), the effective date was corrected to July 24, 1992, and on July 9, 1992 (57 FR 30429) FRA changed the effective date to August 24, 1992. FRA is suspending 49 CFR 214.103 and 49 CFR 214.105 until November 24, 1992. The effective date of all other sections of 49 CFR part 214 remains August 24, 1992.

EFFECTIVE DATES: Part 214, which was published at 57 FR 28116, was effective on August 24, 1992. Effective September 28, 1992, 49 CFR 214.103 and 214.105 are suspended until November 24, 1992.

ADDRESSES: Any petition for reconsideration should be submitted to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Edward R. English, Director, Office of Safety Enforcement, Office of Safety, FRA, 400 Seventh Street, SW., Washington DC 20590 (Telephone: 202–366–9252), or Christine Beyer, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street SW., Washington, DC 20590 (Telephone: 202–366–0443).

SUPPLEMENTARY INFORMATION: On August 12, 1992, the Association of American Railroads (AAR) filed a Petition for an Extension of Time of the Effective Date of the Bridge Worker Safety Rules, 49 CFR part 214. In that Petition, the AAR states that an extension of the effective date for implementation of the bridge worker standards from August 24, 1992 to January 1, 1993 is necessary in order to provide the railroads sufficient time to purchase fall protection equipment and train employees on its use. The AAR states that the bridge standards promulgated by the Federal Railroad Administration (FRA) on June 24, 1992 (57 FR 28116) require the use of fall protection in situations where equipment was not used previously, and that the new equipment could not be furnished by suppliers prior to the effective date or with sufficient time to allow for necessary training of employees. In support of this, the AAR submitted affidavits from the Atchison, Topeka & Santa Fe Railway Company and Burlington Northern Railroad.

AAR's Petition requests a delay in the effective date for all sections of the Bridge Worker Safety Rule, but the evidence supplied concerning unavailability of equipment and training time relate only to those sections involving fall protection, 49 CFR 214.103 and 214.105. Therefore, the request to delay the effective date of the entire rule is denied. Sections 214.1 through 214.101 and sections 214.107 through 214.117 remain in effect as of August 24, 1992.

Based on information received from the AAR, however, FRA has determined that in the interest of employee safety the sections of the rule that relate specifically to fall protection, §§ 214.103 and 214.105, must be suspended. This suspension is provided so that the railroads can complete a comprehensive acquisition, implementation, and training program that will meet the requirements of the rule, and ultimately ensure a safe workplace for bridge workers. Class 1 railroads such as CSX Transportation, Inc., Union Pacific Railroad company, and Southern Pacific Transportation Company were fully prepared to meet all requirements of the rule on its effective date, August 24, 1992. In addition, many Class 2 and 3 railroads were in compliance on that date. However the AAR has submitted information indicating that many Class 1 railroads, including Burlington Northern Railroad, Consolidated Rail Corporation, Norfolk Southern Railway Company, Atchison, Topeka & Santa Fe Railway Company, and Illinois Central Railroad Company have been unable to acquire a sufficient number of body harnesses and lifeline systems to fully equip their track employees who perform work on railroad bridges.

In addition, the AAR states that the railroads have not had ample time to complete a training program for bridge and track employees on proper use of the new equipment. While FRA believes that a diligent effort by all railroads to meet the requirements of the new rule would have resulted in a suitable supply of complying fall protection devices, the sixty days that elapsed between publication and implementation of the rule now appears to have been an insufficient amount of time to train adequately the track and bridge workers who must use the required equipment. In particular, many track employees will be using fall protection systems for the

first time, and must be provided a comprehensive training program to ensure their safety. Therefore, this suspension is granted so that all railroads complete such a program for their employees. Although sections 214.103 and 214.105 are suspended until November 24, 1992, FRA intends to actively monitor the railroads' progress toward full compliance with the requirements of 49 CFR part 214 during this acquisition, implementation, and training period.

Finally, because regulations promulgated by the Occupational Safety and Health Administration (OSHA) applied to railroad bridge workers until the effective date of FRA's new bridge worker standards, OSHA's standards that address fall protection systems specifically shall now remain in effect until November 24, 1992.

Due to potential employee safety hazards and the need for a prompt response to the AAR's Petition to Extend Time, FRA has determined that notice and comment on this issue would be impractical, unnecessary, and contrary to the public interest. The parties directly affected by the extension, the railroad industry and the Brotherhood of Maintenance-of-Way Employees, have been apprised of the request and given an opportunity to comment.

Regulatory Impact

E.O. 12291 and DOT Regulatory Policies and Procedures

This change to the final rule has been evaluated in accordance with existing policies and procedures and is considered to be nonmajor under Executive Order 12291. However, it is considered to be significant under DOT policies and procedures (44 FR 11304) because it is part of a substantial regulatory program.

The suspension relates to only two sections of the final rule, and those sections governed by the regulations of the Occupational Safety and Health Administration (OSHA) prior to issuance of FRA's bridge worker standards, will continue to be governed by OSHA until the new effective date. Therefore, there are no new costs associated with this suspension.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. This suspension of two sections of the final rule results in a continuation of authority of the existing OSHA regulations, and will have no new direct or indirect economic impact on small units of government, businesses, or other organizations. Therefore, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act.

Paperwork Reduction Act

There are no paperwork requirements associated with this suspension.

Environmental Impact

FRA has evaluated this suspension in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. This suspension meets criteria establishing this as a nonmajor action for environmental purposes.

Federalism Implications

This suspension will not have a substantial effect 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. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

Therefore, effective September 28, 1992, 49 CFR 214.103 and 214.105 are suspended until November 24, 1992.

Issued this 28th day of September 1992.

Gilbert E. Carmichael,

Administrator.

[FR Doc. 92-23880 Filed 9-30-92; 8:45 am]

BILLING CODE 4910-06-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81-2; Notice 13]

RIN 2127-AD35

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

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

ACTION: Change of effective date for adding previously adopted amendments to the Code of Federal Regulations (CFR).

SUMMARY: This document changes the date when amendments to Standard No. 108 published on April 19, 1991, will be added to the text of that standard as it appears in the CFR, from September 1, 1993, to October 1, 1992. There is no substantive effect of this change as the paragraphs containing substantive requirements for center high-mounted stop lamps (CHMSL) on vehicles other than passenger cars retain the originally stated date of September 1, 1993, for mandatory compliance with the CHMSL requirements. The change has the effect of making immediately effective the redesignation of certain paragraphs of the standard. This action is taken pursuant to a comment submitted in an unrelated rulemaking.

EFFECTIVE DATE: The effective date of the amendment to 49 CFR part 571 published in FR Doc 91-9220 on April 19, 1991 (56 FR 16105) is changed from September 1, 1993, to October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Patrick Boyd, Office of Rulemaking (202-366-6436).

SUPPLEMENTARY INFORMATION: This notice resolves a conflict that has arisen between a final rule amending Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*, and a notice of proposed rulemaking (NPRM).

On April 19, 1991, NHTSA issued a final rule (56 FR 16020) that had the following effects. Paragraph S5.1.1.27 was revised to require motor vehicles other than passenger cars "manufactured on and after September 1, 1993" to be equipped with high-mounted stop lamps. Paragraphs S5.1.1.28, S5.1.1.29, S5.1.1.30 and S5.1.1.31 were redesignated respectively as paragraphs S5.1.1.29, S5.1.1.30, S5.1.1.31, and S5.1.1.32. New paragraph S5.1.1.28 was added to permit vehicles other than passenger cars "manufactured between September 1, 1992, and September 1, 1993" to be voluntarily equipped in accordance with S5.1.1.27 and S5.3.1.8, also revised by the final rule. Finally, Tables III and IV were revised to reflect the applicability and location requirements for center high-mounted stop lamps on vehicles other than passenger cars. The notice gave the overall effective date of the final rule as September 1, 1993. The amendments were published at pages 320-21, following the current text of Standard No. 108, in "Title 49 Code of Federal Regulations parts 400 to 999 Revised as of October 1, 1991."

On July 8, 1992, NHTSA published a notice of proposed rulemaking (NPRM) (57 FR 30189) regarding the marking of sealed beam headlamps which also proposed to transfer paragraphs of S5.1.1 relating to replacement equipment to paragraph S5.7 *Replacement*

Equipment. Under the NPRM, redesignation of many of the remaining paragraphs of S5.1.1 was also proposed. However, the proposal was made with reference to Standard No. 108 as it remains in effect until September 1, 1993, and did not take into account the amendments which become effective that day. Ford Motor Company, in commenting on the NPRM, related it to the standard as amended by the April 1991 notice, instead of the standard as it currently appears in the CFR, and found certain apparent errors and inconsistencies.

In formulating the final rule on the NPRM, NHTSA is faced with two choices. The first is based on the standard as it currently appears in the CFR. If the agency took this approach, it would issue the final rule with the redesignations as proposed in July 1992, (which would only be in effect until September 1, 1993), relating Ford's comments to the extent possible. At the same time, the agency would amend the redesignations that are scheduled to become effective on September 1, 1993. The second choice is based on the standard as amended by the April 1991 final rule. Under this approach, the agency would accelerate the 1993 effective date for adding the 1991 amendments to the CFR so that the final rule on headlamp markings can adopt a definitive redesignation of paragraphs without further amendments. The agency has chosen this alternative course.

Accelerating the effective date for adding the April 1991 amendments to the CFR results in no substantive burden. No compliance date or text is changed. The mandatory CHMSL provisions of paragraph S5.1.1.27, by their own terms, will still not come into effect for vehicles other than passenger cars until September 1, 1993. The optional CHMSL compliance provisions in Paragraph S5.1.1.28, by their own terms, are still effective only between September 1, 1992, and September 1, 1993. There is no substantive reason why the redesignation of paragraphs of S5.1.1, and the changes to Tables III and IV cannot be made effective immediately. NHTSA also notes that such an amendment with an effective date of October 1, 1992 for adding the amendments to the text of the standard in the CFR, will allow publication of the most current version of Standard No. 108 in the next volume of 49 CFR parts 400–999 revised as of October 1, 1992. The clarity that this will afford is in the public interest.

Accordingly, for the reasons stated above, NHTSA finds that prior notice and an opportunity for comment are not required for this change, and that an effective date of October 1, 1992 for adding the amendments to 49 CFR 571.108 Motor Vehicle Safety Standard No. 108, published on April 19, 1991, to the CFR is in the public interest. The effective date for adding the amendments of April 19, 1991, to the CFR is changed from September 1, 1993, to October 1, 1992.

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

Issued on: September 28, 1992.

Marion C. Blakey,

Administrator.

[FR Doc. 92-23872 Filed 9-29-92; 9:11 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB56

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Washington, Oregon, and California Population of the Marbled Murrelet

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines the Washington, Oregon, and California population of the marbled murrelet (*Brachyramphus marmoratus marmoratus*) to be a threatened species pursuant to the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 et seq.). The marbled murrelet is threatened by the loss and modification of nesting habitat (older forests) primarily due to commercial timber harvesting. It is also threatened from mortality associated with current gill-net fishing operations off the Washington coast and the effects of oil spills. This rule extends the Act's protection to the marbled murrelet in Washington, Oregon, and California. Pursuant to an order of the United States District Court, Western District of Washington at Seattle, dated September 15, 1992, this listing takes effect immediately.

EFFECTIVE DATE: September 28, 1992.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Portland Field Office, 2600 SE. 98th Avenue, suite 100, Portland, Oregon 97266.

FOR FURTHER INFORMATION CONTACT: Mr. Russell D. Peterson, Field Supervisor, at the above address (503/231-6179).

SUPPLEMENTARY INFORMATION:

Background

Biological Considerations

The marbled murrelet (*Brachyramphus marmoratus*) is a small seabird of the Alcidae family. It was first described in 1789 by Gmelin as *Colymbus marmoratus,* but in 1837 Brandt placed it under the genus *Brachyramphus* (American Ornithologists' Union 1983). The North American subspecies (*B. m. marmoratus*) ranges from the Aleutian Archipelago in Alaska, eastward to Cook Inlet, Kodiak Island, Kenai Peninsula, and Prince William Sound, southward coastally throughout the Alexander Archipelago of Alaska, and through British Columbia, Washington, Oregon, to central California. Some wintering birds are found in southern California. A separate subspecies (*B. m. perdix*) is present in Asia.

Marbled murrelets feed primarily on fish and invertebrates in near-shore marine waters. The majority of marbled murrelets are found within or adjacent to the marine environment, although there have been detections of marbled murrelets on rivers and inland lakes (Carter and Sealy 1986). Marbled murrelets spend the majority of their lives on the ocean, and come inland to nest, although they visit some inland stands during all months of the year. Marbled murrelets have been recorded up to 80 kilometers (50 miles) inland in Washington (Hamer and Cummins 1991), 56 kilometers (35 miles) inland in Oregon (Nelson 1990), 37 kilometers (22 miles) inland in northern California (Carter and Erickson 1988, Paton and Ralph 1990), and 18 kilometers (11 miles) inland in central California (Paton and Ralph 1990). However, marbled murrelets are not evenly distributed from the coast to the maximum inland distances, with higher detections being recorded closer to the coast. Hamer and Cummins (1991) found that over 90 percent of all observations were within 60 kilometers (37 miles) of the coast in the northern Washington Cascades. In Oregon, marbled murrelets are observed most often within 20 kilometers (12 miles) of the ocean (Nelson 1990).

Marbled murrelets are semi-colonial in their nesting habits, and simultaneous detections of more than one bird are frequently made at inland sites. Nesting marbled murrelets are often aggregated; for example, two nests discovered in

Washington in 1990 were located only 46 meters (150 feet) apart (Hamer and Cummins 1990).

Marbled murrelets do not reach sexual maturity until their second year. Like other alcids, adult marbled murrelets produce 1 egg per nest. Alcids typically have a variable (not all adults may nest every year) reproductive rate, and marbled murrelets exhibit this same trend. Adult/juvenile ratios from counts along the central Oregon coast indicated a recruitment rate of less than 2 percent per year over the past 4 years (1988–1991) (Nelson, *in litt.*, 1992).

Adult marbled murrelets lay one egg on the limb of an old-growth conifer tree. Nesting occurs over an extended period from mid-April to late September (Carter and Sealy 1987). Incubation lasts about 30 days and fledging takes another 28 days (Hirsch *et al.* 1981, Simons 1980). Both sexes incubate the egg in alternating 24-hour shifts (Simons 1980, Singer *et al.* 1991). Flights by adults are made from ocean feeding areas to inland nest sites most often at dusk and dawn (Hamer and Cummins 1991). The adults feed the chick at least once per day, carrying one fish at a time (Carter and Sealy 1987; Hamer and Cummins 1991; Singer *et al.* 1992; Nelson, OR Coop. Wildl. Res. Unit, pers. comm., 1992). The young are altricial, and remain in the nest longer than young of most other alcids. Before leaving the nest, the young molt into a distinctive juvenile plumage. Fledglings appear to fly directly from the nest to the sea, rather than exploring the forest environment first (Hamer and Cummins 1991).

In California, Oregon, and Washington marbled murrelets use older forest stands near the coastline for nesting. These forests are generally characterized by large trees (> 80 centimeters (32 inches) dbh), multi-storied stand, and a moderate to high canopy closure. In certain parts of the range, marbled murrelets are also known to use mature forests with an old-growth component. Trees must have large branches or deformities for nest platforms (Binford *et al.* 1975; Carter and Sealy 1987; Hamer and Cummins 1990, 1991; Singer *et al.* 1991, 1992; Nelson, *in litt.*, 1991). Marbled murrelets tend to nest in the oldest trees in the stand.

Twenty-three tree nests have been located in North America; five in Washington, seven in Oregon, four in California, two in British Columbia, and five in Alaska (Binford *et al.* 1975; Quinlan and Hughes 1990; Hamer and Cummins 1990, 1991; Kuletz 1991; Singer *et al.* 1991, 1992; Nelson *et al.*, unpubl. data). All 16 of the nests found in Washington, Oregon, and California were located in old-growth trees that ranged in diameter at breast height (dbh) from 88 centimeters (35 inches) to 533 centimeters (210 inches) with a mean of 203 centimeters (80 inches). Nests were located high above ground and usually had good overhead protection; such locations would allow easy access to the exterior of the forest. Nest sites were located in stands dominated by Douglas-fir (*Pseudotsuga menziesii*) in Oregon and Washington, and in old-growth redwood (*Sequoia sempervirens*) stands in California. Nests were mostly placed in older Douglas-fir trees within these stands.

It is difficult to locate individual nests for a species that may only show activity near its nest one time per day, and may do so under low light conditions. Therefore, occupied sites or suitable habitat become the most important parameters to consider when evaluating its status. Active nests, egg shell fragments or young found on the forest floor, birds seen flying through the forest beneath the canopy, birds seen landing, or birds heard calling from a stationary perch are all strong indicators of occupied habitat. Biologists have documented 154 occupied sites in the Oregon Coast Ranges, all in old-growth forests or mature forest stands with an old-growth component.

Marbled murrelets more commonly occupy old-growth forests compared to mixed-age and young forests in California, Oregon, and Washington. In California, the species is restricted to old-growth redwood forests in Del Norte, Humboldt, San Mateo, and Santa Cruz Counties (Paton and Ralph 1988). In surveys of mature and second-growth forests of California, marbled murrelets were only found in these forests where there was nearby old-growth, or where residual older trees remained; murrelets were absent from 80 percent of the second-growth forests examined (Ralph *et al.* 1990). In northwest Washington, marbled murrelets are mostly found at old-growth/mature sites (Hamer and Cummins 1990). In Oregon, marbled murrelets occupy stands dominated by larger trees (averaging greater than or equal to 82 centimeters (32 inches) dbh) more often (statistically significant) than those dominated by smaller trees (Nelson 1990).

Stand size is also an important factor for marbled murrelets. These birds more commonly occupy larger stands (greater than 202 hectares (500 acres)) than smaller stands (less than 40 hectares (100 acres)) in California; marbled murrelets are usually absent from stands less than 24 hectares (60 acres) in size (Paton and Ralph 1988, Ralph *et al.* 1990). Marbled murrelets generally do not occur in isolated stands of coastal old-growth forest in California (CDFG, *in litt.*, 1992). In Washington, marbled murrelets are found more often when the percent of available old-growth/mature forests makes up over 30 percent of the landscape. Similarly, fewer murrelets are found when clearcut/meadow areas make up more than 25 percent of the landscape (Hamer and Cummins 1990). Nelson (1990) found that a statistically significant lower number of detections were noted in the highly fragmented Oregon Coast Range, compared to detection rates documented by Paton and Ralph (1988) in a less fragmented area in northern California.

Concentrations of marbled murrelets offshore are almost always adjacent to older forests on-shore. Nelson (1990) and Ralph *et al.* (1990) found marbled murrelets were absent offshore where on-shore older forests were absent. Large geographic gaps in offshore marbled murrelet numbers occur in areas such as that between central and northern California (a distance of 480 kilometers (300 miles)), and between Tillamook County, Oregon, and the Olympic Peninsula (a distance of about 190 kilometers (120 miles)), where nearly all older forest has been removed near the coast. Small rafts of marbled murrelets may be found associated with remaining insolated stands of older forests (e.g., the Nemah site). Historically, records for California indicate that marbled murrelets were found "regularly" and were "plentiful" along the coast from Monterey County north to the Oregon border (Grinnell and Miller 1944; Paton and Ralph 1988). Historical records of marbled murrelets also showed significant numbers during the nesting season near the mouth of the Columbia River in Clatsop County, Oregon. Marbled murrelets are rarely found in this area, where extensive harvesting of older forests has also occurred (Nelson *et al.*, in press).

Population size for marbled murrelets is most accurately estimated by counting the numbers of birds observed in the marine environment. Washington's breeding population is estimated to be a maximum of 5,000 birds (Speich *et al.*, in press). The current population estimates for Oregon and California are fewer than 1,000 pairs (Nelson *et al.*, in press), and about 2,000 birds (Carter *et al.* 1990), respectively. By extrapolating from known population numbers in relation to the remaining available nesting habitat, it has been estimated that 60,000 marbled murrelets may have been found historically along the coast of California (Larsen 1991).

The principal factor affecting the marbled murrelet in the three-state area, and the main cause of population decline has been the loss of older forests and associated nest sites. Older forests have declined throughout the range of the marbled murrelet as a result of commercial timber harvest, with additional losses from natural causes such as fire and windthrow. Most suitable nesting habitat (old-growth and mature forests) on private lands within the range of the subspecies in Washington, Oregon, and California has been eliminated by timber harvest (Green 1985; Norse 1988; Thomas *et al.* 1990). Remaining tracts of potentially suitable habitat on private lands throughout the range are subject to continuing timber harvest operations (see Factor A). Mortality associated with oil spills and gill-net fisheries (in Washington) are lesser threats adversely affecting the marbled murrelet.

Distinct Population Segment

The Act defines "species" to include any subspecies of fish or wildlife or plants, and any distinct population segment of any species or vertebrate fish or wildlife which interbreeds when mature (16 U.S.C. 1532 (6)). As discussed under Factor D in the Summary of Factors Affecting the Species section of this rule, existing legal mechanisms are not adequate to protect the marbled murrelet in California, Oregon, and Washington. The three states encompass roughly one-third of the geographic area occupied by this subspecies, comprising a significant portion of its range. The amount of nesting habitat has undergone a tremendous decline since the late 1800s (most of which has taken place during the last 20 to 30 years), especially in the coastal areas of all three states.

At the time of proposing to list the marbled murrelet in Washington, Oregon, and California, the Service considered the murrelets in these States to constitute a distinct population segment comprising a significant portion of the eastern Pacific subspecies of the marbled murrelet. While the Service continues to believe that existing legal protection is not adequate to ensure survival of murrelets in the three-state area, some question remains whether the population listed in this rule qualifies for protection under the Act's definition of "species."

Compliance with a court order required a final decision on listing to be made at this time. Based on the information now available to the Service, the only supportable decision that can be reached within the limit imposed by the court is to list the population as proposed. Nevertheless, the Service intends to reexamine the basis of recognizing this population of murrelets as a "species" under the Act. Within 90 days, the Service will announce the results of this examination and at that time may propose a regulatory change that would alter the listing of the murrelet as a threatened species.

Previous Federal Actions

The National Audubon Society submitted a petition to the Service on January 15, 1988, the list the Washington, Oregon, California population of the marbled murrelet as a threatened species. Section 4(b)(3)(A) of the Act requires that, to the maximum extent practicable, within 90 days of receipt of a petition to list, delist, or reclassify a species, a finding be made as to whether substantial information has been presented indicating that the requested action may be warranted. The 90-day finding stating that the petition had presented substantial information to indicate that the requested action may be warranted was published in the **Federal Register** on October 17, 1988 (53 FR 40479). Because of the increased research efforts and the amount of new data available, the status review period was reopened, with the concurrence of the petitioners, from March 5, 1990 through May 31, 1990 (55 FR 4913).

The marbled murrelet has been included in the Service's Notice of Review for vertebrate wildlife as a category 2 candidate species for listing since 1989 (54 FR 554). A category 2 candidate is one for which information contained in Service files indicates that preparation of a proposal to list the species is possibly appropriate but additional data is needed to support a listing proposal. The best available scientific and commercial data were analyzed and evaluated as a result of the status review mentioned above. The review included the pertinent data available from both published and unpublished sources. Unpublished sources included solicited progress and final reports, file data, meeting notes, letters, and personal contact with agencies, organizations, and individuals. These data elevated the marbled murrelet to category 1 candidate status and contributed to the information on which the decision to propose this species for listing was based. A category 1 candidate is one for which the Service has sufficient data in its possession to support a listing proposal. On June 20, 1991, the Service published a proposal to list the marbled murrelet as a threatened species in Washington, Oregon, and California (56 FR 28362). This proposed rule constituted the 12-month finding that the petitioned action was warranted, in accordance with section 4(b)(3)(B) of the Act.

On January 30, 1992, the Service published a notice in the **Federal Register** (57 FR 3804) that reopened the comment period on the proposed listing for 30 days. This action was taken to gather the most updated information on the marbled murrelet. Having considered all the information presented during the comment periods, the Service now determines the marbled murrelet in Washington, Oregon, and California to be a threatened species.

Summary of Comments and Recommendations

In the June 20, 1991, proposed rule (56 FR 28362) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final decision. The comment period originally closed September 18, 1991. Appropriate state agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. No requests for public hearings were received. On January 30, 1992, the Service published in the **Federal Register** (57 FR 3804) a notice that reopened the comment period for 30 days to solicit additional biological information on the status of the marbled murrelet.

During the comment periods, totaling 120 days, 52 letters on the proposal were received. Five additional comments were received shortly after the official comment period closing dates. Of the 57 comments received, 30 (53 percent) supported the proposal, 8 (14 percent) opposed the proposal, and 19 (33 percent) were neutral. Opposing comments were received from various companies and organizations that are directly or indirectly related to the timber industry, and from individuals who rely on a timber-supported economy. The California Department of Fish and Game (CDFG) and Oregon Department of Fish and Wildlife (ODFW) submitted biological information on the status of the marbled murrelet and supported Federal listing. The Washington Department of Wildlife submitted biological information, but did not state a position on the proposed listing. The Forest Service, Bureau of Land Management (Bureau), and U.S. Department of the Navy presented biological information on the murrelet but did not state positions on the proposed Federal listing. Some of the

commenters submitted additional data that has been incorporated into this rule.

Written comments obtained during the comment periods are combined in the following discussion. Opposing comments and other comments questioning the rule can be placed in a number of general groups, organized around specific issues. These categories of comment, and the Service's response to each are listed below.

Issue 1. Current Regulatory Mechanisms

Comment: Some commenters disagreed with the conclusion that adequate regulatory protection does not exist for the marbled murrelet in California. They stated that the majority of known marbled murrelet habitat in California is located in State or National Parks that is protected from timber harvesting. In addition, the small but significant amount of murrelet habitat found on private timberlands in California is adequately protected through the evaluation and review process conducted by the California Board of Forestry (Board). California environmental statutes provide sufficient protection for the bird in that state.

Another commenter stated that the Service failed to assess the degree to which current regulatory mechanisms will maintain a viable sub-population of marbled murrelets and that land allocations and projected forest conditions described in the Final Forest Service Land Management Plans (Forest Plans) were not analyzed. Through wilderness, critical habitat for the northern spotted owl (*Strix occidentalis caurina*), and other non-timber harvest "set asides," final Forest Plans in Oregon and Washington have left only 18 percent of the original land base that was primarily available for timber production.

Service Response: The Service considered all the existing applicable regulatory mechanisms that deal with timber harvest and marbled murrelets on private, State, and Federal lands in California, Oregon, and Washington. These issues are discussed in the Summary of Factors section, Factor D. The Service concludes that existing management plans pertaining to timber harvest and marbled murrelets are inadequate to ensure the survival of the species. The management direction for the northern spotted owl, in many cases, will not adequately provide for marbled murrelets (see Factor D). Furthermore, Forest Plans are flexible and could be altered in the future, and thus protection afforded to marbled murrelets may be temporary.

Comment: The Siuslaw National Forest's Land and Resource Plan provided adequate protection for the marbled murrelet because the age class inventory of acres that marbled murrelets can utilize increases over time.

Service Response: The Siuslaw National Forest is highly fragmented at present; and it is only a small part of the marbled murrelet's range. The Siuslaw National Forest Plan (USDA 1990) estimates only 6 percent (13,680 hectares (33,800 acres)) of the forested land base remains as older forest. Of this total, 32 percent (4,330 hectares (10,700 acres)) is non-reserved. The Forest Plan estimates that 1,200 hectares (3,000 acres) of the non-reserved old-growth will be harvested during the next 10 years and the remaining within the next 50 years (p. III–3). The Service will continue to work with the Siuslaw National Forest to evaluate the value of the forest for marbled murrelets and encourage actions that are of benefit to the species.

Issue 2. Insufficiency of Scientific Data

Habitat Association

Comment: Several commenters thought that too few nests had been discovered to date to be able to make the assumption that nesting habitat consisted of old-growth and mature forests, and the small set of marbled murrelet nest sites did not provide substantive evidence (with a statistically valid sample size) that the marbled murrelet prefers late stage vegetation in the Pacific States.

Service Response: The Act requires the Service to base its decision upon the best scientific information available. As discussed in the Background section of this rule, nests sites comprise a small part of the information the Service has used to determine habitat preferences and use. A larger sample size of nests would be helpful in providing a more detailed description of nesting habitat and nest site selection. Surveys have been conducted in forests of all age classes; and marbled murrelets do not occupy stands lacking old-growth characteristics. Furthermore, 8 of 10 downy young and 20 of 31 fledglings from throughout the range were located in old-growth coniferous forests, with the remainder being adjacent or near to old-growth forests (Carter and Sealy 1987). Since the publication of the proposed rule, the number of known nests has more than doubled; all nests have been in old-growth trees.

Comment: One commenter stated that surveys in forests in California, Oregon, and Washington suggest, but do not verify, that marbled murrelets require larger areas of old-growth or mature forests for nesting. Also, statements indicating that fragmentation has a negative impact on nesting are not backed by sufficient scientific data.

Service Response: The Service's conclusions regarding the murrelet's preference for old growth, and vulnerability, are based upon numerous studies comparing the findings of marbled murrelets in various stand age classes, sizes, and structure. All studies show a strong affinity/dependence on larger older forest stands. A statistically significant higher rate of marbled murrelet detections has been observed in old-growth forests compared to mixed-age and young forests in California, Oregon, and Washington.

In a few instances murrelets have been found in mature stands, but always in close association with residual older trees. These stands had recovered naturally following a natural disaster. The structural characteristics of the surrounding stand, size and configuration of the timber stand, existing condition of adjacent timber stands, distance to and abundance of a prey source, and density of and vulnerability to predators are all very likely important aspects of marbled murrelet nesting habitat. The marbled murrelet's semi-colonial social structure may dictate some nest site characteristics as well.

Comment: Some commenters stated that attempts to correlate general observations of marbled murrelets along coastlines or bodies of water with adjacent mainland old-growth must not be misconstrued as a cause-and-effect relationship. These aggregations could be the resultant effect of historical groupings, prey base availability, or coastline features such as estuarine environments or topographical features that offer protection from prevailing winds, rather than necessarily being "old growth" driven. Furthermore, the conclusion that widespread timber harvesting may have caused dramatic declines in marbled murrelet populations cannot be considered unequivocal because past populations may have been limited by food availability and/or winter mortality rather than availability of nesting habitat. In addition since we do not know how breeding marbled murrelets were distributed over the forest landscape historically, we cannot know if they are different today.

Service Response: The Service determines species to be endangered or threatened using the best scientific information as the basis for such decisions. The Service agrees that prey

availability probably influences the offshore distribution of marbled murrelets; however, murrelets are absent from some areas where prey species are abundant. Therefore, the absence of marbled murrelets offshore from most areas where older forests have been extensively depleted strongly suggests that offshore abundance of marbled murrelets is correlated with adjacent mainland mature and old-growth forests, particularly given historical accounts of birds located in these areas prior to extensive logging. As discussed in the Background section of this rule, current research has shown that marbled murrelets are strongly associated with older forest habitat.

Comment: Although the density of nesting pairs may be low in managed forests, the vast acreage involved possible could include a considerable number of marbled murrelets.

Service Response: As discussed in the Background section of this rule, current research has shown that marbled murrelets are strongly associated with older forest habitat. Second-growth forests lack marbled murrelets except in those rare instances where residual old-growth trees remain.

Comment: One commenter stated that although the conclusion that marbled murrelets are linked to old-growth and mature forests for nesting is supported by field observations, it is unknown if the forest as a whole promotes successful nesting or if structural conditions found within such forests determine use of forests. Two examples suggested that required nesting structures may not necessarily include extensive old-growth or mature forest. One such example was the area along the Nemah River near Willapa Bay, Washington. Although it is not known conclusively if marbled murrelets nest in the area, birds are consistently observed there during the nesting season. The commenter stated that this area was selectively harvested about 50 years ago, and now consists largely of remnant old-growth trees (Sitka spruce, 366 centimeters (144 inches) dbh; western red cedar, 427 centimeters (168 inches) dbh; in a forest area now largely composed of about 60 year-old trees. A second example presented was the Brandy Bar study area reported by Varoujean *et al.* (1989) from coastal Oregon; however, no descriptive information was provided for this site.

Service Response: The Service obtained information on the Nemah River site, an isolated stand in southwest Washington, from Washington Department of Wildlife personnel who have been conducting surveys for marbled murrelets in the area (Hamer, Wash. Dept. Wildl., pers. comm., 1992). The Nemah site is an unmanaged stand that naturally regenerated after fire and windthrow. The majority of trees in the stand are approximately 70 years old and grew back naturally after severe windstorms that occurred during 1921. Remnant old-growth trees are scattered throughout the stand. Although no nests have been discovered to date, high numbers of detections indicate occupancy. The Brandy Bar site in coastal Oregon is also a naturally regenerated stand. The majority of trees in the stand, which are approximately 80 years old, grew back naturally after fire. Similar to the Nemah stand, large remnant old-growth trees are scattered throughout the site. These observations are consistent with the information on habitat preference presented in the Background section of this rule.

Life History Information

Comment: Some commenters questioned life history parameters presented and indicated that a sample size of so few nests was insufficient to draw such conclusions. Such issues included the number of eggs laid per nest and the semi-colonial behavior of the bird.

Service Response: The Service has continued to collect information on the marbled murrelet in the three-state area. We have information from twice as many nests as were known at the time of the proposal. New observations continue to indicate that marbled murrelets lay one egg per nest and are semi-colonial in nesting areas. None of the commenters provided data or observations that refuted statements regarding the life history strategy of marbled murrelets.

Population Estimates and Trends

Comment: One commenter stated that the Service should clearly define the threshold, such as population level, for a species such as the marbled murrelet to be delineated as threatened. Without supplying a minimum population threshold level it considers viable, the Service has no way to determine that sufficient habitat is not available.

Service Response: The Act does not establish such thresholds, nor does it require the Service to set thresholds. The Service has information indicating that the marbled murrelet population has undergone a decline, and that the primary cause of that decline, loss of nesting habitat, is likely to continue. Lesser threats of oil spills, gill-net fisheries, and predation also contribute to the decline and are likely to continue.

Comment: One commenter stated that surveys that have occurred were concentrated in older forests, thereby biasing the data in favor of the dependence of marbled murrelets on older forests. The commenter stated that population trends cannot be established using such data. The Service assumed that populations have declined but lacks demographic studies upon which to verify this trend. The Service lacks historical population data to compare to current population levels.

Service Response: Many studies have surveyed a variety of forest age classes to avoid any survey bias towards older forests. The anecdotal historical information suggests a precipitous decline in total numbers (from an estimated 60,000 birds in California to 9,000 for the three-state area). Although demographic information could contribute to our understanding of the decline, it is not needed to validate the trend.

Issue 3. Decision is Political, Not Biological

Comment: One commenter stated that the decision process was being driven by politics and threatened legal pressure from the Sierra Club, National Wildlife Federation, etc. and was not based on facts.

Service Response: The Service bases its decisions on the listing of species solely upon biological information, as required by the Act.

Issue 4. Critical Habitat

Comment: One commenter asked why, if old-growth and mature forests are critical for the viability of the marbled murrelet, didn't the Service list all old-growth and mature forests within the range of the species as critical habitat according to section 4(a)(3) of the Act during the rule development. Another commenter stated that due to the strong commitment of the private timberland owners in California, the vast quantity of public land presently being managed for the murrelet, and the legally protected status of the species in California, they did not feel it was necessary or prudent to designate critical habitat in California. Several commenters urged designating critical habitat for the marbled murrelet at the time of listing.

Service Response: During the comment periods on the proposed listing, the Service sought additional agency and public input on critical habitat, along with information on biological status and threats to the species. The Service must also take into consideration the economic impacts of

specifying any particular area as critical habitat (16 U.S.C. 1533(b)(2)). The Service will continue to analyze information and will propose critical habitat to the maximum extent prudent and determinable, within the timeframes specified in the Act. The Service's process in determining critical habitat for the marbled murrelet is discussed in more detail in the Critical Habitat section of this rule.

Issue 5. Alternate Listing Status Recommended

Comment: ODFW recommended that it may be more appropriate to list the marbled murrelet as endangered in California and Oregon and threatened in Washington.

Service Response: After a thorough status review, the Service proposed threatened status for the population. Although the status of the murrelet is not uniform throughout its range in Washington, Oregon, and California, the overall picture presented is one of a threatened species. Recovery planning will consider the status of the marbled murrelet within the individual states and smaller sub-regions.

Comment: One commenter suggested that the species should be considered for listing as threatened in Alaska as well. They presented data on logging practices in southeast Alaska, in particular, on the Tongass National Forest. They also expressed concern for the marbled murrelet population in Prince William Sound that experienced high losses as a result of the Exxon Valdez oil spill and is also subject to pressures from logging of adjacent private old-growth forests. They suggested that the marbled murrelet should be listed as threatened in Alaska until it could be demonstrated conclusively that planning for logging (including accurate forest inventories), had fail-safe provisions to assure that marbled murrelet nesting habitat would not be significantly diminished.

Service Response: This rule presents the final determination that the proposal (56 FR 28362) to list the marbled murrelet in Washington, Oregon, and California as a threatened species is warranted. Alaska was not included in the proposed rule; therefore, it cannot be included in this final rule for listing. The Service will continue to evaluate the status of the marbled murrelet and its habitat in Alaska.

Issue 6. National Environmental Policy Act

Comment: One commenter stated that the Service should prepare an Environmental Impact Statement (EIS), pursuant to the National Environmental Policy Act (NEPA), on this rule. A decision to list the marbled murrelet is a major Federal action significantly affecting the quality of the human environment that must be accompanied by an EIS under NEPA.

Service Response: The Service has determined that preparation of an EIS is not required in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended (see National Environmental Policy Act section of this rule). The Service's reasons for this determination were published in the Federal Register (see 48 FR 49244).

Issue 7: Distinct Population Segment

Comment: The Service failed to explain how it determined the marbled murrelet in California, Oregon, and Washington to be a "distinct population segment". The commenter questioned the significance of the area selected.

Service Response: This issue is discussed in the Distinct Population Segment section of this rule. In summary, no comments were received indicating that the marbled murrelet in Washington, Oregon, and California is more widespread, more common, or under lesser threats than indicated by previous analyses.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Washington, Oregon, and California population of the marbled murrelet should be classified as a threatened species. Procedures found in section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Washington, Oregon, and California population of the marbled murrelet (*Brachyramphus marmoratus marmoratus*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Current estimates of 1.4 million hectares (3.4 million acres) of old-growth forest throughout western Oregon and Washington represent a reduction of approximately 82.5 percent from prelogging levels (Booth 1991). Old-growth forests in the Douglas-fir/mixed conifer region of northwestern California have undergone a reduction of about 45 to 80 percent since the mid-1800's (Laudenslayer 1985, California Department of Forestry and Fire Protection 1988). Estimates of the amount of reduction of coastal old-growth redwood forests in California (all formerly marbled murrelet habitat) range from approximately 85 to 96 percent (Green 1985, Fox 1988, Larsen 1991). The marbled murrelet occurs along the coastline, occupying only a small fraction of area that was formerly dominated by older forests, and a small fraction of the area that still contains older forests.

In addition, reduction of the remaining older forest has not been evenly distributed over western Oregon, Washington, and northwestern California. Harvest has been concentrated at the lower elevations and within the Coast Ranges (Thomas *et al.* 1990), generally corresponding with the range of the marbled murrelet. Reduction of these older forests is largely attributable to timber harvesting and land conversion practices, although natural perturbations, such as forest fires and windthrow, have caused considerable losses as well.

The geographic distribution of the marbled murrelet along the west coast of North America is discontinuous. The gap in the present distribution in the southern portion of the range in California was apparently the result of extensive clearcutting of forests in the earlier half of this century that eliminated most nesting habitat (Paton and Ralph 1988, Carter and Erickson 1988). Other local breeding populations, especially between the Olympic Peninsula in Washington and Tillamook County in Oregon, were very likely eliminated through loss of their nesting habitat (Nelson, pers. comm., 1991).

Some of the old-growth areas that have been lost through natural perturbations such as forest fire and windthrow still provide habitat suitable for marbled murrelets. Mature forests, naturally regenerated from such perturbations, that retain scattered old-growth trees and a diversity of structure are sometimes occupied and used for nesting, but less commonly than large stands of old growth forests. That is particularly true in coastal Oregon where there has been extensive fire history. No occupied sites have been located in young stands or clear-cuts, or young/mature mixed forests that lack remnant old-growth trees (Nelson, pers. comm., 1992). Mature second-growth does not support breeding when it occurs isolated from older forest or residual (fragmented) older forest stands (Larsen 1991).

Forests generally require approximately 200 years to develop old-growth characteristics. The older trees within these stands have large horizontal limbs used by nesting murrelets. However, forests in Washington, Oregon, and northern California have been subjected to, and are proposed for, intensive management with average cutting rotations of 70 to 120 years to produce wood at a non-declining rate (USDI 1984, USDA 1988). Cutting rotations of 40 to 50 years are used for some private lands. Current preferred timber harvest strategies on Federal lands and some private lands emphasize dispersed clearcut patches for even-aged management as the pattern of harvest. Although recently both the Forest Service and the Bureau announced that their respective agencies intend to de-emphasize clearcutting in their future timber sale planning efforts, alternate methods of timber harvest vary greatly in terms of how they will modify marbled murrelet habitat. For example, timber harvest methods such as the shelterwood and seed tree methods, in addition to "new forestry" techniques, remove a varying amount of trees from a particular area. Although the remaining trees and habitat components left by these alternate harvest methods may help decrease the amount of time it would take an area to again become suitable habitat for marbled murrelets, the harvest methods would not provide suitable habitat over the short-term. Thus, public forest lands that are intensively managed for timber production (cutting rotations of 70 to 120 years) are, in general, not allowed to develop old-growth characteristics. As a result of this short rotation age and the continued harvest of old-growth and mature forests, loss and fragmentation of remaining suitable nesting habitat for marbled murrelets will continue throughout the forested range of the subspecies under current management practices, except in reserved areas.

Most remaining nesting habitat within the petitioned states is on Federal and State owned lands, as most nesting habitat on private lands has been eliminated. Under current forest management practices, logging of the remaining older forests is likely to continue, except in areas with mandated protection. In Oregon, 8 of 154 forest stands in which marbled murrelets are found, have been eliminated or greatly modified by logging practices. Additionally, 10 or more stands with occupied sites are likely to be modified or eliminated due to timber harvest in 1992 (Nelson, *in litt.*, 1992).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Not known to be applicable.

C. Disease or Predation

Predation is an additional threat to the continued existence of the marbled murrelet. Of the 23 tree nests located, 8 were successful, 13 failed (10 from predation, 2 from human interference, and 1 from edge effects (wind blew the chick out of the nest)), and the status of the remaining 2 was indeterminable (Nelson, *in litt.*, 1992). Great horned owls (*Bubo virginianus*), Stellar's jays (*Cyanocitta stelleri*), common ravens (*Corvus corax*), peregrine falcons (*Falco peregrinus*), and sharp-shinned hawks (*Accipiter striatus*) are known predators. Additional suspected predators include gray jays (*Perisoreus canadensis*) and common crows (*Corvus brachyrhynchos*). Predation at 10 of 23 (43 percent) nests is high and could have a substantial effect on the viability of this species. There is a substantial amount of information on the effects of forest fragmentation on depredation of bird nests by corvids (jays, ravens, crows). Corvid predation on nests (eggs and chicks) increases with the fragmentation of older-aged forests (Yahner and Scott 1988), and avian nesting success is lower in small forest fragments than larger intact forests because of predation and decreased fecundity (Ambuel and Temple 1983, Andren *et al.* 1985, Wilcove 1985, Temple and Cary 1988).

D. Inadequacy of Existing Regulatory Mechanisms

Marbled murrelets are protected from "take" by the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*). The marbled murrelet is identified as Sensitive by the Forest Service and the Bureau. The States of California, Oregon, and Washington have legislative mandates and acts specific to listing and protecting species determined to be endangered or threatened.

The marbled murrelet was listed as endangered within the State of California by the CDFG. Under provisions of the California Endangered Species Act, the California Department of Forestry (CDF) must consult with CDFG if a proposed timber harvest plan for private or State lands has the potential to adversely affect the marbled murrelet or its habitat. However, most of the marbled murrelet habitat in California is Federally controlled (National Parks and Forest Service) and does not fall under the protection of the State Act. In addition, the State Act does not require that a recovery plan be developed, in contrast to a federally listed threatened or endangered species. The CDF, responsible for regulating the harvest of commercial timber from private and State timberlands in California, adopted emergency rules to protect the marbled murrelet that became effective on June 28, 1991. These emergency rules required surveys for marbled murrelets in potential habitat and required feasible mitigation to reduce or avoid a significant adverse impact on the species in known activity areas. These emergency rules expired on March 2, 1992. Proposed permanent rules promote consistency and conformity with the State Act which prohibits "take" of an endangered species. The specific protections under the State Act extended to habitat protection for the marbled murrelet are unclear at this time.

In Oregon, the marbled murrelet is classified as Sensitive by the ODFW, which provides no mandated protection. The Oregon Board of Forestry is currently reviewing a proposal, submitted by the Portland Audubon Society in late November 1991, to list the marbled murrelet as a species that uses sensitive nesting sites. Until final rules are adopted, timber harvests within known marbled murrelet sites on State-owned forest land are being examined on a case-by-case basis. Although affording some protection to known occupied sites, the proposed rules would not require surveys in potential marbled murrelet habitat prior to conducting activities that could impact the habitat.

In Washington, the marbled murrelet is also listed as Sensitive by the WDW. Under its State Forest Practices Act, the Washington Department of Natural Resources (WDNR) is responsible for regulating harvesting of commercial timber from private and State DNR managed timberlands in Washington. The WDW does provide management recommendations to WDNR on proposed harvests within known marbled murrelet areas; however, WDNR has no rules that provide legally mandated protection for the marbled murrelet.

The National Forest Management Act of 1976 and its implementing regulations require the Forest Service to manage National Forests to provide sufficient habitat to maintain viable populations of native vertebrate species, such as the marbled murrelet. These regulations define a viable population as one which "* * * has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well

distributed in the planning area" (36 CFR 219.19).

A system of Habitat Conservation Areas (HCAs) was developed as part of a conservation strategy for the northern spotted owl (Thomas *et al.* 1990). These areas have been recommended as "no harvest" areas. Currently neither the Forest Service nor the Bureau are harvesting timber in these areas. However, neither agency has made a final decision on the long term management of these areas. Some portions of these HCAs occur within the range of the marbled murrelet in all three states. The HCA's were designed to support a pair target of northern spotted owls in the future, and may not currently support sufficient habitat for the target number of owls.

These HCAs were modified to produce the Designated Conservation Areas (DCAs) in the draft recovery plan for the northern spotted owl. The DCA lines are only recommendations. Final decisions on HCA or DCA lines will be determined by the individual agency's land management planning process.

Category 4 HCAs are a maximum of 32 hectares (80 acres) in size, and may not be large enough to support reproductively successful marbled murrelets. In addition, sites on the edge of protected areas may experience the adverse effects of forest fragmentation.

On January 15, 1992, the Service finalized designation of 2.8 million hectares (6.88 million acres) as critical habitat for the northern spotted owl in Washington, Oregon, and California (57 FR 1796). These critical habitat areas include most of the HCAs and add areas around and between them. Acres in spotted owl critical habitat, in addition to HCAs and other protected land allocations, equal approximately 78 percent of the suitable marbled murrelet habitat managed by the Forest Service on the Mount Baker-Snoqualmie, Olympic, Siuslaw, and Siskiyou National Forests (Gunderson, Forest Service, pers. comm., 1992), examining areas up to 80 kilometers (50 miles) inland.

In Washington, Oregon, and California, the HCAs, plus other protected areas (primarily managed for northern spotted owls), encompass approximately 67 percent of the suitable marbled murrelet habitat managed by the Forest Service (Gunderson, pers. comm., 1992). However, about 29 percent of the known occupied sites within the four Forests are located within Forest Plan allocations where timber harvest will occur. These estimates used 50 miles inland as the boundary of marbled murrelet occurrence; however, in the northern Washington Cascades on the Mount Baker-Snoqualmie National Forest, over 90 percent of all inland observations have been within 60 kilometers (37 miles) of the coast (Hamer and Cummins 1991). In Oregon, the majority of detections and number of marbled murrelets occur within 40 kilometers (25 miles) of the coast (Nelson, pers. comm.). The Service concludes that although the marbled murrelet will be afforded some amount of incidental protection through the management of HCAs for the northern spotted owl, this protection is not adequate.

Although these critical habitat areas and other designations for the northern spotted owl may provide some incidental protection for the marbled murrelet, such areas do not provide adequate protection for marbled murrelets. For example, critical habitat designation for the owl does not necessarily preclude timber harvest or other project activities from occurring within critical habitat boundaries. Northern spotted owls use various age classes and structures of forest habitat, and critical habitat boundaries encompass all types of habitat used by spotted owls. Spotted owls use forests for nesting, roosting, foraging, and dispersal. Although nesting habitat for spotted owls and marbled murrelets may be somewhat similar, spotted owls can use younger stands for activities such as foraging and dispersal. Marbled murrelets use older forests solely for nesting purposes. Roosting and foraging take place in the marine environment. Federal agencies are required to consult with the Service on any actions they authorize, fund, or carry out that may affect spotted owl critical habitat. Habitat requirements and impacts specific to marbled murrelets are not addressed during consultation on spotted owl critical habitat. The results of such consultations may provide for owl dispersal or foraging habitat, or other forest structures that are not used by marbled murrelets. Moreover, spotted owls may be more adaptable in their nest site selection than are marbled murrelets. For example, in approximately 7 percent of the range of the northern spotted owl (i.e., northern California), owls use comparatively young second-growth redwood forests, whereas marbled murrelets do not (probably because redwoods do not provide the large horizontal limbs needed by marbled murrelets for nesting). Spotted owls use some second-growth forests where inefficient logging practices left remnant patches of older trees. Marbled murrelets are known to use some second-growth forests that recovered following natural disasters, but only where residual old-growth trees remained. Forests may recover more rapidly from natural disasters (e.g., windthrow, fire) because fallen trees decay and nutrients are returned to the soil, and more older trees may be spared.

In California, only about 28,300 hectares (70,000 acres) (3.5 percent) of the original old-growth coastal coniferous forest remains (Larsen 1991). Of these remaining hectares, 24,280 (60,000 acres) are in State or Federal parks, where logging is precluded. The remaining 4,000 hectares (10,000 acres) are under private ownership as commercial timberland and are eligible for harvest. Marbled murrelets would not be adequately preserved by depending solely on remaining old-growth coastal coniferous forest maintained on parkland (Larsen 1991). In a park situation where human food and garbage are readily available, the population levels of corvids are unnaturally high and may lead to increased nest predation. Tree cutting and the removal of large horizontal branches and snags through safety pruning operations in picnic areas and campgrounds may also adversely affect the marbled murrelet (Singer, *in litt.*, 1991).

E. Other Natural or Man-made Factors Affecting its Continued Existence

Mortality from gill-net fishing and oil spills has had a negative impact on the marbled murrelet. Although California and Oregon no longer allow gill-net operations, gill-net fishing is an annual occurrence in Washington. For example, about 1,200 gill-net licenses are issued each year in Washington (Marshall 1988). Gill-net fisheries occur in areas of marbled murrelet concentrations in Washington, but the mortality rate is unknown. One study conducted in British Columbia along Vancouver Island documented gill-netting as responsible for killing approximately 8 percent of the potential fall population of marbled murrelets (Carter and Sealy 1984). In a 1990 study of incidental take in the Prince William Sound salmon gill-net fishery, marbled murrelets were the most frequently caught seabird (Kuletz 1992). By extrapolation, an estimated 1,200 (95 percent CI–702–1,764) murrelets, or 1.4 percent of the Prince William Sound population, were taken. These studies suggest that the gill-net fishery in Washington may negatively affect marbled murrelet numbers there.

Marbled murrelets have a high susceptibility to mortality from oil spills because they tend to spend most of their time swimming on the sea surface and

feeding in local concentrations close to shore. In a paper presented at the 1975 Symposium on Conservation of Marine Birds of North America, the marbled murrelet was given one of the highest oil spill vulnerability ratings of any Northeast Pacific seabird (King and Sanger 1979). Oil spills are chance events but, depending on the location, extent, and season of spill, could have significant adverse effects on local or regional populations of marbled murrelets. The *Exxon Valdez* oil spill of 1989 occurred in Prince William Sound, Alaska, and adversely affected local populations of marbled murrelets (Piatt *et al.* 1990). The number of carcasses recovered after the spill was from 612 to 642. Identified *Brachyramphus* murrelets, most of which were probably marbled murrelets, represented 11.6 percent of the Prince William Sound carcasses recovered. At the time of the spill, marbled murrelets were estimated to be 6.3 percent of the seabirds present in Prince William Sound and, thus, proportionally more murrelets were killed than were at risk (Piatt *et al.* 1990, Kuletz 1992). For the three-state area of this proposed rule, Puget Sound in Washington is a special concern.

Marbled murrelets are found both during the nesting season and during winter within areas affected by oil shipments. If approved, proposed oil exploration, possibly leading to production and increased movement of oil along the near-shore marine environment in Washington, Oregon, and California would increase the degree of threat from oil spills. Oiled marbled murrelets have been reported in several Washington oil spills, including the *Seagate* oil spill of 1956, the *Arco Anchorage* oil spill of 1985, the *Nestucca* oil spill of 1988, and the *Teenyo Maru* oil spill of 1991 (Leschner and Cummins 1990; Momot, U.S. Fish and Wildl. Serv., pers. comm., 1992). Several instances of marbled murrelet mortality due to oil spills have been documented in California as well (Carter and Erickson 1988, Carter *et al.* 1990). Oil spills are random events that would adversely affect marbled murrelets in the local area of the spill. Because the populations in Oregon, Washington, and California are small and locally concentrated, oil spills could result in local extirpations.

The marbled murrelet's reproductive strategy offers little opportunity for the population to rapidly increase in number. Murrelets probably do not reproduce every year, and pairs only lay one egg in a nest. Such a low reproductive rate would not yield a rapidly increasing population or one that can easily recover once numbers have been depleted.

The Service has carefully assessed the best scientific and commercial data available and concluded that the marbled murrelet in California, Oregon, and Washington is threatened due to loss of mature and old-growth forests that provide suitable nesting habitat. Secondary threats include gill-net fisheries in Washington, predation, and oil spills. The species' intrinsically low reproductive rate makes it unlikely that it will rapidly increase in number. The degree of threat facing the marbled murrelet does not suggest that extinction is imminent, but continued loss of nesting habitat throughout the forested portion of its range, indicates the species is likely to become endangered within the foreseeable future throughout a significant portion of its range. Under these circumstances, listing as threatened is appropriate.

Critical Habitat

Section 4(a)(3) of the Act requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Critical habitat is defined as the specific areas within the geographical area currently occupied by a species on which are found the physical or biological features essential to the conservation of the species and that may require special management considerations or protection (16 U.S.C. 1532(5); 50 CFR 424.02(d)). Designations of critical habitat must be based on the best scientific data available and must take into consideration the economic and other relevant impacts of specifying any particular area as critical habitat (16 U.S.C. 1533(b)(2)).

When prompt listing of a species is essential to its conservation, but sufficient information to perform required analyses of the impacts of a critical habitat designation is lacking, the Service may go forward with a final listing decision without designating critical habitat. A critical habitat determination, to the maximum extent prudent, must then be completed not later than 1 year after the listing. The Service is continuing to gather information to be used in these analyses, and to evaluate the benefits (if any) of designating critical habitat for this species.

The Service currently lacks sufficient information to perform required analyses of the impacts of a critical habitat designation for the marbled murrelet. The Service must evaluate several aspects of a critical habitat designation for the marbled murrelet. The marbled murrelet nests in older forests, but roosts and forages in the marine environment. The Service must determine whether or not designation of critical habitat in the marine environment is prudent. The Service must also carefully study all known occupied sites and other suitable areas, in order to determine which physical or biological features are in fact essential to the conservation of the murrelet. Ongoing studies will help refine the Service's knowledge of the marbled murrelet's association with timber stands of varying size and structure, and of the surrounding landscape conditions.

In addition, in order to analyze the economic impacts of a critical habitat designation, the Service must obtain information about the costs of such a designation over and above costs associated with listing. The Service must have information on the costs associated with a designation of critical habitat in the marine environment. Such information would include the possible increased costs associated with oil spill contingency plans, changing oil tanker routes, and a possible alteration of fishery practices. Such information will be gathered by coordinating with appropriate Federal agencies. The restrictions on timber harvest for a critical habitat designation for the marbled murrelet would be different from those associated with critical habitat for the northern spotted owl. The costs associated with timber harvest reductions in critical habitat for the murrelet would be different from those associated with critical habitat for the owl.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing

this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Regulations governing these consultations are found at 50 CFR 402.14.

The Forest Service and Bureau have active timber sale programs in Washington, Oregon, and California, whereby private timber companies bid for timber on Federal land. A substantial portion of these timber sales occur in older forests. The Forest Service and Bureau would review and assess the potential impacts of these timber sales on the murrelet, and would be required to consult with the Service on these sales to ensure compliance pursuant to section 7 of the Act. Other Federal agencies that are likely to have projects that may affect the marbled murrelet include the Bureau of Indian Affairs (timber harvest) and the Army Corps of Engineers (waste disposal and dredging/fill operations).

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife not covered by a special rule. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States, to take (defined as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these activities), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce, any threatened species not covered by a special rule. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing threatened species permits are provided in 50 CFR 17.32. Unless otherwise provided by special rule, such permits are available for scientific purposes, to enhance the propagation or survival of the species, for economic hardship, zoological exhibition, educational purposes, special purposes consistent with the Act, and/or for incidental take in connection with otherwise lawful activities. Information on permits to take federally listed species may be obtained by writing to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington, Virginia 22203–3507 (703/358–2104, FAX 703/358–2281)

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor, U.S. Fish and Wildlife Service, Portland Field Office, 2600 S.E. 98th Avenue, suite 100, Portland, Oregon 97266.

Authors

The primary authors of this rule are Janet L. Stein and Gary S. Miller, U.S. Fish and Wildlife Service, Portland Field Office (see **ADDRESSES** section); telephone 503/231–6179.

List of Subjects in 50 CFR Part 17

Endangered and threatened Species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[Amended]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended as set forth below:

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under Birds, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	* *	*	*	*	*		
BIRDS							
*	* *	*	*	*	*		
Murrelet, marbled	*Brachyramphus marmoratus marmoratus.*	U.S.A. (CA, OR, WA, AK); Canada (British Columbia).	WA, OR, CA	T	479	NA	NA
*	* *	*	*	*	*		

Dated: September 17, 1992.

Jay L. Gerst,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 92–23804 Filed 9–28–92; 12:00 pm]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 57, No. 191
Thursday, October 1, 1992

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 HOUSING FINANCE BOARD

12 CFR Parts 935 and 940

[No. 92-727]

Advances

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Board) is proposing to amend its regulations to establish revised and new requirements governing secured loans (called advances) made by the Federal Home Loan Banks (Banks). The proposed rule modifies or renews existing regulations and implements provisions in the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), which amended the Federal Home Loan Bank Act of 1932 (Act). The proposed rule also transfers the Board's Statements of Policy on advances from one regulatory part to another, as discussed in the **SUPPLEMENTARY INFORMATION:** Section.

DATES: Comments must be submitted in writing to the Board by November 30, 1992.

ADDRESSES: Written comments may be mailed to: Executive Secretariat, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Christine M. Freidel, Financial Analyst, (202) 408-2976; Thomas D. Sheehan, Assistant Director, District Banks Directorate, (202) 408-2870; James H. Gray, Jr., Associate General Counsel, (202) 408-2552; Sharon B. Like, Attorney-Advisor, (202) 408-2930; Charles J. Szlenker, Attorney-Advisor, (202) 408-2554, Office of Legal and External Affairs; Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Home Loan Bank System (System) is comprised of 12 District Banks. Each Bank is federally chartered, wholly owned by its members and managed by a board of directors that sets policies pursuant to regulations and guidelines established by the Board. The Banks act as intermediaries in the capital markets, raising funds on favorable terms and passing the proceeds on to member institutions in the form of advances. Advances are required to be fully secured, primarily by residential mortgage collateral, see 12 U.S.C. 1430(a), and are made available over a range of maturities. The Board is responsible for supervising the Banks, and ensuring that the Banks: (1) Remain adequately capitalized and able to raise funds in the capital markets; (2) operate in a safe and sound manner; and (3) carry out their housing finance mission. See 12 U.S.C. 1422a(a)(3).

All savings institutions insured by the Savings Association Insurance Fund (SAIF) of the Federal Deposit Insurance Corporation (FDIC) are members of the System, as are many savings banks insured by the FDIC's Bank Insurance Fund, and a limited number of insurance companies. With he passage of FIRREA, membership in the System also was opened to federally insured commercial banks and credit unions that make long-term home mortgage loans and that have at least 10 percent of their total assets in residential mortgage loans. See 12 U.S.C. 1424(a).

Each member is required to hold stock in its Bank based upon the level of the member's mortgage-related assets and outstanding advances. See 12 U.S.C. 1426. Bank stock pays dividends, is not publicly traded, and is redeemable at par. See *id.*

II. Analysis of Proposed Rulemaking

Subpart A—Advances to Members

A. Primary Credit Mission of the Banks

Section 935.2 of the proposed rule sets forth the primary credit mission of the Banks, which is to enhance the availability of residential mortgage credit by providing a readily available, economical and affordable source of funds in the form of advances to their member institutions. In order to carry out this mission, the Banks shall offer competitively priced advance products and programs that satisfy their members' credit needs. Limitations on advances, beyond those specifically prescribed by statute, regulation, policy or other requirements of the Board, shall be those that protect the financial integrity of a Bank and accommodate the practical constraints associated with a Bank's ability to raise funds.

B. Bank Advances Policies and Application for Advances

Section 935.3 of the proposed rule continues the requirement in the Board's current regulation that each Bank's board of directors adopt, and review at least semiannually, a policy on extending advances to members of that Bank. Each Bank's policy shall be consistent with the requirements of the Act, 12 U.S.C. 1421 *et seq.*, this part, and general guidelines established by the Board, as reflected in its resolutions, orders, or manuals. A Bank's board of directors may designate officers authorized to extend or deny credit, or take other actions consistent with the Bank's advances policy. Exceptions to a Bank's policy must receive the approval of its board of directors, a committee thereof, or officers specifically authorized by the board of directors to approve exceptions. Such exceptions to Bank policy must comply with the Act, this part, and policies and guidelines of the Board.

Section 935.4 of the proposed rule requires the Banks to enter into advances and security agreements with their members that govern the terms and conditions under which credit will be extended. Section 935.4(a) permits a Bank to accept oral or written applications for advances from its members. Section 935.4(b) specifies that a Bank shall require any member applying for an advance to enter into a primary and unconditional obligation to repay such advance and all other indebtedness to the Bank. Section 935.4(c)(1) provides that a Bank shall make only fully secured advances to its members. Section 935.4(c)(2) provides that a Bank shall execute a written security agreement with each borrowing member that gives the Bank a perfectible security interest in the collateral pledged to secure the advances. In practice, the advances and security agreements may be consolidated in one document. Such document may also constitute a master

agreement covering all outstanding advances by a Bank to a member.

Section 935.4(d) of the proposed rule requires a Bank's board of directors, or a delegated committee thereof, to approve the Bank's advances application forms, advances agreements, and security agreements. A Bank's board is not required to approve each revision to an already approved form, it the resulting document is substantially the same as the previously approved form. The Act requires that the form for the advance application, as well as the form of the document evidencing a member's obligation to repay outstanding advances, be approved by the Board, 12 U.S.C. 1429, 1430(d). The proposed rule deems the forms to be approved by the Board, if the terms of the documents comply with the prescribed requirements of this part. The Banks are required to provide the Board with copies of their standard advances and security agreements, as well as any substantive revisions thereto.

C. Limitations on Access to Advances

Section 935.5(a) of the proposed rule implements 12 U.S.C. 1429 by authorizing the Banks, in their discretion, to limit or deny a member's application for an advance, or to approve it on such additional terms as the Bank may prescribe, subject to the Act, this part, and Board policy guidelines. Advances may be limited or denied if, in the Bank's judgment, a member is engaged or has engaged in any unsafe or unsound business practices, has inadequate capital, is sustaining operating losses, has financial or managerial deficiencies that bear upon the member's creditworthiness, or has any other deficiencies as determined by the Bank.

Section 935.5(b) of the proposed rule sets forth new requirements for Bank lending to certain capital deficient members. These requirements were adopted in part as Board policy in April, 1992 (see Board Resolution No. 92-277.1). The Board today proposes to revise and incorporate these guidelines into its advances regulation, and specifically requests comment on all aspects of the new requirements.

Prior to the adoption of the policy guidelines, there were no Board-mandated restrictions on a Bank's ability to lend to an insolvent member. Although the secured nature of advances protects the Banks from credit risk, the Board is concerned that, by making advances available to certain capital deficient members, a Bank may inadvertently be acting contrary to the wishes of a member's primary Federal regulator. Section 935.5(b)(1) of the proposed rule, therefore, restricts a Bank from making a new advance to a member that does not have positive tangible capital, unless the member's appropriate Federal banking agency or insurer requests in writing that funding be made available to such member, and the Bank determines in its discretion that it may safely make such advance to the member.

Section 935.1 of the proposed rule defines "tangible capital" as capital, calculated according to Generally Accepted Accounting Principles (GAAP), less intangible assets, as reported in a savings association member's Thrift Financial Report (TFR), or a commercial or savings bank member's Report of Condition and Income (Call Report). GAAP capital currently is reported as "equity" capital on the Call Report and TFR. For credit unions and insurance company members, the level of tangible capital will be determined by the Bank, consistent with the parameters used for savings association and commercial bank members.

In defining tangible capital, the Board is proposing a standard that is consistent with the approach suggested by the FDIC in its proposed rulemaking on prompt corrective action. See 57 FR 29662 (July 6, 1992). The prompt corrective action procedures provide a framework for determining supervisory action. The FDIC has proposed to implement prompt corrective action procedures based on an institution's level of Tier 1 capital or core capital. GAAP capital less intangible assets results in a definition of tangible capital that is similar to Tier 1 or core capital, as defined by the Federal banking regulators. See *e.g.*, 12 CFR part 3, appendix A, section 2(a) (Office of the Comptroller of the Currency); 12 CFR part 208, appendix A, II.A.1 (Federal Reserve Board); 12 CFR 325.(m) (FDIC); 12 CFR 567.5(a) (Office of Thrift Supervision (OTS)).

The proposed definition will allow the Banks to easily verify most federally insured depository institution members' capital positions, using information from members' TFRs, Call Reports or financial statements, since these documents are reviewed at the time of application for an advance. Each Bank will determine the level of tangible capital held by credit union and insurance company members, since regulatory capital for these members is more variable and includes certain insurance and reserve accounts that may not be appropriate to the definition of tangible capital.

The Board realizes that placing restrictions on advances to members without positive tangible capital could cause liquidity problems for these members. Therefore, proposed § 935.5(b)(2) permits renewals of existing advances to these members for periods of up to 30 days, if the Bank determines that such renewals can be safely made. Such renewals may be extended for successive 30-day terms if the Bank determines that it may safely make such extensions to the member. The renewal authority should provide the member with time to identify alternative sources of funds that can be used to repay maturing advances and fund ongoing operations. Renewals may be for periods longer than 30 days if requested by the member's appropriate regulator or insurer and agreed to by the Bank.

Section 935.5(c) of the proposed rule provides that, in the case of members that are not federally insured depository institutions, the provisions in § 935.5(b) may be implemented upon a written request from the member's state regulator.

Section 935.5(d) of the proposed rule requires each Bank to provide the Board with a monthly report of outstanding Bank advances and commitments to all members. It also directs the Banks, upon written request from a member's appropriate Federal banking agency, insurer or state regulator, to provide to such entity information on advances and commitments outstanding to the member.

The proposed rule does not include an existing Board policy provision that directs each Bank to honor written requests from a member's regulator or insurer to limit or deny a tangibly solvent member's access to advances. This provision has been removed in acknowledgment of the sufficiency of current mechanisms available to the members' regulators for denying an institution's access to outside funding.

Section 935.5(e) of the proposed rule requires that the written advances agreement required by § 935.4(b)(2) of the proposed rule shall stipulate that a Bank shall not fund commitments for advances previously made to members whose access to advances has subsequently been restricted pursuant to § 935.5(b).

In proposing the above restrictions on advances, the Board recognizes the authority and responsibility of the regulators and the insurer to supervise and regulate member activities. The restrictions are designed solely to ensure that the Banks do not unintentionally undermine regulatory intent. The Board specifically requests comment on all aspects of this proposal

to restrict access to advances by members without positive tangible capital.

D. Terms and Conditions for Advances

Section 935.6(a) of the proposed rule continues the Board's regulatory requirement that the Banks offer advances with maturities of up to ten years. The proposed rule also authorizes each Bank to offer advances with maturities of any length, consistent with the safe and sound operation of the Bank. This is consistent with the Board's recently promulgated interim final rule, see 57 FR 42,888 (Sept. 17, 1992), eliminating an earlier Board regulatory requirement that advance maturities not exceed 20 years.

The requirement that the Banks offer advances with maturities of up to ten years is designed to ensure that a sufficient variety of advance maturities is available to assist members in their asset/liability management. Members frequently hedge against interest rate movements by funding their long-term home mortgage loans, which generally have an average life between five and ten years, with matching term Bank advances. Long-term advances provide an important funding source for non-conforming loans for which the secondary market has not been a viable financing alternative.

The Board's recent rulemaking that allows the Banks to offer advances with maturities greater than 20 years facilitates the Bank's support of affordable housing finance. Some participants in the Affordable Housing Program (AHP), see 12 U.S.C. 1430(j), had requested AHP loans from Bank members with maturities greater than 20 years in order to lock in financing over the life of a project. However, members were often understandably reluctant to provide such long-term financing without matched funding. The availability of Bank advances with maturities greater than 20 years enables members to match fund such projects and avoid interest rate risk exposure.

Although offering longer-term funding could expose the Banks to additional interest rate risk, their ability to raise long-term debt, the availability of hedging options, and the Bank's expertise in asset/liability management will allow them to offer advances with a broad range of maturities without undue financial risk. The Banks will offer such funding only to the extent they are able to control their own interest rate risk exposure.

Section 935.6(b)(1) of the proposed rule eliminates a current Board policy requirement that the Banks generally price advances within a prescribed schedule of minimum and maximum mark-ups over their cost of issuing consolidated obligations (COs). Each Bank would instead be required to price advances taking into account its marginal cost of raising matching maturity funds in the marketplace, as well as any administrative and operating costs associated with making the advances. Advances offered through a Bank's AHP are exempt from this requirement. See 12 U.S.C. 1430(j).

Under the Board's current policy pricing schedule, the Banks are required to price advances within a specified range above their estimated cost of issuing COs. A required minimum mark-up of 20 basis points over the cost of COs applies across the maturity spectrum. The maximum permissible mark-up on advances declines from a high of 120 basis points over the cost of COs for advances with maturities greater than six months and less than or equal to one year, to a low of 60 basis points over the cost of COs for advances with maturities greater than nine years.

At the time the pricing schedule was established, COs dominated Bank funding. However, while COs remain the Banks' primary funding source, member deposits now comprise about 24 percent of the System's liabilities. Since deposits can be a lower cost funding alternative for short-term advances, a Bank's overall short-term cost of funds may at times be lower than its cost of issuing COs. By removing the minimum mark-up, the Board is encouraging the Banks' efforts to provide attractively priced funding to their members.

Moreover, the minimum and maximum mark-ups have not met their intended policy objectives. The intent of the 20 basis point minimum mark-up was to preclude the Banks from pricing advances below their total cost of funding the advances. When the pricing schedule was established, individual Bank operating expenses, as a percentage of assets, ranged from ten to 18 basis points. The Banks have subsequently introduced operating efficiencies that have significantly reduced the cost of their operations.

Rather than continuing to use a pricing schedule based on static expense figures, which may or may not be accurate over time, § 935.6(b)(1) of the proposed rule provides each Bank with the discretion to determine the appropriate minimum mark-up on advances based upon its current administrative and operating costs. This flexibility should enhance the Banks' regional competitiveness, since the minimum mark-up on advances will reflect an individual Bank's, rather than the System's, administrative costs.

The current maximum mark-up, which declines as advance maturities increase, was principally intended to encourage long-term lending for housing finance purposes, as well as to ensure a supply of longer-term funds at a reasonable cost to assist members in their asset-liability management. However, over the past several years the maximum mark-up has not been a binding constraint. Banks generally have priced advances will below the pricing ceiling and at relatively constant margins across the maturity spectrum.

Since the current Board policy has not significantly influenced pricing behavior, and there is no indication that the Banks are applying relatively higher mark-ups for longer-term advances, the proposed rule eliminates the maximum mark-up as well. The Board believes that the Banks will continue to price short- and long-term advances competitively absent an explicit pricing schedule. In addition, pricing flexibility allows the Banks to include hedging costs when pricing advances, particularly when market constraints inhibit their ability to match fund advances.

Section 935.6(b)(2)(i) of the proposed rule authorizes the Banks to extend credit to individual borrowers on varying terms, based upon the amount of credit risk associated with lending to a particular borrower or other reasonable criteria, provided the criteria apply equally to all members.

Section 7(j) of the Act requires that each Bank's board of directors administer the affairs of the Bank fairly and impartially and without discrimination in favor of or against a member borrower. See 12 U.S.C. 1427(j). Section 9 of the Act gives the Banks broad authority to determine the terms of an advance, subject to statutory and regulatory requirements. Specifically, it provides that a Bank may at its discretion deny any such application for an advance, or, subject to the approval of the Board, may grant it *on such conditions as the Bank may prescribe.* 12 U.S.C. 1429 (emphasis added).

The Board has concluded that the extension of credit on differing terms to Bank members based on the member's creditworthiness, or other reasonable criteria applied equally to all members, does not constitute "discrimination" under section 7(j) of the Act. Such a practice is consistent with the Banks' broad discretion to make advances under section 9 of the Act. It also is consistent with a Federal district court ruling in 1983 that sections 9 and 7(j) of the Act, when read together, confer upon the Banks plenary discretion in the

exercise of their lending authority. See *Fidelity Financial Corp.* v. *Federal Home Loan Bank of San Francisco*, 589 F. Supp. 885, 897 (N.D. Cal. 1983) *aff'd*, 792 F.2d 432 (9th Cir. 1986), *cert. denied*, 479 U.S. 1064 (1987).

Furthermore, risk-based pricing of advances should enhance the fairness of the Banks' credit programs, since terms on advances and other Bank credit products to more creditworthy members should be more favorable than those to members posing a greater credit risk to a Bank. Risk-based pricing will allow the Banks to offer competitive rates to their more creditworthy members, thereby enabling the Banks to better carry out their housing finance mission. It also will compensate the Banks for bearing any increased credit exposure associated with lending to higher risk members.

Differential pricing of advances based upon criteria other than credit risk also would be allowed, subject to the application of consistent standards to all borrowing members. For example, certain Banks have offered "volume discounts" to members who finance a certain percentage of their total assets with Bank advances. Section 935.6(b)(2)(ii) of the proposed rule requires each Bank to establish written standards and criteria for differential pricing and to apply such standards and criteria consistently and without discrimination to all borrowers.

Section 10(i) of the Act, as amended by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Public Law 101–73, 103 Stat. 183 (August 9, 1989), requires each Bank to establish a Community Investment Program (CIP) to provide funding for members to undertake community-oriented mortgage lending. See 12 U.S.C. 1430(i). "Community-oriented mortgage lending" is defined in section 10(i) to include loans to finance the purchase and rehabilitation of housing for low- and moderate-income families, and commercial and economic development activities benefiting low- and moderate-income families or activities located in low- and moderate-income neighborhoods. *Id.*

The Act requires that the Banks price CIP advances at the cost of consolidated Bank obligations of comparable maturities, taking into account reasonable administrative costs. *Id.* However, as noted previously, the Banks' overall short-term funding costs can at times be lower than their cost of issuing COs. Section 935.7 of the proposed rule, therefore, directs the Banks to price CIP advances as provided in proposed § 935.6, except that the cost of such CIP advances shall not exceed the Bank's cost of issuing COs of comparable maturity, taking into account reasonable administrative costs.

E. Fees

The Banks currently are required by Board policy to charge prepayment fees that make them financially indifferent to a borrower's decision to prepay advances. These fees are designed to protect the Banks from interest rate risk and can be considered the price of the member's option to prepay. Since many advances are match funded and prepayments occur when interest rates fall, the Banks can suffer losses if the principal portion of the prepaid advances must be invested in lower yielding assets which continue to be funded by higher cost debt.

Under current Board policy, prepayment fees must equal 90 to 110 percent of the present value of the lost cash flow to the Bank, based upon the difference between the contract rate on the prepaid advance and the rate for a new advance of the same remaining maturity. The discount rate for calculating the present value is the current offering rate for a new advance with the same remaining maturity.

Although prepayment fees theoretically are designed to insulate the Banks from interest rate risk, the current prepayment fee structure may not adequately compensate a Bank for the loss in future cash flows due to an advance prepayment. The discount rate used in the calculation assumes that the Bank can replace the prepaid advance with a new advance. However, in the current operating environment, such opportunities have not always been readily available. The Bank is then forced to invest the prepaid principal and fees in lower-yielding assets, generally at a reduced, and sometimes even a negative, spread or to retire the underlying debt, possibly at a loss.

Therefore, § 935.8(a)(1) of the proposed rule continues the requirement that the Banks charge prepayment fees, but authorizes each Bank to determine the cost of the prepayment option. The fee shall sufficiently compensate the Bank for providing a prepayment option on an advance, and act to make the Bank financially indifferent to the borrower's decision to repay the advance prior to its maturity date.

Under proposed § 935.8(a)(2), prepayment fees are not required for advances with terms to maturity or repricing periods of six months or less, for advances funded by callable debt, or for advances which are otherwise appropriately hedged so that the Bank is financially indifferent to their prepayment. Proposed § 935.8(a)(3) provides that a prepayment fee may be waived only by a Bank's board of directors, a designated committee of the board of directors, or officers specifically authorized by the board, and only if such waiver will not result in an economic loss to the Bank. Any such waiver must subsequently be ratified by the board of directors. The Board specifically requests comment on the proposed change to the prepayment fee requirements.

Section 935.8(b) of the proposed rule eliminates a current Board policy requirement that the Banks charge commitment fees, and provides each Bank with the discretion to charge such fees. Section 935.8(c) authorizes a Bank to charge other fees as it deems necessary and appropriate.

F. Eligible Collateral

Section 10(a) of the Act requires a Bank to obtain and thereafter maintain a security interest in specific types of eligible collateral at the time of origination or renewal of an advance. See 12 U.S.C. 1430(a). Prior to FIRREA, a Bank could accept without limit any collateral that had a readily ascertainable value and in which the Bank could perfect a security interest. See 12 CFR 525.7(b)(4)(1989) (superseded).

In accordance with the requirements imposed by FIRREA in section 10(a) of the Act, § 935.9(a) of the proposed rule specifies four categories of eligible collateral:

(1)(i) Fully disbursed, whole first mortgage loans on improved residential real property not more than 90 days delinquent; or

(ii) Whole mortgage pass-through securities as defined in § 935.1 of this part.

(2) Securities issued, insured or guaranteed by the United States Government, or any agency thereof, including without limitation mortgage-backed securities as defined in § 935.1 of this part, issued or guaranteed by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Government National Mortgage Association.

(3) Deposits in a Bank.

(4)(i) Except as provided in paragraph (a)(4)(iii) of this section, other real estate-related collateral acceptable to the Bank, if:

(A) Such collateral has a readily ascertainable value; and;

(B) The Bank can perfect a security interest in such collateral.

(ii) Eligible other real estate-related collateral may include, but is not limited to:

(A) Non-agency mortgage-backed securities not otherwise eligible under paragraph (a)(1)(ii) of this section;

(B) Second mortgage loans, including home equity loans or lines of credit;

(C) Commercial real estate loans; and

(D) Mortgage loan participations.

(iii) A Bank shall not permit the aggregate amount of outstanding advances to any one member, secured by such other real estate-related collateral, to exceed 30 percent of such member's capital, as calculated according to GAAP, at the time the advance is issued or renewed.

Bank in its discretion may further restrict the types of collateral it will accept based upon the creditworthiness and operations of the borrower, the quality of collateral, or other reasonable criteria.

Section 10(a)(1) of the Act provides that eligible mortgage loans under category (1) must be on "improved residential real property." See 12 U.S.C. 1430(a)(1). Section 935.1 of the proposed rule defines "residential real property" as: One-to-four family property; multifamily property; real property to be improved or in the process of being improved by the construction of dwelling units; or combination business or farm property, where at least 50 percent of the total appraised value of the combined property is attributable to the residential portion of the property. (In such cases, 100 percent of the appraised value of the combined property could be used to secure an advance.) The term "residential real property" does not include "nonresidential real property" as defined in § 935.1 of the proposed rule. "Improved residential real property" is defined as residential real property, excluding real property to be improved, or in the process of being improved, by the construction of dwelling units. The Board specifically requests comment on these definitions.

A "whole mortgage pass-through security" is narrowly defined in the proposed rule so that under category (1)(ii), only privately issued mortgage pass-through securities that represent ownership of all of the fully disbursed, whole first mortgages in an underlying pool under category (1)(i), may be pledged as collateral. Other privately issued mortgage-backed securities, including privately issued mortgage debt securities, that do not meet this requirement may qualify as collateral under category (4), see 12 U.S.C. 1430(a)(4) (other real estate-related collateral).

The Board also is considering at least two other alternative approaches that would significantly broaden the collateral eligible under category (1)(ii). First, the Board is considering the possibility that the final rule will broaden category (1)(ii) to permit the acceptance of any privately issued mortgage pass-through security that represents an equity interest in a *pro rata* share of the principal and interest payments from the underlying fully disbursed, whole first mortgage loans, including mortgage pass-though securities that do not represent ownership of the entire pool of underlying fully disbursed, whole first mortgage loans.

Second, the Board is considering the possibility that the final rule will broaden category (1)(ii) to permit the acceptance of any privately issued mortgage-backed security that represents a *pro rata* share of principal and interest payments from an underlying pool of fully disbursed, whole first mortgage loans. This second alternative would include treating collateralized mortgage obligations or other mortgage debt securities as eligible collateral under category (1)(ii).

The approach taken in the proposed rule is based on the most conservative interpretation of the phrase "securities representing a whole interest in * * * mortgages." *Id.* This interpretation is consistent with the Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 222, 101st Cong., 1st Sess. 427–28 (1989) reprinted in 1989 U.S. Code Cong. & Admin. News 432, 466–67 (FIRREA Conference Report). The FIRREA Conference Report states that the collateral requirements in 12 U.S.C. 1430(a), imposed by FIRREA, were intended to enable the Banks to continue to accept privately issued mortgage-backed securities as collateral. The approach taken in the proposed rule is consistent with the FIRREA Conference Report because some privately issued mortgage pass-through securities may continue to be eligible under category (1)(ii).

The FIRREA Conference Report also indicates that the Bank collateral requirements imposed by FIRREA,

> preclude[ ] acceptance of interest payments or the principal payments on such loans, (iii) any security representing a subordinated interest in mortgage loans, or (iii) any security that represents an interest in a residual or other high risk mortgage derivative product.

Id. The proposed rule, as well as the alternative positions under consideration, would preclude these classes of securities identified in the FIRREA Conference Report from qualifying as acceptable collateral for advances, except under category (4). Accordingly, the Finance Board believes that the approach taken in the proposed rule, as well as the two alternatives under consideration, are consistent with the requirements of the Act and the legislative history as expressed in the Conference Report.

The Board is seriously considering broadening its interpretation of "whole interest" to include privately issued mortgage pass-through securities representing a *pro rata* share of principal and interest payments from the underlying mortgage loans (the first alternative above), because virtually all securities representing an interest in mortgages do not represent ownership of all of the mortgages in the underlying pool. They represent a share of the beneficial interest in the underlying pool of mortgages.

Furthermore, by specifically excluding principal only and interest only "stripped" securities, the FIRREA Conference Report can be interpreted to allow the Banks to accept privately issued securities as qualifying collateral under category (1)(ii), provided they represent a *pro rata* share of the principal and interest payments from the underlying mortgage loans. *Id.*

The second alternative, pursuant to which the Board would include in category (1)(ii) all privately issued mortgage-backed securities, including the lower risk tranches of privately issued collateralized mortgage obligations, would allow the Banks maximum flexibility to treat mortgage-related securities as eligible collateral under category (1)(ii), while still precluding acceptance of certain high risk securities specifically identified in the FIRREA Conference Report language quoted above.

The Board specifically requests comment on its interpretation of the phrase "securities representing a whole interest" in section 10(a)(1) of the Act, as well as the approach taken in the proposed rule, and the two alternatives under consideration.

Section 10(a)(2) of the Act authorizes the Banks to accept, without limitation, all types of securities issued, insured, or guaranteed by the United States government, or any agency thereof. See 12 U.S.C. 1430(a)(2). Eligible securities include, but are not limited to, those issued by the FHLMC, the FNMA, and the GNMA. Section 935.9(a)(2) of the proposed rule implements section 10(a)(2), and allows a Bank to accept as collateral stripped, residual and other high risk securities that are issued, insured or guaranteed by the United States government or one of its agencies.

Although the Board's Financial Management Policy (see Board Resolution No. 91–214, dated June 25, 1991), prohibits Bank investment in such securities due to the interest rate risk associated with holding these instruments, the Board believes that, for

collateral purposes, the Banks can protect themselves by adequately discounting the securities. It is expected that a Bank accepting such securities as collateral will have established systems in place to accurately value the collateral and will establish appropriate loan-to-value rations.

Securities issued by the former Federal Savings and Loan Insurance Corporation (FSLIC) are considered eligible collateral under category (2). The Board has concluded that not only should FSLIC notes be considered securities issued by an agency of the United States government, but also that FIRREA, in transferring liability for the notes to the FSLIC Resolution Fund and making the United States Treasury ultimately responsible for their repayment, has effectively bestowed the full faith and credit of the United States on the FSLIC notes. As of August 31, 1992, there were only $156 million in outstanding Bank advances secured by FSLIC notes, which is less than one percent of the System's total outstanding advances.

Mortgage-backed securities packaged by the Resolution Trust Corporation (RTC) are not issued, insured or guaranteed by the RTC in its corporate or agency capacity, and therefore are not eligible collateral under category (2). However, such securities may qualify as category (1)(ii) or category (4) collateral.

The Board interprets the inclusive "other real estate-related collateral" language of category (4), in conjunction with the 30 percent of capital limitation, to mean that category (4) permits limited amounts of mortgage-related collateral otherwise ineligible under category (1). For example, the following types of collateral may be considered eligible under category (4): Privately-issued mortgage-backed securities not otherwise eligible under category (1)(ii); second mortgage loans, including home equity loans; commercial real estate loans; and mortgage loan participations. This list is not intended to be exclusive.

Sectin 935.9(a)(4) of the proposed rule interprets category (4) broadly to include any other real estate-related collateral acceptable to the Bank, if such collateral has a readily ascertainable value and the Bank can perfect a security interest in such collateral. See 12 U.S.C. 1430(a)(4). Each Bank will determine the particular types of other real estate-related collateral acceptable to that Bank, consistent with the regulatory definition of eligible collateral, and will apprise its members accordingly. However, a member's use of category (4) collateral to secure advances is limited to 30 percent of its capital, calculated according to GAAP, at the time the advance is issued or renewed.

Proposed § 935.9(c) implements section 10(a)(5) of the Act by authorizing each Bank to require a member to pledge additional collateral to protect the Bank's secured position on outstanding advances, even though such collateral may not constitute "eligible collateral" under proposed § 935.9(a). See 12 U.S.C. 1430(a)(5). Section 935.9(d) of the proposed rule implements section 10(c) of the Act by providing that a Bank shall automatically have a lien upon, and shall hold, the Bank capital stock owned by a member as further collateral security for all indebtedness of the member to the Bank. See 12 U.S.C. 1430(c).

Section 935.9(e) of the proposed rule implements section 10(b) of the Act by prohibiting a Bank from accepting as collateral for an advance a home mortgage loan otherwise eligible as collateral for an advance, if any director, officer, employee, attorney or agent of the Bank or of the borrowing member is personally liable thereon, unless the board of directors of the Bank has specifically approved such acceptance by formal resolution, and the Board, or its designee, has endorsed such resolution. See 12 U.S.C. 1430(b).

G. Maintenance of Bank Security Interest in Pledged Collateral

Section 935.10 of the proposed rule implements section 10(f) of the Act (sometimes referred to as the "superlien" provision), by providing that, notwithstanding any other provision of law, the Banks have a priority interest in collateral pledged by a member ahead of other lien creditors, including a receiver or conservator, but not including bona fide purchasers for value of such collateral or creditors with a perfected security interest in the collateral under applicable state law. See 12 U.S.C. 1430(f).

This provision was added to the Act by the Competitive Equality Banking Act of 1987, Public Law 100-86, 101 Stat. 575, section 306(d) (1987). Congress, in establishing the Bank's senior creditor status, stated that the provision "recognizes the special position of the [Banks] * * *" as lenders to the home finance industry. H. Rep. No. 261, 100th Cong., 1st Sess. 163 (1987). The FDIC has adopted a regulation recognizing the special status of the Banks where the borrower of a Bank is in receivership. See 12 CFR 360.1.

Proposed § 935.11(a)(1) provides that a Bank may allow a borrowing member that is a depository institution to retain documents evidencing collateral pledged to the Bank, provided the member executes an agreement with the Bank to hold the collateral solely for the benefit of the Bank and subject to the Bank's direction and control.

A Bank's ability to perfect its security interest in collateral pledged by non-depository institution members, such as insurance companies, is dependent on state law to a greater extent than is the Bank's ability to perfect its security interest in collateral pledged by depository institutions. Proposed § 935.11(a)(2) requires a Bank to take any steps necessary to ensure that its security interest in all collateral pledged by non-depository institutions for an advance is as secured as its security interest in collateral pledged by depository institutions.

Section 935.11(a)(3) of the proposed rule provides that a Bank may at any time perfect its security interest in pledged collateral securing an advance to a member. This may include requiring a member to segregate pledged collateral, or to physically deliver collateral to the Bank or to a designated third party custodian operating on behalf of the Bank.

Proposed § 935.11(b) requires the Banks to regularly verify that collateral pledged to secure advances exists. A Bank shall establish written collateral verification procedures, with standards similar to those established by the Auditing Standards Board of the American Institute of Certified Public Accountants, for verifying the existence of collateral.

Under proposed § 935.12, each Bank is required to determine the value of the collateral securing its advances, according to established written valuation procedures. The valuation procedures used to determine the value of collateral shall be applied consistently and fairly to all borrowers. A Bank may require a member to obtain an appraisal to ascertain the value of collateral pledged to the Bank.

H. Restrictions on Advances to Members That are not Qualified Thrift Lenders (QTLs)

While FIRREA opened membership in the System to federally insured commercial banks and credit unions, it imposed further restrictions on borrowing by members that do not hold a certain level of housing-related assets, as specified in the Qualified Thrift Lender test (OTL test). See 12 U.S.C. 1430(e)(1). Section 935.13 of the proposed rule implements these new restrictions.

The QTL test, as defined in section 10(m) of the Home Owners' Loan Act (HOLA), as amended, 12 U.S.C.

1467a(m), requires that savings associations maintain at least 65 percent of their assets in "qualified thrift investments" (QTI).[1]

Section 10(e) of the Act, as amended by FIRREA, 12 U.S.C. 1430(e), permits members that are not QTLs to borrow from the Banks under the following conditions: (1) Non-QTLs may only use advances for housing finance purposes; (2) each Bank's aggregate amount of advances to non-QTL members shall not exceed 30 percent of the Bank's total advances; and (3) a Bank must grant priority for advances to QTL borrowers over non-QTL borrowers. *Id.* at 1430(e)(1), (2). In addition, a non-QTL borrower must hold Bank stock at the time it receives an advance in an amount equal to at least five percent of the borrower's total advances, divided by its actual thrift investment percentage (ATIP). See *id.* at 1430(e)(1).

The ATIP. used to determine compliance with the QTL test, is a ratio whose numerator is QTI and whose denominator is "portfolio assets." "Portfolio assets" is statutorily defined as total assets, less goodwill and other intangible assets, the value of an institution's business property, and a limited amount of liquid assets. See 12 U.S.C. 1467a(m)(4)(A), (B); 12 CFR 563.51(a), (e).

These limitations do not apply to: (1) A savings bank, as defined in section 3(g) of the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1813(g); (2) a Federal savings association in existence as such on August 9, 1989 that (i) was chartered as a savings bank or cooperative bank prior to October 15, 1982 under state law, or (ii) that acquired its principal assets from an institution that was chartered prior to October 15, 1982 as a savings bank or cooperative bank under state law.

Section 10(m) of the HOLA further restricts non-QTL savings associations' access to Bank advances. Savings associations that fail the QTL test may not take down new Bank advances. See 12 U.S.C. 1467a(m)(3)(B)(i)(III). In addition, if such a savings association fails to regain its QTL status within three years, it must repay all outstanding Bank advances. See 12 U.S.C. 1467a(m)(3)(B)(ii)(II).

[1] QTI assets are divided into two "baskets," one available in unlimited amounts and the other limited to an amount equal to 20 percent of a savings association's portfolio assets. (See following discussion in text.) The unlimited basket contains housing-related assets (mortgage loans, home equity loans, and mortgage-backed securities, as well as certain government agency obligations); the 20 percent basket contains consumer loans and assets associated with community lending. See 12 U.S.C. 1467a(m)(4)(C); 12 CFR 563.51(f).

Since the QTL test, as defined in the HOLA, has application only to savings associations, the requirements in section 10(e) of the Act arguably may be interpreted as applying only to non-QTL savings association members. However, the HOLA specifically prohibits non-QTL savings associations from borrowing advances, making the section 10(e) restrictions, which merely limit advances access, irrelevant for these institutions. It seems unlikely that Congress would create special restrictions on access to advances only for a class of members that, for separate reasons, are not eligible to borrow from a Bank.

In addition, the fact that Congress specifically exempted state-chartered savings banks from section 10(e), but not commercial banks, credit unions or insurance companies, suggests that the requirement was intended to have broader application than just to savings associations. It seems clear, therefore, that Congress used the QTL test to determine access to advances because the test provides a benchmark for measuring a member's commitment to housing finance. The section 10(e) restrictions therefore are being interpreted to have application to all non-QTL System members which are eligible to borrow.

The OTS is responsible for monitoring savings associations' compliance with the QTL test, and for enforcing penalties applicable to institutions that fail the test. See 12 U.S.C. 1467a(m), 1813(q). Therefore, unless otherwise informed by the OTS, a Bank may assume that a member savings association is a QTL. Section 935.13(a) of the proposed rule provides that upon receipt of written notification from the OTS that a savings association member has been designated by the OTS as a non-QTL and is subject to the restrictions on advances applicable to non-QTL savings associations, a Bank shall not extend any new advances or renew existing advances to such member. Proposed § 935.13(b) provides that, upon receipt of written notification from the OTS that all advances held by a non-QTL savings association must be repaid because the association has not requalified as a QTL member within the three-year period, the Bank, in conjunction with the member, shall develop a schedule for the prompt and prudent repayment of all outstanding advances. The schedule shall be consistent with the Bank's and the member's safe and sound operations and shall be forwarded promptly by the Bank to the OTS and the Board.

Proposed § 935.13(c) implements the statutory restrictions on advances to non-QTL members other than savings associations. The Act requires that non-QTL borrowers use advances only for "housing finance" purposes. See 12 U.S.C. 1430(e)(1). ("Housing finance" is defined as "residential housing finance" for the purposes of this part 935). However, the fungibility of money makes it very difficult and costly to track the actual use of an advance. Therefore, § 935.13(c)(1)(i) of the proposed rule ties on non-QTL member's ability to borrow advances to its level of "residential housing finance assets," as determined pursuant to proposed § 935.13(c)(2). The Board believes that a member's level of residential housing finance assets is a reasonable and measurable indicator of a non-QTL borrower's commitment to housing finance and its use of Bank advances for the purpose.

Section 935.1 of the proposed rule defines "residential housing finance assets" as loans secured by residential real property; securities representing an ownership interest in, or collateralized by, loans secured by residential real property; participations in such loans; loans financed by CIP advances; or any loan or investment that the Board, in its discretion, otherwise determines is a residential housing finance asset. This definition includes home equity loans.

The definitions of residential housing finance assets in proposed § 935.1 includes all loans funded by CIP advances, although some of these loans may be for community and economic development projects and thus may be nonresidential. Section 10(i) of the Act specifically includes the financing of commercial and economic activities that benefit low- and moderate-income families and neighborhoods in the definition of community-oriented mortgage lending. See 12 U.S.C. 1430(i). The Board believes that this definition indicates that all loans funded under the CIP should be included in the definition of residential housing finance assets. Otherwise, the Banks could not provide CIP advances to a non-QTL, non-savings association member, or long-term CIP advances to any member, if the advances funded community and economic development projects. (The Act, as amended, requires that long-term advances only be used for purposes of funding residential housing finance, 12 U.S.C. 1430(a). See Section I below.) The Board specifically requests comments on the inclusion of CIP loans in its definition of residential housing finance assets.

Section 935.13(c)(1)(ii) of the proposed rule implements section 10(e)(1) of the Act by providing that a Bank shall

require a non-QTL non-savings association member to hold stock in its Bank at the time it receives an advance in an amount equal to at least five percent of the outstanding principal amount of the member's total advances, divided by the member's ATIP. The ATIP shall be calculated pursuant to proposed § 935.13(c)(3). See 12 U.S.C. 1430 (e)(1).

Proposed § 935.13(c)(1)(iii) implements sections 10(e)(2) of the Act by providing that a Bank may not extend an advance to a non-QTL non-savings association member if the advance would cause the Bank's aggregate amount of outstanding advances to non-QTL non-savings associations members to exceed 30 percent of the Bank's total outstanding advances. See 12 U.S.C. 1430(e)(2). In the event that a Bank's level of outstanding advances to QTL members declines such that existing non-QTL advances exceed 30 percent of total advances, the Bank will not be required to call any outstanding non-QTL advances in order to comply with the requirement.

Section 935.13(c)(2) of the proposed rule provides that prior to granting a non-QTL non-savings association member's request for an advance, a Bank shall determine that the principal amount of outstanding advances to the members does not exceed the total book value of the member's residential housing finance assets, as indicated on the most recent Call Report or financial statement made available by the member.

The Board believes that the proposed compliance monitoring mechanism for residential housing finance assets is an operationally feasible method for implementing the statutory requirement in 12 U.S.C. 1430(e)(1)(B), and is consistent with the legislative intent of FIRREA. The Board specifically requests comments on any alternative methods for verifying that advances are used for housing finance purposes.

Under proposed § 935.13(c)(3), the Banks are responsible for monitoring the ATIP of non-savings association members in order to determine their required capital stock holdings to support outstanding advances. The proposed rule requires a Bank to calculate a non-savings association member's ATIP annually, between January 1 and April 15, based upon financial data as of December 31 of the prior year. The Bank will use this calculation to determine the member's stock purchase requirement for the remainder of the current calendar year and until such time as the next annual calculation is performed. The Board specifically requests comment on this proposal for monitoring the ATIP of non-savings association members.

Section 935.13(c)(4) of the proposed rule provides that the requirements of paragraphs (c)(1), (2) and (3) of this section do not apply to certain state-chartered savings banks and Federal savings associations. Applications for AHP and CIP advances are exempt from the requirements of paragraph (c)(2). The Board is permitting this exemption because, as part of the AHP and CIP advance application process, members supply documentation which certifies that the funds will be used for residential housing finance purposes.

Proposed § 935.13(d) provides that if a Bank is unable to meet its members' aggregate demand for advances, the Bank shall give priority to the demands of its QTL members, taking into consideration the member's creditworthiness, the effect of making such advances on the Bank's financial integrity, the availability of compatible funding, and any other factors that the Bank determines to be relevant. The requirements of paragraph (d) do not apply to special, or otherwise limited, advance offerings by a Bank, which may be offered on a first come, first served basis. This section of the proposed rule implements section 10(e)(2) of the Act. See 12 U.S.C. 1430(e)(2).

Section 935.13(e) of the proposed rule requires that the written advances agreement required by § 935.4(b)(2) of this part stipulate that a Bank shall not fund commitments for advances made to then-QTL savings association members whose access to advances is subsequently restricted pursuant to paragraph (a) of this section, or to then-QTL members other than savings associations whose access to advances is restricted pursuant to paragraph (c) of this section.

I. Limitations on Long-Term Advances

Section 10(a) of the Act, as amended by FIRREA, provides that all *long-term* advances shall only be made for the purpose of providing funds for *residential housing finance*. 12 U.S.C. 1430(a) (emphasis added). Section 935.1 of the proposed rule defines a "long-term advance" as an advance with an original term to maturity greater than five years. Although there is no explicit definition of long-term advance in the Act, this proposed definition is consistent with the historic System definition of long-term, and with the definition of "long-term advances" provided in the Community Support Regulation promulgated by the Board. See 56 F.R. 58639, 58647 (Nov. 21, 1991).

The designation of five years or less as short-term and greater than five years as long-term derives in part from section 11(g) of the Act, see 12 U.S.C. 1431(g). That section requires that each Bank maintain investments in an amount equal to current member deposits, and includes advances with maturities of up to five years in the list of investments eligible to fulfill this liquidity requirement. In addition to this statutory foundation, the housing finance mission of the Banks points to a definition that exceeds five years, since as noted earlier, residential mortgage loans, which long-term advances are designed to finance, generally have an average life greater than five years.

Section 935.14(a) of the proposed rule implements section 10(a) of the Act by requiring that the Banks make long-term advances only for the purpose of enabling a member to fund or purchase new or existing residential housing finance assets. The Board intends to require that the Banks monitor the use of long-term advances for this purpose by using the same method proposed for monitoring advances to non-QTL borrowers.

Specifically, § 935.14(b)(1) of the proposed rule provides that, before funding an advance with a maturity greater than five years, a Bank shall determine that the borrowing member's level of outstanding advances with original maturities greater than five years does not exceed the total book value of the member's residential housing finance assets. The bank shall use the member's most recent TFR, Call Report or other financial statement to determine the total book value of the member's residential housing finance assets.

Applications for AHP and CIP advances are exempt from this requirement. As noted above, the definition of residential housing finance assets includes loans funded with CIP advances, which means that long-term CIP advances also may fund community and economic development projects.

J. Capital Stock Requirements and Redemption of Excess Stock

The Act sets forth two minimum stockholding requirements for System members (minimum subscription requirements). See 12 U.S.C. 1426(b)(1), (4); 1430(e)(3). The first minimum stock subscription requirement provides that each member shall purchase Bank capital stock in an amount equal to one percent of the aggregate unpaid principal of its home mortgage loans, home-purchase contracts and similar obligations, but not less than $500. See 12 U.S.C. 1426(b)(1), (4).

The second minimum subscription requirement provides that each member shall purchase and maintain stock, pursuant to the one percent requirement, as if at least 30 percent of its assets consisted of home mortgage loans (*i.e.*, the minimum purchase requirement equals .3 percent of a member's total assets). This provision only has application to members that have less than 30 percent of their assets in home mortgage loans. For these institutions, the .3 percent of total assets requirement is greater than the one percent of aggregate unpaid loan principal requirement. See 12 U.S.C. 1430(e)(3). These statutory minimum subscription requirements will be addressed more fully in a future Board rulemaking on Bank membership requirements.

In addition to the minimum subscription requirements, the Act specifies two stock purchase requirements based on advance levels (the advances-to-stock requirements). These requirements are implemented in proposed § 935.15(a). All members must hold stock in an amount equal to at least five percent of outstanding advances (*i.e.*, the aggregate amount of advances to a member may not exceed 20 times the amount paid in by such member for capital stock in the Bank). In addition, non-QTL non-savings association members applying for an advance must hold capital stock in the Bank at the time the advance is received in an amount equal to at least five percent of the member's total advances, divided by the member's ATIP. See 12 U.S.C. 1430(c), (e)(1), and proposed § 935.13(c)(1)(ii) discussed *supra*. A member's Bank stockholdings must be at least equal to the greater of its minimum subscription requirement for membership or its respective advances-to-stock requirement.

The Act authorizes the Banks to redeem stock in excess of the minimum requirements at a member's request. See 12 U.S.C. 1426(b)(1). The Banks annually recalculate a member's minimum subscription requirement, and members holding stock in excess of the recalculated amount may request that the Bank redeem the excess stock. *Id.* The Act also authorizes the Banks to unilaterally redeem stock upon the termination of a stockholder's membership in the System if the terminated member has no outstanding indebtedness to the Bank. See *id.* at 1426(e). The Act does not specifically address the issue of whether a Bank has the authority to redeem Bank stock held by a member in excess of the advances-to-stock requirements. In practice, the Banks redeem stock, at the request of a member, in excess of its advances-to-stock requirement throughout the year as advances are repaid, as long as the minimum subscription is maintained.

Section 935.15(b) of the proposed rule provides that a Bank, after providing 15 calendar days advance written notice to a member, may unilaterally redeem the portion of a member's stockholdings in excess of its advances-to-stock requirement, as long as the member's minimum subscription requirement is maintained. The Board believes that this express authority is a reasonable interpretation of the Act, and will aid the Banks in managing their equity levels as part of their financial planning. The 15-day advance notice requirement is designed to allow each member an opportunity to identify alternative investments for the amount received from redemption of the stock.

K. Advance Participations and Intradistrict Transfers of Advances

Section 10(d) of the Act requires Board approval for the participation or sale of advances to other Banks. Section 935.16 of the proposed rule incorporates existing Board policy which provides that, subject to the approval of the boards of directors of the relevant Banks and consistent with Board policy, a Bank may allow any other Bank to purchase a participation interest in any advance, together with an appropriate assignment of the underlying security therefor. See 12 U.S.C. 1430(d). Participation agreements already in place are deemed to meet the requirements of this part, and will not require further approval by the Bank's board or the Board.

Proposed § 935.17 provides that a Bank may allow one of its members to assume advances outstanding to another of its members, provided the assumption conforms to the requirements in this part 935 for the issuance of a new advance. A Bank may charge an appropriate fee for processing the transfer.

L. Special Advances to Savings Associations

Section 935.18(a) of the proposed rule implements section 10(h) of the Act by providing that, upon receipt of a written request from the Director of the OTS, the Banks may extend short-term advances to troubled but solvent member savings associations having reasonable and demonstrable prospects of returning to a satisfactory financial condition. See 12 U.S.C. 1430(h). Proposed § 935.18(b), consistent with section 10(h) of the Act, provides that any advance made pursuant to this section shall be at the interest rate applicable to short-term advances of similar type and maturity made available to members that do not pose such a supervisory concern and shall be subject to the same collateral requirements applicable to other advances. The requirements of the Act, therefore, preclude risk-based pricing of advances made available under this section. The statutory provision regarding these liquidity advances specifies that extending such advances is not mandatory. See 12 U.S.C. 1430(h). The Board expects that a Bank will consider the effect on its own financial integrity of agreeing to make such advances.

M. Liquidation of Advances Upon Termination of Membership

Section 935.19 of the proposed rule implements section 6(e) of the Act by specifying that if an institution's membership in a Bank is terminated, the indebtedness of such institution to the Bank shall be liquidated in an orderly manner, as determined by the Bank. See 12 U.S.C. 1426(e). Such liquidation shall be deemed a prepayment of any such indebtedness and subject to any applicable prepayment fees. A Bank shall not be required to call any such indebtedness prior to maturity if doing so would be inconsistent with the Bank's safe and sound operation.

Subpart B—Advances to Nonmembers

A. Scope

Section 935.20 of the proposed rule provides that advances to nonmembers shall be subject to the provisions in subpart A of this part 935, except as otherwise provided in §§ 935.21 and 935.22 of subpart B of this part 935. This requirement is designed to ensure that nonmember advance programs operate within the same regulatory framework as member advance programs and without special benefits to nonmembers.

B. Advances to SAIF

Section 935.21(a) of the proposed rule implements section 11(k) of the Act, providing that upon receipt of a written request from the FDIC, a Bank may make advances to the FDIC for the use of the SAIF. Pursuant to proposed § 935.21(b), such an advance shall: (1) Bear a rate of interest not less than the Bank's marginal cost of funds, taking into account the maturities involved and reasonable administrative costs; (2) be for a maturity acceptable to the Bank; (3) be subject to any prepayment, commitment or other appropriate fees; and (4) be adequately secured by collateral acceptable to the Bank. See 12 U.S.C. 1431(k).

C. Advances to Nonmember Mortgagees

Under Section 10b of the Act, a Bank may make advances to nonmembers that are approved mortgagees under title II of the National Housing Act (NHA) (12 U.S.C. 1707 *et seq.*). See 12 U.S.C. 1430b. The administration of title II of the NHA is the responsibility of the Federal Housing Administration (FHA), a unit of the Department of Housing and Urban Development (HUD). Approved mortgagees have HUD authorization to buy and sell FHA-insured mortgages.

The Board has approved a program permitting the Dallas Bank to lend up to $2 million over a period of two years to the New Mexico Mortgage Finance Authority to promote the availability of affordable housing in that state. Similar programs are being considered by other Banks. The Board believes that these programs are in keeping with the System's mission to provide housing finance for low- and very low-income families. The proposed rule revises the Board's current regulation to include specific criteria for nonmember mortgagee eligibility for advances, and requirements governing Bank advances to such entities.

Section 935.22(a) of the proposed rule authorizes a Bank, subject to the Act and subpart B of this part 935, to make advances to an entity that is not a member of a Bank, if the entity qualifies as a nonmember mortgagee pursuant to section 10b of the Act and proposed § 935.22(b).

Proposed § 935.22(b) contains the four statutory conditions that a nonmember mortgagee must meet in order to borrow from a Bank:

(1) The mortgagee must be chartered under law and have succession. A corporation, or other entity that has rights, characteristics and powers under applicable law similar to those granted a corporation, or a government agency, meet this requirement;

(2) The mortgagee must be subject, pursuant to statute or regulation, to the inspection, supervision and oversight of a Federal, state or local government agency;

(3) The mortgagee must lend its own funds as its principal activity in the mortgage field; and

(4) The mortgagee must be approved by HUD as a "mortgagee" pursuant to HUD's regulations (24 CFR part 203), under title II of the NHA (12 U.S.C. 1707—1715z–20).

Pursuant to the Act, advances made under this section are not subject to certain other provisions of the Act, *e.g.*, member stock purchase and collateral requirements. See 12 U.S.C. 1430b. However, as noted above, where appropriate, the proposed rule makes the regulatory requirements that are applicable to the Banks' member advances programs also applicable to their nonmember advances programs, except as specifically provided in this proposed § 935.22. The Banks are expected to apply to nonmember mortgagees the same advance application requirements, credit underwriting standards, collateral safekeeping requirements, restrictions on lending to institutions without positive tangible capital, advance maturity requirements, prepayment fees, and other regulatory requirements applicable to members under subpart A of this part 935.

Section 935.22(c) of the proposed rule provides that prior to establishing a program to lend to nonmember mortgagees, each Bank shall adopt a policy on advances to nonmember mortgagees consistent with the requirements of the Act, part 935 of the Board's regulations, and general guidelines of the Board.

Section 935.22(d)(1)(i) of the proposed rule requires the Banks to price advances to nonmember mortgagees to cover the funding, operating and administrative costs associated with making such advances. The pricing may reflect the credit risk associated with lending to the nonmember mortgagee, or other reasonable differential pricing criteria, provided that the terms for differential pricing are applied equally to all nonmember mortgagee borrowers.

In addition, proposed § 935.22(d)(ii) provides that the pricing of advances shall compensate the Bank for the absence of a capital investment by the nonmember mortgagee in the Bank. A Bank may implement this provision by requiring that the nonmember mortgagee hold a compensating balance in a deposit account with the Bank. Proposed § 935.22(d)(2) provides that, in accordance with section 10b of the Act, the principal amount of any advance made to a nonmember mortgagee may not exceed 90 percent of the unpaid principal of the collateral pledged as security.

Proposed § 935.22(e)(1) implements the Act by providing that nonmember mortgagee advances may be collateralized with FHA-insured mortgages. See 12 U.S.C. 1430b. Section 935.22(e)(2) of the proposed rule permits a Bank to additionally accept as collateral, securities representing a *pro rata* share of the principal and interest payments due on a pool of FHA-insured mortgage loans (GNMAs), provided that a Bank shall require a nonmember mortgagee to provide evidence that the securities are backed solely by FHA-insured mortgages.

Section 935.22(f)(1) of the proposed rule provides that a Bank shall require a nonmember mortgagee applying for an advance to agree in writing to inform the Bank promptly of any change in its status as a nonmember mortgagee. The Bank will not be required to call outstanding advances to a nonmember that loses its HUD-approved mortgagee status or otherwise ceases to fulfill the eligibility qualifications for a nonmember mortgagee under proposed § 935.22(b). However, pursuant to proposed § 935.22(f)(2), it may not extend a new advance or renew an existing advance to the nonmember until the Bank is satisfied that the entity again fulfills the requirements for a nonmember mortgagee provided herein.

Under proposed § 935.22(g), a Bank may, from time to time, require a nonmember mortgagee borrower to provide evidence that it continues to satisfy all of the qualifications and requirements contained in this section. The Board specifically requests comment on all aspects of the proposed nonmember mortgagee requirements.

Board Statements of Policy and Former Federal Home Loan Bank Board Policy on Advances

The proposed rule would incorporate the Statements of Policy on advances currently contained in 12 CFR part 940 to the extent the Board deems appropriate. The proposed rule would remove and reserve part 940. The proposed rule also is intended to supersede the former Federal Home Bank Board's policy on advances, adopted by minute entry on July 6, 1988. This minute entry was not published in the **Federal Register**.

Regulatory Flexibility Act

The proposed rule largely implements statutory requirements applicable to all System members, regardless of their size. The Board is not at liberty to make adjustments to those statutory requirements to accommodate small entities. The Board has not imposed any additional regulatory requirements that will have a disproportionate impact on small entities. The only significant requirement added by the Board is limits on advances to members without positive tangible capital. The Board has written the proposed rule specifically so that in many cases members can meet the requirements of the proposed rule by providing copies of reports already generated for other purposes. For these reasons, it is certified, pursuant to section 605(b) of the Regulatory

Flexibility Act, 5 U.S.C. 605b, that this proposed rule, as promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects

12 CFR Part 935

Advances, credit, Federal home loan banks.

12 CFR Part 940

Advances, Federal home loan banks.

The Finance Board hereby proposes to amend chapter IX, title 12, Code of Federal Regulations, as follows:

1. Part 935 is revised to read as follows:

PART 935—ADVANCES

Subpart A—Advances to Members

Subpart B—Advances to Nonmembers

Authority: 12 U.S.C. 1422b(a)(1), 1426, 1429, 1430, 1430b, 1431.

Subpart A—Advances to Members

§ 935.1 Definitions.

As used in this part:

Act means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 *et seq.*).

Actual thrift investment percentage or *ATIP* means generally the percentage of a member's assets actually invested in, or held as, qualified thrift investments, as defined more specifically in section 10(m)(4) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)(4)) and in the implementing regulations of the OTS at 12 CFR 563.51. The ATIP will be calculated and used for purposes of this part for all members of the Banks, whether or not they are savings associations.

Advance means a loan from a Bank pursuant to the Act that is:

(1) Provided pursuant to a written agreement;

(2) Supported by a note or other written evidence of the borrower's obligation; and

(3) Fully secured by collateral in accordance with the Act.

Affordable Housing Program or *AHP* means the program described in section 10(j) of the Act (12 U.S.C. 1430(j)) and part 960 of the Board's regulations.

Appropriate Federal banking agency. The term "appropriate Federal banking agency" has the same meaning as used in 12 U.S.C. 1813(q) and for federally insured credit unions shall mean the National Credit Union Administration.

Bank means a Federal Home Loan Bank established under the authority of the Act.

Board means the Federal Housing Finance Board established under the authority of the Act, its governing Board of Directors, or an official duly authorized to act on its behalf.

Combination business or farm property means real property for which the total appraised value is attributable to residential, and business or farm uses.

Community Investment Program or *CIP* means the program(s) described in section 10(i) of the Act (12 U.S.C. 1430(i)).

Depository institution means a bank or savings association, as defined in 12 U.S.C. 1813, or a credit union, as defined in 12 U.S.C. 1752.

Dwelling unit means a single, unified combination of rooms designed for residential use by one household.

FDIC means the Federal Deposit Insurance Corporation.

GAAP means Generally Accepted Accounting Principles.

HUD means the Department of Housing and Urban Development.

Improved residential real property means residential real property excluding real property to be improved, or in the process of being improved, by the construction of dwelling units.

Insurer means:

(1) the FDIC for banks and savings associations; or

(2) the National Credit Union Share Insurance Fund for credit unions.

Long-term advance means, for the purposes of this part, an advance with an original term to maturity greater than five years.

Manufactured housing means a manufactured home as defined in section 603(6) of the Manufactured Home Construction and Safety Standards Act of 1974, as amended (42 U.S.C. 5402(6)).

Member means an institution that has been admitted to membership in a Bank and, [pursuant to the requirements of § 933.7 of this chapter], has purchased capital stock in the Bank.

Mortgage-backed security means, for purposes of this part, an equity security representing an ownership interest in a pool of fully disbursed, whole mortgage loans on improved residential property or a collateralized mortgage obligation, mortgage-backed bond or other debt security backed entirely by fully disbursed, whole first mortgage loans on improved residential real property.

Multifamily property means:

(1) Real property containing five or more dwelling units; or

(2) Real property containing five or more dwelling units with commercial units combined, provided the property is primarily residential.

Nonresidential real property means real property not used for residential purposes, including business or industrial property, hotels, motels, churches, hospitals, nursing homes, educational and charitable institutions, dormitories, clubs, lodges, association buildings, "homes" for elderly persons, golf courses, recreational facilities, farm property not containing a dwelling unit, or similar types of property, except as otherwise determined by the Board in its discretion.

OCC means The Office of the Comptroller of the Currency within the United States Department of the Treasury.

One-to-four family property means any of the following:

(1) Real property containing:

(i) One-to-four dwelling units; or

(ii) More than four dwelling units if each unit is separated from the other units by dividing walls that extend from ground to roof, including rowhouses, townhouses or similar types of property;

(2) Manufactured housing if:

(i) Applicable state law defines the purchase or holding of manufactured housing as the purchase or holding of real property; and

(ii) The loan to purchase the manufactured housing is secured by such manufactured housing as evidenced by a mortgage or other lien on real property;

(3) Individual condominium dwelling units or interests in individual cooperative housing dwelling units that are part of a condominium or cooperative building without regard to

the number of total dwelling units therein; or

(4) Real property containing one-to-four dwelling units with commercial units combined, provided the property is primarily residential.

OTS means the Office of Thrift Supervision.

Qualified Thrift Lender or *QTL* means the term defined in section 10(m)(1) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)(1)) and in the implementing regulations of the OTS (12 CFR 563.50). A non-savings association member which otherwise meets the QTL test will be treated as a QTL for purposes of this part.

Qualified Thrift Lender test or *QTL test* means the formula described generally in section 10(m) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)) and in the implementing regulations of the OTS (12 CFR 563.50). The QTL test will be applied to all members of a Bank for purposes of this part.

Residential housing finance assets means any of the following:

(1) Loans secured by residential real property;

(2) Mortgage-backed securities;

(3) Participations in loans secured by residential real property;

(4) Loans financed by CIP advances; or

(5) Any loans or investments which the Board, in its discretion, otherwise determines to be residential housing finance assets.

Residential real property means any of the following:

(1) One-to-four family property;

(2) Multifamily property;

(3) Real property to be improved by the construction of dwelling units;

(4) Real property in the process of being improved by the construction of dwelling units;

(5) Combination business or farm property, provided that at least 50 percent of the total appraised value of the combined property is attributable to the residential portion of the property;

(6) The term does not include nonresidential real property as defined in this section.

Savings association means a savings association as defined in section 3(b) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1813(b)).

State means a state of the United States, the District of Columbia, Guam, Puerto Rico or the U.S. Virgin Islands.

State regulator means a state insurance commissioner or state regulatory entity with primary responsibility for supervising a member that is not a federally insured depository institution.

Tangible capital means:

(1) Capital, calculated according to GAAP, less "intangible assets" as reported in the member's Thrift Financial Report for members whose primary Federal regulatory is the OTS, or as reported in the Report of Condition and Income for members whose primary Federal regulator is the FDIC, the OCC or the Board of Governors of the Federal Reserve System; or

(2) Capital calculated according to GAAP, less intangible assets, as defined by a Bank for members which are not regulated by the OTS, the FDIC, the OCC, or the Board of Governors of the Federal Reserve System.

Whole mortgage pass-through security means, for purposes of this part, a security representing the entirety of the beneficial interest in a pool of fully disbursed, whole first mortgage loans on improved residential real property.

§ 935.2 Bank credit mission.

(a) The primary credit mission of the Banks shall be to enhance the availability of residential mortgage credit.

(b) Each Bank shall fulfill its primary credit mission by:

(1) Providing a readily available, economical and affordable source of funds in the form of advances to its members; and

(2) Offering such advances products or programs that satisfy the credit needs of its members.

(c) Notwithstanding paragraph (b) of this section, each Bank shall place such limitations on the making of advances to its members as shall:

(1) Be specifically prescribed by statute, regulation or policy;

(2) Protect the financial integrity of such Bank and accommodate the practical constraints associated with the Bank's ability to raise funds; or

(3) Be required by the Board.

§ 935.3 Bank advances policy.

(a) Each Bank's board of directors shall adopt, and review at least semiannually, a policy on advances to members consistent with the requirements of the Act, this part, and the general guidelines of the Board, as reflected in its resolutions, orders or manuals.

(b) A Bank's board of directors may designate officers authorized to extend or deny credit and take other action consistent with the Bank's advances policy.

(c) A Bank may make exceptions to its advances policy only with the approval of its board of directors, a committee thereof, or officers specifically authorized by the board of directors to approve such exceptions, provided that any such exceptions shall comply with the Act, this part and Board policies and guidelines.

(d) A Bank's board of directors shall:

(1) Require the officers designated pursuant to paragraph (b) of this section to report promptly to it, or a designated committee of the board, all actions taken under this section; and

(2) Review such actions for compliance with this section.

§ 935.4 Authorization and application for advances; obligation to repay advances.

(a) *Application for advances.* A Bank may accept oral or written applications for advances from its members.

(b) *Obligation to repay advances.* (1) A Bank shall require any member applying for an advance to enter into a primary and unconditional obligation to repay such advance and all other indebtedness to the Bank, together with interest and any unpaid costs and expenses in connection therewith, according to the terms under which such advance or other indebtedness was made.

(2) Such obligations shall be evidenced by a written advances agreement that shall be reviewed by the Bank's legal counsel to ensure such agreement is in compliance with applicable law.

(c) *Secured advances.* (1) Each Bank shall make only fully secured advances to its members as set forth in the Act, the provisions of this part and policies established by the Board.

(2) The Bank shall execute a written security agreement with each borrowing member which establishes the Bank's security interest in collateral securing advances.

(3) Such written security agreement shall, at a a minimum, describe the type of collateral securing the advances and give the Bank a perfectible security interest in the collateral.

(d) *Approval*—(1) *By the Bank's board of directors.* Applications for advances, advances agreements and security agreements shall be in substantially such form as approved by the Bank's board of directors, or a committee thereof specifically authorized by the board of directors to approve such forms.

(2) *By the Board.* Each Bank's forms for all advances applications, advances agreements and security agreements are deemed approved by the Board if such forms are consistent with the requirements of this part. Each Bank shall provide copies of its current forms for all advances agreements and security agreements, and any

substantive revisions thereto, to the Board.

§ 935.5 Limitations on access to advances.

(a) *Credit underwriting.* A Bank, in its discretion, may:

(1) Limit or deny a member's application for an advance if, in the Bank's judgment, such member:

(i) Is engaging or has engaged in any unsafe or unsound business practices;

(ii) Has inadequate capital;

(iii) Is sustaining operating losses;

(iv) Has financial or managerial deficiencies, as determined by the Bank, that bear upon the member's creditworthiness; or

(v) Has any other deficiencies, as determined by the Bank; or

(2) Approve a member's application for an advance subject to such additional terms as the Bank may prescribe, pursuant to the provisions of the Act, this part and any policy guidelines of the Board.

(b) *Advances to members without positive tangible capital*—(1) *New Advances.* A Bank shall not make a new advance available to a member without positive tangible capital unless:

(i) The member's appropriate Federal banking agency or insurer requests in writing that the Bank make such advance; and

(ii) The Bank determines in its discretion that it may safely make such advance to the member. The Bank shall promptly inform the Board of any such request.

(2) *Renewal of maturing advances.* (i) A Bank may renew an existing advance to a member without positive tangible capital for successive terms of up to 30 days each if the Bank determines that it may safely make such renewals to the member.

(ii) A Bank may renew an existing advance to a member without positive tangible capital for a term greater than 30 days at the written request of the appropriate Federal banking agency or insurer, if the Bank determines that it may safely make such renewal.

(c) *Members without Federal regulators.* The provisions of paragraph (b) of this section, in the case of members that are not federally insured depository institutions, may be implemented upon written request to the Bank from the member's state regulator.

(d) *Reporting.* (1) Each Bank shall provide the Board with a monthly report of the Bank's advances and commitments outstanding to each of its members.

(2) Such monthly report shall be in a format or on a form prescribed by the Board.

(3) Each Bank shall, upon written request from a member's appropriate Federal banking agency, insurer or state regulator, provide to such entity information on advances and commitments outstanding to the member.

(e) *Advance commitments.* The written advances agreement required by § 935.4(b)(2) of this part shall stipulate that the Bank shall not fund commitments for advances previously made to members whose access to advances is restricted pursuant to this section.

§ 935.6 Terms and conditions for advances.

(a) *Advance maturities.* Each Bank shall offer advances with maturities of up to ten years, and may offer advances with longer maturities consistent with the safe and sound operation of the Bank.

(b) *Advance pricing*—(1) *General.* Each Bank shall price its advances to members taking into account the following factors:

(i) The marginal cost to the Bank of raising matching maturity funds in the marketplace; and

(ii) The administrative and operating costs associated with making such advances to members.

(2) *Differential pricing.* (i) Each Bank may, in pricing its advances, distinguish among members based upon its assessment of:

(A) The credit risk to the Bank of lending to any particular member; or

(B) Other reasonable criteria that may be applied equally to all members.

(ii) Each Bank shall establish written standards and criteria for such differential pricing and shall apply such standards and criteria consistently and without discrimination to all members applying for advances.

(3) *Affordable Housing Program Advances.* The advance pricing policies and procedures contained in paragraph (b)(1) of this section shall not apply in the case of a Bank's AHP advances made pursuant to part 960 of this chapter.

(c) *Authorization for pricing advances.* (1) A Bank's board of directors, a committee thereof, or the Bank's president, if so authorized by the Bank's board of directors, shall set the rates of interest on advances consistent with paragraph (b) of this section.

(2) A Bank president authorized to set interest rates on advances pursuant to this paragraph (c) may delegate any part of such authority to any officer or employee of Bank.

§ 935.7 Interest rates on Community Investment Program advances.

Each Bank shall price its CIP advances as provided in § 935.6 of this part, provided that the cost of such CIP advances shall not exceed the Bank's cost of issuing consolidated obligations of comparable maturity, taking into account reasonable administrative costs.

§ 935.8 Fees.

(a) *Prepayment fees.* (1) Each Bank shall establish and charge a prepayment fee which sufficiently compensates the Bank for providing a prepayment option on an advance, and which acts to make the Bank financially indifferent to the borrower's decision to repay the advance prior to its maturity date.

(2) Prepayment fees are not required for:

(i) Advances with terms to maturity or repricing periods of six months or less;

(ii) Advances funded by callable debt; or

(iii) Advances which are otherwise appropriately hedged so that the Bank is financially indifferent to their prepayment.

(3) The board of directors of each Bank, a designated committee thereof, or officers specifically authorized by the board of directors, may waive a prepayment fee only if such waiver will not result in an economic loss to the Bank. Any such waiver must subsequently be ratified by the board of directors.

(b) *Commitment fees.* Each Bank is authorized to charge a fee for the Bank's commitment to fund an advance.

(c) *Other fees.* Each Bank is authorized to charge other fees as it deems necessary and appropriate.

§ 935.9 Collateral.

(a) *Eligible security for advances.* At the time of origination or renewal of an advance, each Bank shall obtain, and thereafter maintain, a security interest in collateral that meets the requirements of one or more of the following categories:

(1) *Mortgage loans and privately issued securities.* (i) Fully disbursed, whole first mortgage loans on improved residential real property not more than 90 days delinquent; or

(ii) Whole mortgage pass-through securities as defined in § 935.1 of this part.

(2) *Agency securities.* Securities issued, insured or guaranteed by the United States Government, or any agency thereof, including without limitation mortgage-backed securities,

as defined in § 935.1 of this part, issued or guaranteed by:

(i) the Federal Home Loan Mortgage Corporation;

(ii) the Federal National Mortgage Association; or

(iii) the Government National Mortgage Association.

(3) *Deposits.* Deposits in a Bank.

(4) *Other collateral.* (i) Except as provided in paragraph (a)(4)(iii) of this section, other real estate-related collateral acceptable to the Bank if:

(A) Such collateral has a readily ascertainable value; and

(B) The Bank can perfect a security interest in such collateral.

(ii) Eligible other real estate-related collateral may include, but is not limited to:

(A) Non-agency mortgage-backed securities not otherwise eligible under paragraph (a)(1)(ii) of this section;

(B) Second mortgage loans, including home equity loans;

(C) Commercial real estate loans; and

(D) Mortgage loan participations.

(iii) A Bank shall not permit the aggregate amount of outstanding advances to any one member, secured by such other real estate-related collateral, to exceed 30 percent of such member's capital, as calculated according to GAAP, at the time the advance is issued or renewed.

(b) *Bank restrictions on eligible collateral.* A Bank at its discretion may further restrict the types of eligible collateral acceptable to the Bank as security for an advance, based upon the creditworthiness or operations of the borrower, the quality of the collateral, or other reasonable criteria.

(c) *Additional collateral.* The provisions of paragraph (a) of this section shall not affect the ability of any Bank to take such steps as it deems necessary to protect its secured position on outstanding advances, including requiring additional collateral, whether or not such additional collateral conforms to the requirements for eligible collateral in paragraph (a) of this section or section 10 of the Act (12 U.S.C. 1430).

(d) *Bank stock as collateral.* (1) Pursuant to section 10(c) of the Act (12 U.S.C. 1430(c)), a Bank shall have a lien upon, and shall hold, the stock of a member in the Bank as further collateral security for all indebtedness of the member to the Bank.

(2) The written security agreement used by the Bank shall provide that the borrowing member's Bank stock is assigned as additional security by the member to the Bank.

(3) The security interest of the Bank in such member's Bank stock shall be entitled to the priority provided for in section 10(f) of the Act (12 U.S.C. 1430(f)).

(e) *Collateral security requiring formal approval.* No home mortgage loan otherwise eligible to be accepted as collateral for an advance by a Bank under this section shall be accepted as collateral for an advance if any director, officer, employee, attorney or agent of the Bank or of the borrowing member is personally liable thereon, unless the board of directors of the Bank has specifically approved such acceptance by formal resolution, and the Board or its designee has endorsed such resolution.

§ 935.10 Banks as secured creditors.

(a) Except as provided in paragraph (b) of this section, notwithstanding any other provision of law, any security interest granted to a Bank by a member, or by an affiliate of such member, shall be entitled to priority over the claims and rights of any party, including any receiver, conservator, trustee or similar party having rights of a lien creditor, to such collateral.

(b) A Bank's security interest as described in paragraph (a) of this section shall not be entitled to priority over the claims and rights of a party that:

(1) Would be entitled to priority under otherwise applicable law; and

(2) Is an actual bona fide purchaser for value of such collateral or is an actual secured party whose security interest in such collateral is perfected in accordance with applicable state law.

§ 935.11 Pledged collateral; verification.

(a) *Collateral safekeeping.* (1) A Bank may permit a member that is a depository institution to retain documents evidencing collateral pledged to the Bank, provided that the Bank and such member have executed a written security agreement pursuant to § 935.4(c) of this part whereby such collateral is retained solely for the Bank's benefit and subject to the Bank's control and direction.

(2) A Bank shall take any steps necessary to ensure that its security interest in all collateral pledged by non-depository institutions for an advance is as secured as its security interest in collateral pledged by depository institutions.

(3) A Bank may at any time perfect its security interest in collateral securing an advance to a member.

(b) *Collateral verification.* Each Bank shall establish written procedures, with standards similar to those established by the Auditing Standards Board of the American Institute of Certified Public Accountants, for verifying the existence of collateral securing the Bank's advances, and shall regularly verifying the existence of the collateral securing its advances in accordance with such procedures.

§ 935.12 Collateral valuation; appraisals.

(a) Each Bank shall establish written procedures for determining the value of the collateral securing the Bank's advances, and shall determine the value of such collateral in accordance with such procedures.

(b) Each Bank shall apply the valuation procedures consistently and fairly to all borrowing members, and the valuation ascribed to any item of collateral by the Bank shall be conclusive as between the Bank and the member.

(c) A Bank may require a member to obtain an appraisal of any item of collateral, and to perform such other investigations of collateral as the Bank deems necessary and proper.

§ 935.13 Restrictions on advances to members that are not qualified thrift lenders.

(a) *Restrictions on advances to non-QTL savings associations.* A Bank shall not make a new advance or renew an existing advance to a savings association member after receiving written notification from the OTS that such savings association has been designated as a non-QTL and that the restrictions on advances that apply to non-QTLs should be enforced.

(b) *Repayment of advances by non-QTL savings associations.* (1) Upon receipt of written notification from the OTS that all advances held by a savings association must be repaid because the association has not requalified as a QTL member, the Bank, in conjunction with the non-QTL savings association member, shall develop a schedule for the prompt and prudent repayment of outstanding advances by that member, consistent with the member's and the Bank's safe and sound operations.

(2) Notice of the agreed upon schedule referred to in paragraph (b)(1) of this section shall be provided promptly by the Bank to the OTS and the Board.

(c) *Restrictions on advances to non-QTL members other than savings associations.* (1) Except as provided in paragraphs (c)(4) and (c)(5) of this section, a Bank may make or renew an advance to a non-QTL member that is not a savings association only under the following conditions:

(i) Non-QTL members of a Bank that are not savings associations may only receive advances for the purpose of funding or purchasing new or existing

residential housing finance assets, as determined pursuant to paragraph (c)(2) of this section;

(ii) The member holds Bank stock at the time it receives the advance in an amount equal to at least five percent of the outstanding principal amount of the member's total advances, divided by such member's ATIP, calculated pursuant to paragraph (c)(3) of this section; and

(iii) The aggregate amount of a Bank's advances to non-QTL non-savings association members shall not exceed 30 percent of the amount of the Bank's total outstanding advances, at the time such advances are made or renewed.

(2) Prior to approving an application for an advance, a Bank shall determine that the principal amount of all advances outstanding to the non-QTL non-savings association member at the time the advance is requested does not exceed the total book value of residential housing finance assets held by such member, which shall be determined using the member's most recent Report of Condition and Income or financial statement made available by the member.

(3) The Bank shall calculate each non-QTL non-savings association member's ATIP annually, between January 1 and April 15, based upon financial data as of December 31 of the prior calendar year.

(4) The requirements of paragraphs (c)(1), (2) and (3) of this section shall not apply to:

(i) A savings bank, as defined in section 3(g) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1813(g)); or

(ii) A Federal savings association in existence as such on August 9, 1989 that:

(A) Was a state chartered savings bank or cooperative bank before October 15, 1982; or

(B) Acquired its principal assets from an institution that was a state chartered savings bank or cooperative bank before October 15, 1982.

(5) The requirements of paragraph (c)(2) of this section shall not apply to applications from members for AHP or CIP advances.

(d) *Priority for QTL members.* (1) Except as provided in paragraph (d)(3) of this section, if a Bank is unable to meet the aggregate advance demand of all of its members, the Bank shall give priority to applications for advances from its QTL members, subject to the following considerations:

(i) The effect of making the advances on the financial integrity of the Bank;

(ii) The member's creditworthiness;

(iii) The availability of funding with maturities compatible with advance applications; and

(iv) Any other factors that the Bank determines to be relevant.

(2) The institutions identified in paragraph (c)(4) of this section shall be treated as QTLs for purposes of this paragraph.

(3) The requirements of paragraphs (d)(1) and (2) of this section shall not apply to a Bank's special, or otherwise limited, advance offerings.

(e) *Advance commitments.* The written advance agreement required by § 935.4(b)(2) of this part shall stipulate that the Bank shall not fund commitments for advances previously made to members whose access to advances is restricted pursuant to paragraph (a) or (c) of this section.

§ 935.14 Limitations on long-term advances.

(a) A Bank shall make long-term advances only for the purpose of enabling a member to fund or purchase new or existing residential housing finance assets.

(b)(1) Prior to approving an application for a long-term advance, a Bank shall determine that the principal amount of all long-term advances currently held by the member does not exceed the total book value of residential housing finance assets held by such member. The Bank shall determine the total book value of such residential housing finance assets, using the member's most recent Thrift Financial Report, Report of Condition and Income, or financial statement made available by the member.

(2) Applications for AHP and CIP advances are exempt from the requirements of this section.

§ 935.15 Capital stock requirements; unilateral redemption of excess stock.

(a) *Capital stock requirement for advances.* (1) At no time shall the aggregate amount of outstanding advances made by a Bank to a member exceed 20 times the amount paid in by such member for capital stock in the Bank.

(2) A non-QTL non-savings association member shall hold stock in the Bank at the time it receives an advance in an amount equal to at least the amount of stock required to be held pursuant to § 935.13(c)(1)(ii) of this part.

(b) *Unilateral redemption of excess stock.* A Bank, after providing 15 calendar days' advance written notice to a member, may unilaterally redeem that amount of the member's Bank stock that exceeds the stock requirements set forth in paragraph (a) of this section provided the minimum amount required in section 6(b)(1) of the Act is maintained.

§ 935.16 Advance participations.

A Bank may allow any other Bank to purchase a participation interest in any advance, and any other Bank may accept a participation interest therein, together with an appropriate assignment of security therefor, subject to the approval of the boards of directors of the relevant Banks and consistent with Board policy.

§ 935.17 Intradistrict transfer of advances.

A Bank may allow one of its members to assume an advance obligation of another of its members, provided the assumption complies with the requirements of this part governing the issuance of new advances. A Bank may charge an appropriate fee for processing the transfer.

§ 935.18 Special liquidity advances to savings associations.

(a) *Eligible institutions.* (1) A Bank, upon receipt of a written request from the Director of the OTS, may make short-term advances to a member savings association.

(2) Such request must certify that the member:

(i) Is solvent but presents a supervisory concern to the OTS because of the member's financial condition; and

(ii) Has reasonable and demonstrable prospects of returning to a satisfactory financial condition.

(b) *Terms and conditions.* Advances made by a Bank to a member savings association under this section shall:

(1) Be subject to all applicable collateral requirements of the Bank, this part and section 10(a) of the Act (12 U.S.C. 1430(a)); and

(2) Be at the interest rate applicable to advances of similar type and maturity that are made available to other members that do not pose such a supervisory concern.

§ 935.19 Liquidation of advances upon termination of membership.

If an institution's membership in a Bank is terminated, the Bank shall determine an orderly schedule for liquidating any indebtedness of such member of the Bank; provided that this section shall not require a Bank to call any such indebtedness prior to maturity of the advance, if so doing would be inconsistent with the Bank's safe and sound operation. The Bank shall deem any such liquidation a prepayment of the member's indebtedness, and the member shall be subject to any fees applicable to such prepayment.

Subpart B—Advances to Nonmembers

§ 935.20 Scope.

The requirements of subpart A of this part apply to this subpart, except as otherwise provided in §§ 935.21 and 935.22 of this subpart.

§ 935.21 Advances to the Savings Association Insurance Fund.

(a) A Bank may, upon receipt of a written request from the FDIC, make advances to the FDIC for the use of the Savings Association Insurance Fund. The Bank shall provide a copy of such request to the Board.

(b) Such advances shall:

(1) Bear a rate of interest not less than the Bank's marginal cost of funds, taking into account the maturities involved and reasonable administrative costs;

(2) Be for a maturity acceptable to the Bank;

(3) Be subject to any prepayment, commitment or other appropriate fees of the Bank; and

(4) Be adequately secured by collateral acceptable to the Bank.

§ 935.22 Advances to nonmember mortgagees.

(a) *Authority.* Subject to the provisions of the Act and this part, a Bank may make advances to an entity that is not a member of a Bank, if the entity qualifies as a nonmember mortgagee pursuant to section 10b of the Act (12 U.S.C. 143b) and paragraph (b) of this section.

(b) *Qualified nonmember mortgagee.* To qualify for an advance as a nonmember mortgagee, an entity must meet the following requirement:

(1) *Charter.* It must be chartered under law and have succession. A corporation, another entity that has rights, characteristics and powers under applicable law similar to those granted a corporation, or a government agency, meets this requirement;

(2) *Examination.* It must be subject, pursuant to statute or regulation, to the inspection, supervision and oversight of a Federal, state, or local government agency;

(3) *Lending activity.* (i) The entity's principal activity in the mortgage field must consist of lending its own funds, which may include appropriated funds in the case of a Federal, state or local government agency;

(ii) An entity meets the requirement in paragraph (b)(3)(i) of this section, notwithstanding that the majority of its total operations are unrelated to mortgage lending, if the majority of its mortgage activity conforms to this requirement;

(iii) An entity that acts principally as a broker for others making mortgage loans, or makes mortgage loans for the account of others, does not meet the requirement in paragraph (b)(3)(i) of this section; and

(4) *HUD approval.* The entity must be approved by the Department of Housing and Urban Development (HUD) as a "mortgagee" pursuant to HUD regulations (24 CFR part 203), under title II of the National Housing Act (12 U.S.C. 1707—1715z–20).

(c) *Bank advance policy for nonmember mortgagees.* Prior to establishing a program to lend to nonmember mortgagees, a Bank's board of directors shall adopt a policy on advances to nonmember mortgagees consistent with the requirements of the Act, this part, and general guidelines of the Board, as reflected in its resolutions, orders or manuals. Such policy shall be reviewed by the Bank's board of directors at least semiannually.

(d) *Terms and conditions*—(1) *Advance pricing*—(i) *Costs.* Each Bank making an advance to a nonmember mortgagee shall price the advance so as to cover the funding, operating and administrative costs associated with making the advance. The price of the advance may reflect the credit risk or other reasonable differential pricing criteria associated with lending to the nonmember mortgagee, provided that the criteria are applied equally to all nonmember mortgagee borrowers.

(ii) *Capital investment.* The price of the advance shall compensate the Bank for the lack of a capital stock investment by the nonmember mortgagee in the Bank. This requirement may be satisfied by requiring the nonmember mortgagee to maintain a compensating deposit balance with the Bank.

(2) *Limitation on advances.* The principal amount of any advance made to a nonmember mortgagee may not exceed 90 percent of the unpaid principal of the mortgage loans or securities described in paragraph (e) of this section that are pledged as security for the advance.

(e) *Collateral.* A Bank may grant an advance to a nonmember mortgagee pursuant to this section only on the security of the following collateral:

(1) Mortgage loans insured by the Federal Housing Administration of the Department of Housing and Urban Development, pursuant to title II of the National Housing Act (12 U.S.C. 1707—1715z–20); or

(2) Securities representing a *pro rata* share of the principal and interest payments due on a pool of mortgage loans, all of which mortgage loans meet the requirements of paragraph (e)(1) of this section. A Bank shall require a nonmember mortgagee using collateral as described in this paragraph (e)(2) to provide evidence that such securities are backed solely by mortgages of the type described in paragraph (e)(1) of this section.

(f) *Loss of nonmember mortgagee eligibility.* (1) A Bank shall require each nonmember mortgagee that applies for an advance under this section to agree in writing to inform the Bank promptly of any change in its status as a nonmember mortgagee.

(2) If a nonmember mortgagee borrower ceases to fulfill the eligibility requirements for a nonmember mortgagee pursuant to paragraph (b) of this section, a Bank may not extend a new advance or renew an existing advance to such entity, until the Bank is satisfied that the entity again fulfills the requirements for a nonmember mortgagee contained in this section.

(g) *Verification of nonmember mortgagee requirements.* A Bank may, from time to time, require a nonmember mortgagee borrower to provide evidence that such institution continues to satisfy all of the qualifications and requirements contained in this section.

PART 940—[REMOVED]

2. Part 940 is removed and reserved.

By the Federal Housing Finance Board.

Daniel F. Evans, Jr.,

Chairman.

[FR Doc. 92–23792 Filed 9–30–92; 8:45 am]

BILLING CODE 6725–1–M

OFFICE OF NATIONAL DRUG CONTROL POLICY

21 CFR Part 1401

Proposed Rule Regarding Public Availability of Information

AGENCY: Office of National Drug Control Policy.

ACTION: Proposed rule and request for comments.

SUMMARY: The Freedom of Information Act (FOIA) requires every Federal agency to make available to the public official documents and other records upon request, unless the material requested falls under one of several limited exceptions. FOIA also requires agencies to publish rules stating the time, place, fees, and procedures to apply in making records available to any person upon request. Further, Section 1803 of the Freedom of Information Reform Act of 1986 requires each agency to establish a system for recovering costs associated with

responding to requests for information under FOIA. The Office of Management and Budget (OMB) has issued guidelines that set standard government-wide definitions for assessing and collecting FOIA fees (OMB Fee Guidelines).

This proposed rule describes the procedures to be followed in submitting a FOIA request to the Office of National Drug Control Policy (ONDCP) and the procedures that ONDCP will use in responding to such requests. Included are provisions for assessing and collecting fees from FOIA requesters in accordance with the OMB Fee Guidelines.

DATES: Comments must be received on or before November 30, 1992.

ADDRESSES: Written comments should be sent to the Office of the General Counsel, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20500.

FOR FURTHER INFORMATION CONTACT: Paul Cellupica, Office of the General Counsel, Office of National Drug Control Policy, Washington, DC 20500, (202) 467–9840.

SUPPLEMENTARY INFORMATION: The Office of National Drug Control Policy was created by the Anti-Drug Abuse Act of 1988, Public Law 100–690, 21 U.S.C. 1501 *et seq.*, and was charged with the development and coordination of national policy toward illegal drugs.

List of Subjects in 21 CFR Part 1401

Archives and records, Freedom of information, Records.

For the reasons set out in the preamble, title 21, chapter III of the Code of Federal Regulations as proposed to be established at 57 FR 31160, July 14, 1992, is proposed to be amended by establishing a new part 1401 to read as follows:

CHAPTER III—OFFICE OF NATIONAL DRUG CONTROL POLICY

PART 1401—PUBLIC AVAILABILITY OF INFORMATION

Sec.

Authority: 5 U.S.C. 552, as amended.

§ 1401.1 Purpose.

The purpose of this part is to prescribe rules, guidelines and procedures to implement the Freedom of Information Act (FOIA), 5 U.S.C 552, as amended.

§ 1401.2 The Office of National Drug Control Policy—organization and functions.

(a) The Office of National Drug Control Policy (ONDCP) was created by the Anti-Drug Abuse Act of 1988, 21 U.S.C. 1501 *et seq.* The mission of ONDCP is to coordinate the anti-drug efforts of the various agencies and departments of the Federal government, to consult with States and localities and assist their anti-drug efforts, and to annually promulgate the National Drug Control Strategy. ONDCP is headed by the Director of National Drug Control Policy. The Director is assisted by a Deputy Director for Supply Reduction, a Deputy Director for Demand Reduction, and an Associate Director for State and Local Affairs.

(b) ONDCP has an Office of Public Affairs that is responsible for providing information to the press and to the general public. If members of the public have general questions about ONDCP that can be answered by telephone, they may call the Office of Public Affairs at (202) 467–9890. This number should not be used to make FOIA requests. All oral requests for information under FOIA will be rejected.

§ 1401.3 Definitions.

As used in this part, the following definitions shall apply:

(a) *Commercial-use request* means a request from or on behalf of one who seeks information for a cause or purpose that furthers the commercial, trade or profit interests of the requester or the person or institution on whose behalf the request is made. In determining whether a requester properly belongs in this category, ONDCP will consider how the requester intends to use the documents.

(b) *Direct costs* means those expenditures that ONDCP actually incur in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(c) *Duplication* means the process of making a copy of a document in response to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation. ONDCP will provide a copy of the material in a form that is usable by the requester unless it is administratively burdensome to do so.

(d) *Educational institution* means preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research.

(e) *Noncommercial scientific institution* means an institution that is not operated on a "commercial" basis as that term is referenced above, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(f) *Records* and/or *information* means all books, papers, manuals, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by ONDCP and preserved or appropriate for preservation by ONDCP as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the information value of the data in them, but does not include books, magazines or other material acquired solely for library purposes and through other sources, and does not include analyses, computations, or compilations of information not extant at the time of the request. The term "records" does not include objects or articles such as structures, furniture, paintings, sculptures, three-dimensional models, vehicles, and equipment.

(g) *Representative of the news media* means any person actively gathering news for a entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") that make their products available for purchase or subscription by the general public. Freelance journalists may be regarded as working for a news organization if

they can demonstrate a reasonable basis for expecting publication through that organization, even though not actually employed by it.

(h) *Request* means a letter or other written communication seeking records or information under FOIA.

(i) *Review* means the process of examining documents located in response to a commercial-use request to determine if that document or any portion of that document is permitted to be withheld. It also includes processing any document for disclosure (i.e., doing all that is necessary to excise those portions of the document not subject to disclosure under FOIA and otherwise preparing them for release). Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(j) *Search* means all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches should be performed in the most efficient and least expensive manner so as to minimize costs for both ONDCP and the requester; for example, line-by-line searches should not be undertaken when it would be more efficient to duplicate the entire document. Searches should be distinguished from "review" of material in order to determine whether the material is exempt from disclosure. Searches may be done manually or by computer using existing programming.

§ 1401.4 Records of other agencies.

Requests for records that originated in another agency and are in the custody of ONDCP shall be referred to the originating agency for processing, and the person submitting the request shall be so notified. Any decision made by the originating agency with respect to such records will be honored by ONDCP.

§ 1401.5 How to request records—form and content.

(a) Requests for records under FOIA must be submitted in writing, addressed to: Office of the General Counsel, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20500. The words "FOIA REQUEST" or "REQUEST FOR RECORDS" must be clearly marked on both the letter and the envelope. If the request is not so marked and addressed, the 10-day time limit imposed by § 1401.7 of this part shall not begin to run until the request has been received by the Office of the General Counsel and identified as a FOIA request. Due to security requirements, FOIA requests may not be delivered in person.

(b) Any ONDCP employee who receives a request shall promptly forward it to the Office of the General Counsel. Any ONDCP employee who receives an oral request made under the FOIA shall inform the person making the request of the provisions of this part requiring a written request.

(c) Each request must reasonably describe the record(s) sought, including when known: The specific event or action to which the request refers, if any; the name of the agency, office, organization or person that originated the record; the date or time period to which the request refers; the subject matter of the records requested; the type of document requested; the location of the record(s) requested; and any other pertinent information that would assist in promptly locating the record(s).

(d) When a request is not considered reasonably descriptive, or requires the production of voluminous records, or places an extraordinary burden on ONDCP, seriously interfering with its normal functioning to the detriment of the business of the Government, ONDCP may require the person or agent making the FOIA request to confer with an ONDCP representative in order to attempt to verify, and, if possible, narrow the scope of the request.

(e) Upon initial receipt of a request, the Office of the General Counsel shall determine which official or officials within ONDCP shall have the primary responsibility for collecting and reviewing the requested information and drafting a proposed response.

§ 1401.6 Initial determination.

The General Counsel or his or her designee shall have the authority to approve or deny requests received pursuant to these regulations. The decision of the General Counsel shall be final, subject only to administrative review as provided in § 1401.9.

§ 1401.7 Prompt response.

(a) The General Counsel or his or her designee shall either approve or deny a request for records within 10 working days (excluding Saturday, Sundays and Federal holidays) after receipt of the request unless additional time is required for one of the following reasons:

(1) It is necessary to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request; or

(2) It is necessary to consult with another agency having a substantial interest in the determination of the request or among two or more components of ONDCP that have a substantial interest in the subject matter of the request.

(b) When additional time is required for one of the reasons stated in paragraph (a) of this section, the General Counsel or his or her designee shall acknowledge receipt of the request within the 10 working day period and include a brief explanation of the reason for delay, indicating the date by which a determination will be forthcoming. An extended deadline adopted for one of the reasons set forth above may not exceed 10 additional working days.

§ 1401.8 Responses—form and content.

(a) When a requested record has been identified and is available, the General Counsel or his or her designee shall notify the person making the request as to where and when the record will be available for inspection or the copies will be available. The notification shall also advise the person making the request of any fees assessed under § 1401.10 of this part.

(b) A denial or partial denial of a request for a record shall be in writing signed by the General Counsel or his or her designee and shall include:

(1) The name and title of the person making the determination;

(2) Either a reference to the specific exemption under FOIA authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld, or a statement that, after diligent effort, the requested records have not been found or have not been adequately examined during the time allowed by § 1401.7, and that the denial will be reconsidered as soon as the search or examination is complete; and

(3) A statement that the denial may be appealed to the Director within 30 days of its receipt by the requester.

(c) If a requested record cannot be located from the information supplied, or is known to have been destroyed or otherwise disposed of, the person making the request shall be so notified and the legal authority for disposition shall be cited.

§ 1401.9 Appeal procedures.

(a) When the General Counsel or his or her designee denies a request for records in whole or in part, the person making the request may, within 30 days of receipt of the notice of denial, appeal the denial to the Director of ONDCP. The appeal must be in writing, addressed to the Director, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20500. The envelope should be clearly

labeled as a "Freedom of Information Act Appeal."

(b) The Director will act upon the appeal within 20 working days of its receipt. The Director may extend the 20-day period of time by any number of working days which could have been used by the General Counsel or his or her designee under § 1401.7 but which were not used in making the initial determination. The Director's action on an appeal shall be in writing and signed.

(c) If the decision is in favor of the requester, the Director shall order records promptly made available to the requester.

(d) A denial in whole or in part of a request on appeal shall set forth a brief explanation of the reasons for the decision, and shall inform the requester of his or her right to seek judicial review of the denial and ruling on appeal as provided in 5 U.S.C. 552(a)(4).

(e) No personal appearance, oral argument or hearing will ordinarily be permitted in connection with an appeal to the Director.

§ 1401.10 Fee schedule.

(a) There are four categories of requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. FOIA prescribes different levels of fees for each of these categories.

(1) *Commercial use requesters.* When a request for records is made for commercial use, charges will be assessed to cover all the costs of searching for, reviewing for release, and duplicating the records sought.

(2) *Educational and non-commercial scientific institutions.* When a request for records is made by an educational or a non-commercial scientific institution in furtherance of scholarly or scientific research, charges will be assessed to cover the cost of duplication alone, excluding charges for duplication of the first 100 pages.

(3) *Requests by representatives of the news media.* When a request for records is made by a representative of the news media for the purpose of news dissemination, charges will be assessed to cover the cost of duplication alone, excluding charges for duplication of the first 100 pages.

All other requests. When a request for records is made by a requester who does not fit into any of the preceding categories, charges will be assessed to cover the costs of searching for and duplicating the records sought, excluding charges for the first two hours of search time and the duplication of the first 100 pages. Moreover, requests from individuals for records about themselves will be treated under the Privacy Act of 1974, 5 U.S.C. 552a, which permits the assessment of fees for duplication costs only, regardless of the requester's characterization of the search.

(b) Fees for searches, review of records and duplication of records are charged as follows:

(1) *Search for records.* The charge for a manual search is calculated by determining the search time to the nearest quarter hour and multiplying that figure by the sum of the basic rate of pay per hour of the employee conducting the search plus 16 percent of that rate. The charge for a computer search is calculated by determining the search time to the nearest quarter hour and multiplying that figure by the sum of the basic rate of pay per hour of the employee conducting the search, plus 16 percent of that rate, plus the direct cost of the operation of the computer for that portion of time attributable to the search.

(2) *Review of records.* Only requesters who are seeking documents for commercial use will be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges will be assessed only for the initial review; i.e., the review undertaken the first time ONDCP analyzes the applicability of a specific exemption to a particular record or portion of a record. Charges will not be assessed for review at the administrative appeal level of the exemption(s) already applied. The cost for review will be calculated based on the salary of the category of the employee who actually performed the review plus 16 percent of that rate.

(3) *Duplication of records.* Copies made by routine photostatic copying shall be charged at the rate of $0.15 per page. If copies need to be made by other methods, the direct costs of such copies will be charged to the requester, as determined by the General Counsel.

(4) *Unsuccessful searches.* Requesters may be charged for unsuccessful or unproductive searches or for searches when records located are determined to be exempt from disclosure.

(5) *Other charges.* ONDCP will recover the direct costs of providing special services such as certifying that records are true copies, and sending records by special methods such as express mail.

(c) No fee will be charged by ONDCP when the routine costs of collecting and processing the fee equal to or exceed the amount of the fee. For purposes of this section, the routine costs of collecting and processing a fee chargeable under FOIA are estimated to be $15.00 for each FOIA request.

§ 1401.11 Payment of fees.

(a) The requester must agree to pay all fees that are chargeable under this section prior to issuance of the requested copies.

(b) Payment of fees shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasurer of the United States and mailed to the General Counsel, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20500.

(c) If it is anticipated that the fees chargeable under this section will amount to more than $25.00, and the requester has not indicated in advance his willingness to pay such fees, the requester shall be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In instances where the estimated fees will exceed $250.00, an advance deposit may be required. The notice or request for an advance deposit shall extend to the requester an offer to consult with ONDCP personnel in order to reformulate the request in a manner which will reduce the fees. A reformulated request shall be considered a new request, thus beginning a new 10 workday period for responding to the request.

(d) When a requester has previously failed to pay a fee in a timely fashion (i.e., within 30 days of the date of the billing), ONDCP may require the requester to demonstrate that he or she has, in fact, paid any outstanding fees from past requests, and to make an advance payment of the full amount of the estimated fee for the present request before ONDCP responds to that request.

(e) Interest charges on an unpaid bill may be assessed starting on the 31st day following the day on which the billing was sent. Interest shall be assessed at the rate prescribed in 31 U.S.C. 3717, and shall accrue from the date of the billing. The fact that a fee has been received by ONDCP, even if not processed, will suffice to stay the accrual of interest.

(f) To encourage the repayment of delinquent fees, ONDCP shall use the procedures described in the Debt Collection Act of 1982, 31 U.S.C. 3716–3719, including the use of collection agencies and disclosure to consumer reporting agencies.

§ 1401.12 Waiver of fees.

(a) Records shall be furnished without charge, or at a reduced charge, upon a determination by the General Counsel of ONDCP that: (1) Waiver or reduction of the fees is in the public interest because release of the requested information is likely to contribute significantly to public understanding of the operations or activities of ONDCP and is not primarily in the commercial interest of the requestor; or (2) Assessment of fees is not feasible.

(b) Upon written request, a written explanation will be provided as to why a request for waiver or reduction of FOIA fees was not granted.

(c) There is no right to an administrative appeal from a decision not to waive or reduce fees.

§ 1401.13 Aggregation of requests.

(a) When the General Counsel reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break down a request into a series of requests for the purpose of evading the assessment of fees, such requests may be aggregated and fees may be charged accordingly.

(b) In determining whether a series of requests shall be aggregated, the General Counsel will consider two factors: Whether the requests concern a single subject or two or more closely related subjects; and whether the requests were all made within a 30-day period. If a series of requests is made by multiple requesters, the General Counsel will also consider whether there is substantial evidence to support the conclusion that the requesters are acting in concert.

§ 1401.14 Records that are exempt from disclosure.

(a) Records described in 5 U.S.C. 552(b) are exempt from disclosure under FOIA. These include the following categories of records:

(1) Records that are specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order;

(2) Records related solely to the internal personnel rules and practices of an agency;

(3) Records specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), provided that such statute (i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Records of trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (i) Could reasonably be expected to interfere with enforcement proceedings, (ii) Would deprive a person of a right to a fair trial or an impartial adjudication, (iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy, (iv) Could reasonably be expected to disclose the identity of a confidential source including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines or law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (vi) Could reasonably be expected to endanger the life or physical safety of any individual.

§ 1401.15 Deletion of exempted information.

When requested records contain matters that are exempted under 5 U.S.C. 552(b), but such exempted matters are reasonably segregable from the remainder of the records, the records shall be disclosed by ONDCP with the necessary deletions. ONDCP shall attach to each such record a written justification for making the deletion or deletions. A single such justification shall suffice for deletions made in a group of similar or related records.

Bob Martinez,

Director.

[FR Doc. 92-23786 Filed 9-30-92; 8:45 am]

BILLING CODE 3180-02-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 17, 19, 70, 170, 194, 197, 250

[Notice No. 758; Re Notice No. 748; 73R-24P]

Taxpaid Distilled Spirits Used in Manufacturing Products Unfit for Beverage Use

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

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the comment period for Notice No. 748, a notice of proposed rulemaking (NPRM) published in the Federal Register on August 31, 1992 (57 FR 39536). Notice No. 748 concerned taxpaid distilled spirits used to manufacture nonbeverage products. ATF has received a request to extend the comment period in order to provide sufficient time for all interested parties to respond to the difficult and complex issues addressed in the NPRM.

DATES: Comments must be filed on or before October 30, 1992.

ADDRESSES: Send written comments to: Chief, Distilled Spirits and Tabacco Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221; ATTN: Notice No. 758.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Simon Distrilled Spirits and Tabacco Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226, (202) 927-8210.

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking

On August 31, 1992, ATF published Notice No. 748 in the Federal Register (57 FR 39536). Notice No. 748 proposed to amend and recodify the regulations currently in 27 CFR part 197 (Drawback on Distilled Spirits Used in Manufacturing Nonbeverage Products). The recodified regulations would be designated as 27 CFR part 17. In conjunction with the recodification, a number of amendments to the drawback regulations were proposed. The regulations currently in 27 CFR part 170, Subpart U (Manufacture and Sale of Certain Compounds, Preparations, and Products Containing Alcohol) would be distributed between part 19 and the new part 17. Conforming changes were proposed in 27 CFR parts 70, 194, and 250.

Significant proposed changes from current regulations include the following: Allowing manufacturers of nonbeverage products the option of filing claims for credit, if they are also proprietors of distilled spirits plants; simplifying the requirements for supporting data filed with drawback claims; and adding a section to provide for alternate methods of procedures when approved by the ATF Director. The proposed new regulations reflect the holdings of 19 published rulings and one published procedure. For complete details of the proposals, Notice No. 748 should be consulted.

A comment period of just 30 days was provided by Notice No. 748. Primarily this was due to the fact that most of the proposals had been previously aired for public comment by Notice No. 634 (52 FR 28286, July 29, 1987). Notice No. 634 provided a 90-day comment period. Further comments concerning Notice No. 634 were accepted during an additional period of 30 days under Notice No. 649 (52 FR 46628). In total, only four public comments were received.

Request for Extension of Comment Period

The comment period for Notice No. 748 was scheduled to close on September 30, 1992. On September 14, 1992, a request was filed with ATF for an extension of the comment period. This request was submitted by the Distilled Spirits Council of the United States, Inc., a national trade association representing the suppliers of over 80% of the distilled spirits sold in the United States. An extension of an additional 90 days was requested, due to the complexity of the issues raised in Notice No. 748.

In consideration of this request, ATF will grant an extension of the comment period. However, since most of the same issues have previously been aired for public comment during a sufficient length of time, ATF has determined that an extension of an additional 30 days is appropriate. Therefore, the comment period for Notice No. 748 will be extended until October 30, 1992. Drafting Information.

The principal drafter of this document is Steven C. Simon of the Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance: This notice is issued under the authority of 26 U.S.C. 7805.

Signed: September 23, 1992.

Stephen E. Higgins,

Director.

[FR Doc. 92-23755 Filed 9-30-92; 8:45 am]

BILLING CODE 4810-31-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA-11-7-5589; FRL-4512-6]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) adopted by the Santa Barbara County Air Pollution Control District (SBCAPCD) on February 20, 1990 and the San Diego County Air Pollution Control District (SDCAPCD) on May 21, 1991. The California Air Resources Board (ARB) submitted the SBCAPCD revision to EPA on December 31, 1990 and the SDCAPCD revision on May 30, 1991. The revisions concern SBCAPCD Rule 323, Architectural Coatings, which controls the emission of volatile organic compounds (VOCs) from architectural coatings and SDCAPCD Rule 67.16, Graphic Arts, which regulates the emission of VOCs from graphic arts operations. EPA has evaluated the revisions to SDCAPCD Rule 323 and SBCAPCD Rule 67.16 and is proposing a limited approval under sections 110(k)(3) and 301(a) of the Clean Air Act, as amended in 1990 (CAA or the Act) because these revisions strengthen the SIP. At the same time, EPA is proposing a limited disapproval under sections 110(k)(3) and 301(a) of the CAA because the rules do not meet the Part D, section 182(a)(2)(A) requirement of the CAA.

DATES: Comments must be received on or before November 2, 1992.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Rulemaking Section II (A-5-3), Air and Toxics Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814

Santa Barbara County Air Pollution Control District, 26 Castillian Drive, B-23, Goleta, CA 93117

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123-1095

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section II (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1195, FAX: 744-1076.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act) that included Santa Barbara County and the San Diego Area. 43 FR 8964; 40 CFR 81.305. Because Santa Barbara County and the San Diego Area were unable to reach attainment by the statutory attainment date of December 31, 1982, California requested under pre-amended section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.238, 52.222. Santa Barbara County and the San Diego Area did not attain the ozone standard by the approved attainment date. On May 26, 1988, EPA notified the Governor of California that SBCAPCD and the SDCAPCD portions of the SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to preamended section 172(b) as interpreted in EPA's pre-amendment guidance.[1] EPA's SIP-Call used that

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulations Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register

Continued

guidance to indicate the necessary corrections for specific nonattainment areas. Santa Barbara County is classified as moderate and San Diego County is classified as severe [2]; therefore, these two area are subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules to EPA for incorporation into its SIP on December 31, 1990 and May 30, 1991, including the rules being acted on in this notice. This notice addresses EPA's proposed action for SBCAPCD Rule 323 and SDCAPCD Rule 67.16. These submitted rules were found to be complete on February 28, 1991 and July 10, 1991 respectively pursuant to EPA's completeness criteria adopted on February 16, 1990 (55 FR 5830) and set forth in 40 CFR Part 51, Appendix V,[3] and are being proposed for limited approval and limited disapproval.

SBCAPCD Rule 323 controls the emission of VOCs from architectural coatings [4] and SDCAPCD Rule 67.16 controls the emission of VOCs from graphic arts operations. VOCs contribute to the production of ground level ozone and smog. SBCAPCD's revised Rule 323 was originally adopted as part of SBCAPCD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone. SBCAPCD's revision of Rule 323 and SDCAPCD's new Rule 67.16 have been adopted to meet EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for SBCAPCD Rule 323 and SDCAPCD Rule 67.16.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among the provisions of the CAA is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the preamended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to SDCAPCD Rule 67.16 is entitled, "Control of Volatile Organic Emissions from Existing Stationary Sources Volume VII: Graphic Arts—Rotogravure and Flexography," EPA document # EPA–450/2–78–033. Further interpretations of EPA policy are found in the Blue Book. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP. For some source categories, such as architectural coatings, EPA has not published a CTG[5].

While the EPA has not developed a CTG for architectural coatings at this time, on May 12, 1989, the ARB approved a suggested control measure (SCM) for the architectural coatings category. The SCM was developed by the California Technical Review Group (TRG)[6] in cooperation with the paints and coatings industry and was intended to serve as a model architectural coatings rule for ozone nonattainment areas (e.g., the SBCAPCD) in California. The SCM built upon previous architectural coating model rules adopted by ARB in 1977 and 1986. EPA supported the ARB's adoption of the SCM as demonstrating progress toward attainment of the NAAQS for ozone and representing standards which are technically and economically feasible. SBCAPCD Rule 323 is modeled after the SCM.

SBCAPCD Rule 323, Architectural Coatings, controls emissions of VOCs from the use of architectural coatings within the district. SDCAPCD Rule 67.16 is a new rule which was adopted to control the emission of VOCs from the operation of all continuous web or single sheet fed graphic arts printing, processing, laminating or drying operations within the district.

EPA has evaluated SBCAPCD Rule 323 and SDCAPCD Rule 67.16 for consistency with the CAA, EPA regulations, and EPA policy and has found that these submitted rules serve to strengthen the SIP. SBCAPCD Rule 323 will achieve VOC reductions from: amended definitions and additional administrative requirements; new emission limits for previously exempt speciality coatings; and revised emission limits for several specialty coating categories. The revisions include:

- Approximately thirty new or revised definitions which further clarify the applicable coating categories and delete non-substantive verbiage;
- New VOC content limits for approximately eighteen specialty categories through consolidation with other categories; and
- The elimination of one and addition of eight administrative requirements.

For a detailed description of the revision, readers should contact the individual listed previously in the notice. In summary, the revisions strengthen the limits in and improve the enforceability of the current SIP rule.

- SDCAPCD Rule 67.16 will achieve VOC reductions by:
- Setting emission limits for sources previously unregulated and the option of using control equipment in lieu of compliant materials;
- Adding cleanup requirements;
- Requiring daily recordkeeping of the type and amount of graphic arts material used; and
- Adding test methods to determine compliance.

Furthermore, the addition of the more stringent limits in SBCAPCD Rule 323

Notice" (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] Santa Barbara County and the San Diego Area retained their designation and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[3] EPA has since adopted completeness criteria pursuant to section 110(k)(1)(A) of the amended Act to be codified at 40 CFR part 51, appendix V. See 56 FR 42216 (August 26, 1991).

[4] Architectural coatings include but are not limited to: Ordinary house and trim paints, lacquers, varnishes, concrete curing compounds, industrial maintenance coatings, stains, primers, sealers, undercoaters, roof coatings, traffic coatings, and water sealers.

[5] EPA has not developed a Control Technique Guideline (CTG) for architectural coatings. As required under section 183(e) of the CAA, EPA is investigating the development of a CTG or regulations for consumer and commercial products which will include paints, coatings, and solvents (e.g. architectural coatings).

[6] The TRG is a statewide regulatory work group comprised of representatives from the Air Resources Board, various California air pollution control districts, and the federal Environmental Protection Agency. In California, the TRG has been instrumental in assisting the ARB and various air pollution control districts with the development of control strategies which represent RACT for a variety of pollutants, including various VOC categories. On May 24, 1989, the TRG approved the Suggested Control Measure adopted by ARB making it the "Air Resources Board—California Air Pollution Control Officers Association Suggested Control Measure for Architectural Coatings".

and SDCAPCD Rule 67.16 should lead to more emission reductions.

Although the approval of SBCAPCD Rule 323 and SDCAPCD Rule 67.16 will strengthen the SIP, these rules still contain deficiencies which were required to be corrected pursuant to the section 182(a)(2)(A) requirements of Part D of the CAA.

SBCAPCD Rule 323 contains the following deficiencies: (1) Allowance for "equivalent" compliance test methods without EPA review and approval; and (2) a lack of VOC definition in the rule. (SBCAPCD's Rule 102—Definitions has not been approved into the SIP; if approved, the lack of a VOC definition in Rule 323 would no longer be a deficiency). A detailed discussion of rule deficiencies can be found in the Technical Support Document for Rule 323, which is available from the U.S. EPA, Region 9 office. SDCAPCD Rule 67.16 contains one deficiency. This deficiency allows the use of a test method (Bay Area Air Quality Management District Test Method 30) for measurement of VOC content in non-heatset inks that has been found by EPA to be unacceptable for this intended use. A detailed discussion of this deficiency can be found in the Technical Support Document for Rule 67.16, which is available from the U.S. EPA, Region 9 office. Because of these deficiencies, the rules are not approvable pursuant to section 182(a)(2)(A) of the CAA because they are not consistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book and may lead to rule enforceability problems.

Because of the above deficiencies, EPA cannot grant full approval of these rules under section 110(k)(3) and Part D. Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of SBCAPCD submitted Rule 323 and SDCAPCD submitted Rule 67.16 under section 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of these rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rules do not fully meet the requirements of Part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin at the time EPA publishes final notice of this disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c).

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

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

Limited approvals under sections 110 and 301, and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA 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 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

EPA's limited disapproval of the State request under sections 110 and 301, and subchapter I, Part D of the CAA does not affect any existing requirements applicable to small entities. 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.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 18, 1992.

John Wise,

Acting Regional Administrator.

[FR Doc. 92–23874 Filed 9–30–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[CA–12–4–5560; FRL–4515–9]

Approval and Promulgation of Implementation Plans, California State Implementation Plan Revision; Placer, San Diego and San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) adopted by the Placer County Air Pollution Control District (APCD) on September 25, 1990, the San Joaquin Valley Unified APCD on September 19, 1991, and the San Diego County APCD on October 16, 1990. The California Air Resources Board (CARB) submitted the Placer County APCD revisions to EPA on April 5 and May 30, 1991. CARB submitted the San Diego

County APCD and the San Joaquin Valley Unified APCD revisions to EPA on April 5, 1991 and January 28, 1992, respectively. The revisions concern the adoption of four rules: Placer County Rule 213, Gasoline Transfer into Stationary Storage Containers, Placer County Rule 215, Transfer of Gasoline into Tank Trucks, Trailers and Railroad Tank Cars at Loading Facilities, San Joaquin Valley Unified Rule 463.2, Storage of Organic Liquids, and San Diego County Rule 61.4, Transfer of Volatile Organic Compounds into Vehicle Fuel Tanks. These rules control the emission of volatile organic compounds (VOCs) from the transfer of organic liquids, primarily gasoline, to storage, cargo and fuel tanks. EPA has evaluated each of these rules and is proposing to approve them under section 110(k)(3) as meeting the requirements of section 110(a) and part D of the Clean Air Act, as amended in 1990 (CAA or the Act).

DATES: Comments must be received on or before November 2, 1992.

ADDRESSES: Comments may be mailed to: Esther J. Hill, Rulemaking Section I (A-5-4), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814
Placer County Air Pollution Control District, 11464 B. Avenue, Auburn, CA 95603
San Joaquin Valley Unified Air Pollution Control District, 2314 Mariposa Street, Fresno, CA 93721
San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123-1095

FOR FURTHER INFORMATION CONTACT: William E. Davis, Jr., Rulemaking Section I (A-5-4), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1183.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included the Sacramento Metro Area (which includes Placer County with the exception of those areas in the County included in the Lake Tahoe Air Basin),[1] the San Joaquin Valley Area, and the San Diego Area. 43 FR 8964, 40 CFR 81.305. Because these areas were unable to meet the statutory attainment date of December 31, 1982, California requested under pre-amended section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987.[2] 40 CFR 52.238. On May 26, 1988, EPA notified the Governor of California that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

On March 20, 1991, the San Joaquin Valley Unified APCD was formed. This District has authority over the San Joaquin Valley Air Basin which includes Fresno, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare Counties, and over a portion of Kern County. The Kern County APCD has authority over the remainder of Kern County which lies in the Southeast Desert Air Basin.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in EPA's pre-amendment guidance.[3] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. Placer County (excluding the Tahoe Basin) and the San Joaquin Valley Area APCDs are classified as serious and the San Diego Area is classified as severe; therefore, these areas are subject to the RACT fix-up requirement and the May 15, 1991 deadline.[4]

The State of California submitted many revised RACT rules for incorporation into its SIP on April 5, 1991 and January 28, 1992, including the rules being acted on in this notice. This notice addresses EPA's proposed action for Placer County Rules 213, Gasoline Transfer into Stationary Storage Containers and 215, Transfer of Gasoline into Tank Trucks, Trailers and Railroad Tank Cars at Loading Facilities; San Joaquin Valley Unified Rule 463.2, Storage of Organic Liquids; and San Diego County Rule 61.4, Transfer of Volatile Organic Compounds into Vehicle Fuel Tanks. The rules submitted on April 5, 1991 were found to be complete on May 21, 1991 pursuant to EPA's completeness criteria adopted on February 16, 1990 (55 FR 5830) and set forth in 40 CFR part 51 appendix V.[5] The rule submitted on January 28, 1992 was found to be complete on April 3, 1992 pursuant to EPA's completeness criteria adopted August 26, 1991 (see footnote 5). All four rules are being proposed for approval into the SIP.

Each of these rules controls VOC emissions from organic liquids. Placer County Rules 213 and 215 control emissions from the transfer of gasoline to storage and cargo tanks, respectively. San Joanquin Valley Rule 463.2 controls emissions from storage tanks primarily through engineering requirements. San Diego County Rule 61.4 controls vapors displaced from vehicle fuel tanks at service stations by transferring them back into the storage tank (commonly called Stage II vapor control). VOCs contribute to the production of ground level ozone and smog. The rules were adopted as part of each district's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA

[1] On November 6, 1991, the two Placer County nonattainment areas, which were part of the Sacramento Air Quality Maintenance Area (AQMA) and Mountain Counties Air Basin non-AQMA, were combined and redefined as part of the Sacramento Metro Area (55 FR 56694).

[2] This extension applied to Fresno, San Joaquin and Stanislaus Counties which, at the time of the extension, were three of the eight counties comprising the San Joaquin Valley Air Basin. This extension was not requested for Kern, Kings, Madera, Merced and Tulare Counties, which are the remaining five counties in the Basin. Thus, the attainment date for these five latter counties remained December 31, 1982.

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[4] The Placer County nonattainment area and both the San Joaquin Valley and San Diego Areas retained their designation and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[5] EPA has since adopted completeness criteria pursuant to section 110(k)(1)(A) of the amended Act. See 56 FR 42216 (August 26, 1991) to be codified at 40 CFR part 51, appendix V.

requirement. The following is EPA's evaluation and proposed action for these rules.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 3. Among the provisions of the CAA is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepare a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTGs applicable to the Placer County Rule 213 are "Control of Volatile Organic Compounds from Bulk Gasoline Plants", EPA Document 450/2–77–035, and "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems", EPA Document 450/2–78–051. The CTG applicable to Placer County Rule 215 is "Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals", EPA Document 450/2–77–026. The CTGs applicable to San Joaquin Valley Rule 463.2 are "Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks", EPA Document 450/2–48–047, and "Control of Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks", EPA Document 450/2–77–036. There is no CTG applicable to San Diego County's Rule 61.4 which deals with Stage II vapor controls. However, a document entitled "Technical Guidance—Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities, Volumes I and II", EPA Documents 450/3–91–022a and –022b, is available for guidance. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 3. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

The Placer County APCD submitted Rule 213, Gasoline Transfer into Stationary Storage Containers, and submitted Rule 215, Transfer of Gasoline into Tank Trucks, Trailers and Railroad Tank Cars at Loading Facilities, include the following significant changes from the current SIP rules:

- Air Pollution Control Officer (APCO) discretion to allow the use of alternative control systems has been deleted from both rules.
- Test methods for determining compliance with the rules' standards have been added.
- Recordkeeping provisions requiring daily throughput logs have been added to both rules.
- Definitions of relevant terms have been expanded.

The San Joaquin Valley Unified APCD submitted Rule 463.2, Organic Liquid Storage, includes the following significant changes from the eight existing country SIP rules which this rule will replace:

- Specific limits for the gap (space) between the floating roof seal and the tank wall have been set for the whole District. Three of the eight counties did not have gap specifications in their SIP rules. In some cases, these limits are more stringent than those in several of the individual county SIP rules which have gap limits. Also, gap limits for secondary toroid seals are now specified.
- APCO discretion to allow the use of any control equipment other than that specified in the rule has been deleted.
- A provision has been added that new seal designs may be approved by the APCO if EPA approves the designs and publish the approval pursuant to 40 CFR 60.114(b).
- Recordkeeping provisions providing tank contents and storage temperature data have been added which were not a part of three of the existing SIP rules.
- Test methods to determine compliance have been added which were not a part of three of the SIP rules. Also, the test methods have been expanded and clarified from those methods in SIP rules that had test methods.

The San Diego County APCD submitted Rule 61.4, Transfer of Volatile Organic Compounds into Vehicle Fuel Tanks, includes the following significant changes from the current SIP:

- Recordkeeping provisions for throughput by facilities claiming throughput exemptions have been added.
- CARB certification procedures have been added which helps to insure that the equipment has a 95% vapor control efficiency.
- Provisions have been added that make it a violation to operate altered or damaged equipment.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, Placer County's Rules 213 and 215, San Joaquin Valley Unified's Rule 463.2, and San Diego County's Rule 61.4 are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

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

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

SIP approvals under sections 110 and subchapter I, Part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis for a SIP approval would constitute Federal inquiry into the economic reasonableness of the State action. The CAA 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 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On

January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 22, 1992.

John Wise,

Acting Regional Administrator.

[FR Doc. 92–23863 Filed 9–30–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 63

[FRL–4516–2]

National Emission Standards for Hazardous Air Pollutants for Source Categories: Perchloroethylene Emissions From Dry Cleaning Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of new information on control of perchloroethylene (PCE) emissions during clothing transfer at dry cleaning facilities which use transfer dry cleaning machines.

SUMMARY: National emission standards for hazardous air pollutants (NESHAP) for PCE dry cleaning facilities were proposed in the **Federal Register** on December 9, 1991 (56 FR 64382). This notice announces the availability of new information on control of PCE emissions during clothing transfer at dry cleaning facilities which use transfer machines. This notice solicits public review of this information and public comment on the use of this information in developing NESHAP limiting PCE emissions from dry cleaning facilities.

DATES: *Comments:* Written comments must be received on or before November 2, 1992.

Public Meeting: If anyone requests a public meeting by October 11, 1992 a public meeting will be held on October 16, 1992. This meeting will begin at 9 a.m., and it will be held at the EPA Environmental Research Center Annex Auditorium, located at Alexander Drive and Highway 54 in Research Triangle Park, North Carolina. Persons interested in attending the public meeting should call Ms. Julia Stevens at (919) 541–5578 to verify that a public meeting will be held.

Request to Speak at Public Meeting: Persons wishing to make oral statements at this public meeting must contact Ms. Julia Stevens at (919) 541–5578 by October 11, 1992.

ADDRESSES: *Comments:* Written comments should be submitted (in duplicate, if possible) to: Air Docket Section (LE–131), Attention Docket Number A–88–11, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Docket: A special docket category, Docket Number A–88–11, Category IV–M, containing new information on control of PCE emissions during clothing transfer from dry cleaning facilities using transfer machines is available for public inspection between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the EPA's Air Docket, at the address above. A reasonable fee may be charged for copying. Anyone wishing to have a copy of the contents of this docket category mailed to them should contact Mr. George Smith at (919) 541–1549.

FOR FURTHER INFORMATION CONTACT: Mr. George Smith at (919) 541–1549 or Mr. Fred Porter at (919) 541–5251, Standards Development Branch (MD–13), U.S. EPA, Research Triangle Park, NC 27711.

SUPPLEMENTARY INFORMATION: The information presented in this notice is organized as follows:

I. Introduction

On December 9, 1991, NESHAP limiting PCE emissions from new and existing dry cleaning facilities were proposed in the **Federal Register** (56 FR 64382). The reader is referred to the December 9, 1991 **Federal Register** notice for the detailed requirements included in the proposed NESHAP.

To summarize briefly, however, the NESHAP proposed to subcategorize the source category of PCE dry cleaning facilities into two subcategories: Those using transfer machines and those using dry-to-dry machines. In addition, the NESHAP proposed to exempt from all regulatory requirements, except the notification requirements, existing transfer machines which consume less than 1,100 liters per year (300 gallons per year) of PCE and existing dry-to-dry machines which consume less than 830 liters per year (220 gallons per year) of PCE.

Basically, the NESHAP proposed that all owners and operators of transfer and dry-to-dry machines consuming more than the amounts of PCE noted above install and operate carbon absorbers, refrigerated condensers, or equivalent equipment on the vents from these dry cleaning machines. In addition, the NESHAP also proposed that these owners and operators follow pollution prevention practices, such as good operation and maintenance, to prevent liquid or vapor leaks of PCE from dry cleaning equipment. As discussed below, however, the NESHAP proposed no requirements to limit emissions of PCE form clothing transfer at dry cleaning facilities using transfer machines.

This notice summarizes information regarding control of PCE emissions during clothing transfer at dry cleaning facilities using transfer machines which the EPA was unaware of at the time of proposal of the NESHAP. It also summarizes information the EPA was unaware of at proposal of the NESHAP concerning the likelihood that dry cleaning facilities might purchase and install new transfer machines, as well as the use of a piece of dry cleaning equipment referred to within the dry cleaning industry as a "reclaimer."

This notice solicits public comment on this information. It also solicits public comment on what, if any, requirements should be incorporated into final NESHAP at promulgation to limit emissions of PCE from clothing transfer at dry cleaning facilities using transfer machines. In addition, this notice solicits public comment on what, if any, requirements should be incorporated into the final NESHAP at promulgation limiting PCE emissions from new transfer machines (if any new machines of this type are installed) and what, if any, requirements should be included in the final NESHAP at promulgation limiting PCE emissions from reclaimers. This notice does not reopen the public comment period on the proposed NESHAP; only public comments pertaining to the specific issues mentioned in this notice will be reviewed and considered by the EPA in

developing the final NESHAP for promulgation.

II. Background

Under Title III of the 1990 CAA, NESHAP limiting PCE emissions from major source dry cleaning facilities (that is, those which emit or have the potential to emit more than 10 tons per year of PCE) must reflect maximum achievable control technology (MACT). For new major source dry cleaning facilities, MACT can be no less stringent than the level of emission control currently achieved at the best performing similar source. Thus, it would appear that the final NESHAP promulgated for new major source dry cleaning facilities which use transfer machines must include requirements requiring use of the technologies outlined below (or equivalent technologies) for control of PCE emissions during clothing transfer. Specific public comment is solicited on whether the emission control achieved by the technologies outlined below controlling PCE emissions during clothing transfer must be or should be considered MACT for new major source dry cleaning facilities which use transfer machines.

For existing major source dry cleaning facilities, MACT can be no less stringent than the level of emission control currently achieved at the best performing 12 percent of similar sources. Far fewer than 12 percent of existing major source dry cleaning facilities which use transfer machines use any of the technologies outlined below for control of PCE emissions during clothing transfer. MACT must, however, also reflect the maximum degree of emission control which the Administrator determines is achievable, considering the costs and any non-air quality health and environmental and energy impacts associated with this emission control. Specific public comment, therefore, is solicited on whether the emission control achieved by the technologies outlined below for controlling PCE emissions during clothing transfer should be considered MACT for existing major source dry cleaning facilities which use transfer machines (that is, achievable considering the costs and other impacts associated with the use of these technologies). If these technologies are considered MACT for existing major source dry cleaning facilities using transfer machines, the final NESHAP promulgated would include requirements requiring the use of these technologies (or equivalent technologies) at existing major source dry cleaning facilities using transfer machines.

Only a small percentage of dry cleaning facilities, however, are considered major sources. Most dry cleaning facilities are considered area sources (that is, they emit less than 10 tons per year of PCE). Under Title III of the 1990 CAA Amendments, NESHAP for new and existing area sources may reflect MACT or they may reflect generally available control technology (GACT). The December 9, 1991 **Federal Register** notice proposed that NESHAP for both new and existing area source dry cleaning facilities reflect GACT and the reader is referred to that **Federal Register** notice for further detail. This notice is not reopening for public comment this proposed action to base NESHAP for area source dry cleaning facilities on GACT.

GACT is the maximum degree of emission control the Administrator determines is reasonable, considering the costs and other impacts associated with this emission control. GACT may or may not be as stringent as MACT. In addition, as with MACT, GACT may be different for new area sources than for existing area sources.

Specific public comment is solicited on whether the technologies outlined below should be considered generally available (that is, GACT) for controlling PCE emissions during clothing transfer at new and/or existing area source dry cleaning facilities using transfer machines. In other words, should use of these technologies be considered reasonable in light of the costs and other impacts associated with their use, and should the final NESHAP promulgated include requirements requiring the use of these technologies (or equivalent technologies) at new and/or existing area source dry cleaning facilities using transfer machines.

The new information outlined below on control of PCE emissions during clothing transfer at dry cleaning facilities using transfer machines has been included in Docket A–88–11 in Docket Category IV–M. Docket Category IV–M is available as an information packet. This information packet was mailed to all those who commented on the December 9, 1991 proposed NESHAP. Anyone else who wishes to receive the information packet will be sent a copy (see **ADDRESSES**).

III. Emissions of PCE During Clothing Transfer

There are two types of dry cleaning machines: Transfer machines and dry-to-dry machines. A transfer machine consists of two pieces of equipment: A washer and a dryer. At the conclusion of the washing cycle, clothing is manually transferred from the washer to the dryer. Since this clothing is damp with PCE, this step is a significant source of PCE emissions at dry cleaning facilities using transfer machines.

A dry-to-dry machine consists of a single piece of equipment which serves as both a washer and a dryer. As a result, there is no clothing transfer step at facilities using dry-to-dry machines. Since the clothing transfer step is eliminated, there are no PCE emissions during clothing transfer.

The table below illustrates the significance of PCE emissions during clothing transfer in comparison to overall PCE emissions at both transfer and dry-to-dry machines.

EMISSION FACTORS FOR DRY CLEANING MACHINES

[Pounds of PCE Per 100 Pounds of Clothes]

Source	Transfer	Dry-to-Dry
Machine vent	4.0	3.1
Clothing transfer	2.5	0
Equipment leaks	2.5	2.5
Total	9.0	5.6

Nearly a third of all PCE emissions from transfer machines are created during clothing transfer. Overall, transfer machines emit almost twice the PCE emissions that dry-to-dry machines do.

IV. Control of Emissions During Clothing Transfer

At the time of the December 9, 1991 proposal of NESHAP to limit PCE emissions from dry cleaning facilities, the EPA was unaware of any technologies for controlling PCE emissions during clothing transfer at facilities using transfer machines. Public comments submitted in response to the proposal, however, as well as additional information gathered by EPA in response to these public comments, indicate there are several technologies which have been developed recently to control these emissions.

These technologies are termed transfer enclosures for the purpose of further discussion. A transfer enclosure captures or collects PCE emissions during clothing transfer at dry cleaning facilities using transfer machines. Transfer enclosures have been subclassified into two types: Hamper enclosures and room enclosures.

In addition to the use of transfer enclosures, another approach to control PCE emissions during clothing transfer is to replace the transfer machine with a dry-to-dry machine. This approach eliminates the need for clothing transfer,

thus eliminating PCE emissions from this step.

As mentioned earlier, in response to public comments submitted on the December 9, 1991 proposed NESHAP, EPA has attempted to gather all available information on various technologies for capturing and controlling PCE emissions during clothing transfer at dry cleaning facilities using transfer machines. This notice summarizes the results of these efforts and EPA believes all available information has been collected. There may, however, remain other technologies the EPA is unaware of for controlling PCE emissions during clothing transfer at dry cleaning facilities using transfer machines and, as a result, this notice solicits information on any other technologies that may be in use for this purpose.

A. Hamper Enclosures

Clothing is transferred from the washer to the dryer at dry cleaning facilities using tranfer machines in a clothing hamper. A hamper enclosure basically consists of a hood or canopy that effectively encloses the clothing hamper and the open door of the washer when clothing is removed from the washer and placed in the clothing hamper. The same or a different hood or canopy is used to effectively enclose the clothing is transferred from the hamper to the dryer. In addition, the clothing hamper is covered or enclosed when it is wheeled from the washer to the dryer, as well as when it is not in use, to prevent escape of PCE vapors from the hamper.

Hamper enclosures are constructed of a material impervious to PCE vapors, typically clear plastic. The use of clear plastic permits the operator to see into the enclosure. Openings or slits in the hamper enclosure provide access, allowing one to reach into the enclosure provide access, allowing one to reach into the enclosure, open the door of the washer or dryer, transfer clothing to or from the hamper, and then close the door of the washer or dryer. Sleeves and gloves may be attached to these openings or slits, so that when one reaches into the enclosure, their arms and hands are covered.

If the hamper enclosure has openings through which PCE vapors could escape during clothing transfer, fans are used to draw room air into the enclosure to prevent PCE vapors from escaping. Captured PCE vapors are routed to a control device for control. If the hamper enclosure has no openings through which PCE vapors could escape, fans are not necessary.

Hamper enclosures currently sell for about $8,000. Operation and maintenance costs are reported to be negligible, and in some cases, particularly for larger dry cleaning facilities, the use of hamper enclosures are reported to "pay for themselves" through the savings generated as a result of additional PCE solvent recovery.

B. Room Enclosures

A room enclosure, as the name implies, basically consists of a room built to enclose the transfer machine—both the washer and the dryer. The enclosure is constructed of a frame covered by a material impervious to PCE vapors. The frame is typically metal, but could be constructed of other materials, and the material covering the frame is typically clear plastic. A fan is turned on to draw air from outside the room enclosure through louvered door opening(s) in the enclosure during clothing transfer to collect PCE vapors. The PCE vapors collected during clothing transfer are routed to a control device for control.

The louvered door opening(s) in the room enclosure typically consist of strips of plastic hanging from the top of the door openings to the floor. These strips of plastic are moved aside to permit entry to or exit from the room enclosure.

Room enclosures currently sell for about $10,000–$12,000. Operation and maintenance costs are reported to be negligible.

C. Replacement by Dry-to-Dry machines

Each of the technologies mentioned above are used with a transfer machine to control PCE emissions during clothing transfer. Another approach to control PCE emissions from clothing transfer is to replace the transfer machine with a dry-to-dry machine. Dry-to-dry machines perform both the washing cycle and the drying cycle in the same machine. The use of a dry-to-dry machine, therefore, eliminates the clothing transfer step. As a result, this eliminates PCE emissions from clothing transfer.

A new dry-to-dry machine can cost as much as $25,000 or more depending on the size of machine purchased. In addition to the cost of purchasing a new dry-to-dry machine, however, there would be additional costs associated with the removal of the existing transfer machine, since many dry cleaning facilities would probably have to remove the existing transfer machine to make space for a new replacement dry-to-dry machine.

D. Emission Control Performance

Information on the emission control performance of transfer enclosures is limited. Transfer enclosures have been developed relatively recently, and only a small number of dry cleaning facilities currently use them. Based on observation during visits to sites using transfer enclosures and the use of "engineering judgment," the hamper enclosure is considered to be about 75 percent effective in reducing PCE emissions during clothing transfer at dry cleaning facilities using transfer machines. The room enclosure is considered to be about 95 percent effective. In comparison, replacement of an existing transfer machine with a new dry-to-dry machine is 100 percent effective since the clothing transfer step is eliminated.

V. Preliminary Economic Impact Assessment

As discussed in the December 9, 1991 Federal Register notice proposing NESHAP for dry cleaning facilities using PCE, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires that special consideration be given during the development of regulations to the potential impacts of regulation on small business entities. Dry cleaning firms are generally small businesses and a large portion of these businesses are family-owned and operated. Many of these businesses are characterized by limited cash flows, marginal profitability and, as a result, do not have ready access to large amounts of capital for investment in the business. Thus, the economic impact analysis undertaken to support the proposed NESHAP focused on the potential impact of the NESHAP on small dry cleaning facilities.

A. Projected Economic Impacts at Proposal

The reader is referred to the December 9, 1991 Federal Register notice for a full discussion of the economic impact analysis undertaken to support the proposed NESHAP. Two significant potential impacts examined in the analysis were the number of firms projected to experience difficulty raising capital to purchase the emission control equipment required by the NESHAP and the number of projected closures that might occur as a result of adopting the NESHAP. To summarize briefly, the analysis projected that some 570 facilities could experience difficulty raising the capital necessary to comply with the proposed NESHAP and some 30 facilities could close as a result of adopting the proposed NESHAP.

The proposed NESHAP included an exemption from the major requirements of the NESHAP for facilities with gross annual revenues of less than $100,000. (This exemption was expressed in terms of an annual PCE consumption level.) If the exemption level was lowered to only exempt facilities with gross annual revenues of less than $50,000, some 360 additional facilities could experience difficulty raising the capital necessary to comply and some 150 additional facilities could close. As a result, the total number of facilities that might experience difficulty raising the capital necessary to comply with the NESHAP could increase from about 670 to about 1,030, and the total number of facilities that might close could increase from about 30 to about 180.

If the exemption level was lowered to only exempt facilities with annual gross revenues of less than $25,000, some further 1,260 additional facilities could experience difficulties raising the capital necessary to comply and some further 280 additional facilities could close. As a result, the total number of facilities that might experience difficulties raising the capital necessary to comply with the NESHAP could increase from about 670 to about 2,290, and the total number of facilities that might close could increase from about 30 to about 460.

B. Preliminary Assessment of Economic Impacts

To examine the potential economic impacts that might be associated with including requirements to limit PCE emissions from clothing transfer in the final NESHAP adopted at promulgation, a preliminary assessment of these impacts was undertaken. This preliminary assessment employed the same analytic methodology as that used in the economic analysis undertaken to support the proposed NESHAP. Due to a number of concerns, however, which are discussed further below, this preliminary assessment is considered limited in scope.

The major limitation is the assumption that all dry cleaning facilities with transfer machines could purchase and install a hamper enclosure at a cost of $3,000 to limit PCE emissions from clothing transfer. The EPA has a number of concerns with this assumption (as discussed below), but given the time and difficulty associated with developing a more sophisticated methodology that might model a "monopolistic market" environment, EPA chose to use this assumption to examine the potential economic impacts under what might be termed a "best case" scenario.

The complete preliminary economic impact assessment is included in docket category IV-M. To briefly summarize the projected impacts, however, the preliminary assessment projects that if requirements based on the use of hamper enclosures (or equivalent equipment) were included in the proposed NESHAP to limit PCE emissions from clothing transfer, some 490 additional dry cleaning facilities might experience difficulty raising the capital necessary to comply with the NESHAP and some additional 5 facilities might close. Thus, including such requirements in the proposed NESHAP could increase the number of firms projected to experience difficulty raising the capital necessary to comply with the NESHAP from about 670 to about 1,160. The projected number of facilities that might close could increase from about 30 to about 35.

As mentioned, the proposed NESHAP include an exemption from the major requirements of the NESHAP for dry cleaning facilities with annual gross revenues of less than $100,000. The projections cited above also assume this exemption level would apply to requirements to limit PCE emissions from clothing transfer. If the exemption level for the requirements to control PCE emissions from clothing transfer was lowered to exempt only facilities with annual gross revenues of less than $50,000 (but the $100,000 exemption level still applied to all other major requirements of the NESHAP), some 310 additional facilities could experience difficulties raising the capital necessary to comply and some 130 additional facilities might close. Thus, the total projected number of facilities that might experience difficulty raising the capital necessary to comply with the NESHAP could increase from about 670 to about 1,470 and the total number of facilities that might close could increase from about 30 to about 165.

Finally, if the exemption level for requirements to control PCE emissions from clothing transfer was lowered to only exempt facilities with annual gross revenues of less than $25,000, the preliminary assessment projects some further 300 additional facilities could experience difficulties raising the capital necessary to comply and some further 130 additional facilities might close. Thus, the total projected number of facilities that might experience difficulties raising the capital necessary to comply with the NESHAP could increase from about 670 to about 1,770 and the total number of facilities that might close could increase from about 30 to about 295.

The magnitude of these potential impacts associated with including requirements in the NESHAP to limit PCE emissions from clothing transfer is considered quite significant. As discussed in the December 9, 1991 **Federal Register** notice proposing the NESHAP for PCE dry cleaning facilities, the costs of the emission control equipment necessary to comply with the proposed NESHAP were estimated to be in the range of $6,000 to $8,000. As mentioned above, the preliminary assessment assumes the equipment necessary to control PCE emissions from clothing transfer at dry cleaning facilities using transfer machines would cost about $3,000. Thus, the magnitude of these potential impacts projected by the preliminary assessment is not surprising.

C. Concerns With Preliminary Assessment

As mentioned earlier, the EPA believes this preliminary assessment of potential economic impacts associated with requirements to limit PCE emissions from clothing transfer at dry cleaning facilities using transfer machines is limited in scope. As a result, the projected impacts cited above are viewed as a "best case" scenario. A more sophisticated analysis would probably indicate the potential impacts would be much more severe.

The basic reason stems from the critical assumption in the preliminary assessment that requirements to limit PCE emissions from clothing transfer would be based on the use of hamper enclosures and that dry cleaning facilities using transfer machines would experience costs of only $3,000 to purchase and install a hamper enclosure (or equivalent equipment). It seems highly questionable that the actual costs dry cleaning facilities would experience to obtain this technology would remain as low as $3,000. It seems more likely the actual costs would increase, perhaps substantially, above $3,000 due to the demand created within the dry cleaning industry for this technology by including such requirements in the NESHAP.

Currently, there is only one vendor actively selling hamper enclosures and this vendor has obtained patents on his device. This vendor has sold about 20 hamper enclosures. A second vendor has sold hamper enclosures in the past of a somewhat different design than that of the first vendor's. This second vendor no longer does so, however, due to a patent dispute with the first vendor. A third vendor has designed a hamper enclosure, also of a somewhat different design than that of the fist vendor's, and has experimented with its use. However, this third vendor appears reluctant to pursue sales at this point.

Including requirements in the NESHAP to control PCE emissions during clothing transfer, based on the use of hamper enclosures (or equivalent equipment), therefore, could give rise to a monopoly market for hamper enclosures. In this environment, the cost of a hamper enclosure would likely increase to that of alternatives—such as the room enclosure.

This alternative, however, is also currently offered only by a single vendor and this vendor has obtained patents on his device. A second vendor has built several custom designed room enclosures which appear quite effective in capturing PCE vapors from clothing transfer. To date, however, the room enclosures built by this second vendor have not included a control device to control the PCE vapors collected by the room enclosure; the collected PCE vapors are merely collected and released to the atmosphere outside the dry cleaning facility.

Consequently, even if requirements included in the NESHAP to limit PCE emissions from clothing transfer were based on the use of hamper enclosures (or equivalent equipment), the actual costs experienced by dry cleaning facilities to comply with these requirements could increase substantially beyond the $3,000 cost assumed in the preliminary assessment. Eventually other approaches for controlling PCE emissions from clothing transfer would be developed, which would ultimately serve to limit increases in the costs of transfer enclosures. At this point, however, it is very difficult to determine what the actual costs would be of regulatory requirements to control PCE emissions from clothing transfer.

In addition to these concerns regarding the actual costs of transfer enclosures, concerns also exist regarding the ability of the vendor or vendors of these transfer enclosures to supply a large market. Under Title III of the CAA Amendments, all sources for which NESHAP are developed must be in compliance with these NESHAP within three years following adoption or promulgation of the NESHAP.

Currently, about half of the estimated 30,000 commercial dry cleaning facilities are believed to operate with annual gross revenues of more than $100,000. About a third of these facilities are believed to use transfer machines. Thus, including requirements to control PCE emissions from clothing transfer in the final NESHAP adopted at promulgation would create a demand for as many as 5,000, or possibly more, transfer enclosures.

The vendor of the hamper enclosure has only sold about 20 hamper enclosures. The vendor of the room enclosure has only sold some 5 room enclosures. While this does not mean these vendors could not supply several thousand transfer enclosures within three years, it does raise concerns about their ability to adequately supply the potential market.

This in turn, raises concerns about the fate of existing dry cleaning facilities using transfer machines, if the NESHAP required control of PCE emissions during clothing transfer. Many facilities that could afford to purchase transfer enclosures and who tried to purchase enclosures might be unable to obtain and install them within the three year time frame provided by the Act. This would require the EPA to take enforcement action against these dry cleaning facilities and this, quite possibly, could result in a substantial number of closures.

As mentioned earlier, another approach to limit PCE emissions from clothing transfer at dry cleaning facilities using transfer machines is to replace the transfer machines with dry-to-dry machines. The costs of a new dry-to-dry machine, however, can be as much as $25,000 or more. As a result the potential impacts associated with including requirements in the NESHAP which effectively required replacement of existing transfer machines with new dry-to-dry machines would be much more severe than the potential impacts cited above. Consequently, the EPA is inclined to conclude that control of PCE emissions from clothing transfer through replacement of existing transfer machines with new dry-to-dry machines at existing major source dry cleaning facilities using transfer machines is not achievable within the meaning of the Act. Similarly, the EPA is inclined to conclude this is also not generally available (within the meaning of the Act) at existing area source dry cleaning facilities using transfer machines.

In light of the magnitude of the potential impacts projected by the preliminary assessment, as well as the concerns outlined above which lead the EPA to believe these impacts could be much greater, the EPA is inclined to conclude that control of PCE emissions from clothing transfer at existing major source dry cleaning facilities using transfer machines is not achievable within the meaning of the Act. In addition, the EPA is also inclined to conclude that control of PCE emissions from clothing transfer at existing area source dry cleaning facilities using transfer machines is not generally available within the meaning of the Act.

As mentioned above, this notice solicits public comment on whether control of PCE emissions during clothing transfer is achievable (within the meaning of the Act) for existing major source day cleaning facilities and/or generally available for existing area source dry cleaning facilities using transfer machines. This judgment must take into consideration the potential impacts and concerns outlined above. Specific comment on the potential impacts and concerns outlined above is solicited. In addition, if control of PCE emissions from clothing transfer is considered achievable and/or generally available, specific comment is solicited on whether the NESHAP should include requirements based on the use of hamper enclosures, room enclosures, replacement of transfer machines by new dry-to-dry machines, or some other approach.

VI. New Transfer Machines

At the time of proposal of the December 9, 1991 NESHAP for PCE dry cleaning facilities, the EPA believed that no new transfer machines had been sold in recent years and that no new transfer machines would be sold in the future. All new dry cleaning machines were expected to be dry-to-dry machines, mainly because of the problems arising from occupational exposure to PCE emissions that may occur during clothing transfer at dry cleaning facilities using transfer machines.

The permissible exposure limit (PEL) for PCE of 25 parts per million (ppm), which the Occupational Safety and Health Administration (OSHA) had adopted, was felt to be a major driving force from transfer machines to dry-to-dry machines. In fact, EPA believed that transfer machines would not be able to meet this OHSA PEL.

Public comment has stated otherwise, however, claiming that maybe half of the existing dry cleaning facilities using transfer machines currently are able to meet the 25 ppm PEL for PCE. Also, the Eleventh Circuit Appeals Court recently remanded the 25 ppm PEL to the OSHA for reconsideration. This action may have the effect of lessening the movement from transfer machines to dry-to-dry machines in the dry cleaning industry.

Public comment has also stated that manufacturers of petroleum solvent transfer machines could sell these machines for use as new PCE transfer machines. Thus, new PCE transfer machines could easily and quickly be offered for sale in response to a demand for such machines. Transfer machines are claimed to be less costly and more productive than dry-to-dry machines, and this could lead to a resurgence in

their use. Accordingly, this notice solicits public comment on the likely market for new transfer machines under the proposed NESHAP.

In addition, this notice also solicits public comment on what requirements, if any, should be included in the final NESHAP promulgated for new PCE transfer machines. Such requirements could require control of PCE emissions from only the washer and dryer vents, could require control of PCE emissions from the washer and dryer vents and during clothing transfer, or could require all new dry cleaning machines to limit PCE emissions to the levels that can be achieved through the use of new dry-to-dry machines. This last approach could effectively preclude the use of new transfer machines.

As mentioned earlier, MACT for new major source dry cleaning facilities must be no less stringent than the level of emission control achieved by the best similar source. As a result, it would appear that the final NESHAP adopted at promulgation must include requirements based on the use of room enclosures (or equivalent equipment) to limit PCE emissions from clothing transfer at new major source dry cleaning facilities using new transfer machines. The EPA, therefore, is inclined to conclude that control of PCE emissions from clothing transfer based on the use of room enclosures (or equivalent equipment) at new major source dry cleaning facilities using new transfer machines is achievable within the meaning of the Act.

On the other hand, EPA is inclined to conclude that control of PCE emissions from clothing transfer based on the use of new dry-to-dry machines (or equivalent equipment) at new major source dry cleaning facilities using new transfer machines is not achievable within the meaning of the Act. The additional control of PCE emissions achieved through the use of a new dry-to-dry machine over the use of a room enclosure appears marginal, particularly in comparison with the increased costs of a new dry-to-dry machine over a room enclosure. The incremental cost effectiveness of emission control, for example, is about $17,000 per ton of PCE.

Specific public comment is solicited on EPA's inclination to conclude that requirements in the NESHAP based on the use of room enclosures to limit PCE emissions from clothing transfer at new major source dry cleaning facilities that use new transfer machines are achievable within the meaning of the Act. In addition, specific public comment is solicited on EPA's inclination to conclude that requirements based on the use of new dry-to-dry machines are not achievable within the meaning of the Act.

With regard to new area source dry cleaning facilities that use new transfer machines, the EPA is included to conclude that requirements based on the use of hamper enclosures (or equivalent equipment) to limit PCE emissions from clothing transfer are generally available within the meaning of the Act. On the other hand, requirements to limit PCE emissions from clothing transfer based on the use of room enclosures (or equivalent equipment), as well as new dry-to-dry machines (or equivalent equipment) are not generally available within the meaning of the Act.

The additional control of PCE emissions achieved through the use of a hamper enclosure appears quite reasonable compared to the costs of a hamper enclosure. The incremental cost effectiveness of emission control, for example, is about $700 per ton of PCE.

The additional control of PCE emissions achieved through the use of a room enclosure over the use of a hamper enclosure appears marginal, particularly in comparison with the increased cost of a room enclosure over a hamper enclosure. The incremental cost effectiveness of emission control, for example, is about $9,000 per ton of PCE. It is the same with the use of a new dry-to-dry machine.

Specific public comment is solicited on EPA's inclination to conclude that requirements in the NESHAP based on the use of hamper enclosures to limit PCE emissions from clothing transfer at new area source dry cleaning facilities that use new transfer machines are achievable within the meaning of the Act. In addition, specific public comment is solicited on EPA's inclination to conclude that requirements based on the use of room enclosures or new dry-to-dry machines are not achievable within the meaning of the Act.

With regard to requirements based on the use of hamper enclosures (or equivalent equipment), it seems reasonable to assume that few, if any, owners/operators, or for that matter, potential new entrants into the dry cleaning industry, with ready access to sufficient capital to purchase a new transfer machine, would experience difficulty raising the additional capital necessary to purchase a hamper enclosure (or equivalent equipment). It also seems reasonable to assume that few, if any, owners/operators, or for that matter potential new entrants into the dry cleaning industry, would find that the additional capital requirements associated with purchasing a hamper enclosure would adversely alter the potential profitability of purchasing a new transfer machine enough to deter this decision.

VI. Reclaimers

EPA was also unaware at proposal of a piece of dry cleaning equipment referred to within the industry as a reclaimer. It appears that reclaimers are being sold for use with dry-to-dry machines. Used with a reclaimer, a dry-to-dry machine is operated in a manner similar to that of a washer in a transfer machine. Clothing is washed in the dry-to-dry machine and then transferred to the reclaimer for drying. The use of a reclaimer is said to increase the capacity of a dry cleaning facility which uses a dry-to-dry machine.

Although no new transfer machines may have been sold in recent years, a number of reclaimers have been sold. Buying a reclaimer is less expensive than buying a new dry-to-dry machine, and thus buying a reclaimer offers a less expensive means of increasing a dry cleaner's capacity than the purchase of another dry-to-dry machine.

This notice solicits information on the number of reclaimers presently being used within the dry cleaning industry and on potential future sales of reclaimers.

The EPA believes the use of a reclaimer essentially converts a dry-to-dry machine into a transfer machine. As a result, the EPA believes existing dry-to-dry machine which are operated in conjunction with a reclaimer should be considered as transfer machines—not dry-to-dry machines—under the NESHAP. Also, the EPA believes that adding a new reclaimer to an existing dry-to-dry machine should result in that machine (both the dry-to-dry machine and the reclaimer) being considered a new transfer machine under the NESHAP. This notice, therefore, solicits public comment on this approach to the use of reclaimers under the NESHAP.

VIII. Public Meeting

Written comments should be submitted to the docket at the address provided under **ADDRESSES** above and by the date provided under **DATES** above. As mentioned above, in addition to requesting written comments, the EPA has also scheduled a public meeting to solicit oral comments. This public meeting does not constitute a public hearing for purposes of section 307(d)(5) of the CAA Amendments of 1990. A public hearing was scheduled to be held on January 8, 1992 in Research Triangle Park, North Carolina, following proposal of the NESHAP on December 9, 1991. No

one requested to speak at this public hearing, so no public hearing was held. Since the opportunity for a public hearing has been provided, the public comment period will not remain open for thirty days following the public meeting. Nevertheless, some parties may want to provide additional written comments in response to what is said at the meeting (if one is held) and, as a result, the comment period will remain open for fifteen days following the public meeting. The time, date, and location of the public meeting are provided under **ADDRESSEES** above. The EPA recognizes that the brief period provided for public comment is shorter than normal. However, the EPA is bound by a Consent Decree with the U.S. District Court for the District of Oregon to promulgate the NESHAP for PCE dry cleaning facilities. This requires that public review and comment of the information presented in this notice be done as rapidly as possible, and will not allow for a longer comment period. It should be noted that the focus of the public comments requested is narrow, and the EPA believes the material in Category IV–M of Docket A–88–11 can be adequately reviewed within this time period. In addition, as mentioned earlier, the comment period on other issues is not being reopened; only comments pertaining to the specific issues mentioned in this notice will be accepted.

Dated: September 9, 1992.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 92–23873 Filed 9–30–92; 8:45 am]

BILLING CODE 6560–50–M

Notices

Federal Register
Vol. 57, No. 191
Thursday, October 1, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Agency Information Collection

AGENCY: ACTION, the Federal Domestic Volunteer Agency.

ACTION: Information collection submitted to the Office of Management and Budget (OMB) for review.

SUMMARY: The following form has been submitted to OMB for approval under the Paperwork Reduction Act (44 U.S.C. chapter 35). This entry is not subject to 44 U.S.C. 3504(h). Copies of the submission(s) may be obtained from the ACTION Clearance Officer.

DATES: OMB and ACTION will consider comments received within 60 days from the date of this publication. Send comments to both:

Janet Smith, Clearance Officer, ACTION, 1100 Vermont Ave., NW., Washington, DC 20525, Tel: (202) 606–5245

Steve Semenuk, Desk Officer for ACTION, Office of Management and Budget, 3002 New Executive Office Bldg., Washington, DC 20503

Title of Form: Vista Pre-Application Inquiry.

ACTION Forms No.(s): A–1024.

Need and Use: This document is used by the ACTION State Program Offices to ascertain qualifications of potential VISTA sponsors.

Type of Request: Pre-Application Inquiry.

Respondent's Obligation to Reply: Optional—determined by State Program Office.

Description of Respondents: Public agencies and private non-profits, including small, grass-roots organizations.

Frequency of Collection: Once, as determined by State Office.

Estimated Number of Annual Responses: 200.

Average Burden Hours per Response: 1¼.

Estimated Annual Reporting or Disclosure Burden: 250 hours.

Dated: September 24, 1992.

Jane A. Kenny,

Director, ACTION.

[FR Doc. 92–23769 Filed 9–30–92; 8:45 am]

BILLING CODE 6050–28–M

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Government Processes; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Governmental Processes of the Administrative Conference of the United States. The meeting will be held at 2 p.m., on Thursday, October 22, 1992, at the Administrative Conference of the United States, suite 500, 2120 L Street, NW., Washington, DC (Library, 5th Floor).

The Committee will meet to discuss a study by Professor Ronald F. Wright, Wake Forest University School of Law, on right to counsel issues arising in agency proceedings.

For further information concerning this meeting, contact Deborah S. Laufer, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC (Telephone: 202–254–7020).

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available upon request.

Dated: September 25, 1992.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 92–23841 Filed 9–30–92; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

DEPARTMENT OF LABOR

Immigration and Nationality Act (Section 210A); Seasonal Agricultural Services Worker Shortage Determination

AGENCIES: Office of the Secretary, United States Department of Agriculture; Office of the Secretary, United States Department of Labor.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Secretaries of Agriculture and Labor (the Secretaries) have determined jointly that the number of additional aliens who should be admitted to the United States or who should otherwise acquire the status of aliens lawfully admitted for temporary residence under section 210A of the Immigration and Nationality Act (INA), to meet a shortage of workers to perform seasonal agricultural services (SAS), during fiscal year (FY) 1993, is zero.

Notice is also given that the Secretaries have calculated jointly the annual numerical limitation on the number of such aliens who should be admitted or who should otherwise acquire the status of aliens lawfully admitted for temporary residence, under section 210A of the INA. The annual numerical limitation for FY 1993 is 506,883. This number represents the upper limit on the number of aliens who may be authorized for admission or adjustment of status.

The actual number of aliens to be admitted or whose status is to be adjusted for FY 1993 is the zero "shortage number" announced above.

DATES: This notice is effective during the period October 1, 1992, through September 30, 1993, unless superseded by a subsequent notice.

FOR FURTHER INFORMATION CONTACT: Mr. Gary B. Reed, DOL; telephone (202) 523–6007, or Mr. Al French, USDA; telephone (202) 720–4737.

SUPPLEMENTARY INFORMATION: Section 303 of the Immigration Reform and Control Act of 1986 added section 210A to the Immigration and Nationality Act (INA). Section 210A of the INA requires that before the beginning of each FY, starting with FY 1990 and ending with

FY 1993, the Secretaries determine jointly, according to a specific statutory formula, the number of additional aliens (if any) who should be admitted to the United States or who should otherwise acquire the status of aliens lawfully admitted for temporary residence to meet a shortage of workers to perform SAS. These aliens are known as replenishment agricultural workers (RAWs) and the number of such workers to be admitted in each FY is known as the "shortage number." The INA further provides that the Attorney General shall provide for the admission of a number of RAWs equal to the shortage number, or, if less, a number of RAWs equal to the annual numerical limitation which is established by a statutory formula contained in section 210A(b) of the INA. The Secretaries make the calculation of the annual numerical limitation concurrently with their determination of the shortage number. Regulations regarding the procedure used in the determination of the shortage number and calculation of the annual numerical limitation have been promulgated jointly by the Secretaries. Identical versions of the regulations were published in the **Federal Register** on January 2, 1990 (55 FR 106), and are located at 7 CFR part 1e and 29 CFR part 503. Criteria for admission as a RAW are established by the Immigration and Naturalization Service (INS) in regulations located at 8 CFR part 210a.

Because the INS was unable to complete adjudication of all special agricultural worker (SAW) applications by the end of FY 1992, the Secretaries will recalculate the annual numerical limitation prior to the end of each fiscal quarter. This will be done each time by including all those aliens who have been finally adjudicated as SAWs subsequent to any earlier determination of the annual numerical limitation, and by adjusting the number of SAWs who worked in SAS to take into account the increase in the number of reportable workers who obtained SAW status. These quarterly recalculation will continue until the Secretaries are advised by INS and the Director of the Bureau of the Census (the Director) that all applications for SAW status have been finally adjudicated. Thereafter, the annual numerical limitation will be calculated annually for the entire FY.

In recognition of the uncertainties associated with agricultural production, section 210A(a)(7) of the INA contains emergency procedures for adjusting the shortage number. The procedures through which a group or association representing employers or potential employers of individuals who perform SAS may request an increase in the shortage number are set forth in 7 CFR 1e.20 and 29 CFR 503.20. Until the Secretaries are advised by INS and the Director that all applicants for SAW status have been finally adjudicated, if an emergency increase in the shortage number is granted pursuant to 7 CFR 1e.20 and 29 CFR 503.20, but additional RAWs would otherwise be barred from entry due to the annual numerical limitation, the Secretaries will recalculate the annual numerical limitation based upon the most recent data available from INS and the Director.

Authority: 8 U.S.C. 1161.

Done at Washington, DC, this 25th day of September 1992.

Daniel A. Sumner,

Assistant Secretary for Economics, U.S. Department of Agriculture.

Done at Washington, DC, this 24th day of September 1992.

Lynn Martin,

Secretary of Labor.

[FR Doc. 92-23790 Filed 9-30-92; 8:45 am]

BILLING CODES 3410-01-M, 4510-23-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 25, 1992.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404-W Admin. Bldg., Washington, DC 20250, (202) 690-2118.

Revision

- Animal and Health Inspection Service

Animal Welfare

APHIS 7001, 7002, 7003, 7006, 7006A, 7009, 7011, 7019, 7020, 7023, VS 18-1A, 18-5

Recordkeeping; On occasion; Weekly; Semi-annually; Annually State or local governments; Businesses or other for-profit; Nonprofit institutions; Small businesses or organizations; 72,773 responses; 237,382 hours

Jerry Depoyster 301 436-7586

Extension

- Agricultural Marketing Service

Dried Prunes Produced in California—Marketing Order No. 993

Recordkeeping; On occasion; Monthly; Annually Farms; Businesses or other for-profit; Small Businesses or organizations; 2,182 responses; 552 hours

Mark Hessel (202) 720-3923

New Collection

Food and Nutrition Service

State Automated Systems Study

One-time only

State or local governments; 5,457 responses; 2,651 hours

Martha A. Mayes (703) 305-2147

Larry Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 92-23789 Filed 9-30-92; 8:45 am]

BILLING CODE 3410-01-M

DEPARTMENT OF COMMERCE

Performance Review Board; Membership

This notice announces membership of the Departmental Performance Review Board (PRB) in the Department of Commerce. The purpose of the Departmental PRB is to review the performance appraisals of appointing authorities and their immediate deputies who are in the SES, and SES members whose ratings are initially prepared by their respective appointing authorities.

These Departmental PRB members are appointed for a two year term. The list of members is as follows:

Organization/member/type of appointment	Term expiration
Office of the Secretary (Immediate Office):	
Mary Ann Fish, Deputy Assistant Secretary for White House Liaison (NC)	11/94
General Counsel:	
Lynn S. West, Deputy General Counsel (NC)	11/94

Organization/member/type of appointment	Term expiration
Barbara S. Fredericks, Assistant General Counsel for Administration (C)	11/94
Chief Financial Officer and Assistant Secretary for Administration:	
Otto J. Wolff, Deputy Assistant Secretary (NC)	11/94
Mark E. Brown, Director, Office of Budget (C)	11/94
Minority Business Development Agency:	
William H. Bailey, Deputy Director (NC)	11/93
Bharat K. Bhargava, Assistant Director for Operations (NC)	11/93
Economics and Statistics Administration:	
Susanne H. Howard, Deputy Under Secretary (NC)	11/94
Allan H. Young, Chief Statistician, Bureau of Economic Analysis (C)	11/94
O. Bryant Benton, Associate Director for Field Operations, Bureau of the Census (C)	11/94
Harry A. Scarr, Deputy Assistant Secretary for Statistical Affairs (C)	11/94
Frederick T. Knickerbocker, Executive Director (C)	11/94
Technology Administration:	
Lyle H. Schwartz, Director, Materials Science and Engineering Laboratory (NIST) (C)	11/93
Guy W. Chamberlin, Director of Administration (NIST) (C)	11/93
George A. Sinnott, Director for International and Academic Affairs (NIST) (C)	11/94
Lura J. Powell, Chief, Biotechnology Division (NIST) (C)	11/93
John C. Williams, Director, Office of Technology Policy (C)	11/94
National Telecommunications and Information Administration:	
Charles M. Rush, Chief Scientist (C)	11/93
William F. Maher, Jr., Associate Administrator, Office of Policy Analysis and Development (C)	11/93
Economic Development Administration:	
Richard S. Seline, Deputy Assistant Secretary for Program Support (NC)	11/94
John E. Corrigan, Atlantic Regional Director (C)	11/94
International Trade Administration:	
Augustine D. Tantillo, Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods (NC)	11/93
Peter A Cashman, Director, Office of the Pacific Basin (C)	11/93
George Muller, Director, Office of Export Trading Company Affairs (C)	11/93
Francis J. Sailer, Deputy Assistant Secretary for Investigations, Import Administration (NC)	11/94
Lawrence B. Ryan, Deputy Assistant Secretary for Technology and Aerospace Industries (NC)	11/94
Holly A. Kuga, Director, Office of Agreements Compliance (C)	11/93
Roland L. McDonald, Director, Office of Antidumping Compliance (C)	11/93
Christina M. Bolton, Deputy Assistant Secretary for Basic Industries (NC)	11/93
National Oceanic and Atmospheric Administration:	
Thomas N. Pyke, Assistant Administrator for National Environmental Satellite, Data and Information Services (C)	11/93
James W. Brennan, Deputy General Counsel for Atmospheric and Ocean Research and Services (C)	11/93
Ronald D. McPherson, Director, National Meteorological Center (C)	11/93
Thomas A. Campbell, General Counsel (NC)	11/93
Carmen J. Blondin, Deputy Assistant Secretary for International Interests (C)	11/93
Alan R. Thomas, Deputy Assistant Administrator for Oceanic and Atmospheric Research (C)	11/93
Richard A. Edwards, Deputy Assistant Secretary (NC)	11/93
William W. Fox, Jr., Assistant Administrator for National Marine Fisheries Service (NC)	11/93
Patent and Trademark Office:	
Stephen G. Kunin, Deputy Assistant Commissioner for Patents (C)	11/93
boyd L. Alexander, Deputy Assistant Commissioner for Information Systems (C)	11/93
Bureau of Export Administration:	
John A. Richards, Deputy Assistant Secretary for Industrial Resources Administration (C)	11/93
James LeMunyon, Deputy Assistant Secretary for Export Administration (NC)	11/93
William V. Skidmore, Director, Office of Antiboycott Compliance (C)	11/93

Persons desiring further information about the Departmental PRB or its membership may contact Mr. Thomas J. Lambiase, Executive Secretary to the Departmental PRB, Office of Human Resources Management, Herbert C. Hoover Building, Room 5102, Washington, DC 20230 (202) 377-3453.

Dated: September 24, 1992.

Thomas J. Lambiase,

Executive Secretary, Departmental Performance Review Board, Department of Commerce.

[FR Doc. 92-23780 Filed 9-30-92; 8:45 am]

BILLING CODE 3510-BS-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) will hold a public meeting on October 13-15, 1992. The meeting will begin on October 13 at 1 p.m. and adjourn on October 15 at 4:30 p.m. The GMT will meet in the Conference Room of the Pacific States Marine Fisheries Commission in the Oregon Department of Fish and Wildlife (ODFW) building, 2501 SW First Avenue, suite 200, Portland, Oregon, on October 13 and on October 15. On October 14 *ONLY*, beginning at 8 a.m., the meeting site will be moved to the Multnomah Falls Room at the Red Lion Hotel-Portland Downtown, 310 SW Lincoln Street, Portland, OR.

The GMT will: (1) Prepare the annual Stock Assessment and Fishery Evaluation document and final recommendations for 1993 groundfish harvest levels; (2) discuss environmental and socio-economic analyses of proposed Pacific whiting and salmon bycatch measures; and (3) review the individual quota proposal under Council consideration. Other issues of importance to the West Coast groundfish industry may also be discussed. The GMT will prepare recommendations on these issues for presentation to the Council at its upcoming meeting on November 17-20 in Seattle, WA.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 S.W. First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Dated: September 25, 1992.

Richard H. Schaefer,

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

[FR Doc. 92-23826 Filed 9-30-92; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in Uruguay

September 25, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: October 2, 1992.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International

Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In exchange of notes dated July 27, 1992 and August 18, 1992, the Governments of the United States and Uruguay agreed to extend their current bilateral agreement through June 30, 1993.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the period July 1, 1992 through June 30, 1993.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State (202) 647–3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 56 FR 60101, published on November 27, 1991).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 25, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991, pursuant to the Bilateral Cotton and Wool Textile Agreement, effected by exchange of notes dated December 30, 1983 and January 23, 1984, as amended and extended, between the Governments of the United States and Uruguay; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on October 2, 1992, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and wool textile products in the following categories, produced or manufactured in Uruguay and exported during the twelve-month period beginning on July 1, 1992 and extending through June 30, 1993, in excess of the following levels of restraint:

Category	Twelve-month restraint limit [1]
334	104,155 dozen.
335	89,661 dozen.
410	2,713,607 square meters of which not more than 1,550,634 square meters shall be in Category 410-A [2] and not more than 2,498,242 square meters shall be in Category 410-B [3]
433	16,203 dozen.
434	24,173 dozen.
435	48,820 dozen.
442	34,535 dozen.

[1] The limits have not been adjusted to account for any imports exported after June 30, 1992.

[2] Category 410-A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6080, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[3] Category 410-B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

Imports charged to these category limits for the period July 1, 1991 through June 30, 1992 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and Uruguay.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–23803 Filed 9–30–92; 8:45 am]

BILLING CODE 3510-DR-F

Denial of Participation in the Special Access and Special Regime Programs

September 25, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs denying the right to participate in the Special Access and Special Regime Programs.

EFFECTIVE DATE: November 1, 1992.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Committee for the Implementation of Textile Agreements (CITA) has determined that F.M. Industries and F. C. Industries are in violation of the requirements set forth for participation in the Special Access and Special Regime Programs.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs, effective on November 1, 1992, to deny F.M. Industries and F. C. Industries the right to participate in the Special Access and Special Regime Programs, for a period of three months, from November 1, 1992 through January 31, 1993.

Requirements for participation in the Special Access Program are available in Federal Register notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

Requirements for participation in the Special Regime Program are available in Federal Register notices 53 FR 15724, published on May 3, 1988; 53 FR 32421, published on August 25, 1988; 53 FR 49346, published on December 7, 1988;

and 54 FR 50425, published on December 6, 1989.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 25, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: The purpose of this directive is to notify you that the Committee for the Implementation of Textile Agreements has determined that F.M. Industries and F.C. Industries are in violation of the requirements for participation in the Special Access and Special Regime Programs.

Effective on November 1, 1992, you are directed to prohibit F.M. Industries and F.C. Industries from further participation in the Special Access and Special Regime Programs, for a period of three months, from November 1, 1992 through January 31, 1993. Goods accompanied by Form ITA-370P which are presented to U.S. Customs for entry under the Special Access and Special Regime Programs will no longer be accepted. In addition, for the period November 1, 1992 through January 31, 1993, you are directed not to sign ITA-370P forms for export of U.S.-formed and cut fabric for F.M. Industries and F.C. Industries.

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-23802 Filed 9-30-92; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0018]

OMB Clearance Request for Certification of Independent Price Determination and Parent Company and Identifying Data

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for a approval of a previously approved OMB clearance (9000-0018).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request for approval of a previously approved information collection requirement concerning Certification of Independent Price Determination and Parent Company and Identifying Data.

DATES: Comments may be submitted on or before November 2, 1992.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 510-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Agencies are required to report under 41 U.S.C. 252(d) and 10 U.S.C. 2305(d) suspected violations of the antitrust laws (*e.g.*, collusive bidding, identical bids, uniform estimating systems, etc.) to the Attorney General.

As a first step in assuring that Government contracts are not awarded to firms violating such laws, offerors on Government contracts must complete the certificate of independent price determination. An offer will not be considered for award where the certificate has been deleted or modified. Deletions or modifications of the certificate and suspected false certificates are reported to the Attorney General.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *64,250;* responses per respondent, *20;* total annual responses, *1,285,000;* preparation hours per response, *.02;* and total response burden hours, *25,700.*

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0018, Certification of Independent Price Determination and Parent Company and Identifying Data, in all correspondence.

Dated: September 25, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92-23794 Filed 9-30-92; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on 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 October 21, 1992.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 708-5174.

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 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 Management Service, 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 Cary Green at the address specified above.

Dated: September 25, 1992.

Cary Green,

Director, Information Resources Management Service.

Office of Elementary and Secondary Education

Type of Review: Existing.

Title: Application for Grants under the Women's Educational Equity Act (WEEA) Program

Frequency: Annually.

Affected Public: Individuals or households; state or local governments; non-profit institutions.

Reporting Burden:

Responses: 400.

Burden Hours: 6,400.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: This form will be used by State educational agencies to apply for funding under the Women's Educational Equity Act (WEEA) Program. The Department will use the information to make grant awards.

Office of Postsecondary Education

Type of Review: Revision.

Title: Free Application for Federal Student Aid.

Frequency: Annually.

Affected Public: Individuals or households.

Reporting Burden:

Responses: 7,924,954.

Burden Hours: 8,823,464.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: The information is used to calculate the Pell Grant Index (PGI) for the distribution of Pell Grants and the Family Contribution (FC) used by financial aid administrators to determine the amount of a student's SEOG, College Work-Study, Perkins Loan, and Stafford Loan. The PGI is governed by Section 411 and the FC by Part F of the Higher Education Act of 1965, as amended.

Office of Postsecondary Education

Type of Review: Revision.

Title: Student Aid Report (SAR).

Frequency: Annually.

Affected Public: Individuals or households; non-profit institutions, business or other for-profit.

Reporting Burden:

Responses: 13,103,260.

Burden Hours: 2,331,273.

Recordkeeping Burden:

Recordkeepers: 7,300.

Burden Hours: 599,486.

Abstract: The Student Aid Report (SAR) is used to notify applicants of their eligibility to receive Federal financial aid. The forms are submitted by the applicants to the participating institution of their choice. The institution submits part 3 of the SAR to the Department to receive funds for the applicant.

[FR Doc. 92-23768 Filed 9-30-92; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84-195P]

Bilingual Education: Educational Personnel Training Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: To provide assistance to meet the need for additional or better trained educational personnel for programs for limited English proficient (LEP) persons.

Eligible Applicants: Institutions of higher education.

Deadline for Transmittal of Applications: January 27, 1993.

Deadline for Intergovernmental Review: March 29, 1993

Applications Available: October 23, 1992.

Available Funds: $2.5 million.

Estimated Range of Awards: $65,000-$190,000.

Estimated Average Size of Awards: $150,000.

Estimated Number of Awards: 17.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 500 and 561.

Priority: The Priority in the notice of final priority for this program, as published elsewhere in this issue of the Federal Register, applies to this competition.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 561.31.

In addition to the maximum of 100 points awarded under 34 CFR 561.31, the program regulations in 34 CFR 561.32(b) provide that the Secretary distributes 10 additional points among the factors listed in 34 CFR 561.32(a). For this completion the Secretary distributes the 10 additional points as follows:

(1) Job placement and development (34 CFR 561.32(a)(1))—1 point.

(2) Evidence of prior participant's success in serving LEP children in accordance with the needs identified in the prior project (34 CFR 561.32(a)(2))—1 point.

(3) Evidence of demonstrated capacity and cost effectiveness as described in 34 CFR 561.31(d) and (f) (34 CFR 561.32(a)(3))—8 points.

For Applications or Information Contact: Cynthia J. Ryan, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5086, Switzer Building, Washington DC 20202-6642. Telephone: (202) 205-8722. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-8339 (in the Washington DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 3321.

Dated: September 23, 1992.

Nguyen Ngoc-Bich,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 92-23774 Filed 9-30-92; 8:45 am]

BILLING CODE 4000-01-M

Bilingual Education: Educational Personnel Training Program; Final Priority for Fiscal Year 1993

AGENCY: Department of Education.

ACTION: Notice of final priority for fiscal year 1993.

SUMMARY: The Secretary announces an absolute priority for the fiscal year (FY) 1993 competition under the Bilingual Education: Educational Personnel Training (EPT) Program. The Secretary takes this action to focus Federal financial assistance on an identified national need. The priority is intended to assist institutions of higher education (IHEs) to meet the need for additional or better trained teachers of limited English proficient (LEP) students in mathematics and science.

EFFECTIVE DATE: This priority takes effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Cynthia J. Ryan, U.S. Department of Education, 400 Maryland Avenue SW., room 5086, Switzer Building, Washington, DC 20202-6642. Telephone: (202) 205-8842. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: Awards under the EPT Program are made to IHEs to prepare additional or better trained educational personnel for programs for limited English proficient students. The authority for the EPT Program is section 7041 of the Bilingual Education Act (20 U.S.C. 3321).

The Secretary announces an absolute priority for the FY 1993 competition under the EPT Program to assist IHEs in preparing teachers to meet the needs of LEP students in mathematics and

science. This competition supports the President's AMERICA 2000 strategy for helping the Nation move itself toward. the National Education Goals, particularly Goal 3 and Goal 4. Goal 3 calls for all students to demonstrate competency in challenging subject matter, including mathematics and science. Goal 4 calls for American students to be first in the world in science and mathematics achievement by the year 2000. Under this priority, all EPT funds that are not committed to continuing projects will be reserved for projects that prepare teachers to help LEP students achieve competence in mathematics and science.

On June 17, 1992, the Secretary published a notice of proposed priority for this program in the **Federal Register** (57 FR 27036).

Note: This notice of final priority does *not* solicit applications. A notice inviting applications under this competition is published in this issue of the **Federal Register.**

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, three parties submitted comments. An analysis of the comments and of the changes in the priority since publication of the notice of proposed priority follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comments: Each commenter expressed concern that the proposed priority did not specify options for the types of certification that would be allowable under this priority. Two of the commenters believed the proposed priority would exclude programs that train teachers to be certified in bilingual education or English-as-a-second-language (ESL). The third commenter believed the priority would exclude certification in mathematics and science.

Also, one commenter expressed the concern that the proposed priority appeared to limit participation to bilingual education and ESL teachers. This commenter was concerned that limiting participation in the program to bilingual education and ESL teachers would exclude the participation of mathematics and science teachers who need training in providing instruction to LEP students.

Discussion: The Bilingual Education Act requires that preservice and inservice training under the EPT Program assist educational personnel in meeting State and local certification requirements.

The Act, however, does not specify the program areas in which participants may need to obtain certification so that they may meet the instructional needs of the LEP students they will be serving. The purpose of the priority is to assist IHEs to meet the need for additional and better trained teachers of LEP students. The Secretary does not intend for the priority in this notice to limit certification options. Moreover, the Secretary does not intend for the priority to limit participation in training programs to bilingual education and ESL teachers, but rather intends that applications submitted under the priority allow for the participation of any teacher of LEP children in need of this training.

Changes: The Secretary has reworded the priority to clarify the types of certification and participants that will be allowable in applications funded under this priority.

Priority

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Training to prepare teachers to instruct limited English proficient children in one or both of the following core curriculum areas: mathematics or science. The training must be designed to assist participants in meeting State and local certification requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Applicable Program Regulations: 34 CFR parts 500 and 561.

Program Authority: 20 U.S.C. 3321.

(Catalog of Federal Domestic Assistance Number 84.195P Bilingual Education: Educational Personnel Training Program)

Dated: September 11, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92-23766 Filed 9-30-92; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No. 84.031A, CFDA No. 84.031G]

Notice Inviting Applications for Designation as an Eligible Institution for Fiscal Year 1993 for the Strengthening Institutions Program and the Endowment Challenge Grant Program

Purpose: Institutions of higher education must meet specific statutory and regulatory requirements to be designated eligible to receive funds under the Strengthening Institutions Program and the Endowment Challenge Grant Program.

Deadline for Transmittal of Applications: November 30, 1992.

Applications Available: October 16, 1992.

Eligibility Information: Under section 312 of the Higher Education Act of 1965, as amended (HEA), an institution of higher education qualifies as an eligible institution under the Strengthening Institutions and Endowment Challenge Grant Programs if, among other requirements, it has a high enrollment of needy students, *and* its educational and general (E&G) expenditures are low per full-time equivalent (FTE) undergraduate student, in comparison with the average E&G expenditures per FTE student of institutions that offer similar instruction.The complete eligibility requirements are found in 34 CFR 607.2 through 607.5 of the Strengthening Institutions Program regulations.

As a result of amendments made to the statute relating to institutional eligibility requirements, an institution may qualify as an eligible institution if it is fully accredited by a nationally recognized accrediting agency and is legally authorized by the State in which it is located to be a junior or community college or to provide a bachelors degree program. Such an institution no longer has to satisfy those requirements for five years before being eligible to receive funds.

Enrollment of Needy Students: Under 34 CFR 607.3(a), an institution is considered to have a high enrollment of needy students if—

(1) At least 50 percent of its degree students received financial assistance under one or more of the following programs: Pell Grant, Supplemental Educational Opportunity Grant, College Work Study, or Perkins Loan Program; or (2) The percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Pell

Grants at comparable institutions that offer similar instruction. To qualify under the second criterion, an applicant's Pell grant percentage must be more than the median for its category provided on the table in this notice.

E&G Expenditures Per FTE Students: An applicant should compare its average E&G expenditure/FTE student to the average E&G expenditure/FTE student for its category of institution contained in the table in this notice. If the applicant's average E&G expenditure for the 1990–91 base year is less than the average for its category, the applicant meets this eligibility requirement.

The applicant's E&G expenditures are the total amount expended by the institution during the base year for instruction, research, public service, academic support, student services, institutional support, operation and maintenance, scholarships and fellowships, and mandatory transfers.

The following table identifies the relevant median Pell Grant percentages and the average E&G expenditures per FTE student for the 1990–91 base year.

	Median Pell Grant percentage	Average E&G per FTE student
2-year public institutions	37.0	$6,225
2-year non-profit private institutions	43.0	11,585
4-year public institutions	32.0	10,928
4-year non-profit private institutions	30.0	14,350

Waiver Information: Applicants unable to meet the high needy student enrollment requirement and/or the low E&G expenditure requirement may apply to the Secretary for waiver of these requirements under various options described in 34 CFR 607.3(b) and 34 CFR 607.4 (c) and (d), respectively.

For the purpose of 34 CFR 607.3(b)(2), under which an applicant must demonstrate that at least 30 percent of the students it served in base year 1990–91 were from low-income families, "low-income" is defined as an amount that does not exceed 150 percent of the amount equal to the poverty level as established by the U.S. Bureau of the Census. The following table sets forth the low-income levels for various sizes of families.

For the purposes of this waiver provision, low-income families are identified according to the following:

FISCAL YEAR 1991 ANNUAL LOW-INCOME LEVELS

Size of family unit	Contiguous 48 States, the District of Columbia, and outlying jurisdictions	Alaska	Hawaii
1	$9,930	$12,435	$11,415
2	13,320	16,665	15,315
3	16,710	20,895	19,215
4	20,100	25,125	23,115
5	23,490	29,355	27,015
6	26,880	33,585	30,915
7	30,270	37,815	34,815
8	33,660	42,045	38,715

For family units with more than eight members, add the following amount for each additional family member: $3,390 for the contiguous 48 states, the District of Columbia and outlying jurisdictions; $4,230 for Alaska; and $3,900 for Hawaii.

The figures shown under family income represent amounts equal to 150 percent of the family income levels established by the U.S. Bureau of the Census for determining poverty status. These levels were published by the U.S. Department of Health and Human Services in the **Federal Register** of February 20, 1991, Volume 56, Number 34, Pages 5859–6861.

In reference to the waiver option specified in section 607.3(b)(4) of the regulation, information about "metropolitan statistical areas" may be obtained by writing: National Technical Information Services, Document Sales, 5285 Port Royal Road, Springfield, Virginia 22161, or calling (703) 487–4650. The title of the document is Metropolitan Statistical Areas, 1989 #PB89–192546. There is a charge for this publication. *Applicable Regulations:* Regulations applicable to the eligibility process include: (a) The Strengthening Institutions Program Regulations, 34 CFR part 607; (b) the Endowment Challenge Grant Program Regulations, 34 CFR part 628; and (c) the Education Department General Administrative Regulations, 34 CFR parts 74, 75, 77, 82, 85, and 86.

For Applications or Information Contact: Strengthening Institutions Program Branch, Division of Institutional Development, U.S. Department of Education, 400 Maryland Avenue, SW., room 3042, ROB#3, Washington, DC 20202–5335, Telephone: (202) 708–8839. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Services at 1–800–877–8339 (in the Washington, DC, (202) area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1057 and 1065a.

Dated: September 24, 1992.

Carolynn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

[FR Doc. 92–23767 Filed 9–30–92; 8:45 am]

BILLING CODE 4000–01–M

National Assessment Governing Board; Teleconference Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Amendment to notice.

SUMMARY: Notice is hereby given of an amendment to the notice of the teleconference meeting of the full Board scheduled for September 29, 1992, at 800 North Capitol Street NW., suite 825, Washington, DC, as published at 57 FR 38301, August 24, 1992. The teleconference meeting will include the Executive Committee and the Achievement Levels Committee at 11 a.m.

Dated: September 25, 1992.

Roy Truby,

Executive Director.

[FR Doc. 92–23800 Filed 9–30–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER92–730–000, et al.]

Northeast Utilities Service Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Northeast Utilities Service Co.

[Docket No. ER92–730–000]

September 23, 1992.

Take notice that on September 17, 1992, Northeast Utilities Service Company tendered for filing additional information requested by Commission staff in the above-referenced docket.

Comment date: October 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

United Illuminating Co.

[Docket No. ER92–453–001]

September 23, 1992.

Take notice that on September 17, 1992, United Illuminating Company

tendered for filing its Refund Report in the above-referenced docket.

Comment date: October 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

Entergy Power, Inc.

[Docket No. ER92-843-000]

September 23, 1992.

Take notice that Entergy Power, Inc. (EPI) on September 18, 1992 tendered for filing an Interchange Agreement with Associated Electric Cooperative, Inc.

EPI requests an effective date for the Interchange Agreement that is sixty (60) days after the date of filing, in accordance with § 35.11 of the Commission's regulations.

Comment date: October 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

Commonwealth Edison Co. of Indiana, Inc.

[Docket No. ER92-845-000]

September 23, 1992.

Take notice that on September 18, 1992, Commonwealth Edison Company of Indiana, Inc. (Edison Indiana) tendered for filing a letter agreement, dated August 26, 1992 (Letter Agreement), between Edison Indiana and its parent, Commonwealth Edison Company (Edison). The Letter Agreement modifies certain provisions of the Electric Service Agreement, dated July 1, 1941, as amended, and the Transmission Service Agreement, dated May 1, 1958, as amended between Edison Indiana and Edison. Edison Indiana seeks an effective date of January 1, 1992 and, accordingly, seeks waiver of the Commission's notice requirements. Edison Indiana proposes to lower the return on common equity to 11.47 percent pursuant to a contractual obligation in the agreements on file with the Commission. Edison Indiana and Edison have agreed that 11.47 percent shall be a fixed rate of return, subject to change under sections 205 and 206 of the Federal Power Act and have agreed to a revised capital structure resulting in lower rates to be charged to edison by Edison Indiana.

Copies of this filing were served upon the Illinois Commerce Commission and Edison.

Comment date: October 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

Idaho Power Co.

[Docket No. ER92-651-000]

September 23, 1992.

Take notice that on September 15, 1992, Idaho Power Company (Idaho) tendered for filing a letter and attachments regarding amendment of its request for a temporary rate increase for the following wholesale contracts:

1. Idaho Power-Sierra Pacific Company Agreement for a supply of Energy & Power, dated March 10, 1960, FERC Rate Schedule No. 30.
2. The City of Weiser-Idaho Power Company Agreement for Supply of Power, dated April 4, 1963, FERC Rate Schedule No. 42;
3. Idaho Power-Utah Associated Municipal Power Systems Agreement for Supply of Power & Energy, dated February 10, 1988, FERC Rate Schedule No. 74.
4. Idaho Power Company-Washington City, Utah, Agreement for Supply of Power & Energy, dated July 6, 1987, FERC Rate Schedule No. 74.

The amendment requests a change in the effective dates during which the temporary increase would be effective.

Comment date: October 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

Commonwealth Electric Co.

[Docket No. ER92-354-000]

September 23, 1992.

Take notice that on September 11, 1992, Commonwealth Electric Company tendered for filing additional information requested by Commission staff in the above-referenced docket.

Comment date: October 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

Northern States Power Company

[Docket No. ER92-652-000]

September 23, 1992.

Take notice that on September 15, 1992, Northern States Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: October 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

Arizona Public Service Company

[Docket No. ER92-844-000]

September 23, 1992.

Take notice that on September 18, 1992, Arizona Public Service Company (APS) tendered for filing revised Exhibit B to the Wholesale Power Agreement between APS and the Town of Wickenburg (Wickenburg) (APS-FERC Rate Schedule No. 74) and revised Exhibit A to the Transmission Service Agreement between APS and Wickenburg (APS-FERC Rate Schedule No. 170) collectively Exhibits and Agreements). The Exhibits list ranges of Maximum and Contract Demands applicable under the Agreements.

No change from the currently effective rate or revenue levels is proposed herein.

No new facilities or modifications to existing facilities are required as a result of this revision.

A copy of this filing has been served on Wickenburg and the Arizona Corporation Commission.

Comment date: October 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

Minnesota Power & Light Co.

[Docket No. ER92-805-000]

September 23, 1992.

Take notice that on September 17, 1992, Minnesota Power & Light Company (Minnesota Power) tendered for filing an Amended Notice of Cancellation for replacement capacity and energy service to Wisconsin Public Power, Inc. SYSTEM (WPPI) under the Boswell 4 Operation, Ownership and Power Sales Agreement, Rate Schedule FERC No. 158, in accordance with Amendment No. 1 to that Agreement.

Minnesota Power requests an effective date of September 1, 1992, and requests waiver of the notice provisions of § 35.25 of the Commission's regulations.

Copies of this filing have been served on WPPI, the Minnesota Public Utilities Commission and the Wisconsin Public Service Commission.

Comment date: October 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

Pennsylvania Power & Light

[Docket No. ER92-687-001]

September 23, 1992.

Take notice that on September 21, 1992, Pennsylvania Power & Light Company tendered for filing its Refund Report in the above-referenced docket.

Comment date: October 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

Idaho Power Co.

[Docket No. ER92-408-000]

September 23, 1992.

Take notice that on September 1, 1992, Idaho Power Company (Idaho) tendered for filing an exhibit regarding Idaho's wholesale sale to the Oregon Trail Electric Consumers Cooperative.

Comment date: October 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

MDU Resources Group, Inc.

[Docket No. ER92-60-000]

September 24, 1992.

Take notice that on September 21, 1992, MDU Resources Group, Inc. filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authorization to issue not more than $50 million of short-term indebtedness on or before December 31, 1994, with a final maturity date no later than December 31, 1995.

Comment date: October 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 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. 92-23835 Filed 9-30-92; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 2113-022, et al.]

Hydroelectric Applications [Wisconsin Valley Improvement Company, et al.]; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* New License.

b. *Project No.:* 2113-022.

c. *Date Filed:* July 30, 1991.

d. *Applicant:* Wisconsin Valley Improvement Company.

e. *Name of Project:* Wisconsin Valley.

f. *Location:* On the Wisconsin River and its tributaries, Vilas, Oneida, Forest, Marathon, and Lincoln Counties, Wisconsin, and Gogebic County, Michigan.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Robert W. Gall, Wisconsin Valley Improvement Company, 2301 North Third Street, Wausau, WI 54401, (715) 848-2976.

i. *FERC Contact:* Michael Dees (202) 219-2807.

j. *Deadline Date:* November 6, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached standard paragraph E.

l. *Description of Project:* The project as licensed consists of 21 separate existing dam and storage reservoir developments (none of which contain any hydropower facilities) located in the Wisconsin River Basin. Two of the developments are located on the main stem of the Wisconsin River; the remaining developments are located on tributary rivers and streams. The 21 project developments are described as follows:

Lac Vieux Desert Development

The Lac Vieux Desert Development is an improved natural-lake reservoir, located on the Wisconsin River main stem at river mile 420.1 in Vilas County, Wisconsin and Gogebic County, Michigan. The development consists of: (1) A reinforced concrete gated dam 27 feet long, 10 feet wide, and 8.5 feet high, with upstream and downstream wingwalls, each about 9 feet long; (2) one tainter gate in the dam, 12 feet wide and 4 feet high; (3) one stop log bay in the dam, 4 feet wide and 7 feet high; and (4) a reservoir with a surface area of 4,247 acres and gross storage of 2,140 million cubic feet (mcf) at the maximum water level of 1,681.53 feet NGVD. The reservoir has usable storage of 398 mcf with a drawdown of 2.17 feet.

Twin Lakes Development

The Twin Lakes Development is an improved natural-lake reservoir, located on the Twin River 2.1 miles upstream from Pioneer Lake in Vilas County, Wisconsin. Pioneer Lake feeds Pioneer Creek which flows for 9.9 miles to join the Wisconsin at river mile 401.1. The development consists of: (1) A reinforced concrete gated dam 21.5 feet long, 17 feet wide and 9.5 feet high, with upstream wingwalls about 6 feet long, and downstream wingwalls about 26 feet long; (2) one tainter gate in the dam, 10 feet wide and 4.33 feet high; (3) one stop log bay in the dam, 4 feet wide and 8 feet high; (4) a right abutment dike about 60 feet long and 10 feet high, and a left abutment dike about 75 feet long and 10 feet high; and (5) a reservoir with a surface area of 3,535 acres and gross storage of 4,074 mcf at the maximum water level of 1,682.57 feet NGVD. The reservoir has usable storage of 301 mcf with a drawdown of 2.00 feet.

Buckatahpon Development

The Buckatahpon Development is an improved natural-lake reservoir, located on Buckatahpon Creek 1.4 miles upstream from its confluence with the Wisconsin at river mile 396.9 in Vilas County, Wisconsin. The development consists of: (1) A reinforced concrete gated dam 15 feet long, 27 feet wide, and 7.5 feet high, with upstream and downstream wingwalls, each about 9 feet long; (2) one tainter gate in the dam, 6 feet wide and 3.83 feet high; (3) one stop log bay in the dam, 5 feet wide and 5 feet high; (4) a right abutment dike about 100 feet long and 7.4 feet high, and a left abutment dike about 80 feet long and 7.4 feet high; and (5) a reservoir with a surface area of 922 acres and gross storage of 597 mcf at the maximum water level of 1,641.52 feet NGVD. The reservoir has usable storage of 120 mcf with a drawdown of 3.17 feet.

Long-on-Deerskin Development

The Long-on-Deerskin Development is an improved natural-lake reservoir, located on the Deerskin River 18 miles upstream from its confluence with the Wisconsin at river mile 378.8 in Vilas County, Wisconsin. The development consists of: (1) A reinforced concrete gated dam 18 feet long, 15 feet wide, and 9.5 feet high with upstream and downstream wingwalls, each about 9 feet long; (2) one tainter gate in the dam, 8 feet wide and 5 feet high; (3) one stop log bay in the dam, 4 feet wide and 7 feet high; (4) a right abutment dike about 35 feet long and 8.4 feet high, and a left abutment dike about 30 feet long and 8.4 feet high; and (5) a reservoir with a surface area of 2,353 acres and gross storage of 2,651 mcf at the maximum water level of 1,698.43 feet NGVD. The reservoir has usable storage of 255 mcf with a drawdown of 2.59 feet.

Little Deerskin Development

The Little Deerskin Development is an improved natural-lake reservoir, located on the Little Deerskin River 3 miles upstream from its confluence with the Deerskin River in Vilas County, Wisconsin. The development consists of: (1) A steel gated spillway structure 4 feet long, 6 wide, and 4 feet high, with upstream and downstream wingwalls, each about 4 feet long; (2) one 4-foot-wide by 2-foot-wide lift gate within the structure; (3) a right abutment dike about 40 feet long and 4 feet high, and a left abutment dike about the same size; (4) a reservoir with a surface area of 313 acres and gross storage of 82 mcf at the maximum water level of 1,642.16 feet NGVD. The reservoir has usable storage of 23 mcf with a drawdown of 1.67 feet.

Seven Mile Development

The Seven Mile Development is an improved natural-lake reservoir, located on Seven Mile Creek 2.6 miles upstream from the head of Nine Mile Reservoir in Oneida and Forest Counties, Wisconsin. The development consists of: (1) A reinforced concrete gated dam 22 feet long, 30 feet wide, and 9.5 feet high, with downstream wingwalls about 16 feet long; (2) one tainter gate in the dam, 8 feet wide and 4.83 feet high; (3) one stop log bay in the dam, 6 feet wide and 8 feet high; (4) a right abutment dike about 150 feet long and 9.7 feet high, and a left abutment dike about 110 feet long and 9.7 feet high; and (5) a reservoir with a surface area of 518 acres and gross storage of 147 mcf at the maximum water level of 1,650.14 feet NGVD. The reservoir has usable storage of 85 mcf with a drawdown of 4.33 feet.

Lower Nine Mile Development

The Lower Nine Mile Development is an improved natural-lake reservoir, located on Nine Mile Creek 1.1. miles upstream from the head of Burnt Rollways Reservoir in Oneida County, Wisconsin. The development consists of: (1) A reinforced concrete gated dam 26 feet long, 30 feet wide, and 12 feet high, with upstream wingwalls about 16 feet long; (2) two tainter gates in the dam, each 6 feet wide and 6 feet high; (3) one stop log bay in the dam, 3.75 feet wide and 6 feet high; (4) a right abutment dike about 60 feet long and 12.9 feet high, and a left abutment dike about 100 feet long and 12.9 feet high; and (5) a reservoir with a surface area of 841 acres and gross storage of 114 mcf at the maximum water level of 1,643.76 feet NGVD. The reservoir has usable storage of 104 mcf with a drawdown of 4.58 feet.

Burnt Rollways Development

The Burnt Rollways Development is an improved multiple natural-lake and channel reservoir, located on the Eagle River near its confluence with the Wisconsin River in Oneida County, Wisconsin. The development consists of: (1) A reinforced concrete gated dam 47 feet long, 55 feet wide, and 16 feet high, with upstream wingwalls about 20 feet long; (2) two dissimilar tainter gates in the dam, one 16 feet wide by 4.25 feet high, and a second 10 feet wide by 12 feet high; (3) a right abutment dike about 130 feet long and 14.4 feet high, and a left abutment dike about 150 feet long and 17.9 feet high; (4) a boat launching structure consisting of a trestle supported rail track about 165 feet long, mounted with an electrically operated rolling gantry hoist, over the right abutment dike; and (5) a reservoir with a surface area of 7,626 acres and gross storage of 4,525 mcf at the maximum normal water level of 1,625.71 feet NGVD. The reservoir has usable storage in summer of 479 mcf with a drawdown of 1.5 feet, and in winter, 852 mcf with a drawdown of 2.75 feet.

Sugar Camp Development

The Sugar Camp Development is an improved multiple natural-lake and channel reservoir, located on Sugar Camp Creek near its confluence with the Wisconsin River in Oneida County, Wisconsin. The development consists of: (1) A reinforced concrete gated dam 12 feet long, 15 feet wide, and 9.5 feet high, with upstream and downstream wingwalls about 13 feet long; (2) one tainter gate in the dam, 8 feet wide by 7 feet high; (3) a right abutment dike about 260 feet long and 9.5 feet high; and a left abutment dike about 20 feet long and 9.5 feet high; and (4) a reservoir with a maximum surface area of 1,857 acres and gross storage of 1,120 mcf at the maximum winter water level of 1,597.82 feet NGVD. The reservoir has usable storage in summer of 155 mcf with a drawdown of 2.0 feet, and in winter, 411 mcf with a drawdown of 5.5. feet.

Little St. Germain Development

The Little St. Germain Development is an improved natural-lake reservoir, located on the Little St. Germain River about 1.1 miles upstream from its confluence with the Wisconsin River in Vilas County, Wisconsin. The development consists of: (1) A reinforced concrete gated dam 14 feet long, 15 feet wide, and 8.5 feet high, with upstream wingwalls about 10 feet long; (2) one vertical lift gate in the dam, 5 feet wide by 5.17 feet high; (3) a right abutment dike about 50 feet long and 7 feet high; and a left abutment dike about 40 feet long and 7 feet high; and (4) a reservoir with a surface area of 1,008 acres and gross storage of 495 mcf at the maximum water level of 1,613.88 NGVD. The reservoir has usable storage of 77 mcf with a drawdown of 1.83 feet.

Big St. Germain Development

The Big St. Germain Development is an improved natural-lake reservoir, located on the St. Germain River in Vilas County near St. Germain, Wisconsin. The development consists of: (1) A reinforced concrete gated dam 27 feet long, 22 feet wide, and 7 feet high; (2) two similar vertical lift gates in the dam, each 7 feet wide by 4.17 feet high, and one smaller vertical lift gate in the dam, 5 feet wide by 4.17 feet high: (3) a right abutment dike about 55 feet long and 7 high, and a left abutment dike about 35 feet long and 7 feet high; (4) a reservoir with a surface area of 1,653 acres and gross storage of 1,501 mcf at the maximum water level of 1,591.16 feet NGVD. The reservoir has usable storage in summer of 94 mcf with a drawdown of 1.33 feet, and in winter, 210 mcf with a drawdown of 3.0 feet.

Pickerel Development

The Pickerel Development is an improved natural lake reservoir, located on the St. Germain River near its confluence with the Wisconsin River in Oneida County, Wisconsin. The development consists of: (1) A reinforced concrete gated dam 32 feet long, 30 feet wide, and 20.5 feet high, called Pickerel Control Dam, with upstream and downstream wingwalls about 32 feet long; (2) one tainter gate in the dam, 10 feet wide by 16 feet high; (3) a right abutment dike about 70 feet long and 18.5 feet high, and a left abutment dike about 80 feet long and 18.5 feet high; (4) a second reinforced concrete gated dam 28 feet long, 37 feet wide, and 12 feet high, called Pickerel Canal Dam, with upstream and downstream wingwalls about 20 feet long; (5) one tainter gate in the dam, 22 feet wide by 3 feet high; (6) a reservoir with a surface area of 786 acres and gross storage of 315 mcf at the maximum water level of 1,590.34 feet NGVD. The reservoir has usable storage in summer of 33 mcf with a drawdown of 1.0 foot, and in winter, 227 mcf with a drawdown of 9.0 feet.

Rainbow Development

The Rainbow Development is a man-made reservoir, located on the Wisconsin River main stem at river mile 365.2 in Oneida County near Lake Tomahawk, Wisconsin. The development consists of: (1) A reinforced concrete gated dam 128 feet long, 32 feet wide, and 38.5 feet high, with upstream wingwalls about 68 feet long, and downstream wingwalls about 55 feet long; (2) three tainter gates each 20 feet wide by 21 feet high, and two tainter gates each 10 feet wide by 28 feet high, all within the dam; (3) a right abutment dike about 1,000 feet long and 32 feet high; (4) Sawyer dike located about 3,000 feet east of the gated dam, about 800 feet long and 20 feet high; (5) Highway E dike located about 1,000 feet west of the spillway and joining the right abutment dike, about 1,650 feet long and 24 feet high; (6) Jim Hall dike located about 1.5 miles north of the spillway, about 1,550 feet long and 22 feet high; (7) Highway J dike located about 2.5 miles north of the dam, about 500 feet long and 3 feet high; (8) a reservoir with a surface area of 4,165 acres and gross storage of 2,004 mcf at

the maximum water level of 1,587.05 feet NGVD. The reservoir has usable storage of 1,987 mcf with a drawdown of 22 feet.

North Pelican Development

The North Pelican Development is an improved natural-lake reservoir located on the north branch of the Pelican River in Oneida County near Rhinelander, Wisconsin. The development consists of: (1) A reinforced concrete gated gravity dam 32 feet long, 29 feet wide, and 10.5 feet high, with upstream wingwalls about 16 feet long; (2) three vertical lift gates in the dam, each 6.5 feet wide by 4.0 feet high; (3) a right abutment dike about 30 feet long and 10.5 feet high, and a left abutment dike about 170 feet long and 10.5 feet high; (4) a reservoir with a surface area of 1,295 acres and gross storage of 379 mcf at the maximum water level of 1,569.60 feet NGVD. The reservoir has usable storage of 151 mcf with a drawdown of 3.0 feet.

South Pelican Development

The South Pelican Development is an improved natural-lake reservoir located on the main branch of the Pelican River in Oneida County near Pelican Lake, Wisconsin. The development consists of: (1) A reinforced concrete gated gravity dam 29 feet long, 24 feet wide, and 8 feet high, with upstream wingwalls about 10 feet long; (2) two vertical lift gates in the dam, each 5 feet wide by 3 feet high, and two stop log bays, each 5 feet wide by 1 foot high; (3) a right abutment dike about 20 feet long and 6 feet high, and a left abutment dike about 500 feet long and 6 feet high; (4) a reservoir with a surface area of 3,694 acres and gross storage of 2,175 mcf at the maximum water level of 1,591.98 feet NGVD. The reservoir has usable storage of 308 mcf with a drawdown of 2.0 feet.

Minocqua Development

The Minocqua Development is an improved natural-lake reservoir, located at the headwaters of the Tomahawk River in Oneida County near Minocqua, Wisconsin. The development consists of: (1) A reinforced concrete gated gravity dam 35 feet long, 30 feet wide, and 8.75 feet high; (2) two tainter gates in the dam, each 8 feet wide by 4.5 feet high; (3) one overflow bay in the dam, 8 feet wide by 4 feet high; (4) a right abutment dike about 100 feet long and 8 feet high, and a left abutment dike about 150 feet long and 8 feet high; (5) a reservoir with a surface area of 6,069 acres and gross storage of 7,243 mcf at the maximum water level of 1,585.05 feet NGVD. The reservoir has usable storage of 600 mcf with a drawdown of 2.77 feet.

Squirrel Development

The Squirrel Development is an improved natural-lake reservoir, located on the Squirrel River about 13.2 miles upstream from its confluence with the Tomahawk River in Oneida County, Wisconsin. The development consists of: (1) A reinforced concrete gated gravity dam 15 feet long, 21 feet wide, and 6.8 feet high, with upstream wingwalls about 10 feet long; (2) one vertical lift gate in the dam, 5 feet wide by 4.5 feet high; (3) one stop log bay in the dam, 5 feet wide by 4.5 feet high; (4) a left abutment dike about 65 feet long and 7.3 feet high; (5) a reservoir with a surface area of 1,505 acres and gross storage of 1,008 mcf at the maximum water level of 1,564.93 feet NGVD. The reservoir has usable storage of 149 mcf with a drawdown of 2.42 feet.

Willow Development

The Willow Development is a man-made reservoir, located on the Tomahawk River in Oneida County near Hazelhurst, Wisconsin. The development consists of: (1) A reinforced concrete gated gravity dam 72 feet long, 29 feet high, and 34.5 feet high, with upstream wingwalls about 33 feet long and downstream wingwalls about 50 feet long; (2) one central tainter gate in the dam, 20 feet wide by 12.5 feet high, and two flanking tainter gates in the dam, each 10 feet wide by 23.5 feet high; (3) a right abutment dike about 300 feet long and 30.5 feet high, and a left abutment dike about 700 feet long and 30.5 feet high; (4) Doberstein dike, located about 2,000 feet south of the gated dam, measuring about 1,400 feet in length and 18 feet in height; (5) the South dike, located about one mile south of the gated dam, measuring about 3,500 feet in length and 11 feet in height; and (6) a reservoir with a surface area of 6,392 acres and gross storage of 2,924 mcf at the maximum water level of 1,529.35 feet NGVD. The reservoir has usable storage of 2,809 mcf with a drawdown of 18.5 feet.

Rice Development

The Rice Development is a man-made reservoir, located on the Tomahawk River in Lincoln and Oneida Counties near Tomahawk, Wisconsin. The development consists of: (1) A reinforced concrete gated gravity dam 97 feet long, 34 feet wide, and 19 feet high, with upstream wingwalls about 32 feet long and downstream wingwalls about 42 feet long; (2) two tainter gates in the dam, each 20 feet wide by 15 feet high; (3) one timber needle bay in the dam, 20 feet wide by 17.7 feet high; (4) a right abutment dike about 900 feet long and 22 feet high, and a left abutment dike about 500 feet long and 22 feet high; (5) the West dike, located about 4,000 feet northwest of the gated dam, measuring about 1,550 in length and 10 feet in height; and (6) a reservoir with a surface area of 4,111 acres and gross storage of 1,922 mcf at the maximum water level of 1,463.25 feet NGVD. The reservoir has usable storage of 1,698 mcf with a drawdown of 13.25 feet.

Spirit Development

The Spirit Development is a man-made reservoir, located on the Spirit River near its confluence with the Wisconsin River at river mile 313.5 in Lincoln County near Tomahawk, Wisconsin. The development consists of: (1) A reinforced concrete gated gravity dam 60 feet long, 35 feet wide, and 26 feet high, with upstream wingwalls about 36 feet long and downstream wingwalls about 24 feet long; (2) two tainter gates in the dam, each 20 feet wide by 19 feet high; (3) a right abutment dike about 1,140 feet long and 26 feet high, and a left abutment dike about 1,330 feet long and 26 feet high; and (4) a reservoir with a surface area of 1,698 acres and gross storage of 672 mcf at the maximum water level of 1,437.88 feet NGVD. The reservoir has usable storage of 666 mcf with a drawdown of 17.0 feet.

Eau Pleine Development

The Eau Pleine Development is a man-made reservoir, located on the Big Eau Pleine River near its confluence with the Wisconsin River at river mile 237.6 in Marathon County near Mosinee, Wisconsin. The development consists of: (1) A reinforced concrete gated gravity dam 140 feet long, 30 feet wide, and 45 feet high, with upstream wingwalls about 90 feet long and downstream wingwalls about 54 feet long; (2) three tainter gates in the dam, each 26 feet wide by 15.5 feet high; (3) one sluice gate in the dam, 10 feet wide by 6 feet high; (4) a right abutment dike about 4,450 feet long and 45 feet high, and a left abutment dike about 4,000 feet long and 45 feet high; and (4) a reservoir with a surface area of 6,677 acres and gross storage of 4,275 mcf at the maximum water level of 1,145.43 feet NGVD. The reservoir has usable storage of 4,170 mcf with a drawdown of 27.43 feet.

The Applicant is not proposing any changes to the existing project works as licensed. The Applicant owns all existing project facilities.

The existing project would also be subject to Federal takeover under

sections 14 and 15 of the Federal Power Act.

m. *Purpose of Project:* The purpose of the project is to regulate flow of the Wisconsin River.

n. *This notice also consists of the following standard paragraphs:* B1 and E.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC., 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Wisconsin Valley Improvement Company, 2301 North Third Street, Wausau, WI, 54401, (715) 848–2976.

2 a. *Type of Application:* New License.

b. *Project No.:* 2325–007.

c. *Date Filed:* November 20, 1991.

d. *Applicant:* Central Maine Power Co.

e. *Name of Project:* Weston Project.

f. *Location:* On the Kennebec River, Somerset County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contract:* Mr. Gerald C. Poulin, Central Maine Power Co., Edison Drive, Augusta, ME 04336, (207) 623–3521.

i. *FERC Contact:* Michael Dees (202) 219–2807.

j. *Deadline Date:* November 2, 1992.

k. *Status of Environmental Analysis:* This application has been accepted for filing but is not ready for environmental analysis at this time—see attached standard paragraph E.

l. *Description of Project:* The project structures consist of a dam, a powerhouse, an impoundment, and appurtenant facilities. For the existing condition, the Project has a total generator capacity of 12.77 megawatts (MW) and an average annual generation of about 81,900 megawatt-hours (MWH). The Applicant is proposing to replace the existing turbine runners with more efficient runners. Due to this proposal the average annual generation would increase to 93,100 MWH. In detail, the existing and proposed project is described as follows:

(1) A concrete gravity dam, totaling about 921 feet long, consisting of a North Channel Dam and a South Channel Dam:

North Channel Dam

The broad V-shaped north channel dam, with a maximum height of 38 feet, consists of:

(a) A 75-foot-long concrete retaining wall, with a top elevation of 167.2 feet (USGS); (b) a 23-foot-long non-overflow section, with a top elevation of 167.0 feet (USGS); (c) a 244-foot-long stanchion section, with five bays, each 10.5 feet high, having a sill elevation of 145.0 feet (USGS); (d) a 170-foot-long hinged flashboard section, that are 7 feet high, with a sill elevation of 149.0 feet (USGS); (e) a 93-foot-long gate section, having two Taintor gates, each measuring 28 feet wide by 16 feet high, with a sill elevation of 140.0 feet (USGS); and (f) an earth-filled abutment with a concrete core wall.

South Channel Dam

The South Channel Dam, with a maximum height of 51 feet, consists of:

(a) A 125-foot-long intake section, with four intake bays; (b) a 33-foot-long concrete spillway section, with a permanent crest of 154.0 feet (USGS), topped by 2-foot-high stoplogs; (c) a 24-foot-long sluice section, with a permanent top elevation of 142.0 feet (USGS), topped with a 14-foot-high Taintor flow controlled gate, extending about 69.5 feet downstream; (d) a 188-foot-long stanchion section, with five bays, each about 21 feet high, topped with about 11-foot-high of stoplogs from a sill elevation ranging 143.0 feet to 145.0 feet (USGS); and (e) a 22-foot-long concrete gravity non-overflow section, with a top elevation of 166.0 feet (USGS).

(2) A concrete, masonry, and steel integral powerhouse, about 90 feet high by 41 feet wide by 188 feet long, equipped with four vertical Francis electric generating units having (a) the total existing rated capacity of 12,770 kilowatts (kW), a maximum hydraulic capacity of 6,075 cubic feet per second (cfs), an average annual generation of 81,900 MWH; and (b) the total proposed rated capacity of 12,770 kW, a maximum hydraulic capacity of 7,255 cfs, an average annual generation of 93,100 MWH;

(3) An impoundment, about 12.4 miles long, having (a) a surface area of about 930 acres (AC); (b) a gross storage capacity of 18,600 acre-feet (AF), but a negligible useable storage capacity; (c) a normal pool headwater elevation of 156.0 feet (USGS); and (d) a normal tailwater elevation of 122.5 feet (USGS); and

(4) Appurtenant facilities.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act.

m. *Purpose of Project:* The purpose of the project is to generate electric energy for sale to applicant's customers.

n. *This notice also consists of the following standard paragraphs:* B1 and E.

o. *Available Location of Application:* A copy of the application, as amended supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Central Maine Power Co., Edison Drive, Augusta, ME 04336.

3 a. *Type of Application:* New License.

b. *Project No.:* 2613–005.

c. *Date Filed:* December 24, 1991.

d. *Application:* Central Maine Power Co., et al.

e. *Name of Project:* Moxie Project.

f. *Location:* On Moxie Stream, Somerset County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gerald C. Poulin, Central Maine Power Co., Edison Drive, Augusta, ME 04336, (207) 623–3521.

i. *FERC Contact:* Michael Dees (202) 219–2807.

j. *Deadline Date:* November 2, 1992.

k. *Status of Environmental Analysis:* This application has been accepted for filing but is not ready for environmental analysis at this time—see attached standard paragraph E.

1. *Description of Project:* The project structures consists of a main dam, three closure dams, an earthen dike, an impoundment, and appurtenant facilities. The Moxie Project is a storage reservoir with no hydroelectric generating facility. In detail, the project is described as follows:

(1) A main concrete gravity dam, totaling about 570 feet long, with a maximum height of 19 feet, consisting of four sections: (a) a 124-foot-long concrete non-overflow section, with a crest elevation of 972.3 feet (USGS); (b) a 172-foot-long spillway section, with a crest elevation of 970.3 feet (USGS); (c) a 37-foot-long gate section, with one 6-foot-high steel gate, having a sill elevation of 955.3 feet (USGS), and two 8-foot-high timber gates, having sill elevations of 965.3 feet (USGS) and 960.3 feet (USGS); and (d) a 238-foot-long spillway section, with a crest elevation of 970.3 feet (USGS);

(2) Three concrete closure dams, located east of the main dam, beginning with the nearest dam: (a) a closure dam "A", 169 feet long, with a permanent crest at 970.3 feet (USGS); (b) a closure dam "B", totaling 201 feet long, of which:

82 feet has a permanent crest elevation of 968.3 feet (USGS), 80 feet is topped with 1.5-foot-high pin-supported flashboards, 10 feet is topped with 1.0-foot-high pin-supported flashboards, and 29 feet has a permanent crest elevation of 970.3 feet (USGS);

(3) An earthen dike, located west of the main dam, 140 feet long, with a concrete core wall and a top elevation of 972.3 feet (USGS);

(4) An impoundment, about 7.5 miles long, having (a) a surface areas of about 2,231 acres (AC); (b) a gross storage capacity of 35,000 acre-feet (AF); (c) a useable storage capacity of 14,700 AF; and (c) a normal full pond elevation of about 970.3 feet (USGS); and

(5) Appurtenant facilities.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act.

m. *Purpose of Project:* The purpose of the project is to provide water storage for downstream generating facilities.

n. *This notice also consists of the following standard paragraphs: B1 and E.*

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC, 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Central Maine Power Co., Edison Drive, Augusta, ME, 04336.

4 a. *Type of Application:* Major License.

b. *Project No.:* 10729–001.

c. *Date Filed:* September 3, 1992.

d. *Applicant:* Murphy Hydro Company, Inc.

3. *Name of Project:* Murphy Dam Hydroelectric Project.

f. *Location:* On the Connecticut River, Pittsburg Township, Coos County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Wayne E. Nelson, Consolidated Hydro, Inc., RR #2 Box 690H, Industrial Avenue, Sanford, Maine 04073, (207) 490–1980.

i. *FERC Contract:* Mary C. Golato (202) 219–2804.

j. *Comment Date:* November 2, 1992.

k. *Description of Project:* The proposed project consists of the following features: (1) An existing dam 100 feet high and 2,100 feet long; (2) an existing reservoir with a surface area of 2,020 acres and a gross storage capacity of 99,300 acre-feet; (3) a proposed 524-foot-long, approximately 8-foot-diameter penstock; (4) a proposed powerhouse having one turbine-generator unit with a rated capacity of 3.0 megawatts; (5) a proposed 500-foot-long transmission line; and (6) appurtenant facilities.

1. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merits, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

5 a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 11050–001.

c. *Date Filed:* September 7, 1992.

d. *Applicant:* North Side Canal Company.

e. *Name of Project:* U–3.

f. *Location:* On the U Canal in Jerome County, Idaho, T. 7S., R. 16E., Sections 23, 24, and 25 (about 10 miles downstream from the head of the canal). The canal system originates from the Snake River near Milner Dam in the vicinity of Hazelton, Idaho.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant contact:* Mr. Kip Runyan, Ida-West Energy Company, P.O. Box 7867, Boise Idaho 83703, (208) 336–4254

i. *FERC Contact:* Héctor M. Pérez at (202) 219–2843.

j. *Comment Date:* November 6, 1992.

k. *Description of Project:* The proposed project would consist of: (1) An intake structure within the canal embankment; (2) a 150-foot-long, 10-foot-high by 10-foot-wide reinforced concrete box-shaped penstock; (3) an 8-foot-high by 8-foot-wide box-shaped bypass line; (4) a powerhouse with a 3.2-megawatt generating unit; and (5) other appurtenances. The project would have an estimated average annual generation of 11,000 megawatthours.

1. Under § 4.32(b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the application is filed, and must serve a copy of the request on the applicant.

6 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11314–000.

c. *Date Filed:* August 3, 1992.

d. *Applicant:* County of DuPage, Illinois.

e. *Name of Project:* Elmhurst Quarry Pumped Storage Project.

f. *Location:* On Salt Creek near the City of Elmhurst, DuPage County, Illinois.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gregory W. Wilcox, Department of Environmental Concerns, DuPage County Center, 421 N. County Farm Road, Wheaton, IL 60187, (708) 682–7130.

i. *FERC Contact:* Michael Dees (202) 219–2807.

j. *Comment Date:* November 2, 1992.

k. *Description of Project:* The proposed pumped storage project would consist of: (1) An existing surface quarry; (2) an existing underground mine; (3) an upper inlet/outlet structure; (4) a lower inlet/outlet structure; (5) a 28-foot diameter penstock 870 feet long; (6) a proposed powerhouse cavern to house two hydropower units with a combined capacity of 250.0 MW; (7) a 138-kV transmission line two miles long; and (8) appurtenant facilities. The estimated annual energy production is 708.5 GWh. The project energy would be sold to and purchased from Commonwealth Edison. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $150,000.

1. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

7 a. *Type of Application:* Major License.

b. *Project No.:* 11323–000.

c. *Date Filed:* September 4, 1992.

d. *Applicant:* Blue Diamond Associates.

e. *Name of Project:* Tropicana Pumped Storage Hydroelectric Project.

f. *Location:* On lands administered by the Bureau of Land Management on and near Blue Diamond Hill, approximately 5 miles west of Las Vegas in Clark County, Nevada. Sections 32, 33, 34, and 35 in T21S, R59E; sections 3 and 4 in T22S, R59E.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Blue Diamond Associates, c/o Synergics, Inc., 191 Main Street, Annapolis, MD 21401, (410) 268–8820.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.

j. *Description of Project:* The proposed pumped storage project would consist of: (1) A 187-foot-high dam and 41.35-acre upper reservoir on Blue Diamond Hill; (2) a 900-foot-long, 14-foot-diameter

concrete vertical shaft connecting the upper reservoir to a horizontal tunnel; (3) the 2,400-foot-long, 14-foot-diameter horizontal tunnel connecting the vertical shaft to a penstock; (4) the 4,000-foot-long, 14-foot-diameter penstock connecting the horizontal tunnel to a powerhouse; (5) the powerhouse containing two generating units with a total installed capacity of 200 MW; (6) two 450-foot-long, 10-foot-diameter tailrace pipes connecting the powerhouse to a lower reservoir; (7) a 76-foot-high dam and 31.65-acre lower reservoir; (8) a 5,300-foot-long transmission line; and (9) appurtenant facilities. Water for the project will be conveyed to the site via pipeline from an unidentified source.

k. Under § 4.32(b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission on or before November 3, 1992 and must serve a copy of the request on the applicant.

Standard Paragraphs

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the completing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit will be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedures, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

E. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions. When the application is ready for environmental analysis, the Commission will notify all persons on the service list and affected resource agencies and Indian tribes. If any person wishes to be placed on the service list, a motion to intervene must be filed by the specified deadline date herein for such motions. All resource agencies and Indian tribes that have official responsibilities that may be affected by the issues addressed in this proceeding, and persons on the service list will be able to file comments, terms and conditions, and prescriptions within 60 days of the date the Commission issues a notification letter that the application is ready for an environmental analysis. All reply comments must be filed with the Commission within 105 days from the date of that letter.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of

copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: September 28, 1992. Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23814 Filed 9-30-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-697-000, et al.]

United Gas Pipe Line Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Co.

[Docket No. CP92-697-000]

September 23, 1992.

Take notice that on September 11, 1992, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP92-697-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a portion of its transmission pipeline facilities which were certificated in Docket No. CP71-89,[1] all as more fully set forth in the application on file with the Commission and open to public inspection.

United proposes to abandon by sale to Pipeline Equities (Equities) [2] the portion of its 16-inch natural gas transmission line (Index 39) extending between its Refugio and Edna compressor stations, together with two contiguous gas supply lateral lines (Index 39-2 and Index 39-3), and related valves and appurtenances. United describes the pipeline facilities as being low pressure facilities (approximately 300 psig), constructed in 1930, approximately 60 miles in total length, and located in Jackson, Victoria, and Refugio Counties, Texas. It is stated that the facilities would be sold for $376,336.79, which corresponds to their salvage value.

United explains that it is not economical to operate the facilities since gas production in the nearby fields has drastically diminished over the years, and estimates that the abandonment would reduce United's maintenance costs by approximately $200,000 per year. United advises that Equities would not be operating the facilities as "regulated" jurisdictional facilities. United states that the 12 farm tap customers, which would be affected by this proposal, have consented to have their service taps relocated to United's parallel Index 129 pipeline, and that it has filed in Docket No. CP92-644-000 for such authorization. United further states that there is one active gas purchase contract associated with this abandonment, and United has agreed to reconnect that producer to index 129 at no cost to the producer.

Comment date: October 14, 1992, in accordance with Standard Paragraph F at the end of this notice.

2. Trunkline Gas Co.

[Docket No. CP92-705-000]

September 24, 1992.

Take notice that on September 15, 1992, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed an application with the Commission in Docket No. CP92-705-000 pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon a firm sales service to Michigan Gas Utilities Company (MGU), an existing jurisdictional sales customer, under Trunkline's FERC Rate Schedule P-2, all as more fully set forth in the request which is open to the public for inspection.

Trunkline proposes to abandon, at MGU's request, a firm sales service under Trunkline's Rate Schedule P-2 of up to 7,650 Mcf per day of natural gas. Trunkline requests authority to abandon its Rate Schedule P-2 firm sales service to MGU effective the date of any order issued in this proceeding. No facilities would be abandoned in this proposal.

Comment date: October 15, 1992, in accordance with Standard Paragraph F at the end of this notice.

3. Williams Natural Gas Co.

[Docket No. CP92-711-000]

September 24, 1992.

Take notice that on September 17, 1992, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP92-711-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain gathering facilities by sale, to abandon and assign gas purchases along the gathering facilities and to abandon and assign two domestic sales customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Williams requests authorization to abandon, by sale to Sun Operating Limited Partnership by Oryx Energy Company (Oryx), its portion of the Wakita/Clyde gathering system located in Grant and Alfalfa Counties, Oklahoma, consisting of approximately 70.4 miles of various size pipeline and associated meters and meter runs. The sale price is $430,000 it is stated. Williams also proposes to abandon and assign to Oryx its purchases of Natural Gas Act gas along the facilities and two domestic sales made from the facilities. Williams asserts that no compressors, compressor stations or mainline facilities will be sold.

Comment date: October 15, 1992, in accordance with Standard Paragraph F at the end of the notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

[1] *See* 50 FPC 181 (1973), 9 FERC ¶62,082 (1979).

[2] David Howell is a sole proprietorship d/b/a Pipeline Equities.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23836 Filed 9-30-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER92-807-000]

Central Vermont Public Service Corp.; Filing

September 25, 1992.

Take notice that on September 14, 1992, Central Vermont Public Service Corporation tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 8, 1992. 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. 92-23776 Filed 9-30-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC92-14-000]

Columbia Gas Transmission Corp; Tariff Sheet Filings

September 25, 1992.

Take notice that Columbia Gas Transmission (Columbia), 1700 MacCorkle Ave. S.E., P.O. Box 1273, Charleston, WV 25325-1273, has filed its revised tariff sheets to become effective November 1, 1992, pursuant to Section 281.204(b)(2) of the Commission's Regulations, which requires interstate pipelines to update their respective index of entitlements annually to reflect changes in priority 2 entitlements (Essential Agricultural Users).

Columbia filed to revise the following sheets to become effective November 1, 1992:

(a) Third Revised Sheet Nos. 270-274
(b) Second Revised Sheet No. 275
(c) Third Revised Sheet Nos. 276-305
(d) Second Revised Sheet No. 306
(e) First Revised Sheet Nos. 307-310

Any person desiring to be heard or to make a protest with reference to said tariff sheet filing should, on or before October 16, 1992, file with the Federal Energy Regulatory Commission (825 North Capitol Street, NE., Washington, DC 20426) a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 or 385.211. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23855 Filed 9-30-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER92-674-000]

Entergy Power, Inc.; Filing

September 25, 1992.

Take notice that on September 1, 1992, Entergy Power, Inc. tendered for filing in this docket further information regarding its earlier filing of a letter agreement between Energy Power, Inc. and the Tennessee Valley Authority.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 5, 1992. 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. 92-23777 Filed 9-30-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER92-601-000]

Entergy Power, Inc.; Filing

September 25, 1992.

Take notice that on September 1, 1992, Energy Power, Inc. tendered for filing further information regarding its earlier filing of an agreement with the Tennessee Valley Authority in this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 5, 1992. 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. 92-23853 Filed 9-30-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-15-000]

Equitrans, Inc.; Conference

September 25, 1992.

Take notice that on October 8, 1992, a conference will be convened in the above-captioned docket to discuss Equitrans, Inc.'s summary of its proposed plan for implementation of Order No. 636.

The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The conference will begin at 10 a.m. All interested persons are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons can call Betsy Carr at (202) 208-1240 or Leonard Burton at (202) 208-2085.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23838 Filed 9-30-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ92-5-28-002 TM92-4-28-002]

Panhandle Eastern Pipe Line Co.; Compliance Filing

September 25, 1992.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on September 14, 1992, in compliance with the Commission's August 28, 1992 letter order, submitted additional information in support of its filing.

Panhandle states that on August 28, the Commission issued a letter order accepting for filing and suspending the tariff sheets filed by Panhandle subject to refund and conditions, and directed Panhandle to file with 15 days of issuance of this order additional information in support of the filing.

Panhandle states that in compliance with the Commission's directive it has filed the filing:

1. The basis for the Trunkline Gas Company transportation rates reflected in Rate Schedules T-14, T-39, T-40, TE-8 and T-54.

2. An explanation of the Demand billing determinants used for customers served under Rate Schedules SSS-1, SSS-2, and SSS-3.

3. Workpapers to support the rate adjustments pursuant to the TCA tariff provisions.

Panhandle requests that the submittal be accepted as in satisfactory compliance with the Commission's directives in the letter order dated August 29, 1992.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before October 2, 1992. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23850 Filed 9-30-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-233-000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

September 25, 1992.

Take notice that on September 23, 1992, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following tariff sheets listed on appendix A to the filing, to its FERC Gas Tariff, Original Volume No. 1 in compliance with the Commission's May 28, 1992 order in Docket No. CP92-462-000. Panhandle proposes that the tariff sheets be made effective November 1, 1992.

Panhandle states that the tariff sheets are being submitted to provide for a open-access storage service. The Commission stated in the aforementioned order that the proposed storage service was consistent with the goals of Order No. 636 and that Panhandle may provide the requested storage service under part 284 of the Regulations by filing revised tariff sheets that provide for such service. The Commission expressly stated that Panhandle may implement the storage service "in advance of its required filing in full compliance with Order No. 636" and that such a filing "will benefit all market participants."

Panhandle states that copies of the filing have been served upon Panhandle's jurisdictional customers, interested state regulatory commissions and parties in the Docket No. CP92-462-000 proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 2, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23851 Filed 9-30-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-72-000]

Pelican Interstate Gas System; Proposed Change in FERC Gas Tariff

September 25, 1992.

Take notice that on September 23, 1992, Pelican Interstate Gas System (Pelican) tendered for filing Sixth Revised Sheet No. 2A and Fifth Revised Sheet No. 2B to be a part of its FERC Gas Tariff, with a proposed effective date of October 1, 1992.

Pelican states that the proposed tariff sheets provides a revised Annual Charges Adjustment (ACA) that the Federal Energy Regulatory Commission ("Commission") assesses Pelican under § 382.103 of the Commission's Regulations. Pelican states that the Commission has specified that ACA unit charge of $.0023/Mcf to be applied to rates in 1993 for recovery of 1992 annual charges.

Pelican states that copies of the filing has been mailed to Pelican's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before October 2, 1992. 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. 92-23837 Filed 9-30-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-48-000]

Riverside Pipeline Co., L.P.; Prefiling Conference

September 25, 1992.

Take notice that on Thursday, October 8, 1992, at 10:00 a.m., a conference will be convened in the above-captioned docket to discuss Riverside Pipeline's summary of its proposed plan for implementation of Order No. 636. The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC.

All parties are invited to attend. Attendance at the conference, however,

will not confer party status. For additional information, interested parties may call Arnold H. Meltz at (202) 208–2161 or Thomas E. Gooding at (202) 208–0831.

Lois D. Cashell,

Secretary.

[FR Doc. 92–23854 Filed 9–30–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TC92–10–000]

Southern Natural Gas Co.; Petition for Waiver

September 25, 1992.

Take notice that on September 14, 1992, Southern Natural Gas Company, (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, tendered for filing a Petition For Waiver of certain provisions of the Stipulation and Agreement dated December 30, 1981 in Docket No. TC81–64–000.

By order dated March 18, 1982, the Commission approved the aforementioned Stipulation and Agreement, which established the procedures to be followed in updating the Priority 2.1 Essential Agricultural Use (EAU) requirements of Southern's resale and direct sale customers. One provision of the Stipulation and Agreement requires Southern to resurvey triennially its customers' EAU requirements in order to update its Index of Requirements to reflect any changes in their EAU requirements. By letter order dated November 8, 1991, the Commission authorized Southern to postpone its triennial review of the EAU requirements until September 15, 1992.

In the petition, Southern requests authorization from the Commission to extend the time for filing its triennial EAU survey until November 1, 1992 and that such update be made effective December 1, 1992. Southern submits that there is good cause to waive the triennial survey requirement until November 1, 1992, because Southern and its customers are in the process of negotiating the terms under which Southern will provide service to its customers pursuant to Order No. 636 and it would be burdensome at this time for Southern's customers to resurvey their customers for EAU requirements. Southern has consulted its customers on its Data Verification Committee and they have agreed that Southern should ask for a waiver of the triennial filing requirement until November 1, 1992 with an effective date of December 1, 1992.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or a Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such Motions or Protests should be filed on or before October 5, 1992. 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. 92–23852 Filed 9–30–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER91–588–000]

West Texas Utilities Co.; Filing

September 25, 1992.

Take notice that on September 22, 1992, West Texas Utilities Company (WTU) tendered executed copies of the First Amendment to the Interconnection and Interchange Agreement (Agreement) between WTU and Lower Colorado River Authority (LCRA) and a related letter agreement. Unexecuted copies were originally filed September 4, 1992.

Copies of the filing were served upon LCRA and the Public Utility Commission of Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 5, 1992. 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. 92–23778 Filed 9–30–92; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 92–27–NG]

American Hunter Exploration Ltd.; Order Granite Blanket Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting American Hunter Exploration Ltd. blanket authorization to import from Canada up to 300 Bcf of natural gas over a two-year term, beginning on the date of first delivery after October 5, 1992.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m.. Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 24, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–23870 Filed 9–30–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–85–NG]

Mercado Gas Services, Inc.; Order Granting Blanket Authorization to Export Natural Gas to Mexico and Other Countries

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: This Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Mercado Gas Services, Inc. blanket authorization to export up to 43.8 Bcf of natural gas to Mexico and other countries over a two-year term beginning on the date of the first export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 24, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-23871 Filed 9-30-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Nuclear Energy

Early Site Permit (ESP) Demonstration Program—Siting Conference

AGENCY: Office of Nuclear Energy, U.S. Department of Energy.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Early Site Permit Demonstration Program (ESPDP) will conduct a Siting Conference on October 14, 1992. The purpose of the meeting is to present to U.S. utilities, other potentially qualifying ESP holders, and the interested public, results and status to date. These will include discussions of ESPDP progress and other activities supporting the demonstration of the ESP process.

DATES: The conference will be held on Wednesday, October 14, 1992, from 8 a.m. to 5 p.m.

ADDRESSES: The conference will be held at the Stouffer Concourse Hotel, 2399 Jefferson Davis Highway, Arlington, Virginia 22202, (703) 979-6800.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Pasedag, U.S. Department of Energy, (301) 903-3628.

Registration is required for attending the conference. To preregister, please contact Southern Electric International at (205) 868-5711. Registration is also available the day of the conference beginning at 7:15 a.m. Registration the day of the conference is on a space available basis. The meeting is open to the public.

William H. Young,

Assistant Secretary for Nuclear Energy.

[FR Doc. 92-23869 Filed 9-30-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4515-2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at (202) 260-2740.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

OMB Approvals

EPA ICR No. 1050.04; Standards of Performance for New Stationary Sources Storage Vessels for Petroleum Liquids -- Subpart KA; was approved 05/29/92; OMB No. 2060-0121; expires 05/31/95.

EPA ICR No. 1537.02; Human Activity Pattern Survey; was approved 07/24/92; OMB No. 2080-0045; expires 07/31/95.

EPA ICR No. 1618.01; Request for Cement Kiln Dust Waste Characterization; was approved 07/29/92; OMB No. 2050-0123; expires 07/31/95.

EPA ICR No. 1615.01; Clean Air Act Rule Effectiveness Study; Regulation Compliance Survey -- CAA Section 114; was approved 08/10/92; OMB No. 2060-0241; expires 04/30/94.

EPA ICR No. 0226.09; Application for NPDES Discharge Permit and the Sewage Sludge Management Permit; was approved 08/17/92; OMB No. 2040-0086; expires 08/31/95.

EPA ICR No. 1230.06; New Source Review and Prevention of Significant Deterioration Permitting Programs -- Information Requirements; was approved 08/18/92; OMB No. 2060-0003; expires 08/31/95.

EPA ICR No. 0661.04; NSPS for Asphalt Processing and Asphalt Roofing Manufacturing, Information Requirements -- Subpart UU; was approved 08/18/92; OMB No. 2060-0002; expires 08/31/95.

EPA ICR No. 0657.04; NSPS for Graphic Arts Industry (Subpart QQ) - Information Requirements; was approved 08/18/92; OMB No. 2060-0105; expires 08/31/95.

EPA ICR No. 1284.03; New Source Performance Standards for Polymeric Coating of Supporting Substrates; was approved 08/20/92; OMB No. 2060-0181; expires 08/31/95.

EPA ICR No. 0029.05; NPDES Modification and Variance Requests; was approved 08/27/92; OMB No. 2040-0068; expires 08/31/95.

EPA ICR No. 0801.09; Requirements for Generators, Transporters, and Disposers Under the RCRA Hazardous Waste Manifest System; was approved 09/02/92; OMB No. 2050-0039; expires 09/30/94.

Conditional Approval

EPA ICR No. 1616.01; Total Quality Management (TQM) Studies; OMB No. 2010-0023; expires 07/31/95. This collection of information received a conditional approval from OMB. For a copy of the notice containing the conditions, please call Sandy Farmer on (202) 260-2740.

OMB Extensions of Expiration Dates

EPA ICR No. 0262; RCRA Hazardous Waste Permit Application and Modification, Part A; OMB No. 2050-0034; expiration date extended to 12/31/92.

EPA ICR No. 1571; General Hazardous Waste Facility Standards; OMB No. 2050-0120; expiration date extended to 12/31/92.

EPA ICR No. 1573; Part B Permit Application, Permit Modifications and Special Permits; OMB No. 2050-0009; expiration date extended to 12/31/92.

EPA ICR No. 0261; Notification of Hazardous Waste Activity; OMB No. 2050-0028; expiration date extended to 12/31/92.

Dated: September 24, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-23860 Filed 9-30-92; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-00125; FRL-4167-3]

Toxic Substances Control Act Confidential Business Information Claims Policies and Regulations; Notice of Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given that a public meeting is scheduled to elicit public comments on Toxic Substances Control Act (TSCA) Confidential Business Information (CBI) policies and on a study commissioned by EPA which examined the influence of CBI requirements on TSCA implementation. Interested persons will be given the opportunity to comment on these policies, the recently completed study, and provide suggestions for proposals for future actions in this area.

DATES: The public meeting will occur on October 14, 1992, from 9:30 a.m. to 12:30 p.m. Persons wishing to attend the meeting should contact the party listed under FOR FURTHER INFORMATION CONTACT before October 7, 1992.

ADDRESSES: The public meeting will be held at: Washington Vista Hotel, 1400 M St., NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Scott M. Sherlock, Information Management Division (TS–793), Environmental Protection Agency, 401 M St., SW., Rm. E–118, Washington, DC 20460, Telephone: (202) 260–1536, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In early September 1992, EPA released a commissioned study titled "Influence of CBI Requirements on TSCA CBI." This study was commissioned as part of an EPA initiative to improve TSCA's utilization as a toxics information dissemination statute. The study provided an depth analysis of CBI claims, submitter procedures for making such claims, Agency review and challenges of claims, and effects of improper claims on EPA's toxics information mission.

Using this study as a first step, EPA is reviewing CBI claims procedures to establish a more effective way to provide the required protections to business confidential information and also to further TSCA's usefulness as a toxics information dissemination statute. The Agency in this public meeting is seeking public comment on TSCA confidential business information handling policies, TSCA information dissemination policies, and soliciting perspectives and suggestions for the next steps to be undertaken to make the TSCA confidential business information dissemination systems more effective.

Persons wishing to attend the meeting should contact Scott Sherlock at (202) 260–1536 in order to preregister. Members of the public will be granted the opportunity to make oral comments at the meeting. Individual comments will be limited to 5 minutes. Written comments are invited and should be directed to Scott Sherlock at the address listed under FOR FURTHER INFORMATION CONTACT.

Dated: September 24, 1992.

Linda A. Travers,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92–23858 Filed 9–30–92; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

Elizabeth River Terminals, Inc., et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in §§ 560.6 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult these sections before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No: 224–008435–001.

Title: Terminal Operators Conference of Hampton Roads.

Parties:

Elizabeth River Terminals, Inc.

Lambert's Point Docks, Inc.

Virginia International Terminals, Inc.

Virginia Ports Authority.

Filing Party: H. Robert Jones, Chairman, Virginia Port Authority, 600 World Trade Center, Norfolk, VA 23510.

Synopsis: The subject modification would restate and update the Agreement by acknowledging its effectiveness under the Shipping Act of 1984, expand its geographic scope, change its name, and make administrative changes within the voting provision.

Agreement No: 207–011381–001.

Title: United Yacht Transport Joint Service Agreement.

Parties:

Dock-Express Shipping B.V.

Wijsmuller Transport Holding B.V.

Filing Party: Edward Schmeltzer, Esq., Schmeltzer, Aptaker & Shepard, P.C. 2600 Virginia Avenue, NW., Washington, DC 20037–1905.

Synopsis: The proposed amendment adds Alaska and Hawaii to the U.S. port areas served, expands the Agreement's authority to include U.S. domestic service for the carriage of yachts between the U.S. Virgin Islands and other U.S. ports, and provides for the carriage of watercraft other than yachts between Mediterranean ports, Florida, and the U.S. Virgin Islands.

Dated: September 25, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–23761 Filed 9–30–92; 8:45 am]

BILLING CODE 6730–01–M

The Port of Oakland et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–003914–007.

Title: Port of Oakland/Sea-Land Service, Inc., Marine Terminal Agreement.

Parties:

The Port of Oakland ("Port")

Sea-Land Service, Inc ("Sea-Land").

Synopsis: The Agreement provides for certain container yard repair improvements to be performed by Sea-Land at the Port. It also provides for reimbursement by the Port to Sea-Land of a portion of the cost for container yard improvement.

Agreement No.: 224–200294–005.

Title: Georgia Ports Authority/ Japanese Three Lines Terminal Agreement.

Parties:

Georgia Ports Authority

Mitsui O.S.K. Lines, Ltd.

Nippon Yusen Kaisha.

Synopsis: The amendment revised the Agreement's rate schedule.

Agreement No.: 212–011213–029.

Title: Spain-Italy/Puerto Rico Island Pool Agreement.

Parties:

Compania Trasatlantica Espanola, S.A.

Nordana Line A/S

Sea-Land Service, Inc.

Synopsis: The proposed amendment will reduce the amount of the security

required to be deposited by each member to a flat rate of $30,000.

Agreement No.: 207–011386.

Title: NGPL—Joint Service Agreement.

Parties:

The China Navigation Co. Ltd.
Mitsui O.S.K. Lines Ltd.

Synopsis: The proposed Agreement will permit the parties to establish a joint service in the trade between Papua, New Guinea, the Solomon Islands, and other Asian ports (with transshipment in the Far East) and the United States, Puerto Rico, Northern Marianas Islands, and all of the United States territories and possessions. It will also permit the parties to fix or regulate rates, charges, practices and conditions for carriage of cargo in the service and consult and agree on sailing schedules, service frequencies, ports to be served and port rotations, issue a single bill of lading and share revenue and expenses.

Dated: September 25, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–23759 Filed 9–30–92; 8:45 am]

BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

Notice of Establishment of Committee

Establishment of Advisory Committee

This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) and advises of the establishment by the General Services Administration of the Steering Committee for the African Burial Ground, New York, NY. The Administrator of General Services has determined that establishment of this committee is in the public interest.

Designation

Steering Committee for the African Burial Ground, New York, NY.

Purpose.

The committee will advise the Administrator of General Services and the Congress in determining the present and future activities affecting the pavilion portion of the Federal construction site known as the "Negro Burial Ground" on Duane and Elk Streets, New York City, including, but not limited to: (1) The review of proposals regarding the human remains on the pavilion site; (2) the analysis, curation, and reinterment of remains exhumed from the "Negro Burial Ground"; and (3) the construction of a memorial or other improvement on the pavilion site. The committee will also advise the Administrator regarding activities in the tower site relating to exhibits, the interpretive display, and artwork to the extent that construction of the tower will not be impeded.

Contact for Information

For additional information, contact: William J. Diamond, Regional Administrator, General Services Administration, Region 2, 26 Federal Plaza, New York, NY 10278, Telephone: (212) 264–2600.

Dated: September 23, 1992.

Richard G. Austin,

Administrator.

[FR Doc. 92–23779 Filed 9–30–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Change in Numbering of Department of Health and Human Services (HHS) Programs in the Catalog of Federal Domestic Assistance (CFDA)

Effective October 1, 1992, the Program Number series will change for the following CFDA Programs for ACF (FSA) and AoA:

ADMINISTRATION FOR CHILDREN AND FAMILIES

Old	New
Family Support Administration	
93.020	93.560
93.021	93.561
93.022	93.562
93.023	93.563
93.024	93.564
93.025	93.565
93.026	93.566
93.027	93.567
93.028	93.568
93.031	93.569
93.032	93.570
93.033	93.571
93.034	93.572
93.035	93.573
93.036	93.574
93.037	93.575
93.038	93.576
93.039	93.577
93.040	93.578
Administration on Aging	
93.552	93.041
93.553	93.042
93.555	93.043
93.633	93.044
93.635	93.045
93.641	93.046
93.655	93.047

ADMINISTRATION FOR CHILDREN AND FAMILIES—Continued

Old	New
93.668	93.048

Dated: September 23, 1992.

William J. Topolewski,

Acting Deputy Assistant Secretary, Finance.

[FR Doc. 92–23830 Filed 9–30–92; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

[Docket No. 78N–0050, formerly FDC–D–634; DESI 607]

Antazoline in Fixed Combination With Naphazoline for Human Ophthalmic Use; Drug Efficacy Study Implementation; Final Evaluation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its final evaluation, under the Drug Efficacy Study Implementation (DESI) program, of Vasocon-A, which contains 0.5 percent antazoline phosphate and 0.05 percent naphazoline hydrochloride. Vasocon-A is safe and effective for the relief of signs and symptoms of allergic conjunctivitis, and lacking substantial evidence of effectiveness for all other previously labeled indications. Vasocon-A is manufactured by IOLAB Pharmaceuticals, Inc. (IOLAB), 500 IOLAB Dr., Claremont, CA 91711.

ADDRESSES: Requests for information concerning the notice should be identified with the reference number DESI 607 and directed to the attention of the Division of Drug Labeling Compliance (HFD–310), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8063.

FOR FURTHER INFORMATION CONTACT: Harry T. Schiller, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8041.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 14, 1971 (36 FR 19987), FDA announced that it had completed its evaluation of a report received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group (NAS–NRC), on Antistine Phosphate Ophthalmic Solution containing antazoline phosphate (new

drug application (NDA) 6-456). Based on this evaluation, FDA found that antazoline phosphate for ophthalmic use, alone or in combination with other ingredients, was possibly effective for the relief of ocular irritation and/or congestion, or for the treatment of allergic, inflammatory, or infectious ocular conditions. Although manufacturers of affected products were given time to submit substantial evidence of effectiveness for the possibly effective indications, no data were submitted.

Subsequently, in a notice published in the **Federal Register** of June 21, 1973 (38 FR 16257), FDA reclassified the possibly effective indications for Antistine Phosphate Ophthalmic Solution to lacking substantial evidence of effectiveness, proposed to withdraw approval of NDA 6-456, and offered an opportunity for a hearing on the proposal. The notice also announced that all identical, related, and similar drug products not subject to approved NDA's were covered by the NDA reviewed and by FDA's effectiveness conclusions (21 CFR 310.6; previously 21 CFR 130.40). The notice further offered the manufacturers and distributors of these products an opportunity for a hearing concerning FDA's conclusions.

In response to the 1973 notice, Smith, Miller, and Patch, Inc., a subsidiary of Cooper Laboratories, Inc., filed a hearing request for Vasocon-A, containing 0.5 percent antazoline phosphate and 0.05 percent naphazoline hydrochloride. At that time, Vasocon-A was an unapproved combination drug product related to Antistine Phosphate Ophthalmic Solution.

No other manufacturers or distributors requested a hearing. Consequently, in a notice published in the **Federal Register** of January 21, 1974 (39 FR 2392), FDA withdrew approval of NDA 6-456. This withdrawal of approval also covered all identical, related, and similar drug products not the subjects of approved NDA's, except Vasocon-A. The agency announced that it was unlawful to ship in interstate commerce Antistine Phosphate Ophthalmic Solution and all identical, related, and similar drug products not the subjects of approved NDA's, except for Vasocon-A. The agency permitted the continued marketing of Vasocon-A pending a ruling on the hearing request.

Subsequently, Cooper Laboratories, Inc., sold its rights to Vasocon-A to IOLAB, which submitted an NDA for the drug (NDA 18-746). FDA approved Vasocon-A on April 30, 1990, for the relief of signs and symptoms of allergic conjunctivitis. On January 31, 1992, IOLAB withdrew its hearing request.

Therefore, the Director of the Center for Drug Evaluation and Research finds Vasocon-A as lacking substantial evidence of effectiveness for all other indications except for those previously approved by the agency.

As previously announced, drug products containing antazoline in combination with naphazoline are regarded as new drugs (21 U.S.C. 321(p)). An approved NDA is a requirement for marketing such products. Marketing of such products without an approved NDA will subject those products, and those persons who cause the products to be marketed, to regulatory action.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 201(p), 502, 505 (21 U.S.C. 321(n), 321(p), 352, 355)) and under the authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.70 and 5.82).

Dated: September 17, 1992.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 92-23747 Filed 9-30-92; 8:45 am]

BILLING CODE 4160-01-F

Health Resources and Services Administration

Advisory Council on Trauma Care Systems; Establishment

Pursuant to the Federal Advisory Committee Act, Public Law 92-463 (5 U.S.C. appendix 2), the Secretary, Department of Health and Human Services announces the establishment of the following advisory council.

Designation: Advisory Council on Trauma Care Systems.

Purpose: The Advisory Council on Trauma Care Systems shall advise and make recommendations to the Secretary, the Assistant Secretary for Health, and the Administrator, Health Resources and Services Administration by: (1) Periodically conducting assessments of the needs in the United States with respect to trauma care and the extent to which the States are responding to such needs, including special consideration of the unique needs of rural areas; (2) submitting the findings made as a result of such assessments; and (3) advising with respect to activities carried out under Title XII, including the development of a model trauma care plan.

Structure: The Council consists of 12 appropriately qualified representatives of the public who are not officers or employees of the United States and are appointed by the Secretary. Of such members: 3 will be individuals experienced or specially trained in trauma surgery (including a critical care nurse); 3 will be individuals experienced or specially trained in emergency medicine (including a nurse who is specially trained in emergency medicine); 1 will be an individual experienced or specially trained in the care of injured children; 1 will be an individual experienced or specially trained in physical medicine and rehabilitation; and 4 will be individuals experienced or specially trained in the development, administration or financing of trauma care systems.

Authority for this Council is continuing until otherwise provided by law.

Dated: September 25, 1992.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 92-23832 Filed 9-30-92; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Deletion of Text From Previously Published Notice

AGENCY: Public Health Service, HHS.

ACTION: Deletion.

On September 2, 1992, we published a notice in the **Federal Register** entitled "Specific List for Categorization of Laboratory Test Systems, Assays and Examinations by Complexity" (57 FR 40258-40296). At the bottom of column 1 on page 40293 and running to the end of the document, the notice contained text under a subheading reading "Corrections to the Specific List for Categorization of Laboratory Test Systems, Assays and Examinations by Complexity Published as a notice in the **Federal Register** on February 28, 1992." The subheading and the entirety of such text is hereby deleted.

Corrections to the categorization of tests may be published in future **Federal Register** Notices. These corrections will be made based on analysis of comments and additional information that may become available.

Dated: September 24, 1992.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 92-23752 Filed 9-30-92; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management,

[CA-050-93-4333-13]

Closure of Public Lands in Lake County, CA

AGENCY: Bureau of Land Management Interior.

ACTION: Permanent Closure Order of Public Lands in Lake County, California.

SUMMARY: Notice is hereby given related to the permanent closure of Bureau of Land Management (BLM) administered lands to public use from the hours of 10 p.m. to 5 a.m. in accordance with regulations contained in 43 CFR subpart 8364.1(a) and known as Soda Bay Island Baths, located in T13N, R8W, within section 6 in Lake County containing 1 acre more or less in three closely spaced islands. This closure shall not apply to peace officers, firefighters, or any other emergency service personnel while in the performance of their duties. Exemption to this closure may be granted to groups or individuals by permit from BLM.

DATE: This Closure Order is effective October 1, 1992.

SUPPLEMENTARY INFORMATION: The three small rocky islands were used by the Indians and later developed as a health resort by the white man in the early 1900's. A boardwalk connected the baths to a health resort located on the mainland. In the 1940's the resort burned and was not rebuilt. The islands were claimed as government property and are now managed by the Bureau of Land Management. Today local merchants advertise the presence of the hot water baths to attract tourists to the area. As a result their has been an increase in visitor use on the islands over the past several years. The nocturnal closure is necessary because of the increase nocturnal disturbance caused to wildlife and residents living nearby. Local residents complain about increase occurrences of vandalism, excessive public drinking, and lewd and lascivious behavior which occur on the islands after dark. The Bureau of Land Mangement will continue to manage the area for daylight recreational activities and as a historic site. The area will be posted "Day Use Only", Closed 10 p.m. to 5 a.m.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Ukiah, California office at (707) 462-3873.

Scott C. Adams,

Clear Lake Resource Area Manager.

[FR Doc. 92-23819 Filed 9-30-92; 8:45 am]

BILLING CODE 4310-40-M

Iditarod National Historic Trail Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Iditarod National Historic Trail Advisory Council will be held in Nome, Alaska from 9 a.m. to 5 p.m. on October 27, 1992. The meeting is open to the public and public comment will be taken from 1:30-2 p.m. Field trip(s) of the Iditarod National Historic Trail are scheduled.

DATES: October 26-28, 1992.

ADDRESSES: Nome City Hall, 61 Hunter Way, Nome, Alaska 99762.

FOR FURTHER INFORMATION CONTACT: Mike Zaidlicz, Iditarod Trail Coordinator, Anchorage District Office, 6881 Abbott Loop, Anchorage, AK 99507, (907) 267-1307.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Introductions and opening remarks
2. Iditarod Trail field trip(s)
3. Review/approval of previous meeting's minutes
4. Trail marking & shelter cabins
5. Lands/Cultural Issues
6. Implementation plan
8. Interpretive plan

Richard J. Vernimen,

Anchorage District Manager.

[FR Doc. 92-23744 Filed 9-30-92; 8:45 am]

BILLING CODE 4310-JA-M

[OR-943-4212-13; GP2-457; OR-45050]

Conveyance of Public Land; Order Providing for Opening of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 653.18 acres of public land out of Federal ownership. This action will also open 4,258.18 acres of reconveyed lands to surface entry, and 3,202.18 acres to mining and mineral leasing. Of the balance, the minerals in 800 acres have been and continue to be open to mining and mineral leasing, and the minerals in 256 acres not in Federal ownership.

EFFECTIVE DATE: November 6, 1992.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that in an exchange of lands made pursuant to Section 206 of the Act of October 21, 1976; 43 U.S.C. 1716, a patent has been issued transferring 653.18 acres in Deschutes County, Oregon, from Federal to private ownership.

2. In the exchange, the following described lands have been reconveyed to the United States:

Willamette Meridian

T. 5 S., R. 19 E.,
- Sec. 5, those portions of the SE¼SW¼ and SE¼ lying west of John Day River;
- Sec. 8, those portions of the E½NW¼, SW¼NW¼, NE¼SW¼, and SE¼ lying west of the John Day River;
- Sec. 15, N½, SW¼, N½SE¼, and SE¼SE¼;
- Sec. 16, W¼SW¼, SE¼, and that portion of the N½ lying east of the John Dary River;
- Sec. 22, N½, N½SW¼, and SE¼;
- Sec. 27, W½NE¼, N½NW¼, and SE¼NW¼.

T. 10 S., R. 19, E.,
- Sec. 13, S½S½;
- Sec. 24.

T. 10 S., R. 20 E.,
- Sec. 18, lot 4, N½NE¼, SE¼NE¼, E½SW¼, and SE¼;
- Sec. 19, lots 1, 2, 3, and 4, E½, and E½W½;
- Sec. 30, lots 1 and 2, NE¼, and E½NW¼.

The areas described aggregate approximately 4,258.18 acres in Gilliam, Jefferson, Sherman, and Wheeler Counties, Oregon.

3. The minerals in Secs. 13 and 24, T. 10 S., R. 19 E., are in Federal ownership and have been and remain open to mining and mineral leasing.

4. The minerals in Secs. 5 and 8, T. 5 S., R. 19 E., are not in Federal ownership and will not be open to mining and mineral leasing.

5. At 8:30 a.m., on November 6, 1992, the lands described in paragraph 2 will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on November 6, 1992, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

6. At 8:30 a.m., on November 6, 1992, the lands described in paragraph 2, except as provided in paragraphs 3 and 4, will be opened to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by

State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

7. At 8:30 a.m., on November 6, 1992, the lands described in paragraph 2, except as provided in paragraphs 3 and 4, will be opened to applications and offers under the mineral leasing laws.

Dated: September 22, 1992.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92-23821 Filed 9-30-92; 8:45 am]

BILLING CODE 4310-33-M

[OR-130-02-4212-13: GP-461); WAOR 48464]

Exchange of Public Lands in Ferry, Lincoln and Stevens Counties, WA; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Exchange of Public Lands in Ferry, Lincoln and Stevens Counties, Washington.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Willamette Meridian:

T. 40 N., R. 32 E.,
T. 36 N., R. 33 E.,
  Sec. 22, W½NE¼;
  Sec. 12, S½SE¼;
  Sec. 13, E½NE¼; NE¼SE¼;
  Sec. 23, NE¼NE¼; SE¼;
  Sec. 24, NW¼NW¼;
T. 38 N., R. 33 E.,
  Sec. 11, Lots 10 & 11;
  Sec. 12, NW¼NW¼;
  Sec. 35, W½NW¼;
T. 39 N., R. 33 E.,
T. 40 N., R. 33 E.,
  Sec. 13 Lot 6;
  Sec. 13 Lot 14;
  Sec. 24, NW¼SE¼;
T. 39 N., R. 34 E.,
  Sec. 2, W½SW¼, SW¼SE¼;
  Sec. 11, N½NE¼;
  Sec. 12, NW¼NW¼;
  Sec. 33 Lot 1;
T. 33 N., R. 38 E.,
T. 38 N., R. 38 E.,
  Sec. 26, SE¼NE¼;
T. 39 N., R. 38 E.,
  Sec. 3, W½SW¼
  Sec. 10 NW¼
T. 37 N., R. 39 E.,
  Sec. 20, SW¼SW¼;
  Sec. 29 Lot 2, NW¼NW¼;
  Sec. 30 NE¼SE¼;
T. 38 N., R. 39 E.,
  Sec. 18, Lots 1, 10 & 15;
  Sec. 19, Lot 2 & 14;
  Sec. 30 Lot 3;
T. 39 N., R. 39 E.,
T. 40 N., R. 39 E.,
  Sec. 2 Lot 4;
  Sec. 4, Lot 6, S½NW¼;
  Sec. 17, NE¼;
T. 28 N., R. 40 E.,
  Sec. 10 SW¼NE¼;
  Sec. 24, NE¼NE¼;
  Sec. 30, Lot 1;
T. 38 N., R. 40 E.,
T. 40 N., R. 40 E.,
  Sec. 1 Lot 7, S½NE¼, N½SE¼;
  Sec. 2 Lot 6;
  Sec. 3, Lots 5, 6, 7, & 8, SE¼NW¼, NE¼SW¼;
  Sec. 4 Lot 5;
  Sec. 6 Lots 8 & 9, SE¼SE¼;
  Sec. 8, N½NW¼;
  Sec. 20 Lot 5;
  Sec. 25 Lot 5;
T. 31 N., R. 41 E.,
T. 38 N., R. 41 E.,
  Sec. 20 Lot 2, M.S. #'s 1196, 1197, & 1198;
T. 39½ N., R. 41 E.,
  Sec. 6, SW¼SE¼;
  Sec. 7, NE¼NE¼;
  Sec. 33 Lots 1-4;
  Sec. 34, Lots 1-4;
2. 40 N., R. 41 E.,
  Sec. 1, Lots 9 & 10;
  Sec. 2, Lot 9;
  Sec. 10, E½;
  Sec. 11, NW¼, NW¼SW¼;
  Sec. 32, Lot 12;
T. 31 N., R. 42 E.,

Aggregating 3,208 acres, more or less in Ferry and Stevens Counties, WA.

In exchange for all or part of these lands, the Federal Government will acquire offered private lands within the Upper Crab Creek Management Area of Lincoln County, Washington. The lands proposed for acquisition will primarily be located along the Crab Creek and Lake Creek watersheds. A detailed legal description of the property will be published as specific parcels of the proposal are identified.

The Bureau of Land Management has grouped the exchange of these public and private lands into priorities based on the opportunity to exchange individual properties and through land-use planning. Completion of the total exchange of these lands is expected to occur in several stages. The value of the lands to be exchanged in each stage will be approximately equal. The proponent may be required to make payments to equalize the values of the lands at the conclusion of the exchange.

The purpose to the land exchange is to facilitate resource management opportunities in eastern Washington as identified in the Spokane District's Resource Management Plan. The exchange will reduce the number of widely scattered parcels of public land that are difficult and uneconomic to manage, and acquire private property adjacent to existing public ownership in Lincoln County. The private lands being offered have important values for recreation, fish and wildlife habitat, riparian and watershed management.

The exchange is subject to:

1. The reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890, (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

3. All other valid existing rights, including, but not limited to, any right-or-way, permit, or lease of record.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws.

Detailed information concerning the exchange, is available for review at the Spokane District Office, East 4217 Main Avenue, Spokane, Washington 99202.

For a period of 45 days, interested parties may submit comments to the Spokane District Manager at the above address. Any adverse comments will be reviewed by the State Director. In absence of any adverse comments, this realty action will become a final determination of the Department of the Interior

Date of Issue: September 23, 1992.

Joseph K. Buesing,

District Manager.

[FR Doc. 92-23745 Filed 9-30-92; 8:45 am]

BILLING CODE 4310-33-M

[ID-010-03-4350-08]

Resource Management Plan Amendment, Cascade Resource Area, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Proposed Resource Management Plan Amendment; and proposed Area of Critical Environmental Concern Designations and Federal Land Transfer.

SUMMARY: Pursuant to the BLM Planning Regulations (43 CFR part 1600) and the National Environmental Policy Act (NEPA, section 102(2)(C)) the Boise District, BLM has prepared a proposed amendment to the Cascade Resource Management Plan to designate six sites

within the Cascade Resource Area as Areas of Critical Environmental Concern (ACECs), and to consider transfer of four parcels of land from federal ownership. The proposed plan amendment is now available for a 30-day protest period under provisions in the BLM Planning regulations found at 43 CFR 1610.5–2.

DATES: The 30-day protest period for the proposed plan amendment will begin on September 28, 1992 and close on October 28, 1992. Written protests to the Director must be received or postmarked no later than the closing date.

ADDRESSES: Protests must be sent to the Director at the following address: Director (760), Department of the Interior, Bureau of Land Management, 18th and C Streets NW., Washington, DC 20240. Any protest should include: (1) Name, address, telephone number and interest of protesting party, (2) identification of the issue being protested, (3) a statement on the parts of the plan being protested, (4) a copy of all documents addressing the issue that were submitted during the planning process, and (5) a concise statement why the State Director's decision is believed to be wrong.

FOR FURTHER INFORMATION CONTACT: John Fend, Cascade Area Manager or Fred Minckler, Environmental Specialist at the Bureau of Land Management, 3984 Development Avenue, Boise, ID 83705 Telephone (208) 384–3300.

SUPPLEMENTARY INFORMATION: The Cascade Resource Management Plan (RMP) is a land use plan for public lands within the Cascade Resource Area administered by BLM in southwest Idaho. The Boise District has prepared a proposed amendment to that plan which addresses special management actions and designation of six sites ranging in size from 40 acres to 1,250 acres as ACECs to protect *Allium aaseae* (Aase'e onion), an onion species being considered by the U.S. Fish and Wildlife Service for listing as threatened or endangered. The six sites are: Cartwright Canyon, 400 acres; Hulls Gulch, 120 acres; Sand-capped Knob, 40 acres; Sand Hollow, 1,250 acres; Willow Creek, 1,060 acres and Woods Gulch, 40 acres. Resource use limitations proposed for these areas address: livestock grazing; motorized vehicle use; rights-of-way; mineral leasing, locations and disposal; water developments and fire suppression and rehabilitation.

The proposed amendment also considers transfer of four parcels of public land form federal ownership. Two small parcels, 0.07 and 1.25 acres, would be transferred from federal ownership by direct sale, and two other parcels, 440 and 20.65 acres, would be transferred through private exchanges.

Review of the environmental assessment (EA) prepared on the Proposed Amendment has resulted in a finding that no significant impact on the human environment would result from implementing the proposal and that an environmental impact statement (EIS) need not be prepared.

Dated: September 23, 1992.

David Brunner,

District Manager.

[FR Doc. 92–23820 Filed 9–30–92; 8:45 am]

BILLING CODE 4310–GG–M

[NM–940–02–4730–12]

Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below will be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico on October 31, 1992.

New Mexico Principal Meridian, New Mexico

T. 5 S., R. 1 E., Accepted September 16, 1992, for Group 898 NM.
T. 5 S., R. 15 W., Accepted September 16, 1992, for Group 863 NM.
T. 11 S., R. 10 E., Accepted September 22, 1992, for Group 730 NM.
Tps. 12 & 13 S., R. 10 E., Accepted September 22, 1992, for Group 730 NM.
Second Standard Parallel S. through R. 11 E., Accepted September 22, 1992, for Group 730 NM.

Indian Meridian, Oklahoma

T. 24 N., R. 6 E., Accepted September 16, 1992, for Group 65 OK.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, a notice that they wish to protest prior to the proposed official filing date given above.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

These plats will be in the files of the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–7115. Copies may be obtained from this office upon payment of $2.50 per sheet.

Dated: September 23, 1992.

John P. Bennett,

Chief, Cadastral Survey.

[FR Doc. 92–23822 Filed 9–30–92; 8:45 am]

BILLING CODE 4310–FB–M

[CO–930–4214–10; COC–39308]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw an additional 1,870.48 acres of National Forest System land adjacent to an existing withdrawal near Keystone, Colorado, to protect recreational facilities and high resource values at the Keystone Ski Area. This proposed action will withdraw the entire 6,442 acres of National Forest System land for 20 years. This notice closes the 1,870.48 acres to location and entry under the mining laws for up to two years. The lands remain open to mineral leasing and to such forms of disposition as may by law be made of National Forest System lands.

DATES: Comments on this proposed withdrawal or requests for public meeting must be received on or before December 30, 1992.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Bob Barbour, 303/239–3708.

SUPPLEMENTARY INFORMATION: On September 9, 1992, the Department of Agriculture, Forest Service, filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws:

Sixth Principal Meridian

Arapaho National Forest

T. 5 S., R. 76 W.,
Sec. 19, lots 55, 58 and NE¼NW¼NW¼;
Sec. 20, lot 46 and W½SW¼;
Sec. 29, W½E½SW¼, W½NW¼
exclusive of patented land, and

W½E½NW¼ exclusive of patented land;
Sec. 32, W½NE¼NW¼, SW¼NW¼, and W½SW¼;
T. 5 S., R. 77 W.,
Sec. 24, lots 13, 15, and 17, and E½SW¼;
Sec. 25, SE¼NW¼, E½NE¼SW¼, and SW¼SE¼;
Sec. 36, NE¼NE¼, NE¼SE¼, and E½NW¼SE¼;
T. 6 S., R. 76 W.,
Sec. 5, S½;
Sec. 6, lots 2, 7, and 10;
Sec. 7, SW¼SE¼ and SE¼SW¼;
Sec. 8, N½ and N½N½SW¼;
T. 6 S., R. 77 W.,
Sec. 2, SE¼NE¼;
Sec. 12, S½SE¼, SW¼NW¼, and NE¼SW¼.

The area described aggregates approximately 1,870.48 acres in Summit County.

The purpose of this withdrawal is to protect existing recreational facilities and high resource values at the Keystone Ski Area. If approved, the final order will incorporate the existing withdrawal made by Public Land Order No. 6625 with this land and withdraw a total of 6,442.01 acres of National Forest System land for 20 years.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with this proposal may present their views in writing to the Colorado State Director.

A public meeting will be scheduled and held on this proposed action as required by regulation and will be conducted in accordance with the Bureau of Land Management Manual, section 2351.16B. A notice of the date, time and place of the meeting will be published in the **Federal Register** at least 30 days prior to the meeting.

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2310.

For a period two years from the date of publication of this notice in the **Federal Register**, the land will be segregated from the mining laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Forest Service will continue to manage these lands.

Dated: September 25, 1992.

Robert S. Schmidt,

Chief, Branch of Realty Programs.

[FR Doc. 92-23823 Filed 9-30-92; 8:45 am]

BILLING CODE 4310-JB-M

[CO-930-4214-10; C-43908]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw approximately 280 acres of National Forest System land and add it to the existing withdrawal for protection of facilities at the Breckenridge Ski Area near Breckenridge, Colorado. This proposal would amend Public Land Order No. 6684 to include this land for the duration of that withdrawal. This order will close this land to location and entry under the mining laws for up to two years. The land has been and remains open to such forms of disposition as may by law be made of National Forest System lands and to mineral leasing. This notice also cancels the existing application for expansion of Public Land Order No. 6684, appearing as **Federal Register** Document No. 90-19574.

DATES: Comments on this proposed withdrawal or requests for public meeting must be received on or before December 30, 1992.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215-7076.

FOR FURTHER INFORMATION CONTACT: Bob Barbour, 303-239-3708.

SUPPLEMENTARY INFORMATION: On September 9, 1992, the Department of Agriculture, Forest Service, filed an application to amend their existing withdrawal for the Breckenridge Ski Area, to include the following described land:

Sixth Principal Meridian

Arapaho National Forest

T. 6 S., R. 78 W.,
Sec. 34, Nominal W½W½; (Protraction Diagram No. 9, accepted 4/26/1965)
T. 7 S., R. 78 W.,
Sec. 3, Nominal N½NW¼ and N½S½N W¼. (Protraction Diagram No. 45, accepted 8/20/1986)

The area described contains approximately 280.00 acres in Summit County. The purpose of this amendment is to protect additional facilities at the Breckenridge Ski Area. This would add the 280 acres to the existing withdrawal made by Public Land Order 6684 for a total of 1,720 acres. The entire withdrawal will expire June 14, 2038.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or obligations in connection with this proposal, or to request a public meeting, may present their views in writing to the Colorado State Director. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with the Bureau of Land Management Manual, § 2351.16B.

This application will be processed in accordance with the regulations set forth in 43 CFR part 2310.

For a period two years from the date of publication of this notice in the **Federal Register**, the land will be segregated from the mining laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Forest Service will continue to manage this land.

Dated: September 25, 1992.

Robert S. Schmidt,

Chief, Branch of Realty Programs.

[FR Doc. 92-23831 Filed 9-30-92; 8:45 am]

BILLING CODE 4310-JB-M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT-722075

Applicant: The Hawthorn Corporation, Grayslake, IL.

The applicant requests amendment of an existing permit to export and re-import five male and eight female captive-born tigers (*Panthera tigris*) for enhancement of survival through educational exhibitions.

PRT-766841

Applicant: The Great American Circus, Sarasota, FL.

The applicant requests a permit to purchase in interstate commerce two female Asian elephants (*Elephas maximus*) from Gary Johnson, Perris, CA, for the purpose of enhancement of survival of the species through education.

PRT-770623

Applicant: International Ctr. for Gibbon Studies, Santa Clarita, CA.

The applicant requests a permit to import 1 male Hooloch gibbon (*Hylobates hooloch leuconedys*) taken from the wild in 1978, one male captive-bred moloch gibbon (*Hylobates moloch*),

and one female captive-bred light-cheeked gibbon (*Hylobates concolor leucogenys*) for captive-breeding.

PRT-772084

Applicant: Sunrise Nursery, Leander, TX.

The applicant requests a permit to sell in interstate commerce artificially propagated endangered & threatened cactus species to enhance the propagation & survival of the species. Species include Tobusch fishhook (*Ancistrocactus tobuschii*), Nellie cory (*Coryphantha minima*), Bunched cory (*C. ramillosa*), Cochise pincushion (*C. robbinsorum*), Lee pincushion (*C. sneedii* var. *leei*), Sneed pincushion (*C. sneedii* var. *sneedii*), Chisos Mountain hedgehog (*Echinocereus chisosensis* var. *chisosensis*), kuenzler hedgehog (*E. fendleri* var. *kuenzleri*), Lloyd's hedgehog (*E. lloydii*), Black lace (*E. reichenbachii* var. *albertii*), and Davis' green pitaya (*E. viridiflorus* var. *davisii*).

PRT-770646

Applicant: Paul C. Kao, Northridge, CA.

The applicant requests a permit to import two male Palawan peacock pheasant (*Syrmaticus mikado*) from Hong Kong Zoo, Hong Kong, for enhancement of propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: September 25, 1992.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 92–23753 Filed 9–30–92; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Niobrara Scenic River Advisory Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Niobrara Scenic River Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

The Commission was established pursuant to Public Law 102–50, section 5. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, on matters pertaining to the development of a management plan, and on the management and operation of the 40-mile and 30-mile segments of the Niobrara River designated by section 2 of Public Law 102–50 which lie outside the boundary of the Fort Niobrara National Wildlife Refuge and that segment of the Niobrara River from its confluence with Chimney Creek to its confluence with Rock Creek.

Meeting Date and Time: October 2, 1992, 1:30 p.m.

Address: City Hall Council Chambers, Ainsworth, Nebraska.

Agenda:

1. Responsibilities of Federal Advisory Commissions
2. Administrative procedures
3. Need for standard operating procedures and/or bylaws
4. Public participation in meetings
5. Proposed agenda, date of the next Commission meeting

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Requests for time for making presentations may be made to the Superintendent prior to the meeting or to the Chairman at the beginning of the meeting. In order to accomplish the agenda for the meeting the Chairman may want to limit or schedule public presentations.

FOR FURTHER INFORMATION CONTACT: Warren Hill, Superintendent, Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, Nebraska 68763–0591, (402) 336–3970.

Dated: August 13, 1992.

William W. Schenk,

Acting Regional Director, Midwest Region.

[FR Doc. 92–23861 Filed 9–30–92; 8:45 am]

BILLING CODE 4310–70–M

Sudbury, Assabet and Concord Rivers Study Committee Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. I s 10), that there will be a meeting of the Sudbury, Assabet and Concord Rivers Study Committee on Thursday, October 22, 1992.

The Committee was established pursuant to Public Law 101–628. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of the Sudbury, Assabet and Concord River segments specified in section 5(a) (110) of the Wild and Scenic Rivers Act. The Committee shall also advise the Secretary concerning management alternatives, should some or all of the river segments studied be found eligible for inclusion in the National Wild and Scenic Rivers System.

The meeting will convene at 7:30 p.m. in the Sudbury Town Hall Sudbury, Massachusetts (Sudbury Town Hall is located on the north side of Route 27, east of the intersection of Route 27 and Concord Road. From the east, take Route 27 west from Route 20 in Wayland. Town Hall is on the right approximately 1.5 mile past the causeway over the Sudbury River. From the north, take Concord Road or Pantry Brook Road south off Route 117. Turn left at Route 27. Town Hall is on the left just past the intersection).

Agenda

I. Welcome, introductions, and comments—Bill Sullivan
II. Approval of minutes from 9/17 meeting
III. Subcommittee Reports—Subcommittee Chairs
  A. River Conservation Planning Subcommittee
  B. Instream Flow Study Subcommittee
  C. Public Participation Subcommittee
IV. Discussion—Issues of Local Concern
V. Opportunity for public comment
VI. Other Business
  A. Next meeting dates and locations

Dated: August 21, 1992.

Steven H. Lewis,

Acting Regional Director.

[FR Doc. 92–23862 Filed 9–30–92; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–341]

Certain Static Random Access Memories, Components Thereof and Products Containing Same; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 27, 1992, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of SGS-Thomson Microelectronics, Inc., 1310 Electronics

Drive, Carrollton, Texas 75006. Letters supplementing the complaint were filed on September 1, September 4, September 15 and September 16, 1992. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain static random access memories, component thereof and products containing same, by reason of alleged infringement of claims 1 and 4 of U.S. Letters Patent 4,125,854 and claims 1, 2, 3, 6, 7, 8, 11, 12, 15, and 17 of U.S. Letters Patent 4,251,876, and that an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., room 112, Washington, DC 20436, telephone 202-205-1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

FOR FURTHER INFORMATION CONTACT: Thomas L. Jarvis, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-205-2568.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on September 24, 1992, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain static random access memories, components thereof or products containing same by reason of alleged infringement of claim 1 or 4 of U.S. Letters Patent 4,125,854, or claims 1, 2, 3, 6, 7, 8, 11, 12, 15, or 17 of U.S. Letters Patent 4,251,876, and whether an industry exists in the United States or is in the process of being established as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—SGS-Thomson Microelectronics, Inc., 1310 Electronics Drive, Carrollton, Texas 75006.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Micro-Comp Industries, 3350 Scott Boulevard, Building No. 57, Santa Clara, California 95054; United States Microelectronics Corp., 3 Industrial East 3rd Road, Science-Based Industrial Park, Hsinchu, Taiwan 30077.

(c) Thomas L. Jarvis, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401J, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to such respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: September 25, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-23754 Filed 9-30-92; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32152]

Eastern Shore Railroad, Inc.—Trackage Rights Exemption—Norfolk and Western Railway Co.

Norfolk and Western Railway Company (NW) has agreed to grant overhead trackage rights to Eastern Shore Railroad, Inc. (ES) over that part of an NW line at Norfolk, VA, lying between a junction with Norfolk Southern Railway at or near milepost A 1.3 and an interchange track owned by NW at Portlock Yard at or near milepost 2.5, a distance of approximately 4.2 miles. ES will use these trackage rights to reach a point of interchange in Norfolk with NW to facilitate the through movement of loaded and empty freight cars over ES and NW. The proposed trackage rights will be effective on a date mutually agreed upon by the parties, but not before October 6, 1992.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Robert C. Oliver, Esq., P.O. Box 818, Eastville, VA 23347.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under Norfolk and Western Ry, Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Dated: September 24, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-23846 Filed 9-30-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32153]

Union Pacific Railroad Company—Trackage Rights Exemption—The Atchison, Topeka and Santa Fe Railway Co.

The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) has agreed to grant overhead trackage rights to Union Pacific Railroad Company (Union Pacific) over a 10.4-mile segment of Santa Fe's line, between Pittsburg (milepost 1154.10) and Port Chicago (milepost 1164.50), in Contra Costa County, CA. The trackage rights will be used in connection with existing trackage rights that Union Pacific holds over Santa Fe's line of railroad between Pittsburg and Stockton, CA. The trackage rights transaction will be consummated on or after September 18, 1992.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Joseph D. Anthofer, 1416 Dodge Street, room 830, Omaha, NE 68179.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: September 24, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-23847 Filed 9-30-92; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-227 (Sub-No. 2X)]

The Wheeling & Lake Erie Railway Co.; Abandonment Exemption; In Stark, Wayne, and Medina Counties, OH

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by the Wheeling & Lake Erie Railway Company (WLE) of its line of railroad between Milepost 133.0 at Brewster, OH, and Milepost 93.6 at Spencer, OH, including the 1.3-mile Massillon Branch between Milepost 0.0 at Orrville Jct., and Milepost 1.3 at Orrville, OH, a total distance of approximately 40.7 miles in Stark, Wayne, and Medina Counties, OH. We will grant the petition subject to the standard employee protective conditions and certain environmental conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on October 31, 1992. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [1] must be filed by October 11, 1992. Petitions to stay must be filed by October 16, 1992. Petitions to reopen must be filed by October 26, 1992. Requests for public use conditions must be filed by October 21, 1992.

ADDRESSES: Send pleadings, referring to Docket No. AB-227 (Sub-No. 2X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and

(2) Petitioner's representative: Thomas J. Healey, Two Illinois Center, 233 North Michigan Avenue, Suite 2400, Chicago, IL 60601.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927-5610; [TDD for hearing impaired: (202) 927-5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927-5721.]

Decided: September 29, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-23845 Filed 9-30-92; 8:45 am]

BILLING CODE 7035-01-M

[1] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96-511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu on (202) 395-7340 and to the Department of Justice's Clearance Officer, Mr. Don Wolfrey, on (202) 514-4115. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Don Wolfrey, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Reinstatement of a Previously Approved Collection for Which Approval Has Expired

(1) Petition for Alien Relative.

(2) I-130. Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. The I-130 information is used to determine eligibility of petitioner and beneficiary for immediate relative status and admission to the U.S.

(5) 825,000 annual responses at .5 hours per response.

(6) 412,500 annual burden hours.

(7) Not applicable under 3504(h).

Public comment on these items is encouraged.

Dated: September 28, 1992.

Don Wolfrey,

Department Clearance Officer, Department of Justice.

[FR Doc. 92-23799 Filed 9-30-92; 8:45 am]

BILLING CODE 4410-10-M

Lodging of Consent Decree Pursuant to CERCLA

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *City of Bunnell, Florida, and the State of Florida,* Civil Action No. 91-554-CIV-J-16, was lodged with the United States District Court for the Middle District of Florida on September 16, 1992. This agreement resolves a judicial enforcement action brought by the United States against the defendants pursuant to section 301 and 402 of Clean Water Act, 33 U.S.C. 1311 and 1342.

The proposed consent decree provides that defendant City of Bunnell, Florida will complete the construction of a new wastewater treatment facility, rehabilitate its existing treatment facility, develop and implement a program for the operation and maintenance of its wastewater treatment facility, and develop and implement a program for sampling and monitoring its wastewater discharge. The proposed consent decree also requires that the defendant City of Bunnell pay a civil penalty to the Treasury of the United States in the amount $105,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of publication, comments relating to the proposed consent decree. Comments should be addressed to the Acting Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Bunnell, Florida, et al.,* D.O.J. Ref. 90-5-1-1-3697.

The proposed consent decree may be examined at the offices of the United States Attorney, Middle District of Florida, Jacksonville Division, room 409, Federal Building, 311 W. Monroe Street, Jacksonville, Florida 32202; at the offices of the Regional Counsel, United States Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365; and at the offices of the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, room 1535, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. The proposed consent decree may also be examined at the Consent Decree Library, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202-347-2072). A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $8.50 (25 cents per page reproduction costs) payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92-23817 Filed 9-30-92; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Under RCRA

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on September 22, 1992, a proposed Consent Decree in *United States* v. *Escambia Treating Co.* was lodged with the United States District Court for the Northern District of Florida. This Consent Decree resolves the claims of the United States against settling defendant Charles A. Soule, Jr. for violations of the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., and the Florida Fraudulent Conveyances Act. Under the proposed Decree, defendant will pay a civil penalty of $20,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Escambia Treating Co.*, D.J. Ref. 90-7-1-454.

The proposed Consent Decree may be examined at any of the following offices: (1) The Office of the United States Attorney for the Northern District of Florida, 114 East Gregory Street, Pensacola, Florida; (2) the U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia; and (3) the Consent Decree Library, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (telephone (202) 347-2072). Copies of the proposed Decree may be obtained by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., P.O. Box 1097, Washington, DC 20004. Please enclose a check for $ $4.75 ($.25 per page reproduction charge) payable to "Consent Decree Library."

John C. Cruden,

Chief Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 92-23781 Filed 9-30-92; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree

Notice is hereby given that a proposed Settlement Agreement and Stipulated Order ("Agreement") in In re Insilco Corporation, Civil Action No. SA-92-CA-210, among the United States, Insilco Corporation and its named subsidiaries, and the Valspar Corporation was lodged on September 21, 1992 with the United States District Court for the Western District of Texas. Under the Agreement, Insilco agrees to a cash payment of $5,050,000 and an allowed general unsecured claim of $4,227,560 in Insilco's bankruptcy proceeding for response costs, and as indicated in the Agreement, natural resource damages, under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, at the following sixteen sites: The Midco I and II sites in Gary, Indiana, the Ninth Avenue Dump site in Gary, Indiana, the Fisher-Calo site in Kingsbury, Indiana, the Operating Industries, Inc. site in Los Angeles, California, the U.S. Scrap site in Chicago, Illinois, the American Chemical Services site in Griffith, Indiana, the Ellis Road/Yellow Water site in Jacksonville, Florida, the Oak Grove site in Anoka County, Minnesota, the Cross Brothers site in Pembroke, Illinois, the Cortese Landfill in Sullivan County, New York, the Kin Buc Site in Middlesex County, New Jersey, the Galaxy Spectron site in Elkton, Maryland, the Maryland Sand & Gravel site in Cecil County, Maryland, the Re-Solve site in North Dartmouth, Massachusetts, and the Taylor Road site in Hillsborough County, Florida. The parties also agree that as described in the Agreement certain claims of the United States against Insilco and its named subsidiaries at the following three sites are discharged under the bankruptcy laws without any distribution or payments to the United States: the Calumet Containers site in Hammond, Indiana, the Diaz Refinery site in Diaz, Arkansas, and the New York City Landfill site in New York, New York. The Agreement also provides that Insilco may under conditions described in the Agreement request similar agreement by the United States with respect to claims of the United

States at the following thirteen sites: The Carter Coatings site in Tampa, Florida, the Ashland Avenue site in Chicago, Illinois, the South Plainfield site in South Plainfield, New Jersey, the Washington Blvd. site in Commerce, California, the 2500 S. Atlantic Blvd. site in Commerce, California, the Factory H site in Meriden, Connecticut, the 901 E. 61st Street site in Commerce, California, the Trio Solvents site in New Brighton, Minnesota, the 508 N. Colony site in Meriden, Connecticut, the Eyelet site in Wallingford, Connecticut, the 550 Research site in Meriden, Connecticut, the Factory E site in Meriden, Connecticut, and the Crawfordsville Scrap & Salvage site in Crawfordsville, Indiana. The Agreement also provides that Insilco's and its named subsidiaries' obligations and liabilities arising from prepetition acts, omissions, or conduct of Insilco or its subsidiaries or predecessors at any Additional Sites not owned or operated by Insilco or its subsidiaries after January 13, 1991 will be discharged under the bankruptcy laws but will be liquidated and satisfied as general unsecured claims if an when the United States undertakes enforcement activities in the ordinary course. The Agreement also resolves certain claims of the United States against the Valspar Corporation at certain of the sites already referenced in this Notice but only with regard to claims based solely on the Valspar Corporation's potential liability as successor to Insilco based on Valspar's purchase of The Enterprise Companies, a former division of Insilco.

The Department of Justice will receive comments relating to the proposed Settlement Agreement and Stipulated Order for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *In re Insilco Corporation and Subsidiaries,* Civil Action No. SA-92-CA-210 (W.D. Tex.), D.J. Ref. No. 90-11-2-697. The proposed Settlement Agreement and Stipulated Order may be examined at the Office of the United States Attorney for the Western District of Texas, 727 East Durango Boulevard, suite A-601, San Antonio, Texas 78206; the Region 5 Office of the United States Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604; and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004 (202-347-2072). A copy of the proposed Settlement Agreement and Stipulated Order may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $15.25 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

Vicki A. O'Meara,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92-23782 Filed 9-30-92; 8:45 am]

BILLING CODE 4410-01-M

Consent Judgment in Action to Recover Costs and Obtain Civil Penalties

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a Consent Decree in *United States* v. *McGraw-Edison, et al.*, was lodged with the United States District Court for the Western District of New York on September 24, 1992. The Consent Decree, signed by the Trustee for the Bankruptcy Estate of W.R. Case and Sons Cutlery Company ("W. R. Case") addresses the recovery of $700,000 in costs incurred by the United States for actions taken in response to the release of hazardous substances from the Alcas, AVX, and McGraw-Edison manufacturing facilities at the Olean Well Field Superfund Site located in the Town of Olean, Cattaraugus Country, New York and requires W. R. Case to make payment for $50,000 in civil penalties for failure to comply with an Administrative Order issued by the United States Environmental Protection Agency. The cost recovery and penalty amounts take into account the nature and severity of the alleged violations, W. R. Case's status in bankruptcy, and various litigation risks.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *McGraw-Edison, et al.*, D.O.J. Ref. No. 90-11-3-181.

The Consent Decree may be examined at the Office of the United States Attorney, Western District of New York, 502 U.S. Courthouse, 68 Court St., Buffalo, NY 14202; at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, room 437, New York, NY 10278; or at the Consent Decree Library, 601 Pennsylvania Ave., NW., Washington, DC 20004. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Ave., NW., Washington, DC 20004, telephone number (202) 347-2072. In requesting a copy, please enclose a check in the amount of $3.50 (25 cents per page reproduction charge) payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 92-23818 Filed 9-30-92; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

United States v. Hospital Association of Greater Des Moines, et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b) through (h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Southern District of Iowa, Central Division in *United States* versus *Hospital Association of Greater Des Moines, et al.*, Civil Action No. 4-92-70648.

The Complaint in this case alleges that the defendants unreasonably restrained competition among the hospitals in Polk County, Iowa by agreeing to limit the types and amounts of advertising in which they would engage, in violation of section 1 of the Sherman Act, 15 U.S.C. 1. The proposed Final Judgment enjoins the defendants from entering into, directly or indirectly, any contract, agreement, understanding, arrangement, plan, program, or course of action with any hospital in Polk County or any Polk County hospital association to limit or regulate the types or amounts of advertising by any hospital in the County. Each defendant is required to establish an antitrust compliance program which must include an annual briefing of all officers, directors, and management employees on the meaning of the Consent Judgment and on the antitrust laws.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the Federal Register and filed with the Court. Comments should be directed to Robert E. Bloch, Chief, Profession & Intellectual Property Section, Antitrust Division, Department of Justice, room 9903, 555 4th Street,

NW., Washington, DC 20001, (telephone: (202) 307–0467)).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

United States District Court for the Southern District of Iowa Central Division

United States of America, Plaintiff, v. *Hospital Association of Greater Des Moines, Inc.; Broadlawns Medical Center; Des Moines General Hospital Company; Iowa Lutheran Hospital; Iowa Methodist Medical Center; Mercy Hospital Medical Center, Des Moines, Iowa,* Defendants.

Civil Action No. 4–92–70648.

Filed: 9/22/92, Judge Vietor.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court;

2. In the event plaintiff withdraws its consent or the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: September 22, 1992.

For the Plaintiff:

Charles A. James,

Acting Assistant Attorney General.

J. Mark Gidley,

Deputy Assistant Attorney General.

Constance K. Robinson,

Robert E. Bloch,

Gail Kursh,

Nancy M. Goodman,

Karen L. Gable,

John B. Arnett, Sr.,

Attorneys, U.S. Department of Justice, Antitrust Division, 555 4th Street, NW., Washington, DC 20002, (202) 307–0789.

For the Defendants:

Thomas H. Burke,

Counsel for Hospital Association of Greater Des Moines, Inc.

Edgar F. Hansell,

Counsel for Iowa Lutheran Hospital.

Norene D. Jacobs,

Counsel for Broadlawns Medical Center.

Mark McCormick,

Counsel for Iowa Methodist Medical Center.

Eugene E. Olson,

Counsel for Des Moines General Hospital Company.

John D. Shors,

Counsel for Mercy Hospital Medical Center, Des Moines, Iowa.

United States District Court for the Southern District of Iowa, Central Division

Final Judgment

United States of America, Plaintiff v. *Hospital Association of Greater Des Moines, Inc.; Broadlawns Medical Center; Des Moines General Hospital Company; Iowa Lutheran Hospital; Iowa Methodist Medical Center, Mercy Hospital Medical Center, Des Moines, Iowa,* Defendants.

Civil Action No. 4–92–70648, Judge Vietor.

Filed: 9/22/92

Plaintiff, United States of America, having filed its Complaint on September 22, 1992, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby

Ordered, adjudged and decreed:

I.

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting to this Final Judgment. The Complaint states a claim upon which relief may be granted against each defendant under section 1 of the Sherman Act, 15 U.S.C. 1.

II.

This Final Judgment applies to each defendant and to each of their officers, directors, agents, employees, successors, and assigns and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

III.

As used in this Final Judgment:

(A) "Des Moines area" means Polk County, Iowa.

(B) "Management Employee" means any employee who supervises the preparation of or approves any price, charge, or discount schedule; any wage, salary, or employee benefit schedule; any budget or financial plan; any marketing or advertising plan; any long range or strategic plan; or any plan to acquire materials, equipment, or services. This definition includes but is not limited to the chief executive officer and/or administrator, the chief financial officer, vice presidents and/or assistant administrators, and the individuals who head the divisions or departments responsible for human resources, materials management, strategic and financial planning, marketing, public relations, and advertising.

IV.

Each defendant is enjoined and restrained from entering into, directly or indirectly, any contract, agreement, understanding, arrangement, plan, program, or course of action with any other hospital in the Des Moines area or any Des Moines area hospital association to limit or regulate the types or amounts of advertising by any hospital in the Des Moines area.

V.

Nothing in this Final Judgment shall prohibit any defendant from advocating, in accordance with the doctrine established in *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961) and its progeny, legislation, regulatory actions, or governmental policies or actions, relating to the practices identified in Section IV above.

VI.

Each defendant is ordered to maintain an antitrust compliance program which shall include:

(A) Distributing, within 60 days from the entry of this Final Judgment, a copy of this Final Judgment to all directors, officers, and management employees;

(B) Notifying, within 60 days from the entry of this Final Judgment, all directors, officers, and management employees that the defendant will not be bound by the Hospital Association of Greater Des Moines Guidelines on Advertising, dated October 26, 1989;

(C) Distributing in a timely manner a copy of this Final Judgment to any person who succeeds to a position as director, officer, or management employee;

(D) Holding a briefing annually for all directors, officers, and management employees on (1) the meaning and requirements of this Final Judgment including the consequences of non-compliance with this Final Judgment; and (2) the application of the antitrust laws to the defendant's activities including potential antitrust concerns raised by hospitals (a) engaging in agreements or arrangements to allocate services, equipment or facilities or any other joint activities, and (b) exchanging competitive information such as contemplated or expected changes in prices or employees' salaries or benefits; and

(E) Maintaining for inspection by plaintiff a record of the directors, officers, and management employees who attend each annual briefing.

VII.

(A) Within 75 days after the entry of this Final Judgment, each defendant shall certify to the plaintiff whether it has made the distribution of this Final Judgment and the notification in accordance with Section VI above.

(B) For 10 years after the entry of this Final Judgment, on or before its anniversary date, each defendant shall certify annually to the Court and the plaintiff whether that defendant has complied with the provisions of Section VI above.

VIII.

(A) For the sole purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant, be permitted:

(1) Access during office hours of such defendant to inspect and copy all records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees or agents of such defendant, who may have counsel present, regarding any such matters.

(B) Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to any defendant, such defendant shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

(C) No information or documents obtained by the means provided in this Section shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

IX.

Jurisdiction is retained by this Court to enable any of the parties to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or implementation of this Final Judgment, for the enforcement, modification, or termination of any of its provisions, and for the punishment of any violation hereof.

X.

This Final Judgment shall expire ten (10) years from the date of entry.

XI.

Entry of this Final Judgment is in the public interest.

Dated: _____.

United States District Judge.

Competitive Impact Statement

United States District Court for the Southern District of Iowa, Central Division

United States of America, Plaintiff v. *Hospital Association of Greater Des Moines, Inc.; Broadlawns Medical Center; Des Moines General Hospital Company; Iowa Lutheran Hospital; Iowa Methodist Medical Center; Mercy Hospital Medical Center, Des Moines, Iowa,* Defendants.

Civil Action No. 4-92-70648, Judge Vietor.

Filed: 9/22/92.

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), the United States submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I.

Nature and Purpose of the Proceeding

On September 22, 1992, the United States filed a civil antitrust complaint alleging that defendants named above conspired unreasonably to restrain competition among themselves, by agreeing to limit the types and amounts of advertising in which they would engage, in violation of section 1 of the Sherman Act, 15 U.S.C. 1. This conspiracy diminished competition between these hospitals for patients, physician referrals, and third-party contracts, and deprived patients, physicians, and third-party payers of information necessary for them to make informed choices on the selection of hospitals and of the benefits of free and open competition in the sale of hospital services.

The Complaint alleges that, beginning at least as early as October 26, 1989, and continuing until the date of the Complaint, defendants violated the Sherman Act by agreeing that each hospital could limit its advertising expenditures to ⅓ of 1% of its respective previous year's operating expenses, and would refrain from engaging in certain types of competitive advertising about the quality of services provided by its hospital. Specifically, each hospital agreed to refrain from engaging in advertising that included quality comparisons or that would be considered image building or self-aggrandizement. This agreement was set out in a document entitled "Guidelines on Advertising" which was adopted by the defendants on October 26, 1989. The Complaint further alleges that defendants agreed that each hospital would establish and adhere to an internal operating policy in conformance with the guidelines' provisions limiting advertising expenditures and restricting the use of certain types of competitive advertising.

The relief sought in the Complaint is to enjoin defendants for a period of 10 years from continuing or renewing their agreement or from engaging in any other agreement or arrangement having a similar purpose or effect. The Complaint also seeks to require defendants to institute a compliance program to ensure that defendants do not enter into or participate in any plan, program, or other arrangement having the purpose or effect of unreasonably restraining competition among the hospitals in Polk County.

Entry of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction over the matter for further proceedings which

may be required to interpret, enforce, or modify the Judgment, or to punish violations of any of its provisions.

II.

Description of the Practices Involved in the Alleged Violation

At trial, the Government would have contended the following:

1. Hospital Association of Greater Des Moines, Inc., ("HAGDM") was incorporated in 1976 and is a trade association for general and specialty hospitals located in Polk County, Iowa. HAGDM is a nonprofit corporation located in Des Moines, Iowa, whose current membership includes six of the seven acute-care hospitals located in Polk County, including the other defendants named herein and the Department of Veterans Affairs Medical Center in Des Moines.

2. Broadlawns Medical Center ("Broadlawns") is a 214-bed, county public hospital located in the downtown section of Des Moines, Iowa. Broadlawns is a member of HAGDM and its Chief Executive Officer ("CEO") serves as a director of HAGDM.

3. Des Moines General Hospital Company ("DMGHC") is a nonprofit corporation that operates Des Moines General Hospital ("DMGH"). DMGH is a 150-bed, acute-care, osteopathic hospital located in Des Moines, Iowa. DMGH is currently managed by Quorum Health Resources, Inc., which is located in Nashville, Tennessee. The management agreement with Quorum Health Resources is scheduled to expire in 1993. DMGH is a member of HAGDM and its COO serves as a director of HAGDM.

4. Iowa Lutheran Hospital ("ILH") is a 333-bed, acute-care, nonprofit hospital corporation located in Des Moines, Iowa. Fairview Hospital & Healthcare Services, Inc., which is located in Minneapolis, Minnesota, is the sole member of ILH. ILH is a member of HAGDM and its CEO serves as a director of HAGDM.

5. Iowa Methodist Medical Center ("IMMC") is a 680-bed, acute-care, nonprofit hospital corporation located in Des Moines, Iowa. Iowa Methodist Health System, Inc., which is located in Des Moines, Iowa, is the sole member of IMMC. IMMC is a member of HAGDM and its CEO serves as a director of HAGDM.

6. Mercy Hospital Medical Center ("Mercy") is a 520-bed, acute-care, nonprofit hospital corporation located in Des Moines, Iowa. Mercy Health Center of Central Iowa, Inc. which is located in Des Moines, Iowa, is the sole member of Mercy. Mercy is a member of HAGDM and its CEO serves as a director of HAGDM.

7. The five above-named hospitals [hereinafter referred to as defendant hospitals] are or operate general acute-care hospitals in Polk County, Iowa, that provide a variety of services in connection with the diagnoses, care, and treatment of patients. These defendant hospitals compete with each other for patients residing in Polk County and nearby areas. With the exception of one small hospital and the Department of Veterans Affairs Medical Center, the defendant hospitals are or operate the only general acute-care hospitals in Polk County.

8. General acute-care hospitals, including defendant hospitals, compete for patients on the basis of price, quality, and services. Such hospitals endeavor to increase admissions by attempting to influence patients in their choice of facility, by trying to persuade physicians to refer patients to their facility, and by contracting with third-party payers who can influence hospital utilization of their enrollees. General acute-care hospitals strive to increase admissions, in part, by using advertising to inform patients, physicians, and third-party payers about the price, quality, and range of services offered by their hospital.

9. Consumers of inpatient hospital services often have limited information about hospitals and, therefore, rely in part on advertising to learn about the quality, price, and range of services offered by hospitals in their geographic area. Hospital advertising is increasingly being used to provide this information in a format that consumers can understand. When information is made available to consumers, they can more easily select, or assist their physician in selecting, the hospital that best meets their needs. Hospitals are thereby encouraged to compete to provide the types and quality of services that consumers and physicians desire at a reasonable price.

10. Beginning at least as early as October 26, 1989, defendants have combined and conspired to restrain competition in violation of section 1 of the Sherman Act. The combination and conspiracy consists of a continuing agreement, understanding, and concert of action among defendants whereby each defendant hospital is to limit the types and amount of advertising in which it engages, thus diminishing competition between the defendant hospitals for patients, physician referrals, and third-party contracts. On October 26, 1989, the defendant hospital adopted the "Guidelines on Advertising," a document prepared under the auspices of HAGDM. In adopting these guidelines, defendant hospitals agreed to limit their advertising expenditures ⅓ of 1% of their respective previous year's operating expenses, and to refrain from engaging in certain types of competitive advertising, including quality comparisons, claims of prominence, image building, or self-aggrandizement.

11. In furtherance of this combination and conspiracy, defendants also agreed that each defendant hospital would establish and adhere to an internal operating policy limiting its advertising expenditures and restraining it from engaging in those types of advertising prohibited by the agreement. The actions of defendants far exceeded any reasonable limited undertaking to restrain false and deceptive advertising.

12. This combination and conspiracy had the effect of unreasonably restraining price and quality competition among defendant hospitals for the sale of hospital services to patients and third-party payers, and for physician referrals. The combination and conspiracy deprived patients, physicians, and third-party payers in Polk County of information needed by them to make informed choices on the selection of hospitals and of the benefits of free and open competition in the sale of hospital services.

III.

Explanation of the Proposed Final Judgment

The United States and defendants have stipulated that the Court may enter the proposed Final Judgment after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h). The proposed Final Judgment provides that its entry does not constitute any evidence against or admission by any party with respect to any issue of fact or law.

Under the provisions of section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(e), the proposed Final Judgment may not be entered unless the Court finds that such entry is in the public interest. Section XI of the proposed Final Judgment sets forth such a finding.

The proposed Final Judgment is intended to ensure that defendant hospitals reach independent decisions regarding the amount each defendant hospital expends to advertise its hospital services and the types of such advertising each defendant utilizes, and that defendant HAGDM does not act as a conduit to encourage joint agreements on advertising.

A. Prohibitions and Obligations

Under Section IV of the proposed Final Judgment, each defendant is enjoined and restrained from entering into, directly or indirectly, any contract, agreement, understanding, arrangement, plan, program, or course of action with any hospital in the Des Moines area or any Des Moines area hospital association to limit or regulate the types or amounts of advertising by any hospital in the Des Moines area. The "Des Moines area" is defined in Section III as Polk County, Iowa.

Section V provides that nothing in the Final Judgment prohibits any defendant from exercising rights permitted under the First Amendment to the United States Constitution to petition any federal or state government executive agency, legislative body, or other governmental agency concerning legislation, regulatory actions, or governmental policies or actions relating to advertising by hospitals.

Section VI requires each defendant to maintain an antitrust compliance program. Section VI provides that this program at a minimum shall include: (A) Distributing, within 60 days from the entry of the Final Judgment, a copy of the Final Judgment to all directors, officers, and management employees; (B) notifying, within 60 days from the entry of the Final Judgment, all directors, officers, and management employees that the defendant will not be bound by HAGDM's "Guidelines on Advertising," dated October 26, 1989; (C) distributing in a timely manner a copy of the Final Judgment to any person who succeeds to a position as director, officer, or management employee; (D) holding a briefing annually for all directors, officers, and management employees on certain topics related to the Final Judgment and the antitrust laws; and (E) maintaining for inspection by plaintiff a record of the directors, officers, and management employees who attend each annual briefing. The annual briefing will be held to educate them on (1) the meaning and requirements of the Final Judgment including the consequences of noncompliance with the Final Judgment and (2) the application of the antitrust laws to the defendnt's activities including potential antitrust concerns raised by hospitals (a) engaging in agreements or arrangements to allocate services, equipment, or facilities or any other joint activities, and (b) exchanging of competitive information such as contemplated or expected changes in prices or employees' salaries or benefits. "Management employee," as defined in Section III, includes any employee who supervises the preparation of or approves any price, rate, or discount schedule; any wage, salary, or employee benefit schedule; any budget or financial plan; any marketing or advertising plan; any long range or strategic plan; or any plan to acquire materials, equipment, or services.

Section VII requires various certifications of defendants. Section VII(A) requires each defendant to certify to plaintiff within 75 days after the entry of the Final Judgment whether defendant has made the distribution and notification required by Section VI of the Final Judgment. Section VII(B) requires each defendant to certify to plaintiff annually for 10 years after the entry of the Final Judgment whether defendant has complied with the provisions of Section VI of the Final Judgment.

Section VIII(A) provides that an authorized representative of the Department of Justice may visit defendants' offices, after providing reasonable notice, to review their records and to conduct interviews regarding any matters contained in the Final Judgment. Defendants may also be required to submit written reports, under oath, pertaining to the Final Judgment.

b. Scope of the Proposed Final Judgment

Section II of the Final Judgment provides that the Final Judgment shall apply to each defendant and to each of its officers, directors, agents, employees, successors, and assigns and to all other persons in active concert or participation with any of them who receive actual notice of the Final Judgment by personal service or otherwise.

Section X of the proposed Final Judgment provides that the Final Judgment shall remain in effect for 10 years.

C. Effect of the Proposed Judgment on Competition

The relief in the proposed Final Judgment is designed to ensure that each defendant hospital, using its independent judgment, decides unilaterally the amount it expends on advertising and the types of advertising it utilizes, and that neither HAGDM nor the defendant hospitals undertake any collective activity or arrangement to limit or regulate such advertising. It is also designed to ensure that patients, physicians, and third-party payers have the opportunity to receive information necessary for them to make informed choices on the selection of hospitals and to benefit from lower prices or increased quality that would result from competition among the hospitals.

The Department of Justice believes that the proposed Final Judgment contains adequate provisions to prevent further violations of the type upon which the Complaint is based and to remedy the effects of the alleged agreement.

IV.

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair not assist the bringing of such actions. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the judgment has no *prima facie* effect in any subsequent lawsuits that may be brought against defendants in this matter.

V.

Procedures Available for Modification of the Proposed Judgment

As provided in section 2(d) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), any person believing that the proposed Final Judgment should be modified by submit written comments to Robert E. Bloch, Chief, Professions and Intellectual Property Section, U.S. Department of Justice, Antitrust Division, 555 4th Street, NW., room 9903, Judiciary Center Building, Washington, DC 20001, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. Section IX of the proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI.

Alternative to the Proposed Final Judgment

The alternative to the proposed Final Judgment would be a full trial of the case. In the view of the Department of Justice, such a trial would involve substantial cost to the United States and is not warranted since the proposed Final Judgment provides the relief that

the United States sought in its Complaint.

VII.

Determinative Materials and Documents

No materials and documents of the type described in section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b), were considered in formulating the proposed Final Judgment.

Respectfully submitted,

Nancy M. Goodman,
Karen L. Gable,
John B. Arnett, Sr.,
Attorneys, U.S. Department of Justice, Antitrust Division, 555 4th Street, NW., Washington, DC 20001. Telephone: (202) 307-0798.

[FR Doc. 92-23816 Filed 9-30-92; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Utah State Standards; Approval

Background

Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667), (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902.

On January 10, 1973, notice was published in the **Federal Register** (38 FR 1178) of the approval of the Utah State Plan and the adoption of subpart E to part 1952 containing the decision. Utah was granted final approval on section 18(e) of the Act on July 16, 1985. By law (Section 63-46a-16 Utah Code), the Utah Administrative Rulemaking Procedure is the authorized compilation of the administrative law of Utah and "shall be received in all the courts, and by all the judges, public officers, commissioners, and departments of the State government as evidence of the administrative law of the State of Utah * * *." The Utah Occupational Safety and Health Division revised its Administrative Rulemaking Act (chapter 46a, title 63, Utah annotated, 1953) which became effective on April 29, 1985. On May 6, 1985, a State Plan Supplement was submitted to the Occupational Safety and Health Administration (OSHA) for approval and publication in the **Federal Register** of Utah's revised Administrative Rulemaking Act. The plan supplement was published in the **Federal Register** (53 FR 43688) on October 28, 1988. The supplement provides for adoption of Federal standards by reference through the publication of standards in the Utah State Digest. Utah now adopts Federal OSHA standards by reference using the OSHA numbering system.

Following the publication date, the agency shall allow at least 30 days for public comment on the rule. During the public comment period the agency may hold a hearing on the rule. Except as provided in statutes 63-46a-6 and 63-46a-7, a proposed rule becomes effective on any date specified by the agency which is no fewer than 30 nor more than 90 days after the publication date. The agency shall provide written notification of the rule's effective date to the office. Notice of the effective date shall be published in the next issue of the bulletin.

OSHA regulations (29 CFR 153.22 and .23) require that States respond to the adoption of new or revised permanent Federal Standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register**, and within 30 days for emergency temporary standards. Although adopted State Standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in Part 1953, they are enforceable by the State prior to Federal review and approval.

The State submitted statements along with copies of the Utah States Digest, to verify the adoption of standards by reference from the Code of Federal Regulations. The Industrial Commission of Utah, Occupational Safety and Health Division adopted by reference on May 6, 1992, the Federal Standard, Process Safety Management of Highly Hazardous Chemicals, Explosives and Blasting Agents; Final Rule of 29 CFR 1910 as published in 57 FR 6356. The effective date of the State Rule was June 1, 1992.

Decision

The statement of incorporation of the aforementioned Federal Standard by reference has been printed in the Utah Administrative Code. The code contains the statement of the incorporation of Federal Standards by reference as compiled by the Occupational Safety and Health Division of the Industrial Commission of Utah. Copies of the Utah Administrative Code have been reviewed and verified at the Regional Office. OSHA has determined that the Federal Standards incorporated by reference from 29 CFR 1910 and 29 CFR 1926 are identical to Federal Standards with no differences and therefore approves the Utah Standards.

Location of Supplement for Inspection and Copying

A copy of the standards along with the approved plan may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Room 1576 Federal Office Building 1961 Stout Street, Denver, Colorado 80294; Utah State Industrial Commission, UOSH Offices at 160 East 300 South, Salt Lake City, Utah 84151; and the Director, Federal-State Operations, room N3700, 200 Constitution Avenue, NW., Washington, DC 20210.

Public Participation

Under 29 CFR 1953.2 (c), the Assistant Secretary may prescribe alternative procedures, or show any other good cause consistent with applicable laws, to expedite the review process. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Utah State Plan as proposed change and makes the Regional Administrator's approval effective upon publication for the following reason(s): The Standards were adopted in accordance with the procedural requirements of State law which include public comment, and further public participation would be repetitious. This decision is effective October 1, 1992.

Authority: Sec. 18, Public Law 91-596, 84 Stat. 1608 [29 U.S.C. 667]. Signed at Denver, Colorado this 2nd day of September, 1992.

Byron R. Chadwick,

Regional Administrator, VIII.

[FR Doc. 92-23805 Filed 9-30-92; 8:45 am]
BILLING CODE 4510-26-M

LIBRARY OF CONGRESS

American Folklife Center; Board of Trustees Meeting

AGENCY: Library of Congress.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Board of Trustees of the American Folklife Center. This notice also describes the functions of the

Center. Notice of this meeting is required in accordance with Public Law 94–463.

DATES: Saturday, October 10, 1992, 9 a.m. to 1 p.m.

ADDRESSES: San Jose Hotel Meeting Room, San Jose, California 95053.

FOR FURTHER INFORMATION CONTACT: Raymond L. Dockstader, Deputy Director, American Folklife Center, Washington, DC 20540.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. It is suggested that persons planning to attend this meeting as observers contact Raymond Dockstader at (202) 707–6590.

The American Folklife Center was created by the U.S. Congress with passage of Public Law 94–201, the American Folklife Preservation Act, in 1976. The Center is directed to "preserve and present American folklife" through programs of research, documentation, archival preservation, live presentation, exhibition, publications, dissemination, training, and other activities involving the many folk cultural traditions of the United States. The Center is under the general guidance of a Board of Trustees composed of members from Federal agencies and private life widely recognized for their interest in American folk traditions and arts.

The Center is structured with a small core group of versatile professionals who both carry out programs themselves and oversee projects done by contract by others. In the brief period of the Center's operation it has energetically carried out its mandate with programs that provide coordination, assistance, and model projects for the field of American folklife.

Rhoda W. Canter,

Associate Librarian for Management.

[FR Doc. 92–23815 Filed 9–30–92; 8:45 am]

BILLING CODE 1410–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Opera-Musicial Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Opera-Musical Theater Advisory Panel (New American Works: Musical Evaluation Section) to the National Council on the Arts will meet on October 21–23, 1992 from 9 a.m.–5:30 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained form Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: September 25, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–23825 Filed 9–30–92; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Astronomical Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: October 22 and 23, 1992 8:30 a.m.—5 p.m.

Place: National Science Foundation, 1110 Vermont Avenue, NW., Washington, DC, room 500D.

Type of Meeting: Open.

Contact Person: Dr. M. Kent Wilson, Director, Division of Astronomical Sciences, Room 615, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9488.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning research programs, proposals, and projects in NSF-funded astronomy with the objective of achieving the highest quality forefront research for the funds allocated. To provide advice and recommendations concerning short-range and long-range plans in astronomy, including a recommendation of relative priorities.

Agenda

Thursday, October 22, 1992

9 am Discussion on Future of NSF
10:30 am Budget and Planning Discussion
1 pm Discussion of Gemini Telescopes Project
2 pm Presentation of U/MA Millimeter Array Project
2:30 pm Discussion of Roles of National Astronomy Centers and University Facilities

Friday, October 23, 1992

8:30 am Budget Discussion
9:30 am Discussion on Size of Astronomy Community—Designers of Instrumentation
10:30 am Infrastructure Discussion
2 pm Meeting with NSF Director

Dated: September 28, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–23875 Filed 9–30–92; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Cross Disciplinary Activities; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: October 20, 1992; 8:30 a.m. to 5 p.m.

Place: Latham Hotel, 3000 M Street NW., Washington, DC 20007–3701.

Type of Meeting: Closed.

Contact Person: Forbes Lewis, Program Director, CISE/CDA, room 436, National Science Foundation, 1800 G. St. NW., Washington, DC 20550. Telephone: (202) 357–7349.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CISE Instrumentation proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 28, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–23876 Filed 9–30–92; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Neuroscience; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: October 21–23, 1992; 9 a.m. to 5 p.m.

Place: Vacation Village, Laguna Beach, California.

Type of Meeting: Part-Open.

Contact Person: Dr. Kathie L. Olsen, Program Director, Integrative Biology and Neuroscience, rm. 321, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-7040.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Open session: October 23, 1992; 9:15 a.m. to 11:45 a.m.—To discuss research trends and opportunities in Neuroendocrinology.

Closed session: October 21–22, 1992; 9 a.m. to 5 p.m. and October 23, 11:45 a.m. to 5 p.m.—To review and evaluate Neuroendocrinology proposals as part of the selection process for awards.

Date and Time: November 9–11, 1992; 9 a.m. to 5 p.m.

Place: Room 1243, 1800 G Street NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Sanya Springfield, Program Director, Integrative Biology and Neuroscience, rm. 321, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-7471.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Neuronal and Glial Mechanisms proposals as part of the selection process for awards.

Date and Time: November 12–14, 1992; 9 a.m. to 5 p.m.

Place: Room 500D, 1110 Vermont Avenue NW., Washington, DC.

Type of Meeting: Part-Open.

Contact Person: Dr. Donald Edwards, Program Director, Integrative Biology and Neuroscience, rm. 321, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-7040.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Open session: November 13, 1992; 2 p.m. to 4 p.m.—To discuss research trends and opportunities in Neural Mechanisms of Behavior and Cognitive, Computational, and Theoretical Neurobiology (CCTN).

Closed session: November 12 and 14, 1992; 9 a.m. to 5 p.m. and November 13, 9 a.m. to 2 p.m. and—To review and evaluate Neural Mechanisms of Behavior and CCTN proposals as part of the selection process for awards.

Date and Time: November 18–20, 1992; 9 a.m. to 5 p.m.

Place: Room 500D, 1110 Vermont Avenue NW., Washington, DC.

Type of Meeting: Part-Open.

Contact Person: Dr. Steven C. McLoon, Program Director, Integrative Biology and Neuroscience, rm. 321, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-7042.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Open session: November 19, 1992; 9:15 a.m. to 11:45 a.m.—To discuss research trends and opportunities in Developmental Neuroscience.

Closed session: November 18 and 20, 1992; 9 a.m. to 5 p.m. and November 19, 11:45 a.m. to 5 p.m.—To review and evaluate Developmental Neuroscience proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: September 28, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-23877 Filed 9-30-92; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Physics; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Date and Time: October 18, 1992, 10 a.m.—5:30 p.m., October 19, 1992, 8:30 a.m.—5:30 p.m., October 20, 1992, 8:30 a.m.—4:30 p.m.

Place: Room 540, National Science Foundation, 1800 G Street, NW. Washington, DC 20550.

Type of Meeting: Part-Open.

Contact Person: Dr. Robert A. Eisenstein, Director, Division of Physics, room 341, National Science Foundation, 1800 G Street, NW. Washington, DC 20550, (202) 357-7985.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise the National Science Foundation on its programs in physics.

Agenda: Open session.

- Proposed New Directions for NSF
- Public Comment (*)
- FY 1993 Budget
- Physics Program Issues

Closed session: October 19, 1992, 1:30 p.m.—5:30 p.m. To review and evaluate proposals and to formulate recommendations on Division priorities.

Reason for Closing: In the formulation of Division priorities, proposals will be reviewed which include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. Knowledge of the priorities discussed could significantly frustrate the Foundation's implementation of grant proposals. These matters are exempt under 5 U.S.C. 552b(c)(4), (6) and (9)(B) of the Government in the Sunshine Act.

(*) Persons wishing to speak should make arrangements through the Contact Person identified above.

Dated: September 28, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-23878 Filed 9-30-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182 b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on October 8–10, 1992 in room P-110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on August 20, 1992.

Thursday, October 8, 1992

8: 30 a.m.—8:45 a.m.: Opening Remarks by ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest.

8:45 a.m.—9:45 a.m.: Boiling Water Reactor Stability (Open/Closed)—The Committee will hear a report on and discussion of the proposed resolution of boiling water reactor core power oscillations which can occur under certain operating conditions and the impact of an ATWS during such an event. Information may be presented relating to General Electric Company analysis of reactor stability under these conditions. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

Portions of this session will be closed as necessary to discuss Proprietary Information related to this matter.

9:45 a.m.—10:45 a.m.: Environmental Qualification of Safety-Grade Digital Computer Protection and Control Systems (Open)—The Committee will hear a briefing on and prepare a report as appropriate regarding the NRC sponsored research program on environmental qualification of safety-grade digital computer protection and control systems.

Representatives of the NRC staff and the Nuclear industry will participate, as appropriate.

10:45 a.m.—11:45 a.m.: Preparation of ACRS Reports (Open)—The Committee will discuss a proposed Committee report on NRC staff action with respect to ITAAC for the GE ABWR.

11:45 a.m.—12 Noon: Prioritization of ACRS Reports (Open)—The Committee will discuss priorities for preparation of ACRS reports during this meeting.

1 p.m.—2:30 p.m.: Environmental Qualification of Electric Equipment for License Renewal (Open)—The Committee will review and report on a proposed NRR Branch Technical Position on environmental qualification of electric equipment for license renewal.

Representatives of the staff and the nuclear industry will participate, as appropriate.

2:45 p.m.—4:45 p.m.: Form and Content of a Design Certification Rule (Open)—The Committee will review and comment on SECY-92-287, "Form and Content for a Design Certification Rule."

Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

4: 45 p.m.—5:30 p.m.: ACRS Future Activities (Open)—The Committee will discuss the report of the ACRS Planning and Procedures Subcommittee regarding matters proposed for consideration by the full Committee.

5:30 p.m.—6 p.m.:—Reconciliation of ACRS Recommendations (Open)—The Committee will discuss NRC staff responses to ACRS comments and recommendations.

Friday, October 9, 1992

8:30 a.m.—10 a.m.: Maintenance of Nuclear Power Plants (Open)—The Committee will review and comment on a proposed Regulatory Analysis and a draft Regulatory Guide, "Monitoring the Effectiveness of Maintenance at Nuclear Power Plants," and an associated NUMARC document 93-01, Revision 2A, "Industry Guideline for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants."

Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

10:15 a.m.—10:45 a.m.: Preparation of ACRS Reports (Open)—The Committee will discuss the scope and content of reports to be considered during this meeting.

10:45 a.m.—11:15 a.m.: Training and requalification of Nuclear Power Plant Operators (Open)—The Committee will hear a briefing, discuss, and report as appropriate on results of the NRC pilot simulator examination program and proposed changes to NRC rule (10 CFR part 55) regarding recertification of nuclear power plant operators.

Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

11:15 a.m.—12:15 p.m.: Use of PRA in the Regulatory Process (Open)—The Committee will hear a briefing by representatives of the NRC Working Group on the status of tasks related to use of PRA in the NRC regulatory process.

1:15 p.m.—3:15 p.m.: Design Acceptance Criteria (Open)—The Committee will review and comment on proposed Design Acceptance Criteria (DAC) in the areas of man/machine interface and control and protection systems.

Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

3:15 p.m.—4:15 p.m.: Yankee Rowe Nuclear Power Plant (Open)—The Committee will hear a briefing by representatives of the NRC staff regarding lessons learned from the review and evaluation of the Yankee Rowe nuclear plant reactor pressure vessel integrity.

Representatives of the NRC staff and the licensee will participate, as appropriate.

4:15 p.m.—5 p.m.: Subcommittee Activities (Open)—The Committee will discuss the report and recommendations of the ACRS Planning and Procedures Subcommittee regarding conduct of Committee business.

5 p.m.—5:15 p.m.: Election of ACRS Officer (Closed)—The Committee will discuss qualifications of candidates nominated for Member-at-Large of the Planning and Procedures Subcommittee.

This session will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

5:15 p.m.—6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding matters considered during this meeting.

Saturday, October 10, 1992

8:30 a.m.—12 Noon: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding matters considered during this meeting.

1 p.m.—2 p.m.: Appointment of ACRS Members (Closed)—The Committee will discuss qualifications of candidates proposed for appointment as members of the Committee.

This session will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

2 p.m.—2:30 p.m.—Miscellaneous (Open)—The Committee will complete discussions of items considered during this meeting and matters which were not completed at previous meetings as time and availability of information permit.

Portions of this session will be closed as necessary to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 1, 1991 (56 FR 49800). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those open portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director, Mr. Raymond F. Fraley, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Public Law 92-463 that it is necessary to close portions of this meeting noted above to discuss Proprietary Information applicable to the matters being considered in accordance with 5 U.S.C. 552(c)(4) and information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552(c)(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301-492-8049), between 8 a.m. and 4:30 p.m. EST.

Dated: September 25, 1992.

John C. Hoyle,

Advisory, Committee Management Officer.

[FR Doc. 92-23806 Filed 9-30-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-8768

Rio Algom Mining Corp.; Final Finding of no Significant Impact Regarding the Termination of a Source Material License of Rio Algom Mining Corp.; O-Sand in Situ Leach Mine Project, Converse County, Wyoming

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of final finding of no significant impact.

1. Proposed Action

The proposed administration action is to terminate the source and byproduct material license authorizing Rio Algom Mining Corp. (Rio Algom) to operate the O-Sand uranium ISL research and development (R&D) facility located 12 miles north of Glenrock, Converse County, Wyoming. The Commission has determined an environmental assessment specific to this administrative action is not required.

2. Reasons for Final Finding of No Significant Impact

The R&D project initiated leaching activities in the Q-Sand well field in October 1981. NRC authorized additional mining in the O-Sand well field during July 1984. Rio Algom ceased mining in the Q-Sand and conducted an aquifer restoration demonstration, completed and approved by NRC, in August 1987. Meanwhile, O-Sand mining continued until September 1991, when Rio Algom placed the R&D project on standby status. At this time, Rio Algom is maintaining the site in standby while its commercial mining plant is under construction. Future commercial mining will create new well fields which include the O-Sand pilot well field.

On January 10, 1992, NRC issued a final Environmental Assessment (EA) regarding issuing the commercial license. The EA discussed environmental and radiological monitoring requirements to be implemented for the commercial project. In the meantime, Rio Algom proposed a monitoring and sampling program for the interim period prior to commercial operations. The program was approved by License Amendment No. 4 to the R&D Source Material License SUA-1387. Further, these requirements are included as preoperational conditions in the commercial Source Material License No. SUA-1548.

NRC intends to terminate the R&D license concurrently with review and approval of the commercial financial surety arrangement. Based on the reviews cited above and conditions to be contained in the commercial license, the Commission has determined that no significant impact will result from the proposed administrative action. The following statements support the final finding of no significant impact and summarize the conclusions resulting from the environmental evaluations.

A. The license has demonstrated that ground-water quality can be stabilized and restored to class-of-use standards determined by the Wyoming Department of Environmental Quality.

B. Remaining and future facilities and operations at the site shall be regulated by the commercial license.

In accordance with 10 CFR 51.34(a), the Director, Uranium Recovery Field Office (URFO), made the determination to issue a final finding of no significant impact in the **Federal Register**. Source Material License SUA-1387 for the Rio Algom O-Sand R&D Project will be terminated upon approval of the commercial surety.

The environmental evaluations setting forth the basis for the finding are available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Colorado, and at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC

Dated at Denver, Colorado, this 22 day of September, 1992.

For the Nuclear Regulatory Commission.

Ramon E. Hall,

Director.

[FR Doc. 92-23808 Filed 9-30-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-8452]

Union Pacific Resources-Minerals; Finding of No Significant Impact Regarding Issuance of an Amendment to Source Material License SUA-1310 for the Union Pacific Resources-Minerals, Bear Creek Mill, to Incorporate Reclamation Schedule, Converse County, Wyoming

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of a finding of no significant impact.

1. Proposed Action

The administrative action is issuance of a license amendment to incorporate an enforceable reclamation schedule for the Bear Creek Mill in Converse County, Wyoming.

2. Reasons for Finding of No Significant Impact

The proposed amendment is administrative, incorporating reclamation milestones into the license in accordance with the Memorandum of Understanding (MOU) between the Environmental Protection Agency (EPA) and the NRC which was published in the **Federal Register** on October 25, 1991. The Notice of Intent to Amend Source Material License SUA-1310 for the Bear Creek Mill to incorporate reclamation schedules was published in the **Federal Register** on May 14, 1992. The NRC accepted comments on this proposed licensing action for 45 days. No comments were received. In accordance with 10 CFR 51.22(c)(11), the Commission has determined that no environmental analysis need be performed since no significant impacts will result from the proposed licensing actions.

3. Action

The Commission action is to amend Source Material License SUA-1310 upon publication of this Notice. The action is based on this Finding of No Significant Impact and no comments being received to the Notice of Intent published on May 14, 1992.

This Notice, together with the Notice of Intent to Amend Source Material License SUA-1310, is available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Colorado, and at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555.

Dated at Denver, Colorado, this 22 day of September 1992

Ramon E. Hall,

Director.

[FR Doc. 92-23807 Filed 9-30-92; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Pay Rate Report.
(2) *Form(s) submitted:* UI-1e.
(3) *OMB Number:* 3220-0097.
(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.
(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.
(6) *Frequency of response:* On occasion.
(7) *Respondents:* Individuals or households, Businesses or other for-profit.
(8) *Estimated annual number of respondents:* 1,500.
(9) *Total annual responses:* 1,500.
(10) *Average time per response:* .0833 hours
(11) *Total annual reporting hours:* 125
(12) *Collection description:* Under the RUIA, the daily benefit rate for unemployment and sickness benefits depends on the employee's last daily rate of pay. The reports obtain information from the employee and verification from the employer of the claimed rate of pay for use in determining whether an increase in the benefit rate is due.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312-751-4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 92-23811 Filed 9-30-92; 8:45 am]

BILLING CODE 7905-01-M

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Statement Regarding Contributions and Support.
(2) *Form(s) submitted:* G-134.
(3) *OMB Number:* 3220-0099.
(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.
(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.
(6) *Frequency of response:* On occasion.
(7) *Respondents:* Individuals or households.
(8) *Estimated annual number of respondents:* 400.
(9) *Total annual responses:* 400.
(10) *Average time per response:* .292 hours.
(11) *Total annual reporting hours:* 117.
(12) *Collection description:* Dependency on the employee for one-half support at the time of the employee's death can be a condition affecting eligibility for a survivor annuity provided for under section 2 of the Railroad Retirement Act. One-half support is also a condition which may negage the public service pension offset in Tier I for a spouse or widow(er).

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312-751-4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 92-23812 Filed 9-30-92; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-18972; 811-3862]

Carnegie-Cappiello Trust; Application

September 23, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Carnegie-Cappiello Trust.

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATE: The application on Form N-8F was filed on September 10, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 19, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 1100 Halle Building, 1228 Euclid Avenue, Cleveland, Ohio 44115-1831.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, (202) 272-2190, or Barry D. Miller, Special Senior Counsel, (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, diversified management company organized as an Ohio business trust. On October 4, 1983, applicant (formerly known as Carnegie-Cappiello Growth Trust) filed a registration statement pursuant to section 8(b) of the 1940 Act. On that date, applicant also filed a registration statement pursuant to the Securities Act of 1933, which registered an indefinite number of shares of beneficial ownership. The registration statement became effective on December 9, 1983.

2. On September 25, 1985, applicant amended its registration statement changing its name to Carnegie-Cappiello Trust which consisted of the Growth Series and Total Return Series. The registration of these series became effective on November 30, 1985. On September 25, 1989, applicant amended its registration statement adding the Emerging Growth Series and Diversified High Income Series to the Trust. The registration of these series became effective on November 30, 1989.

3. At a meeting held on March 12, 1992, applicant's board of trustees approved a proposal to reorganize applicant and recommend its approval by applicant's shareholders. Under the proposed reorganization, applicant would transfer its assets to the Fortis Funds (defined below) in return for shares of these funds. Applicant distributed proxy materials relating to the reorganization to its shareholders beginning on approximately April 20, 1992. Copies of such materials were filed with the Commission on April 22, 1992. Shareholders approved the reorganization at a special shareholders meeting held on June 1, 1992.

4. On June 5, 1992, applicant consummated the reorganization pursuant to which all the assets and liabilities of applicant's Diversified High Income Series, Total Return Series, Emerging Growth Series, and Growth Series ("Carnegie Series") were transferred, respectively, to the High Yield Portfolio, Asset Allocation Portfolio, and Capital Appreciation Portfolio of the Fortis Advantage Portfolios, Inc. and Fortis Growth Fund, Inc. (the "Fortis Funds"). In return for its assets, each Carnegie Series received shares of the respective Fortis Fund having a net asset value equal to the value of the assets less the value of the liabilities transferred. Subsequently, each Carnegie Series liquidated and distributed the respective Fortis Fund shares received in the exchange to its shareholders on a *pro rata* basis. No brokerage commissions were incurred in this reorganization.

5. The expenses incurred in connection with the liquidation and dissolution of applicant were borne by the investment adviser to applicant, Carnegie Capital Management Company ("CCMC"). No expenses were incurred by applicant in connection with its liquidation and dissolution.[1]

6. On September 3, 1992, applicant filed Articles of Dissolution with the Secretary of State of Ohio.

7. As of the date of the application, the applicant had no assets, debts or liabilities, and was not a party to any litigation or administrative proceeding.

8. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding up of its affairs.

[1] Pursuant to a letter dated September 22, 1992, applicant clarified that not only the liquidation expenses, but also the merger costs incurred in connection with the reorganization, have been borne by CCMC and by Fortis Advisers, Inc., investment adviser to the Fortis Funds.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-23785 Filed 9-30-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16974; File No. 812-8022]

Phoenix Edge Series Fund et al; Application

September 24, 1992.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Phoenix Edge Series Fund ("Phoenix Fund") and Home Life Equity Fund, Inc. ("Home Equity Fund").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 17(b) for exemption from Section 17(a).

SUMMARY OF APPLICATION: Applicants seek an order permitting the transfer of the assets of Home Equity Fund to the Growth Series of the Phoenix Fund in exchange for shares of the Growth Series.

FILING DATE: The application was filed on July 29, 1992 and amended on September 18, 1992.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m. on October 19, 1992. Request a hearing in writing, giving the nature of your interest, the reason for your request, and the issues you contest. Serve Applicants with the request, either personally or by mail, and also send a copy to the Secretary of the Commission, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Phoenix Edge Series Fund and Home Life Equity Fund, Inc., c/o Phoenix Home Life Mutual Insurance Company, One American Row, Hartford, Connecticut 06115.

FOR FURTHER INFORMATION CONTACT: Thomas E. Bisset, Senior Attorney, at (202) 272-2058, or Wendell M. Faria, Deputy Chief, at (202) 272-2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Phoenix Fund was organized on February 18, 1986, as a Massachusetts business trust and is registered under the Act on Form N-1A (Registration No. 811-4642) as an open-end, diversified management investment company. The Phoenix Fund is currently comprised of six separate investment series ("Series"). A separate class of shares of beneficial interest is issued in connection with each Series and the Phoenix Fund has registered those shares under the Securities Act of 1933 (the "1933 Act").

2. The Growth Series is a separate, managed investment portfolio of the Phoenix Fund. The primary investment objective of the Growth Series is to achieve intermediate and long-term growth of capital, with income as a secondary consideration. The Growth Series seeks to achieve its primary investment objective by investing principally in common stocks of corporations believed to offer growth potential over both the intermediate and the long-term.

3. To date, the Growth Series of the Phoenix Home has sold shares only to (i) the Phoenix Home Life Variable Accumulation Account (the "VA Account"), a separate account of Phoenix Home Life Mutural Insurance Company ("Phoenix Home") established to fund variable annuity contracts issued by Phoenix Home, and (ii) the Phoenix Home Life Variable Universal Life Account (the "VUL Account"), also a separate account of Phoenix Home established to fund flexible premium variable life insurance policies issued by Phoenix Home. Both the VA Account and the VUL Account are registered under the Act as unit investment trusts.

4. Home Equity Fund is an open-end, diversified management investment company. Home Equity Fund was organized as a Maryland corporation on June 3, 1970 and is registered under the Act (Registration No. 811-2172). Shares of Home Equity Fund are registered under the 1933 Act on Form N-1A.

5. The principal investment objective of Home Equity Fund is the long-term growth of capital through the appreciation of portfolio securities and the reinvestment of capital gains and income, with an equal emphasis on the preservation of capital. Home Equity Fund invests primarily in the equity securities of selected companies.

6. Home Equity Fund currently sells its shares only to Phoenix Home Life Separate Account B ("Separate Account B"), Phoenix Home Life Separate Account C ("Separate Account C") and Phoenix Home Life Separate Account D ("Separate Account D"), each of which is a separate account of Phoenix Home established to receive and invest premiums paid under retirement annuity benefit or other insurance contracts. Separate Account C and Separate Account D are registered under the Act as unit investment trusts.

7. The assets of Separate Account B are derived solely from contributions under "H.R. 10 Plans." Separate Account B is not registered under the Act in reliance on Section 3(c)(11) of the Act. However, the variable contracts offered through Separate Account B are registered under the 1933 Act on Form N-4.

8. Phoenix Home is a mutual insurance company organized under the laws of the state of New York. Phoenix Home is principally engaged in the offering of ordinary and group life and health insurance policies and annuity contracts. Phoenix Home is the depositor of the VA Account, VUL Account, Separate Account C and Separate Account D and is the issuer of the variable life insurance policies and annuity contracts (the "Contracts") offered through the foregoing separate accounts.

9. Phoenix Investment Counsel, Inc. (the "Adviser") serves as investment adviser to Home Equity Fund and each of the Series of the Phoenix Fund under the general supervision of the Board of Directors of Home Equity Fund and the Board of Trustees of the Phoenix Fund, respectively. As compensation for its services as investment adviser to Home Equity Fund, the Adviser is paid a monthly advisory fee, accrued daily, currently at an annual rate of 0.30% of the average daily net asset value of Home Equity Fund. For its services with respect to the Growth Series, the Adviser is entitled to an advisory fee, payable monthly, at an annual rate of 0.5% of the first $500 million, 0.45% of the next $500 million and 0.4% of the excess over $1 billion of the average of the aggregate daily net asset value of the Growth Series.

10. The Trustees of the Phoenix Fund, including a majority of those Trustees who are not "interested persons" of the Phoenix Fund ("disinterested Trustees") and the Board of Directors of Home Equity Fund, including a majority of those Directors who are not "interested persons" of Home Equity Fund ("disinterested Directors"), have unanimously approved an Agreement and Plan of Reorganization and Liquidation (the "Plan").

11. The proposed Plan provides that Home Equity Fund will convey, transfer and deliver to the Growth Series all of the existing assets of Home Equity Fund. In consideration thereof, the Phoenix Fund agrees to cause the Growth Series (a) to assume and pay all of the obligations and liabilities of Home Equity Fund to the extent that they exist on or after the effective time of the reorganization and (b) to deliver to Home Equity Fund full and fractional shares of beneficial interest of the Phoenix Fund representing shares of the Growth Series ("Growth Series Shares") equal to that number of full and fractional Growth Series Shares as determined based on the relative net asset value per share of Home Equity Fund and Growth Series as of the close of the New York Stock Exchange on the last business day immediately preceding the reorganization in accordance with the provisions of section 22(c) of the Act and rule 22c-1 thereunder.

12. The Plan provides that Home Equity Fund will liquidate and distribute pro rata to its shareholders the growth Series Shares received by Home Equity fund pursuant to the reorganization. Simultaneously Home Equity Fund shares held by such shareholders shall be canceled. The Phoenix Fund will register the shares of the Growth Series issued pursuant to this reorganization under the 1933 Act on Form N-14. The aggregate value of Growth Series Shares to be issued under the Plan will exactly equal the aggregate value of Home Equity Fund shares held by Separate Account B, Separate Account C and Separate Account D immediately prior to the reorganization. Further, the aggregate value of outstanding units of interests in such Accounts will not change on the effective date of the reorganization as a result of the share exchange program.

13. Home Equity Fund will submit the proposed reorganization and the related Plan to shareholders for approval at a Special meeting called for that purpose. Two-thirds of the outstanding shares of Home Equity Fund will be required to approve the Plan and the reorganization contemplated therein. Phoenix Home will vote shares attributable to Separate Account C and Separate Account D in accordance with instructions received from Contract owners with Contract value allocated to those Separate Accounts. Home Equity Fund shares held in Separate Account C and Separate Account D for which no voting instructions are received will be voted by the management of Home Equity Fund in proportion to the voting instructions that are received from Contract owners. Shares of the Home Equity Fund held in Separate Account B will be voted by Phoenix Home in direct proportion to the votes of Contract owners with Contract value allocated to Separate Account C and Separate Account D. Separate Account B owns approximately eighty-five percent of the outstanding shares of Home Equity Fund.

14. Phoenix Fund and Home Equity Fund will receive an opinion of tax counsel to the effect that the reognization will qualify as a tax-free reorganization under the Internal Revenue Code of 1986, as amended, and not result in the recognition of any gain or loss to Phoenix Fund/Growth Series or Home Equity Fund, or to any shareholders thereof.

Applicants' Legal Analysis

1. Section 17(a)(1) of the Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the Act, generally, prohibits the persons described above, acting as principals, from knowingly purchasing any security or other property from the registered investment company.

2. Section 2(a)(3) of the Act defines the term "affiliated person", in relevant part, as:

(A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person; * * *

3. Because Phoenix Home, through Separate Account B, Separate Account C and Separate Account D, owns 100% of the outstanding shares of Home Equity Fund and may itself vote approximately eighty-five percent of the outstanding shares of the Home Equity Fund, it is an affiliate of Home Equity Fund. Because Phoenix Home, through the VA Account and the VUL Account, owns 100% of the outstanding shares of the Phoenix Fund and, therefore, 100% of the outstanding shares of the Growth Series, it is a "5% affiliate" of the Phoenix Fund and Growth Series. Home Equity Fund and the Phoenix Fund/Growth Series are, therefore, affiliated

persons of an affiliated person and transactions between Home Equity Fund and the Phoenix Fund/Growth Series are subject to the prohibition of section 17(a) of the Act. An affiliation between Home Equity Fund and the Phoenix Fund may also arise as a result of the Funds being deemed under "common control" of Phoenix Home since all the voting shares of each of Home Equity Fund and the Phoenix Fund are owned by Phoenix Home. Accordingly, the transfer of assets of Home Equity Fund in exchange for shares of Growth Series may entail the purchase and sale of securities or other property in contravention of section 17(a).

4. Section 17(b) of the Act provides, in pertinent part, that the Commission may grant an order exempting any transaction from the prohibitions of section 17(a) if the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned, and with the general purposes of the Act.

5. Applicants represent that the terms of the proposed reorganization as set forth in the Plan, including the consideration to be paid and received, are reasonable and fair and do not involve overreaching on the part of any person concerned. Applicants also represent that the proposed reorganization of Home Equity Fund and the Growth Series is consistent with the investment policies of Home Equity Fund and the Growth Series as recited in the current registration statements of Home Equity Fund and the Phoenix Fund, other reports filed by Home Equity Fund and the Phoenix Fund under the Act and with the general purposes of the Act.

6. The Board of Trustees of the Phoenix Fund, including a majority of the disinterested Trustees, and the Board of Directors of the Home Equity Fund, including a majority of the disinterested Directors have reviewed and approved the terms of the proposed reorganization as set forth in the Plan, including the consideration to be paid or received by all parties. The Directors of Home Equity Fund also have independently determined that the proposed reorganization, as set forth in the Plan, would be in the best interests of the shareholders of Home Equity Fund and of the Contract owners who have indirectly allocated Contract value through Separate Account C and Separate Account D to Home Equity Fund, and that the consummation of the proposed reorganization will not result in the dilution of the current interests of any such shareholder or Contract owner. The Trustees of Phoenix Fund also have determined that the proposed reorganization, as set forth in the Plan, will be in the best interests of shareholders of the Phoenix Fund/Growth Series and of the Contract owners who have indirectly allocated Contract value through the VA and VUL Accounts to the Phoenix Fund/Growth Series, and that the consummation of the proposed reorganziation will not result in the dilution of the current interests of any such shareholder or Contract owner. Phoenix Home will pay all the direct and indirect expenses of the proposed reorganization, including any brokerage fees relating to transactions resulting from the reorganization.

7. The proposed reorganization will result in an increase in the asset size of Home Equity Fund and the Growth Series. The larger aggregate net assets should enable the combined entities to realize significant benefits associated with economies of scale, increased investment opportunities and enhanced portfolio diversification and liquidity. The Directors and Trustees have considered the relative investment performance of Home Equity Fund and the Growth Series. For the six month period following Home Equity Fund's last fiscal year (September 30, 1991 through March 31, 1992), the Growth Series' total return was 11.99% and the Home Equity Fund's total return was 6.55%. The Directors believe performance and investment flexibility could be enhanced if the assets of Home Equity Fund and the Growth Series are combined.

8. Although the advisory fee applicable to shareholders of Home Equity Fund will increase as a result of the reorganization, the Directors of Home Equity Fund have determined that shareholders and Contract owners with Contract value allocated to Separate Account C and Separate Account D will ultimately benefit from the services of the Adviser. Further, the Directors of Home Equity Fund have determined that Home Equity Fund could not continue to retain the Adviser under the terms of the current Management Agreement or obtain the services of a comparable investment adviser at the rate currently applicable to Home Equity Fund. Moreover, while the Adviser presently bears substantially all expenses of Home Equity Fund, it is possible that, in the future, Home Equity Fund would be required to bear a greater portion or all of its expenses. In such event, the consummation of the reorganization would result in cost savings for Contract owners with Contract value allocated to Separate Account C and Separate Account D by virtue of the economies of scale associated with a larger asset base.

9. The investment objectives and policies of Home Equity Fund and the Growth Series are, in the opinion of the Directors and Trustees, compatible. The principal differences are as follows: (i) Home Equity Fund's investment objective is long-term growth of capital while the Growth Series' objective is intermediate and long-term growth of capital; (ii) not more than 2% of Home Equity Fund's assets can be invested in rights and warrants to purchase common stocks while Growth Series can invest up to 20% of its total assets in such rights and warrants to purchase common stock; (iii) Home Equity Fund is restricted to borrowing money in the aggregate of an amount not exceeding 5% of the value of its assets while the Growth Series can borrow money in an amount equaling up to 50% of the net asset value of the Series; and (iv) the investment restrictions applicable to the Growth Series permit it to engage in a wider range of investment techniques and strategies designed to "hedge" against market risks and enhance income than is permissible under Home Equity Fund's investment restrictions.

The Directors of Home Equity Fund believe that shareholders will be protected and benefited under the investment objectives, policies and restrictions of the Growth Series. The Directors of Home Equity Fund have considered the differences between the investment objectives of Home Equity Fund and the Growth Series and determined that the investment objective of the Growth Series is consistent with the objective of a shareholder seeking growth of capital through an equity portfolio. The Directors concluded that the Growth Series has investment objectives, policies and restrictions comparable to those of Home Equity Fund, and to the extent there are differences, the Directors of Home Equity Fund believe that such differences are of no practical significance and are often advantageous to Home Equity Fund shareholders.

10. Rule 17a-8 under the Act exempts from Section 17(a) of the Act, mergers, consolidations, purchases or sales of substantially all of the assets involving registered investment companies which may be affiliated persons, or affiliated persons of affiliated persons, solely by reason of having a common investment adviser, common directors and/or common officers. Because Home Equity

Fund and the Growth Series are affiliates of each other for reasons other than having a common investment adviser, they can not rely on Rule 17a–8. However, the Applicants submit that the share exchange phase of the proposed transaction will comply with all of the conditions that Rule 17a–8 of the Act requires for the protection of investment companies and their shareholders. The Applicants agree to the grant of the order requested being specifically conditioned on the Board of Trustees of Phoenix Home and the Board of Directors of Home Equity Fund having made the requisite determinations that the participation of the Growth Series and Home Equity Fund, respectively, in the proposed reorganization is in the best interests of the Growth Series and Home Equity Fund and that such participation will not dilute the interests of shareholders of Growth Series or Home Equity Fund or Contract owners that are or will become indirectly invested in the Growth Series.

11. The Applicants submit that the proposed reorganization is consistent with the general purposes of the Act as stated in the Findings and Declaration of Policy in Section 1 of the Act. The Applicants further submit that the plan does not present any of the conditions or abuses that the Act was designed to mitigate or eliminate. In particular, section 1(b)(6) of the Act states that the national public interest and the interest of investors are adversely affected when investment companies are reorganized without the consent of their security holders. As described above, the Plan must receive the approval of two-thirds of the outstanding shares of Home Equity Fund. Contract owners with Contract value allocated to Separate Account C and Separate Account D will receive a proxy statement containing all material disclosures, including a description of all material aspects of the Plan and a copy thereof. Therefore, the Applicants assert, the proposed reorganization is consistent with the general purposes of the Act.

Conclusion

For the reasons stated above, the Applicants believe that the terms of the proposed reorganization satisfy the standards of section 17(b). Accordingly, the applicants assert that it is appropriate for the Commission to issue an order pursuant to section 17(b) exempting the proposed transaction from the provisions of section 17(a) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–23784 Filed 9–30–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1706]

United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT) National Committee Meeting

The Department of State announces that the United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT) National Committee will meet on October 27, 1992 at 9:30 a.m. in room 1207 at the Department of State, 2201 C Street NW., Washington, DC 20520.

The agenda for the meeting will include a debrief of the latest meeting of the World Telecommunications Advisory Council; the report of the joint CCIR/CCITT National Committee meeting, and continue the current work, or to receive reports, of the various sub-committees established by the USNC to prepare the U.S. delegation for the upcoming CCITT Xth Plenary Assembly to be held in Helsinki, March 1993.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Persons who plan to attend should advise the Office of Earl Barbely, Department of State, (202) 647–0201, FAX (202) 647–7407. The above includes government and non-government attendees. Public visitors will be asked to provide their date of birth and Social Security number at the time they register their intention to attend and must carry a valid photo ID with them to the meeting in order to be admitted. All attendees must use the C Street entrance.

Please bring 60 copies of documents to be considered at this meeting. If the document has been mailed, bring only 10 copies.

Dated: September 15, 1992.

Earl Barbely,

Director, Telecommunications and Information Standards, Chairman U.S. CCITT National Committee.

[FR Doc. 92–23813 Filed 9–30–92; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Walworth Co, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Walworth County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: James Zavoral, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin 53705–4906, Telephone: (608) 264–5944. Additional information can be obtained through Ms. Carol Cutshall, Director, Office of Environmental Analysis, Wisconsin Department of Transportation, 4802 Sheboygan Avenue, Madison, Wisconsin 53707, Telephone: (608) 266–9626.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to improve U.S. Highway 12 (USH 12) in Walworth County, Wisconsin. The proposed improvement would involve the construction of a four lane freeway bypass of the City of Whitewater for a distance of about 10 miles.

Improvements to the corridor are considered necessary to provide for the compatibility with the regional function of USH 12, and also to provide for the safety and traffic demand of this highway.

Alternatives under consideration include (1) taking no action; (2) constructing a divided four lane freeway to either the north or south of the city. Incorporated into and studied with each of the building alternatives will be design variations of grade and alignment location.

Letters describing the proposed action and soliciting comments will be sent to the appropriate Federal, State and local agencies, and to private organizations and citizen groups who have previously

expressed or are known to have an interest in this proposal. A series of public meetings will be held in the City of Whitewater between October 1992 and August 1993. In addition, a public hearing will be held in the Fall of 1994. Public notice will be given of the time and place of the meetings and hearings. The draft EIS will be available for public and agency review and comment prior to the public hearing. The scoping process will continue through the duration of the project.

To ensure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. This document is being prepared in conformance with 40 CFR part 1500 and the FHWA regulations. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Issued on: September 21, 1992.

Robert W. Cooper P.E.,

District Engineer, Madison, Wisconsin.

[FR Doc. 92-23810 Filed 9-30-92; 8:45 am]

BILLING CODE 4910-22-M

Maritime Administration

Change of Name of Approved Trustee

Notice is hereby given that effective December 31, 1991, by merger of Manufacturers Hanover Corporation with and into Chemical Banking Corporation, under the name of Chemical Banking Corporation, Manufacturers Hanover Trust Company of California, San Francisco, California, changed its name to Chemical Trust Company of California.

Dated: September 28, 1992.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 92-23857 Filed 9-30-92; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

Intermodal Surface Transportation Efficiency Act of 1991; Electronic Access to Informal Implementation Guidance Via the Federal Highway Administration (FHWA) Electronic Bulletin Board System

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of availability.

SUMMARY: The Intermodal Surface Transportation Efficiency Act (ISTEA) enacted several new highway safety provisions that are being administered by the National Highway Traffic Safety Administration (NHTSA). Several new programs have been established and changes have been made in some existing programs. In order to inform the public about these changes, NHTSA has placed a read-only listing on the Federal Highway Administration (FHWA) Electronic Bulletin Board System (FEBBS). This notice announces the availability of this material and instructs the public on how to access it.

ADDITIONAL INFORMATION: NHTSA is making informal ISTEA-related information and guidance available on the FEBBS to assist in the implementation of the Act. Information on the bulletin board is organized into major subject or information areas called "conferences." The information provided in the ISTEA conference of FEBBS shall be considered only as preliminary guidance on the implementation of the ISTEA and is subject to change. Members of the public may now dial into the FEBBS ISTEA information conference using a microcomputer and modem and view informal information on how NHTSA is implementing the provisions of the ISTEA. This read-only facility is especially intended for use by State and local transportation agencies, vehicle manufacturers, special interest groups, and safety advocacy groups. The telephone number for FEBBS is Area Code 202-366-3764. While the system supports 300, 1200 and 2400 baud line speeds, and a variety of terminal types and protocols, setting the modem for 2400 baud, 8 data bits, full duplex and no parity will give optimal performance. Once a connection has been established, a first-time caller will be required to enter <R> to register. Registration will consist of entering the caller's name, location, computer information and finally specification of a password. After registering, callers will view the "Main Menu" for FEBBS. Callers can then enter the main ISTEA conference menu by selecting <Q>uestions and Answers on ISTEA. From this menu, the caller can then access NHTSA's ISTEA conference menu by selecting <N>HTSA. This conference has information related to the agency's efforts to meet the ISTEA provisions.

FOR TECHNICAL ASSISTANCE CONTACT: FHWA Computer Help Desk, HMS 40, room 4401, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-1120.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Hoidal, NPP-32, room 5208, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2572. Office hours are from 7:30 a.m. to 4:00 p.m. e.t., Monday through Friday.

Issued on September 25, 1992.

Donald C. Bischoff,

Associate Administrator for Plans and Policy.

[FR Doc. 92-23783 Filed 9-30-92; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 92-50; Notice 1]

Autokraft Limited; Receipt of Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

Autokraft Limited of Weybridge, Surrey, England, has petitioned for a temporary exemption from paragraph S4.1.4 of Federal Motor Vehicle Safety Standard No. 208, Occupant Crash Protection. The basis of the petition is that compliance would cause it substantial economic hardship.

Notice of receipt of the petition is published in accordance with agency regulations on the subject (49 CFR part 555), and does not represent any judgment of the agency on the merits of the petition.

Petitioner seeks a two-year exemption for its A.C. Mark IV ("MkIV" herein) passenger car. The basis for the petition is that immediate compliance with the automatic restraint requirements of Standard No. 208 will cause the petitioner substantial economic hardship, within the meaning of 49 CFR 555.6(a). petitioner's total motor vehicle production in the 12 months preceding the filing of the petition was 45 units. It projects sales of 50 vehicles per year.

The Autokraft A.C. MkIV, according to petitioner, "is the only Cobra-like vehicle which is produced from original Cobra tooling. The original A.C. Cobras, both 289 and 427 versions, manufactured by A.C. Cars in Thames Ditton, Surety, England, are no longer in production." Further, "Because of public interest, the A.C. Cobra is reported to be the most duplicated vehicle of all time." In August 1991, the petitioner decided to

introduce the MkIV into the American market. In the year since, it has expended approximately 1,200 man hours and 64,000 Pounds Sterling on the project. It has examined both automatic belt systems and air bags in its review of Standard No. 208, and has been unable to identify any automatic belt system that it could install in the MkIV that would allow it to conform to the automatic restraint requirements. It has also examined available air bag systems because designing a proprietary system is cost and time prohibitive.

The modifications required to adapt an existing air bag system to the MkIV are estimated to total in cost $790,000. The components of this cost are modifications to the steering column ($50,000), modifications to the underhood packaging, etc. ($40,000), design and development of a knee bolster system and tooling, and dashboard modifications ($200,000), and all relevant testing costs ($500,000). In order not to duplicate its costs, the petitioner wishes to develop a passenger-side air bag system at the same time, at an estimated additional cost of $300,000. These costs are said to be prohibitive without the sale of vehicles to fund the development program. The two-year period requested will provide time for Autokraft to develop and implement its fully-complying air bag systems, and to generate sufficient income to fund the project. In the interim, the MkIV will be equipped "with a four point belt system on the driver and passenger side of the vehicle." In substantiation of its hardship argument, petitioner submitted its balance sheets and income statements for the past three fiscal years, plus the first six months of 1992. It reports a net loss of 186,318 Pounds Sterling in the first half of 1992 (or $348,415 at a rate of $1.87 to 1 Pound), a net profit of 604,487 Pounds Sterling in 1991 (or $1,130,391 at the same rate), and a cumulative net profit as of June 30, 1992, of 1,073,752 Pounds Sterling (or $2,007,916).

According to the petitioner, a temporary exemption would be in the public interest because it would allow sale of a vehicle that is "the only true alternative" to the original Cobra vehicles, and result "in the establishment of dealer and service networks which would increase stateside employment and generate tax revenues." An exemption would be consistent with the objectives of the National Traffic and Motor Vehicle Safety Act "since they meet all FMVSS and NHTSA standards, except for the passive restraint portion of standard 208 and are equipped with a superior four point seat belt system which ensures the safety of the driver and passenger."

NHTSA wishes to observe that Standard No. 208, through its incorporation by reference of Standard No. 209, specifies requirements for two and three points non-automatic occupant restraint systems, but does not include the four point system that the petitioner installs in the MkIV. Thus, any exemption would be from Standard No. 208 in its entirety, not just paragraph S4.1.4. NHTSA has invited the petitioner to comment on the extent to which its four point system and its installation may otherwise conform to the requirements of Standard No. 208 and Standard No. 209.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 2, 1992.

Authority: 15 U.S.C. 1410; delegations of authority at 49 CFR 1.50, and 501.8.

Issued on September 25, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-23827 Filed 9-30-92; 8:45 am]

BILLING CODE 4910-59-M

Denial of Motor Vehicle Defect Petition

This notice sets forth the reasons for the denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. 1410a.

Mrs. Karin I. Gibbons petitioned the agency on June 6, 1992 to make a determination that 1988 and 1989 Renault/Eagle Medallions contain safety-related defects. The petition enumerates a number of diverse problems that the petitioner and other owners have reported on these vehicles. As stated in the petition, the principal complaint concerns "premature, repeated brake wear." The petition cites the need for frequent replacement of brake pads and brake shoes on the subject vehicles. It further alleges that accidents have been caused by "repeated brake failure in Renault Eagle/Medallions."

In its consideration of the petition, NHTSA reviewed actions concerning the subject vehicles that were taken by their manufacturer, Chrysler Corporation, as well as consumer complaint information in the agency's files.

Available records indicate that Chrysler issued newsletters or technical service bulletins to its dealers on five separate occasions concerning the servicing and repair of the brake system on the 1988 Medallion. Two of these advised of procedures to diagnose and correct brake noise. The remaining advisories concerned proper rear brake bleeding techniques, the availability of a new front brake pad, and repairs for a broken front brake pad wear sensor warning light wire. Additionally, the company issued a recall notification in March 1988 concerning the replacement of front brake pads to correct a brake noise condition on the 1988 Medallion. This recall was conducted for the purpose of customer satisfaction, and not to correct a safety-related defect.

NHTSA has received a number of complaints from owners of the subject vehicles concerning excessive brake wear and the need for frequent replacement of brake pads and brake shoes. However, the brake wear described in these reports is not likely to cause sudden brake failure, and should produce sufficient noise to alert consumers to the existence of a problem before it creates an adverse impact on safety. NHTSA's files also contain reports of two brake-related accidents for the 1988 model year Medallion, and one for the 1989 model year. None of these accidents were alleged to have resulted in injuries and no failed components were identified in any of the accident reports. Moreover, in each instance the driver complained of brake problems occurring prior to the alleged accident.

Previously, NHTSA received a petition concerning brake problems for the 1988 model year Medallion from Mr. and Mrs. Tim Barnes. That petition was denied on September 17, 1991, based primarily on insufficient numbers of reports of brake failure and insufficient data to indicate the existence of a safety-defect trend. The additional

information submitted by Mrs. Gibbons is not sufficient to cause NHTSA to reach a different decision on her petition.

The remaining problems with 1988 and 1989 model year Medallions cited by the petitioner principally concern customer satisfaction issues. These include excess tire wear, leaking and noisy struts, premature muffler failure, poor engine performance (as evidenced by sputtering, stalling, poor hot idling, rough idling, and hot running), excess speedometer needle fluctuation, acceleration beyond speed set on cruise control, difficulty in moving gear shift lever when vehicle is parked on an incline, heater and air conditioner malfunctions, inoperative interior lights and clock, creaking body structure, and sticking door latches. None of these problems constitute safety-related defects. The only remaining safety issue raised in the petition concerned rear seat belts that at one time were allegedly difficult to unfasten. The petition states that this problem was alleviated by applying a lubricant to the belt buckle.

In consideration of the foregoing, NHTSA has concluded that there is not a reasonable possibility that an order for the notification and remedy of a safety-related defect would be issued at the conclusion of an investigation concerning the problems that the petition has alleged. Under these circumstances, further commitment of agency resources does not appear to be warranted. Therefore, the petition is denied.

Authority: Sec. 124, Pub. L. 93-492; 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 23, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92-23765 Filed 9-30-92; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods by Air; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise persons that RSPA will conduct a public meeting to exchange views on proposals submitted to the Working Group meeting of the International Civil Aviation Organization's (ICAO) Dangerous Goods Panel (DGP) to be held in Edinburgh, Scotland and October 12-16, 1992.

DATES: October 8, 1992 at 2:30 p.m.

ADDRESSES: Department of Transportation, Nassif Building, room 4432, 400 Seventh Street SW., Washington, DC 20590-0001.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, (202) 366-0656, International Standards Coordinator for Hazardous Materials Safety, RSPA, Department of Transportation Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION: This meeting will be held in preparation for the ICAO Dangerous Goods Panel Working Group meeting. The primary purpose of the Working Group meeting will be to discuss proposed amendments to the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air (the Technical Instructions for the Safe Transport of Dangerous Goods by Air (the Technical Instructions). The Working Group will consider possible amendments to resolve problems encountered with the use of the Technical Instructions, and future amendments to the Technical Instructions on the basis of revisions to the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations). The public is invited to attend without prior notification.

Documents

Documents submitted to the working group of the ICAO DGP may be reviewed between the hours of 8:30 a.m. and 5 p.m. in RSPA's Dockets Unit located in room 8419 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Copies of documents may be obtained from RSPA for a nominal fee. A listing of these documents is available on the Hazardous Materials Information Exchange (HMIX), RSPA's computer bulletin board. Documents may be ordered by filling out an online request form on the HMIX or by contacting RSPA's Dockets Unit (202-366-4453). For more information on the use of the HMIX system, contact the HMIX information center; 1-800-PLANFOR 782-6367); in Illinois 1-800-367-9592; Monday through Friday, 8:30 a.m. to 5 p.m. Central time.

After the meeting, a summary of the public meeting will also be available from the Hazardous Materials Advisory Council (HMAC), suite 250, 1110 Vermont Ave., NW., Washington, DC 20005; telephone number (202) 728-1460.

Issued in Washington, DC, on September 22, 1992.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 92-23829 Filed 9-30-92; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: September 25, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0091
Form Number: None
Type of Review: Extension
Title: Importers of Merchandise Subject to Actual Use Provision
Description: This part of the regulation provides that certain items may be admitted duty-free such as farming implements, seed, potatoes, etc. providing the importer can prove these items were actually used as contemplated by law. The importer must maintain detailed records and furnish a statement of use.
Respondents: Individuals or households, Small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 12,000
Estimated Burden Hours Per Respondent/ Recordkeeper: 1 hour, 5 minutes
Frequency of Response: On occasion
Estimated Total Reporting/ Recordkeeping Burden: 13,000 hours
Clearance Officer: Ralph Meyer (202) 927-1552, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive

Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 92-23763 Filed 9-30-92; 8:45 am]

BILLING CODE 4820-02-M

Public Information Collection Requirements Submitted to OMB for Review

Date: September 25, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Office of Thrift Supervision

OMB Number: 1550-0041
Form Number: None
Type of Review: Extension
Title: Procedures Monitoring Bank Secrecy Act Compliance
Description: Necessary to enable OTS to determine whether a savings association has implemented a program reasonably designed to assure and monitor compliance with the currency recordkeeping and reporting requirements established by Federal statute and U.S. Department of Treasury regulation
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 2,100
Estimated Burden Hours Per Respondent: 2 hours
Frequency of Response: Other (one time only)
Estimated Total Reporting Burden: 4,200 hours
Clearance Officer: Colleen Devine (202) 906-6025, Office of Thrift Supervision, 2nd Floor, 1700 G. Street, NW. Washington, DC 20552
OMB reviewer: Gary Waxman (202) 395-7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 92-23764 Filed 9-30-92; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF VETERANS AFFAIRS

Geriatrics and Gerontology Advisory Committee; Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92-463) of October 6, 1972, that the Department of Veterans Affairs' Geriatrics and Gerontology Advisory Committee has been renewed for a 2-year period beginning August 7, 1992, through August 7, 1994.

By direction of the Secretary:

Dated: September 22, 1992.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92-23771 Filed 9-30-92; 8:45 am]

BILLING CODE 8320-01-M

Privacy Act of 1974; Amendment of System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice; publication of notice of proposed new routine uses.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is considering amending the system of records entitled "Patient Medical Records—VA" (24VA136) which is set forth on page 889 of the **Federal Register** publication, "Privacy Act Issuances, 1989 Compilation, Volume II, and amended at 55 FR 5112, February 13, 1990; 55 FR 37604, September 12, 1990; 55 FR 42534, October 19, 1990; 56 FR 1054, January 10, 1991; and 57 FR 28003, June 23, 1992.

DATES: Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed routine uses to the Secretary, Department of Veterans Affairs (271A), 810 Vermont Avenue, NW, Washington, DC 20420. All relevant material received before November 2, 1992, will be considered. All written comments received will be available for public inspection only in room 170 of the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until November 10, 1992. If no comment is received during the 30-day review period allowed for public comment or unless otherwise published in the **Federal Register** by VA, the routine uses in the system are effective November 2, 1992.

FOR FURTHER INFORMATION CONTACT: Celia Winter, Program Specialist, Medical Administration Service (161B), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 535-7658.

SUPPLEMENTARY INFORMATION: Public Law 99-272, The Veterans' Healthcare Amendments of 1986, established an income-based means test for determining eligibility for hospital, nursing home, and outpatient medical care in VA facilities for nonservice-connected veterans. Veterans with incomes in excess of the means test income levels may obtain care in VA facilities if resources and facilities are available and if they agree to pay a copayment to VA. Veterans with incomes in excess of the means test income levels who do not agree to pay copayments to the VA are not eligible for VA medical care and may be treated only on the basis of a humanitarian emergency.

Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990, authorized VA to use IRS (Internal Revenue Service) and SSA (Social Security Administration) income tax return information to verify incomes for certain nonservice-connected veterans who have applied for VA medical care. Proposed routine use number 39 will permit the disclosure of the individual identifiers for these nonservice-connected veterans to IRS and SSA. Income data will be provided to VA which will be compared with the incomes reported by the veterans and used to verify or determine their eligibility for medical care.

Proposed routine use number 40 will allow VA to release identifying information to SSA including social security numbers of individuals who are receiving benefits under Title 38, United States Code. The information may be released only upon an official written agreement between VA and SSA. The agreement will follow requirements of the Privacy Act of 1974.

This release of information will permit the validation of social security numbers maintained in VA records and facilitate determination and verification of eligibility for medical care.

Proposed routine use number 41 is added at this time to incorporate the VA policy of releasing the patient name and relevant treatment information to the Food and Drug Administration, Department of Health and Human Services, for purposes of reporting adverse drug reactions (ADR's) for quality of care monitoring functions.

Approved: September 22, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Notice of System of Records

In the system identified as 24VA136, "Patient Medical Records—VA" appearing on page 889 of the **Federal Register** publication, "Privacy Act Issuances, 1989 Compilation, Volume II" and amended at 55 FR 5112, February 13, 1990; 55 FR 37604, September 12, 1990; 55 FR 41534, October 19, 1990; 56 FR 1054, January 10, 1991; and 57 FR 28003, June 23, 1992, the following routine uses are added:

24VA136

SYSTEM NAME:

Patient Medical Records—VA.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

39. Identifying information, including social security number, concerning veterans and the dependents of veterans, may be disclosed to other Federal agencies for purposes of conducting computer matches to obtain information to determine or verify eligibility of certain veterans who are receiving VA medical care under Title 38, United States Code.

40. The name and social security number of a veteran, spouse and dependent, and other identifying information as is reasonably necessary may be disclosed to the Social Security Administration, Department of Health and Human Services, for the purpose of conducting a computer match to obtain information to validate the social security numbers maintained in VA records.

41. The patient name and relevant medical record treatment information concerning an adverse drug reaction of a patient may be disclosed to the Food and Drug Administration, Department of Health and Human Services for purposes of quality of care management including detection, treatment, monitoring, reporting, analysis and follow-up actions relating to adverse drug reactions

[FR Doc. 92-23772 Filed 9-30-92; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 191
Thursday, October 1, 1992

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).

AFRICAN DEVELOPMENT FOUNDATION

Board of Directors Meeting

TIME: 4:00–5:00 p.m.

PLACE: Department of State.

DATE: Tuesday, October 6, 1992.

STATUS: Open.

Agenda

1. Selection of next Board meeting date.
2. Delegation of Authority.

If you have any questions or comments, please direct them to Ms. Janis McCollim, Executive Assistant to the President, who can be reached at (202) 673–3916.

Gregory Robeson Smith,

President.

[FR Doc. 92–23976 Filed 9–29–92; 2:47 pm]

BILLING CODE 6116–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board was held at the offices of the Farm Credit Administration in McLean, Virginia, on September 18, 1992, from 11:55 a.m. until such time as the Board concluded its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board was open to the public (limited space available). The matter considered at the meeting was:

Open Session

A. New Business

1. Request from National Bank for Cooperatives to Temporarily Exceed its Lending Limit to One Borrower.

Dated: September 28, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92–23913 Filed 9–28–92; 4:50 pm]

BILLING CODE 6705–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on October 1, 1992, from 10:00 a.m. until such time as the Board concludes its businesses.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

Approval of Minutes

A. New Business

1. Regulations

a. Conservatorship and Receivership (Final);

b. Release of Information (Proposed);

2. Other

a. Proposed Reporting Mechanisms for OSMO;

Closed Session*

A. New Business

1. Enforcement Actions.

Dated: September 28, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92–23914 Filed 9–28–92; 4:50 pm]

BILLING CODE 6705–01–M

* Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (8) and (9).

Corrections

Federal Register
Vol. 57, No. 191
Thursday, October 1, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

48 CFR Parts 202, 204, 208, 210, 214, 215, 216, 219, 223, 225, 226, 227, 228, 231, 232, 236, 237, 239, 242, 245, 252, 253

[Defense Acquisition Circular (DAC) 91-3]

Acquisition Regulations; Miscellaneous Amendments; Interim Rules

Correction

In rule document 92-21665 beginning on page 42626 in the issue of September 15, 1992, in the first column, under **DATES** in the eighth line, "30 days from publication" should read "October 15, 1992."

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 30

[FAC 90-12; FAR Case 92-18]

Federal Acquisition Regulation; Cost Accounting Standards

Correction

In correction document 92-20667 appearing on page 43495 in the issue of Monday, August 31, 1992, in the second column, "30.602-1" should read "30.602-2" and in amendatory instruction 9., in the second line, "30.602-1" should read "30.602-2".

BILLING CODE 1505-01-D 1

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-09; Notice 27]

RIN 2127-AD45

Child Restraint Systems

Correction

In rule document 92-21717 beginning on page 41423 in the issue of Thursday, September 10, 1992, make the following corrections:

§ 571.213 [Corrected]

1. On page 41427, in the third column, in the paragraph beginning with "S5.1.3", in the fourth line, "application" should read "applicable".

2. On page 41428, in the first column, in the fourth full paragraph, "S.1.1.5" should read "S6.1.1.5".

BILLING CODE 1505-01-D

federal register

Thursday
October 1, 1992

Part II

Department of Transportation

Research and Special Programs Administration

Federal Preemption of State, Local, and Indian Tribe Requirements Under the Hazardous Materials Transportation Act; Notice

DEPARTMENT OF TRANSPORTATION

[Notice No. 92-10]

Federal Preemption of State, Local, and Indian Tribe Requirements Under the Hazardous Materials Transportation Act

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice.

SUMMARY: This Notice publishes a subject-matter index and table summarizing RSPA inconsistency rulings, non-preemption determinations, and a waiver of preemption determination, and all court decisions which discuss preemption issues under the Hazardous Materials Transportation Act (HMTA) (Pub. L. 93-633), 88 Stat. 2156 (1975), as amended by the Hazardous Materials Transportation Uniform Safety Act (HMTUSA) (Pub. L. 101-615, 104 Stat. 3244 (1990)), and the Hazardous Materials Regulations (HMR) (49 CFR parts 171-180) issued thereunder. With its passage in 1990, HMTUSA significantly amended HMTA, particularly in the area of Federal preemption of State, local government, and Indian tribe requirements. The publication of this information is intended to facilitate better public understanding and awareness of the judicial and administrative precedents concerning preemption under HMTA. It may be particularly useful to State, local, or tribal officials considering the regulation or restriction of hazardous materials transportation.

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Assistant Chief Counsel for Hazardous Materials Safety, Office of the Chief Counsel, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590-0001 [Tel. (202) 366-4400].

SUPPLEMENTARY INFORMATION: The HMTA generally preempts "* * * any requirement, of a State or political subdivision thereof or Indian tribe" when compliance with both the local regulation and HMR "is not possible", when the local regulation "creates an obstacle to the accomplishment and execution" of the HMTA or the HMR, or when the local regulation concerns one or more of five "covered subjects" and the local regulation is not "substantively the same" and HMTA or HMR. 49 app. U.S.C. 1804(a), 1811(a). The "dual compliance" (or "impossibility") test and the "obstacle" test were the regulatory criteria used by RSPA and the courts even prior to 1990; HMTUSA's passage gave them statutory status.

These express preemption provisions make it evident that Congress did not intend that the HMTA and the HMR completely occupy the field of transportation so as to preclude all State, local, or Indian tribe action. However, Congress did give the Department of Transportation (DOT) the authority to promulgate uniform national standards, and Congress intended, to the extent possible, to make State, local, and Indian tribe action unnecessary. HMR's comprehensiveness severely restricts the scope of historically permissible state, local, and Indian tribe activity.

Section 1804(a)(4) preempts any provision, not otherwise authorized by Federal law, concerning a "covered subject" which is not "substantively the same" as any HMTA or HMR provision. "Covered subjects" are the: (1) Designation, description, and classification of hazardous materials; (2) packing, repacking, handling, labeling, marking, and placarding of hazardous materials; (3) preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents; (4) written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; and (5) design, manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

In these five covered subject areas, national uniformity is critical. In those areas, DOT has determined what requirements are necessary for the safe transportation of hazardous materials. Any additional requirements in excess of the Federal requirements would not be "substantively the same" and would be preempted. Therefore, "substantively the same" is defined in the HMR to mean that the non-Federal requirement conforms in every significant respect to the Federal requirement. Editorial and other similar *de minimis* changes are permitted. 49 CFR 107.202, 57 FR 20428 (May 13, 1992).

Section 1804(b)(4) provides that, beginning two years after the issuance of Federal highway routing standards, State and Indian tribe highway routing designations, limitations, and requirements relating to hazardous materials will be preempted unless they meet Federal procedural and substantive requirements. The Federal Highway Administration will issue regulations and preemption determinations on highway routing of hazardous materials. 49 CFR 1.48(ii), 56 FR 31343 (July 10, 1991).

In addition, section 1819 states that, after DOT enacts regulations with regard to motor carrier registration forms for states that register persons who transport hazardous materials by motor vehicle, "no State shall establish, maintain, or enforce any requirement which relates to the subject matter of such regulation unless such requirement is the same as such regulation."

The HMTA also provides that the Secretary of Transportation (Secretary) may waive preemption of a State, local, or Indian tribe regulation, in response to an application that "acknowledges" preemption, upon a determination that the State, local, or Indian tribe requirement: "(1) Affords an equal or greater level of protection to the public than is afforded by the requirements of [the HMTA] or the regulations issued under [the HMTA], and (2) does not unreasonably burden commerce." 49 app. U.S.C. 1811(d).

The Secretary delegated to RSPA the authority to decide applications for a determination of preemption and for a waiver of preemption, except for those concerning highway routing, which were delegated to the Federal Highway Administration. 49 CFR 1.53(b); 56 FR 31343 (July 10, 1991). RSPA's procedures for deciding applications for preemption determinations and waiver of preemption determinations are set forth at 49 CFR 107.201-107.227 (including amendments of February 28, 1991 (56 FR 8616), April 17, 1991 (56 FR 15510), and May 13, 1992 (57 FR 20424)).

Any person "aggrieved" by RSPA's decision on an application for a preemption determination or waiver may file a petition for reconsideration. 49 CFR 107.223(a). A party to a waiver of preemption proceeding may also seek judicial review of the Secretary's decision "by the appropriate district court of the United States." 49 app. U.S.C. 1811(e).

Prior to HMTUSA, Congress had utilized a more general preemption standard ("inconsistent"). Only the question of statutory preemption under the HMTA was considered in DOT's inconsistency rulings. A court might have found a non-Federal requirement preempted for other reasons, such as statutory preemption under another Federal statute, preemption under State law, or preemption by the Commerce Clause and the Supremacy Clause of the U.S. Constitution because of an undue burden on interstate commerce. However, RSPA did not make such

determinations in an inconsistency ruling proceeding. It had incorporated into its procedures the dual compliance/impossibility and obstacle tests for determining whether a State or local requirement was consistent with, and thus not preempted by, HMTA. These tests were based upon and supported by U.S. Supreme Court decisions on preemption, including *Hines* v. *Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); and *Ray* v. *Atlantic Richfield Co.*, 435 U.S. 151 (1978).

All of RSPA's inconsistency rulings, its non-preemption determination, and its waiver of preemption determination (including all relevant **Federal Register** citations) are summarized in a detailed table accompanying this Notice; those rulings and determinations also are summarized in the index accompanying this Notice. In contrast to DOT's advisory inconsistency rulings, its preemption determinations and waiver of preemption determinations are legally binding on parties and affected governments unless reversed on judicial review. Court decisions on HMTA preemption issues are legally binding upon parties to those cases and may constitute binding precedents within the geographical area of each court's jurisdiction. Relevant opinions, published and unpublished, are summarized in the index accompanying this Notice.

Issued in Washington, DC on September 23, 1992, under authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

Index to Preemption of State and Local Laws and Regulations Under the Hazardous Materials Transportation Act (HMTA)

(49 App. U.S.C. 1801–1819)

The following is an alphabetized subject matter index of issues arising under the preemption provisions of the HMTA. This index summarizes the implementation of the HMTA's preemption provisions by DOT and the courts.

Abbreviations Used in this Document

CFR—Code of Federal Regulations
DOT—U.S. Department of Transportation
FR—**Federal Register**
HM–XXX—Hazardous Materials Regulations Docket of RSPA (e.g., HM–181)
HMR—Hazardous Materials Regulations (49 CFR parts 171–180) issued by DOT under HMTA
HMTA—Hazardous Materials Transportation Act, 49 app. U.S.C. 1801–1819.
HMTUSA—Hazardous Materials Transportation Uniform Safety Act of 1990, Public Law 101–615
HRCQ—Highway route controlled quantities (of RAM)
IR–XX—Inconsistency Ruling issued by DOT (e.g., IR–18)
IR–XX(A)—Decision on Appeal re Inconsistency Ruling IR–XX (e.g., IR–18(A))
IRA–XX—Inconsistency Ruling Application filed with DOT (e.g., IRA–44)
LNG—Liquified natural gas
LPG—Liquefied petroleum gas
"Nine-pack"—Group of nine inconsistency rulings (*IR–7 through *IR–15) issued by RSPA on 11/27/84 (49 FR 46632 *et seq.*)
NRC—Nuclear Regulatory Commission
OHMS—Office of Hazardous Materials Safety, RSPA
RAM—Radioactive materials
RSPA—Research and Special Programs Administration, DOT

An asterisk (*) denotes a case, IR or other provision involving only RAM.

A cross-hatch (#) denotes a case, IR or other provision involving both RAM and other hazardous materials.

Accident/Incident Reporting Requirements (Also see "covered subjects" discussion on pp. 1–2.)

• Requirements for immediate, oral accident/incident reports for emergency response purposes generally are consistent. IR–2; IR–3; #IR–28; #IR–31; #IR–32; *National Tank Truck Carriers, Inc.* v. *Burke*, 535 F. Supp. 509 (D.R.I. 1982), *aff'd*, 698 F.2d 559 (1st Cir. 1983).

• Incident reporting requirements concerning irradiated reactor fuel incidents are inconsistent because of redundancy and possible conflict with NRC rules incorporated into HMR. *IR–8, #IR–28; IR–32. However, such requirements may be consistent where they are clear and not in conflict with the NRC rule (incorporated into the HMR) requiring shippers to arrange with local law enforcement agencies for emergency response. #IR–31.

• Requirements for written accident/incident reports are redundant with Federal requirements, tend to undercut compliance with them, and thus are inconsistent. IR–2; IR–3; IR–3(A); #IR–31. See "covered subjects" discussion on pp. 1–2.

Advance Notice—See "Notice Requirements" and "Delays of Transportation."

Approval Requirements (Also see "Permit Requirements.")

• Transportation approval requirements identical to Federal are consistent. *IR–14; *IR–15.

• Transportation approval requirements different from Federal are inconsistent. *IR–8; *IR–8(A); *IR–10; *IR–11; *IR–12; *IR–13; *IR–15; *IR–15(A); #IR–19; #IR–19(A).

• Transportation approval requirements may not include inconsistent provisions: "A requirement for compliance with an inconsistent provision is itself inconsistent." *IR–8(A), 52 FR 13000, 13006.

• Unfettered discretion to approve or disapprove transportation is inconsistent. *IR–8(A); *IR–15(A); *IR–18; #IR–20.

• "In light of the virtually total occupation of the field of radioactive materials transportation by the HMTA and the HMR, State or local provisions requiring approval or authorizing conditions to be established for the transportation of radioactive materials (other than compliance with Federal regulations) constitute unauthorized prior restraints on shipments that are presumptively safe based on their compliance with Federal regulations and are inconsistent with the HMTA and the HMR." *IR–15(A), 52 FR 13062, 13063; quoted and followed, #IR–19.

Approvals—See "Exemptions and Approvals."

Bans on Hazardous Materials Transportation—See "Prohibitions of Hazardous Materials Transportation."

Bonding Requirements—See "Insurance or Indemnification Requirements."

Certification Requirements—See "Information/Documentation Requirements", "Packaging Design and Construction Requirements" and "Shipping Paper Requirements."

Civil Penalties—See "Penalties."

Classification of Hazardous Materials—See "covered subjects" discussion on pp. 1–2.

Communication Requirements

• Requirement that motor vehicles carrying LPG or natural gas use two-way radio communications is consistent. IR–2.

• RAM communications requirements which are different from, or authorized to be different from, Federal requirements are inconsistent. *IR–8; *IR–8(A).

• City requirements that vehicles carrying hazardous waste have and monitor CB radio is consistent except as to radioactive materials. #IR–32.

Confidentiality Requirement

• Requirements to keep RAM shipment information confidential which are same as Federal are consistent. *IR-8; *IR-15.

Container Design and Certification Requirements—See "covered subjects" discussion on pp. 1-2 and "Packaging Design and Construction Requirements."

Curfew—See "Time Restrictions."

Definitions—See "Hazard Class and Hazardous Materials Definitions."

Delays of Transportation (Also see "Routing Requirements" and "Time Restrictions.")

• State and local requirements likely to cause unreasonable transportation delays are inconsistent. IR-2; IR-3; IR-3(A); IR-6; IR-16; #IR-19; #IR-19(A); #IR-20; *IR-21; *IR-21(A); IR-22; #IR-28; *IR-30.

• "The manifest purpose of the HMTA and the Hazardous Materials Regulations is safety in the transportation of hazardous materials. Delay in such transportation is incongruous with safe transportation." IR-2, 44 FR 75566, 75571.

• "The mere threat of delay may redirect commercial hazardous materials traffic into other jurisdictions that may not be aware of or prepared for a sudden, possibly permanent, change in traffic patterns." IR-3, 46 FR 18919, 18921, #IR-20; *IR-21(A).

• Local highway routing requirements for hazardous materials through-traffic not based on complete safety analysis and consultations with all affected jurisdictions are inconsistent with § 177.853(a) of the HMR. IR-3; IR-3(A); IR-23.

• "Since safety risks are 'inherent in the transportation of hazardous materials in commerce' [49 U.S.C. 1801], an important aspect of transportation safety is that transit time be minimized. This precept has been incorporated in the HMR at 49 CFR 177.853, which directs highway shipments to proceed without unnecessary delay, and at 49 CFR 174.14, which directs rail shipments to be expedited within a stated time frame." IR-6, 49 FR 760, 765; see also *IR-16, 50 FR 20872, 20879; quoted, #IR-19, 52 FR 24404, 24409.

• Acute delays at State border inevitably resulting from State imposing documentary prerequisites upon non-domiciliaries for transport of hazardous materials render those requirements inconsistent with 49 CFR 177.853. #IR-26.

• State fees for hazardous materials transport not causing unnecessary transportation delays are consistent. *IR-17; *IR-17(A); *IR-27; # *New Hampshire Motor Transport Ass'n* v. *Flynn*, 751 F.2d 43 (1st Cir. 1984); **Colorado Pub. Utilities Comm'n* v. *Harmon*, No. 88-Z-1524 (D. Colo. 1989), *rev'd on other grounds*, 951 F.2d 1571 (10th Cir. 1991).

• Time-consuming state permitting process with no definite decision date creates possibility of transportation delay and thus is inconsistent. #IR-19, #IR-19(A); *IR-21; *IR-21(A).

• Two-hour advance approval requirement not shown to serve any purpose causes delay and is inconsistent. #IR-20; *IR-21; *IR-21(A).

• City 20-car limitation on unloaded and loaded butane railcars at a site will cause delays and temporary storage elsewhere and thus is inconsistent. *Consolidated Rail Corp.* v. *City of Bayonne*, 724 F. Supp. 320 (D.N.J. 1989). "The obvious conclusion is that the more frequently hazardous material is handled during transportation, the greater the risk of mishap. Accordingly, these [HMR] provisions require that the material reach its destination as quickly as possible, with the least amount of handling and temporary storage." *Ibid.* at 330.

• Additional switching, handling and delays of hazardous materials caused by state requirement for caboose on certain trains carrying hazardous materials create obstacle, and requirement is inconsistent. *Missouri Pacific R.R. Co.* v. *Railroad Commission of Texas*, 671 F. Supp. 466 (W.D. Tex. 1987), *aff'd on other grounds*, 850 F.2d 264 (5th Cir. 1988), *cert. denied*, 109 S. Ct. 794 (1989).

• State statute providing three days for a permit issuance decision re each RAM shipment is inconsistent. *IR-21; *IR-21(A). Local ordinance requiring 45 days' prenotification of RAM shipments is inconsistent. *IR-30. Prohibition on permit applications more than one day prior to scheduled shipment also is inconsistent. *IR-21; *IR-21(A).

• RAM requirements unnecessarily delaying transportation are inconsistent. *IR-8(A), *IR-18; *IR-18(A); *IR-21; *IR-21(A); #IR-26, *IR-30.

• City tank truck regulations causing delays for cargo transfers, vehicle permit inspections and obtaining specifications, certifications and affidavits, are inconsistent. IR-22.

• City truck regulations, requiring bulk gases to be transported around City unless no practical alternative route exists and the fire commission authorizes trip, promote safety, do not cause "unnecessary delay" under 49 CFR 177.853(a), and thus are consistent. *City of New York* v. *Ritter Transp., Inc.*, 515 F. Supp. 663 (S.D. N.Y. 1981), *aff'd, National Tank Truck Carriers, Inc.* v. *City of New York*, 677 F.2d 270 (2d Cir. 1982).

• "While states do have a role in effectuating the safe transportation of radioactive materials, it does not follow that they have unfettered discretion to take actions which have the effect of restricting or delaying transportation being conducted in compliance with Federal law." *IR-8(A), 52 FR 13000 at 13003; quoted in #IR-19, 52 FR 24404, 24409.

Designation/Description of Hazardous Materials—See "covered subjects" discussion on pp. 1-2.

Documentation—See "Information/Documentation Requirements."

Drivers' Licenses—See "Information/Documentation Requirements" and "Training Requirements."

Effect of Requirements (Also see "Language of Requirements.")

• "* * * it is the effect, both actual and potential, not the intent of state or local rules which determines their consistency with the HMTA and the HMR." IR-8(A), 52 FR 13000, 13003.

Emergency Response

• "Although the Federal Government can regulate in order to avert situations where emergency response is necessary, and can aid in local and state planning and preparation, when an accident does occur, response is, of necessity, a local responsibility." IR-2, 44 FR 75565, 75568.

• Inadequacy of emergency response capabilities cannot provide basis for prohibiting transportation. *IR-18; *IR-18(A). Thus, non-Federal emergency response-related information requirements, such as a cleanup plan or vehicle equipment failure plan, cannot be used as a prerequisite to hazardous materials transportation. #IR-19; *IR-27; #IR-28. **Colorado Pub. Utilities Comm'n* v. *Harmon*, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88-Z-1524 (D. Colo. 1989).

• "* * * RSPA's emergency response information requirements for hazardous materials transportation, including the loading, unloading, or storage incidental to such transportation exclusively occupy that field. Therefore, state and local requirements not identical to these HMR provisions will cause confusion concerning the nature of such requirements, undermine compliance with the HMR requirements, constitute obstacles to the implementation of these provisions, and thus be inconsistent and preempted." #IR-28.

Emergency Requirements (Also see "Loading and Unloading")

Enforcement and Violations Provisions (Also see "Penalties.")

• Enforcement and violations provisions (such as criminal or civil sanctions, private attorney general

lawsuits, injunctions, cease-and-desist orders, cut-off of city services, etc.) are consistent with HMTA and HMR if used to enforce consistent provisions. *IR-3; #IR-31.

• Enforcement and violations provisions (such as criminal or civil sanctions, private attorney general lawsuits, injunctions, cease-and-desist orders, cut-off of city services, etc.) are inconsistent with HMTA and HMR if used to enforce inconsistent provisions. *IR-18; *IR-18(A); *IR-30; #IR-31.

Equipment Requirements (Also see "covered subjects" discussion on pp. 1-2 and "Packaging Design and Construction Requirements.")

• Cargo containment-related equipment requirements, including those vesting discretionary approval authority in state or local officials, are inconsistent. IR-2; *IR-8; *IR-8(A); *IR-15; IR-22; *Nat'l Paint & Coatings Ass'n. et al.* v. *City of New York,* Index No. CV 84-4525 (ERK) (E.D. N.Y. Oct. 18, 1991).

• "In summary, RSPA, OHMT and their predecessor agencies have established in a series of inconsistency rulings issued during the past decade the principle that the HMR provisions concerning hazardous materials transportation cargo containment systems, equipment, accessories and packagings, and the certification, marking, testing and permitting of same, have fully occupied that regulatory field. Those subjects are the exclusive province of the Federal Government. As a result, state or local requirements concerning those subjects detract from and create confusion concerning the Federal requirements, are inconsistent with the HMTA and the HMR, and, therefore, are preempted under section 112(a) of the HMTA. Similarly, these rulings have demonstrated RSPA's position that permitting systems and information or documentation requirements relating to or containing such requirements likewise are inconsistent with the HMTA and the HMR and, therefore, preempted." IR-22, 52 FR 46574, 46582.

• "Headlights on" requirement is consistent. IR-2; IR-3; #IR-32 (with reasonable notice); *National Tank Truck Carriers, Inc.* v. *Burke,* 535 F. Supp. 509 (D.R.I. 1982), *aff'd,* 698 F.2d 559 (1st Cir. 1983); * *Colorado Pub. Utilities Comm'n* v. *Harmon,* No. 88-Z-1524 (D. Colo. 1989), *rev'd on other grounds,* 951 F.2d 1571 (10th Cir. 1991).

• RAM transportation requirement for mobile telephone equipped with multiple channels is consistent. **Colorado Pub. Utilities Comm'n* v. *Harmon,* No. 88-Z-1524 (D. Colo. 1989), *rev'd on other grounds,* 951 F.2d 1571 (10th Cir. 1991).

• State requirement for caboose on certain trains carrying hazardous materials would cause additional switching, handling and delays of hazardous materials and thus is inconsistent. *Missouri Pacific RR Co.* v. *Railroad Commission of Texas, supra.*

• Requirement for illuminated rear bumper signs conflicts with DOT lighting regulations and would divert attention from DOT placards and thus is inconsistent. IR-2.

• Requirement for frangible shank-type lock on tank trailers carrying LNG or LPG is inconsistent since DOT comprehensively regulates cargo tank containment. IR-2.

• City 20-car limitation on unloaded or loaded butane railcars at a site is inconsistent. *Consolidated Rail Corp.* v. *City of Bayonne,* 724 F. Supp. 320 (D. N.J. 1989).

• "* * * a state or local rule which grants an official discretionary authority to set equipment requirements for carriers engaged in interstate commerce impedes the Congressional purposes of increased safety and regulatory uniformity underlying the HMTA." IR-8(A), 52 FR 13000, 13003.

• Vehicle equipment requirements which might conflict with those provisions of the Federal Motor Carrier Safety Regulations (FMCSR), 49 CFR parts 390-397, which are incorporated in the HMR only by 49 CFR 177.804, must only meet the "dual compliance" test, not the "obstacle" test. IR-3; 43 FR 4858 (Feb. 6, 1978); *National Paint & Coatings Ass'n, Inc.* v. *City of New York,* No. CV-4525 (ERK) (E.D. N.Y. 1985); 52 FR 18668-9 (May 18, 1987); IR-22. However, those FMCSR requirements specifically incorporated into the HMR by other HMR regulations must meet both tests. IR-22.

• Waiver of preemption denied with regard to tank truck design and capacity requirements for flammable and combustible liquids and gases, because they do not provide an equal level or greater level of protection to the public as the Federal requirements, and they unreasonably burden commerce. In this specific case, there is no evidence that local design requirements and capacity limits increase the level of safety by a sufficient amount to offset an expected reduction in deaths, injuries, and property damage, when larger-capacity trucks allow fewer trips. WPD-1.

Escort Requirements

• RAM transportation front and rear escort requirements identical to DOT/NRC standards are consistent, *IR-14, as are notice requirements facilitating escorts under the DOT/NRC requirements. *IR-17.

• Requirements for additional or special escorts re RAM transportation not required by DOT/NRC regulations are inconsistent, *IR-11; *IR-13; *IR-15(A); *IR-18; *IR-18(A); *IR-21.

• Requirements for carriers to delay for escorts re RAM transportation other than those in NRC standards are inconsistent. *IR-15.

• Escort requirements linked to inconsistent equipment requirements are inconsistent. IR-22; IR-23.

• Temporary restraining order and later a permanent injunction were imposed against State escort requirement for chlorine and oleum shipments, because of the high degree of likelihood that such a requirement would not be upheld upon court review. *Chlorine Institute* v. *California Highway Patrol et al.,* No. CIV-S-92 396 DFL/JFM (E.D. Ca. 1992).

Exemptions and Approvals

• "A state must implicitly or explicitly recognize the validity of OHMT's exemptions and approvals; a state may not establish its own exemptions and approvals program." #IR-31, 55 FR 25572, 25581.

Federal Motor Carrier Safety Regulations (FMCSR).

• 49 CFR parts 390-397 (FMCSR) were not made relevant to HMTA preemption by adoption of 49 CFR 177.804. They are relevant only insofar as specifically incorporated by reference in other HMR provisions. IR-22; IR-23; #IR-32.

Federal Requirements (Also see "Standing.")

• Only conflicts with Federal requirements under the HMTA and the HMR are cognizable in inconsistency proceedings (not Commerce Clause issues or preemption issues under other Federal statutes or regulations), but OHMT may address these HMTA/HMR conflict issues even if not clearly raised in the application. IR-17(A).

• Absence of a Federal regulation addressing the same subject as a challenged state or local requirement is not determinative of the issue of that requirement's consistency. *IR-17(A).

• Requiring compliance with Federal requirements is consistent. IR-3; *IR-7.

• State or local requirements identical to Federal ones are consistent. *IR-8.

• Adequacy of Federal requirements is irrelevant. *IR-8(A).

Fee Requirements

• Fees on hazardous materials transportation must be equitable and used for purposes related to hazardous materials transportation, including enforcement and planning, development

and maintenance of emergency response capability. 49 app. U.S.C. 1811(b).

• Reasonable fees to fund consistent activities are consistent. *IR–17; *IR–17(A); *IR–27; #*New Hampshire Motor Transport Ass'n* v. *Flynn*, 751 F.2d 43 (1st Cir. 1984);

**Colorado Pub. Utilities Comm'n* v. *Harmon*, No. 88–Z–1524 (D. Colo. 1989), *rev'd on other grounds*, 951 F.2d 1571 (10th Cir. 1991).

• Fees which are unreasonably high or are related to inconsistent activities are inconsistent. *IR–11; *IR–13; *IR–15; *IR–18(A); #IR–19; *IR–27; *IR–30; #*New Hampshire Motor Transport Ass'n* v. *Flynn, supra.*

• State's $1,000 per cask fee for spent nuclear fuel transportation to fund inspection, enforcement, State escorts and emergency response, not related to inconsistent provisions, and not causing transportation delays or diversions is consistent. *IR–17; *IR–17(A). Similar State RAM shipment fees are consistent. *IR–27.

• State's $25/year or $15/trip fee for hazardous materials transportation to fund transportation and environmental programs and related to a minimal delay licensing system is consistent. #*New Hampshire Motor Transport Ass'n* v. *Flynn, supra.*

• State's $1,000 per shipment fee for spent nuclear fuel transportation apparently to fund inconsistent state monitoring activities is inconsistent. *IR–15. State's RAM permit fee is inconsistent. *IR–27.

• State's $500 annual permit fee and $200 shipment fee for RAM transportation are consistent. **Colorado Pub. Utilities Comm'n* v. *Harmon*, No. 88–Z–1524 (D. Colo. 1989), *rev'd on other grounds*, 951 F.2d 1571 (10th Cir. 1991).

• State preliminarily enjoined from depositing the proceeds of a $25 per truck annual hazardous materials transportation license fee and a related $15 single trip fee into the State treasury, and ordered to place these monies in an escrow account pending final disposition of court case challenging validity of the fees under the Commerce clause, because plaintiffs established the likelihood of their success on the merits. *American Trucking Associations et al.* v. *New Hampshire*, No. 89–E–00405–B (Sup. Ct. NH 1989).

• State's hazardous materials license fee of $25 per vehicle or $15 per trip per vehicle found to be a "flat tax", failed Commerce clause "internal consistency" test as required by *Armco* v. *Hardesty* (467 U.S. 644 (1994)), and therefore was an undue burden on interstate commerce. *American Trucking Assn's* v. *Diamond, et al.*, No. CV–90–195 (Sup. Ct. Maine 1990).

• The imposition and use of an "equitable fee" as part of a City's permit and inspection system for purposes related to the transportation of hazardous materials is not preempted. WPD–1.

Findings

• Findings regarding hazardous materials transportation are not "requirements" subject to preemption under the HMTA. *IR–18.

Forms—See "Motor Carrier Registration and Permitting Forms."

Handling of Hazardous Materials—See "covered subjects" discussion on pp. 1–2.

Hazard Class and Hazardous Materials Definitions (Also see "covered subjects" discussion on pp. 1–2.)

• State and local hazard class and hazardous materials definitions differing from those in the HMR and used to regulate hazardous materials transportation are inconsistent because the Federal role is exclusive. *IR–18; *IR–18(A); #IR–19; #IR–19(A); #IR–20; *IR–21; #IR–26; #IR–28; IR–29; *IR–30; #IR–31; #IR–32; *Missouri Pacific R.R. Co.* v. *Railroad Commission of Texas, supra.*

• State and local hazardous materials definitions and classifications which result in regulating the transportation, including loading, unloading or storage incidental thereto, of more, fewer or different hazardous materials than the HMR are obstacles to uniformity in transportation regulation and thus are inconsistent. IR–5; IR–6; #IR–28; IR–29; #IR–31; #IR–32.

• Application of state requirements to selected DOT hazardous materials can contribute to the overall inconsistency of a series of interrelated regulations. #IR–19.

• "The key to hazardous materials transportation safety is precise communication of risk. The proliferation of differing State and local systems of hazard classification is antithetical to a uniform, comprehensive system of hazardous materials transportation safety regulations." IR–6, 48 FR 760, 764.

• "State government or political subdivisions may not regulate—let along prohibit—the transportation or radioactive or other hazardous materials specifically excepted from regulation under the HMTA or the HMR. The determination of what hazardous materials may or may not be regulated in the transportation field is the essence of DOT's exclusive authority to define and classify hazardous materials." #IR–20, 52 FR 24396, 24401.

• "Radioactive Material" definitions different from HMR definitions are inconsistent. *IR–8; *IR–12, *IR–15; *IR–16; *IR–18; *IR–21; *IR–30; **Northern States Power Co.* v. *Prairie Island Mdewakanton Sioux Indian Community*, Civ. 3–9–783 (D. Minn., Dec. 23, 1991) (enjoining enforcement of ordinance), *appeal docketed* (8th Cir. 1992). But essentially identical definitions are consistent. *IR–18.

• "If every jurisdiction were to assign additional requirements on the basis of independently created and variously named subgroups of radioactive materials, the resulting confusion of regulatory requirements would lead directly to the increased likelihood of reduced compliance with the HMR and subsequent decrease in public safety." *IR–12, 49 FR 46650, 46651.

• City definitions of RAM and flammable materials differed from HMTA definitions and thus were preempted and their use enjoined. *Union Pac. R.R. Co.* v. *City of Las Vegas*, No. LV–85–932 HDM (D. Nev. 1986).

• City definition of "hazardous waste" consisting of ambiguous and subjective standards and including non-HMR materials is inconsistent. #IR–32.

• *Hazard Warning Requirements*—See "Placarding and Other Hazard Warning Requirements."

• *Hazardous Substances and Wastes* (Also see "covered subjects" discussion on pp. 1–2.)

• Dicta in footnotes indicate that State's hazardous substances transportation regulations appeared to be valid under the HMTA because they regulated only transportation from points in Maryland [but decision overlooked RSPA's 1980 amendment of 49 CFR 171.1 applying HMR to intrastate transportation of hazardous substances and wastes]. *Browning-Ferris, Inc.* v. *Anne Arundel County, Maryland*, 292 Md. 136, 438 A.2d 269, 274 (1981).

• City requirement that driver transporting hazardous waste carry a hazardous waste manifest is same as HMR and is consistent. #IR–32.

• City definition of hazardous waste consisting of ambiguous and subjective standards and including non-HMR materials is inconsistent. #IR–32.

• City definition of hazardous gases different from that in HMR does not afford as much protection to the public and unreasonably burdens commerce, and therefore waiver of preemption is denied. WPD–1.

• *Incident Reporting*—See "Accident/Incident Reporting Requirements."

Inconsistency Rulings

• Local government need not obtain an RSPA inconsistency ruling before enforcing a local requirement. *National Tank Truck Carriers, Inc.* v. *Burke*, 608 F.2d 819, 821–2 (1st Cir. 1979); *City of New York* v. *Ritter Transportation, Inc.*, 515 F. Supp. 663, 668 (S.D. N.Y. 1981), *aff'd sub nom. National Tank Truck Carriers, Inc.* v. *City of New York*, 677 F.2d 270 (2d Cir. 1982); *Seaboard System R.R., Inc.* v. *Bankester, et al.*, 254 Ga. 455, 330 S.E. 2d 700, 705 (1985). *Contra* (based on doctrine of primary jurisdiction): *Consolidated Rail Corp.* v. *City of Dover*, 450 F. Supp. 966, 974 (D. Del. 1978).

• "Because the DOT authored the HMR, its determination of what constitutes an obstacle to the accomplishment or execution of those regulations is deserving of substantial deference." *Southern Pac. Transp. Co.* v. *Public Serv. Comm'n of Nevada*, 909 F.2d 352, 359 (9th Cir. 1990).

• DOT improperly issued an FR policy statement which had the effect of determining that Ohio's radioactive materials prenotification requirement was inconsistent with the HMTA—without affording Ohio the protections of the IR regulations. **State of Ohio* v. *U.S. Dept. of Transportation*, No. C81–1394 (N.D. Ohio Oct. 5, 1989).

Incorporation by Reference

• NRC regulations incorporated by reference in HMR provide basis for consistency comparison with state and local requirements. *IR–8(A).

• DOT encourages State adoption or incorporation by reference of the HMR as State law—and enforcement thereof. *IR–17; #IR–19; #IR–31; WPD–1.

• State and local requirements which incorporate by reference specific superseded Federal regulations are inconsistent. *IR–8; *IR–8(A); *IR–18. However, state and local governments may incorporate by reference specific CFR volumes of the HMR for a reasonable time (up to two years) after their publication, although a later-published HMR rule would control over an inconsistent state or local requirement. #IR–19.

• *Indemnification Requirements*—See "Insurance or Indemnification Requirements."

Indian Tribe Requirements

÷ HMTA likely preempts significant portions (if not all) of an Indian tribe ordinance requiring license for transport of "radioactive substances," broadly defining those substances, requiring 180-day advance application and a $1,000 fee, and providing broad discretion to Tribal Council whether to issue or deny the license. **Northern States Power Co.* v. *Prairie Island Mdewakanton Sioux Indian Community*, Civ. 3–91–783 (D. Minn. Dec. 23, 1991) (enjoining enforcement of ordinance), *appeal docketed* (8th Cir. Nos. 92–1240, 92–1478 1992). However, another court has held that Indian tribes are immune from suit in U.S. district court for actions allegedly preempted by the HMTA. **Public Serv. Co. of Colorado* v. *Shoshone-Bannock Tribes* (D. Idaho, No. 91–440–E EJL, Jan. 9, 1992), *appeal docketed* (9th Cir. No. 92–35206 1992).

• *Information/Documentation Requirements* (Also see "covered subjects" discussion at pp. 1–2 and "Shipping Paper Requirements," "Notice Requirements," and "Placarding and Other Warning Requirements.")

• Requirements for information or documentation in excess of Federal requirements create potential delay, constitute an obstacle to execution of the HMTA and the HMR, and thus are inconsistent. IR–2; IR–6; *IR–8; *IR–8(A); *IR–15; *IR–15(A); *IR–18; *IR–18(A); #IR–19; #IR19(A); *IR–21; #IR–26; *IR–27; #IR–28; *IR–30; **Chem-Nuclear Systems, Inc.* v. *City of Missoula*, No. 80–18–M (D. Mont. 1984); #*Southern Pac. Transp. Co.* v. *Public Serv. Comm'n of Nevada*, 909 F.2d 352 (9th Cir. 1990), *reversing* No. CV–N–86–444–BRT (D. Nev. 1988); **Colorado Pub. Utilities Comm'n* v. *Harmon*, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88–Z–1524 (D. Colo. 1989). There is no *de minimis* exception to the "obstacle" test because thousands of jurisdictions could impose *de minimis* information requirements. *IR–8(A).

• "In summary, the HMTA and HMR provide sufficient information and documentation requirements for the safe transportation of hazardous materials; state and local requirements in excess of them constitute obstacles to implementation of the HMTA and HMR and thus are inconsistent with them." #IR–19, 52 FR 24404 at 24408. Quoted in #IR–28.

• Preliminary injunction was granted against City requirements to have decal and carry copy of permit. *American Trucking Ass'ns, Inc.* v. *City of Boston*, No. 81–628–MA, Fed. Carr. Cas. ¶82,938 (CCH) (D. Mass. 1981).

• Emergency response-related information requirements cannot be used as a prerequisite to hazardous materials transportation. #IR–19; *IR–27.

• State may require, as prerequisite to motor vehicle transport of hazardous materials, a driver's license or documentary evidence of hazardous materials training from its own domiciliaries but not from non-domiciliaries—except, on or after April 1, 1992, from non-domiciliaries not having hazardous materials endorsements on their commercial drivers' licenses. #IR–26; #IR–31; #IR–32.

• "DOT and NRC have determined what information and documentation requirements are needed for the safe transportation of radioactive materials, and state and local requirements going beyond them create confusion, impose burdens on transporters, are obstacles to the accomplishment of the HMTA's objectives, and thus are inconsistent." *IR–8(A), 52 FR 13000, 130004; quoted in *IR–27; quoted and applied to non-RAM in #IR–19, 52 FR 24404, 24408; see also *IR–15(A).

• "No matter what the form, any state or local requirement that asks for an additional piece of paper that supplies the same information as is required to be on the DOT shipping paper would be inconsistent with the requirements contained in the Hazardous Materials Regulations." IR–2, 44 FR 75566, 75571. Requirements for multiple submissions of same information are inconsistent. *IR–8(A).

• Requirements for RAM transportation route plans or other shipment-specific documentation or information are inconsistent. *IR–21. Also inconsistent are requirements for RAM shipment information on possible alternate routes, proposed means of conveyance, estimated date and time of departure, emergency response or recovery plans, attestations re safety inspections, certification of compliance with laws and regulations (latter being same as required on DOT shipping papers), telephone numbers, inspection reports, state permits, proof of driver training, proof of insurance, and equipment replacement or repair plans. *IR–8(A); *IR–15; *IR–15(A); *IR–27; **Colorado Pub. Utilities Comm'n* v. *Harmon*, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88–Z–1524 (D. Colo. 1989).

• RAM information requirements identical to NRC's are consistent, but requirement for submission to state of NRC approvals and licenses is inconsistent. *IR–8; *IR–8(A); *IR–15; *IR–15(A).

• Requirement to carry proof of insurance is inconsistent. *IR–27; #IR–32; **Colorado Pub. Utilities Comm'n* v. *Harmon*, 951 F.2d (10th Cir. 1991), *reversing* No. 88–Z–1524 (D. Colo. 1989).

• Mere requirement in permit application of some information required on DOT shipping papers may not require preemption. Dicta in *National Tank Truck Carriers, Inc.* v.

Burke, 535 F. Supp. 509 (D. R.I. 1982), *aff'd*, 698 F.2d 559 (1st Cir. 1983).

• "The Secretary's regulations contain hundreds of information and documentation requirements, all of which have been established by the Secretary to ensure the health and safety of citizens in every jurisdiction. Congress specifically found that additional documentation and information requirements in one jurisdiction create "unreasonable hazards in other jurisdictions" and could confound "shippers and carriers which attempt to comply with multiple and conflicting regulations." 49 U.S.C. app. 1801. Colorado's regulations clearly exceed the information and documentation requirements set forth in the Secretary of Transportation's regulations governing the transportation of radioactive materials. The enactment of separate information and documentation requirements in even a few of the thousands of local jurisdictions across the country would lead to the multiplicitous regulations Congress sought to avoid by enacting the HMTUSA. Because Colorado's regulation forces transporters of hazardous materials to generate and maintain additional documentation and information, we conclude that it is likely to confound shippers and carriers and to increase the potential for hazards in other jurisdictions. Colorado's regulations simply do not further the Federal purpose of promoting safety through uniformity. Therefore, we hold that NT-8 is preempted. * * * In addition to obstructing Congress' objective that safety be achieved through uniformity, the expense of burdensome documentation and information requirements also is contrary to Congress' intent that regulation of hazardous materials transportation be as cost-effective as possible." **Colorado Pub. Utilities Comm'n* v. *Harmon*, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88-Z-1524 (D. Colo. 1989).

Inspection Requirements (Also see "Permit Requirements")

• Inspection requirements relating to Federal and consistent requirements are encouraged by RSPA and are consistent. IR-2; *IR-8; *IR-15; *IR-17; #IR-20; *IR-27; #IR-31; **Colorado Pub. Utilities Comm'n* v. *Harmon*, No. 88-Z-1524 (D. Colo. 1989), *rev'd on other grounds*, 951 F.2d (10th Cir. 1991).

• Inspection requirements relating to inconsistent requirements are themselves inconsistent. #IR-20; *IR-21; *IR-21(A); *IR-27, *IR-30; #IR-31.

• State may not require carrier to retain inspection report in vehicle. Such an additional documentation requirement could create confusion and increase hazards. **Colorado Pub. Utilities Comm'n* v. *Harmon*, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88-Z-1524 (D. Colo. 1989).

• Annual inspections for tank trucks hauling flammable and combustible liquids and compressed gasses, to determine the vehicles' general safety levels, are not preempted. However, waiver of preemption was denied with respect to inspections to enforce vehicles' conformity to local design requirements (truck size and tank design and capacity). WPD-1.

Insurance or Indemnification Requirements

• Hazardous materials transportation indemnification, bonding or insurance requirements differing from Federal requirements are inconsistent. *IR-10; *IR-11; *IR-15; *IR-15(A); *IR-18; *IR-18(A); #IR-25; #IR-31. (See also *IR-13; *IR-14.) State may not require proof of insurance meeting the Federal requirements. **Colorado Pub. Utilities Comm'n* v. *Harmon*, 951 F.2d (10th Cir. 1991), *reversing* No. 88-Z-1524 (D. Colo. 1989).

• The absence of a bonding, insurance, or indemnity requirement in the HMR "is a reflection of OHMT's determination that no such requirement is necessary and that any such requirement imposed at the state or local level is inconsistent with the HMR." #IR-25, 54 FR 16308, 16311. "[N]o such requirement is necessary—particularly because 49 CFR 387.7 and 387.9 already require insurance or surety bonds of between $1,000,000 and $5,000,000 for motor carriers transporting hazardous wastes, hazardous substances and other hazardous materials." *Ibid.*

• "The indemnification level established through the HMR, coupled with the indemnification provisions of the Price-Anderson Act (42 U.S.C. 2210), provides the exclusive standard for radioactive materials transportation indemnification. They have totally occupied that field, and any state or local bond, insurance or indemnification requirement not identical to the HMR requirement is an obstacle to the accomplishment of the objectives of the HMTA and the HMR." *IR-15(A), 52 FR 13062, 13063.

• Requirement to carry proof of insurance is inconsistent. #IR-32.

Labeling of Hazardous Materials—See "covered subjects" discussion on pp. 1-2.

Land Use Restrictions

• Regulations which apply only to transportation activities are not types of non-transportation land use restrictions which might be consistent. #IR-19; see IR-16.

Language of Requirements (Also see "Effect of Requirements.")

• Actual language of state and local requirements, rather than later statements of intent, are controlling, *IR-8(A), IR-16, #IR-19(A), unless there is a demonstrated actual practice to the contrary. *IR-17.

Licensing—See "Information/Documentation Requirements."

Loading and Unloading (Also see "covered subjects" discussion on pp. 1-2 and "Smoking limitations".)

• State and local requirements for hazardous materials loading and unloading incidental to transportation (including loading and unloading by consignors and consignees) must be consistent with the HMTA and HMR. Such requirements are inconsistent if they differ from, or add to, the HMR requirements—particularly if they are subjective. #IR-19; #IR-19(A); #IR-28; #*Southern Pac. Transp. Co.*, v. *Public Serv. Comm'n of Nevada*, 909 F.2d 352 (9th Cir. 1990), *reversing* No. CV-N-86-444-BRT (D. Nev. 1988).

• Despite DOT's extensive regulation of loading, unloading, transfer and storage incidental to the transportation of hazardous materials, the Nevada regulations require a carrier to obtain an annual permit prior to engaging in these activities within the state of Nevada. The Nevada regulations, thus, create a separate regulatory regime for these activities, fostering confusion and frustrating Congress' goal of developing a uniform, national scheme of regulation. The resulting confusion is exacerbated by the fact that the Nevada regulations only apply to some of the hazardous materials covered by the HMTA and HMR and not to others." #*Southern Pac. Transp. Co.*, v. *Public Serv. Comm'n of Nevada*, 909 F.2d 352, 358 (9th Cir. July 18, 1990), *reversing* No. CV-N-86-444-BRT (D. Nev. 1988).

• Waiver of preemption was granted as to a local transfer requirement, which restricted the emergency transfer of flammable or combustible liquids from a tank or platform truck to vehicles with Fire Department permits or to those otherwise authorized and when authorized by a Fire Department representative. WPD-1.

• Waiver of preemption was granted for a local requirement that gasoline be discharged by gravity into underground tanks, because such a requirement affords an equal or greater level of protection to the public as the HMR and does not unreasonably burden commerce. However, waiver of

preemption was denied as to other flammable liquids and to the discharge of gasoline into tanks which are not underground. WPD–1.

Marking of Hazardous Materials—See "covered subjects" discussion on pp. 1–2.

Mode or Means of Transportation—See "Prohibitions of Hazardous Materials Transportation."

Monitoring of Shipments (Also see "Inspection Requirements.")

• Monitoring of hazardous materials shipments by state officials in consistent. *IR–17. However, a carrier cannot be required to stop and wait for state officials assigned to monitor shipments. *IR–15.

Motor Carrier Registration and Permitting Forms—See discussion of section 1819 on p. 2.

Non-Regulatory Actions—See "Statements of Intent to Regulate."

Notice Requirements (Also see "Accident/Incident Reporting Requirements", "Delays of Transportation", and "Information/ Documentation Requirements.")

• Advance notice requirements of hazardous materials transportation generally are inconsistent. IR–6; *IR–8(A); *IR–16; #IR–28; *IR–30; #IR–32.

• "Through its rulemaking process and related studies, DOT has determined what prenotification (including information, documentation and certification) requirements are necessary for the safe transportation of radioactive materials. In the process of analyzing rulemaking comments and studies it has commissioned or examined, DOT has determined what prenotification requirements are not necessary. This field has been totally occupied by the HMR. State and local provisions either authorizing less prenotification or requiring greater prenotification than the HMR, therefore, constitute obstacles to the accomplishment and execution of the objectives of the HMTA and the HMR, are inconsistent, and are preempted." *IR–8(A), 52 FR 13000, 13005.

• Local requirements for advance notice of hazardous materials transportation have potential to delay and redirect traffic and thus are inconsistent. IR–6; #IR–32.

• Notice requirements re RAM shipment schedule changes identical to NRC regulations (incorporated by HMR) are consistent. *IR–8.

• Notice requirements re RAM shipment schedule or changes thereto different from NRC regulations (incorporated by HMR) are inconsistent. *IR–14; *IR–15, *IR–16; *IR–18; *IR–18(A); *IR–27; *IR–30; #IR–32; **Chem-Nuclear Systems, Inc.* v. *City of Missoula*, No. 80–18–M (D. Mont. 1984).

• "The State's prenotification requirements differ from, and are more burdensome than, the radioactive materials prenotification requirements in §§ 173.22 and 117.825 of the HMR and 10 CFR 71.97 and 73.97 (NRC regulations incorporated by reference in § 173.22 of the HMR). [Its rule] requires more information about more shipments and thereby creates confusion and undermines the likelihood of proper compliance with the HMR prenotification requirements. Therefore, [it] is inconsistent with the HMR to the extent that it exceeds NRC requirements by requiring greater prenotification concerning non-spent fuel HRCQ radioactive materials shipments." *IR–27, 54 FR 16326, 16331. *Affirmed* in **Colorado Pub. Utilities Comm'n* v. *Harmon*, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88–Z–1524 (D. Colo. 1989).

• "Congress expressly found that state 'notification' requirements that 'vary from Federal laws and regulations' create 'unreasonable hazards' and pose a 'serious threat to public health and safety.' 49 U.S.C. app. 1801. Colorado's prenotification requirement varies from Federal law, poses a threat to uniformity, and thereby threatens public safety and obstructs the purpose and objective of Congress and the Secretary." **Colorado Pub. Utilities Comm'n* v. *Harmon*, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88–Z–1524 (D. Colo. 1989).

"Otherwise Authorized by Federal Law"

• A State requirement is not "otherwise authorized by Federal law"—and thus not preempted under section 1811(a) of the HMTA—merely because it is not preempted by another Federal statute. **Colorado Pub. Utilities Comm'n* v. *Harmon*, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88–Z–1524 (D. Colo. 1989).

Operations Suspension/ Requirements—See "Traffic Controls/ Regulations."

Packaging Design and Construction Requirements (Also see "covered subjects" discussion on pp. 1–2.)

• Packaging and cargo containment design, construction, testing, accessories, equipment, certification and permit requirements, including those vesting discretionary authority in state or local officials, are inconsistent. IR–2, *IR–8; *IR–8(A); *IR–18; *IR–18(A); IR–22; *National Paint & Coatings Ass'n, Inc.* v. *City of New York*, No. CV–4525 (ERK) (E.D. N.Y. 1985).

• "State and local governments may not issue requirements that differ from or add to Federal ones with regard to packaging design, construction and equipment for hazardous materials shipments subject to Federal regulations." IR–2, 44 FR 75566 at 75566.

• Hazardous gas container-testing requirements are inconsistent. *National Tank Truck Carriers, Inc.* v. *City of New York*, 677 F.2d 270 (2d Cir. 1982).

• RAM container testing and certification requirements are inconsistent. *IR–8; *IR–8(A); *IR–15.

• Requirement for frangible shank-type lock on tank trailers carrying LNG or LPG is inconsistent since DOT comprehensively regulates cargo tank containment. IR–2.

• Initially, plaintiffs failed to demonstrate "obstacle" test violations or to obtain summary judgment enjoining city cargo containment system regulations, including requirements that flammable liquid cargo tanks be constructed of steel, not aluminum, and contain compartments and baffles, that flammable liquids not be transported in semi-trailers nor gases or combustible liquids in full trailers, and that trucks be inspected annually and carry a permit evidencing that inspection and imposing capacity limits on tank truck shipments. *National Paint & Coatings Ass'n, Inc.* v. *City of New York*, No. CV 4525 (ERK) (E.D. N.Y. 1985). However, those requirements were preempted by the packaging "covered subject" provision of HMTUSA. *Ibid.*, Oct. 18, 1991; WPD–1.

Penalties (Also see "Enforcement and Violations Provisions.")

• Penalties (such as fines, imprisonment or civil penalties) for violating consistent state or local rules are consistent unless they are so extreme or arbitrarily applied to reroute or delay shipments; mere differences in amount do not undermine consistency. IR–3; *IR–27, #IR–28.

• Penalties (such as fines, imprisonment or civil penalties) for violating inconsistent state or local rules are themselves inconsistent. *IR–18; *IR–18(A); *IR–27; #IR–28; *IR–30; **Jersey Cent. Power & Light Co.* v. *Township of Lacey*, 772 F.2d 1103 (3d Cir. 1985), *cert. denied*, 475 U.S. 1013 (1986).

• The absence of a "knowingly" requirement for imposition of a civil penalty is inconsistent because it promotes strict or absolute liability.

Packing/Repacking of Hazardous Materials See "covered subjects" discussion on pp. 1–2.

Permit Requirements (Also see "covered subjects" discussion on pp. 1–2, "Approval Requirements", "Fee Requirements", and "Inspection Requirements")

• Permit *per se* is not inconsistent; its consistency depends upon its requirements. IR–2; IR–3; #IR–20; #IR–28; *New Hampshire Motor Transport Ass'n* v. *Flynn*, 751 F.2d 43 (1st Cir. 1984); **Colorado Pub. Utilities Comm'n* v. *Harmon*, No. 88–Z–1524 (D. Colo. 1989), *rev'd on other grounds*, 951 F.2d 1571 (10th Cir. 1991).

• State permitting system which prohibits or requires certain transportation activities depending upon whether a permit has been issued (regardless of whether the activity is in compliance with the HMTA), applies to selected hazardous materials, involves extensive information and documentation requirements and contains considerable discretion as to permit issuance, is inconsistent. "Cumulatively, these factors constitute unauthorized prior restraints on shipments of nonradioactive hazardous materials that are presumptively safe based on their compliance with Federal regulations." #IR–19, 52 FR 24404, 24407. Affirmed in #IR–19(A) and #*Southern Pac. Transp. Co.* v. *Public Serv. Comm'n of Nevada*, 909 F.2d 352 (9th Cir. 1990), *reversing* No. CV–N–86–444–BRT (D. Nev. 1988).

• Local permit for hazardous materials storage is inconsistent with respect to storage incidental to transportation because of its burdensome information and documentation requirements, its discretionary nature, and its delay-inducing tendencies. #IR–28.

• Certain over-the-phone permits for transportation of hazardous gases are consistent. *National Tank Truck Carriers, Inc.* v. *City of New York*, 677 F.2d 270 (2d Cir. 1982).

• Permit requirements for each shipment involving application 4 hours to 2 weeks prior to shipment, carrying of permit on vehicle and "an additional piece of paper that supplies the same information as is required to be on the DOT Shipping paper" involve high probability of transportation delay and thus are inconsistent. IR–2.

• Local RAM transportation permit was consistent—prior to DOT's issuance of HM–164 re routing of certain RAM. *IR–1.

• Requirements implementing, inextricably related to, or "fleshing out," inconsistent permitting requirements are themselves inconsistent. *IR–21; *IR–21(A).

• If permit system is consistent, requirements to carry permit and display decal are consistent. IR–3. *But* requirement to display permit decal was held inconsistent. *American Trucking Ass'ns* v. *City of Boston*, C.A. 81–628–MA, Fed. Carr. Cas. ¶82,938 (CCH) (D. Mass. 1981).

• Since HMTA and HMR have almost completely occupied the field of RAM transportation safety, state and local requirements are limited to: (1) Traffic control or restrictions applying to all traffic, (2) designation of preferred routes under 49 CFR 177.825, (3) adoption of Federal or consistent requirements, (4) enforcement of consistent requirements or those for which preemption has been waived, and (5) imposition of reasonable transit fees to finance those enforcement activities and emergency response preparedness. Thus, RAM transportation permits generally are inconsistent. *IR–8; *IR–8(A); *IR–10; *IR–11; *IR–12; *IR–13; *IR–15; IR–18; *IR–18(A); #IR–19; #IR–19(A); #IR–20; *IR–21; *IR–21(A); *IR–27. **Colorado Pub. Utilities Comm'n* v. *Harmon*, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88–Z–1524 (D. Colo. 1989).

• HMTA likely preempts significant portions (if not all) of an Indian tribe ordinance requiring license for transport of "radioactive substances," broadly defining those substances, requiring 180-day advance application and a $1,000 fee, and providing broad discretion to Tribal Council whether to issue or deny the license. **Northern States Power Co.* v. *Prairie Island Mdewakanton Sioux Indian Community*, Civ. 3–91–783 (D. Minn. Dec. 23, 1991) (enjoining enforcement of ordinance), *appeal docketed* (8th Cir. 1992).

• Permit requirement calling for annual inspections to determine trucks' general safety levels is not preempted, but waiver of preemption was denied with regard to the enforcement of preempted local tank truck design and capacity requirements. WPD–1.

Persons Subject to Requirements (Also see "Transportation Subject to Requirements.")

• Definitions of persons subject to state or local requirements which include fewer persons than HMR minimize inconsistency possibilities and are themselves consistent. *IR–18.

Placarding and Other Hazard Warning Requirements (Also see "covered subjects" discussion on pp. 1–2.)

• Placarding and other hazard warning requirements are inconsistent if they are in addition to or different from Federal placarding requirements. IR–2; IR–3; IR–24; *IR–30; *Kappelmann* v. *Delta Air Lines, Inc.*, 539 F.2d 165 (D.C. Cir. 1976), *cert. denied*, 429 U.S. 1061 (1977); *National Tank Truck Carriers Inc.* v. *City of New York*, 677 F.2d 270 (2d Cir. 1982). Such requirements are consistent if they do not differ from the HMR. #IR–31; #IR–32.

• "Hazard warning systems are another area where [OHMT] perceives the Federal role to be exclusive. * * * Additional, different requirements imposed by States or localities detract from the DOT systems and may confuse those to whom the DOT systems are meant to impart information." IR–2, 44 FR 75565, 75568.

• Requirement for illuminated rear bumper sign conflicts with DOT lighting regulations, would divert attention from DOT placards and this is inconsistent. IR–2.

• Requirements for placards and identification of products are inconsistent. IR–3; *American Trucking Ass'ns* v. *City of Boston, supra.*

• Requirement to display permit decal is inconsistent. *American Trucking Ass'ns* v. *City of Boston, supra.*

• "It is OHMT's view that the HMR placarding provisions do completely occupy the field and, therefore, preempt all state and local placarding and warning sign requirements for hazardous materials transportation which are not identical to the Federal requirements. This is true with respect to requirements applying solely to pickups and deliveries, as well as to requirements applying to through-traffic, because all such non-identical requirements create confusion and undermine the uniform system of hazard communication necessary for the safe transportation of hazardous materials. Transportation viewed as being a mere pickup or delivery by one jurisdiction actually may be just the beginning or end of multi-state transportation through numerous local jurisdictions." IR–24, 53 FR 19848, 19850.

• But plaintiffs, prior to IR–24, failed to obtain summary judgment or make sufficient showing that Federal placarding regulations were intended to occupy field and preempt city hazard warning sign requirements with respect to local deliveries. *National Paint & Coatings Ass'n, Inc.* v. *City of New York*, No. 84–4525 (E.D. N.Y. 1985).

• Waiver of preemption was denied for local requirement mandating color and size of permanent "GASOLINE" lettering on trucks used to transport gasoline. Although not in conflict with the HMR, the requirement would mandate the maintenance of a separate fleet of trucks to transport gasoline and lead to an increase in the number of trips required. Further, the requirement would unreasonably burden commerce while not affording a greater level of public protection. WPD–1.

Prenotification Requirements—See "Notice Requirements."

Prohibitions of Hazardous Materials Transportation (Also see "Permit Requirements.")

• Prohibitions of hazardous materials transportation generally are inconsistent. IR–3; IR–3(A); IR–10; *IR–16; #IR–20.

• Power to ban, rather than to channel or guide, hazardous materials traffic is exclusively Federal. "A unilateral local ban is a negation, rather than an exercise, of local responsibility, since it isolates the local jurisdiction from the risks associated with the commercial life of the nation." IR–3(A), 47 FR 18457, 18458 (Apr. 29, 1982).

• Town order requiring railroad to remove its railcars containing vinyl chloride from Town is inconsistent. *Consolidated Rail Corp.* v. *Hancock*, No. 79–0983–MA (D. Mass. 1979).

• City ban on hazardous materials pickups and deliveries by non-city-permitted vehicles is inconsistent. Likewise inconsistent is a City ban on fueling or stopping of hazardous materials through-traffic. IR–23.

• "A State or local government may not resolve the problem by effectively exporting it to another jurisdiction." *"Nine-Pack" Preamble, citing *Kassel* v. *Consolidated Freightways*, 4 50 U.S. 662 (1981) and IR–3.

• But local prohibition on liquefied gases transportation through city unless no practical alternative route existed is consistent. *National Tank Truck Carriers, Inc.* v. *City of New York*, 677 F.2d 270 (2d Cir. 1982), *aff'g City of New York* v. *Ritter Transportation, Inc.*, 515 F. Supp. 663 (S.D. N.Y. 1981).

• Prohibition of RAM or explosives transportation, including storage incidental thereto, is inconsistent. *IR–16; #IR–20; *IR–30.

• *De Facto* prohibitions are inconsistent. *IR–10.

• Prohibition of RAM transportation which RSPA has excepted from HMR requirements is inconsistent. #IR–20.

• Inadequacy of emergency response capabilities cannot provide basis for prohibiting transportation. *IR–18; *IR–18(A).

• To the extent it prohibits rail, air or water transportation of fireworks, State regulation allowing fireworks delivery by motor vehicle is inconsistent and thus is preempted. *South Dakota Dep't of Public Safety ex rel. Melgaard* v. *Haddenham*, 339 N.W.2d 786 (S.D. 1983).

• Similarly, City requirement that it determine the safest means of transportation constitutes an inconsistent ban on transportation by other modes of transportation. *IR–30. The HMTA does not require or authorize the mandatory selection of a single "safest" mode of transportation. **City of New York* v. *U.S. Department of Transportation*, 715 F.2d 732 (2d Cir. 1983), *cert. denied*, 465 U.S. 1055 (1984); *IR–30.

• But an otherwise consistent requirement is not inconsistent because it applies only to certain modes of transportation. *IR–18.

• County ordinance prohibiting spent fuel or radioactive waste transportation into County for storage on nuclear power plant sites is inconsistent and thus preempted. **Jersey Cent. Power & Light Co.* v. *Township of Lacey*, 772 F.2d 1103 (3d Cir. 1985), *cert. denied*, 475 U.S. 1013 (1986).

Radio Requirements—See "Communications Requirements."

Railroad-Related Requirements

• State or local hazardous materials railroad transportation requirements may be preempted under the Federal Railroad Safety Act (FRSA), 49 U.S.C. app. 434, without consideration of whether they might be consistent under the HMTA. *CSX Transportation, Inc.* v. *City of Tallahoma*, No. 4–87–47 (E.D. Tenn. 1988); *CSX Transportation, Inc.* v. *Public Utilities Comm'n of Ohio*, 701 F. Supp. 608 (D. Ohio 1988), affirmed, 901 F.2d 497 (6th Cir. 1990), *cert. den.* 111 S. Ct. 781 (1991). Court decisions exclusively concerning FRSA preemption are irrelevant to HMTA preemption issues. #IR–31.

• State definition of "train" which results in regulation of transportation specifically exmpted from regulation by the HMR is inconsistent. #IR–31.

Reporting Requirements—See "Accident/Incident Reporting Requirements."

Ripeness of IR Application (Also see "Standing To Apply for IR.")

• Pendency of a judicial proceeding concerning the same issues as are in an IR application does not bar the issuance of an IR but instead increases possible usefulness of an IR. *IR–27; *IR–30.

Routing Requirements (Also see highway routing discussion on p. 2 and "Delays of Transportation," "Prohibitions of Hazardous Materials Transportation" and "Traffic Controls/Regulations.")

• Without adequate safety justification and appropriate coordination with, and concern for safety of people in, adjoining affected jurisdictions, routing restrictions (including time and weather restrictions) are inconsistent—particularly if they result in increased transit times. *IR–1; IR–2; IR–3; IR–3(A); *IR–10; *IR–11; *IR–14; *IR–16, #IR–20; IR–23; #IR–32.

• Local routing restrictions prohibiting transport of liquefied gases through city except to areas for which no practical interstate or major highway alternative route exists are consistent. *National Tank Truck Carriers, Inc.* v. *City of New York*, 677 F.2d 270 (2d Cir. 1982), *aff'g City of New York* v. *Ritter Transportation, Inc.*, 515 F. Supp. 663 (S.D. N.Y. 1981).

• State preferred route designations for highway route controlled quantity RAM are consistent if in accordance with 49 CFR 177.825(b).

• "* * * the Department, through promulgation of 49 CFR 177.825, has established a near total occupation of the 'field of routing * * * requirements relating to the transportation of radioactive materials. Thus, state and local radioactive materials transportation routing * * * requirements other than (1) those identical to Federal requirements or (2) state designated alternate routes under 49 CFR 177.825(b), are likely to be inconsistent and thus preempted under section 112(a) of the HMTA." *IR–8(a), 52 FR 13000, 13003.

• Local routing restrictions re RAM are inconsistent if they prohibit transportation on routes authorized by 49 CFR part 177 or authorized by a state routing agency consistent with that part. *IR–18; *IR–18(A); #IR–20.

• Suspension or regulation of spent nuclear fuel shipments on *non*-Interstate highways (not needed for access to or from Interstate or preferred routes) is consistent. *IR–7.

• Routing restrictions on highway route controlled quantity RAM not in accordance with 49 CFR 177.825(b), which authorizes State (not local) designation of certain preferred routes, are inconsistent. *IR–8(A); *IR–16; *IR–18; *IR–18(A); IR–20; *IR–21; *IR–30; #IR–32; **Jersey Cent. Power Light Co.* v. *State of New Jersey*, No. 84–5883 (D. N.J., Dec. 27, 1984), *appeal dismissed as moot*, 772 F.2d 35 (3d Cir. 1985).

• Routing restrictions re non-highway route controlled quantity RAM required by 49 CFR part 172 to be placarded are inconsistent unless identical to 49 CFR 177.825(a). *IR–18; *IR–18(A); *IR–21; *IR–30; #IR–32.

• Local highway routing restrictions on other types of RAM are inconsistent. *IR–30; #IR–32

• Non-highway routing restrictions on RAM are inconsistent. *IR–30.

• "* * * Congress' dual purposes in enacting the HMTA were: (1) To protect the Nation against the risks inherent in hazardous materials transportation; and (2) to prevent a patchwork of varying and conflicting State and local regulations. Commissioners' Ordinance No. 0–31–80 impedes both purposes. By delaying hazardous materials shipments

and causing traffic to be diverted from established routes, the Ordinance increases exposure to the risks inherent in hazardous materials transportation; and to the extent that the Ordinance results in the diversion of hazardous materials traffic into adjacent jurisdictions, it constitutes a routing requirement adopted without consideration of the safety impacts on other affected jurisdictions. To the extend that the Ordinance creates a precedent for the establishment of independent and uncoordinated local prenotification systems, it contributes to the creation of the regulatory patchwork which Congress intended to preclude." IR–6, 48 FR 760, 766.

• Routing requirements linked to inconsistent equipment requirements are inconsistent. IR–22; IR–23.

Sanctions—See "Enforcement and Violations Provisions" and "Penalties."

Segregation and Separation Requirements—See "Storage Provisions."

Shipping Paper Requirements (Also see "covered subjects" discussion on pp. 1–2 and "Information/Documentation Requirements.")

• "Shipping papers" and "shipping documents" are interchangeable terms. **Colorado Pub. Utilities Comm'n* v. *Harmon*, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88–Z–1524 (D. Colo. 1989).

• Virtually identical shipping paper requirements (to those of the HMR) generally are consistent. #IR–31.

• Additional or different shipping paper requirements generally are inconsistent. IR–4, IR–4(A). State shipping document requirements not substantively the same as HMR are preempted. **Colorado Pub. Utilities Comm'n* v. *Harmon*, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88–Z–1524 (D. Colo. 1989).

• Requirement for red or red-bordered shipping papers for intrastate hazardous materials shipments is an obstacle to uniform national system and thus is inconsistent. IR–4.

• Requirements for certification to state of shipment's compliance with law are redundant, constitute obstacles to HMTA, and thus are inconsistent. *IR–8; *IR–15; *IR–21.

• Requirement to carry State Patrol phone number with shipping papers is not "substantively the same" and is preempted. **Colorado Pub. Utilities Comm'n* v. *Harmon*, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88–Z–1524 (D. Colo. 1989).

Smoking Limitations

• Local smoking ban in vicinity of motor vehicle carrying flammable or combustible liquids or flammable gases, which is more extensive than the HMR, is not preempted. WPD–1.

Speed Limit—See "Traffic Controls/ Regulations."

Standing To Apply for IR (Also see "Ripeness of IR Application.")

• OHMS liberally construes its IR application threshold requirements and applies a broad interpretation of the "person affected" standard for requesting IR's, which are intended to resolve HMTA preemption issues expeditiously and inexpensively. *IR–21; #IR–32. Signing of contract to comply with local requirements does not preclude applying for inconsistency ruling. #IR–28.

Statements of Purpose or of Intent To Regulate

• State or local statements of purpose or of intent to regulate are consistent. *IR–9; *IR–12; *IR–15; *IR–18; *IR–30.

State Requirements

• Local requirements for compliance with otherwise consistent state requirements are consistent. IR–3.

Storage Provisions

• State or local prohibition of hazardous materials storage incidental to transportation without a state or local permit at places where, and for times when, the HMR allow such storage is inconsistent. #IR–19; #IR–19(A); #IR–28; **Southern Pac. Transp. Co.* v. *Public Serv. Comm'n of Nevada*, 909 F.2d 352 (9th Cir. 1990), *reversing* No. CV–N–86–444–BRT (D. Nev. 1988).

• City prohibition of hazardous waste storage is inconsistent as applied to storage incidental to transportation. #IR–32.

• City 20-car limitation on unloaded or loaded butane railcars at a site is inconsistent. *Consolidated Rail Corp.* v. *City of Bayonne*, 724 F. Supp. 320 (D. N.J. 1989).

• "In summary, the HMR contain a comprehensive series of regulations relating to the storage of hazardous materials incidental to transportation by rail. These regulations authorize or prohibit specific types of hazardous materials storage under specified circumstances. Creation by the PSC of a separate regulatory regime for rail transport-related storage of hazardous materials raises the spectre of widespread confusion. The PSC regulations are so open-ended and discretionary that they authorize the PSC to approve storage prohibited by the HMR or prohibit storage authorized by the HMR." #IR–19, 52 FR 24404, 24410.

• "State or local imposition of containment or segregation requirements for the storage of hazardous materials incidental to the transportation thereof different from, or additional to those in, § 177.848(f) of the HMR create confusion concerning such requirements and the likelihood of noncompliance with § 177.848(f)." #IR–28, 55 FR 8884, 8893.

• "Despite DOT's extensive regulation of loading, unloading, transfer and storage incidental to the transportation of hazardous materials, the Nevada regulations require a carrier to obtain an annual permit prior to engaging in these activities within the state of Nevada. The Nevada regulations, thus, create a separate regulatory regime for these activities, fostering confusion and frustrating Congress' goal of developing a uniform, national scheme of regulation. The resulting confusion is exacerbated by the fact that the Nevada regulations only apply to some of the hazardous materials covered by the HMTA and HMR and not to others." **Southern Pac. Transp. Co.*, v. *Public Serv. Comm'n of Nevada*, 909 F.2d 353 (9th Cir. 1990), *reversing* No. CV–N–86–444–BRT (D. Nev. 1988).

Time Restrictions (Also see "Routing Requirements" and "Delays of Transportation.")

• Time restrictions are a subset of routing restrictions. IR–3. Thus, without adequate safety justification and appropriate coordination with adjoining affected jurisdictions, time restrictions, except as to in-city pickup and deliveries, are inconsistent. IR–3(A); IR–23; #IR–32.

• Statewide prohibition on hazardous materials carriage between 7–9 a.m. and 4–6 p.m. on weekdays resulted in delay and are inconsistent. IR–2; *National Tank Truck Carriers, Inc.* v. *Burke*, 535 F. Supp. 509 (D. R.I. 1982) *aff'd*, 698 F.2d 559 (1st Cir. 1983). Also inconsistent is statewide prohibition on RAM transportation other than during non-holiday weekdays from 9 a.m. to 4 p.m. *IR–21.

• Citywide rush-hour curfew (no transport between 6–10 a.m. and 3–7 p.m.) on liquefied gas transportation is consistent. *National Tank Truck Carriers, Inc.* v. *City of New York*, 677 F.2d 270 (2d Cir. 1982), *aff'g City of New York* v. *Ritter Transportation Co.*, 515 F. Supp. 663 (S.D. N.Y. 1981).

• City prohibition of hazardous materials transportation in downtown area between 6 a.m. and 8 p.m. on weekdays is consistent insofar as it applies to in-city pickups and deliveries. IR–3.

• No decision on consistency of 6–10 a.m. and 3–7 p.m. bridge and tunnel

prohibition is possible without information on safety justification, coordination with other jurisdictions, and delays or diversions of hazardous materials. #IR–20.

• Restriction of RAM transportation to May-October period and prohibition of holiday or inclement weather shipments is inconsistent. *IR–14.

• County's assertion of unfettered authority to change dates, routes and times of hazardous materials shipments is inconsistent. *IR–18.

• Time restrictions linked to inconsistent routing requirements are inconsistent. IR–22; IR–23.

• City restriction of hazardous materials through-traffic on weekdays to 10 a.m.–3 p.m. and 7 p.m.–6 a.m. for explosives and "prohibited materials" and to 9 a.m.–4 p.m. and 6 p.m.–7 a.m. for other "hazardous cargo" is inconsistent because not based on adequate safety analysis or preceded by consultations with all affected jurisdictions. IR–23. City prohibition of hazardous waste transportation between 6:30 a.m. and 8:30 a.m. and 2 and 3 p.m. is inconsistent for same reason. #IR–32.

Traffic Controls/Regulations (Also see "Routing Requirements.")

• So long as reasonably administered on a case-by-case basis, the local authority to restrict or suspend operations when road, weather, traffic or other hazardous conditions or circumstances warrant is consistent. IR–3; *IR–15(a); #IR–20; *American Trucking Ass'ns* v. *City of Boston, supra; National Tank Truck Carriers, Inc.* v. *Burke,* 535 F. Supp. 509 (D.R.I. 1982), *aff'd,* 698 F.2d 559 (1st Cir. 1983).

• Local traffic controls are presumed to be valid. #IR–20; IR–23; #IR–32. This includes speed limits. #IR–32.

• "To the extent that nationwide regulations do not adequately address a particular local safety hazard, state and local governments can regulate narrowly for the purpose of eliminating or reducing the hazard." IR–2, 44 FR 75565, 75568.

• Radioactive materials may not be singled out for different types of control than hazardous materials generally, nor may controls conflict with carrier discretion and responsibility provided by the HMR. *IR–15(A).

• Requirement to comply with lawful orders, instructions and directives of authorized bridge personnel is consistent. #IR–20.

• Local "rules of road" restrictions on vehicles carrying hazardous materials are consistent. Thus, requirements for separation distances between moving or parked vehicles carrying hazardous materials which do not create hazards or unreasonable delays are consistent. IR–3; #IR–20; #IR–32.

• Local provision that carriers must use major city thoroughfares and that otherwise Federal motor carrier safety routing rules (49 CFR 397.9(a)) apply is consistent. IR–3. Likewise consistent is a local regulation requiring hazardous materials through-traffic to avoid congested areas so far as practicable and to use highway exits as close as possible to final destination. IR–23.

• Weight restriction applying only to hazardous materials and their containers, not to entire vehicles and contents, is not a *bona fide* traffic control measure and is inconsistent. #IR–20.

• State order prohibiting railroad cars carrying hazardous materials from being cut off in motion, struck by other cars moving under their own momentum or coupled into with unnecessary force is inconsistent and preempted by the HMTA, HMR, and the Federal Railroad Safety Act. *Atchison, Topeka and Santa Fe R.R. Co.* v. *Illinois Commerce Comm'n,* 453 F. Supp. 920 (N.D. Ill. 1977).

• Traffic controls linked to inconsistent equipment requirements are inconsistent. IR–22; IR–23.

Training Requirements

• "[S]tate may impose more stringent training requirements [than HMR] on motor carrier operators so long as those requirements do not directly conflict with the HMR requirements and apply only to individuals domiciled in that state and on or after April 1, 1992 to individuals domiciled in other states who do not have hazardous materials endorsements on their CDL's [commercial drivers' licenses]." #IR–26, 54 FR 16314, 16322. This principle applies to RAM and other hazardous materials. *Ibid.*

• "* * * the Department, through promulgation of 49 CFR 177.825, has established a near total occupation of the field of training requirements relating to the transportation of radioactive materials. Thus, state and local radioactive materials transportation * * * training requirements other than * * * those identical to Federal requirements * * * are very likely to be inconsistent and thus preempted under section 112(a) of the HMTA." *IR–8(A), 52 FR 13000, 13003; quoted and relied upon in *IR–27 and **Colorado Pub. Utilities Comm'n* v. *Harmon,* 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88–Z–1524 (D. Colo. 1989). However, see preceding paragraph.

• State requirement for submission of company's driver training program, including provisions for RAM and mountain driving training, as prerequisite to certain RAM transportation is inconsistent. *IR–27; **Colorado Pub. Utilities Comm'n* v. *Harmon,* 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88–Z–1524 (D. Colo. 1989).

Transportation Subject to Requirements (Also see "Persons Subject to Requirements.")

• Where a specific decision has been made in the HMR that certain transportation in commerce of hazardous materials should not be subject to the general requirements of the HMR, state or local regulation of that transportation is inconsistent with the HMR under the 'obstacle' test * * *" #IR–31, 55 FR 25572, 25581.

Tunnel Restrictions

• Except for RAM, State and local regulations regarding the kind, character or quantity of hazardous material permitted to be carried through any urban vehicular tunnel used for mass transportation are consistent. 49 CFR 177.810. But prohibition on RAM transportation through a tunnel is inconsistent. #IR–20.

Unloading—See "covered subjects" discussion on pp. 1–2 and "Loading and Unloading."

Waiver of Preemption

• Under HMTA prior to amendment by HMTUSA, if non-Federal requirement afforded an equal or greater level of protection to the public than the HMTA or HMR, and the requirement did not unreasonably burden commerce, such requirement was not preempted. Therefore, RSPA was obliged to issue a "non-preemption determination" if those two tests were met. **New York City* v. *U.S. Department of Transportation,* 87 Civ. 1443 (MGC) (S.D.N.Y. 1988).

• After amendment by HMTUSA, DOT has discretion to grant a waiver of preemption where the non-Federal requirement affords an equal or greater level of protection to the public than HMTA or HMR, and the requirement does not unreasonably burden commerce. 49 app. U.S.C. 1811(b); WPD–1.

Weight Restrictions—See "Traffic Controls/Regulations."

INCONSISTENCY RULINGS

Ruling	Applicant	Subject	Disposition	Summary
IR-1	Associated Universities, Inc.....	New York City health code restrictions on radioactive materials (RAM).	Public Notice: 8/15/77 (42 FR 41204); Ruling: IR-1, 4/20/78 (43 FR 16954).	City ordinance effectively banning shipment of radioactive materials in or through city was *consistent* with HMTA or HMR—[prior to issuance of Fed. highway routing rule HM-164].
IR-2	R.I. Div. of Public Utilities & Carriers.	R.I. restrictions on transportation of bulk flammable gas by highway.	Public Notice: 3/12/79 (44 FR 13617); Ruling: IR-2, 12/20/79 (44 FR 75566); Appeal Filed: 1/21/78; Perfected 6/24/78; Ruling on Appeal: 10/30/80 (45 FR 71881); Upheld: 535 F. Supp. 509 (D. R.I. 1982) and 698 F.2d 559 (1st Cir. 1983).	State regulations re two-way radio communications, immediate notification to State Police of any accident, use of headlights at all times, vehicle inspections and definitions were *consistent*. But requirements re written notification to state agencies of accidents, illuminated rear bumper signs, frangible shank-type locks on trailers, permit requirements for each shipment and prohibitions on travel in rush hours were *inconsistent*. Affirmed on appeal and in court.
IR-3	Hazardous Materials Advisory Council (HMAC), Mass. Motor Transport Assn., American Trucking Associations, Inc. (ATA).	City of Boston regulations on routing, time of day, and other requirements re hazardous materials transportation.	Public Notice: 3/24/80 (45 FR 19110); Ruling: IR-3, 3/26/81 (46 FR 18918); Appeal filed; 7/10/81; Ruling on Appeal: 4/29/82 (47 FR 18457).	City regulations re immediate reporting of accidents to local officials, requiring use of major roads except for pickups and deliveries, assessing penalties for violations of valid local regulations, requiring use of headlights, specifying separation distances between vehicles and vehicle operating requirements, and adopting Federal and State motor carrier safety regulations were *consistent*. But, City regulations re marking vehicles to identify products, requiring written accident reports, restricting travel during a.m. rush hours, and restricting use of certain streets were *inconsistent*. No decision rendered on undefined permit system. On appeal, written accident reports still found *inconsistent*, but routing restrictions inconsistency finding was rescinded with no conclusion as to their validity.
IR-4	National Tank Truck Carriers, Inc. (NTTC)	Washington State shipping papers requirements.	Public Notice: 11/3/80 (45 FR 72655); Ruling: IR-4, 1/11/82 (47 FR 1231); Appeal filed: 1/28/82; Ruling on Appeal: 8/2/82 (47 FR 33357); Corrected 8/5/82 (47 FR 34074).	State law requiring intrastate shipments of hazardous materials carried by motor vehicles to be accompanied by red or red bordered shipping papers was *inconsistent*.
IR-5	Ritter Transportation Nat'l LP-Gas Assn. Propane Corp. of America & 7 other companies.	New York City Fire Dept. regulations re hazardous gases.	Public Notice: 4/6/81 (46 FR 20662); Ruling: IR-5, 11/18/82 (47 FR 51991).	City regulations re gas under pressure, combustible or flammable gas, combustible mixture and inflammable mixture had definitions different from DOT's and thus were *inconsistent*.
IR-6	General Battery Corp.....	City of Covington, KY prenotification ordinance.	Public Notice: 8/26/82 (47 FR 37737); Ruling: IR-6, 1/6/83 (48 FR 760).	City ordinance extending scope of hazardous materials regulated and requiring advance notice of rail, barge and truck transport of dangerous and hazardous materials within city was found *inconsistent*.
IR-7	Nuclear Assurance Corp.....	Governor of New York Order suspending shipments of spent fuel.	Public Notice: 5/12/83 (48 FR 21496); Correction: 5/26/83 (48 FR 23747); Ruling: IR-7, 11/27/84 (49 FR 46632).	Governor's letter advising company to suspend spent nuclear fuel shipments of 2 non-Interstate highway routes was *consistent* because it required compliance with Federal regulations requiring use of Interstate Highway System.
IR-8	Nuclear Assurance Corp.....	Michigan regulations re radioactive materials (RAM) transportation.	Public Notice: 5/12/83 (48 FR 21496); Correction: 5/26/83 (48 FR 23747); Ruling: IR-8, 11/27/84 (49 FR 46637); Appeal Filed: 12/20/84; Ruling on appeal: 4/20/87 (52 FR 13000); Correction: 6/11/87 (52 FR 22416).	State RAM regulations re confidentiality standards, inspection requirements (relating to valid regulations), incorporation of Federal regulations, and notification of shipment schedule changes (identical to Federal) were *consistent*. But state regulations re RAM definition, application for approval of shipments, application approval criteria (including container testing and certification requirements) different from Federal regulations, written notification of approvals, communications requirements, and notifications of delays and emergency plan implementation were *inconsistent*.
IR-9	Nuclear Assurance Corp.....	Governor of Vermont's letters suspending shipments of spent nuclear fuel.	Public Notice: 5/12/83 (48 FR 21496); Correction: 5/26/83 (49 FR 23747); Ruling: IR-9, 11/27/84 (49 FR 46644).	Governor's letter advising that spent nuclear fuel shipments would not be permitted until Federal agencies established a national policy on them was found not to be state "requirement" and thus was not subject to an inconsistency determination.

INCONSISTENCY RULINGS—Continued

Ruling	Applicant	Subject	Disposition	Summary
IR-10	Nuclear Assurance Corp	New York State Thruway Authority regulations re RAM transportation.	Public Notice: 5/12/83 (48 FR 21496); Correction: 5/26/83 (48 FR 23747); Ruling: IR-10, 11/27/84 (49 FR 46645); Correction: 3/12/85 (50 FR 9939).	Thruway Authority regulation prohibiting RAM transportation except under its procedures, which generally resulted in approval of low-level RAM shipments and disapproval of shipments of highway route controlled quantities of RAM, was *inconsistent.*
IR-11	DOT (Under 49 CFR 107.209(b).	Ogdensburg Bridge and Port Authority regulations re RAM transportation.	Public Notice: 5/12/83 (48 FR 21496); Correction: 5/26/83 (48 FR 23747); Ruling: IR-11, 11/27/84 (49 FR 46647).	Bridge and Port Authority regulations specifying international bridge crossing times; requiring escort, compensation therefor, and evidence of unquantified "proper" insurance, and incorporating county requirements were *inconsistent* as applied to non highway route controlled RAM quantities. Bridge was not part of Interstate Highway system.
IR-12	DOT (Under 49 CFR 107.209(b)).	St. Lawrence County (N.Y.) law re RAM transportation.	Public Notice: 5/12/83 (48 FR 21496); Correction: 5/26/83 (49 FR 23747); Ruling IR-12, 11/27/84 (49 FR 46650.	County law regulating RAM transport on non-Interstate highways, as it applied to non-highway route controlled quantities of RAM, was *consistent* in its non-regulatory and non-obligatory policy statement, but was *inconsistent* in its permit requirements and hazard class definitions (different from Federal).
IR-13	DOT (under 49 CFR 107.209(b)).	Thousand Islands Bridge Authority regulations re hazardous materials (including RAM) transportation.	Public Notice: 5/12/83 (48 FR 21496); Correction: 5/26/83 (49 FR 23747); Ruling IR-13, 11/27/84 (49 FR 46653.	Bridge authority regulations re permit, fee and escort requirements as applied to vehicle carrying highway route controlled quantities of radioactive materials over Interstate Highway System bridge were *inconsistent.*
IR-14	DOT (under 49 CFR 107.209(b)).	Jefferson County (N.Y.) ordinance re RAM highway transportation.	Public Notice: 5/12/83 (48 FR 21496); Correction: 5/26/83 (49 FR 23747); Ruling IR-14, 11/27/84 (49 FR 46656).	County ordinance regulating transportation of highway route controlled quantities of RAM in area including Interstate highway was *consistent* insofar as it contained front and rear escort requirements identical to NRC standards but was *inconsistent* in requiring 24-hour prenotification, limiting transport to May-October period, and prohibiting holiday and inclement weather shipments.
IR-15	DOT (under 49 CFR 107.209(b)).	Vermont regulations re RAM transportation.	Public Notice: 8/4/83 (48 FR 35550); Ruling: IR-15, 11/27/84 (49 FR 46660); Appeal Filed: 12/19/84; Ruling on Appeal: 4/20/87 (52 FR 13062); Correction: 5/15/87 (52 FR 18492)..	State regulations re highway, rail and water transport of irradiated reactor fuel and nuclear waste were *consistent* as to statement of intent, information requirements identical to NRC's, confidentiality standards same as Federal, and inspection requirements (as applied to consistent rules); but were *inconsistent* re application to Federally-regulated highway route controlled quantity radioactive materials, submission of application for shipment approval (including identification, fee and container certification requirements), criteria for approvals, written notice of approval by Vermont, notice requirements for schedule changes and delays, and monitoring of shipments by state officials.
IR-16	Arizona DOT	City of Tucson ordinance re RAM transportation.	Public Notice: 12/12/83 (48 FR 55387); Ruling: IR-16, 5/20/85 (49 FR 20872).	City ordinance establishing different (from Federal) RAM definitions, prohibiting certain transportation within or through city, and requiring prenotification was *inconsistent.*
IR-17	Wisconsin Electric Power Co	Illinois statutory fee on spent nuclear fuel transportation.	Public Notice: 10/30/85 (50 FR 45186); Ruling: IR-17, 6/9/86 (51 FR 20926); Appeal Filed 9/9/86; Public Notice: 9/29/86 (51 FR 34527); Correction: 10/8/86 (51 FR 36125); Ruling on Appeal: 9/25/87 (52 FR 36200); Correction: 11/6/87 (52 FR 37399).	State law imposing fee of $1,000 per cask of spent nuclear fuel transported through state used to fund consistent inspection and emergency response programs was *consistent.*
IR-18	Prince George's County (MD)	Prince George's County (Md.) regulations re RAM transportation.	Public Notice: 10/4/84 (49 FR 39260); Ruling IR-18, 1/2/87 (52 FR 200); Appeal Filed: 1/20/87; Ruling on Appeal: 7/29/88 (53 FR 22850).	County Regulations re RAM transportation were *inconsistent* re statement of intent, findings, essentially identical hazardous materials definitions, penalties, and permit, advance notice, information, time, routing, escort, and bonding requirements.
IR-19	Southern Pacific Transportation Company.	Nevada regulations re railroad-related loading, unloading transfer and storage of RAM, explosives and other hazardous materials.	Public Notice: 11/25/86 (51 FR 42808); Ruling: IR-19, 6/30/87 (52 FR 24404); Correction: 8/7/87 (52 FR 29468); Appeal Filed 7/26/87; Ruling on Appeal: 4/7/88 (53 FR 11600).	State regulations containing burdensome and discretionary permitting system for railroad-related loading, unloading, transfer and storage of hazardous materials were *inconsistent.*

INCONSISTENCY RULINGS—Continued

Ruling	Applicant	Subject	Disposition	Summary
IR-20	Citizens Against Nuclear Trucking (CANT).	Triborough Bridge and Tunnel Authority regulations re RAM and explosives transportation.	Application Amended: 10/8/86; Public Notice: 10/20/86 (51 FR 37248); Correction: 11/5/86 (51 FR 40294); Ruling: IR-20, 6/30/87 (52 FR 24396); Correction: 8/7/87 (52 FR 29468).	Authority regulations effectively prohibiting transportation of most RAM and explosives through tunnels and across bridges were *inconsistent*. Unfettered discretion to ban transportation was *inconsistent*. But traffic controls, inspections, vehicle separation distances, and requirements to comply with lawful orders were *consistent*.
IR-21	Citizens Against Nuclear Trucking (CANT).	Connecticut statute and regulations re RAM Transportation.	Public Notice: 9/29/86 (51 FR 34524); Correction: 10/8/86 (51 FR 36125); Ruling: IR-21, 10/2/87 (52 FR 37072); Appeal Filed 11/2/87; Public Notice: 1/15/88 (53 FR 1089); Ruling on Appeal: 11/11/88 (53 FR 46735).	State statute and regulations re RAM transportation permitting, information documentation, certification, time restriction, routing, escort requirements and related definition were *inconsistent*. OHMT applies a broad interpretation of the "person affected" standing requirement for inconsistency ruling applications.
IR-22	American Trucking Assns., Inc. (ATA) & National Tank Truck Carriers, Inc (NTTC).	New York City Fire Dept. Directives re tank truck carriage of hazardous liquids and gases.	Public Notice: 5/18/87 (52 FR 18668); Ruling: IR-22, 12/8/87 (52 FR 46574); Correction: 12/29/87 (52 FR 49107); Appeal Filed 2/1/88; Public Notice: 2/24/88 (53 FR 5538); Ruling on Appeal: 6/23/89 (54 FR 26698).	City regulations re cargo containment systems, equipment and related areas were *inconsistent* because they involved exclusively Federal areas and caused delays.
IR-23	American Trucking Assns., Inc. (ATA) & National Tank Truck Carriers, Inc. (NTTC).	New York City routing and time restrictions.	Public Notice: 5/18/87 (52 FR 18668); Ruling IR-23, 5/11/88 (53 FR 16840); Appeal Filed 6/20/88; Public Notice: 8/23/88 (53 FR 32184); Appeal dismissed as moot: 9/9/92 (57 FR 41165).	City routing and time restrictions on through-traffic hazardous materials transportation were *inconsistent* because of absence of determination of effect on overall public safety and consultations with other affected jurisdictions.
IR-24	McGil Specialized Carriers, Inc.	City of San Antonio, TX regulations re placarding of small quantities of explosives.	Public Notice: 11/6/87 (52 FR 43016); Ruling: IR-24, 5/31/88 (53 FR 19848).	City regulation adopting vague explosives placarding requirement of 1979 Uniform Fire Code was *inconsistent* because placarding is exclusively Federal area and City regulation required placarding where HMR forbid it.
IR-25	City of Maryland Heights, MO....	City of Maryland Heights Ordinance requiring $1,000 bond for each waste-hauling vehicle.	Public Notice: 6/6/88 (53 FR 20736); Ruling: IR-25, 4/21/89 (54 FR 16308); Correction: 5/10/89 (54 FR 20235).	City ordinance requiring a $1,000 bond for highway transportation of hazardous wastes was *inconsistent* insofar as it applied to hazardous materials regulated under the HMTA
IR-26	California Dept. of Motor Vehicles.	California administrative Code regulations re training for highway transportation of hazardous materials.	Public Notice: 11/6/87 (52 FR 43830); Extension: 12/29/87 (52 FR 49107); Ruling: IR-26, 4/21/89 (54 FR 16314); Correction: 5/18/89 (54 FR 21526).	State regulations requiring training for operators of motor vehicles carrying hazardous materials generally were *consistent* with respect to domiciliaries of that state but *inconsistent* with respect to non-domiciliaries. However, after April 1, 1992, they would be *consistent* with respect to non-domiciliaries not having a hazardous material endorsement on their commercial drivers' licenses (CDL's)
IR-27	Department of Energy (DOE)....	Colorado law and regulations re RAM transport.	Public Notice: 8/11/88 (54 FR 30418); Ruling: IR-27, 4/21/89 (54 FR 16326); Correction, 5/9/89 (54 FR 20001).	State regulations concerning permits, training, prenotifi- cation, information, documentation, and permit fee requirements for transportation of RAM, as well as civil penalty provisions relating to them, were *inconsistent*. But inspection, civil penalty and shipping fee requirements not related to inconsistent State activities were *consistent*
IR-28	Yellow Freight System, Inc.....	City of San Jose, CA ordinance re hazardous materials storage.	Public Notice: 10/5/88 (53 FR 39196). Ruling: IR-28, 3/8/90 (54 FR 8884); Appeal Filed: 4/5/90; Public Notice: 6/5/90 (55 FR 22986); Appeal dismissed as moot: 9/9/92 (57 FR 41165).	City ordinance re hazardous materials storage was *inconsistent* as applied to transportation (including storage, loading and unloading incidental thereto) with respect to hazardous materials definition; permitting, information and documentation, storage, loading, unloading and certain incident reporting requirements; and related civil penalty provisions. But most incident reporting requirements and related civil penalty provisions were *inconsistent*
IR-29	Reichhold Limited.....	Maine statutes and regulations re hazardous materials transportation permit and fee.	Public Notice: 9/12/89 (54 FR 37764); Ruling: IR-29, 3/12/90 (55 FR 9304).	State statutes and regulation re hazardous materials transportation materials transportation permit and fee were *inconsistent* insofar as they were "triggered" but SARA Title III list of hazardous substances instead of HMR's Hazardous Materials Table

INCONSISTENCY RULINGS—Continued

Ruling	Applicant	Subject	Disposition	Summary
IR-30	Department of the Navy	City of Oakland, CA Nuclear Free Zone Act re RAM transport.	Public Notice: 6/27/89 (54 FR 27104); Extension: 9/25/89 (54 FR 39253); Ruling: IR-30, 3/14/90 (55 FR 9676).	City ordinance re RAM Transport was *inconsistent in all respects:* Definitions, 45-day prenotification, routing and mode requirements, placarding, prohibition of transportation and related activities, information requirements, and inspection enforcement and fee provisions
IR-31	State of Louisiana	Louisiana statutes and regulations adopting 49 CFR parts 171-180 with respect to rail carriers and shippers.	Public Notice: 9/27/89 (54 FR 39622); Ruling: IR-31, 6/21/90 (55 FR 25571); Appeal Filed: 7/2/90; Public Notice: 9/6/90 (55 FR 36735); Appeal dismissed as moot: 9/9/92 (57 FR 41165).	State statutes and regulations adopting HMR generally *consistent.* However, the following were *inconsistent.* Different hazardous materials definitions, different definition of "train" insurance requirements, written incident reports, civil penalties for other than "knowing" violations, and penalty and enforcement provisions insofar as related to inconsistent substantive provisions
IR-32	Chemical Waste Transportation Council.	City of Montevallo, AL ordinance re hazardous waste transportation.	Public Notice: 1/23/89 (54 FR 3177); Ruling IR-32, 9/6/90 (55 FR 36736). Appeal Filed 9/27/90. Public Notice: 10/17/91 (56 FR 52154); Appeal dismissed as moot: 9/9/92 (57 FR 41165).	City code re hazardous waste transportation was *consistent* re speed limit, separation distance, "headlights-on," hazardous waste manifest-carriage and placarding requirements; CB radio requirement except relating to radioactive materials; and immediate accident reporting requirement except relating to irradiated reactor fuel. Code was *inconsistent* re hazardous waste definitions; routing, time, weather, prenotification, and liability insurance requirements; CB radio requirement relating to radioactive materials; immediate accident reporting requirement relating to irradiated reactor fuel; and prohibition on transportation-related hazardous waste storage

NON-PREEMPTION DETERMINATIONS

Ruling	Applicant	Subject	Disposition	Summary
N/A	Commonwealth of Mass. on behalf of Town of Framingham.	Massachusetts statute and Town of Framingham by-law restricting storage of vinyl chloride.	Public Notice: 10/5/81; Public Hearing: 12/15/81; Suspended: 4/15/83.	Application for nonpreemption determination cannot be acted upon until inconsistency determination has been made as to provisions at issue.
NPD-1	City of New York	City of New York Health Code provision establishing permit requirements for each shipment into or through City of specified radioactive materials, thereby effectively banning transportation of most radioactive materials.	Public Notice: 1/15/85 (50 FR 2528); Ruling: NPD-1, 9/12/85 (50 FR 37308); Appeal Filed: 10/8/85; Ruling on Appeal: 12/30/86 (51 FR 47182): Reversed and remanded, *City of New York* v. *U.S. Dept. of Transportation*, 87 Civ. 1443 (MGC) (S.D.N.Y. 12/8/88); Public Notices: 3/28/89 (54 FR 12732), Correction: 4/4/89 (54 FR 13606), 7/16/90 (55 FR 28982), 9/15/90 (55 FR 36380); Superseded by WPDA-2: 7/2/92 (57 FR 29556).	Denying City's application, OHMT and RSPA stated that requests for nonpreemption determinations would be considered only if applicant could demonstrate that its inconsistent requirement is necessary, in light of exceptional local circumstances, to assure the adequate level of safety intended by the HMTA. However, Federal district court held that HMTA does not authorize requirement of a threshold showing of exceptional circumstances, reversed the denial of City's application, and remanded to DOT to determine whether application meets the two statutory criteria. RSPA has published notices reopening the docket and inviting public comment to update and supplement the docket.
WPD-1	City of New York	City of New York Fire Dept. Regulations re capacity, construction, etc. of tank trucks transporting flammable and combustible liquids and compressed gases.	Public Notices: 11/15/91 (56 FR 58126) Feb. 27, 1992 (57 FR 6767) 4/8/92 (57 FR 11984); Denial of Temporary Stay of Preemption: 3/23/92 (57 FR 10057); Ruling: WPD-1, 6/2/92 (57 FR 23278).	RSPA has no authority under the HMTA to grant a temporary stay of preemption. Denial of waiver on tank truck design and construction requirements; dismissal of application on compressed gases regulations; grant of waiver on emergency transfer; no preemption on inspection and permit as general safety measures.

[FR Doc. 92-23687 Filed 9-30-92; 8:45 am]
BILLING CODE 4910-60-M

federal register

Thursday
October 1, 1992

Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171

Infectious Substances; Correction and Extension of Compliance Date; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

[Docket No. HM-181; Amendment No. 171-112]

RIN 2137-AA01

Infectious Substances; Correction and Extension of Compliance Date

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; correction and extension of compliance date.

SUMMARY: RSPA is revising the transition period applicable to infectious substances, including regulated medical wastes, under a final rule published in the Federal Register on December 20, 1991 (56 FR 66124). The compliance date for classification and hazard communication requirements applicable to infectious substances is delayed from October 1, 1992, to April 1, 1993. The compliance date for packaging requirements for infectious substances, which was inadvertently omitted from the December 20, 1991 final rule, is extended in this document to April 1, 1993. The delay in the compliance date is necessary to provide additional time for RSPA to conclude its evaluation and respond to two petitions for reconsideration and a number of related comments and requests for clarification addressed to infectious substances, particularly regulated medical wastes. RSPA anticipates publication of its response in the near future.

DATES: These amendments are effective on October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Eileen Martin, Office of Hazardous Materials Standards, Research and Special Programs Administration, 400 Seventh St., SW., Washington, DC 20590-0001, telephone: (202) 366-4488.

SUPPLEMENTARY INFORMATION: On January 3, 1991, RSPA adopted a final rule under Docket HM-142A (56 FR 197) which: (1) Revised the definition of "etiologic agent," (2) removed the 50 milliliter (ml) exception from regulation for etiologic agents, and (3) clarified quantity limitations for etiologic agents transported aboard aircraft. On December 21, 1990, RSPA issued a final rule under Docket HM-181 (55 FR 52402) which comprehensively revised the Hazardous Materials Regulations (HMR) with respect to hazard communication, classification, and packaging requirements and incorporated the HM-142A provisions with minor changes. A document making editorial and substantive revisions to the December 1990 final rule was published on December 20, 1991 (56 FR 66124) under Docket HM-181. The revisions contained in the latter document were primarily in response to over 250 petitions for reconsideration received on the December 21, 1990 final rule.

Following issuance of the December 1991 rule, RSPA received two petitions for reconsideration and numerous comments and requests for clarification concerning the provisions on infectious substances and regulated medical waste. RSPA is nearing completion of its evaluation of these petitions and comments which address a wide range of issues. RSPA anticipates publication of a document which responds to these petitions in the near future. However, that document will not be ready for publication prior to October 1, 1992, the date on which new requirements for infectious substances, including regulated medical wastes, would become mandatory. Therefore, in this document RSPA is extending the compliance date in 49 CFR 171.14(b), for classification and hazard communication requirements applicable to infectious substances, from October 1, 1992, to April 1, 1993.

RSPA is also correcting an error and extending the compliance date for packaging requirements for infectious substances, from October 1, 1992, to April 1, 1993. The January 3, 1991 rule had an effective date of February 19, 1991, which was extended to September 30, 1991 (56 FR 7312), and extended again to October 1, 1992 (56 FR 49830). Although the preamble language of the December 1991 final rule indicated an October 1, 1992 compliance date for new packaging requirements, this date was inadvertently omitted from the regulatory text of the final rule.

Because the amendments adopted herein correct a certain provision in the HMR, extend the compliance date of certain regulations, and impose no new regulatory burden on any person, notice and public procedure are unnecessary. For these same reasons, these amendments are being made effective without the usual 30-day delay following publication.

Rulemaking Analyses and Notices

Executive Order 12291

This final rule has been reviewed under the criteria specified in section 1(b) of Executive Order 12291 and is determined not to be a major rule. Although the December 20, 1991 final rule is significant under the regulatory procedures of the Department of Transportation (44 FR 11034), this document is not significant because it does not impose additional requirements, has the effect of extending a compliance date, and is similar in effect to an extension of effective date. A regulatory evaluation for the December 20, 1991 final rule is available for review in the docket.

Executive Order 12612

This action has been analyzed in accordance with Executive Order 12612 on Federalism. It has no substantial direct effect on the States, the current Federal-State relationship, or the current distribution of power and responsibilities among levels of government. Therefore, no Federalism Assessment is required.

Regulatory Flexibility Act

Based on information concerning the size and nature of entities likely to be affected by this rule, I certify that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Paperwork Reduction Act

This amendment does not impose information collection or recordkeeping requirements.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN numbers contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 171 is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808, 1815, 1818; 49 CFR Part 1.

2. In § 171.14, paragraph (b)(2) is revised; paragraphs (b)(3), (b)(4) and (b)(5) are redesignated as (b)(4), (b)(5)

and (b)(6), respectively; and a new paragraph (b)(3) is added to read as follows:

§ 171.14 Transitional provisions for implementing requirements based on the UN Recommendations.

* * * * *

(b) * * *

(2) *October 1, 1992.* For materials poisonous by inhalation (see § 173.132 of this subchapter), the hazard communication requirements of part 172 of this subchapter, including placarding requirements of subpart F of part 172, are effective on October 1, 1992.

(3) *April 1, 1993.* For Division 6.2 materials (infectious substances, including regulated medical wastes), all applicable regulatory requirements, including those pertaining to classification (see § 173.134 of this subchapter), hazard communication, and packaging, are effective on April 1, 1993.

* * * * *

Issued in Washington, DC on September 25, 1992, under authority delegated in 49 CFR part 1.

Douglas B. Ham,

Acting Administrator.

[FR Doc. 92-23809 Filed 9-30-92; 8:45 am]

BILLING CODE 4910-60-M

federal register

Thursday
October 1, 1992

Part IV

Department of Transportation

Research and Special Programs Administration

49 CFR Part 107, et al.

Hazardous Materials Regulations; Editorial and Technical Revisions; Final Rule

DEPARTMENT OF TRANSPORTATION

49 CFR Parts 107, 171, 172, 173, 174, 176, 177, 178, 179, and 180

[Docket Nos. HM-181, HM-189, Amdt. Nos. 107-23, 171-111, 172-123, 173-224, 174-68, 176-30, 177-78, 178-97, 179-45, and 180-3]

Editorial and Technical Revisions

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule corrects editorial errors and makes minor regulatory changes to title 49 of the Code of Federal Regulations (CFR), parts 100–199, revised as of December 31, 1991. The 1991 version contained provisions of a final rule issued on December 21, 1990 and revised on December 20, 1991 which comprehensively amended the Hazardous Materials Regulations (HMR) with respect to hazard communication, classification and packaging requirements. The intended effect of this final rule is to promote accuracy through editorial and technical corrections to the CFR. This rule will not impose any new requirements on persons subject to the HMR.

DATES: *Effective:* October 1, 1992.

Applicability: Because of the transition period provisions in 49 CFR 171.14, the provisions of § 172.101(l)(1)(ii), which allows up to one year after a change in the Hazardous Materials Table (HMT) to use up stocks of preprinted shipping papers and to ship packages that were marked prior to the change, do not apply to these amendments.

FOR FURTHER INFORMATION CONTACT: John Gale or Beth Romo, telephone (202) 366–4488, Office of Hazardous Materials Standards, or Charles Hochman, telephone (202) 366–4545, Office of Hazardous Materials Technology, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

The Research and Special Programs Administration (RSPA) published a final rule on December 21, 1990 [Docket HM–181; 55 FR 52402] which comprehensively revised the Hazardous Materials Regulations (HMR; 49 CFR parts 171 to 180) with respect to hazard communication, classification, and packaging requirements based on the UN Recommendations. A document responding to petitions for reconsideration and containing editorial and substantive revisions to the final rule was published on December 20, 1991 [56 FR 66124]. That document included revisions to a January 3, 1991 final rule under HM–142A and to the 1990 49 CFR parts 106–180, under HM–189.

The 1991 49 CFR parts 100–199 incorporated the revised final rule issued December 20, 1991 as well as all other revisions published prior to December 31, 1991. This document makes editorial and technical corrections to the 1991 49 CFR parts 107–180.

This document does not include revisions to requirements for infectious substances or regulated medical waste. A separate rulemaking is forthcoming which will respond to petitions for reconsideration concerning regulated medical waste and will address other issues concerning infectious substances and regulated medical waste.

These amendments in Docket HM–181 clarify and revise certain provisions of the final rule in response to petitions for reconsideration. These amendments in Docket HM–189 clarify and correct other provisions of the HMR. In both cases, these changes impose no new regulatory burden on any person and provide relief from existing requirements. Notice and public comment are unnecessary and good cause exists to make these amendments effective less than 30 days following publication.

Regulatory Review Comments

In response to the President's January 28, 1992, announcement of a federal regulatory review, DOT published a notice on February 7, 1992 [57 FR 4744] soliciting public comments on the Department's regulatory programs. In response to that notice, RSPA received numerous comments to the HMR as revised under Docket HM–181. All comments to the regulatory review have been considered in preparing this document. Based on the merit of comments received during the regulatory review, RSPA is revising certain provisions of the regulations. These revisions are discussed in detail in the section-by-section review.

Section-by-Section Review

Part 107: Hazardous Materials Program Procedures

Section 107.315. Paragraph (c) is revised and paragraph (d) is added to set forth different procedures for payment of civil penalties, based on the amount of the penalty.

Part 171: General Information, Regulations and Definitions

Section 171.8. The definition for "NRC (non-reusable container)" was inadvertently removed in the final rule. Because a specification DOT 39 cylinder is non-reusable, and because other non-reusable packagings may be authorized in the future, RSPA is reinstating this definition.

The definition for "bulk packaging" is revised to clarify that for solids, the packaging must have a maximum net mass of greater than 400 kg (882 pounds) *and* a maximum capacity greater than 450 L (119 gallons). Therefore, a packaging having a maximum net mass of greater than 882 pounds must also have a maximum capacity greater than 119 gallons to be considered a bulk packaging for solids.

The definition for "non-bulk packaging" is revised to clarify that for liquids, the maximum capacity of the packaging must be less than 450 L (119 gallons) *and* for solids the maximum net mass of the packaging must be less than 400 kg or a maximum capacity of less than 450 L.

In addition, the definition for "oxidizer" is revised to correct a section reference to "§ 173.127" and the second definition of oxidizer is removed.

Section 171.12. Paragraph (b)(7) is revised for clarity.

Section 171.12a. Paragraph (b) is revised to clarify provisions for shipments of hazardous materials transported to or through the United States which have been prepared in accordance with Canadian regulations.

Section 171.14. Paragraphs (a) and (b) are revised to clarify the applicable transition dates for the final rule as revised December 20, 1991 and by this document. Language is added to paragraph (a) clarifying that other rules issued during the transition periods may implement requirements earlier or later than the transition dates.

In paragraph (c)(2), RSPA is permitting the use, for highway transportation only, until October 1, 2001, of pre-October 1991 placards or placards specified in the December 21, 1990 final rule (which contains minor deviations from the placards adopted in the December 20, 1991 rule) in place of the placards adopted in the December 20, 1991 rule. This extended conversion period applies to highway transportation only and does not include intermodal shipments. The extension will minimize the impact of converting to the new placarding system and responds to petitions from motor carriers.

Part 172: Hazardous Materials Table, Special Provisions, Hazardous Materials Communications Requirements and Emergency Response Information Requirements

Section 172.101: The Hazardous Materials Table (The Table). The Table is amended as follows:

a. The entries "Azido hydroxy tetrazole (mercury and silver salts)" and "Dinitroglycoluril" are removed. The entry "Sodium hydrogen sulfate, solid" is removed because the material in its solid state does not meet any hazard class definition.

b. The "Asbestos" entries referencing blue or brown asbestos and white asbestos are removed and a generic "Asbestos" entry is added for domestic transportation only, which will allow the use of either the domestic shipping name or the international shipping name for the transportation of all forms of asbestos in the US.

c. The entry "Acrolein, inhibited" is corrected by removing the "+" in Column (1).

d. The entry "Aerosols, poison, each not exceeding 1 L capacity" is revised by removing Special Provision 3 from Column (7) because the provision is not consistent with the hazard class and only Division 6.1 Packing Group III materials are authorized in aerosols.

e. The entry "Aircraft hydraulic power unit fuel tank (containing a mixture of anhydrous hydrazine and monomethyl hydrazine (M86 fuel)." is revised by removing the "D" in Column (1) and revising the identification number in Column (4) to read "UN 3165" for consistency with international requirements.

f. The entry "Alcoholic beverages" is revised by adding a Packing Group II entry in Column (5). This addition is necessary because many alcoholic beverages fall within the Packing Group II level for Class 3.

g. The entry "Alkali metal alloys" is revised by adding Special Provision B48 in Column (7) to except portable tanks in sodium metal service from hydrostatic testing requirements.

h. The domestic entry "Ammonia anhydrous liquefied or Ammonia solutions" is revised by adding commas to read: "Ammonia, anhydrous, liquefied *or* Ammonia solutions".

i. The entry "Ammonium nitrate, liquid (hot concentrated solution)" is revised by removing Special Provision B17 in Column (7). The purpose of this change is to remove the requirement that bulk packagings must be made from aluminum.

j. The entry "Barium peroxide" is corrected by removing the "2" in Column (8C) and replacing it with "242".

k. The entry "Blue asbestos (Crocidolite) or Brown asbestos (amosite, mysorite)" is revised by adding an "I" in Column (1).

l. In Column (9A), for the entry "Bombs, *with bursing charge*" in Division 1.1F, the spelling of "Forbidden" is corrected.

m. Based on the merit of petitions, Special Provision 19 is added in Column (7) for "Butane *or* Butane mixtures" and "Butylene" to permit the use of the identification number "UN1075" as an alternative to the identification number assigned, as long as the identification number is consistent on package markings, shipping papers and emergency response information.

n. The entries "Carbon dioxide and nitrous oxide mixtures" and "Carbon monoxide" are corrected by revising Column (8C) of each entry to read "314, 315".

o. The entry for "Combustible liquid, n.o.s." is moved to its proper alphabetical sequence.

p. The entries "Corrosive solids, self heating, n.o.s." and "Corrosive solids, which in contact with water emit flammable gases, n.o.s." are revised by removing "241" from Column (8C) and replacing it with "243". This revision is necessary in order to provide packagings that are equivalent to other materials in the same hazard classes.

q. The entry "Diethylaminopropylamine" is revised by removing the "AW" in Column (1) to correspond with § 173.154 for consistency.

r. The entry "Dimethylhydrazine, unsymmetrical" is revised by removing Special Provision B58 and adding Special Provision B74 in Column (7) to provide consistency with requirements imposed on other materials poisonous by inhalation in Hazard Zone B.

s. The entry "Fish meal or Fish scrap stabilized" is editorially revised by changing the proper shipping name to read "Fish meal, stabilized *or* Fish scrap, stabilized" and by removing Special Provision A1 from Column (7).

t. The entry for "Fusee" is moved to its proper alphabetical sequence.

u. The entries "Hydrochloric acid, solution" and "Sulfuric acid" are revised by changing Special Provision B2 to B3 in Column (7) to prohibit the use of DOT 57 portable tanks. Special Provision B2 was amended in the December 20, 1991 revised final rule to permit the use of DOT 57 portable tanks, and Special Provision B3 was added which prohibited the use of these portable tanks. In the revised final rule, for hydrochloric acid and sulfuric acid, Special Provision B3 should have replaced B2 to reflect this prohibition. This is consistent with pre-HM-181 requirements which authorized DOT 57 portable tanks only for cleaning compounds, not hydrochloric acid solutions or sulfuric acid.

v. Special Provision B35 is added in Column (7) for the entry "Hydrogen cyanide, anhydrous, stabilized" to authorize an alternative shipping name "Hydrocyanic acid" to be marked on a tank car.

w. The entry for "Hydrogen peroxide, aqueous solutions", containing between 40% and 60% hydrogen peroxide, is editorially revised by correcting Special Provision "BB53" to read "B53".

x. The entry "Hydroxylamine sulfate" is revised by removing the "AW" in Column (1) to correspond with § 173.154 for consistency.

y. A cross reference "Isobutane or Isobutane mixtures see also Petroleum gases, liquefied" is added to clarify that either name may be used as a proper shipping name. In addition, Special Provision 19 is added in Column (7) for "Isobutane" to permit the use of the identification number "UN1075", as an alternative to the identification number assigned as long as the identification number is consistent on package markings, shipping papers and emergency response information.

z. The entry "Isophoronediamine" is revised by removing the "AW" in Column (1) to correspond with § 173.154 for consistency.

aa. The entry "Lead compounds, soluble, n.o.s." is editorially revised by changing the packing group in Column (5) to read "III" and by revising Column (6) to read "KEEP AWAY FROM FOOD".

bb. The entry "Metal powders, flammable, n.o.s" in Packing Group III is editorially revised to correct the bulk packaging authorization in Column (8C) to read "240".

cc. The entry "Methanol or Methyl alcohol" is editorially revised to correct the bulk packaging authorization in Column (8C) to read "242".

dd. The entry "Methylhydrazine" is editorially revised to correct the non-bulk packaging authorization in Column (8B) to read "226".

ee. The entries "Nitrating acid mixtures with not more than 50 per cent nitric acid" and "Nitrating acid mixtures with 50 per cent or more nitric acid" are revised by adding Special Provision B47 in Column (7).

ff. The entry "PCB see Polychlorinated biphenyls" is revised by removing the "D" in Column 1 and adding "AW" for

consistency with the referenced entry "Polychlorinated biphenyls".

gg. The entry "Phosphorous pentasulfide" is corrected, based on the merit of a petition requesting consistency with materials of similar hazards, by revising the bulk packaging authorization in Column (8C) to read "242".

hh. Special Provision 19 is added in Column (7) for "Propane" to permit the use of the identification number "UN1075" as an alternative to the identification number assigned as long as the identification number is consistent on package markings, shipping papers and emergency response information.

ii. The entry "1,2-Propylenediamine" is revised to correctly assign Packing Group II and reference the non-bulk packaging authorization "202". These corrections are consistent with UN provisions.

jj. The entry "Silicon tetrachloride" is revised by removing Special Provision N41 from Column (7) because this material does not pose an additional transportation hazard when packaged in certain metal packagings.

kk. In Column (7), for the entry "Sodium", Special Provision B48 is added to except sodium metal in portable tanks from hydrostatic testing requirements, and Special Provision T28 is removed and replaced with Special Provision T46 in appropriate alpha-numerical order.

ll. The entry "Sodium bisulfate, solid or solution, see Sodium hydrogen sulfate, solid, *or* solution" is revised to read "Sodium bisulfate, solution, see Sodium hydrogen sulfate, solution". RSPA has determined that this material in its solid state does not meet the definition of a Class 8 PG III material.

mm. The entry "Substances which in contact with water emit flammable gases, solid, n.o.s." in Packing Group III is editorially revised by changing the bulk packaging authorization in Column 8(C) from "242" to "241".

nn. The entry "Sulfuric acid, fuming less than 30 percent free sulfur trioxide" is revised by removing "POISON" as a subsidiary hazard label in Column (6) because this material is not poisonous below their concentration.

oo. Special Provision B13 is added in Column (7) for the entry "Tars, liquid including road asphalt and oils, bitumen and cut backs" in both Packing Groups II and III to authorize certain non-specification bulk packagings.

pp. The entry "Titanium tetrachloride" is revised, based on the merit of petitions, by adding Special Provision B77 in Column (7), which authorizes other approved packagings.

qq. The entry (mono-(Trichloro) tetra-) monopotassium * * *" is revised by removing the parenthesis preceding the first "mono".

rr. The entry "Vanadium trichloride" is revised by removing the "AW" in Column (1) to correspond with § 173.154 for consistency.

ss. Based on the merits of a petition, the entry "Vinyl chloride" with identification number "NA1086" and Special Provision 21 is added for domestic transportation only. Addition of this entry allows "Vinyl chloride" to be transported with or without an inhibitor, provided the requirements of Special Provision 21 are satisfied. This entry is separate from the entry for "Vinyl chloride, inhibited".

tt. The entry "White asbestos (chrysotile, actinolite, anthophyllite, tremolite)" is editorially revised to indicate that "(chrysotile, actinolite, anthophyllite, tremolite)" are not part of the proper shipping name.

The Air Transport Association requested that RSPA add an entry to the Table "Cosmetics, n.o.s., containing flammable aerosol and/or non-flammable aerosol and/or flammable liquid in small inner packagings" for consistency with the ICAO Technical Instructions. However, RSPA does not believe that maintaining consistency with ICAO is adequate justification for adopting piecemeal revisions, such as this entry. RSPA already offers limited quantity and consumer commodity exceptions for flammable liquids and aerosols. International consistency could be attained through a more fundamental approach, such as adopting consumer commodity provisions in international regulations.

Section 172.101 Appendix. In paragraph 2. of the appendix to § 172.101, the section reference is editorially revised to read "§ 172.101(c)(8)".

Section 172.102. Special Provision 4 is corrected to reference "Hazard Zone D". Special Provision 19 is added to allow the use of either the specific identification number assigned to a material or "UN1075" (the number assigned to "Petroleum gases, liquefied") for liquefied petroleum gases such as propane, butane, isobutane and butylene. Special Provision 21 is added to provide guidance as to when vinyl chloride that does not contain an inhibitor may be transported using the proper shipping name "Vinyl chloride".

Based on the merit of a petition, Special Provisions B2, B3, B4, and B10 are revised to prohibit the use of MC 300, MC 301, MC 302, MC 303, and MC 305 cargo tanks. This revision is consistent with the prohibited use of an MC 306 cargo tank. A new Special Provision B13 is added to provide relief from certain packaging requirements for liquid asphalts having a flash point below 37.8°C (100°F).

RSPA received several requests to revise Special Provision B14. RSPA is revising B14 to clarify that the requirement for tank and jacket protective coatings applies only to new construction or repair and is not a retrofit requirement. Other revisions to B14 are beyond the scope of this document and may be addressed in a future rulemaking.

The last two sentences in Special Provision B26 are revised for clarity. RSPA is adding Special Provision B35, based on the merits of a petition, to allow the alternative marking "Hydrocyanic acid, liquefied" on tank cars containing hydrogen cyanide. A new Special Provision B47 reinstates a provision of the pre-HM-181 regulations, which permits a safety relief device with a start-to-discharge pressure setting of 310 kPa (45 psig) for nitrating acid mixtures. Special Provision B69 is revised to include covered motor vehicles and portable tanks as authorized bulk packagings for solid sodium cyanide. Several "T" notes are editorially revised to facilitate use of the IM Tank Configurations.

Section 172.203. The phrase "or class entry" is added in paragraph (m)(1). The effect of this change is that the word "poison" does not need to be annotated in association with the basic shipping description if the hazard class entry indicates the material is a poison (i.e., a Division 6.1 material).

Section 172.312. The depiction of the ISO Standard orientation marking in the December 20, 1991 final rule displays more than the minimal ISO standard mark, which does not have a rectangular border surrounding the arrows. Therefore, a sentence is added in paragraph (a)(2) to clarify that a rectangular border around the orientation arrows is optional.

Section 172.330. The paragraph (a) heading is revised to include "identification number".

Section 172.405. The introductory text in paragraph (a) is revised to clarify that when use of text indicating a hazard is optional, this option applies to both primary and subsidiary labels.

Section 172.422. The correct SPONTANEOUSLY COMBUSTIBLE label is published, which indicates that the red color in the lower half of the label extends to the dotted line border.

Section 172.504. Paragraph (c) is revised to allow the 454 kg (1,001 pounds) placarding exception for any

material covered in Table 2 other than those materials which are poisonous by inhalation. This will eliminate the requirement to placard for other Table 2 hazardous materials which are on a transport vehicle, but have an aggregate gross weight of less than 454 kg (1,001 pounds). For example, as prescribed in § 172.505(a), any material which is poisonous by inhalation and also meets another hazard class must be placarded in accordance with § 172.504, regardless of the aggregate gross weight. This revision modifies the legal interpretation to the Illinois Department of Transportation issued by RSPA's office of the Chief Counsel, Int. No. 88–1–RSPA issued on February 2, 1987 and published in the **Federal Register** on February 26, 1990 [55 FR 6758].

Paragraph (f)(1) is revised to require only the placard having the lowest division number on a transport vehicle, rail car, freight container or unit load device that contains more than one explosives division. Paragraph (f)(4) is revised to except OXIDIZER placards on transport equipment which are placarded for Division 1.1 and 1.2 explosives. A new paragraph (f)(10) is added to permit the use of a POISON placard in place of a KEEP AWAY FROM FOOD placard.

Comments received from shippers and carriers and their representatives following publication of the final rule and during the regulatory review stated that the Class 9 placard is unnecessary and unduly burdensome in domestic transportation. RSPA agrees with these comments and a domestic exception from the Class 9 placarding requirements is added as paragraph (f)(9). Under this exception, Class 9 placards are not required for domestic transportation. Bulk packages must be marked on both sides and both ends with the appropriate identification number displayed on orange panels or white-square-on-point display configurations, as specified in § 172.336(b). This permits continued use of a method of communication that has been required for ORM materials since 1980.

Section 172.505. The revision to paragraph (a) is the December 20, 1991 revised final rule was intended to mean that duplication of the POISON or POISON GAS placards to indicate a subsidiary poisonous-by-inhalation hazard was not necessary if POISON or POISON GAS placards were already displayed. The wording of the revision unintentionally raised the question of whether the exception in § 172.504(c)(1) might apply to a material meeting another hazard class definition in addition to poisonous by inhalation. Paragraph (a) is revised to clarify that the placarding exception in § 172.504(c)(1) is not applicable to dual hazard materials which are subject to § 172.505 (e.g., a material poisonous by inhalation).

Section 172.510. Paragraph (e) is revised for consistency with new terminology and a section reference is corrected in paragraph (c).

Section 172.519. Paragraph (b)(3) is revised to require the use of the text "OXYGEN" on OXYGEN placards, for consistency with the OXYGEN labeling requirement.

Section 172.526. In paragraph (a)(4), the section reference "§ 172.540", which was inadvertently omitted from the list of placard specification sections, is added in appropriate numerical sequence.

Section 172.560. Paragraph (b) is revised to clarify requirements for the Class 9 placard.

Part 173: Shippers, General Requirements for Shipments and Packagings

Section 173.2 The section reference for the entry "Oxidizer" is corrected to read "§ 173.127".

Section 173.22. In paragraph (a)(4), a section reference "§ 178.2(d)" is corrected to read "§ 178.2(c)".

Section 173.23. paragraph (c) is corrected by removing "i.e." and replacing it with "e.g."

Section 173.24a. Paragraph (c)(1)(iii) is revised to provide an exception to the requirement for corrosive materials in bottles to be further packed in inner receptacles and outer packagings if the corrosive materials have been reclassed as ORM–D.

Section 173.28. Provisions for the reuse of non-reusable containers (NRC) are reinstated as a new paragraph (e).

Section 173.31. Two references are editorially revised in Notes I and N following Retest Table I in paragraph (c).

Section 173.32. Paragraphs (a)(1), (a)(3), (a)(5) and (c) are editorially revised to correct section references and to provide clarity.

Section 173.32c. A section reference in paragraph (f) is revised to correct a printing error. A new paragraph (r) is added to correct a previous oversight. The December 21, 1990 final rule relocated the provisions contained in the IM Tank Table, which was a separate publication, into the HMR. In the IM Tank Table, hazardous materials authorized for transport in a tank having bottom outlets with serial mounted closures also were permitted to be transported in a tank having no bottom outlets or having bottom outlets with serial mounted closures of a comparable configuration. This authorization was inadvertently omitted in the final rule. This oversight is corrected herein; the provision is added in new paragraph (r).

Section 173.33. Paragraph (c)(1)(iii) is revised to correct a section reference and the phrase "Poison B" in paragraphs (c)(5) and (e) is replaced with UN hazard class terminology.

Section 173.115. The definition for a Division 2.2 (nonflammable) gas is revised to clarify that the definition includes absolute pressure greater than 280 kPa (41 psia) at 20°C (68°F).

Section 173.120. Paragraphs (b)(1) and (b)(2) are editorially revised by removing the phrase "except Class 9". This amendment is consistent with the revision of the Class 9 definition in this document, which clarifies that a material which meets the definition of another hazard class, but also falls within one of the Class 9 criteria (e.g., hazardous substance), does not meet the definition of Class 9. Therefore, a Class 3 liquid which also meets the definition of a hazardous substance may be reclassed as a combustible liquid or shipped as a limited quantity.

Section 173.124. Paragraph (a)(3)(ii) is revised to correctly reference the burning rate test contained in appendix E to part 173.

Section 173.133. The second entry in Column 4 of the paragraph (a)(1) table is corrected to indicate the correct toxicity limits, and the table in paragraph (a)(2)(i) is revised to include Packing Group II and III materials. In addition, in paragraph (a)(2)(ii), the figure 1 Inhalation Toxicity chart is republished because the Figure 1 appearing in the 1991 CFR is not the correct Figure 1 published in the December 20, 1991 revised final rule.

Section 173.140. The definition of Class 9 is editorially corrected and reprinted in its entirety, including the amendments issued under Docket HM–198A, for convenience of the reader.

Section 173.150. Paragraph (a) is editorially revised for the same reasons as discussed under the review of § 173.120 and to provide clarity.

Section 173.154. Several commenters suggested that the provisions of § 173.154(d) be revised to except from the HMR certain materials corrosive only to steel or aluminum when packaged in containers constructed of materials compatible with lading. RSPA agrees, and the provisions of paragraph (d) have been revised to make it clear that (1) materials corrosive only to aluminum are not regulated when transported by rail or highway in bulk or

non-bulk packagings; and (2) materials corrosive only to steel are not regulated when transported by rail or highway in bulk packagings. These exceptions apply only if the offeror has determined that the packaging is compatible with the lading, as specified in § 173.24(e).

Section 173.156. In the December 20, 1991 revised final rule, RSPA accepted two petitions to allow domestic-only shipments of ORM–D materials unitized in stretch-wrapped floor display stands or wire-bound shrouded pallets to exceed the 30-kg gross weight limit. RSPA did not address the petitioners' request that, based on current industry practices, this exception be broadened to apply to shipments going directly from a manufacturer to a distribution center or retail outlet or returning. Commenters to the regulatory review asked RSPA to revise § 173.156 to remove the 66-pound weight limit on ORM–Ds to allow shipment of display packs without shipping papers. Alternatively, commenters suggested RSPA should remove any limitation on exclusive use by common carrier and allow transportation by highway carrier from any point of origin to any point of destination. RSPA already had removed the weight limit for ORM–D but not limited quantity shipments. RSPA disagrees with petitions requesting that either unitized ORM–D shipments be allowed to be transported by common carrier not under exclusive use or that RSPA waive the 30-kg (66-pound) gross weight limit for limited quantity shipments. RSPA believes safety could be compromised by the intermixing of shipments of this type with LTL traffic normally handled by common carriers. Therefore, RSPA will not permit non-exclusive use by common carrier, nor will it lift the 30-kg (66-pound) weight limit on limited quantity shipments. However, RSPA is broadening points of origin and destination to include manufacturers and return shipments. RSPA is revising paragraph (b) to include these types of activities in the exception for unitized shipments and clarifies that a box would be an acceptable overpack.

Section 173.159. UN standard 1D plywood drums, 1G fiber drums, 1H2 plastic drums, 3H2 plastic jerricans, and 4H2 solid plastic boxes are added as authorized packagings in new paragraphs (b)(3) through (b)(6) to correct an earlier oversight. In addition, the word "articles" is corrected to read "materials" in paragraph (c).

Section 173.193. Paragraph (d) is revised to except methyl bromide from the requirements of § 173.40.

Section 173.211. Paragraph (c) is editorially revised to correct authorizations for 6HA1 and 6HA2 composite packagings.

Section 173.225. Authorization for use of DOT 412 cargo tanks has been added in paragraph (e)(2), and paragraphs (e)(3) and (e)(4) have been restructured to more accurately reflect their applicability.

Section 173.227. The introductory text in paragraph (b) is editorially revised to specify that a 1H1 plastic drum or 6HA1 composite packaging must be further packed in a 1A2 or 1H2 drum.

Section 173.244. The section heading is revised by adding a reference to Division 4.3 (dangerous when wet) materials.

Sections 173.302 and 173.304. Paragraph (a)(5)(iii) in § 173.302 is editorially revised to correct reference to Federal Specification RR–C–901c. In addition, paragraph (h) in § 173.302 and paragraph (g) in § 173.304 are revised to limit conformance with § 173.40 Division 2.3 materials in Hazard Zone A.

Section 173.304. In paragraph (f)(1), references to DOT Specification fiberboard and wooden boxes are removed and replaced with an authorization for use of strong, tight packagings.

Section 173.314. In the December 20, 1991 revised final rule, RSPA amended § 173.24b(a)(3) to apply a five percent outage requirement to all materials poisonous by inhalation. RSPA subsequently has received several inquiries concerning the applicability of the five percent outage requirement for anhydrous ammonia. One company stated that a five percent outage requirement or anhydrous ammonia would be inconsistent with RSPA's earlier position, noting that:

> [t]hroughout the rulemaking proceeding, DOT has clearly stated their intention to improve the hazard communication for anhydrous ammonia with the "Inhalation Hazard" making requirement, not to increase the transportation costs of the product.

RSPA initially proposed classification criteria for poisonous gases in Notice 87–4 (May 5, 1987; 52 FR 16482) which resulted in significant controversy over the proposed reclassification of anhydrous ammonia from a Division 2.2 (non-flammable gas) to a Division 2.3 (poisonous gas) material. Commenters to this proposal stated that the reclassification would impose severe economic constraints and impose unwarranted increased transportation charges and insurance rates. Based on a regulatory analysis, RSPA eventually withdrew its proposal to reclassify anhydrous ammonia and retained the Division 2.2 (non-flammable gas) classification for domestic transportation.

In other previous rules, RSPA has recognized the need for improved packagings for materials posing acute health risks, such as anhydrous ammonia and other materials poisonous by inhalation. Such packaging improvements would include crashworthiness (packaging survivability) in accidents. In addition, RSPA and the Federal Railroad Administration (FRA) consider it necessary to require sufficient outage in tank cars so that, even under extreme but credible scenarios, there will be no release of a hazardous material from the expansion of the lading.

In response to the recent inquiries, RSPA and FRA have calculated the permissible filling limits for anhydrous ammonia under both the pre-HM–181 regulations and the new requirements. Based on these calculations, RSPA is authorizing a two percent outage calculated at the reference temperature of 41°C for insulated tank cars and 46°C for non-insulated tank cars to assure a level of safety commensurate with public interest. For example, the revised requirements in paragraph (c) will allow 4,870 pounds more for an insulated tank car and 4,793 pounds more for a non-insulated tank car for a hypothetical tank capacity of 33,625 gallons loaded in the summer. Prior to publication of the final rule, the basis for the filling limits was developed from limited empirical data. In developing provisions for filling limits in the Docket HM–181 final rule, RSPA considered seasonal factors because of the broad temperature ranges in the United States. For example, in the months of November through March, shippers may load anhydrous ammonia in non-insulated tank cars so that the tanks would become "liquid full" at about 35.5°C (96°F). For this reason, the provisions in revised paragraph (c) will not allow as much anhydrous ammonia in tank cars filled in the winter months as with previously authorized under the pre-HM–181 regulations. RSPA also is changing the filling limits for other Division 2.3 Zone D materials consistent with those limits for anhydrous ammonia.

Recent inquiries did not address the filling limits of anhydrous ammonia in DOT 106 multi-unit-tank cars. Calculations indicate that even at a five percent outage, more anhydrous ammonia is allowed in the multi-unit tank cars under the new requirements than under the pre-HM–181 regulations. Since the pre-HM–181 regulations were unusually restrictive, RSPA and FRA

will not change the reference in Note 21 at this time.

In addition, use of a 109A tank car for ammonia solutions between 35 and 50 percent ammonia by mass is authorized. This authorization was inadvertently omitted in the December 21, 1990, final rule.

Section 173.315. Notes 3, 11, and 16 in paragraph (a) are editorially revised for clarity. Paragraphs (d) and (i)(12) are revised to correct section references.

Section 173.336. The section heading and introductory text are editorially revised to reflect the correct proper shipping names specified in the § 172.101 HMT.

Part 174: Carriage by Rail

Section 174.25. In the § 174.25 Table, the placard endorsement for a Division 1.6 material is changed from "Dangerous" to "None".

Section 174.55. Paragraph (c) is editorially revised to reference new orientation markings.

Section 174.61. Paragraph (c) is revised to reflect a change in the Federal Railroad Administration's approval authority.

Section 174.81. The Segregation Table and paragraph (e)(5) are revised to allow ammonium nitrate fertilizer to be loaded or stored with Division 1.5 (blasting agents) material. In addition, in the revised final rule, an "O" correctly appeared at the intersection of the row entitled "Flammable liquids" and the column entitled "5.1", but the "O" did not appear in the reverse intersection. In this document, the Segregation Table is editorially revised to add an "O" at the intersection of the row entitled "Oxidizers" and the column entitled "3". Paragraph (f) also is corrected to allow the shipment of detonators and high explosives in accordance with § 177.835(g).

Section 174.82. Paragraph (a) is revised to except Division 1.6 (explosive) materials from handling requirements.

Section 174.85. Paragraph (b) is editorially revised to clarify that Class 7 materials also must conform with the train position requirements of paragraph (d).

Part 176: Carriage by Vessel

Section 176.83. The text of paragraphs (c)(2)(i)(A) and (c)(2)(i)(B) is switched to indicate the correct meaning of each pictorial display.

Section 176.600. The phrases "Poison A" and "Poison B" are replaced with UN hazard class terminology.

Part 177: Carriage by Public Highway

Section 177.805. The section is editorially revised by removing the paragraph (a) designation.

Section 177.848. The Segregation Table and paragraph (e)(5) are revised to allow ammonium nitrate fertilizer to be loaded or stored with Division 1.5 (blasting agents) material. In addition, in the revised final rule, an "O" correctly appeared at the intersection of the row entitled "Flammable liquids" and the column entitled "5.1", but the "O" did not appear in the reverse intersection. In this document, the Segregation Table is editorially revised to add an "O" at the intersection of the row entitled "Oxidizers" and the column entitled "3". Paragraph (f) also is corrected to allow the shipment of detonators and high explosives in accordance with § 177.835(g).

Part 178: Specifications for Packagings

Section 178.44–15. Paragraph (a)(2) is reserved.

Section 178.45–7. Paragraph (c)(2) is reserved.

Section 178.270–5. Paragraphs (a), (c), and (d) are corrected by removing the wording "deka newtons" and replacing it with "decanewtons".

Section 178.337–1. A section reference in paragraph (b) is corrected.

Section 178.337–11. A date in paragraph (a)(4)(i)(B) is corrected.

Section 178.345–2. A reference to an ASTM standard in paragraph (a)(2) is corrected.

Section 178.345–11. Paragraph (a) is revised to remove inference that a loading/unloading outlet may not be used for other purposes. Changes are made to paragraph (b)(2) to clarify that the lading is discharged into the cargo tank *through internal piping* situated above the maximum liquid level of the tank. Prior to publication of a June 17, 1991 final rule (Docket HM–183, 56 FR 27877), former § 178.345–11(b)(2) stated that any loading/unloading connection extending beyond the prescribed stop valve which is part of a self-closing system "must be fitted with another stop-valve or other leak-tight closure at the end of such connection" (55 FR 37062, September 7, 1990). In the June 17 final rule, § 178.345–11 was reorganized for clarity and paragraph (b)(2) was revised and redesignated as paragraph (c). Through an oversight, the wording "or other leak-tight closure" was omitted in the revised rule and is corrected herein.

In addition, the phrase "Poison B liquids" is replaced with UN hazard class terminology.

Section 178.507. Paragraph (a) is corrected by removing "ID" and replacing it with "1D".

Section 178.601. In paragraph (h), a reference is corrected to include § 178.504.

Section 178.603. Paragraph (a) has been revised to specify that for other than flat drops, the center of gravity of the test packaging must be vertically over the point of impact. The UN Recommendations, as well as the ICAO Technical Instructions and the IMDG Code, require that the center of gravity be vertically over the point of impact. RSPA had originally specified only that a packaging be dropped "diagonally." However, based on petitions for reconsideration and comments to the amendments and corrections of December 20, 1991, RSPA recognizes that a drop with the center of gravity vertically over the point of impact is the most severe test. To permit drops in other orientations is inconsistent with the international requirements, and could allow certification of packagings which do not provide the desired structural integrity. While RSPA had previously stated a belief that a drop test with the center of gravity over the point of impact would be difficult to achieve, RSPA now believes that such an orientation can be and is being achieved in testing of all types of packagings. In addition, there has been some confusion over the number of samples which must be used for performance of the drop test. The intent of paragraph (a) is to require that six sample drums be drop tested, and five sample boxes be tested, etc. One sample cannot be tested five or six times to meet the requirements of this section. Therefore, the heading of the second column of the table in paragraph (a) has been changed to clarify this requirement.

Section 178.606. The requirement in paragraph (d) for the assessment of a packaging's stacking stability has been misinterpreted. The intent of this provision is that, in instances such as guided load tests where stacking stability cannot be assessed during the stacking test, an additional stacking stability assessment must be performed. This additional stacking stability assessment consists of stacking two identically filled packages on the test packaging, and having them maintain their position for one hour. Since this is part of the actual test procedure, paragraph (c) has been modified to specifically require that the stacking stability assessment procedure be performed whenever a guided load test is used. Reference to this stacking

stability assessment procedure has been removed from paragraph (d). Where the stacking test is performed using actual stacked packages, the stacking stability assessment procedure is not required.

Appendix B to Part 178. In the amendments and corrections published December 20, 1991, the alternative leak test procedure known as the "T-zone" test was added for metal drums. This test procedure is intended to be used only as a production testing method, not as a design qualification test. However, by placing the "T-zone" test in appendix B to part 178 without qualification, RSPA inadvertently authorized this test as an alternative for design qualification as well as production testing. Paragraph (4) of appendix B has been changed to limit the use of the alternative test procedure known as the "T-zone" test to other than design qualification testing.

Part 179: Specifications for Tank Cars

Section 179.101–1. The appropriate footnotes for each minimum plate thickness entry for Class DOT cars are moved to follow each entry to clarify that they are footnotes. In addition, for Class DOT 112A200W cars, the footnote "1" is removed as it is inconsistent with footnote "3", which remains.

Section 179.200. Paragraph (b)(4), which requires tank cars equipped with non-closing pressure relief devices to be marked "NOT FOR FLAMMABLE OR POISONOUS LIQUIDS", is removed as it is inconsistent with the marking requirement in § 173.31(a)(15), which allows certain poisonous liquids in tank cars with a non-closing pressure relief device. Part 179 requires tank cars equipped with non-closing pressure relief devices to have the marking "NOT FOR FLAMMABLE OR POISONOUS LIQUIDS" applied to the tank; whereas, part 173 allows certain poisonous liquids in tank cars with a non-closing pressure relief device. Since this marking applies only to rail transportation, is inconsistent with other modes of transport, and is applied for the sole use of the shipping community, § 179.200–18(b)(4) is removed for regulatory consistency thereby leaving the marking requirement to the private sector if the need arises.

Part 180: Continuing Qualification and Maintenance of Packaging

Section 180.403. A section reference in the definition for "corrosive to the tank/valve" a section reference is corrected.

Section 180.405. A section reference in paragraph (g)(2) is corrected.

Section 180.407. Paragraph (d)(2)(vii) states that, as part of the periodic external visual inspection, a cargo tank motor vehicle must conform to parts 393 and 396 of the Federal Motor Carrier Safety Regulations (FMCSR) and, where appropriate, part 571 of the Federal Motor Vehicle Safety Standards (FMVSS). This provision is redundant with § 177.834 which requires motor carriers and other persons subject to part 177 to comply with the FMCSR. Part 571 of the FMVSS applies to newly manufactured vehicles and not to the continuing qualification of a vehicle. For these reasons, paragraph (d)(2)(vii) is removed and reserved.

Section 180.409. Paragraph (b) is revised to clarify that an employee, who is not a Registered Inspector, may perform hydrostatic or pneumatic pressure tests under certain specified conditions, but external and internal visual inspections must be done by a Registered Inspector.

Section 180.413. In a final rule published on September 7, 1990, at 55 FR 37069, the amendatory language to § 180.413 incorrectly stated that paragraph "(d)(1)(v)" was revised instead of stating "(d)(2)(v)" was revised. The revised text allowing the use of a supplemental specification plate on stretched or rebarrelled cargo tanks appears in the September 7 publication but not in the 1991 edition of the CFR. The CFR contains an editorial note following the section stating that RSPA would publish a document in the Federal Register to clarify the agency's intent. The error is corrected herein.

Section 180.415. Paragraph (b) pertaining the display of periodic test and inspection markings on cargo tank motor vehicles is revised to clarify that the date must be readily identifiable with the applicable test or inspection and to permit other arrangements other than the date followed by the type of test or inspection. In the last sentence in paragraph (c), the wording "constructed to different intervals" is revised to read "constructed to different specifications, which are tested and inspected at different intervals." This wording was inadvertently omitted in a June 17, 1991 final rule [Docket HM–183, 56 FR 27877, also see Federal Register publication dated September 7, 1990, page FR 37062].

Rulemaking Analyses and Notices

A. Executive Order 12291

This final rule has been reviewed under the criteria specified in section 1(b) of Executive Order 12291 and is determined not to be a major rule. Although the underlying rule was considered to be "significant" under the regulatory procedures of the Department of Transportation, this document is considered to be "non-significant" because it clarifies and corrects provisions of the final rule and provides consistency. This final rule does not impose additional requirements and, in fact, provides relief in some areas. The net result is that costs imposed under the final rule published in the Federal Register on December 21, 1990 are reduced, but without a reduction in safety [55 FR 52402]. The original regulatory evaluation of the final rule was reexamined but was not modified because the changes made under this rule provide limited relief and thus will result in minimal economic impact on industry.

B. Executive Order 12612

This action has been analyzed in accordance with Executive Order 12612 ("Federalism"). The HMTA contains an express preemption provision which RSPA is implementing at the minimum level necessary to achieve the objectives of the statute. Therefore, preparation of a Federalism Assessment is not warranted.

C. Impact on Small Entities

Based on limited information concerning size and nature of entities likely to be affected by this rule, I certify this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A regulatory flexibility analysis is available for review in the docket.

D. Paperwork Reduction Act

This amendment imposes no changes to the information collection and recordkeeping requirements contained in the December 21, 1990 final rule, which was approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35.

E. Regulation Identification Number (RIN)

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN numbers contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

F. National Environmental Policy Act

This final rule has been reviewed under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and does not require an environmental impact statement.

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 179

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

Authority: 49 App. U.S.C. 1421(c), 1802, 1804, 1805, 1806, 1808–1811, 1815; Public Law 89–670, 80 Stat. 933 (49 App. U.S.C. 1653(d), 1655); 49 CFR 1.45 and 1.53 and app. A of 49 CFR part 1.

2. In § 107.315, paragraph (c) is revised and paragraph (d) is added, to read as follows:

§ 107.315 Admission of violations.

* * * * *

(c) Payment of a civil penalty, when the amount of the penalty exceeds $10,000, must be made by wire transfer, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions on making payments by wire transfer may be obtained from the Salary and Expenses Branch (M–86.2), Accounting Services Division, Office of the Secretary, room 9112, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001 (Tel. No. 202–366–5760). A photocopy of the electronic funds transfer receipt should be sent to the Office of the Chief Counsel (DCC–1), RSPA, room 8405, at the same address.

(d) Payment of a civil penalty, when the amount of the penalty is $10,000 or less, must be made either by wire transfer, as set forth in paragraph (c) of this section, or certified check or money order payable to "U.S. Department of Transportation" and submitted to the Salary and Expenses Branch (M–86.2), Accounting Services Division, Office of the Secretary, room 9112, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. A photocopy of that check or money order should be sent to the Office of the Chief Counsel (DCC–1), RSPA, room 8405, at the same address.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

3. The authority citation for part 171 continues to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808, 1815, 1818; 49 CFR Part 1.

4. In § 171.8, the following definitions are added, revised, or removed, as indicated, in appropriate alphabetical order:

§ 171.8 Definitions and abbreviations.

* * * * *

[Add:]

* * * * *

NRC (non-reusable container) means a packaging (container) whose reuse is restricted in accordance with the provisions of § 173.28 of this subchapter.

* * * * *

[Revise:]

* * * * *

Bulk packaging means a packaging, other than a vessel or a barge, including a transport vehicle or freight container, in which hazardous materials are loaded with no intermediate form of containment and which has:

(1) A maximum capacity greater than 450 L (199 gallons) as a receptacle for a liquid;

(2) A maximum net mass greater than 400 kg (882 pounds) and a maximum capacity greater than 450 L (119 gallons) as a receptacle for a solid; or

(3) A water capacity greater than 454 kg (1000 pounds) as a receptacle for a gas as defined in § 173.115 of this subchapter.

* * * * *

Non-bulk packaging means a packaging which has:

(1) A maximum capacity less than 450 L (119 gallons) as a receptacle for a liquid;

(2) A maximum net mass less than 400 kg (882 pounds) and a maximum capacity less than 450 L (119 gallons) as a receptacle for a solid; or

(3) A water capacity greater than 454 kg (1000 pounds) or less as a receptacle for a gas as defined in § 173.115 of this subchapter.

* * * * *

Oxidizer. See § 173.127 of this subchapter.

* * * * *

§ 171.8 [Amended]

5. In addition, in § 171.8, the second definition of "Oxidizer" is removed.

6. In § 171.12, paragraph (b)(7) is revised to read as follows:

§ 171.12 Import and export shipments.

* * * * *

(b) * * *

(7) A Class 1 material must be classed and approved under the procedures in subpart C of part 173 of this subchapter and conform to the requirements of 172.320 and part 176 of this subchapter.

* * * * *

7. In § 171.12a, the first sentence of paragraph (b) introductory text is revised to read as follows:

§ 171.12a Canadian shipments and packagings.

* * * * *

(b) *Conditions and limitations.* Notwithstanding the requirements of parts 172, 173, and 178 of this subchapter, and subject to the limitations of paragraph (a) of this section, a hazardous material that is classed, marked, labeled, placarded, described on a shipping paper, and packaged in accordance with the Transportation of Dangerous Goods

(TDG) Regulations issued by the Government of Canada may be offered for transportation and transported to or through the United States by motor vehicle or rail car. * * *

* * * * *

8. In § 171.14, the section heading, paragraph (a), the introductory text of paragraph (b), and the introductory text of paragraph (c)(2) preceding the Placard Substitution Table are revised to read as follows:

§ 171.14 Transitional provisions for implementing requirements based on the UN Recommendations.

(a) *General.* The transitional provisions of this section are subject to the following conditions and limitations:

(1) *Purpose.* A rule published in the **Federal Register** on December 21, 1990, effective October 1, 1991, resulted in a comprehensive revision of this subchapter based on the UN Recommendations. Final rules published in the **Federal Register** on December 20, 1991, effective October 1, 1991, and on October 1, 1992 in the **Federal Register**, effective October 1, 1992, further revised the December 21, 1990 final rule. The purpose of the provisions of this section is to provide an orderly transition to the new requirements, so as to minimize any burdens associated with them.

(2) *Scope.* Except as provided in paragraph (a)(3) of this section, during a transition period as provided in paragraphs (b) and (c) of this section, a person may elect to comply with either the applicable requirements of this subchapter in effect on September 30, 1991, or the requirements of this subchapter appearing in the December 20, 1990 rule, as revised in final rules published in the **Federal Register** on December 20, 1991, and October 1, 1992.

(3) *Applicability.* Final rules issued subsequent to the December 21, 1990 rule may implement different time requirements than the transitional provisions in this section. When the effective date section or regulatory text of a final rule imposes a compliance date earlier or later than that which would be required under this section, the transition date in this section does not apply.

(b) *Transition dates.* Except as provided in paragraph (a) of this section, the following transition dates apply only to requirements in the December 21, 1990 rule, as revised in the December 20, 1991 and October 1, 1992. final rules:

* * * * *

(c) * * *

(2) *Transitional placarding provisions.* Until October 1, 2001, placards which conform to specifications for placards in effect on September 30, 1991 or placards specified in the December 21, 1990 final rule may be used, for highway transportation only, in place of the placards specified in subpart F of part 172 of this subchapter, in accordance with the following table:

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

9. The authority citation for part 172 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, and 1808; 49 CFR part 1, unless otherwise noted.

§ 172.101 [Amended]

10. In § 172.101, in the Hazardous Materials Table, the following changes are made:

a. For the entry "Acrolein, inhibited", the "+" is removed in Column (1), and, in Column (7), Special Provision "T45" is revised to read "T44".

b. For the entry "Aerosols, *poison, each not exceeding 1 L capacity*", in Column (7), Special Provision "3" is removed.

c. For the entry "Alkali metal alloys, liquid, n.o.s.", in Column (7), Special Provision "B48," is added in appropriate alpha-numeric order.

d. For the second entry for "Ammonia anhydrous liquefied *or* Ammonia solutions" commas are added to read "Ammonia, anhydrous, liquefied *or* Ammonia solutions".

e. For the entry "Ammonium nitrate, liquid *(hot concentrated solution)*, Special Provision"B17," is removed.

f. The first entry for "*Azido hydroxy tetrazole (mercury and silver salts)*" is removed.

g. For the entry "Barium peroxide", in Column (8C), "2" is removed and replaced with "242".

h. For the entry "Blue Asbestor *Crocidolite) or* Brown asbestos *(amosite, mysorite)*", in Column (1), an "I" is added and in Column (2), the words "Blue Asbestos" are revised to read "Blue asbestos".

i. For the first entry for "Bombs, *with bursting charge*," in Division 1.1F, in Column (9A), the word "Forbiden" is revised to read "Forbidden".

j. For the entry "Butane *or* Butane mixtures *see also* Petroleum gases, liquefied", in Column (7), Special Provision "19" is added.

k. For the entry "Butylene *see also* Petroleum gases, liquefied", in Column (7), Special Provision "19" is added.

l. For the entry "Carbon dioxide and nitrous oxide mixtures", the Column (8C) section reference "244" is revised to read "314, 315".

m. For the entry "Carbon monoxide", the Column (8C) section reference "302" is revised to read "314, 315".

n. For the entry "Combustible liquid, n.o.s.", the entry is amended by moving it to its correct alphabetical sequence following "*Collodion, see* Nitrocellulose *etc.*"

o. For the entry "Corrosive solids, self heating, n.o.s." in Packing Group I, in Column (8C), the section reference "241" is revised to read "243".

p. For the entry "Corrosive solids, which in contact with water emit flammable gases, n.o.s." in Packing Group I, in Column (8C), the section reference "241" is revised to read "243"

q. For the entry "Diethylaminopropylamine", in Column (1), "AW" is removed.

r. For the entry "Dimethylhydrazine, unsymmetrical", in Column (7), Special Provision "B58," is removed and Special Provision "B74," is added in appropriate alpha-numeric order.

s. For the entry "Fusee", the entry is amended by moving it to its correct alphabetical sequence following "Fuse, safety".

t. For the entry "Hexachlorocyclopentadiene", in Column (7), Special Provision "T44" is revised to read "T45".

u. For the entry "Hydrochloric acid, solution", in Column (7), Special Provision "B2" is revised to read "B3".

v. For the entry "Hydrogen cyanide, anhydrous, stabilized", in Column (7), Special Provision "B35," is added in appropriate alpha-numeric order.

w. For the entry "Hydrogen peroxide, aqueous solutions *with more than 40 per cent but not more than 60 per cent hydrogen peroxide (stabilized as necessary)*", in Column (7), Special Provision "BB53" is revised to read "B53".

x. For the entry "Hydroxylamine sulfate", in Column (1), "AW" is removed.

y. For the entry "Isophoronediamine", in Column (1), "AW" is removed.

z. For the entry " Lead compounds, soluble, n.o.s.", the Column (5) packing group reference "II" is revised to read "III" and the Column (6) label "POISON" is revised to read "KEEP AWAY FROM FOOD".

aa. For the entry "Metal powders, flammable, n.o.s." in Packing Group III, in Column (8C), the section reference "140" is revised to read "240".

bb. For the entry "Methanol, *or* Methyl alcohol", in Column (8C), the

section reference "243" is revised to read "242".

cc. For the entry "Methylhydrazine", in Column (8B), the section reference "227" is revised to read "226".

dd. For the entries "Nitrating acid mixtures *with not more than 50 per cent nitric acid*" and "Nitrating acid mixtures *with 50 per cent or more nitric acid*", in Column (7), Special Provision "B47," is added in appropriate alpha-numeric order.

ee. For the entry "PCB *see* Polychlorinated biphenyls", in Column (1), "D" is removed and replaced with "AW".

ff. For the entry "Phosphorus pentasulfide, *free from yellow or white phosphorus*", in Column (8C), the section reference "243" is revised to read "242".

gg. For the entry "Propane *see also* Petroleum gases, liquefied", in Column (7), Special Provision "19" is added.

hh. For the entry "Silicon tetrachloride", in Column (7), Special Provision "N41," is removed.

ii. For the entry "Sodium", in Column (7), Special Provisions "B48," and ",T46" are added in appropriate alpha-numeric order and Special Provision "T28," is removed.

jj. For the entry "*Sodium bisulfate, solid or solution, see* Sodium hydrogen sulfate, solid *or* solution", in Column (2), the proper shipping name is revised to read "*Sodium bisulfate, solution, see* Sodium hydrogen sulfate, solution".

kk. For the entry "Substances which in contact with water emit flammable gases, solid n.o.s." in Packing Group III, in Column 8(C) the section reference "242" is revised to read "241" and the proper shipping name in Column (2) is amended by inserting a comma after the word "solid".

ll. For the entry "Sulfuric acid", in Column (7), Special Provision "B2" is revised to read "B3".

mm. For the entry "Sulfuric acid, fuming *less than 30 percent free sulfur trioxide*", in Column (6), the ",POISON" label is removed.

nn. For the entry "Sulfuryl chloride", in Column (7), Special Provision "B82" is revised to read "B30".

oo. For the entry "Tars, liquid *including road asphalt and oils bitumen and cut backs*", in Packing Groups II and III, in Column (7), Special Provision "B13," is added in appropriate alpha-numeric order.

pp. For the entry "Titanium tetrachloride", in Column (7), Special Provision "B77," is added in appropriate alpha-numeric order.

qq. For the entry "(mono-(Trichloro) tetra-(monopotassium dichloro)- penta-s-triazinetrione, dry (*containing over 39% available chlorine*)", in Column (2), the proper shipping name is amended by removing the first parenthesis, preceding "mono-(Trichloro)".

rr. For the entry "Vanadium trichloride", in Column (1), "AW" is removed.

11. In addition, the Hazardous Materials Table is amended by removing, adding, or revising, in appropriate alphabetical sequence, the following entries:

§ 172.101 HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or rail car	Cargo air craft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	[REMOVE]												
	Asbestos, blue or brown, see Blue asbestos *etc.*												
	Asbestos, white, see White asbestos *etc.*												
	Dinitroglycoluril	Forbidden											
W	Fish meal *or* Fish scrap stabilized.	9	UN2216	III	None	A1	155	218	218	No limit	No limit	A	88, 120
	Isobutane *or* Isobutane mixtures.	2.1	UN1969		Flammable gas		306	304	314, 315	Forbidden	150 kg	E	40
	Sodium hydrogen sulfate, solid.	8	UN1821	III	Corrosive		154	213	240	25 kg	100 kg	A	
	White asbestos (chrysotile, antinolite, anthophyllite, tremolite).	9	UN2590	III	Class 9		155	216	240	200 kg	200 kg	A	34, 40
	[ADD]												
D	Asbestos	9	NA2212	III	Class 9		155	216	240	200 kg	200 kg	A	34, 40
W	Fish meal, stabilized *or* Fish scrap, stabilized.	9	UN2216	III	None		155	218	218	No limit	No limit	A	88, 120
	Isobutane *or* Isobutane mixtures *see also* Petroleum gases, liquefied.	2.1	UN1969		Flammable gas	19	306	304	314, 315	Forbbiden	150 kg	E	40
	White asbestos (*chrysotile, actinolite, anthophyllite, tremolite*).	9	UN2590	III	Class 9		155	216	240	200 kg	200 kg	A	34, 40

[REVISED]

Aircraft hydraulic power unit fuel tank *(containing a mixture of anhydrous hydrazine and monomethyl hydrazine) (M86 fuel).*	3		UN3165	I	Flammable liquid, poison, corrosive.		None	172	None	Forbidden	30 L	E	
Alcoholic beverages	3		UN3065	II	Flammable liquid.	B1, T1	150	202	242	5 L	60 L	A	
			NA	III	Flammable liquid.	B1, N11, T1	150	203	242	60 L	220 L	A	
1,2 Propylenediamine.	8		UN2258	II	Corrosive	A3, A6, N34, T8.	None	202	243	1 L	30 L	A	12, 20, 40, 48

§ 172.101, App. [Amended]

12. In the Appendix to § 172.101, in paragraph 2., the reference "§ 172.101(c)(9)" is revised to read "§ 172.101(c)(8)".

13. In § 172.102, the following special provisions are added, revised, or removed as indicated:

a. In paragraph (c)(1), Special Provisions 19 and 21 are added.

b. In paragraph (c)(3), Special Provisions B13, B35, and B47 are added and Special Provisions B14 and B69 are revised.

c. In paragraph (c)(7)(ii), T28 is redesignated as T46 and moved to its proper alpha-numeric order and Special Provisions T28, T39 and T43 are added.

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

19. For domestic transportation only, the identification number "UN1075" may be used in place of the identification number specified in Column (4) of the § 172.101 Table. The identification number used must be consistent on package markings, shipping papers and emergency response information.

* * * * *

21. This material must be stabilized by appropriate means (e.g., addition of chemical inhibitor, purging to remove oxygen) to prevent dangerous polymerization (see § 173.21(f) of this subchapter).

* * * * *

(3) * * *

Code/Special Provisions

B13. A nonspecification cargo tank motor vehicle authorized in § 173.247 of this subchapter must be at least equivalent in design and in construction to a DOT 406 cargo tank or MC 306 cargo tank (if constructed before September 1, 1993), except as follows:

a. Packagings equivalent to MC 306 cargo tanks are excepted from §§ 178.340–10, certification; 178.341–4, vents; and 178.341–5, emergency flow control.

b. Packagings equivalent to DOT 406 cargo tanks are excepted from §§ 178.345–14, marking; 178.345–15, certification; 178.346–10, pressure relief; and 178.346–11, outlets.

c. Packagings are excepted from the design stress limits at elevated temperatures, as described in the ASME Code. However, the design stress limits may not exceed 25 per cent of the stress, as specified in § 178.65–5(b) of this subchapter, for 0 temper at the maximum design temperature of the cargo tank.

B14. Each tank, except a multi-unit tank car tank, must be insulated with at least 100 mm (3.9 inches) of cork or other suitable insulation material of sufficient thickness that the overall thermal conductance at 15.5 °C (60 °F) is not more than 1.533 kilojoules per hour per square meter per degree Celsius (0.075 Btu per hour per square foot per degree Fahrenheit) temperature differential. Insulation systems must not promote corrosion to steel when wet. Tank and jacket protective coatings are required. Additionally, all tank car tanks constructed after October 1, 1988 and tanks repaired after October 1, 1993, where the entire jacket is removed during the repair, must have tank and jacket protective coatings. The jacket must be flashed around all openings so as to be weather tight.

* * * * *

B35. Tank cars containing hydrogen cyanide may be alternatively marked "Hydrocyanic acid, liquefied" if otherwise conforming to marking requirements in subpart D of this part.

* * * * *

B47. A safety relief device with a start-to-discharge pressure setting of 310 kPa (45 psig) is permitted.

* * * * *

B69. Dry sodium cyanide or potassium cyanide may be shipped in sift-proof weather-resistant metal covered hopper cars, covered motor vehicles, portable tanks or non-specification bins. Bins must be approved by the Associate Administrator for Hazardous Materials Safety. Flexible intermediate bulk containers (FIBCs) may also be used under conditions approved by the Associate Administrator for Hazardous Materials Safety.

* * * * *

(7) * * *

(ii) * * *

Code/Special Provisions

* * * * *

T28. See entry for T28 in the IM Tank Configuration Table in paragraph (c)(70(i) of this section.

* * * * *

T39. See entry for T39 in the IM Tank Configuration Table in paragraph (c)(7)(i0 of this section.

* * * * *

T43. See entry for T43 in the IM Tank Configuration Table in paragraph (c)(7)(i) of this section.

* * * * *

§ 172.102 [Amended]

14. In addition, in § 172.102, the following changes are made:

a. In paragraph (c)(1), in Special Provision 4, the wording "Hazard Zone C" is revised to read "Hazard Zone D".

b. In paragraph (c)(1), in Special Provision 12, the word "comply" is revised to read "conform".

c. In paragraph (c)(1), in Special Provision 28, the word "dihydrated" is revised to read "dehydrated"

d. In paragraph (c)(1), in Special Provision 31, the word "nonhazardous" is revised to read "non-hazardous".

e. In paragraph (c)(3), in Special Provisions B2, B3, B4, and B10, the wording "MC 306"is revised to read "MC 300, MC 301, MC 302, MC 303, MC 305, and MC 306".

f. In paragraph (c)(3), in Special Provision B24, the wording "shall be" is revised to read "must be".

g. In paragraph (c)(3), in Special Provision B26, the last two sentences are revised to read "In addition, the material also must be covered with an inert gas or the container must be filled with water to the tank's capacity. After unloading, the residual material also must be covered with an inert gas or the container must be filled with water to the tank's capacity.".

h. In paragraph (c)(3), in Special Provision B68, the wording "2069 kPa" is revised to read "2,069 kPa".

i. In paragraph (c)(3), in Special Provision B80, the wording "shall have" is revised to read "must have".

j. In paragraph (c)(3), in Special Provision B90, the wording "equivalent or" is revised to read "equivalent to"

§ 172.203 [Amended]

15. In § 172.203, in paragraph (m)(1), the wording "is not disclosed in the shipping name" is revised to read "is not disclosed in the shipping name or class entry".

§ 172.312 [Amended]

16. In § 172.312, in paragraph (a)(2), a second sentence is added at the end of the paragraph to read "Depicting a rectangular border around the arrows is optional.".

§ 172.330 [Amended]

17. In § 172.330, in paragraph (a), the paragraph heading "*Shipping name.*" is revised to read *"Shipping name and identification number.".*

§ 172.405 [Amended]

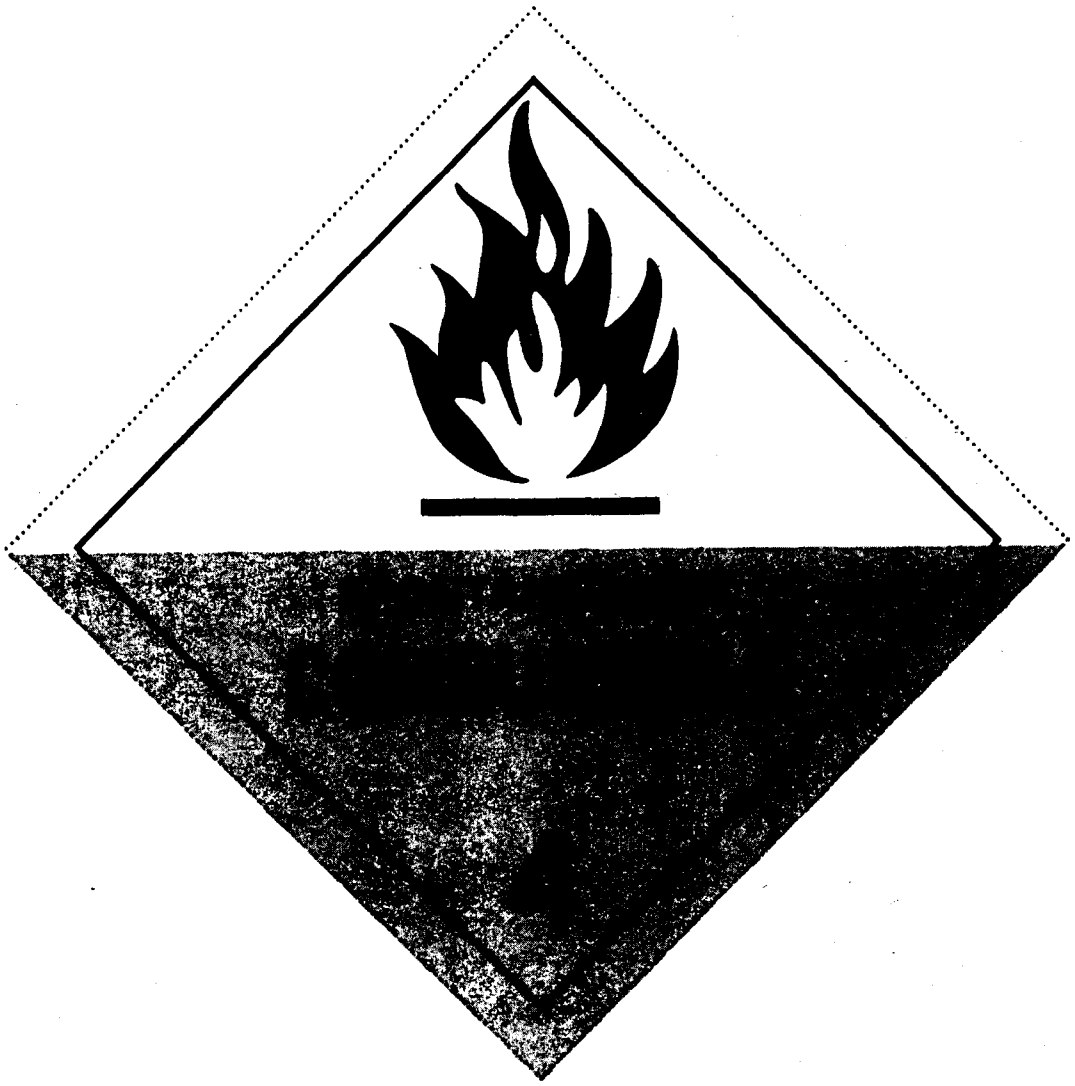
18. In § 172.405, in paragraph (a) introductory text, the wording "is not required on a label when" is revised to read "is not required on a primary or subsidiary label when".

19. In § 172.422, paragraph (a) is revised to read as follows:

§ 172.422 SPONTANEOUSLY COMBUSTIBLE label.

(a) Except for size and color, the SPONTANEOUSLY COMBUSTIBLE label must be as follows:

BILLING CODE 4910-60-M



BILLING CODE 4910-60-C

* * * * *

20. In § 172.504, the introductory text of paragraph (c) and paragraphs (f)(1) and (f)(4) are revised, and paragraphs (f)(9) and (f)(10) are added to read as follows:

§ 172.504 General placarding requirements.

* * * * *

(c) *Exception for less than 454 kg (1,001 pounds).* Except for bulk packagings and hazardous materials subject to § 172.505, when hazardous materials covered by Table 2 of this section are transported by highway or rail, placards are not required on—

* * * * *

(f) * * * (1) When more than one division placard is required for Class 1 materials on a transport vehicle, rail car, freight container or unit load device, only the placard representing the lowest division number must be displayed.

* * * * *

(4) OXIDIZER placards are not required for Division 5.1 materials on freight containers, unit load devices, transport vehicles or rail cars which also contain Division 1.1 or 1.2 materials and which are placarded with EXPLOSIVES 1.1 or 1.2 placards, as required.

* * * * *

(9) For domestic transportation, a Class 9 placard is not required. A bulk packaging containing a Class 9 material must be marked on each side and each end with the appropriate identification number displayed on an orange panel or a white-square-on-point display configuration are required by subpart D of this part.

(10) For domestic transportation of Division 6.1, PG III materials, a POISON placard may be used in place of a KEEP AWAY FROM FOOD placard.

* * * * *

21. In § 172.505, paragraph (a) is revised to read as follows:

§ 172.505 Placarding for subsidiary hazards.

(a) Each transport vehicle, freight container, portable tank and unit load device that contains a poisonous material subject to the "Poison-Inhalation Hazard" shipping description of § 172.203(m)(3) must be placarded with a POISON or POISON GAS placard, as appropriate, on each side and each end, in addition to any other placard required for that material in § 172.504. Duplication of the POISON or POISON GAS placard is not required.

* * * * *

22. In § 172.510, paragraph (e) is revised to read as follows:

§ 172.510 Special placarding provisions: Rail.

* * * * *

(e) *Chemical ammunition.* Each rail car containing Division 1.1 or 1.2 (explosive) ammunition which also meets the definition of a material poisonous by inhalation (see § 171.8 of this subchapter) must be placarded EXPLOSIVES 1.1 or EXPLOSIVES 1.2 and POISON GAS or POISON.

§ 172.510 [Amended]

23. In addition, in § 172.510, in paragraph (c), in the second sentence, the wording "§ 172.505(c)" is revised to read "§ 172.505".

§ 172.519 [Amended]

24. In § 172.519, in paragraph (b)(3), the wording "For other than Class 7," is revised to read "For other than Class 7 or the OXYGEN placard,".

§ 172.526 [Amended]

25. In § 172.526, in paragraph (a)(4), in the first sentence, "172.540," is added in its appropriate numerical sequence.

26. In § 172.560, paragraph (b) is revised to read as follows:

§ 172.560 CLASS 9 placard.

* * * * *

(b) In addition to conformance with § 172.519, the background on the CLASS 9 placard must be white with seven black vertical stripes on the top half extending from the top of the placard to one inch above the horizontal centerline. The black vertical stripes must be spaced so that, visually, they appear equal in width to the six white spaces between them. The space below the vertical lines must be white with the class number 9 underlined and centered at the bottom.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

27. The authority citation for part 173 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808, 1817; 49 CFR part 1, unless otherwise noted.

§ 173.2 [Amended]

28. In the § 173.2 Table, for the entry "Oxidizer", in the fourth column the entry "§ 173.128" is removed and replaced with "§ 173.127".

§ 173.22 [Amended]

29. In § 173.22, in paragraph (a)(4), the reference "§ 178.2(d)" is revised to read "§ 178.2(c)".

§ 173.23 [Amended]

30. In § 173.23, in paragraph (c), the wording "i.e." is revised to read "e.g.".

§ 173.24a [Amended]

31. In § 173.24a, in paragraph (c)(1)(iii), the wording "Corrosive materials" is revised to read "Corrosive materials (except ORM-D)".

32. § 173.28, a new paragraph (e) is added to read as follows:

§ 173.28 Reuse, reconditioning and remanufacture of packagings.

* * * * *

(e) *Non-reusable containers.* A packaging marked as NRC according to the DOT specification or UN standard requirements of part 178 of this subchapter may be reused for the shipment of any material not required by this subchapter to be shipped in a DOT specification or UN standard packaging.

§ 173.31 [Amended]

33. In § 173.31, in paragraph (c), the following changes are made:

a. In Note i following Retest Table 1, the wording "Associate Director for HMR" is revised to read "Associate Administrator for Hazardous Materials Safety".

b. In Note n following Retest Table 1, the reference "§ 179.102–11 of this chapter" is revised to read "§ 173.314(i)".

§ 173.32 [Amended]

34. In § 173.32, the following changes are made:

a. In paragraph (a)(1), the words "comply with" are revised to read "conform to".

b. In paragraph (a)(3), the reference "§ 173.300" is revised to read "§ 173.115" and the words "complying with" are revised to read "conforming to".

c. In paragraph (a)(5), the reference "§ 172.101(c)(7)" is revised to read "§ 172.102(c)(7)".

d. In paragraph (c), the reference "(e)(3), (4), and (5)" is revised to read "(e)(3) and (4)".

35. In § 173.32c, a new paragraph (r) is added to read as follows:

§ 173.32c Use of Specification IM portable tanks.

* * * * *

(r) Hazardous materials authorized for transport in a tank fitted with bottom outlets having two serially mounted closures are also authorized for transport in a tank fitted with three serially mounted closures and in tanks fitted with no bottom outlets. Similarly, hazardous materials authorized for transport in tanks fitted with bottom outlets having three serially mounted closures are also authorized for transport in tanks fitted with no bottom outlets.

§ 173.32c [Amended]

36. In addition, in § 173.32c, in paragraph (f), the reference "§ 178.270–11(d)" is corrected to read "§ 178.270–11(d)."

§ 173.33 [Amended]

37. In § 173.33, the following changes are made:

a. In paragraph (c)(1)(iii), the reference "§ 173.119(a)(17)(iii)" is revised to read "Special Provision B33 in § 172.102(c)(3) of this subchapter".

b. In paragraph (c)(5), the wording "Poison B material" is revised to read "Division 6.1 (poisonous liquid) material".

c. In paragraph (e), the wording "Poison B liquid" is revised to read "Division 6.1 (poisonous liquid) material".

§ 173.115 [Amended]

38. In § 173.115, in paragraph (b)(1), the wording "or greater" is added immediately following "280 kPa (41 psia)" and before "at 20 °C".

§ 173.120 [Amended]

39. In § 173.120, in paragraphs (b)(1) and (b)(2), the wording ", except Class 9," is removed both places it appears.

40. In § 173.124, paragraph (a)(3)(ii) is revised to read as follows:

§ 173.124 Class 4 Divisions 4.1, 4.2 and 4.3—Definitions.

(a) * * *

(3) * * *

(ii) Show a burning rate faster than 2.2 mm (0.087 inches) per second when tested in accordance with paragraph 2.c.(2) of appendix E to this part; or

* * * * *

41. In § 173.133, in paragraph (a)(2)(ii), the introductory text is republished and Figure 1 is revised to read as follows:

§ 173.133 Assignment of packing group and hazard zones for Division 6.1 materials.

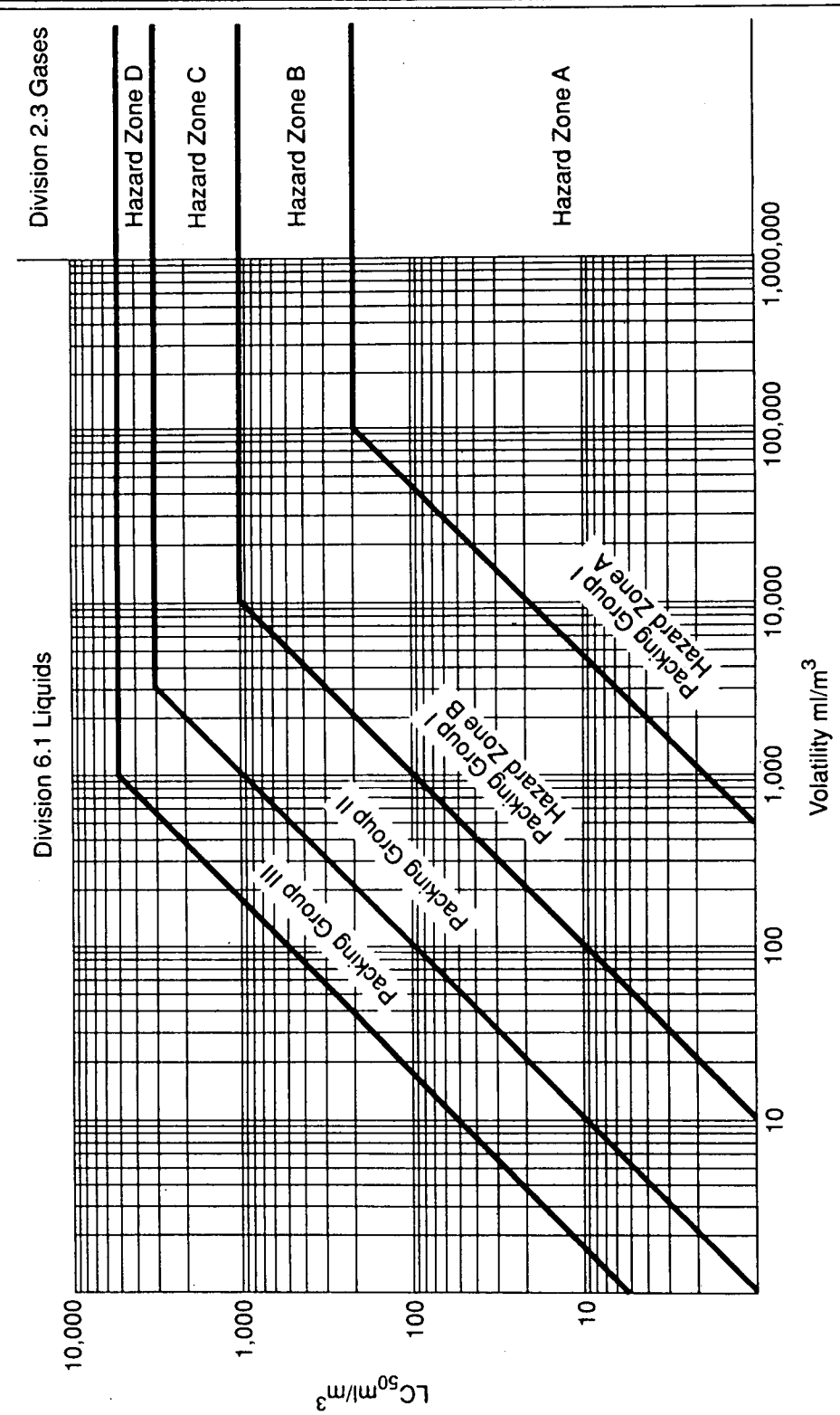
(a) * * *

(2) * * *

(ii) These criteria are represented graphically in Figure 1:

BILLING CODE 4910-60-M

Figure 1
Inhalation Toxicity: Packing Group and Hazard Zone Borderlines



BILLING CODE 4910-60-C

* * * * *

§ 173.133 [Amended]

42. In addition, in § 173.133, the following changes are made:

a. In the paragraph (a)(1) table, in column 4, "<0.5<2" is revised to read to ">0.5<2".

b. In paragraph (a)(2)(i), in column 1 of the table, add "II" and "III", respectively, for the entries in column 2 beginning "V>LC_{50};" and "V>.2LC_{50};", respectively.

43. Section 173.140 is revised to read as follows:

§ 173.140 Class 9—Definitions.

For the purposes of this subchapter, "miscellaneous hazardous material" (Class 9) means a material which presents a hazard during transportation but which does not meet the definition of any other hazard class. This class includes:

(a) Any material which has an anesthetic, noxious or other similar property which could cause extreme annoyance or discomfort to a flight crew member so as to prevent the correct performance of assigned duties; or

(b) Any material which meets the definition in § 171.8 of this subchapter for an elevated temperature material, a hazardous substance or a hazardous waste.

§ 173.150 [Amended]

44. In § 173.150, the following changes are made:

a. In paragraphs (a) and (f), the wording ", except Class 9" is removed.

b. In paragraph (f)(3)(vii), the word "comply" is revised to read "conform".

45. In § 173.154, paragraph (d) is revised to read as follows:

§ 173.154 Exceptions for Class 8 (corrosive materials).

* * * * *

(d) *Materials corrosive to aluminum or steel only.* Except for a hazardous substance or a hazardous waste, a material classed as a Class 8, Packing Group III, material solely because of its corrosive effect—

(1) On aluminum is not subject to any other requirements of this subchapter when transported by motor vehicle or rail car in a packaging constructed of materials that will not react dangerously with or be degraded by the corrosive material; or

(2) On steel is not subject to any other requirements of this subchapter when transported by motor vehicle or rail car in a bulk packaging constructed of materials that will not react dangerously with or be degraded by the corrosive material.

§ 173.156 [Amended]

46. In § 173.156, in paragraph (b), in the second sentence, the wording "unitized in cages, carts or similar overpacks" is revised to read "unitized in cages, carts, boxes or similar overpacks" and the wording "from a distribution center to a retail outlet" is revised to read "from a manufacturer to a distribution center, from a manufacturer or a distribution center to a retail outlet, or return".

47. In § 173.159, new paragraphs (b)(3), (b)(4), (b)(5), and (b)(6) are added to read as follows:

§ 173.159 Batteries, wet.

* * * * *

(b) * * *

(3) 1D plywood drums.

(4) 1G fiber drums.

(5) 1H2 and 3H2 plastic drums and jerricans.

(6) 4H2 plastic boxes.

* * * * *

§ 173.159 [Amended]

48. In addition, in § 173.159, in paragraph (c) introductory text, the word "articles" is revised to read "materials".

§ 173.193 [Amended]

49. In § 173.193, in paragraph (d), the wording", except those containing methyl bromide," is added to immediately follow the word "Cylinders".

§ 173.211 [Amended]

50. In § 173.211, in paragraph (c), for the entry "Plastic receptacle in steel, aluminum, plywood, fiber or plastic drum:" the wording "6HA2" is revised to read "6HA1"; and for the entry "Plastic receptacle in steel, aluminum, wooden, plywood or fiberboard box:" the wording "6HA1" is revised to read "6HA2".

§ 173.225 [Amended]

51. In § 173.225, the following changes are made:

a. In paragraph (e)(2), the wording "MC 310, MC 311 and MC 312 cargo tank motor vehicles" is revised to read "MC 310, MC 311, MC 312 and DOT 412 cargo tank motor vehicles".

b. In paragraph (e)(3), the introductory text and paragraphs (e)(3)(i) through (e)(3)(iii) are redesignated as paragraphs (e)(3)(i) introductory text and (e)(3)(i)(A) through (e)(3)(i)(C), respectively; paragraph (e)(3)(v) is redesignated as new paragraph (e)(3)(ii); and paragraph (e)(3)(iv) is redesignated as paragraph (e)(4).

§ 173.227 [Amended]

52. In § 173.227, in paragraph (b) introductory text, in the first sentence the phrase "or 1H1 drums further packed in a 1A2 or 1H2 drum or a 6HA1 composite" is revised to read "or 1H1 drum or 6HA1 composite further packed in a 1A2 or 1H2 drum".

53. In § 173.244, the section heading is revised to read as follows:

§ 173.244 Bulk packaging for certain pyrophoric liquids (Division 4.2), dangerous when wet (Division 4.3) materials, and poisonous liquids with inhalation hazards (Division 6.1).

* * * * *

54. In § 173.302, paragraph (h) is revised to read as follows:

§ 173.302 Charging of cylinders with non-liquefied compressed gases.

* * * * *

(h) *Poisonous mixtures.* Cylinders containing mixtures meeting Division 2.3 *Hazard Zone A* must conform to the requirements of § 173.40 of this part.

§ 173.302 [Amended]

55. In addition, in § 173.302, in paragraph (a)(5)(iii), the reference "RR-C-901b" is corrected to read "RR-C-901c" each place it appears.

56. In § 173.304, paragraph (g) is revised to read as follows:

§ 173.304 Charging of cylinders with liquefied compressed gas.

* * * * *

(g) *Poisonous mixtures.* Cylinders containing mixtures meeting Division 2.3 *Hazard Zone A* must conform to the requirements of § 173.40 of this part.

§ 173.304 [Amended]

57. In addition, in § 173.304, in paragraph (f)(1), in the second sentence, the wording "packaged in Spec. 12B (§ 178.205 of this subchapter) fiberboard boxes equipped with top and bottom pads which will provide three complete thicknesses of fiberboard on top and bottom of each box, or Spec. 15A, 15B, 15C, 19A, or 19B (§ § 178.168, 178.169, 178.170, 178.190, 178.191 of this subchapter) wooden boxes" is revised to read "packaged in strong, tight packagings".

58. In § 173.314, the introductory text of paragraph (c) is revised to read as follows:

§ 173.314 Requirements for compressed gases in tank car tanks.

* * * * *

(c) *Authorized gases, filling limits for tank cars.* A person may load and offer a tank car containing a compressed gas

for transportation only in accordance with the following table:

* * * * *

§ 173.314 [Amended]

59. In addition, in § 173.314, the following changes are made:

a. In the table in § 173.314(c), for the entry "Ammonia, anhydrous, or ammonia solutions >50 percent ammonia", in Column 2, the first "Note 21" is revised to read "Note 25".

b. In the table in § 173.314(c), for the entry "Ammonia, solutions with >35 percent <50 percent ammonia by mass", Column 3 is amended by adding "109A," immediately after "105A," and before "112A".

c. In the table in § 173.314(c), for the entry "Division 2.3, Hazard Zone D, materials not specifically identified in this table", in Column 2, the first "Note 21" is revised to read "Note 25"; in Column 3, "105J300W, 109A, 112J340W, 112T340W, 114J340W, 114T340W" is revised to read "105A300W, 109A, 112S340W, 114S340W"; and in Column 4, ",24" is added immediately following "15".

d. In the Notes following the § 173.314(c) table, Notes 21 and 22 are revised and Note 25 is added to read as follows:

Notes:

* * * * *

[21] The requirements of § 173.24(b) of this subchapter apply.

[22] The requirements of § 173.245 of this subchapter apply.

* * * * *

[25] The liquefied gas must be loaded so that the outage is at least two percent of the total capacity of the tank at the reference temperature of 46 °C (115 °F) for non-insulated tanks and 41 °C (105 °F) for insulated tanks.

* * * * *

§ 173.315 [Amended]

60. In § 173.315, the following changes are made:

a. In paragraph (a), in the table, in Notes 3, 11, and 16, the words "comply with" are revised to read "conform to".

b. In paragraphs (d) and (i)(12), the reference "paragraph (a)(1)" is revised to read "paragraph (a)".

61. In § 173.336, the section heading and introductory text are revised to read as follows:

§ 173.336 Nitrogen dioxide, liquefied, or dinitrogen tetroxide, liquefied.

Nitrogen dioxide, liquefied, or dinitrogen tetroxide, liquefied, must be packaged in specification cylinders as follows:

* * * * *

PART 174—CARRIAGE BY RAIL

62. The authority citation for part 174 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1808; 49 CFR 1.53(e), 1.53(e), app. A to part 1.

§ 174.25 [Amended]

63. In § 174.25, in the paragraph (a)(2) table, for the entry "Division 1.6", in Column 3, the word "Dangerous" is removed and replaced with "(None)".

§ 174.55 [Amended]

64. In § 174.55, in paragraph (c), the wording "bearing markings 'THIS SIDE UP' or 'THIS END UP' " is revised to read "bearing package orientation markings, as prescribed in § 172.312(a) of this subchapter".

§ 174.61 [Amended]

65. In § 174.61, in paragraph (c), the wording "the Federal Railroad Administrator" is revised to read "the Associate Administrator for Safety, FRA".

66. In § 174.81, the paragraph (f) compatibility table is revised to read as follows:

§ 174.81 Segregation of hazardous materials.

* * * * *

(f) * * *

COMPATIBILITY TABLE FOR CLASS 1 (EXPLOSIVE) MATERIALS.

Compatibility group	A	B	C	D	E	F	G	H	J	K	L	N	S
A		X	X	X	X	X	X	X	X	X	X	X	X
B	X		X	4	X	X	X	X	X	X	X	X	4/5
C	X	X		2	2	X	X	X	X	X	X	3	4/5
D	X	4	2		2	X	X	X	X	X	X	3	4/5
E	X	X	2	2		X	X	X	X	X	X	3	4/5
F	X	X	X	X	X		X	X	X	X	X	X	4/5
G	X	X	X	X	X	X		X	X	X	X	X	4/5
H	X	X	X	X	X	X	X		X	X	X	X	4/5
J	X	X	X	X	X	X	X	X		X	X	X	4/5
K	X	X	X	X	X	X	X	X	X		X	X	4/5
L	X	X	X	X	X	X	X	X	X	X	1	X	X
N	X	X	3	3	3	X	X	X	X	X	X		4/5
S	X	4/5	4/5	4/5	4/5	4/5	4/5	4/5	4/5	4/5	X	4/5	

* * * * *

§ 174.81 [Amended]

67. In addition, in § 174.81, the following changes are made:

a. In the Segregation Table in paragraph (d), in the column "Notes", for the entry "Very insensitive explosives.", the letter "A" is added.

b. In paragraph (e)(5), the wording "Division 1.1 (Class A explosive) materials" is revised to read "Division 1.1 (Class A explosive) or Division 1.5 (blasting agents) materials."

§ 174.82 [Amended]

68. In § 174.82, in paragraph (a), the wording "Division 1.6," is added immediately after "contain" and before "combustible liquids".

§ 174.85 [Amended]

69. In § 174.85, in paragraph (b), the wording "must comply with train positioning requirements of paragraph (d) of this section and" is added immediately following " 'RADIOACTIVE' ".

PART 176—CARRIAGE BY VESSEL

70. The authority citation for part 176 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1808; 49 CFR 1.53, App. A to part 1.

71–72. In § 176.83, in paragraphs (c)(2)(i) (A) and (B), the text preceding the illustrations is revised to read as follows:

§ 176.83 Segregation.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(A) Package containing incompatible goods.

* * * * *

(B) Reference package.

* * * * *

§ 176.600 [Amended]

73. In paragraph (d), the wording "Division 2.3 (Poison A) material" is revised to read "Division 2.3 (poisonous gas) material" and the wording "Division 6.1 (Poison B) material" is revised to read "Division 6.1 (poison) material".

PART 177—CARRIAGE BY PUBLIC HIGHWAY

74. The authority citation for part 177 is revised to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805; 49 CFR part 1.

§ 177.805 [Amended]

75. Section 177.805 is amended by removing the paragraph designation (a).

76. In § 177.848, the paragraph (f) compatibility table is revised to read as follows:

§ 177.848 Segregation of hazardous materials.

* * * * *

(f) * * *

COMPATIBILITY TABLE FOR CLASS 1 (EXPLOSIVE) MATERIALS.

Compatibility group	A	B	C	D	E	F	G	H	J	K	L	N	S
A		X	X	X	X	X	X	X	X	X	X	X	X
B	X		X	4	X	X	X	X	X	X	X	X	⅙
C	X	X		2	2	X	X	X	X	X	X	3	⅙
D	X	4	2		2	X	X	X	X	X	X	3	⅙
E	X	X	2	2		X	X	X	X	X	X	3	⅙
F	X	X	X	X	X		X	X	X	X	X	X	⅙
G	X	X	X	X	X	X		X	X	X	X	X	⅙
H	X	X	X	X	X	X	X		X	X	X	X	⅙
J	X	X	X	X	X	X	X	X		X	X	X	⅙
K	X	X	X	X	X	X	X	X	X		X	X	⅙
L	X	X	X	X	X	X	X	X	X	X	1	X	X
N	X	X	3	3	3	X	X	X	X	X	X		⅙
S	X	⅙	⅙	⅙	⅙	⅙	⅙	⅙	⅙	⅙	X	⅙	

* * * * *

§ 177.848 [Amended]

77. In addition, in § 177.848, the following changes are made:

a. In the Segregation Table in paragraph (d), in the column "Notes", for the entry "Very insensitive explosives.", the letter "A" is added.

b. In paragraph (e)(5), the wording "Division 1.1 (Class A explosive) materials" is revised to read "Division 1.1 (Class A explosive) or Division 1.5 (blasting agents) materials".

PART 178—SPECIFICATIONS FOR PACKAGINGS

78. The authority citation for part 178 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR part 1.

§ 178.44-15 [Amended]

79. In § 178.44-15, paragraph (a)(2) is added and reserved.

§ 178.45-7 [Amended]

80. In § 178.45-7, paragraph (c)(2) is added and reserved.

§ 178.270-5 [Amended]

81. In § 178.270-5, in paragraph (a), the word "deka-newtons" is revised to read "decanewtons" and in paragraphs (c) and (d), the wording "deka newtons" is revised to read "decanewtons".

§ 178.337-1 [Amended]

82. In § 178.337-1, in paragraph (b), the reference "§ 173.315(a)(1)" is revised to read "§ 173.315(a)".

§ 178.337-11 [Amended]

83. In § 178.337-11, in paragraph (a)(4)(i)(B), the date "May 16, 1973" is revised to read "May 16, 1969".

§ 178.345-2 [Amended]

84. In § 178.345-2, in paragraph (a)(2), the designation "ASTM B-209 Alloy 5654" is revised to read "ASTM B-209 Alloy 5652".

85. In § 178.345-11, in the first sentence in paragraph (a), the word "exclusively" is removed, and paragraphs (b)(2) and (c) are revised to read as follows:

§ 178.345-11 Tank outlets.

* * * * *

(b) * * *

(2) Bottom loading outlets which discharge lading into the cargo tank through fixed internal piping above the maximum liquid level of the tank need not be equipped with a self-closing system.

(c) Any loading/unloading outlet extending beyond an internal self-closing stop-valve, or beyond the innermost external stop-valve which is part of a self-closing system, must be fitted with another stop-valve or other leak-tight closure at the end of such connection.

* * * * *

§ 178.345-11 [Amended]

86. In addition, in § 178.345-11, in paragraph (b)(1)(iii), the wording "Poison B liquids" is revised to read "Division 6.1 (poisonous liquid) materials".

§ 178.507 [Amended]

87. In § 178.507, in paragraph (a), the wording "ID" is revised to read "1D".

§ 178.601 [Amended]

88. In § 178.601, in paragraph (h), the reference "§§ 178.505-178.523" is revised to read "§§ 178.504-178.523".

§ 178.603 [Amended]

89. In § 178.603, in paragraph (a), the following changes are made:

a. In the text preceding the table, a new sentence is added after the first sentence to read "For other than flat drops, the center of gravity of the test packaging must be vertically over the point of impact."

b. In the paragraph (a) table, the heading of the second column is revised to read "No. of tests (samples)".

§ 178.606 [Amended]

90. In § 178.606, the following changes are made:

a. In paragraph (c)(1), three new sentences are added at the end of the paragraph to read "In guided load tests, stacking stability must be assessed after completion of the test by placing two filled packagings of the same type on the test sample. The stacked packages must

maintain their position for one hour. Plastic packagings must be cooled to ambient temperature before this stacking stability assessment."

b. The fourth sentence in paragraph (d) is removed.

Appendix B [Amended]

91. In appendix B to part 178, in the first sentence of paragraph (4), he wording "For drums, the following test may be used:" is revised to read "For other than design qualification testing, the following test may be used for metal drums:"

PART 179—SPECIFICATIONS FOR TANK CARS

92. The authority citation for part 179 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR part 1, unless otherwise noted.

§ 179.101-1 [Amended]

93. In § 179.101-1, in paragraph (a), in the second table, for the entry "Minimum plate thickness, inches, shell and heads", in the column "112A200W [12]", footnote 1 is removed.

§ 179.200-18 [Amended]

94. In § 179.200-18, paragraph (b)(4) is removed.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

95. The authority citation for part 180 continues to read as follows:

Authority: 49 App. U.S.C. 1803; 49 CFR part 1.

§ 180.403 [Amended]

96. In § 180.403, in the definition "Corrosive to the tank/valve", the section reference "§ 173.240" is revised to read "§ 173.136".

§ 180.405 [Amended]

97. In § 180.405, in paragraph (g)(2), the wording "the hydrostatic testing requirements in § 178.354-5(b)" is revised to read "the hydrostatic testing requirements in § 178.345-5(b)".

§ 180.407 [Amended]

98. In § 180.407, paragraph (d)(2)(vii) is removed and reserved and a semicolon is added at the end of (d)(2)(viii) in place of the period.

99. In § 180.409, the introductory text of paragraph (b) is revised to read as follows:

§ 180.409 Minimum qualifications for inspectors and testers.

* * * * *

(b) A motor carrier or cargo tank owner who meets the requirements of paragraph (a) of this section may use an employee who is not a Registered Inspector to perform a portion of the pressure retest required by § 180.407(g). External and internal visual inspections must be accomplished by a Registered Inspector, but the hydrostatic or pneumatic pressure test, as set forth in § 180.407(g)(1)(viii) and (ix), respectively, may be done by an employee who is not a Registered Inspector provided that—

* * * * *

100. In § 180.413, as amended at 55 FR 37069, September 7, 1990, an error was contained in the amendatory language, which incorrectly stated that paragraph (d)(1)(v) was revised. Instead it should have stated that paragraph (d)(2)(v) was revised. Therefore, paragraph (d)(2)(v) is correctly revised to read as follows:

§ 180.413 Repair, modification, stretching, or rebarrelling of cargo tanks.

* * * * *

(d) * * *

(2) * * *

(v) Change the existing specification plate to reflect the cargo tank as modified, attach a supplemental specification plate noting appropriate changes that have been made to the cargo tank, or remove the existing specification plate and attach a new specification plate to the cargo tank;

* * * * *

101. In § 180.415, the first two sentences of paragraph (b) are removed and three new sentences are added in their place and the last sentence in paragraph (c) is revised to read as follows:

§ 180.415 Test and inspection markings.

* * * * *

(b) Each cargo tank must be durably and legibly marked, in English, with the date (month and year) and the type of test or inspection performed. The date must be readily identifiable with the applicable test or inspection. The marking must be in letters and numbers at least 32 mm (1.25 inches) high, on the tank shell near the specification plate or anywhere on the front head. * * *

(c) * * * For a cargo tank motor vehicle composed of multiple cargo tanks constructed to different specifications, which are tested and inspected at different intervals, the test and inspection markings must appear in the order of the cargo tank's corresponding location, from front to rear.

Issued in Washington, DC on September 17, 1992 under authority delegated in 49 CFR part 1.

Douglas B. Ham,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 92-23042 Filed 9-30-92; 8:45 am]

BILLING CODE 4910-60-M

federal register

Thursday
October 1, 1992

Part V

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 888

Section 8 Housing Assistance Payments Program; Fair Market Rent Schedules; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 888

[Docket No. N-92-3426; FR-3233-N-02]

Section 8 Housing Assistance Payments Program; Fair Market Rent Schedules for Use in the Rental Certificate Program, Loan Management and Property Disposition Programs, Moderate Rehabilitation Program and Rental Voucher Program

AGENCY: Office of the Secretary, HUD.

ACTION: Final fair market rents.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to publish Fair Market Rents (FMRs) periodically, but not less frequently than annually, to be effective on October 1 of each year. The Department published proposed FY 1993 FMRs for the Section 8 Rental Certificate program on April 30, 1992 (57 FR 18684) and solicited public comments. Today's notice announces final FY 1993 FMR schedules for the Section 8 Rental Certificate program (part 882, subparts A and B), including space rentals by owners of manufactured homes under the Section 8 Rental Certificate program (part 882, subpart F); the Section 8 Moderate Rehabilitation program (part 882, subparts D and E); and Section 8 housing assisted under part 886, subparts A and C (Section 8 Loan Management and Property Disposition programs). FMRs are also used to determine payment standard schedules in the Rental Vouchers program.

EFFECTIVE DATE: The FMRs published in this notice are effective on October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Shirley C. Stone, Rental Assistance Division, Office of Elderly and Assisted Housing, telephone (202) 708-0477. For technical information on the development of schedules for specific areas or the method used for the rent calculations, contact Michael R. Allard, Economic and Market Analysis Division, Office of Economic Affairs, telephone (202) 708-0577. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 8 of the United States Housing Act of 1937 (the Act) (42 U.S.C. 1437f) authorizes a housing assistance program to aid lower income families in renting decent, safe, and sanitary housing. Assistance payments are limited by Fair Market Rents (FMRs) (or payment standards based on FMRs in the Housing Voucher Program) established by HUD for different areas. In general, the FMR for an area is the amount that would be needed to rent privately owned, decent, safe, and sanitary rental housing of a modest (non-luxury) nature with suitable amenities.

Section 8(c) of the Act requires the Secretary of HUD to publish FMRs periodically, but not less frequently than annually, to be effective on October 1 of each year. The FMRs must reflect changes based on the most recent available data, so FMRs will be current for the year in which they apply. The Department's regulations provide that HUD will develop FMRs by publishing proposed FMRs for public comment, analyzing the public comment, and publishing final FMRs. (See 24 CFR 888.115). On April 30, 1992 (57 FR 18684), the Department proposed FMRs for Section 8 rental certificates for FY 1993. Today's notice contains an analysis and response to public comments and makes appropriate revisions to the proposed FMRs.

The FMRs for 1993 announced in this notice govern the following Section 8 Housing Assistance Payments programs: The Section 8 Rental Certificate program under part 882 (subparts A and B), including space rentals by owners of manufactured homes (subpart F), the Moderate Rehabilitation program under part 882 (subparts D and E), the Section 8 Housing Assistance program for projects with HUD-insured or HUD-held mortgages under part 886 (subpart A), as well as for existing housing under the Section 8 Housing Assistance program for the disposition of HUD-owned projects under part 886 (subpart C). In addition, FMRs are used to establish payment standards for the Rental Voucher program.

Proposed Fair Market Rents

The proposed FY 1993 FMRs published on April 30, 1992 reflected estimated rent levels projected forward to April 1, 1993. The criteria and methodology used by HUD in developing the proposed FMRs appear at 24 CFR part 888, subpart A, and have been in use since 1983.

The criteria used by HUD in developing FMRs are: (1) The 45th percentile rent (that is, the rent below which 45 percent of the standard quality) rental housing units are distributed); (2) rents based on units occupied by recent movers (households who moved within two years before the date of the survey data used in these calculations); and (3) exclusion from the data base of public housing units and recently completed housing (units built within two years of the survey dates). (See 24 CFR 888.113.) The FMRs for manufactured home spaces are based on the 45th percentile rent for manufactured home spaces. (See 24 CFR 888.113(a).)

In establishing the proposed FMRs, HUD used the most accurate data available. In addition to 1980 Census data, data used to compute the FY 1993 FMRs include the Consumer Price Indices (CPI) for rental housing and utilities, post-1980 American Housing Survey (AHS) data, statistically reliable area specific data submitted by public commenters, and data from the Random Digit Dialing (RDD) telephone surveys of HUD Regions and selected FMR areas. (The use of the RDD survey was described in the April 30 notice of proposed FMRs.)

The proposed FY 1993 FMRs published on April 30, 1992 reflected estimated rent levels trended forward to April 1, 1993. As in past years, the FMR estimates are based primarily on decennial Census and American Housing Survey (AHS) data. This year, for the first time, the Department is incorporating the results of Random Digit Dialing (RDD) telephone surveys to update FMRs in areas not covered by CPI metropolitan surveys. It is also using these surveys to revise FMRs for selected areas.

RDD surveys were conducted in 37 individual FMR areas for use in revising local FMRs. Twenty other surveys were conducted to obtain rent updating factors for 1991. These latter surveys were conducted in the metropolitan and nonmetropolitan parts of the 10 HUD Regions not covered by CPI area-specific surveys. The Regional RDD surveys will be repeated each year to determine the annual rent change factors.

The individual FMR areas selected for RDD surveys include 33 areas that had been recommended by the HUD field offices and four areas by an Office of Inspector General audit. The areas recommended by the HUD field offices were areas with suspected FMR problems, most of which were thought to have FMRs that were too high. The areas recommended were reviewed to determine, on the basis of the number of Section 8 program units, that it would be cost effective to conduct an RDD survey. The survey results generally supported the HUD field office concerns. Of the 37 areas surveyed, 29 were subsequently proposed for FMR reductions. Eight areas were proposed for FMR increases, including four with increases larger than the normal inflation adjustment.

Administrative Fees

The FMRs published for effect will be used to calculate the PHA ongoing administrative fee. For a PHA administering a Section 8 program in an area where the two-bedroom FMR has increased, the PHA's administrative fee will be adjusted as of October 1, 1992. For a PHA administering a Section 8 program in an area where the two-bedroom FMR is decreased, the PHA's administrative fee will be adjusted as of the first day of the PHA's fiscal year that begins after October 1, 1992.

Public Comments

In response to the request for public comments on proposed FY 1993 FMRs, HUD received 1989 comments covering 64 FMR areas. This total included over 100 letters from individuals in Massachusetts expressing concerns about the proposed decrease in the FMRs in the Boston and surrounding metropolitan areas.

The Department carefully evaluated all comments, and has modified FMRs where the survey data were acceptable or where deficiencies could be corrected. Based on this evaluation, the FMRs for 13 areas are being increased. The FMRs for one area are being retained at last year's levels at the request of the area's major program sponsor. No rental housing survey data were submitted with the comments for 25 FMR areas. The information submitted for the remaining 24 FMR areas was not adequate to provide a basis for revising the FMRs.

The Department received comments for 24 of the 29 FMR areas recommended for proposed decreases on the basis of RDD surveys. As a result of these comments, the final FMRs for Tucson, AZ, Richland-Kennewick-Pasco, WA, Boston, MA, Salt Lake City, UT, and Mendocino County, CA have been revised.

This year's FMRs also incorporated the results of the 1990 metropolitan AHS surveys covering 8 FMR areas. Two of these areas, Anaheim-Santa Ana, CA and San Antonio, TX, had proposed decreases based on the survey data. Comments were submitted from these areas, but did not provide a sufficient basis for revising the proposed FMRs.

Miami, Florida FMRs: In response to the extensive losses and damage to the housing inventory in Dade County, Florida, caused by Hurricane Andrew, the Department is publishing final FMRs for the Miami PMSA that have been increased 10 percent above the proposed FMRs. This increase recognizes the impact on local rent levels of demand pressures and repair costs directly related to the hurricane. The Department will continue to monitor rent levels in this area in the near future and will respond with adjusted FMRs as necessary.

Several commenters raised questions concerning the reliability of the RDD survey approach. Answers to three of the most frequently asked questions are provided here.

Issue: Several comments expressed concern about the reliability of the RDD survey method and about the small sample sizes used.

Response: This technique has been independently tested and found to be reliable in market areas where extensive Bureau of the Census rental data are available. The RDD survey method produces both an FMR estimate and a measurement of the reliability of this estimate. The statistical reliability of sample survey estimates is primarily dependent on the extent to which the sample used approximates a pure random sample representatively covering all parts of the FMR area. A relatively small ramdon sample (e.g., one or two hundred cases) can provide reliable information about a characteristic for a large population. In contrast, a sample of five or ten thousand cases in a large metropolitan area, would provide little reliable information on a population characteristic if the sample had a significant bias (e.g., contained only relatively new rental units in large apartment complexes). Based on an analysis of surveys conducted to date, a 400 two-bedroom unit sample size generally will provide enough two-bedroom units to permit estimates that have a 95 percent likelihood of being withing 4 percent of the true 45th percentile rent.

Issue: The Department received several comments that contended that a telephone survey of individual units could not make a determination of the quality of these units.

Response: The RDD survey produces a 45th percentile rent estimate that is a very close approximation of what would be produced by a random sample of all renters with telephones. The 45th percentile rent estimates produced by this approach has two biases with respect to its use for setting FMRs. One is the upward bias on survey rent estimates caused by excluding non-telephone households who, as a group, have lower than average incomes and rents. The other is the downward bias on rents from surveying households that live in rental units that do not meet HUD housing quality standards.

Both biases are relatively small in terms of their impacts on 45th percentile rents. Analysis of the size and impact of these biases has been done using Census and American Housing Survey data. This analysis indicates that there is a relationship between units not covered and substandard units. It also showed that the upward bias caused by excluding non-telephone households was almost exactly offset by the downward bias from including substandard units.

The 45th percentile rent for units with telephones is, on average, 2 percent higher than for all units. On average, the inclusion of substandard and public housing units produces a 45th percentile rent estimate that is 2 percent lower than the intended FMR standard. In areas where larger percentages apply, such as the rural South, both percentages are larger but they remain off-setting. Based on this analysis, it has been concluded that the FMRs developed using the RDD survey methodology are representative of rental units that meet HUD's housing quality standards.

Issue: Some comments expressed concern about the way HUD was converting the rents of one-bedroom units to two-bedroom equivalent rents.

Response: One-bedroom units are included in the FMR RDD survey to increase the effective size of the sample, and thereby improve the accuracy of the rent estimates generated. HUD has found that there is a consistent relationship between 45th percentile one- and two-bedroom rents. This means that a more accurate two-bedroom FMR can be obtained with a given sample size by including information on one-bedroom rents. HUD adjusts the one-bedroom rents, however, before combining them with rents for two-bedroom units. One-bedroom rents are increased by the average two-bedroom to one-bedroom ratio to convert them into two-bedroom equivalent rents.

Rental Housing Survey Instrument

The Department continues to announce the availability of a FMR survey it had developed. This survey, which is based on a Random Digit Dialing (RDD) telephone, provides a statistically reliable means for obtaining FMR estimates. The RDD survey technique is based on a sampling procedure that uses computers to select a statistically random sample of rental housing, dial and keep track of the telephone numbers, and process the responses.

Because of its complexity and the large number of calls required, a survey contractor with specialized knowledge

and equipment is required to conduct one of these surveys. To assist interested parties, the "PHA Guide to Conducting a Fair Market Rent (FMR) Telephone Survey" is available from HUD USER by calling 1-800-245-2691. This guide is intended for local governments or PHAs that believe their FMRs are too high, or too low, and wish to obtain the data needed to revise them. The information contained in the guide provides a full explanation of how to decide whether to use the survey and step-by-step instructions on how to proceed with the contract. Interested PHAs concerned about the accuracy of their FMRs may wish to begin now, since it takes about two to three months to receive the survey results.

The Department recommends the RDD survey as the preferred method for testing FMR accuracy for areas where there is a sufficient number of section 8 units to justify the survey cost of approximately $15,000 to $20,000. HUD intends to use this technique in the future as an improved method for obtaining rent change factors for the metropolitan and nonmetropolitan portions of the ten HUD Regions. RDD surveys will be conducted annually by HUD in selected areas identified as having potential FMR problems.

Other Matters

A Finding of No Significant Impact with respect to the environment as required by the National Environmental Policy Act (42 U.S.C. 4321-4374) is unnecessary, since the Section 8 Rental Certificate program is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(d).

The undersigned, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), hereby certifies that this notice does not have a significant economic impact on a substantial number of small entities, because FMRs do not change the rent from that which would be charged if the unit were not in the Section 8 program.

The General Counsel, as the Designated Official under Executive Order No. 12606, The Family, has determined that this notice will not have a significant impact on family formation, maintenance, or well-being. The notice amends Fair Market Rent schedules for various Section 8 assisted housing programs, and does not affect the amount of rent a family receiving rental assistance pays, which is based on a percentage of the family's income.

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611, Federalism, has determined that this notice will not involve the preemption of State law by Federal statute or regulation and does not have Federalism implications. The Fair Market Rent schedules do not have any substantial direct impact on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibility among the various levels of government.

The Catalog of Federal Domestic Assistance program number is 14.156, Lower-Income Housing Assistance Program (section 8).

Accordingly, the Fair Market Rent Schedules, which will not be codified in 24 CFR part 888, are amended as follows:

Dated: September 28, 1992.

Jack Kemp,

Secretary.

Section 8 Fair Market Rent Schedules for Use in the Existing Housing Certificate Program, Loan Management and Property Disposition Programs, Moderate Rehabilitation Program and Housing Voucher Program Schedules B and D—General Explanatory Notes

1. Geographic Coverage

a. FMRs for Existing Housing (Schedule B) are established for all Metropolitan Statistical Area (MSAs), Primary Metropolitan Statistical Areas (PMSAs), nonmetropolitan counties and county equivalents in the United States, District of Columbia, Puerto Rico, the Virgin Islands, and Guam. FMRs also are established for nonmetropolitan parts of counties in the New England states.

b. FMRs for Manufactured Home spaces in the Section 8 Certificate Program (Schedule D) are established for all MSAs, PMSAs, selected nonmetropolitan counties, and the residual nonmetropolitan portion of each State.

c. The current 339 MSAs and PMSAs are those established by the Office of Management and Budget effective in June 1986.

2. Arrangement of FMR Areas and Identification of Constituent Parts

a. The FMR areas in Schedules B and D are listed alphabetically by MSA-PMSA and nonmetropolitan county within each State.

b. The constituent counties (and New England towns and cities) included in each MSA and PMSA are listed immediately following the listings of the FMR dollar amounts. All of the constituent parts of an MSA that are in more than one State can be identified by consulting listings for each applicable State.

c. Two non-metropolitan counties are listed alphabetically on each line of the nonmetropolitan county listings.

d. The New England towns and cities included in a non-metropolitan part of a county are listed immediately following the county name.

e. The FMRs are listed by dollar amount on the first line beginning with the FMR area name.

BILLING CODE 4210-32-M

ALABAMA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Anniston, AL MSA	258	312	368	462	517	Calhoun
Birmingham, AL MSA	299	365	428	535	599	Blount, Jefferson, St Clair, Shelby, Walker
Columbus, GA-AL MSA	266	320	380	476	536	Russell
Decatur, AL MSA	263	319	378	472	530	Lawrence, Morgan
Dothan, AL MSA	301	365	429	537	601	Dale, Houston
Florence, AL MSA	271	332	392	488	545	Colbert, Lauderdale
Gadsden, AL MSA	235	288	341	426	477	Etowah
Huntsville, AL MSA	304	368	432	542	608	Madison
Mobile, AL MSA	313	380	447	560	629	Baldwin, Mobile
Montgomery, AL MSA	276	338	397	498	558	Autauga, Elmore, Montgomery
Tuscaloosa, AL MSA	291	353	417	521	585	Tuscaloosa

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Barbour	217	263	311	389	436
Bullock	221	268	316	397	444
Chambers	215	261	308	386	431
Chilton	210	257	304	379	423
Clarke	234	287	340	425	475
Cleburne	215	261	308	386	431
Conecuh	234	287	340	425	475
Covington	217	263	311	389	436
Cullman	262	318	377	471	528
De Kalb	249	301	353	441	497
Fayette	210	257	304	379	423
Geneva	217	263	311	389	436
Hale	210	257	304	379	423
Jackson	249	301	353	441	497
Lee	268	326	386	483	541
Lowndes	221	268	316	397	444
Marengo	234	287	340	425	475
Marshall	230	280	330	410	460
Perry	234	287	340	425	475
Pike	234	286	339	422	473
Sumter	234	287	340	425	475
Tallapoosa	215	261	308	386	431
Wilcox	234	287	340	425	475

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Bibb	210	257	304	379	423
Butler	225	273	322	404	452
Cherokee	215	261	308	386	431
Choctan	234	287	340	425	475
Clay	215	261	308	386	431
Coffee	285	344	405	508	568
Coosa	215	261	308	386	431
Crenshaw	221	268	316	397	444
Dallas	234	287	340	425	475
Escambia	199	245	285	357	400
Franklin	210	256	301	377	421
Greene	210	257	304	379	423
Henry	217	263	311	389	436
Lamar	210	257	304	379	423
Limestone	222	270	319	400	448
Macon	234	286	339	422	473
Marion	210	256	301	377	421
Monroe	234	287	340	425	475
Pickens	210	257	304	379	423
Randolph	215	261	308	386	431
Talladega	215	261	308	386	431
Washington	234	287	340	425	475
Winston	210	256	301	377	421

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

A L A S K A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Anchorage, AK MSA	459	558	656	820	918	Anchorage

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Aleutian I	495	601	707	885	992
Bristol Bay	495	601	707	885	992
Fairbanks No. Star	470	571	695	869	973
Juneau	572	695	890	1057	1184
Ketchikan Gateway	600	728	857	1073	1200
Kodiak Island	665	806	949	1187	1330
Nome	495	601	707	885	992
Pr Wales-Outer Ket	495	601	707	885	992
Skgwy-Ykutt-Angoon	495	601	707	885	992
Valdez-Cordova	625	758	893	1116	1250
Wrangellpetersburg	556	675	794	993	1111

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Bethel	495	601	707	885	992
Dillingham	495	601	707	885	992
Haines	495	601	707	885	992
Kenai-Penin	457	555	653	817	916
Kobuk	495	601	707	885	992
Matanuska-Susitna	421	511	601	751	841
North Slope	495	601	707	885	992
Sitka	556	675	794	993	1111
Southeastfairbanks	407	495	582	728	817
Wade Hampton	495	601	707	885	992
Ykn-Koykk	495	601	707	885	992

A R I Z O N A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Phoenix, AZ MSA	354	429	505	631	707	Maricopa
Tucson, AZ MSA	343	392	490	612	686	Pima
Yuma, AZ MSA	397	482	570	712	798	Yuma

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Apache	308	375	442	553	620
Coconino	393	476	561	703	788
Graham	314	384	450	565	633
Lapaz	398	484	571	713	800
Nauajo	308	375	442	553	620
Santa Cruz	314	384	450	565	633

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Cochise	314	384	450	565	633
Gila	317	387	458	571	638
Greenlee	314	384	450	565	633
Mohave	398	484	571	713	800
Pinal	317	387	458	571	638
Yavapai	393	476	561	703	788

A R K A N S A S

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Fayetteville-Springdale, AR MSA	284	344	406	506	568	Washington
Fort Smith, AR-OK MSA	273	333	393	494	553	Crawford, Sebastian
Little Rock-North Little Rock, AR MSA	327	397	467	587	657	Faulkner, Lonoke, Pulaski, Saline
Memphis, TN-AR-MS MSA	316	383	451	562	629	Crittenden
Pine Bluff, AR MSA	270	330	390	490	547	Jefferson
Texarkana, TX-Texarkana, AR MSA	271	329	389	489	545	Miller

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

092492

A R K A N S A S continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Arkansas	227	275	325	407	457
Baxter	257	313	371	463	521
Boone	257	313	371	463	521
Calhoun	218	266	312	393	438
Chicot	217	261	309	387	435
Clay	243	295	346	434	487
Cleveland	224	272	321	402	450
Conway	223	270	320	401	447
Cross	228	281	330	408	457
Desha	217	261	309	387	435
Franklin	201	245	289	361	404
Garland	237	291	341	427	480
Greene	243	295	346	434	487
Hotspring	237	291	341	427	480
Independence	253	308	364	455	508
Jackson	253	308	364	455	508
Lafayette	222	266	316	398	445
Lee	228	281	330	408	457
Little River	222	266	316	398	445
Madison	257	313	371	463	521
Mississippi	261	320	376	470	529
Montgomery	237	291	341	427	480
Newton	257	313	371	463	521
Perry	223	270	320	401	447
Pike	237	291	341	427	480
Polk	242	293	344	430	484
Prairie	194	236	281	350	392
St Francis	228	281	330	408	457
Searcy	257	313	371	463	521
Sharp	253	308	364	455	508
Union	218	266	312	393	438
White	253	308	364	455	508
Yell	223	270	320	401	447

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Ashley	217	261	309	387	435
Benton	266	324	378	466	521
Bradley	217	261	309	387	435
Carroll	257	313	371	463	521
Clark	237	291	341	427	480
Cleburne	253	308	364	455	508
Columbia	218	266	312	393	438
Craighead	285	344	406	506	570
Dallas	218	266	312	393	438
Drew	240	291	343	461	482
Fulton	253	308	364	455	508
Grant	224	272	321	402	450
Hempstead	222	266	316	398	445
Howard	222	266	316	398	445
Izard	253	308	364	455	508
Johnson	223	270	320	401	447
Lawrence	243	295	346	434	487
Lincoln	217	261	309	387	435
Logan	201	245	289	361	404
Marion	257	313	371	463	521
Monroe	194	236	281	350	392
Nevada	222	266	316	398	445
Ouachita	218	263	310	390	438
Phillips	228	281	330	408	457
Poinsett	243	295	346	434	487
Pope	223	270	320	401	447
Randolph	243	295	346	434	487
Scott	201	245	289	361	404
Sevier	222	266	316	398	445
Stone	253	308	364	455	508
Van Buren	253	308	364	455	508
Woodruff	253	308	364	455	508

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

C A L I F O R N I A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Anaheim-Santa Ana, CA PMSA	618	751	883	1104	1236	Orange
Bakersfield, CA MSA	432	525	618	772	866	Kern
Chico CA MSA	379	461	543	678	760	Butte
Fresno, CA MSA	394	479	565	705	791	Fresno
Los Angeles-Long Beach, CA PMSA	579	704	829	1036	1161	Los Angeles
Merced, CA MSA	371	451	531	684	776	Merced
Modesto, CA MSA	413	503	595	744	822	Stanislaus
Oakland, CA PMSA	581	706	832	1040	1165	Alameda, Contra Costa
Oxnard-Ventura, CA PMSA	554	674	793	991	1111	Ventura
Redding, CA MSA	394	479	565	705	791	Shasta
Riverside-San Bernardino, CA PMSA	470	555	647	838	943	Riverside, San Bernardino
Sacramento, CA MSA	417	497	595	864	918	El Dorado, Placer, Sacramento, Yolo
Salinas-Seaside-Monterey, CA MSA	473	575	675	847	948	Monterey
San Diego, CA MSA	503	618	725	908	1016	San Diego
San Francisco, CA PMSA	697	845	1002	1247	1397	Marin, San Francisco, San Mateo
San Jose, CA PMSA	643	780	920	1149	1288	Santa Clara
Santa Barbara-Santa Maria-Lompoc, CA MSA	534	649	765	959	1072	Santa Barbara
Santa Cruz, CA PMSA	623	756	893	1116	1249	Santa Cruz
Santa Rosa-Petaluma, CA PMSA	548	665	785	983	1100	Sonoma
Stockton, CA MSA	401	487	573	716	802	San Joaquin
Vallejo-Fairfield-Napa, CA PMSA	508	582	685	989	1066	Napa, Solano
Visalia-Tulare-Porterville, CA MSA	367	447	527	764	836	Tulare
Yuba City, CA MSA	324	396	466	614	689	Sutter, Yuba

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alpine	433	526	620	774	868
Calaveras	433	526	620	774	868
Del Norte	395	480	566	706	793
Humboldt	407	495	583	729	819
Inyo	433	526	620	774	868
Lake	395	480	566	706	793
Madera	357	434	510	642	717
Mendocino	427	464	610	763	854
Mono	433	526	620	774	868
Plumas	362	439	518	646	727
San Luis Obispo	490	596	702	878	985
Siskiyou	362	439	518	646	727
Trinity	395	480	566	706	793

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Amador	433	526	620	774	868
Colusa	326	398	469	590	661
Glenn	326	398	469	590	661
Imperial	410	499	588	735	823
Kings	357	434	510	639	717
Lassen	362	439	518	646	727
Mariposa	433	526	620	774	868
Modoc	362	439	518	646	727
Nevada	485	592	695	869	972
San Benito	404	492	620	796	894
Sierra	485	592	695	869	972
Tehama	362	439	518	646	727
Tuolumne	433	526	620	774	868

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

092492

COLORADO

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Boulder-Longmont, CO PMSA	421	511	601	752	841	Boulder
Colorado Springs, CO MSA	353	428	504	632	708	El Paso
Denver, CO PMSA	365	443	522	652	730	Adams, Arapahoe, Denver, Douglas, Jefferson
Fort Collins-Loveland, CO MSA	406	494	581	726	815	Larimer
Greeley, CO MSA	352	426	501	630	705	Weld
Pueblo, CO MSA	350	424	499	626	702	Pueblo

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alamosa	351	424	500	627	703
Baca	306	368	428	536	602
Chaffee	389	471	555	695	780
Clear Creek	389	471	555	695	780
Costilla	351	424	500	627	703
Custer	389	471	555	695	780
Delores	351	424	500	627	703
Elbert	299	364	428	536	602
Garfield	441	535	632	790	885
Grand	464	561	661	827	927
Hinsdale	464	561	661	827	927
Jackson	464	561	661	827	927
Kit Carson	299	364	428	536	602
La Plata	390	468	552	690	774
Lincoln	306	368	428	536	602
Mesa	441	535	632	790	885
Moffat	441	535	632	790	885
Montrose	464	561	661	827	927
Otero	306	368	428	536	602
Park	389	471	555	695	780
Pitkin	464	561	661	827	927
Rio Blanco	441	535	632	790	885
Routt	464	561	661	827	927
San Juan	351	424	500	627	703
Sedgwick	299	364	428	536	602
Teller	389	471	555	695	780
Yuma	299	364	428	536	602

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Archuleta	351	424	500	627	703
Bent	306	368	428	536	602
Cheyenne	299	364	428	536	602
Conejos	351	424	500	627	703
Crowley	306	368	428	536	602
Delta	464	561	661	827	927
Eagle	464	561	661	827	927
Fremont	389	471	555	695	780
Gilpin	389	471	555	695	780
Gunnison	464	561	661	827	927
Huerfano	351	424	500	627	703
Kiowa	306	368	428	536	602
Lake	389	471	555	695	780
Las Animas	351	424	500	627	703
Logan	299	364	428	536	602
Mineral	351	424	500	627	703
Montezuma	351	424	500	627	703
Morgan	299	364	428	536	602
Ouray	464	561	661	827	927
Phillips	299	364	428	536	602
Prowers	306	368	428	536	602
Rio Grande	351	424	500	627	703
Saguache	351	424	500	627	703
San Miguel	464	561	661	827	927
Summit	464	561	661	827	927
Washington	299	364	428	536	602

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

CONNECTICUT

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
Bridgeport-Milford, CT PMSA	510	619	731	912	1024	Fairfield county towns of Bridgeport, Easton Fairfield Monroe, Shelton, Stratford, Trumbull New Haven county towns of Ansonia, Beacon Falls, Derby Milford, Oxford, Seymour
Bristol, CT PMSA	416	504	594	744	834	Hartford county towns of Bristol, Burlington Litchfield county towns of Plymouth
Danbury, CT PMSA	552	673	791	991	1112	Fairfield county towns of Bethel, Brookfield, Danbury New Fairfield, Newtown, Redding, Ridgefield, Sherman Litchfield county towns of Bridgewater, New Milford
Hartford, CT PMSA	500	609	713	898	1002	Hartford county towns of Avon, Bloomfield, Canton East Granby, East Hartford, East Windsor, Enfield Farmington, Glastonbury, Granby, Hartford, Manchester Marlborough, Newington, Rocky Hill, Simsbury South Windsor, Suffield, West Hartford, Wethersfield Windsor, Windsor Locks Litchfield county towns of Barkhamsted, New Hartford Middlesex county towns of East Haddam New London county towns of Colchester Tolland county towns of Andover, Bolton, Columbia Coventry, Ellington, Hebron, Somers, Stafford, Tolland Vernon, Willington
Middletown, CT PMSA	421	511	604	756	847	Middlesex county towns of Cromwell, Durham, East Hampton Haddam, Middlefield, Middletown, Portland
New Britain, CT PMSA	445	541	637	797	894	Hartford county towns of Berlin, New Britain, Plainville Southington
New Haven-Meriden, CT MSA	539	655	773	968	1082	Middlesex county towns of Clinton, Killingworth New Haven county towns of Bethany, Branford, Cheshire East Haven, Guilford, Hamden, Madison, Meriden New Haven, North Branford, North Haven, Orange Wallingford, West Haven, Woodbridge
New London-Norwich, CT-RI MSA	479	583	684	856	960	New London county towns of Bozrah, East Lyme, Franklin Griswold, Groton, Ledyard, Lisbon, Montville, New London North Stonington, Norwich, Old Lyme, Preston, Salem Sprague, Stonington, Waterford Windham county towns of Canterbury
Norwalk, CT PMSA	588	714	842	1052	1180	Fairfield county towns of Norwalk, Weston, Westport Wilton
Stamford, CT PMSA	709	862	1015	1270	1421	Fairfield county towns of Darien, Greenwich, New Canaan Stamford
Waterbury, CT MSA	434	526	620	775	869	Litchfield county towns of Bethlehem, Thomaston Watertown, Woodbury New Haven county towns of Middlebury, Naugatuck, Prospect Southbury, Waterbury, Wolcott

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

C O N N E C T I C U T continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Hartford	413	501	591	740	829	Hartland
Litchfield	458	556	653	819	917	Canaan, Colebrook, Cornwall, Goshen, Harwinton, Kent Litchfield, Morris, Norfolk, North Canaan, Roxbury Salisbury, Sharon, Torrington, Warren, Washington Winchester
Middlesex	513	622	732	915	1026	Chester, Deep River, Essex, Old Saybrook, Westbrook
New London	365	445	525	658	738	Lebanon, Lyme, Voluntown
Tolland	496	603	708	888	994	Mansfield, Union
Windham	437	532	627	784	880	Ashford, Brooklyn, Chaplin, Eastford, Hampton, Killingly Plainfield, Pomfret, Putnam, Scotland, Sterling Thompson, Windham, Woodstock

D E L A W A R E

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Wilmington, DE-NJ-MD PMSA	454	542	646	808	961	New Castle

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Kent	385	467	550	687	770

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Sussex	385	467	550	687	770

D I S T . O F C O L U M B I A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Washington, DC-MD-VA MSA	597	725	854	1067	1195	Washington

F L O R I D A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Bradenton, FL MSA	380	463	545	682	764	Manatee
Daytona Beach, FL MSA	369	447	526	658	738	Volusia
Fort Lauderdale-Hollywood-Pompano Beach, FL PMSA	472	573	674	843	944	Broward
Fort Myers-Cape Coral, FL MSA	391	474	559	701	786	Lee
Fort Pierce, FL MSA	391	474	559	701	786	Martin, St Lucie
Fort Walton Beach, FL MSA	261	316	373	467	523	Okaloosa
Gainesville, FL MSA	331	403	473	594	663	Alachua, Bradford
Jacksonville, FL MSA	346	420	497	620	696	Clay, Duval, Nassau, St Johns
Lakeland-Winter Haven, FL MSA	311	380	448	560	627	Polk
Melbourne-Titusville-Palm Bay, FL MSA	357	429	506	634	711	Brevard
Miami-Hialeah, FL PMSA	504	611	719	899	1007	Dade
Naples, FL MSA	402	488	574	719	805	Collier

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

F L O R I D A continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Ocala, FL MSA	311	402	445	556	622	Marion
Orlando, FL MSA	382	466	548	667	746	Orange, Osceola, Seminole
Panama City, FL MSA	276	338	398	499	557	Bay
Pensacola, FL MSA	309	378	445	556	622	Escambia, Santa Rosa
Sarasota, FL MSA	412	501	591	737	828	Sarasota
Tallahassee, FL MSA	327	396	467	585	654	Gadsden, Leon
Tampa-St. Petersburg-Clearwater, FL MSA	373	453	534	665	747	Hernando, Hillsborough, Pasco, Pinellas
West Palm Beach-Boca Raton-Delray Beach, FL MSA	400	477	556	680	749	Palm Beach

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Baker	252	304	357	448	504
Charlotte	377	460	540	674	757
Columbia	258	313	368	462	517
Dixie	229	282	332	414	466
Franklin	213	258	303	380	426
Glades	377	460	540	674	757
Hamilton	229	282	332	414	466
Hendry	377	460	540	674	757
Holmes	248	299	353	443	496
Jackson	221	267	315	396	444
Lafayette	229	282	332	414	466
Levy	288	350	411	515	577
Madison	229	282	332	414	466
Okeechobee	269	329	387	485	543
Sumter	288	348	411	515	577
Taylor	229	282	332	414	466
Wakulla	273	332	390	488	548
Washington	248	301	354	445	497

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Calhoun	213	258	303	380	426
Citrus	288	348	411	515	577
De Soto	269	329	387	485	543
Flagler	291	351	414	519	583
Gilchrist	229	282	332	414	466
Gulf	213	258	303	380	426
Hardee	269	329	387	485	543
Highlands	269	329	387	485	543
Indian River	390	473	557	699	783
Jefferson	213	258	303	380	426
Lake	303	368	432	542	609
Liberty	213	258	303	380	426
Monroe	443	537	711	851	924
Putnam	291	351	414	519	583
Suwannee	229	282	332	414	466
Union	229	282	332	414	466
Walton	290	350	413	518	581

G E O R G I A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Albany, GA MSA	287	346	410	512	574	Dougherty, Lee
Athens, GA MSA	296	360	424	531	595	Clarke, Jackson, Madison, Oconee
Atlanta, GA MSA	405	492	580	725	813	Barrow, Butts, Cherokee, Clayton, Cobb, Coweta, De Kalb Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry Newton, Paulding, Rockdale, Spalding, Walton
Augusta, GA-SC MSA	301	365	424	531	595	Columbia, Mcduffie, Richmond
Chattanooga, TN-GA MSA	320	390	460	575	647	Catoosa, Dade, Walker
Columbus, GA-AL MSA	266	320	380	476	536	Chattahoochee, Columbus

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G E O R G I A continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Macon-Warner Robins, GA MSA	297	365	429	536	597	Bibb, Houston, Jones, Peach
Savannah, GA MSA	301	368	432	540	606	Chatham, Effingham

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Appling	247	299	353	441	495
Bacon	230	280	330	413	465
Baldwin	233	286	336	420	471
Barton	250	304	358	448	504
Berrien	245	296	348	437	489
Brantley	230	280	330	413	465
Bryan	285	330	390	488	548
Burke	234	287	337	423	473
Camden	271	330	390	488	548
Carroll	285	343	404	506	565
Chattooga	250	304	358	448	504
Clinch	230	280	330	413	465
Colquitt	236	290	340	426	476
Crawford	199	244	286	357	399
Dawson	224	276	322	400	445
Dodge	238	293	340	427	471
Early	238	293	340	427	476
Elbert	226	275	324	407	456
Evans	247	299	353	441	495
Floyd	250	304	358	448	504
Gilmer	266	324	381	477	536
Glynn	271	330	390	488	548
Grady	238	293	340	427	476
Habersham	249	301	356	445	499
Hancock	238	293	340	427	471
Harris	244	296	343	428	476
Heard	263	320	378	473	530
Jasper	238	293	340	427	471
Jefferson	234	287	337	423	473
Johnson	238	293	340	427	471
Lanier	245	296	348	437	489
Liberty	271	330	390	488	548
Long	271	330	390	488	548
Lumpkin	224	276	322	400	445
Macon	238	293	340	427	476
Meriwether	263	320	378	473	530

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Atkinson	230	280	330	413	465
Baker	238	293	340	427	476
Banks	221	269	317	397	445
Ben Hill	245	296	348	437	489
Bleckley	238	293	340	427	471
Brooks	245	296	348	437	489
Bulloch	247	299	353	441	495
Calhoun	238	293	340	427	476
Candler	247	299	353	441	495
Charlton	238	292	340	419	465
Clay	238	293	340	427	476
Coffee	230	280	330	413	465
Cook	245	296	348	437	489
Crisp	236	290	340	426	476
Decatur	238	293	340	427	476
Dooly	238	293	340	427	476
Echols	245	296	348	437	489
Emanuel	234	287	337	423	473
Fannin	266	324	381	477	536
Franklin	221	269	317	397	445
Glascock	234	287	337	423	473
Gordon	250	304	358	448	504
Greene	224	271	320	401	449
Hall	319	384	457	570	643
Haralson	250	304	358	448	504
Hart	221	269	317	397	445
Irwin	245	296	348	437	489
Jeff Davis	247	299	353	441	495
Jenkins	234	287	337	423	473
Lamar	220	266	315	395	441
Laurens	233	286	336	420	471
Lincoln	234	287	337	423	473
Lowndes	245	296	348	437	489
Mcintosh	271	330	390	488	548
Marion	244	296	343	428	476
Miller	238	293	340	427	476

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

G E O R G I A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Mitchell	238	293	340	427	476
Montgomery	244	297	348	430	476
Murray	266	324	381	477	536
Pickens	266	324	381	477	536
Pike	220	266	315	395	441
Pulaski	238	293	340	427	471
Quitman	236	290	340	426	476
Randolph	238	293	340	427	476
Screven	244	297	348	430	476
Stephens	260	319	374	469	522
Sumter	265	325	384	479	539
Taliaferro	234	287	337	423	473
Taylor	238	293	340	427	476
Terrell	238	293	340	427	476
Tift	245	296	348	437	489
Towns	224	276	322	400	445
Troup	269	325	382	476	532
Twiggs	199	244	286	357	399
Upson	220	266	315	395	441
Warren	234	287	337	423	473
Wayne	247	299	353	441	495
Wheeler	238	293	340	427	471
Whitfield	266	324	381	477	536
Wilkes	234	287	337	423	473
Worth	238	293	340	427	476

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Monroe	199	244	286	357	399
Morgan	224	271	320	401	449
Oglethorpe	224	271	320	401	449
Pierce	230	280	330	413	465
Polk	250	306	358	448	504
Putnam	238	293	340	427	471
Rabun	224	276	322	400	445
Schley	244	296	343	428	476
Seminole	238	293	340	427	476
Stewart	244	296	343	428	476
Talbot	236	290	340	426	476
Tattnall	247	299	353	441	495
Telfair	238	293	340	427	471
Thomas	277	337	397	499	558
Toombs	247	299	353	441	495
Treutlen	238	293	340	427	471
Turner	245	296	348	437	489
Union	224	276	322	400	445
Ware	230	280	330	413	465
Washington	238	293	340	427	471
Webster	244	296	343	428	476
White	224	276	322	400	445
Wilcox	238	293	340	427	471
Wilkinson	238	293	340	427	471

H A W A I I

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Honolulu, HI MSA	643	782	920	1158	1297	Honolulu

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Hawaii	505	612	720	903	1010
Maui	596	724	852	1066	1193
Kauai	629	767	901	1127	1262

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I D A H O

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Boise City, ID MSA	414	503	594	742	832	Ada

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	321	392	462	576	647
Bear Lake	334	405	478	600	672
Bingham	336	410	478	600	672
Boise	321	392	462	576	647
Bonneville	361	437	517	646	724
Butte	361	437	517	646	724
Canyon	321	392	462	576	647
Cassia	342	415	490	612	688
Clearwater	334	405	478	600	672
Elmore	321	392	462	576	647
Fremont	361	437	517	646	724
Gooding	342	415	490	612	688
Jefferson	361	437	517	646	724
Kootenai	334	405	478	600	672
Lemhi	361	437	517	646	724
Lincoln	342	415	490	612	688
Minidoka	342	415	490	612	688
Oneida	334	405	478	600	672
Payette	321	392	462	576	647
Shoshone	334	405	478	600	672
Twin Falls	342	415	490	612	688
Washington	321	392	462	576	647

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Bannock	336	410	478	600	672
Benewah	334	405	478	600	672
Blaine	342	415	490	612	688
Bonner	334	405	478	600	672
Boundary	334	405	478	600	672
Camas	342	415	490	612	688
Caribou	336	410	478	600	672
Clark	361	437	517	646	724
Custer	361	437	517	646	724
Franklin	334	405	478	600	672
Gem	321	392	462	576	647
Idaho	334	405	478	600	672
Jerome	342	415	490	612	688
Latah	334	405	478	600	672
Lewis	334	405	478	600	672
Madison	361	437	517	646	724
Nez Perce	334	405	478	600	672
Owyhee	321	392	462	576	647
Power	336	410	478	600	672
Teton	361	437	517	646	724
Valley	321	392	462	576	647

I L L I N O I S

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Aurora-Elgin, IL PMSA	490	598	705	880	989	Kane, Kendall
Bloomington-Normal, IL MSA	343	419	491	614	688	Mclean
Champaign-Urbana-Rantoul, IL MSA	332	403	476	598	668	Champaign
Chicago, IL PMSA	480	591	692	870	974	Cook, Du Page, Mchenry
Davenport-Rock Island-Moline, IA-IL MSA	368	448	528	659	738	Henry, Rock Island
Decatur, IL MSA	332	403	476	598	668	Macon
Joliet, IL PMSA	495	603	713	891	1001	Grundy, Will
Kankakee, IL MSA	329	399	471	590	662	Kankakee
Lake County, IL PMSA	509	618	725	912	1021	Lake
Peoria, IL MSA	387	469	552	692	774	Peoria, Tazewell, Woodford

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

I L L I N O I S continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Rockford, IL MSA	350	427	502	627	702	Boone, Winnebago
St. Louis, MO-IL MSA	351	426	503	628	704	Clinton, Jersey, Madison, Monroe, St Clair
Springfield, IL MSA	351	428	503	629	704	Menard, Sangamon

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	259	314	370	464	520
Bond	283	347	408	511	572
Bureau	315	385	454	566	635
Carroll	292	356	421	526	588
Christian	300	363	428	536	601
Clay	267	324	384	479	537
Cranford	267	324	384	479	537
De Kalb	381	463	546	682	763
Douglas	283	347	408	511	572
Edwards	259	314	370	464	520
Fayette	267	324	384	479	537
Franklin	303	366	433	544	608
Gallatin	239	290	344	429	481
Hamilton	259	314	370	464	520
Hardin	239	290	344	429	481
Iroquois	297	360	425	533	597
Jasper	267	324	384	479	537
Jo Daviess	292	356	421	526	588
Knox	308	374	437	550	617
Lawrence	267	324	384	479	537
Livingston	297	360	425	533	597
Mcdonough	283	346	402	502	559
Marion	267	324	384	479	537
Mason	297	357	423	523	582
Mercer	277	337	396	498	559
Morgan	297	357	423	523	582
Ogle	292	356	421	526	588
Piatt	283	347	408	511	572
Pope	239	290	344	429	481
Putnam	315	385	454	566	635
Richland	267	324	384	479	537
Schuyler	259	314	370	464	520
Shelby	300	363	428	536	601
Stephenson	292	356	421	526	588
Vermilion	297	360	425	533	597

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alexander	239	290	344	429	481
Brown	259	314	370	464	520
Calhoun	289	353	417	519	582
Cass	297	357	423	523	582
Clark	283	347	408	511	572
Coles	283	347	408	511	572
Cumberland	283	347	408	511	572
De Witt	283	347	408	511	572
Edgar	283	347	408	511	572
Effingham	267	324	384	479	537
Ford	297	360	425	533	597
Fulton	315	385	454	566	635
Greene	289	353	417	519	582
Hancock	277	337	396	498	559
Henderson	277	337	396	498	559
Jackson	303	366	433	544	608
Jefferson	291	354	422	526	586
Johnson	239	290	344	429	481
La Salle	358	434	512	642	719
Lee	358	434	512	642	719
Logan	297	357	423	523	582
Macoupin	300	363	428	536	601
Marshall	315	385	454	566	635
Massac	239	290	344	429	481
Montgomery	300	363	428	536	601
Moultrie	300	363	428	536	601
Perry	283	347	408	511	572
Pike	259	314	370	464	520
Pulaski	239	290	344	429	481
Randolph	283	347	408	511	572
Saline	239	290	344	429	481
Scott	297	357	423	523	582
Stark	315	385	454	566	635
Union	239	290	344	429	481
Wabash	259	314	370	464	520

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

ILLINOIS continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Warren	283	346	402	502	559
Wayne	259	314	370	464	520
Whiteside	358	434	512	642	719
Washington	283	347	408	511	572
White	259	314	370	464	520
Williamson	303	366	433	544	608

INDIANA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Anderson, IN MSA	284	346	406	510	573	Madison
Bloomington, IN MSA	307	373	440	551	617	Monroe
Cincinnati, OH-KY-IN PMSA	342	415	489	611	684	Dearborn
Elkhart-Goshen, IN MSA	301	364	429	538	603	Elkhart
Evansville-Henderson, IN-KY MSA	315	376	441	553	619	Posey, Vanderburgh, Warrick
Fort Wayne, IN MSA	315	381	444	557	619	Allen, De Kalb, Whitley
Gary-Hammond, IN PMSA	392	476	561	702	787	Lake, Porter
Indianapolis, IN MSA	355	432	508	635	711	Boone, Hamilton, Hancock, Hendricks, Johnson, Marion Morgan, Shelby
Kokomo, IN MSA	312	382	447	561	629	Howard, Tipton
Lafayette-West Lafayette, IN MSA	331	403	474	592	665	Tippecanoe
Louisville, KY-IN MSA	287	347	408	508	570	Clark, Floyd, Harrison
Muncie, IN MSA	272	328	387	480	538	Delaware
South Bend-Mishawaka, IN MSA	309	374	437	543	605	St Joseph
Terre Haute, IN MSA	280	342	399	497	551	Clay, Vigo

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	276	336	391	490	549
Benton	265	323	381	477	534
Brown	312	381	448	563	631
Cass	274	335	394	493	552
Crawford	228	278	327	412	463
Decatur	312	381	448	563	631
Fayette	269	325	381	477	534
Franklin	269	325	381	477	534
Gibson	299	362	426	534	599
Greene	258	312	371	465	519
Huntington	273	334	391	490	549
Jasper	276	337	396	497	556
Jefferson	299	362	426	534	599
Knox	265	319	371	465	519
Lagrange	284	344	405	508	571
Lawrence	287	350	413	517	578
Bartholomew	312	381	448	563	631
Blackford	251	305	359	448	504
Carroll	265	323	381	477	534
Clinton	265	323	381	477	534
Daviess	258	312	371	465	519
Dubois	228	278	327	412	463
Fountain	265	323	381	477	534
Fulton	266	322	379	478	534
Grant	251	305	359	448	504
Henry	251	305	359	448	504
Jackson	312	381	448	563	631
Jay	251	305	359	448	504
Jennings	312	381	448	563	631
Kosciusko	288	349	411	506	566
La Porte	302	367	431	539	606
Marshall	276	337	396	497	556

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

I N D I A N A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Martin	258	312	371	465	519
Montgomery	265	323	381	477	534
Noble	283	344	405	508	571
Orange	228	278	327	412	463
Parke	265	323	381	477	534
Pike	299	362	426	534	599
Putnam	300	365	429	536	600
Ripley	299	362	426	534	599
Scott	284	345	408	510	573
Starke	276	337	396	497	556
Sullivan	265	323	381	477	534
Union	269	325	381	477	534
Wabash	257	311	368	463	517
Washington	307	374	440	551	617
Wells	280	337	392	493	549

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Miami	274	335	394	493	552
Newton	276	337	396	497	556
Ohio	299	362	426	534	599
Owen	304	370	434	544	610
Perry	228	278	327	412	463
Pulaski	276	337	396	497	556
Randolph	251	305	359	448	504
Rush	265	323	381	477	534
Spencer	228	278	327	412	463
Steuben	283	344	405	508	571
Switzerland	299	362	426	534	599
Vermillion	274	334	389	484	537
Warren	265	323	381	477	534
Wayne	270	326	384	477	534
White	265	323	381	477	534

I O W A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Cedar Rapids, IA MSA	359	433	510	640	719	Linn
Davenport-Rock Island-Moline, IA-IL MSA	368	448	528	659	738	Scott
Des Moines, IA MSA	355	432	509	639	716	Dallas, Polk, Warren
Dubuque, IA MSA	331	400	472	592	662	Dubuque
Iowa City, IA MSA	374	457	537	672	753	Johnson
Omaha, NE-IA MSA	326	395	464	581	655	Pottawattamie
Sioux City, IA-NE MSA	322	392	461	576	647	Woodbury
Waterloo-Cedar Falls, IA MSA	360	434	512	642	721	Black Hawk, Bremer

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adair	265	324	380	479	534
Allamakee	281	341	403	504	565
Audubon	282	343	406	506	567
Boone	322	390	459	575	645
Buena Vista	277	335	396	494	556
Calhoun	282	343	406	506	567
Cass	290	353	414	519	582
Cerro Gordo	279	339	400	499	560
Chickasaw	281	341	403	504	565
Clay	277	335	396	494	556
Clinton	314	380	451	563	632

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	265	324	380	479	534
Appanoose	265	324	380	479	534
Benton	276	334	394	493	553
Buchanan	281	341	403	504	565
Butler	281	341	403	504	565
Carroll	282	343	406	506	567
Cedar	314	380	451	563	632
Cherokee	282	343	406	506	567
Clarke	265	324	380	479	534
Clayton	281	341	403	504	565
Crawford	282	343	406	506	567

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

I O W A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Davis	265	324	380	479	534
Delaware	314	380	451	563	632
Dickinson	277	335	396	494	556
Fayette	281	341	403	504	565
Franklin	279	339	400	499	560
Greene	282	343	406	506	567
Guthrie	282	343	406	506	567
Hancock	279	339	400	499	560
Harrison	290	353	414	519	582
Howard	281	341	403	504	565
Ida	282	343	406	506	567
Jackson	314	380	451	563	632
Jefferson	294	358	420	527	591
Keokuk	277	335	396	494	556
Lee	295	360	423	529	594
Lucas	265	324	380	479	534
Madison	297	363	426	533	598
Marion	297	363	426	533	598
Mills	290	353	414	519	582
Monona	282	343	406	506	567
Montgomery	290	353	414	519	582
O Brien	277	335	396	494	556
Page	290	353	414	519	582
Plymouth	282	343	406	506	567
Poweshiek	293	357	419	525	590
Sac	282	343	406	506	567
Sioux	277	335	396	494	556
Tama	293	357	419	525	590
Union	265	324	380	479	534
Wapello	314	379	450	561	630
Wayne	265	324	380	479	534
Winnebago	279	339	400	499	560
Worth	279	339	400	499	560

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Decatur	265	324	380	479	534
Des Moines	295	360	423	529	594
Emmet	277	335	396	494	556
Floyd	279	339	400	499	560
Fremont	290	353	414	519	582
Grundy	281	341	403	504	565
Hamilton	282	343	406	506	567
Hardin	293	357	419	525	590
Henry	295	360	423	529	594
Humboldt	282	343	406	506	567
Iowa	276	334	394	493	553
Jasper	297	363	426	533	598
Jones	276	334	394	493	553
Kossuth	279	339	400	499	560
Louisa	295	360	423	529	594
Lyon	277	335	396	494	556
Mahaska	265	324	380	479	534
Marshall	293	357	419	525	590
Mitchell	279	339	400	499	560
Monroe	265	324	380	479	534
Muscatine	295	360	423	529	594
Osceola	277	339	396	494	556
Palo Alto	277	335	396	494	556
Pocahontas	282	343	406	506	567
Ringgold	265	324	380	479	534
Shelby	290	353	414	519	582
Story	322	390	459	575	645
Taylor	265	324	380	479	534
Van Buren	265	324	380	479	534
Washington	276	334	394	493	553
Webster	282	343	406	506	567
Winneshiek	281	341	403	504	565
Wright	282	343	406	506	567

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

K A N S A S

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Kansas City, MO-KS MSA	342	416	489	611	685	Johnson, Leavenworth, Miami, Wyandotte
Lawrence, KS MSA	361	438	516	644	724	Douglas
Topeka, KS MSA	327	398	467	588	656	Shawnee
Wichita, KS MSA	348	423	503	627	698	Butler, Harvey, Sedgwick

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Allen	224	272	320	400	451
Atchison	258	313	369	463	519
Barton	259	315	372	465	521
Brown	258	313	369	463	519
Chautauqua	224	272	320	400	451
Cheyenne	226	275	323	406	455
Clay	282	344	406	508	567
Coffey	282	344	406	508	567
Cowley	224	272	320	400	451
Decatur	226	275	323	406	455
Doniphan	258	313	369	463	519
Elk	224	272	320	400	451
Ellsworth	280	341	401	504	563
Ford	265	323	380	478	535
Geary	282	344	406	508	567
Graham	226	275	323	406	455
Gray	265	323	380	478	535
Greenwood	282	344	406	508	567
Harper	259	315	372	465	521
Hodgeman	265	323	380	478	535
Jefferson	245	298	352	437	492
Kearny	265	323	380	478	535
Kiowa	259	315	372	465	521
Lane	265	323	380	478	535
Linn	224	272	320	400	451
Lyon	282	344	406	508	567
Marion	282	344	406	508	567
Meade	265	323	380	478	535
Montgomery	237	289	340	426	478
Morton	265	323	380	478	535
Neosho	237	289	340	426	478
Norton	226	275	323	406	455
Osborne	226	275	323	406	455
Pawnee	259	315	372	465	521

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Anderson	224	272	320	400	451
Barber	259	315	372	465	521
Bourbon	224	272	320	400	451
Chase	282	344	406	508	567
Cherokee	237	289	340	426	478
Clark	265	323	380	478	535
Cloud	280	341	401	504	563
Comanche	259	315	372	465	521
Crawford	237	289	340	426	478
Dickinson	282	344	406	508	567
Edwards	259	315	372	465	521
Ellis	226	275	323	406	455
Finney	265	323	380	478	535
Franklin	245	297	351	436	490
Gove	226	275	323	406	455
Grant	265	323	380	478	535
Greeley	265	323	380	478	535
Hamilton	265	323	380	478	535
Haskell	265	323	380	478	535
Jackson	258	313	369	463	519
Jewell	280	341	401	504	563
Kingman	259	315	372	465	521
Labette	237	289	340	426	478
Lincoln	280	341	401	504	563
Logan	226	275	323	406	455
Mcpherson	298	362	428	535	598
Marshall	282	344	406	508	567
Mitchell	280	341	401	504	563
Morris	282	344	406	508	567
Nemaha	258	313	369	463	519
Ness	265	323	380	478	535
Osage	245	298	352	437	492
Ottawa	280	341	401	504	563
Phillips	226	275	323	406	455

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

K A N S A S continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Pottawatomie	282	344	406	508	567
Rawlins	226	275	323	406	455
Republic	280	341	401	504	563
Riley	282	344	406	508	567
Rush	259	315	372	465	521
Saline	280	341	401	504	563
Seward	265	323	380	478	535
Sherman	226	275	323	406	455
Stafford	259	315	372	465	521
Stevens	265	323	380	478	535
Thomas	226	275	323	406	455
Wabaunsee	282	344	406	508	567
Washington	280	341	401	504	563
Wilson	224	272	320	400	451
Pratt	259	315	372	465	521
Reno	298	362	428	535	598
Rice	298	362	428	535	598
Rooks	226	275	323	406	455
Russell	226	275	323	406	455
Scott	265	323	380	478	535
Sheridan	226	275	323	406	455
Smith	226	275	323	406	455
Stanton	265	323	380	478	535
Sumner	259	315	372	465	521
Trego	226	275	323	406	455
Wallace	226	275	323	406	455
Wichita	265	323	380	478	535
Woodson	224	272	320	400	451

K E N T U C K Y

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Cincinnati, OH-KY-IN PMSA	342	415	489	611	684	Boone, Campbell, Kenton
Clarksville-Hopkinsville, TN-KY MSA	297	374	468	569	632	Christian
Evansville-Henderson, IN-KY MSA	315	376	441	553	619	Henderson
Huntington-Ashland, WV-KY-OH MSA	320	389	460	575	647	Boyd, Carter, Greenup
Lexington-Fayette, KY MSA	332	405	474	596	667	Bourbon, Clark, Fayette, Jessamine, Scott, Woodford
Louisville, KY-IN MSA	287	347	408	508	570	Bullitt, Jefferson, Oldham, Shelby
Owensboro, KY MSA	260	315	373	465	522	Daviess

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adair	245	297	346	428	478
Anderson	304	371	436	545	611
Barren	259	314	373	464	522
Bell	263	322	379	473	532
Bracken	245	296	348	437	490
Breckinridge	238	293	343	430	480
Caldwell	260	316	376	469	526
Carlisle	250	303	355	446	500
Casey	237	291	342	428	478
Clinton	245	297	346	428	478
Cumberland	245	297	346	428	478
Elliott	224	271	322	403	451
Fleming	245	296	348	437	490
Allen	205	250	294	367	411
Ballard	250	303	355	446	500
Bath	245	296	348	437	490
Boyle	296	357	423	529	593
Breathitt	251	304	357	448	502
Butler	205	250	294	367	411
Calloway	250	303	355	446	500
Carroll	251	305	357	449	502
Clay	224	271	320	401	450
Crittenden	260	316	376	469	526
Edmonson	205	250	294	367	411
Estill	296	357	423	529	593
Floyd	264	323	380	475	534

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

K E N T U C K Y continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Franklin	304	371	436	545	611
Gallatin	251	305	357	449	502
Grant	251	305	357	449	502
Grayson	238	293	343	430	480
Hancock	253	307	363	454	507
Harlan	263	322	379	473	532
Hart	205	250	294	367	411
Hickman	250	303	355	446	500
Jackson	224	271	320	401	450
Knott	251	304	357	448	502
Larue	238	293	343	430	480
Lawrence	224	271	322	403	451
Leslie	251	304	357	448	502
Lewis	245	296	348	437	490
Livingston	225	273	323	404	452
Lyon	225	273	323	404	452
Mccreary	245	297	346	428	478
Madison	296	357	427	529	593
Marion	238	293	343	430	480
Martin	264	323	380	475	534
Meade	270	331	389	488	546
Mercer	304	371	436	545	611
Monroe	205	250	294	367	411
Morgan	245	297	348	437	490
Nelson	238	293	343	430	480
Ohio	253	307	363	454	507
Owsley	251	304	357	448	502
Perry	251	304	357	448	502
Powell	220	266	314	395	444
Robertson	245	296	348	437	490
Rowan	245	296	348	437	490
Simpson	261	318	377	471	528
Taylor	245	297	346	428	478
Trigg	225	273	323	404	452
Union	253	307	363	454	507
Washington	238	293	343	430	480
Webster	253	307	363	454	507
Wolfe	251	304	357	448	502

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Fulton	250	303	355	446	500
Garrard	296	357	423	529	593
Graves	250	303	355	446	500
Green	245	297	346	428	478
Hardin	270	331	389	488	546
Harrison	296	359	423	528	592
Henry	223	270	318	400	448
Hopkins	260	316	376	469	526
Johnson	264	323	380	475	534
Knox	260	314	369	462	516
Laurel	224	313	395	410	450
Lee	251	304	357	448	502
Letcher	251	304	357	448	502
Lincoln	296	357	423	529	593
Logan	261	318	377	471	528
Mccracken	260	306	360	446	500
Mclean	253	307	363	454	507
Magoffin	264	323	380	475	534
Marshall	260	306	360	446	500
Mason	245	296	348	437	490
Menifee	245	297	348	437	490
Metcalfe	205	250	294	367	411
Montgomery	245	296	348	437	490
Muhlenberg	260	316	376	469	526
Nicholas	220	266	314	395	444
Owen	251	305	357	449	502
Pendleton	251	305	357	449	502
Pike	264	323	380	475	534
Pulaski	245	297	346	428	478
Rockcastle	224	271	320	401	450
Russell	237	291	342	428	478
Spencer	223	270	318	400	448
Todd	225	273	323	404	452
Trimble	223	270	318	400	448
Warren	261	318	377	471	528
Wayne	245	297	346	428	478
Whitley	263	322	379	473	532

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

092492

L O U I S I A N A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Alexandria, LA MSA	280	342	402	503	562	Rapides
Baton Rouge, LA MSA	353	428	504	630	707	Ascension, East Baton Rouge, Livingston, West Baton Rouge
Houma-Thibodaux, LA MSA	312	379	447	558	626	Lafourche, Terrebonne
Lafayette, LA MSA	353	428	504	630	707	Lafayette, St Martin
Lake Charles, LA MSA	288	350	412	515	576	Calcasieu
Monroe, LA MSA	279	341	400	501	560	Ouachita
New Orleans, LA MSA	316	383	451	564	631	Jefferson, Orleans, St Bernard, St Charles, St John The St Tammany
Shreveport, LA MSA	317	385	457	570	638	Bossier, Caddo

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Acadia	237	291	343	427	480
Assumption	206	251	294	369	414
Beauregard	189	231	274	344	383
Caldwell	217	261	309	380	426
Catahoula	234	286	339	423	473
Concordia	234	286	339	423	473
East Carroll	188	230	272	341	379
Evangeline	228	277	325	410	459
Grant	234	286	339	423	473
Iberville	197	241	283	354	398
Jefferson Davis	189	231	274	344	383
Lincoln	246	301	353	441	495
Morehouse	188	230	272	341	379
Plaquemines	347	419	495	619	694
Red River	246	301	353	441	495
Sabine	246	301	353	441	495
St James	206	251	294	369	414
St Mary	282	345	405	505	566
Tensas	188	230	272	341	379
Vermilion	237	291	343	427	480
Washington	223	272	318	401	448
West Carroll	188	230	272	341	379
Winn	234	286	339	423	473

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Allen	189	231	274	344	383
Avoyelles	234	286	339	423	473
Bienville	246	301	353	441	495
Cameron	189	231	274	344	383
Claiborne	246	301	353	441	495
De Soto	246	301	353	441	495
E Feliciana	197	241	283	354	398
Franklin	188	230	272	341	379
Iberia	282	345	405	505	566
Jackson	188	230	272	341	379
La Salle	234	286	339	423	473
Madison	188	230	272	341	379
Natchitoches	246	301	353	441	495
Pointe Coupee	197	241	283	354	398
Richland	188	230	272	341	379
St Helena	197	241	283	354	398
St Landry	228	277	325	410	459
Tangipahoa	223	272	318	401	448
Union	188	230	272	341	379
Vernon	234	286	339	423	473
Webster	214	259	306	381	428
W Feliciana	197	241	283	354	398

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

M A I N E

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
Bangor, ME MSA	369	448	528	662	742	Penobscot county towns of Bangor, Brewer, Eddington Glenburn, Hampden, Hermon, Holden, Kenduskeag, Old Town Orono, Orrington, Penobscot Indian I, Veazie Waldo county towns of Winterport
Lewiston-Auburn, ME MSA	388	462	523	585	666	Androscoggin county towns of Auburn, Greene, Lewiston Lisbon, Mechanic Falls, Poland, Sabattus
Portland, ME MSA	454	577	731	819	984	Cumberland county towns of Cape Elizabeth, Cumberland Falmouth, Freeport, Gorham, Gray, North Yarmouth Portland, Raymond, Scarborough, South Portland, Standish Westbrook, Windham, Yarmouth York county towns of Buxton, Hollis, Old Orchard Beach
Portsmouth-Dover-Rochester, NH-ME MSA	488	594	697	874	979	York county towns of Berwick, Eliot, Kittery North Berwick, South Berwick, Wells, York

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Androscoggin	335	396	467	573	634	Durham, Leeds, Livermore, Livermore Falls, Minot, Turner Wales
Aroostook	340	414	488	610	685	
Cumberland	377	459	540	671	747	Baldwin, Bridgton, Brunswick, Casco, Harpswell, Harrison Naples, New Gloucester, Pownal, Sebago
Franklin	355	402	479	566	643	
Hancock	357	425	498	623	695	
Kennebec	357	435	513	643	718	
Knox	345	420	495	621	695	
Lincoln	340	413	487	610	684	
Oxford	355	402	479	566	643	
Penobscot	352	425	495	621	695	Alton, Argyle, Bradford, Bradley, Burlington, Carmel Carroll, Charleston, Chester, Clifton, Corinna, Corinth Dexter, Dixmont, Drew, East Millinocket, Edinburg Enfield, Etna, Exeter, Garland, Grand Falls, Greenbush Greenfield, Howland, Hudson, Kingman, Lagrange Lakeville, Lee, Levant, Lincoln, Lowell, Mattawamkeag Maxfield, Medway, Milford, Millinocket, Mount Chase Newburgh, Newport, North Penobscot, Passadumkeag, Patten Plymouth, Prentiss, Seboeis, Springfield, Stacyville Stetson, Summit, Twombly, Webster, Whitney, Winn Woodville
Piscataquis	293	357	421	531	593	
Sagadahoc	391	526	566	662	776	
Somerset	340	413	487	610	684	
Waldo	345	420	495	621	695	Belfast, Belmont, Brooks, Burnham, Frankfort, Freedom Islesboro, Jackson, Knox, Liberty, Lincolnville, Monroe Montville, Morrill, Northport, Palermo, Prospect Searsmont, Searsport, Stockton Springs, Swanville Thorndike, Troy, Unity, Waldo

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

M A I N E continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Washington	345	420	495	621	695	
York	432	508	643	662	803	Acton, Alfred, Arundel, Biddeford, Cornish, Dayton Kennebunk, Kennebunkport, Lebanon, Limerick, Limington Lyman, Newfield, Parsonsfield, Saco, Sanford, Shapleigh Waterboro

M A R Y L A N D

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Baltimore, MD MSA	414	504	593	742	831	Anne Arundel, Baltimore, Carroll, Harford, Howard Queen Annes, Baltimore
Columbia, MD	539	654	770	963	1078	Columbia
Cumberland, MD-WV MSA	294	350	411	507	566	Allegany
Hagerstown, MD MSA	329	400	472	591	660	Washington
Washington, DC-MD-VA MSA	597	725	854	1067	1195	Calvert, Charles, Frederick, Montgomery, Prince George'S
Wilmington, DE-NJ-MD PMSA	454	542	646	808	961	Cecil

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Caroline	310	372	437	549	616
Garrett	294	358	422	526	591
St Marys	449	544	634	796	880
Talbot	354	431	507	635	711
Worcester	319	391	456	570	639
Dorchester	317	385	456	570	639
Kent	322	394	464	582	651
Somerset	317	385	456	570	639
Wicomico	378	463	542	678	759

M A S S A C H U S E T T S

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
Boston, MA PMSA	566	647	809	1011	1133	Bristol county towns of Mansfield, Norton, Raynham Essex county towns of Lynn, Lynnfield, Nahant, Saugus Middlesex county towns of Acton, Arlington, Ashland, Ayer Bedford, Belmont, Boxborough, Burlington, Cambridge Carlisle, Concord, Everett, Framingham, Groton Holliston, Hopkinton, Hudson, Lexington, Lincoln Littleton, Malden, Marlborough, Maynard, Medford Melrose, Natick, Newton, North Reading, Reading Sherborn, Shirley, Somerville, Stoneham, Stow, Sudbury Townsend, Wakefield, Waltham, Watertown, Wayland, Weston Wilmington, Winchester, Woburn Norfolk county towns of Bellingham, Braintree, Brookline Canton, Cohasset, Dedham, Dover, Foxborough, Franklin Holbrook, Medfield, Medway, Millis, Milton, Needham Norfolk, Norwood, Quincy, Randolph, Sharon, Stoughton Walpole, Wellesley, Westwood, Weymouth, Wrentham Plymouth county towns of Carver, Duxbury, Hanover, Hanson

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092592

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

M A S S A C H U S E T T S continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
						Hingham, Hull, Kingston, Lakeville, Marshfield Middleborough, Norwell, Pembroke, Plymouth, Plympton Rockland, Scituate
						Suffolk county towns of Boston, Chelsea, Revere, Winthrop
						Worcester county towns of Berlin, Bolton, Harvard Hopedale, Lancaster, Mendon, Milford, Southborough Upton
Brockton, MA PMSA	468	568	668	835	935	Bristol county towns of Easton
						Norfolk county towns of Avon
						Plymouth county towns of Abington, Bridgewater, Brockton East Bridgewater, Halifax, West Bridgewater, Whitman
Fall River, MA-RI PMSA	433	517	620	718	792	Bristol county towns of Fall River, Somerset, Swansea Westport
Fitchburg-Leominster, MA MSA	475	573	678	847	950	Middlesex county towns of Ashby
						Worcester county towns of Ashburnham, Fitchburg Leominster, Lunenburg, Westminster
Lawrence-Haverhill, MA-NH PMSA	452	548	645	806	903	Essex county towns of Amesbury, Andover, Boxford Georgetown, Groveland, Haverhill, Lawrence, Merrimac Methuen, Newbury, Newburyport, North Andover, Salisbury West Newbury
Lowell, MA-NH PMSA	475	577	679	849	951	Middlesex county towns of Billerica, Chelmsford, Dracut Dunstable, Lowell, Pepperell, Tewksbury, Tyngsborough Westford
New Bedford, MA MSA	441	496	587	718	792	Bristol county towns of Acushnet, Dartmouth, Fairhaven Freetown, New Bedford
						Plymouth county towns of Marion, Mattapoisett, Rochester
Pawtucket-Woonsocket-Attleboro, RI-MA PMSA	420	507	598	734	839	Bristol county towns of Attleboro, North Attleborough Rehoboth, Seekonk
						Norfolk county towns of Plainville
						Worcester county towns of Blackstone, Millville
Pittsfield, MA MSA	438	531	621	773	872	Berkshire county towns of Cheshire, Dalton, Hinsdale Lanesborough, Lee, Lenox, Pittsfield, Richmond Stockbridge
Salem-Gloucester, MA PMSA	522	634	746	933	1044	Essex county towns of Beverly, Danvers, Essex, Gloucester Hamilton, Ipswich, Manchester, Marblehead, Middleton Peabody, Rockport, Rowley, Salem, Swampscott, Topsfield Wenham
Springfield, MA MSA	414	502	591	739	827	Hampden county towns of Agawam, Chicopee, East Longmeadow Hampden, Holyoke, Longmeadow, Ludlow, Monson, Montgomery Palmer, Russell, Southwick, Springfield, Westfield West Springfield, Wilbraham
						Hampshire county towns of Belchertown, Easthampton Granby, Huntington, Northampton, Southampton South Hadley
Worcester, MA MSA	454	559	654	823	917	Worcester county towns of Auburn, Barre, Boylston Brookfield, Charlton, Clinton, Douglas, Dudley East Brookfield, Grafton, Holden, Leicester, Millbury

Note The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

M A S S A C H U S E T T S continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
						Northborough, Northbridge, North Brookfield, Oxford Paxton, Princeton, Rutland, Shrewsbury, Spencer Sterling, Sutton, Uxbridge, Webster, Westborough West Boylston, Worcester
NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Barnstable	583	719	824	1030	1156	
Berkshire	382	465	547	686	768	Adams, Alford, Becket, Clarksburg, Egremont, Florida Great Barrington, Hancock, Monterey, Mount Washington New Ashford, New Marlborough, North Adams, Otis, Peru Sandisfield, Savoy, Sheffield, Tyringham, Washington West Stockbridge, Williamstown, Windsor
Bristol	423	513	605	727	808	Berkley, Dighton, Taunton
Dukes	583	719	824	1030	1156	
Franklin	444	528	616	776	864	
Hampden	400	486	572	717	804	Blandford, Brimfield, Chester, Granville, Holland Tolland, Wales
Hampshire	521	605	741	892	1036	Amherst, Chesterfield, Cummington, Goshen, Hadley Hatfield, Middlefield, Pelham, Plainfield, Ware Westhampton, Williamsburg, Worthington
Nantucket	583	719	824	1030	1156	
Plymouth	453	549	646	785	906	Wareham
Worcester	423	500	605	741	824	Athol, Gardner, Hardwick, Hubbardston, New Braintree Oakham, Petersham, Phillipston, Royalston, Southbridge Sturbridge, Templeton, Warren, West Brookfield Winchendon

M I C H I G A N

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Ann Arbor, MI PMSA	434	528	622	778	872	Washtenaw
Battle Creek, MI MSA	297	361	424	532	597	Calhoun
Benton Harbor, MI MSA	330	402	471	591	662	Berrien
Detroit, MI PMSA	365	444	522	653	731	Lapeer, Livingston, Macomb, Monroe, Oakland, St Clair Wayne
Flint, MI MSA	313	380	450	562	629	Genesee
Grand Rapids, MI MSA	351	431	505	631	713	Kent, Ottawa
Jackson, MI MSA	327	396	467	585	655	Jackson
Kalamazoo, MI MSA	340	410	483	594	662	Kalamazoo
Lansing-East Lansing, MI MSA	358	429	502	625	698	Clinton, Eaton, Ingham
Muskegon, MI MSA	290	352	416	521	584	Muskegon
Saginaw-Bay City-Midland, MI MSA	323	390	458	573	641	Bay, Midland, Saginaw

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

M I C H I G A N continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alcona	257	314	369	463	519
Allegan	297	364	427	534	599
Antrim	323	390	459	576	646
Baraga	263	320	376	471	529
Benzie	323	390	459	576	646
Cass	292	356	418	524	587
Cheboygan	257	314	369	463	519
Clare	282	343	407	506	567
Delta	253	309	365	455	511
Emmet	323	390	459	576	646
Gogebic	263	320	376	471	529
Gratiot	324	392	462	580	648
Houghton	295	360	424	529	637
Ionia	301	365	429	535	599
Iron	263	320	376	471	529
Kalkaska	323	390	459	576	646
Lake	295	361	424	530	595
Lenawee	321	388	457	573	643
Mackinac	253	309	365	455	511
Marquette	323	390	459	576	646
Mecosta	295	361	424	530	595
Missaukee	323	390	459	576	646
Montmorency	257	314	369	463	519
Oceana	287	347	411	516	576
Ontonagon	263	320	376	471	529
Oscoda	257	314	369	463	519
Presque Isle	257	314	369	463	519
St Joseph	300	366	431	539	603
Schoolcraft	253	309	365	455	511
Tuscola	290	354	415	520	583
Wexford	323	390	459	576	646

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alger	253	309	365	455	511
Alpena	257	314	369	463	519
Arenac	282	343	407	506	567
Barry	300	366	431	539	603
Branch	300	366	431	539	603
Charlevoix	323	390	459	576	646
Chippewa	253	309	365	455	511
Crawford	257	314	369	463	519
Dickinson	263	333	393	492	553
Gladwin	282	343	407	506	567
Grand Traverse	323	390	459	576	646
Hillsdale	321	388	457	573	643
Huron	290	354	415	520	583
Iosco	282	343	407	506	567
Isabella	324	392	462	580	648
Keweenaw	263	320	376	471	529
Leelanau	323	390	459	576	646
Luce	253	309	365	455	511
Manistee	323	390	459	576	646
Mason	295	361	424	530	595
Menominee	323	390	459	576	646
Montcalm	297	364	427	534	599
Newaygo	295	361	424	530	595
Ogemaw	282	343	407	506	567
Osceola	295	361	424	530	595
Otsewo	257	314	369	463	519
Roscommon	282	343	407	506	567
Sanilac	290	354	415	520	583
Shiawassee	320	387	456	570	641
Van Buren	292	356	418	524	587

M I N N E S O T A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Duluth, MN-WI MSA	331	395	466	585	657	St Louis
Fargo-Moorhead, ND-MN MSA	335	407	478	600	672	Clay
Minneapolis-St. Paul, MN-WI MSA	440	535	630	788	882	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey Scott, Washington, Wright

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

MINNESOTA continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Rochester, MN MSA	352	427	504	630	705	Olmsted
St. Cloud, MN MSA	334	407	480	602	672	Benton, Sherburne, Stearns

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Aitkin	299	364	428	537	602
Beltrami	287	349	412	513	578
Blue Earth	332	403	468	579	640
Carlton	301	366	428	537	602
Chippewa	265	324	382	479	535
Cook	299	364	428	537	602
Crow Wing	281	341	426	529	587
Douglas	297	363	426	535	600
Fillmore	275	334	395	494	552
Goodhue	287	349	409	507	568
Houston	275	334	395	494	552
Itasca	301	366	428	537	602
Kanabec	299	364	428	537	602
Kittson	287	349	412	513	578
Lac Qui Parle	265	324	382	479	535
Lake Of The Woods	287	349	412	513	578
Lincoln	274	330	387	482	536
Mcleod	314	382	449	563	629
Marshall	287	349	412	513	578
Meeker	314	382	449	563	629
Morrison	281	341	401	503	564
Murray	274	330	387	482	536
Nobles	274	330	387	482	536
Otter Tail	297	363	426	535	600
Pine	299	364	428	537	602
Polk	287	349	412	513	578
Red Lake	287	349	412	513	578
Renville	314	382	449	563	629
Rock	274	330	387	482	536
Sibley	312	380	445	556	625
Stevens	297	363	426	535	600
Todd	281	341	401	503	564
Wabasha	287	349	409	507	568
Waseca	283	345	405	507	568
Wilkin	297	363	426	535	600
Yellow Medicine	265	324	382	479	535

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Becker	297	363	426	535	600
Big Stone	265	324	382	479	535
Brown	283	345	405	507	568
Cass	281	341	401	503	564
Clearwater	287	349	412	513	578
Cottonwood	265	324	382	479	535
Dodge	269	327	385	482	540
Faribault	283	345	405	507	568
Freeborn	325	395	467	583	654
Grant	297	363	426	535	600
Hubbard	287	349	412	513	578
Jackson	274	330	387	482	536
Kandiyohi	314	382	449	563	629
Koochiching	299	364	428	537	602
Lake	299	364	428	537	602
Le Sueur	312	380	445	556	625
Lyon	274	330	387	482	536
Mahnomen	287	349	412	513	578
Martin	283	345	405	507	568
Mille Lacs	299	364	428	537	602
Mower	275	334	395	494	552
Nicollet	312	380	445	556	625
Norman	287	349	412	513	578
Pennington	287	349	412	513	578
Pipestone	274	330	387	482	536
Pope	297	363	426	535	600
Redwood	265	324	382	479	535
Rice	325	395	467	583	654
Roseau	287	349	412	513	578
Steele	325	395	467	583	654
Swift	265	324	382	479	535
Traverse	297	363	426	535	600
Wadena	281	341	401	503	564
Watonwan	283	345	405	507	568
Winona	300	364	429	603	625

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

M I S S I S S I P P I

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Biloxi-Gulfport, MS MSA	276	338	398	499	558	Hancock, Harrison
Jackson, MS MSA	352	428	505	633	710	Hinds, Madison, Rankin
Memphis, TN-AR-MS MSA	316	383	451	562	629	De Soto
Pascagoula, MS MSA	304	368	431	543	610	Jackson

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	244	280	331	439	475
Amite	202	246	288	359	405
Benton	225	274	324	407	456
Calhoun	264	322	380	474	537
Chickasaw	271	322	380	478	534
Claiborne	202	246	288	359	405
Clay	261	305	356	448	502
Copiah	213	259	306	382	428
Forrest	262	319	377	470	528
George	205	250	294	367	411
Grenada	267	325	383	479	537
Humphreys	232	283	335	418	468
Itawamba	250	303	355	446	499
Jefferson	202	246	288	359	405
Jones	264	308	347	395	439
Lafayette	264	322	380	474	534
Lauderdale	260	315	373	467	522
Leake	222	270	320	403	451
Leflore	264	294	346	451	487
Lowndes	288	356	410	550	572
Marshall	225	274	324	407	456
Montgomery	203	248	290	363	407
Newton	222	270	320	403	451
Oktibbeha	251	305	356	448	502
Pearl River	262	319	377	470	528
Pike	244	280	331	439	475
Prentiss	225	274	324	407	456
Scott	222	270	320	403	451
Simpson	213	259	306	382	428
Stone	262	319	377	470	528
Tallahatchie	246	296	348	435	491
Tippah	225	274	324	407	456
Tunica	246	296	348	435	491
Walthall	202	246	288	359	405

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alcorn	243	293	345	430	485
Attala	203	248	290	363	407
Bolivar	232	283	335	418	468
Carroll	203	248	290	363	407
Choctaw	261	305	356	448	502
Clarke	262	318	373	467	522
Coahoma	246	296	348	435	491
Covington	205	250	294	367	411
Franklin	202	246	288	359	405
Greene	205	250	294	367	411
Holmes	203	248	290	363	407
Issaquena	232	283	335	418	468
Jasper	262	318	373	467	522
Jefferson Davis	205	250	294	367	411
Kemper	262	318	373	467	522
Lamar	262	319	377	470	528
Lawrence	202	246	288	359	405
Lee	282	342	401	505	565
Lincoln	202	246	288	359	405
Marion	262	319	377	470	528
Monroe	250	303	355	446	499
Neshoba	222	270	320	403	451
Noxubee	251	305	356	448	502
Panola	246	296	348	435	491
Perry	205	250	294	367	411
Pontotoc	271	322	380	478	534
Quitman	246	296	348	435	491
Sharkey	232	283	335	418	468
Smith	222	270	320	403	451
Sunflower	232	283	335	418	468
Tate	246	296	348	435	491
Tishomigo	225	274	324	407	456
Union	271	322	380	478	534
Warren	296	359	423	532	595

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092492

M I S S I S S I P P I continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Washington	274	332	391	489	547
Webster	261	305	356	448	502
Winston	261	305	356	448	502
Yazoo	296	359	423	532	595
Wayne	205	250	294	367	411
Wilkinson	202	246	288	359	405
Yalobusha	203	248	290	363	407

M I S S O U R I

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Columbia, MO MSA	291	353	416	520	583	Boone
Joplin, MO MSA	251	306	360	452	507	Jasper, Newton
Kansas City, MO-KS MSA	342	416	489	611	685	Cass, Clay, Jackson, Lafayette, Platte, Ray
St. Joseph, MO MSA	268	325	383	478	539	Buchanen
St. Louis, MO-IL MSA	351	426	503	628	704	Crawford, Franklin, Jefferson, St Charles, St Louis St. Louis
Springfield, MO MSA	278	341	401	504	561	Christian, Greene

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adair	250	303	358	450	504
Atchison	236	289	340	425	477
Barry	231	281	333	415	465
Bates	225	273	322	404	454
Bollinger	265	323	379	474	535
Caldwell	236	289	341	425	477
Camden	253	307	362	454	508
Carroll	244	297	350	436	492
Cedar	225	273	322	404	454
Clark	250	303	358	450	504
Cole	278	338	399	499	559
Crawford	242	296	346	434	489
Dallas	231	281	333	415	465
De Kalb	236	289	340	425	477
Douglas	219	267	312	391	439
Gasconade	242	296	346	434	489
Grundy	250	303	358	450	504
Henry	225	273	322	404	454
Holt	236	289	340	425	477
Howell	219	267	312	391	439
Johnson	253	308	380	489	509
Laclede	253	307	362	454	508
Lewis	248	300	354	442	493
Linn	250	303	358	450	504
Andrew	263	319	376	470	530
Audrain	278	338	399	499	559
Barton	225	273	322	404	454
Benton	225	273	322	404	454
Butler	219	267	317	396	442
Callaway	278	338	399	499	559
Cape Girardeau	265	323	379	474	535
Carter	219	267	317	396	442
Chariton	244	297	350	436	492
Clinton	236	289	340	425	477
Cooper	278	338	399	499	559
Dade	231	281	333	415	465
Daviess	236	289	341	425	477
Dent	242	296	346	434	489
Dunklin	219	267	312	391	439
Gentry	236	289	340	425	477
Harrison	236	289	341	425	477
Hickory	225	273	322	404	454
Howard	278	338	399	499	559
Iron	265	323	379	474	535
Knox	250	303	358	450	504
Lawrence	231	281	333	415	465
Lincoln	242	296	346	434	489
Livingston	250	303	358	450	504

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

MISSOURI continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Mcdonald	231	281	333	415	465
Madison	265	323	379	474	535
Marion	248	300	354	442	493
Miller	253	307	362	454	508
Moniteau	278	338	399	499	559
Montgomery	242	296	346	434	489
New Madrid	219	267	312	391	439
Oregon	219	267	312	391	439
Ozark	219	267	312	391	439
Perry	265	323	379	474	535
Phelps	283	342	404	511	574
Polk	231	281	333	415	465
Putnam	250	303	358	450	504
Randolph	242	296	346	434	489
Ripley	219	267	317	396	442
Ste. Genevieve	265	323	379	474	535
Saline	244	297	350	436	492
Scotland	250	303	358	450	504
Shannon	219	267	312	391	439
Stoddard	219	267	312	391	439
Sullivan	250	303	358	450	504
Texas	219	267	312	391	439
Warren	242	296	346	434	489
Wayne	219	267	317	396	442
Worth	236	289	340	425	477

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Macon	242	296	346	434	489
Maries	242	296	346	434	489
Mercer	236	289	341	425	477
Mississippi	219	267	312	391	439
Monroe	242	296	346	434	489
Morgan	253	307	362	454	508
Nodaway	246	289	350	425	477
Osage	278	338	399	499	559
Pemiscot	219	267	312	391	439
Pettis	244	297	350	436	492
Pike	242	296	346	434	489
Pulaski	253	307	362	454	508
Ralls	248	300	354	442	493
Reynolds	219	267	317	396	442
St Clair	225	273	322	404	454
St Francois	265	323	379	474	535
Schuyler	250	303	358	450	504
Scott	265	323	379	474	535
Shelby	242	296	346	434	489
Stone	231	281	333	415	465
Taney	231	281	333	415	465
Vernon	225	273	322	404	454
Washington	242	296	346	434	489
Webster	231	281	333	415	465
Wright	219	267	312	391	439

MONTANA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Billings, MT MSA	384	467	550	688	771	Yellowstone
Great Falls, MT MSA	340	412	487	610	683	Cascade

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Beaverhead	339	412	485	607	682
Blaine	316	385	451	566	635
Carbon	318	388	457	572	641
Chouteau	316	385	451	566	635
Daniels	316	385	451	566	635
Deer Lodge	339	412	485	607	682
Fergus	318	388	457	572	641

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Big Horn	318	388	457	572	641
Broadwater	339	412	485	607	682
Carter	318	388	457	572	641
Custer	318	388	457	572	641
Dawson	318	388	457	572	641
Fallon	318	388	457	572	641
Flathead	345	421	495	620	695

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

M O N T A N A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Gallatin	373	460	544	673	758
Glacier	316	385	451	566	635
Granite	339	412	485	607	682
Jefferson	339	412	485	607	682
Lake	345	421	495	620	695
Liberty	316	385	451	566	635
Mccone	318	388	457	572	641
Meagher	339	412	485	607	682
Missoula	345	421	495	620	695
Park	339	412	485	607	682
Phillips	316	385	451	566	635
Powder River	318	388	457	572	641
Prairie	318	388	457	572	641
Richland	318	388	457	572	641
Rosebud	318	388	457	572	641
Sheridan	316	385	451	566	635
Stillwater	318	388	457	572	641
Teton	316	385	451	566	635
Treasure	318	388	457	572	641
Wheatland	318	388	457	572	641
Yl-St-Nt-Pk	339	412	485	607	682

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Garfield	318	388	457	572	641
Golden Valley	318	388	457	572	641
Hill	316	385	451	566	635
Judith Basin	318	388	457	572	641
Lewis And Clark	388	479	564	699	790
Lincoln	345	421	495	620	695
Madison	339	412	485	607	682
Mineral	345	421	495	620	695
Musselshell	318	388	457	572	641
Petroleum	318	388	457	572	641
Pondera	316	385	451	566	635
Powell	339	412	485	607	682
Ravalli	345	421	495	620	695
Roosevelt	316	385	451	566	635
Sanders	345	421	495	620	695
Silver Bow	339	412	485	607	682
Sweet Grass	318	388	457	572	641
Toole	316	385	451	566	635
Valley	316	385	451	566	635
Wibaux	318	388	457	572	641

N E B R A S K A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Lincoln, NE MSA	331	402	474	594	665	Lancaster
Omaha, NE-IA MSA	326	395	464	581	655	Douglas, Sarpy, Washington
Sioux City, IA-NE MSA	322	392	461	576	647	Dakota

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	291	355	417	523	585
Arthur	246	299	353	441	493
Blaine	239	290	341	427	481
Box Butte	272	331	390	487	546
Brown	239	290	341	427	481
Burt	260	317	373	468	525
Cass	257	313	368	461	519
Chase	246	299	353	441	493
Cheyenne	239	290	341	427	481
Colfax	260	317	373	468	525

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Antelope	282	343	406	505	568
Banner	239	290	341	427	481
Boone	260	317	373	468	525
Boyd	239	290	341	427	481
Buffalo	291	355	417	523	585
Butler	257	313	368	461	519
Cedar	282	343	406	505	568
Cherry	239	290	341	427	481
Clay	291	355	417	523	585
Cuming	260	317	373	468	525

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

N E B R A S K A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Custer	239	290	341	427	481
Dawson	246	299	353	441	493
Dixon	282	343	406	505	568
Dundy	246	299	353	441	493
Franklin	291	355	417	523	585
Furnas	246	299	353	441	493
Garden	239	290	341	427	481
Gosper	246	299	353	441	493
Greeley	239	290	341	427	481
Hamilton	291	355	417	523	585
Hayes	246	299	353	441	493
Holt	243	298	351	436	487
Howard	291	355	417	523	585
Johnson	257	313	368	461	519
Keith	246	299	353	441	493
Kimball	239	290	341	427	481
Lincoln	246	299	353	441	493
Loup	239	290	341	427	481
Madison	282	343	406	505	568
Merrill	239	290	341	427	481
Nemaha	257	313	368	461	519
Otoe	257	313	368	461	519
Perkins	246	299	353	441	493
Pierce	282	343	406	505	568
Polk	257	313	368	461	519
Richardson	257	313	368	461	519
Saline	257	313	368	461	519
Scotts Bluff	278	334	390	484	538
Sheridan	239	290	341	427	481
Sioux	239	290	341	427	481
Thayer	257	313	368	461	519
Thurston	260	317	373	468	525
Wayne	282	343	406	505	568
Wheeler	239	290	341	427	481

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Dawes	239	290	341	427	481
Deuel	239	290	341	427	481
Dodge	260	317	373	468	525
Fillmore	257	313	368	461	519
Frontier	246	299	353	441	493
Gage	285	346	408	512	571
Garfield	239	290	341	427	481
Grant	246	299	353	441	493
Hall	291	355	417	523	585
Harlan	291	355	417	523	585
Hitchcock	246	299	353	441	493
Hooker	246	299	353	441	493
Jefferson	257	313	368	461	519
Kearney	291	355	417	523	585
Keya Paha	243	298	351	436	487
Knox	282	343	406	505	568
Logan	246	299	353	441	493
Mcpherson	246	299	353	441	493
Merrick	291	355	417	523	585
Nance	260	317	373	468	525
Nuckolls	291	355	417	523	585
Pawnee	257	313	368	461	519
Phelps	291	355	417	523	585
Platte	260	317	373	468	525
Red Willow	246	299	353	441	493
Rock	243	298	351	436	487
Saunders	257	313	368	461	519
Seward	257	313	368	461	519
Sherman	239	290	341	427	481
Stanton	282	343	406	505	568
Thomas	246	299	353	441	493
Valley	239	290	341	427	481
Webster	291	355	417	523	585
York	257	313	368	461	519

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

N E V A D A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Las Vegas, NV MSA	481	583	687	862	965	Clark
Reno, NV MSA	403	489	575	719	805	Washoe

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Churchill	423	508	600	749	840	Douglas	423	508	600	749	840
Elko	423	508	600	749	840	Esmeralda	419	508	600	749	840
Eureka	419	508	600	749	840	Humboldt	423	508	600	749	840
Lander	423	508	600	749	840	Lincoln	419	508	600	749	840
Lyon	423	508	600	749	840	Mineral	423	508	600	749	840
Nye	419	508	600	749	840	Pershing	423	508	600	749	840
Storey	423	508	600	749	840	White Pine	419	508	600	749	840
Carson City	423	508	600	749	840						

N E W H A M P S H I R E

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
Lawrence-Haverhill, MA-NH PMSA	452	548	645	806	903	Rockingham county towns of Atkinson, Brentwood, Danville Derry, East Kingston, Hampstead, Kingston, Newton Plaistow, Salem, Sandown, Seabrook, Windham
Lowell, MA-NH PMSA	475	577	679	849	951	Hillsborough county towns of Pelham
Manchester, NH MSA	470	572	673	841	946	Hillsborough county towns of Bedford, Goffstown Manchester Merrimack county towns of Allenstown, Hooksett Rockingham county towns of Auburn, Candia
Nashua, NH PMSA	501	608	715	894	1001	Hillsborough county towns of Amherst, Brookline, Hollis Hudson, Litchfield, Merrimack, Milford, Mont Vernon Nashua, Wilton Rockingham county towns of Londonderry
Portsmouth-Dover-Rochester, NH-ME MSA	488	594	697	874	979	Rockingham county towns of Exeter, Greenland, Hampton New Castle, Newfields, Newington, Newmarket North Hampton, Portsmouth, Rye, Stratham Strafford county towns of Barrington, Dover, Durham Farmington, Lee, Madbury, Milton, Rochester, Rollinsford Somersworth

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Belknap	406	491	570	708	793	
Carroll	401	487	573	717	805	
Cheshire	491	595	700	876	981	
Coos	374	455	537	669	751	
Grafton	417	508	599	748	838	
Hillsborough	532	645	760	950	1064	Antrim, Bennington, Deering, Francestown, Greenfield

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

NEW HAMPSHIRE continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Merrimack	524	636	749	936	1049	Greenville, Hancock, Hillsborough, Lyndeborough, Mason New Boston, New Ipswich, Peterborough, Sharon, Temple Weare, Windsor Andover, Boscawen, Bow, Bradford, Canterbury, Chichester Concord, Danbury, Dunbarton, Epsom, Franklin, Henniker Hill, Hopkinton, Loudon, Newbury, New London, Northfield Pembroke, Pittsfield, Salisbury, Sutton, Warner, Webster Wilmot
Rockingham	514	625	734	918	1016	Chester, Deerfield, Epping, Fremont, Hampton Falls Kensington, Northwood, Nottingham, Raymond South Hampton
Strafford	455	556	654	820	904	Middleton, New Durham, Strafford
Sullivan	406	491	572	713	802	

NEW JERSEY

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Allentown-Bethlehem-Easton, PA-NJ MSA	380	462	540	681	759	Warren
Atlantic City, NJ MSA	451	552	647	808	909	Atlantic, Cape May
Bergen-Passaic, NJ PMSA	645	783	929	1161	1301	Bergen, Passaic
Jersey City, NJ PMSA	456	555	653	818	915	Hudson
Middlesex-Somerset-Hunterdon, NJ PMSA	597	726	853	1069	1197	Hunterdon, Middlesex, Somerset
Monmouth-Ocean, NJ PMSA	537	651	767	959	1076	Monmouth, Ocean
Newark, NJ PMSA	535	650	765	956	1071	Essex, Morris, Sussex, Union
Philadelphia, PA-NJ PMSA	444	538	634	793	889	Burlington, Camden, Gloucester
Trenton, NJ PMSA	543	661	778	974	1090	Mercer
Vineland-Millville-Bridgeton, NJ PMSA	435	530	622	780	874	Cumberland
Wilmington, DE-NJ-MD PMSA	454	542	646	808	961	Salem

NEW MEXICO

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Albuquerque, NM MSA	393	479	562	704	789	Bernalillo
Las Cruces, NM MSA	313	379	446	559	627	Dona Ana
Santa Fe, NM MSA	458	557	657	819	919	Los Alamos, Sante Fe

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NEW MEXICO continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Catron	279	338	400	499	558
Cibola	279	338	400	499	558
Curry	287	350	412	516	577
Eddy	333	405	478	598	669
Guadalupe	287	350	412	516	577
Hidalgo	279	338	400	499	558
Lincoln	303	367	433	541	607
Mckinley	386	470	553	694	776
Otero	303	367	433	541	607
Rio Arriba	258	314	370	462	520
Sandoval	326	399	469	586	657
San Miguel	287	350	412	516	577
Socorro	303	367	433	541	607
Torrance	287	350	412	516	577
Valencia	279	338	400	499	558

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Chaves	303	367	433	541	607
Colfax	287	350	412	516	577
De Baca	287	350	412	516	577
Grant	279	338	400	499	558
Harding	287	350	412	516	577
Lea	333	405	478	598	669
Luna	279	338	400	499	558
Mora	287	350	412	516	577
Quay	287	350	412	516	577
Roosevelt	287	350	412	516	577
San Juan	386	470	553	694	776
Sierra	303	367	433	541	607
Taos	310	375	441	553	621
Union	287	350	412	516	577

NEW YORK

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Albany-Schenectady-Troy, NY MSA	385	463	547	689	766	Albany, Greene, Montgomery, Rensselaer, Saratoga Schenectady
Binghamton, NY MSA	346	418	494	611	687	Broome, Tioga
Buffalo, NY PMSA	329	401	471	590	660	Erie
Elmira, NY MSA	352	427	503	630	708	Chemung
Glens Falls, NY MSA	363	442	520	649	730	Warren, Washington
Jamestown-Dunkirk, NY MSA	325	397	466	586	653	Chautauqua
Nassau-Suffolk, NY PMSA	635	771	908	1137	1271	Nassau, Suffolk
New York, NY PMSA	477	579	681	854	957	Bronx, Kings, New York, Putnam, Queens, Richmond Rockland
Westchester County, NY	570	691	813	1016	1137	Westchester
Niagarafalls, NY PMSA	332	404	476	595	666	Niagara
Orange County, NY PMSA	490	596	700	875	980	Orange
Poughkeepsie, NY MSA	528	642	756	944	1060	Dutchess
Rochester, NY MSA	413	506	596	745	830	Livingston, Monroe, Ontario, Orleans, Wayne
Syracuse, NY MSA	364	436	511	639	716	Madison, Onondaga, Oswego
Utica-Rome, NY MSA	334	405	477	596	668	Herkimer, Oneida

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

N E W Y O R K continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Allegany	314	373	440	550	618
Cayuga	366	446	525	655	737
Clinton	348	417	490	610	671
Cortland	373	456	538	674	755
Essex	335	405	475	595	669
Fulton	298	364	427	536	598
Hamilton	334	405	475	595	669
Lewis	359	434	512	640	718
St Lawrence	341	413	488	610	682
Schuyler	344	418	493	618	694
Steuben	344	418	493	618	694
Tompkins	373	456	538	674	755
Wyoming	342	413	488	610	682

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Cattaraugus	308	372	440	550	618
Chenango	363	440	517	649	725
Columbia	344	418	493	618	694
Delaware	337	411	483	602	676
Franklin	334	405	475	595	669
Genesee	341	413	488	610	682
Jefferson	372	455	536	670	751
Otsego	337	411	483	602	676
Schoharie	337	411	483	602	676
Seneca	366	446	525	655	737
Sullivan	390	474	558	698	783
Ulster	430	522	616	768	863
Yates	342	415	490	615	685

N O R T H C A R O L I N A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Asheville, NC MSA	287	349	412	512	575	Buncombe
Burlington, NC MSA	347	421	497	621	697	Alamance
Charlotte-Gastonia-Rock Hill, NC-SC MSA	319	385	453	566	633	Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union
Fayetteville, NC MSA	294	414	432	559	684	Cumberland
Greensboro--Winston-Salem--High Point, NC MSA	299	366	428	538	603	Davidson, Davie, Forsyth, Guilford, Randolph, Stokes Yadkin
Hickory-Morganton, NC MSA	305	369	437	547	615	Alexander, Burke, Catawba
Jacksonville, NC MSA	270	331	390	490	548	Onslow
Raleigh-Durham, NC MSA	344	418	494	617	691	Durham, Franklin, Orange, Wake
Wilmington, NC MSA	287	349	412	512	575	New Hanover

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alleghany	258	311	365	457	501
Ashe	258	311	365	457	501
Beaufort	286	348	410	511	573
Bladen	275	337	396	496	555
Caldwell	280	338	399	502	559
Carteret	267	326	384	483	541
Chatham	343	417	492	615	689
Chowan	275	331	387	480	536
Cleveland	299	363	427	534	598
Craven	295	358	422	532	596
Dare	275	331	387	480	536
Edgecombe	267	326	384	483	541

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Anson	260	312	365	458	511
Avery	267	323	380	474	520
Bertie	286	348	410	511	573
Brunswick	259	315	371	466	521
Camden	275	331	387	480	536
Caswell	259	314	370	465	520
Cherokee	222	270	320	403	451
Clay	222	270	320	403	451
Columbus	269	329	388	486	543
Currituck	314	378	433	538	594
Duplin	244	294	346	431	486
Gates	275	331	387	480	536

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N O R T H C A R O L I N A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Graham	222	270	320	403	451
Greene	268	325	381	480	536
Harnett	251	304	356	448	501
Henderson	280	344	405	506	567
Hoke	244	294	346	431	486
Iredell	259	400	467	538	602
Johnston	264	322	380	474	534
Lee	303	374	432	540	607
Mcdowell	270	330	388	487	543
Madison	280	344	405	506	567
Mitchell	267	323	380	474	521
Moore	260	312	365	458	511
Northampton	267	326	384	483	541
Pasquotank	275	331	387	480	536
Perquimans	275	331	387	480	536
Pitt	286	348	410	511	573
Richmond	260	312	365	458	511
Rockingham	259	314	370	465	520
Sampson	251	304	356	448	501
Stanly	270	330	388	486	542
Swain	222	270	320	403	451
Tyrrell	275	331	387	480	536
Warren	249	301	353	444	497
Watauga	368	444	520	651	714
Wilkes	309	371	436	546	598
Yancey	288	347	408	509	560

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Granville	249	301	353	444	497
Halifax	267	326	384	483	541
Haywood	287	349	412	517	580
Hertford	286	348	410	511	573
Hyde	275	331	387	480	536
Jackson	285	345	406	508	569
Jones	267	326	384	483	541
Lenoir	267	326	384	483	541
Macon	280	343	405	506	568
Martin	286	348	410	511	573
Montgomery	260	312	365	458	511
Nash	274	336	395	495	554
Pamlico	267	326	384	483	541
Pender	235	288	391	489	549
Person	249	301	353	444	497
Polk	270	330	388	487	543
Robeson	255	314	364	450	510
Rutherford	270	330	388	487	543
Scotland	230	279	331	413	464
Surry	246	297	349	437	491
Transylvania	280	344	405	506	567
Vance	249	301	353	444	497
Washington	275	331	387	480	536
Wayne	251	304	356	448	501
Wilson	274	336	395	495	554

N O R T H D A K O T A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Bismarck, ND MSA	335	407	479	599	672	Burleigh, Morton
Fargo-Moorhead, ND-MN MSA	335	407	478	600	672	Cass
Grand Forks, ND MSA	317	385	457	570	638	Grand Forks

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

N O R T H D A K O T A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	281	344	407	509	568
Benson	290	352	415	520	585
Bottineau	281	344	407	509	568
Burke	281	344	407	509	568
Dickey	290	352	415	520	585
Dunn	281	344	407	509	568
Emmons	255	309	366	460	512
Golden Valley	281	344	407	509	568
Griggs	290	352	415	520	585
Kidder	255	309	366	460	512
Logan	290	352	415	520	585
Mcintosh	290	352	415	520	585
Mclean	255	309	366	460	512
Mountrail	281	344	407	509	568
Oliver	255	309	366	460	512
Pierce	281	344	407	509	568
Ransom	263	318	378	472	528
Richland	263	318	378	472	528
Sargent	263	318	378	472	528
Sioux	255	309	366	460	512
Stark	281	344	407	509	568
Stutsman	290	352	415	520	585
Traill	263	318	378	472	528
Ward	281	344	407	509	568
Williams	281	344	407	509	568

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Barnes	290	352	415	520	585
Billings	281	344	407	509	568
Bowman	281	344	407	509	568
Cavalier	290	352	415	520	585
Divide	281	344	407	509	568
Eddy	290	352	415	520	585
Foster	290	352	415	520	585
Grant	255	309	366	460	512
Hettinger	281	344	407	509	568
La Moore	290	352	415	520	585
Mchenry	281	344	407	509	568
Mckenzie	281	344	407	509	568
Mercer	255	309	366	460	512
Nelson	290	352	415	520	585
Pembina	290	352	415	520	585
Ramsey	290	352	415	520	585
Renville	281	344	407	509	568
Rolette	290	352	415	520	585
Sheridan	255	309	366	460	512
Slope	281	344	407	509	568
Steele	263	318	378	472	528
Towner	290	352	415	520	585
Walsh	290	352	415	520	585
Wells	290	352	415	520	585

O H I O

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Akron, OH PMSA	333	405	480	600	671	Portage, Summit
Canton, OH MSA	287	348	410	513	578	Carroll, Stark
Cincinnati, OH-KY-IN PMSA	342	415	489	611	684	Clermont, Hamilton, Warren
Cleveland, OH PMSA	353	429	505	632	707	Cuyahoga, Geauga, Lake, Medina
Columbus, OH MSA	327	393	468	584	657	Delaware, Fairfield, Franklin, Licking, Madison, Pickaway Union
Dayton-Springfield, OH MSA	303	370	431	542	602	Clark, Greene, Miami, Montgomery
Hamilton-Middletown, OH PMSA	342	419	491	615	689	Butler
Huntington-Ashland, WV-KY-OH MSA	320	389	460	575	647	Lawrence
Lima, OH MSA	304	370	435	546	613	Allen, Auglaize
Lorain-Elyria, OH PMSA	327	400	471	591	662	Lorain
Mansfield, OH MSA	274	337	393	495	552	Richland

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

O H I O continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Parkersburg-Marietta, WV-OH MSA	300	364	428	539	602	Washington
Steubenville-Weirton, OH-WV MSA	307	374	438	550	619	Jefferson
Toledo, OH MSA	348	425	502	626	702	Fulton, Lucas, Wood
Wheeling, WV-OH MSA	302	368	433	542	606	Belmont
Youngstown-Warren, OH MSA	304	370	435	546	613	Mahoning, Trumbull

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	270	326	381	475	536
Ashtabula	319	387	457	574	641
Brown	270	326	381	475	536
Clinton	274	336	395	496	552
Coshocton	247	301	355	440	496
Darke	274	336	395	496	552
Erie	311	378	446	556	626
Gallia	297	362	425	535	598
Hancock	292	355	418	522	587
Harrison	273	334	392	494	550
Highland	270	326	381	475	536
Holmes	289	353	415	519	582
Jackson	266	324	380	475	536
Logan	292	355	418	522	587
Meigs	263	319	376	470	529
Monroe	294	359	422	531	592
Morrow	266	324	380	475	536
Noble	294	359	422	531	592
Paulding	308	374	440	550	618
Pike	266	324	380	475	536
Putnam	297	362	425	535	598
Sandusky	311	378	446	556	626
Seneca	273	334	392	494	550
Tuscarawas	289	353	415	519	582
Vinton	297	362	425	535	598
Williams	308	374	440	550	618

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Ashland	299	365	428	537	600
Athens	283	347	411	511	575
Champaign	288	350	414	517	580
Columbiana	283	342	405	506	568
Crawford	273	334	392	494	550
Defiance	308	374	440	550	618
Fayette	274	336	395	496	552
Guernsey	291	354	417	521	585
Hardin	292	355	418	522	587
Henry	308	374	440	550	618
Hocking	263	319	376	470	529
Huron	273	334	392	494	550
Knox	266	324	420	525	588
Marion	266	324	380	475	536
Mercer	274	336	395	496	552
Morgan	294	359	422	531	592
Muskingum	274	334	392	494	550
Ottawa	311	378	446	556	626
Perry	263	319	376	470	529
Preble	300	366	429	539	602
Ross	274	336	395	496	552
Scioto	266	324	380	475	536
Shelby	296	359	423	530	592
Van Wert	297	362	425	535	598
Wayne	299	365	428	537	600
Wyandot	273	334	392	494	550

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

O K L A H O M A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Enid, OK MSA	329	402	473	593	664	Garfield
Fort Smith, AR-OK MSA	273	333	393	494	553	Sequoyah
Lawton, OK MSA	284	346	409	509	571	Comanche
Oklahoma City, OK MSA	308	375	440	552	618	Canadian, Cleveland, Logan, Mcclain, Oklahoma Pottawatomie
Tulsa, OK MSA	277	337	396	495	554	Creek, Osage, Rogers, Tulsa, Wagoner

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adair	219	267	313	392	435
Atoka	191	233	276	345	385
Beckham	243	294	347	434	488
Bryan	230	281	330	414	464
Carter	230	281	330	414	464
Choctaw	191	233	276	345	385
Coal	191	233	276	345	385
Craig	278	340	399	499	560
Delaware	217	264	310	387	435
Ellis	248	303	356	444	500
Grady	229	279	327	412	462
Greer	243	294	347	434	488
Harper	248	303	356	444	500
Hughes	223	272	318	401	447
Jefferson	229	279	327	412	462
Kay	288	349	412	515	578
Kiowa	243	294	347	434	488
Le Flore	191	233	276	345	385
Love	230	281	330	414	464
Mcintosh	223	272	318	401	447
Marshall	230	281	330	414	464
Murray	230	281	330	414	464
Noble	288	349	412	515	578
Okfuskee	223	272	318	401	447
Ottawa	278	340	399	499	560
Payne	286	347	408	510	572
Pontotoc	230	281	330	414	464
Roger Mills	243	294	347	434	488
Stephens	229	279	327	412	462
Tillman	229	279	327	412	462
Washita	243	294	347	434	488
Woodward	248	303	356	444	500

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alfalfa	248	303	356	444	500
Beaver	248	303	356	444	500
Blaine	248	303	356	444	500
Caddo	229	279	327	412	462
Cherokee	219	267	313	392	435
Cimarron	248	303	356	444	500
Cotton	229	279	327	412	462
Custer	243	294	347	434	488
Dewey	248	303	356	444	500
Garvin	230	281	330	414	464
Grant	288	349	412	515	578
Harmon	243	294	347	434	488
Haskell	191	233	276	345	385
Jackson	243	294	347	434	488
Johnston	230	281	330	414	464
Kingfisher	288	349	412	515	578
Latimer	191	233	276	345	385
Lincoln	275	334	393	492	551
Mccurtain	244	297	350	436	490
Major	248	303	356	444	500
Mayes	289	350	414	517	580
Muskogee	223	272	318	401	447
Nowata	278	340	399	499	560
Okmulgee	223	272	318	401	447
Pawnee	275	334	393	492	551
Pittsburg	191	233	276	345	385
Pushmataha	191	233	276	345	385
Seminole	228	278	327	407	453
Texas	248	303	356	444	500
Washington	278	340	399	499	560
Woods	248	303	356	444	500

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

O R E G O N

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Eugene-Springfield, OR MSA	424	516	608	760	851	Lane
Medford, OR MSA	420	512	604	754	846	Jackson
Portland, OR PMSA	358	435	512	676	748	Clackamas, Multnomah, Washington, Yamhill
Salem, OR MSA	394	483	568	710	795	Marion, Polk

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Baker	385	468	552	690	773
Clatsop	375	456	537	671	751
Coos	403	489	577	721	808
Curry	403	489	577	721	808
Douglas	403	489	577	721	808
Grant	385	468	552	690	773
Hood River	408	495	584	733	817
Josephine	403	489	577	721	808
Lake	367	448	527	659	739
Linn	391	477	563	704	787
Morrow	385	468	552	690	773
Tillamook	375	456	537	671	751
Union	385	468	552	690	773
Wasco	408	495	584	733	817

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Benton	391	477	563	704	787
Columbia	375	456	537	671	751
Crook	408	495	584	733	817
Deschutes	408	495	584	733	817
Gilliam	385	468	552	690	773
Harney	367	448	527	659	739
Jefferson	408	495	584	733	817
Klamath	367	448	527	659	739
Lincoln	375	456	537	671	751
Malheur	367	448	527	659	739
Sherman	408	495	584	733	817
Umatilla	385	468	552	690	773
Wallowa	385	468	552	690	773
Wheeler	385	468	552	690	773

P E N N S Y L V A N I A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Allentown-Bethlehem-Easton, PA-NJ MSA	380	462	540	681	759	Carbon, Lehigh, Northampton
Altoona, PA MSA	338	409	484	603	678	Blair
Beaver County, PA PMSA	291	355	418	522	585	Beaver
Erie, PA MSA	388	473	556	698	781	Erie
Harrisburg-Lebanon-Carlisle, PA MSA	403	484	572	714	799	Cumberland, Dauphin, Lebanon, Perry
Johnstown, PA MSA	328	400	470	587	659	Cambria, Somerset
Lancaster, PA MSA	406	495	581	729	817	Lancaster
Philadelphia, PA-NJ PMSA	444	538	634	793	889	Bucks, Chester, Delaware, Montgomery, Philadelphia
Pittsburgh, PA PMSA	318	386	454	568	636	Alleghany, Fayette, Washington, Westmoreland
Reading, PA MSA	380	463	545	681	764	Berks
Scranton--Wilkes-Barre, PA MSA	308	380	444	547	620	Columbia, Lackawanna, Luzerne, Wyoming
Monroe County, PA	400	485	571	714	799	Monroe
Sharon, PA MSA	360	436	516	647	725	Mercer
State College, PA MSA	433	529	623	779	873	Centre
Williamsport, PA MSA	328	400	470	587	659	Lycoming
York, PA MSA	365	446	525	656	735	Adams, York

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

P E N N S Y L V A N I A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Armstrong	377	458	538	675	755
Bradford	312	380	447	559	626
Cameron	316	384	453	568	637
Clearfield	322	393	463	578	648
Crawford	320	386	459	573	643
Forest	308	377	443	553	621
Fulton	303	370	435	546	610
Huntingdon	303	370	435	546	610
Jefferson	322	393	463	578	648
Lawrence	320	386	459	573	643
Mifflin	313	381	458	563	628
Northumberland	337	393	463	578	648
Potter	316	384	453	568	637
Snyder	313	381	448	563	628
Susquehanna	312	380	447	559	626
Union	362	425	524	650	708
Warren	320	386	459	573	643

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Bedford	303	370	435	546	610
Butler	375	455	535	672	751
Clarion	308	377	443	553	621
Clinton	316	382	449	563	628
Elk	316	384	453	568	637
Franklin	346	423	495	622	696
Greene	322	393	463	578	648
Indiana	377	458	538	675	755
Juniata	313	381	448	563	628
Mckean	316	384	453	568	637
Montour	322	393	463	578	648
Pike	448	546	641	801	898
Schuylkill	350	410	500	604	658
Sullivan	312	380	447	559	626
Tioga	312	380	447	559	626
Venango	308	377	443	553	621
Wayne	382	465	548	683	767

R H O D E I S L A N D

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
Fall River, MA-RI PMSA	433	517	620	718	792	Newport county towns of Little Compton, Tiverton
New London-Norwich, CT-RI MSA	479	583	684	856	960	Washington county towns of Hopkinton, Westerly
Pawtucket-Woonsocket-Attleboro, RI-MA PMSA	420	507	598	734	839	Providence county towns of Burrillville, Central Falls Cumberland, Lincoln, North Smithfield, Pawtucket Smithfield, Woonsocket
Providence, RI PMSA	457	555	653	818	916	Bristol county towns of Barrington, Bristol, Warren Kent county towns of Coventry, East Greenwich, Warwick West Warwick Newport county towns of Jamestown Providence county towns of Cranston, East Providence Foster, Glocester, Johnston, North Providence Providence, Scituate Washington county towns of Exeter, Narragansett North Kingstown, Richmond, South Kingstown

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RHODE ISLAND continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Kent	397	482	568	711	798	West Greenwich
Newport	520	630	743	928	1040	Middletown, Newport, Portsmouth
Washington	397	482	568	711	798	Charlestown, New Shoreham

SOUTH CAROLINA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Anderson, SC MSA	260	315	371	466	521	Anderson
Augusta, GA-SC MSA	301	365	424	531	595	Aiken
Charleston, SC MSA	320	391	462	575	647	Berkeley, Charleston, Dorchester
Charlotte-Gastonia-Rock Hill, NC-SC MSA	319	385	453	566	633	York
Columbia, SC MSA	325	396	467	584	653	Lexington, Richland
Florence, SC MSA	263	319	378	472	530	Florence
Greenville-Spartanburg, SC MSA	283	345	408	508	571	Greenville, Pickens, Spartanburg

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Abbeville	227	276	327	406	450
Bamberg	235	290	341	427	477
Beaufort	294	357	422	528	592
Cherokee	227	275	325	408	460
Chesterfield	226	274	323	406	456
Colleton	294	357	422	528	592
Dillon	226	274	323	406	456
Fairfield	222	270	319	400	448
Greenwood	227	276	327	406	450
Horry	274	335	394	493	553
Kershaw	257	311	366	461	515
Laurens	227	276	327	406	450
Mccormick	222	270	319	400	448
Marlboro	226	274	323	406	456
Oconee	279	343	404	505	566
Saluda	222	270	319	400	448
Union	227	275	325	408	460

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Allendale	235	290	341	427	477
Barnwell	235	290	341	427	477
Calhoun	245	297	352	431	483
Chester	227	275	325	408	460
Clarendon	257	311	366	461	515
Darlington	226	274	323	406	456
Edgefield	222	270	319	400	448
Georgetown	274	335	394	493	553
Hampton	294	357	422	528	592
Jasper	294	357	422	528	592
Lancaster	246	300	353	437	489
Lee	257	311	366	461	515
Marion	226	274	323	406	456
Newberry	222	270	319	400	448
Orangeburg	235	290	341	427	477
Sumter	257	311	366	461	515
Williamsburg	274	335	394	493	553

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

S O U T H D A K O T A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Rapid City, SD MSA	305	368	428	530	594	Pennington
Sioux Falls, SD MSA	321	391	459	577	645	Minnehaha

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Aurora	274	331	387	485	544
Bennett	249	302	356	446	499
Brookings	269	325	379	472	533
Brule	271	329	387	485	544
Butte	296	360	423	531	594
Charles Mix	271	329	387	485	544
Clay	271	329	387	485	544
Corson	249	302	356	446	499
Davison	274	331	387	485	544
Deuel	243	291	347	432	479
Douglas	271	329	387	485	544
Fall River	296	360	423	531	594
Grant	269	325	379	472	533
Haakon	249	302	356	446	499
Hand	274	331	387	481	537
Harding	296	360	423	531	594
Hutchinson	271	329	387	485	544
Jackson	249	302	356	446	499
Jones	249	302	356	446	499
Lake	235	287	337	422	474
Lincoln	274	331	387	485	544
Mccook	235	287	337	422	474
Marshall	261	321	378	474	530
Mellette	249	302	356	446	499
Moody	235	287	337	422	474
Potter	249	302	356	446	499
Sanborn	274	331	387	485	544
Spink	261	321	378	474	530
Sully	249	302	356	446	499
Tripp	249	302	356	446	499
Union	271	329	387	485	544
Yankton	271	329	387	485	544

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Beadle	274	331	387	481	537
Bon Homme	271	329	387	485	544
Brown	293	354	415	520	582
Buffalo	249	302	356	446	499
Campbell	249	302	356	446	499
Clark	243	291	347	432	479
Codington	269	325	379	472	533
Custer	296	360	423	531	594
Day	261	321	378	474	530
Dewey	249	302	356	446	499
Edmunds	261	321	378	474	530
Faulk	261	321	378	474	530
Gregory	249	302	356	446	499
Hamlin	243	291	347	432	479
Hanson	274	331	387	485	544
Hughes	325	397	465	582	650
Hyde	249	302	356	446	499
Jerauld	274	331	387	485	544
Kingsbury	235	287	337	422	474
Lawrence	303	360	423	531	594
Lyman	249	302	356	446	499
Mcpherson	261	321	378	474	530
Meade	305	368	428	531	594
Miner	235	287	337	422	474
Perkins	249	302	356	446	499
Roberts	261	321	378	474	530
Shannon	249	302	356	446	499
Stanley	325	397	465	582	650
Todd	249	302	356	446	499
Turner	274	331	387	485	544
Walworth	249	302	356	446	499
Ziebach	249	302	356	446	499

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1 30 times the 4 BR FMR.

092492

T E N N E S S E E

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Chattanooga, TN-GA MSA	320	390	460	575	647	Hamilton, Marion, Sequatchie
Clarksville-Hopkinsville, TN-KY MSA	297	374	468	569	632	Montgomery
Jackson, TN MSA	292	350	416	519	585	Madison
Johnson City-Kingsport-Bristol, TN-VA MSA	268	327	384	481	540	Carter, Hawkins, Sullivan, Unicoi, Washington
Knoxville, TN MSA	296	360	423	531	595	Anderson, Blount, Grainger, Jefferson, Knox, Sevier Union
Memphis, TN-AR-MS MSA	316	383	451	562	629	Shelby, Tipton
Nashville, TN MSA	351	429	505	631	709	Cheatham, Davidson, Dickson, Robertson, Rutherford Sumner, Williamson, Wilson

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Bedford	252	316	359	448	504
Bledsoe	262	319	377	471	528
Campbell	214	260	309	384	428
Carroll	235	288	340	426	475
Claiborne	214	260	309	384	428
Cocke	237	291	341	428	478
Crockett	243	293	344	432	485
Decatur	258	315	371	465	520
Dyer	243	293	344	432	485
Fentress	235	291	343	428	479
Gibson	243	293	344	432	485
Greene	233	286	335	419	471
Hamblen	249	301	356	445	499
Hardeman	258	315	371	465	520
Haywood	248	310	354	444	497
Henry	235	288	340	426	475
Houston	218	264	312	390	437
Jackson	205	253	299	375	416
Lake	243	293	344	432	485
Lawrence	252	316	359	448	504
Lincoln	285	343	404	506	565
Mcminn	262	319	377	471	528
Macon	235	291	343	428	479
Maury	252	316	359	448	504
Monroe	252	310	363	454	508
Morgan	214	260	309	384	428
Overton	235	291	343	428	479
Pickett	235	291	343	428	479
Putnam	245	296	348	437	489
Roane	252	310	363	454	508

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Benton	235	288	340	426	475
Bradley	262	319	377	471	528
Cannon	235	291	343	428	479
Chester	258	315	371	465	520
Clay	205	253	299	375	416
Coffee	252	316	359	448	504
Cumberland	235	291	343	428	479
De Kalb	235	291	343	428	479
Fayette	248	301	354	444	497
Franklin	285	343	404	506	565
Giles	252	316	359	448	504
Grundy	262	319	377	471	528
Hancock	233	286	335	419	471
Hardin	258	315	371	465	520
Henderson	258	315	371	465	520
Hickman	252	316	359	448	504
Humphreys	218	264	312	390	437
Johnson	227	277	326	409	458
Lauderdale	248	310	354	444	497
Lewis	250	304	358	448	504
Loudon	252	310	363	454	508
Mcnairy	258	315	371	465	520
Marshall	252	316	359	448	504
Meigs	262	319	377	471	528
Moore	252	316	359	448	504
Obion	246	301	344	435	485
Perry	250	304	358	448	504
Polk	262	319	377	471	528
Rhea	262	319	377	471	528
Scott	244	260	309	384	428

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

T E N N E S S E E continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Smith	235	291	343	428	479
Trousdale	235	291	343	428	479
Warren	245	296	348	437	489
Weakley	235	288	340	426	475
Stewart	218	264	312	390	437
Van Buren	245	296	348	437	489
Wayne	250	304	358	448	504
White	245	296	348	437	489

T E X A S

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Abilene, TX MSA	256	310	365	456	511	Taylor
Amarillo, TX MSA	296	359	424	530	594	Potter, Randall
Austin, TX MSA	380	457	538	673	753	Hays, Travis, Williamson
Beaumont-Port Arthur, TX MSA	342	414	489	611	683	Hardin, Jefferson, Orange
Brazoria, TX PMSA	369	447	527	659	738	Brazoria
Brownsville-Harlingen, TX MSA	302	367	431	540	605	Cameron
Bryan-College Station, TX MSA	400	489	572	716	804	Brazos
Corpus Christi, TX MSA	349	423	499	625	701	Nueces, San Patricio
Dallas, TX PMSA	398	485	571	713	798	Collin, Dallas, Denton, Ellis, Kaufman, Rockwall
El Paso, TX MSA	324	394	463	579	648	El Paso
Fort Worth-Arlington, TX PMSA	371	451	532	665	745	Johnson, Parker, Tarrant
Galveston-Texas City, TX PMSA	332	402	474	593	665	Galveston
Houston, TX PMSA	341	414	488	612	685	Fort Bend, Harris, Liberty, Montgomery, Waller
Killeen-Temple, TX MSA	270	328	386	483	540	Bell, Coryell
Laredo, TX MSA	277	339	397	498	559	Webb
Longview-Marshall, TX MSA	337	409	480	599	673	Gregg, Harrison
Lubbock, TX MSA	250	313	411	521	574	Lubbock
Mc Allen-Edinburg-Mission, TX MSA	301	366	429	538	603	Hidalgo
Midland, TX MSA	385	469	553	693	775	Midland
Odessa, TX MSA	383	467	550	686	770	Ector
San Angelo, TX MSA	271	329	387	484	542	Tom Green
San Antonio, TX MSA	331	402	473	591	662	Bexar, Comal, Guadalupe
Sherman-Denison, TX MSA	295	357	422	528	592	Grayson
Texarkana, TX-Texarkana, AR MSA	271	329	389	489	545	Bowie
Tyler, TX MSA	341	413	488	609	681	Smith
Victoria, TX MSA	415	503	593	744	833	Victoria
Waco, TX MSA	280	337	394	492	547	Mclennan
Wichita Falls, TX MSA	306	372	438	547	614	Wichita

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

T E X A S continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Anderson	254	308	364	455	510
Angelina	296	357	423	530	592
Archer	244	297	349	437	490
Atascosa	260	316	375	470	525
Bailey	246	301	354	440	491
Bastrop	258	313	370	465	521
Bee	281	343	404	502	564
Borden	237	293	344	429	483
Brewster	218	263	309	387	436
Brooks	281	343	404	502	564
Burleson	260	315	373	467	523
Caldwell	258	313	370	465	521
Callahan	252	306	358	450	505
Carson	264	320	378	474	532
Castro	264	320	378	474	532
Cherokee	254	308	364	455	510
Clay	244	297	349	437	490
Coke	227	277	325	409	457
Collingsworth	264	320	378	474	532
Comanche	252	306	358	450	505
Cooke	279	341	402	500	562
Crane	218	263	309	387	436
Crosby	246	301	354	440	491
Dallam	264	320	378	474	532
Deaf Smith	264	320	378	474	532
De Witt	274	335	393	492	552
Dimmit	234	289	340	423	474
Duval	281	343	404	502	564
Edwards	243	297	348	428	476
Falls	223	272	317	402	447
Fayette	258	313	370	465	521
Floyd	246	301	354	440	491
Franklin	249	303	356	445	498
Frio	260	316	375	470	525
Garza	246	301	354	440	491
Glasscock	237	293	344	429	483
Gonzales	274	335	393	492	552
Grimes	260	315	373	467	523
Hall	264	320	378	474	532
Hansford	264	320	378	474	532

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Andrews	218	263	309	387	436
Aransas	281	343	404	502	564
Armstrong	264	320	378	474	532
Austin	301	365	429	538	604
Bandera	260	316	375	470	525
Baylor	244	297	349	437	490
Blanco	237	293	344	429	484
Bosque	223	272	317	402	447
Briscoe	264	320	378	474	532
Brown	246	301	354	440	491
Burnet	237	293	344	429	484
Calhoun	274	335	393	492	552
Camp	232	283	337	418	470
Cass	249	303	356	445	498
Chambers	310	377	444	556	622
Childress	244	297	349	437	490
Cochran	246	301	354	440	491
Coleman	246	301	354	440	491
Colorado	301	365	429	538	604
Concho	227	277	325	409	457
Cottle	244	297	349	437	490
Crockett	227	277	325	409	457
Culberson	218	263	309	387	436
Dawson	237	293	344	429	483
Delta	249	303	356	445	498
Dickens	246	301	354	440	491
Donley	264	320	378	474	532
Eastland	252	306	358	450	505
Erath	252	306	358	450	505
Fannin	279	341	402	500	562
Fisher	252	306	358	450	505
Foard	244	297	349	437	490
Freestone	223	272	317	402	447
Gaines	218	263	309	387	436
Gillespie	260	316	375	470	525
Goliad	274	335	393	492	552
Gray	264	320	378	474	532
Hale	246	301	354	440	491
Hamilton	237	293	344	429	484
Hardeman	244	297	349	437	490

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

T E X A S continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Hartley	264	320	378	474	532
Hemphill	264	320	378	474	532
Hill	277	334	390	490	548
Hood	301	365	429	538	604
Houston	263	318	377	473	531
Hudspeth	218	263	309	387	436
Hutchinson	264	320	378	474	532
Jack	244	297	349	437	490
Jasper	281	343	404	502	564
Jim Hogg	266	322	381	480	536
Jones	252	306	358	450	505
Kendall	260	316	375	470	525
Kent	252	306	358	450	505
Kimble	227	277	325	409	457
Kinney	243	297	348	428	476
Knox	246	301	354	440	491
Lamb	246	301	354	440	491
La Salle	234	289	340	423	474
Lee	258	313	370	465	521
Limestone	223	272	317	402	447
Live Oak	281	343	404	502	564
Loving	218	263	309	387	436
Mcculloch	246	301	354	440	491
Madison	268	325	384	483	539
Martin	237	293	344	429	483
Matagorda	301	365	429	538	604
Medina	260	316	375	470	525
Milam	258	313	370	465	521
Mitchell	252	306	358	450	505
Moore	264	320	378	474	532
Motley	246	301	354	440	491
Navarro	223	272	317	402	447
Nolan	252	306	358	450	505
Oldham	264	320	378	474	532
Panola	254	308	364	455	510
Pecos	218	263	309	387	436
Presidio	218	263	309	387	436
Reagan	227	277	325	409	457
Red River	249	303	356	445	498
Refugio	281	343	404	502	564

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Haskell	252	306	358	450	505
Henderson	254	308	364	455	510
Hockley	246	301	354	440	491
Hopkins	249	303	356	445	498
Howard	237	293	344	429	483
Hunt	279	341	402	500	562
Irion	227	277	325	409	457
Jackson	274	335	393	492	552
Jeff Davis	218	263	309	387	436
Jim Wells	281	343	404	502	564
Karnes	215	260	307	384	430
Kenedy	281	343	404	502	564
Kerr	260	316	375	470	525
King	246	301	354	440	491
Kleberg	281	343	404	502	564
Lamar	249	303	356	445	498
Lampasas	237	293	344	429	484
Lavaca	274	335	393	492	552
Leon	268	325	384	483	539
Lipscomb	264	320	378	474	532
Llano	237	293	344	429	484
Lynn	246	301	354	440	491
Mcmullen	281	343	404	502	564
Marion	232	283	337	418	470
Mason	227	277	325	409	457
Maverick	243	297	348	428	476
Menard	227	277	325	409	457
Mills	246	301	354	440	491
Montague	244	297	349	437	490
Morris	249	303	356	445	498
Nacogdoches	296	357	423	530	592
Newton	281	343	404	502	564
Ochiltree	264	320	378	474	532
Palo Pinto	252	306	358	450	505
Parmer	264	320	378	474	532
Polk	296	357	423	530	592
Rains	242	296	346	427	472
Real	243	297	348	428	476
Reeves	218	263	309	387	436
Roberts	264	320	378	474	532

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

T E X A S continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Robertson	260	315	373	467	523
Rusk	254	308	364	455	510
San Augustine	231	283	335	418	468
San Saba	246	301	354	440	491
Scurry	252	306	358	450	505
Shelby	231	283	335	418	468
Somervell	223	272	317	402	447
Stephens	252	306	358	450	505
Stonewall	252	306	358	450	505
Swisher	264	320	378	474	532
Terry	246	301	354	440	491
Titus	249	303	356	445	498
Tyler	268	325	384	483	539
Upton	237	293	344	429	483
Val Verde	243	297	348	428	476
Walker	306	373	440	551	616
Washington	268	325	384	483	539
Wheeler	264	320	378	474	532
Willacy	281	343	404	502	564
Winkler	218	263	309	387	436
Wood	232	283	337	418	470
Young	244	297	349	437	490
Zavala	243	297	348	428	476

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Runnels	246	301	354	440	491
Sabine	231	283	335	418	468
San Jacinto	296	357	423	530	592
Schleicher	227	277	325	409	457
Shackleford	252	306	358	450	505
Sherman	264	320	378	474	532
Starr	231	282	334	415	466
Sterling	227	277	325	409	457
Sutton	227	277	325	409	457
Terrell	218	263	309	387	436
Throckmorton	252	306	358	450	505
Trinity	268	340	401	498	560
Upshur	232	283	337	418	470
Uvalde	243	297	348	428	476
Van Zandt	242	296	346	427	472
Ward	218	263	309	387	436
Wharton	301	365	429	538	604
Wilbarger	244	297	349	437	490
Wilson	215	260	307	384	430
Wise	301	365	429	538	604
Yoakum	246	301	354	440	491
Zapata	231	282	334	415	466

U T A H

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Provo-Orem, UT MSA	323	394	462	579	650	Utah
Salt Lake City-Ogden, UT MSA	300	343	429	536	601	Davis, Salt Lake, Weber

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Beaver	355	432	509	635	712
Cache	326	396	468	585	657
Daggett	405	492	579	724	811
Emery	405	492	579	724	811
Grand	405	492	579	724	811
Juab	355	432	509	635	712
Millard	355	432	509	635	712
Piute	355	432	509	635	712
San Juan	405	492	579	724	811

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Box Elder	326	396	468	585	657
Carbon	405	492	579	724	811
Duchesne	405	492	579	724	811
Garfield	355	432	509	635	712
Iron	355	432	509	635	712
Kane	355	432	509	635	712
Morgan	405	492	579	724	811
Rich	326	396	468	585	657
Sanpete	355	432	509	635	712

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

U T A H continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Sevier	355	432	509	635	712
Tooele	326	396	468	585	657
Wasatch	405	492	579	724	811
Wayne	355	432	509	635	712
Summit	405	492	579	724	811
Uintah	405	492	579	724	811
Washington	388	466	550	687	772

V E R M O N T

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
Burlington, VT MSA	479	583	684	856	960	Chittenden county towns of Burlington, Charlotte Colchester, Essex, Hinesburg, Jericho, Milton, Richmond St. George, Shelburne, South Burlington, Williston Winooski Franklin county towns of Georgia Grand Isle county towns of Grand Isle, South Hero

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Addison	381	462	545	680	763	
Bennington	387	476	558	696	784	
Caledonia	325	394	463	580	650	
Chittenden	439	537	631	791	887	Bolton, Buels, Huntington, Underhill, Westford
Essex	325	394	463	580	650	
Franklin	361	439	519	647	726	Bakersfield, Berkshire, Enosburg, Fairfax, Fairfield Fletcher, Franklin, Highgate, Montgomery, Richford St. Albans, St. Albans, Sheldon, Swanton
Grand Isle	325	394	463	580	650	Alburg, Isle La Motte, North Hero
Lamoille	393	477	560	701	785	
Orange	387	472	555	693	777	
Orleans	325	394	463	580	650	
Rutland	421	512	602	752	843	
Washington	387	476	558	696	784	
Windham	407	496	582	729	818	
Windsor	417	505	596	745	835	

V I R G I N I A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Charlottesville, VA MSA	376	458	539	675	755	Albemarle, Fluvanna, Greene, Charlottesville
Danville, VA MSA	288	349	412	514	576	Pittsylvania, Danville
Johnson City-Kingsport-Bristol, TN-VA MSA	268	327	384	481	540	Scott, Washington, Bristol
Lynchburg, VA MSA	310	385	444	542	622	Amherst, Campbell, Lynchburg
Norfolk-Virginia Beach-Newport News, VA MSA	385	468	550	688	771	Gloucester, James City, York, Chesapeake, Hampton Newport News City, Norfolk, Poquoson, Portsmouth, Suffolk

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V I R G I N I A continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Richmond-Petersburg, VA MSA	344	414	482	605	679	Virginia Beach, Williamsburg City Charles City, Chesterfield, Dinwiddie, Goochland, Hanover Henrico, New Kent, Powhatan, Prince George Colonial Heights, Hopewell, Petersburg, Richmond
Roanoke, VA MSA	302	368	431	541	605	Botetourt, Roanoke, Roanoke, Salem
Washington, DC-MD-VA MSA	597	725	854	1067	1195	Arlington, Fairfax, Loudoun, Prince William, Stafford Alexandria, Fairfax, Falls Church City, Manassas Manassas Park City

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Accomack	283	342	398	492	549
Amelia	249	301	353	444	499
Augusta	300	364	429	537	601
Bedford	258	314	372	464	520
Brunswick	234	285	334	420	470
Buckingham	249	301	353	444	499
Carroll	253	307	361	454	507
Clarke	301	367	430	539	603
Culpeper	312	379	448	559	626
Dickenson	267	311	369	461	515
Fauquier	312	379	448	559	626
Franklin	258	314	372	464	520
Giles	299	363	426	534	598
Greensville	234	285	334	420	470
Henry	301	367	430	538	602
Isle Of Wight	241	296	343	429	470
King George	353	431	507	632	712
Lancaster	271	332	392	491	549
Louisa	316	382	448	559	626
Madison	316	382	448	559	626
Mecklenburg	234	285	334	420	470
Montgomery	364	442	520	654	728
Northampton	283	342	398	492	549
Nottoway	249	301	353	444	499
Page	301	367	430	539	603
Prince Edward	249	301	353	444	499
Rappahannock	312	379	448	559	626
Rockbridge	300	364	429	537	601
Russell	287	348	410	513	576
Smyth	253	307	361	454	507
Spotsylvania	353	431	507	632	712

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alleghany	300	364	429	537	601
Appomattox	303	364	426	534	598
Bath	300	364	429	537	601
Bland	253	307	361	454	507
Buchanan	287	348	410	513	576
Caroline	353	431	507	632	712
Charlotte	249	301	353	444	499
Craig	234	285	334	418	469
Cumberland	249	301	353	444	499
Essex	271	332	392	491	549
Floyd	299	363	426	534	598
Frederick	301	367	430	539	603
Grayson	253	307	361	454	507
Halifax	249	301	353	444	499
Highland	300	364	429	537	601
King And Queen	271	332	392	491	549
King William	271	332	392	491	549
Lee	256	311	369	461	515
Lunenburg	249	301	353	444	499
Mathews	271	332	392	491	549
Middlesex	271	332	392	491	549
Nelson	262	318	376	470	527
Northumberland	271	332	392	491	549
Orange	316	382	448	559	626
Patrick	258	314	372	464	520
Pulaski	299	363	426	534	598
Richmond	271	332	392	491	549
Rockingham	300	364	429	537	601
Shenandoah	301	367	430	539	603
Southampton	241	296	343	429	470
Surry	241	296	343	429	470

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092492

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

V I R G I N I A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Sussex	234	285	334	420	470
Warren	301	367	430	539	603
Wise	289	349	412	515	578
Bedford	258	314	372	464	520
Clifton Forge City	300	364	429	537	601
Emporia	234	285	334	420	470
Fredericksburg	418	508	598	748	838
Harrisonburg City	344	417	492	614	687
Martinsville City	301	367	430	538	602
Radford	364	442	520	654	728
Staunton	300	364	429	537	601
Winchester	365	443	522	652	730

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Tazewell	287	348	410	513	576
Westmoreland	271	332	392	491	549
Wythe	273	333	386	478	535
Buena Vista	300	364	429	537	601
Covington	300	364	429	537	601
Franklin	234	285	334	420	470
Galax	253	307	361	454	507
Lexington	300	364	429	537	601
Norton	288	348	411	514	577
South Boston City	249	301	353	444	499
Waynesboro	300	364	429	537	601

W A S H I N G T O N

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Bellingham, WA MSA	431	526	619	792	870	Whatcom
Bremerton, WA MSA	403	490	576	718	808	Kitsap
Olympia, WA MSA	416	505	595	745	836	Thurston
Richland-Kennewick-Pasco, WA MSA	349	424	499	624	699	Benton, Franklin
Seattle, WA PMSA	441	536	630	813	895	King, Snohomish
Spokane, WA MSA	364	425	501	641	708	Spokane
Tacoma, WA PMSA	373	453	535	713	793	Pierce
Vancouver, WA PMSA	365	444	522	689	767	Clark
Yakima, WA MSA	366	444	523	655	735	Yakima

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	296	361	424	533	597
Chelan	359	435	515	642	721
Columbia	385	467	552	689	773
Douglas	359	435	515	642	721
Garfield	385	467	552	689	773
Grays Harbor	387	470	555	693	779
Jefferson	387	470	555	693	779
Klickitat	360	437	515	646	725
Lincoln	296	361	424	533	597
Okanogan	328	396	469	588	658
Pend Oreille	296	361	424	533	597
Skagit	393	482	566	708	792
Stevens	296	361	424	533	597

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Asotin	385	467	552	689	773
Clallam	387	470	555	693	779
Cowlitz	300	365	429	605	665
Ferry	296	361	424	533	597
Grant	296	361	424	533	597
Island	393	482	566	708	792
Kittitas	328	396	469	588	658
Lewis	360	437	515	646	725
Mason	387	470	555	693	779
Pacific	387	470	555	693	779
San Juan	393	482	566	708	792
Skamania	360	437	515	646	725
Wahkiakum	360	437	515	646	725

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WASHINGTON continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Walla Walla	385	467	552	689	773
Whitman	385	467	552	689	773

WEST VIRGINIA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Charleston, WV MSA	389	473	558	698	782	Kanawha, Putnam
Cumberland, MD-WV MSA	294	350	411	507	566	Mineral
Huntington-Ashland, WV-KY-OH MSA	320	389	460	575	647	Cabell, Wayne
Parkersburg-Marietta, WV-OH MSA	300	364	428	539	602	Wood
Steubenville-Weirton, OH-WV MSA	307	374	438	550	619	Brooke, Hancock
Wheeling, WV-OH MSA	302	368	433	542	606	Marshall, Ohio

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Barbour	278	338	399	500	558
Boone	277	335	396	496	555
Calhoun	321	377	437	569	627
Doddridge	270	331	391	488	547
Gilmer	297	355	432	535	590
Greenbrier	255	310	367	457	513
Hardy	266	325	382	478	537
Jackson	321	377	437	569	627
Lewis	278	338	399	500	558
Logan	267	325	382	478	537
Marion	329	400	470	590	659
Mercer	261	319	377	471	529
Monongalia	329	400	470	590	659
Morgan	281	342	402	502	562
Pendleton	266	325	382	478	537
Pocahontas	255	310	367	457	513
Raleigh	267	321	372	464	521
Ritchie	235	286	335	418	470
Summers	267	321	377	471	529
Tucker	278	338	399	500	558
Upshur	278	338	399	500	558
Wetzel	281	342	403	504	564
Wyoming	267	321	372	464	521

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Berkeley	325	395	465	582	651
Braxton	245	297	348	437	491
Clay	277	335	396	496	555
Fayette	255	310	367	457	513
Grant	266	325	382	478	537
Hampshire	266	325	382	478	537
Harrison	321	377	437	569	627
Jefferson	315	383	451	564	631
Lincoln	267	325	382	478	537
Mcdowell	258	315	371	464	521
Mason	267	325	382	478	537
Mingo	267	325	382	478	537
Monroe	267	321	377	471	529
Nicholas	255	310	367	457	513
Pleasants	235	286	335	418	470
Preston	329	400	470	590	659
Randolph	278	338	399	500	558
Roane	321	377	437	569	627
Taylor	270	331	391	488	547
Tyler	235	286	335	418	470
Webster	255	310	367	457	513
Wirt	235	286	335	418	470

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

W I S C O N S I N

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Appleton-Oshkosh-Neenah, WI MSA	300	365	432	539	603	Calumet, Outagamie, Winnebago
Duluth, MN-WI MSA	331	395	466	585	657	Douglas
Eau Claire, WI MSA	297	363	429	534	599	Chippewa, Eau Claire
Green Bay, WI MSA	300	365	434	539	603	Brown
Janesville-Beloit, WI MSA	331	404	476	596	668	Rock
Kenosha, WI PMSA	383	467	549	688	770	Kenosha
La Crosse, WI MSA	356	432	508	635	712	La Crosse
Madison, WI MSA	400	467	571	714	799	Dane
Milwaukee, WI PMSA	359	433	513	642	716	Milwaukee, Ozaukee, Washington, Waukesha
Minneapolis-St. Paul, MN-WI MSA	440	535	630	788	882	St Croix
Racine, WI PMSA	339	412	485	607	681	Racine
Sheboygan, WI MSA	308	372	440	552	619	Sheboygan
Wausau, WI MSA	300	365	432	539	603	Marathon

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	304	368	435	546	612	Ashland	266	325	383	480	536
Barron	289	354	415	520	584	Bayfield	266	325	383	480	536
Buffalo	275	332	394	491	553	Burnett	266	325	383	480	536
Clark	289	354	415	520	584	Columbia	278	335	397	496	557
Crawford	261	320	374	470	526	Dodge	278	335	397	496	557
Door	274	329	389	480	536	Dunn	289	354	415	520	584
Florence	261	320	374	470	526	Fond Du Lac	327	395	449	559	612
Forest	283	344	404	510	567	Grant	274	331	392	489	550
Green	283	344	402	501	556	Green Lake	297	363	429	535	599
Iowa	274	331	392	489	550	Iron	266	325	383	480	536
Jackson	275	332	394	491	553	Jefferson	318	387	454	567	639
Juneau	304	368	435	546	612	Kewaunee	274	329	389	480	535
Lafayette	274	331	392	489	550	Langlade	283	344	404	510	567
Lincoln	283	344	404	510	567	Manitowoc	274	329	389	480	535
Marinette	266	322	376	472	526	Marquette	266	325	383	480	536
Menominee	266	325	383	480	536	Monroe	275	332	394	491	553
Oconto	261	320	374	470	526	Oneida	283	344	404	510	567
Pepin	275	332	394	491	553	Pierce	275	332	394	491	553
Polk	289	354	415	520	584	Portage	304	368	435	546	612
Price	266	325	383	480	536	Richland	274	331	392	489	550
Rusk	266	325	383	480	536	Sauk	302	369	435	545	609
Sawyer	266	325	383	480	536	Shawano	266	325	383	480	536
Taylor	266	325	383	480	536	Trempealeau	275	332	394	491	553
Vernon	261	320	374	470	526	Vilas	283	344	404	510	567
Walworth	318	387	454	567	639	Washburn	266	325	383	480	536

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W I S C O N S I N continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Waupaca	266	325	383	480	536
Wood	304	368	435	546	612
Waushara	266	325	383	480	536

W Y O M I N G

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Casper, WY MSA	454	551	647	812	910	Natrona
Cheyenne, WY MSA	374	454	537	673	752	Laramie

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Albany	289	357	421	526	584
Campbell	289	357	421	526	584
Converse	289	357	421	526	584
Fremont	289	357	421	526	584
Hot Springs	297	362	428	532	596
Lincoln	289	357	421	526	584
Park	297	362	428	532	596
Sheridan	400	492	579	721	813
Sweetwater	289	357	421	526	584
Uinta	289	357	421	526	584
Weston	297	362	428	532	596
Big Horn	297	362	428	532	596
Carbon	289	357	421	526	584
Crook	289	362	428	532	596
Goshen	289	357	421	526	584
Johnson	289	357	421	526	584
Niobrara	289	357	421	526	584
Platte	289	357	421	526	584
Sublette	289	357	421	526	584
Teton	447	542	638	798	893
Washakie	297	362	428	532	596

P A C I F I C I S L A N D S

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Pacific Isl	639	768	909	1138	1280

P U E R T O R I C O

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Aguadilla, PR MSA	225	275	325	405	455	Aguada, Aguadilla, Isabela, Moca
Arecibo, PR MSA	330	400	470	590	660	Arecibo, Camuy, Hatillo, Quebradillas
Caguas, PR PMSA	275	330	390	490	545	Aguas Buenas, Caguas, Cayey, Cidra, Gurabo, San Lorenzo
Mayaguez, PR MSA	225	275	325	405	455	Anasco, Cabo Rojo, Hormigueros, Mayaguez, San German
Ponce, PR MSA	320	390	460	575	645	Juana Diaz, Ponce
San Juan, PR PMSA	320	390	460	575	645	Bayamon, Barceloneta, Canovanas, Carolina, Catano Corozal, Dorado, Fajardo, Florida, Guaynabo, Humacao Juncos, Las Piedras, Loiza, Luquillo, Manati, Naranjito Rio Grande, San Juan, Toa Alta, Toa Baja, Trujillo Alto Vega Alta, Vega Baja

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

P U E R T O R I C O continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adjuntas	215	265	310	390	435
Arroyo	215	265	310	390	435
Ceiba	215	265	310	390	435
Coamo	215	265	310	390	435
Culebra	215	265	310	390	435
Guayama	215	265	310	390	435
Jayuya	215	265	310	390	435
Lares	215	265	310	390	435
Maricao	215	265	310	390	435
Morovis	215	265	310	390	435
Orocovis	215	265	310	390	435
Penuelas	215	265	310	390	435
Sabana Grande	215	265	310	390	435
San Sebastian	215	265	310	390	435
Utuado	215	265	310	390	435
Villalba	215	265	310	390	435
Yauco	215	265	310	390	435

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Aibonito	215	265	310	390	435
Barranquitas	215	265	310	390	435
Ciales	215	265	310	390	435
Comerio	215	265	310	390	435
Guanica	215	265	310	390	435
Guayanilla	215	265	310	390	435
Lajas	215	265	310	390	435
Las Marias	215	265	310	390	435
Maunabo	215	265	310	390	435
Naguabo	215	265	310	390	435
Patillas	215	265	310	390	435
Rincon	215	265	310	390	435
Salinas	215	265	310	390	435
Santa Isabel	215	265	310	390	435
Vieques	215	265	310	390	435
Yabucoa	215	265	310	390	435

V I R G I N I S L A N D S

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Charlotte Amalie	485	590	694	867	970
St. Thomas	485	590	694	867	970

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
St. Croix	432	525	619	773	866

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	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
NON METRO STATE: ALABAMA	72	83
MSA: Anniston, AL	75	85
MSA: Birmingham, AL	108	119
MSA: Columbus, GA-AL	98	108
MSA: Decatur, AL	72	84
MSA: Dothan, AL	70	80
MSA: Florence, AL	85	92
MSA: Gadsden, AL	75	85
MSA: Huntsville, AL	108	119
MSA: Mobile, AL	86	93
MSA: Montgomery, AL	86	92
MSA: Tuscaloosa, AL	101	115
EXCEPTION COUNTY: LIMESTONE	81	89
EXCEPTION COUNTY: MARSHALL	81	89
NON METRO STATE: ALASKA	173	173
MSA: Anchorage, AK	199	199
EXCEPTION COUNTY: KETCHIKAN	173	182
NON METRO STATE: ARIZONA	108	139
MSA: Phoenix, AZ	152	181
MSA: Tucson, AZ	108	152
MSA: Yuma, AZ	108	139
NON METRO STATE: ARKANSAS	39	44
MSA: Fayetteville-Springdale, AR	67	72
MSA: Fort Smith, AR-OK	37	40
MSA: Little Rock-North Little Rock, AR	57	59
MSA: Memphis, TN-AR-MS	100	100
MSA: Pine Bluff, AR	28	31
MSA: Texarkana, TX-Texarkana, AR	118	133
EXCEPTION COUNTY: BENTON	53	55
EXCEPTION COUNTY: LITTLE RIVER	88	99
NON METRO STATE: CALIFORNIA	171	224
PMSA: Anaheim-Santa Ana, CA	418	418
MSA: Bakersfield, CA	160	245
MSA: Chico, CA	171	224
MSA: Fresno, CA	245	277
PMSA: Los Angeles-Long Beach, CA	202	341
MSA: Merced, CA	171	224

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B 092492

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Modesto, CA	256	277
PMSA: Oakland, CA	283	372
PMSA: Oxnard-Ventura, CA	259	393
MSA: Redding, CA	171	224
PMSA: Riverside-San Bernardino, CA	172	281
MSA: Sacramento, CA	197	235
MSA: Salinas-Seaside-Monterey, CA	245	309
MSA: San Diego, CA	314	343
PMSA: San Francisco, CA	304	396
PMSA: San Jose, CA	361	422
MSA: Santa Barbara-Santa Maria-Lompoc, CA	201	309
PMSA: Santa Cruz, CA	264	331
PMSA: Santa Rosa-Petaluma, CA	264	317
MSA: Stockton, CA	256	277
PMSA: Vallejo-Fairfield-Napa, CA	275	314
MSA: Visalia-Tulare-Porterville, CA	171	224
MSA: Yuba City, CA	171	224
EXCEPTION COUNTY: SAN LUIS OBI	235	278
NON METRO STATE: COLORADO	N/A	N/A
PMSA: Boulder-Longmont, CO	221	242
MSA: Colorado Springs, CO	162	182
PMSA: Denver, CO	252	272
MSA: Fort Collins-Loveland, CO	153	172
MSA: Greeley, CO	153	172
MSA: Pueblo, CO	153	172
EXCEPTION COUNTY: ALAMOSA	128	154
EXCEPTION COUNTY: ARCHULETA	154	172
EXCEPTION COUNTY: BACA	128	154
EXCEPTION COUNTY: BENT	128	154
EXCEPTION COUNTY: CHAFFEE	154	172
EXCEPTION COUNTY: CHEYENNE	128	154
EXCEPTION COUNTY: CLEAR CREEK	154	172
EXCEPTION COUNTY: CONEJOS	128	154
EXCEPTION COUNTY: COSTILLA	128	154
EXCEPTION COUNTY: CROWLEY	128	154
EXCEPTION COUNTY: CUSTER	154	172
EXCEPTION COUNTY: DELTA	154	172
EXCEPTION COUNTY: DELORES	154	172
EXCEPTION COUNTY: EAGLE	249	280
EXCEPTION COUNTY: ELBERT	128	154
EXCEPTION COUNTY: FREMONT	154	172
EXCEPTION COUNTY: GARFIELD	249	280
EXCEPTION COUNTY: GILPIN	164	189
EXCEPTION COUNTY: GRAND	154	172

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

092492

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: GUNNISON	154	172
EXCEPTION COUNTY: HINSDALE	154	172
EXCEPTION COUNTY: HUERFANO	128	154
EXCEPTION COUNTY: JACKSON	154	172
EXCEPTION COUNTY: KIOWA	128	154
EXCEPTION COUNTY: KIT CARSON	128	154
EXCEPTION COUNTY: LAKE	154	172
EXCEPTION COUNTY: LA PLATA	154	172
EXCEPTION COUNTY: LAS ANIMAS	128	154
EXCEPTION COUNTY: LINCOLN	128	154
EXCEPTION COUNTY: LOGAN	128	154
EXCEPTION COUNTY: MESA	154	172
EXCEPTION COUNTY: MINERAL	128	154
EXCEPTION COUNTY: MOFFAT	249	280
EXCEPTION COUNTY: MONTEZUMA	154	172
EXCEPTION COUNTY: MONTROSE	154	172
EXCEPTION COUNTY: MORGAN	128	154
EXCEPTION COUNTY: OTERO	128	154
EXCEPTION COUNTY: OURAY	154	172
EXCEPTION COUNTY: PARK	154	172
EXCEPTION COUNTY: PHILLIPS	128	154
EXCEPTION COUNTY: PITKIN	249	280
EXCEPTION COUNTY: PROWERS	128	154
EXCEPTION COUNTY: RIO BLANCO	249	280
EXCEPTION COUNTY: RIO GRANDE	128	154
EXCEPTION COUNTY: ROUTT	249	280
EXCEPTION COUNTY: SAGUACHE	128	154
EXCEPTION COUNTY: SAN JUAN	154	172
EXCEPTION COUNTY: SAN MIGUEL	154	172
EXCEPTION COUNTY: SEDGWICK	128	154
EXCEPTION COUNTY: SUMMIT	249	280
EXCEPTION COUNTY: TELLER	128	154
EXCEPTION COUNTY: WASHINGTON	128	154
EXCEPTION COUNTY: YUMA	128	154
NON METRO STATE: CONNECTICUT	168	168
PMSA: Bridgeport-Milford, CT	224	224
PMSA: Bristol, CT	170	170
PMSA: Danbury, CT	171	171
PMSA: Hartford, CT	184	184
PMSA: Middletown, CT	184	184
PMSA: New Britain, CT	184	184
MSA: New Haven-Meriden, CT	166	166
MSA: New London-Norwich, CT-RI	157	157
PMSA: Norwalk, CT	210	210

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

092492

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
PMSA: Stamford, CT	210	210
MSA: Waterbury, CT	170	170
NON METRO STATE: DELAWARE	74	74
PMSA: Wilmington, DE-NJ-MD	153	153
EXCEPTION COUNTY: KENT	160	160
EXCEPTION COUNTY: DE SUSSEX	115	115
NON METRO STATE: DIST. OF COLUMBIA	N/A	N/A
MSA: Washington, DC-MD-VA	209	209
NON METRO STATE: FLORIDA	91	91
MSA: Bradenton, FL	133	133
MSA: Daytona Beach, FL	118	118
PMSA: Fort Lauderdale-Hollywood-Pompano Beach, FL	192	192
MSA: Fort Myers-Cape Coral, FL	124	124
MSA: Fort Pierce, FL	89	89
MSA: Fort Walton Beach, FL	92	92
MSA: Gainesville, FL	92	92
MSA: Jacksonville, FL	85	100
MSA: Lakeland-Winter Haven, FL	92	92
MSA: Melbourne-Titusville-Palm Bay, FL	108	108
PMSA: Miami-Hialeah, FL	151	151
MSA: Naples, FL	92	92
MSA: Ocala, FL	92	92
MSA: Orlando, FL	108	108
MSA: Panama City, FL	92	92
MSA: Pensacola, FL	92	92
MSA: Sarasota, FL	124	124
MSA: Tallahassee, FL	85	85
MSA: Tampa-St. Petersburg-Clearwater, FL	124	124
MSA: West Palm Beach-Boca Raton-Delray Beach, FL	158	158
EXCEPTION COUNTY: BAKER	82	97
EXCEPTION COUNTY: COLUMBIA	91	91
EXCEPTION COUNTY: WAKULLA	82	97
NON METRO STATE: GEORGIA	66	66
MSA: Albany, GA	58	62
MSA: Athens, GA	66	66
MSA: Atlanta, GA	104	112
MSA: Augusta, GA-SC	89	92
MSA: Chattanooga, TN-GA	58	85

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

092492

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Columbus, GA-AL	98	108
MSA: Macon-Warner Robins, GA	59	65
MSA: Savannah, GA	73	85
EXCEPTION COUNTY: BRYAN	66	66
EXCEPTION COUNTY: TWIGGS	58	64
NON METRO STATE: HAWAII	N/A	N/A
MSA: Honolulu, HI	N/A	N/A
NON METRO STATE: IDAHO	129	129
MSA: Boise City, ID	140	163
NON METRO STATE: ILLINOIS	119	128
PMSA: Aurora-Elgin, IL	249	268
MSA: Bloomington-Normal, IL	134	134
MSA: Champaign-Urbana-Rantoul, IL	109	109
PMSA: Chicago, IL	263	281
MSA: Davenport-Rock Island-Moline, IA-IL	147	155
MSA: Decatur, IL	147	147
PMSA: Joliet, IL	263	281
MSA: Kankakee, IL	106	106
PMSA: Lake County, IL	249	268
MSA: Peoria, IL	201	220
MSA: Rockford, IL	198	210
MSA: St. Louis, MO-IL	107	124
MSA: Springfield, IL	129	137
NON METRO STATE: INDIANA	65	84
MSA: Anderson, IN	72	72
MSA: Bloomington, IN	68	68
PMSA: Cincinnati, OH-KY-IN	130	136
MSA: Elkhart-Goshen, IN	94	94
MSA: Evansville-Henderson, IN-KY	87	92
MSA: Fort Wayne, IN	80	109
PMSA: Gary-Hammond, IN	127	146
MSA: Indianapolis, IN	102	118
MSA: Kokomo, IN	94	107
MSA: Lafayette-West Lafayette, IN	88	130
MSA: Louisville, KY-IN	92	101
MSA: Muncie, IN	69	78
MSA: South Bend-Mishawaka, IN	107	113
MSA: Terre Haute, IN	68	85

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

092492

SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM)

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: ADAMS	65	84
EXCEPTION COUNTY: BLACKFORD	73	84
EXCEPTION COUNTY: GIBSON	65	84
EXCEPTION COUNTY: GRANT	73	84
EXCEPTION COUNTY: HENRY	73	84
EXCEPTION COUNTY: JAY	73	84
EXCEPTION COUNTY: MARSHALL	74	84
EXCEPTION COUNTY: RANDOLPH	73	84
EXCEPTION COUNTY: SULLIVAN	66	78
EXCEPTION COUNTY: VERMILLION	66	78
EXCEPTION COUNTY: WAYNE	73	84
EXCEPTION COUNTY: WELLS	65	84
NON METRO STATE: IOWA	101	109
MSA: Cedar Rapids, IA	119	138
MSA: Davenport-Rock Island-Moline, IA-IL	149	156
MSA: Des Moines, IA	127	135
MSA: Dubuque, IA	119	148
MSA: Iowa City, IA	119	135
MSA: Omaha, NE-IA	111	130
MSA: Sioux City, IA-NE	115	115
MSA: Waterloo-Cedar Falls, IA	119	138
NON METRO STATE: KANSAS	89	101
MSA: Kansas City, MO-KS	103	126
MSA: Lawrence, KS	93	106
MSA: Topeka, KS	91	103
MSA: Wichita, KS	106	114
EXCEPTION COUNTY: JEFFERSON	85	98
EXCEPTION COUNTY: OSAGE	85	98
NON METRO STATE: KENTUCKY	79	87
PMSA: Cincinnati, OH-KY-IN	130	136
MSA: Clarksville-Hopkinsville, TN-KY	85	92
MSA: Evansville-Henderson, IN-KY	86	92
MSA: Huntington-Ashland, WV-KY-OH	97	97
MSA: Lexington-Fayette, KY	101	116
MSA: Louisville, KY-IN	92	100
MSA: Owensboro, KY	93	111
NON METRO STATE: LOUISIANA	85	100
MSA: Alexandria, LA	85	100

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

092492

SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM)

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Baton Rouge, LA	100	118
MSA: Houma-Thibodaux, LA	84	98
MSA: Lafayette, LA	92	109
MSA: Lake Charles, LA	98	116
MSA: Monroe, LA	85	100
MSA: New Orleans, LA	106	122
MSA: Shreveport, LA	92	109
EXCEPTION COUNTY: GRANT	81	96
EXCEPTION COUNTY: WEBSTER	85	100
NON METRO STATE: MAINE	149	171
MSA: Bangor, ME	150	173
MSA: Lewiston-Auburn, ME	114	114
MSA: Portland, ME	187	214
MSA: Portsmouth-Dover-Rochester, NH-ME	150	173
NON METRO STATE: MARYLAND	135	135
MSA: Baltimore, MD	219	219
MSA: Cumberland, MD-WV	136	136
MSA: Hagerstown, MD	208	208
MSA: Washington, DC-MD-VA	209	209
PMSA: Wilmington, DE-NJ-MD	153	153
EXCEPTION COUNTY: ST MARYS	248	248
NON METRO STATE: MASSACHUSETTS	183	183
PMSA: Boston, MA	176	190
PMSA: Brockton, MA	176	176
PMSA: Fall River, MA-RI	114	114
MSA: Fitchburg-Leominster, MA	136	136
PMSA: Lawrence-Haverhill, MA-NH	167	178
PMSA: Lowell, MA-NH	167	178
MSA: New Bedford, MA	157	157
PMSA: Pawtucket-Woonsocket-Attleboro, RI-MA	156	156
MSA: Pittsfield, MA	171	171
PMSA: Salem-Gloucester, MA	176	190
MSA: Springfield, MA	134	134
MSA: Worcester, MA	117	117
NON METRO STATE: MICHIGAN	128	142
PMSA: Ann Arbor, MI	187	202
MSA: Battle Creek, MI	110	129
MSA: Benton Harbor, MI	129	143

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

092492

SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM)

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
PMSA: Detroit, MI	181	196
MSA: Flint, MI	157	157
MSA: Grand Rapids, MI	118	127
MSA: Jackson, MI	129	129
MSA: Kalamazoo, MI	135	139
MSA: Lansing-East Lansing, MI	151	176
MSA: Muskegon, MI	118	120
MSA: Saginaw-Bay City-Midland, MI	137	137
EXCEPTION COUNTY: BARRY	104	122
EXCEPTION COUNTY: IONIA	128	142
EXCEPTION COUNTY: OCEANA	111	113
EXCEPTION COUNTY: SHIAWASSEE	149	149
EXCEPTION COUNTY: VAN BUREN	128	132
NON METRO STATE: MINNESOTA	91	91
MSA: Duluth, MN-WI	94	106
MSA: Fargo-Moorhead, ND-MN	146	165
MSA: Minneapolis-St. Paul, MN-WI	219	233
MSA: Rochester, MN	133	133
MSA: St. Cloud, MN	117	117
EXCEPTION COUNTY: POLK	140	158
NON METRO STATE: MISSISSIPPI	85	101
MSA: Biloxi-Gulfport, MS	100	118
MSA: Jackson, MS	108	133
MSA: Memphis, TN-AR-MS	100	100
MSA: Pascagoula, MS	85	100
EXCEPTION COUNTY: STONE	85	101
NON METRO STATE: MISSOURI	71	78
MSA: Columbia, MO	103	111
MSA: Joplin, MO	72	79
MSA: Kansas City, MO-KS	103	126
MSA: St. Joseph, MO	106	115
MSA: St. Louis, MO-IL	108	125
MSA: Springfield, MO	74	80
EXCEPTION COUNTY: ANDREW	99	106
NON METRO STATE: MONTANA	N/A	N/A
MSA: Billings, MT	192	214
MSA: Great Falls, MT	162	182
EXCEPTION COUNTY: BEAVERHEAD	154	172

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

092492

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: BIG HORN	154	172
EXCEPTION COUNTY: BLAINE	109	128
EXCEPTION COUNTY: BROADWATER	154	172
EXCEPTION COUNTY: CARBON	154	172
EXCEPTION COUNTY: CARTER	109	128
EXCEPTION COUNTY: CHOUTEAU	109	128
EXCEPTION COUNTY: CUSTER	154	172
EXCEPTION COUNTY: DANIELS	109	128
EXCEPTION COUNTY: DAWSON	154	172
EXCEPTION COUNTY: DEER LODGE	154	172
EXCEPTION COUNTY: FALLON	109	128
EXCEPTION COUNTY: FERGUS	109	128
EXCEPTION COUNTY: FLATHEAD	154	172
EXCEPTION COUNTY: GALLATIN	154	172
EXCEPTION COUNTY: GARFIELD	109	128
EXCEPTION COUNTY: GLACIER	109	128
EXCEPTION COUNTY: GOLDEN VALLE	109	128
EXCEPTION COUNTY: GRANITE	154	172
EXCEPTION COUNTY: HILL	109	128
EXCEPTION COUNTY: JEFFERSON	154	172
EXCEPTION COUNTY: JUDITH BASIN	109	128
EXCEPTION COUNTY: LAKE	154	172
EXCEPTION COUNTY: LEWIS+ CLARK	154	172
EXCEPTION COUNTY: LIBERTY	109	128
EXCEPTION COUNTY: LINCOLN	154	172
EXCEPTION COUNTY: MCCONE	109	128
EXCEPTION COUNTY: MADISON	154	172
EXCEPTION COUNTY: MEAGHER	154	172
EXCEPTION COUNTY: MINERAL	154	172
EXCEPTION COUNTY: MISSOULA	154	172
EXCEPTION COUNTY: MUSSELSHELL	154	172
EXCEPTION COUNTY: PARK	154	172
EXCEPTION COUNTY: PETROLEUM	109	128
EXCEPTION COUNTY: PHILLIPS	109	128
EXCEPTION COUNTY: PONDERA	109	128
EXCEPTION COUNTY: POWDER RIVER	154	172
EXCEPTION COUNTY: POWELL	154	172
EXCEPTION COUNTY: PRAIRIE	109	128
EXCEPTION COUNTY: RAVALLI	154	172
EXCEPTION COUNTY: RICHLAND	109	128
EXCEPTION COUNTY: ROOSEVELT	109	128
EXCEPTION COUNTY: ROSEBUD	154	172
EXCEPTION COUNTY: SANDERS	154	172
EXCEPTION COUNTY: SHERIDAN	109	128
EXCEPTION COUNTY: SILVER BOW	154	172
EXCEPTION COUNTY: STILLWATER	109	128

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

092492

SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM)

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: SWEET GRASS	109	128
EXCEPTION COUNTY: TETON	109	128
EXCEPTION COUNTY: TOOLE	109	128
EXCEPTION COUNTY: TREASURE	154	172
EXCEPTION COUNTY: VALLEY	109	128
EXCEPTION COUNTY: WHEATLAND	109	128
EXCEPTION COUNTY: WIBAUX	109	128
EXCEPTION COUNTY: YL-ST-NT-PK	154	172
NON METRO STATE: NEBRASKA	92	113
MSA: Lincoln, NE	128	135
MSA: Omaha, NE-IA	111	130
MSA: Sioux City, IA-NE	115	115
NON METRO STATE: NEVADA	121	139
MSA: Las Vegas, NV	256	285
MSA: Reno, NV	256	285
NON METRO STATE: NEW HAMPSHIRE	134	149
PMSA: Lawrence-Haverhill, MA-NH	167	178
PMSA: Lowell, MA-NH	167	178
MSA: Manchester, NH	154	170
PMSA: Nashua, NH	190	190
MSA: Portsmouth-Dover-Rochester, NH-ME	150	173
NON METRO STATE: NEW JERSEY	142	142
MSA: Allentown-Bethlehem-Easton, PA-NJ	137	137
MSA: Atlantic City, NJ	216	216
PMSA: Bergen-Passaic, NJ	297	299
PMSA: Jersey City, NJ	289	289
PMSA: Middlesex-Somerset-Hunterdon, NJ	339	339
PMSA: Monmouth-Ocean, NJ	259	314
PMSA: Newark, NJ	279	289
PMSA: Philadelphia, PA-NJ	239	239
PMSA: Trenton, NJ	210	210
PMSA: Vineland-Millville-Bridgeton, NJ	185	185
PMSA: Wilmington, DE-NJ-MD	151	151
NON METRO STATE: NEW MEXICO	111	129
MSA: Las Cruces, NM	113	131
MSA: Albuquerque, NM	127	148

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

092492

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Santa Fe, NM	113	131
EXCEPTION COUNTY: SANDOVAL	119	135
NON METRO STATE: NEW YORK	166	166
MSA: Albany-Schenectady-Troy, NY	204	204
MSA: Binghamton, NY	122	122
PMSA: Buffalo, NY	148	148
MSA: Elmira, NY	130	130
MSA: Glens Falls, NY	164	164
MSA: Jamestown-Dunkirk, NY	165	165
PMSA: Nassau-Suffolk, NY	227	294
PMSA: New York, NY	236	236
PMSA: NiagaraFalls, NY	141	141
PMSA: Orange County, NY	163	163
MSA: Poughkeepsie, NY	311	311
MSA: Rochester, NY	186	186
MSA: Syracuse, NY	150	150
MSA: Utica-Rome, NY	152	152
EXCEPTION COUNTY: WESTCHESTER	279	279
NON METRO STATE: NORTH CAROLINA	59	73
MSA: Asheville, NC	85	100
MSA: Burlington, NC	85	100
MSA: Charlotte-Gastonia-Rock Hill, NC-SC	85	100
MSA: Fayetteville, NC	85	100
MSA: Greensboro--Winston-Salem--High Point, NC	85	100
MSA: Hickory-Morganton, NC	59	73
MSA: Jacksonville, NC	59	73
MSA: Raleigh-Durham, NC	85	100
MSA: Wilmington, NC	85	100
EXCEPTION COUNTY: BRUNSWICK	64	76
EXCEPTION COUNTY: CURRITUCK	101	101
EXCEPTION COUNTY: HAYWOOD	76	76
EXCEPTION COUNTY: MADISON	64	76
NON METRO STATE: NORTH DAKOTA	117	135
MSA: Bismarck, ND	167	184
MSA: Fargo-Moorhead, ND-MN	147	166
MSA: Grand Forks, ND	127	157
NON METRO STATE: OHIO	83	83
PMSA: Akron, OH	124	124

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B 092492

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Canton, OH	90	90
PMSA: Cincinnati, OH-KY-IN	130	136
PMSA: Cleveland, OH	132	132
MSA: Columbus, OH	118	137
MSA: Dayton-Springfield, OH	90	90
PMSA: Hamilton-Middletown, OH	105	108
MSA: Huntington-Ashland, WV-KY-OH	98	98
MSA: Lima, OH	118	118
PMSA: Lorain-Elyria, OH	141	141
MSA: Mansfield, OH	110	110
MSA: Parkersburg-Marietta, WV-OH	98	98
MSA: Steubenville-Weirton, OH-WV	88	88
MSA: Toledo, OH	148	201
MSA: Wheeling, WV-OH	90	90
MSA: Youngstown-Warren, OH	110	110
EXCEPTION COUNTY: CHAMPAIGN	83	83
EXCEPTION COUNTY: OTTAWA	100	134
EXCEPTION COUNTY: PREBLE	83	83
EXCEPTION COUNTY: PUTNAM	83	83
EXCEPTION COUNTY: VAN WERT	83	83
NON METRO STATE: OKLAHOMA	81	88
MSA: Enid, OK	83	89
MSA: Fort Smith, AR-OK	37	40
MSA: Lawton, OK	84	92
MSA: Oklahoma City, OK	86	95
MSA: Tulsa, OK	92	100
EXCEPTION COUNTY: LE FLORE	35	38
EXCEPTION COUNTY: MAYES	81	88
NON METRO STATE: OREGON	165	174
MSA: Eugene-Springfield, OR	194	201
MSA: Medford, OR	165	175
PMSA: Portland, OR	222	246
MSA: Salem, OR	194	201
NON METRO STATE: PENNSYLVANIA	98	98
MSA: Allentown-Bethlehem-Easton, PA-NJ	139	139
MSA: Altoona, PA	128	128
PMSA: Beaver County, PA	98	98
MSA: Erie, PA	128	128
MSA: Harrisburg-Lebanon-Carlisle, PA	146	146
MSA: Johnstown, PA	128	128

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

092492

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Lancaster, PA	132	132
PMSA: Philadelphia, PA-NJ	241	241
PMSA: Pittsburgh, PA	102	102
MSA: Reading, PA	132	132
MSA: Scranton--Wilkes-Barre, PA	117	117
MSA: Sharon, PA	98	98
MSA: State College, PA	98	98
MSA: Williamsport, PA	98	98
MSA: York, PA	132	132
EXCEPTION COUNTY: MONROE	117	117
EXCEPTION COUNTY: SUSQUEHANNA	98	98
NON METRO STATE: RHODE ISLAND	149	149
PMSA: Fall River, MA-RI	114	114
MSA: New London-Norwich, CT-RI	157	157
PMSA: Pawtucket-Woonsocket-Attleboro, RI-MA	157	157
PMSA: Providence, RI	157	157
NON METRO STATE: SOUTH CAROLINA	66	66
MSA: Anderson, SC	66	66
MSA: Augusta, GA-SC	89	92
MSA: Charleston, SC	85	85
MSA: Charlotte-Gastonia-Rock Hill, NC-SC	85	100
MSA: Columbia, SC	73	85
MSA: Florence, SC	66	66
MSA: Greenville-Spartanburg, SC	73	73
NON METRO STATE: SOUTH DAKOTA	100	117
MSA: Rapid City, SD	100	117
MSA: Sioux Falls, SD	141	158
NON METRO STATE: TENNESSEE	66	66
MSA: Chattanooga, TN-GA	58	85
MSA: Clarksville-Hopkinsville, TN-KY	85	92
MSA: Jackson, TN	66	66
MSA: Johnson City-Kingsport-Bristol, TN-VA	92	92
MSA: Knoxville, TN	73	73
MSA: Memphis, TN-AR-MS	100	100
MSA: Nashville, TN	100	118
NON METRO STATE: TEXAS	70	88

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

092492

SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM)

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
NON METRO STATE: TEXAS	70	88
MSA: Abilene, TX	62	69
MSA: Amarillo, TX	116	122
MSA: Austin, TX	106	124
MSA: Beaumont-Port Arthur, TX	109	124
PMSA: Brazoria, TX	116	135
MSA: Brownsville-Harlingen, TX	85	100
MSA: Bryan-College Station, TX	106	118
MSA: Corpus Christi, TX	89	118
PMSA: Dallas, TX	83	107
MSA: El Paso, TX	120	136
PMSA: Fort Worth-Arlington, TX	83	107
PMSA: Galveston-Texas City, TX	112	125
PMSA: Houston, TX	119	139
MSA: Killeen-Temple, TX	109	118
MSA: Laredo, TX	74	92
MSA: Longview-Marshall, TX	100	115
MSA: Lubbock, TX	115	118
MSA: Mc Allen-Edinburg-Mission, TX	98	118
MSA: Midland, TX	118	124
MSA: Odessa, TX	118	124
MSA: San Angelo, TX	100	109
MSA: San Antonio, TX	85	100
MSA: Sherman-Denison, TX	92	109
MSA: Texarkana, TX-Texarkana, AR	118	133
MSA: Tyler, TX	92	97
MSA: Victoria, TX	72	89
MSA: Waco, TX	95	109
MSA: Wichita Falls, TX	66	74
EXCEPTION COUNTY: CALLAHAN	60	66
EXCEPTION COUNTY: CLAY	64	70
EXCEPTION COUNTY: HOOD	70	88
EXCEPTION COUNTY: JONES	60	66
EXCEPTION COUNTY: WISE	70	88
NON METRO STATE: UTAH	N/A	N/A
MSA: Provo-Orem, UT	153	172
MSA: Salt Lake City-Ogden, UT	172	192
EXCEPTION COUNTY: BEAVER	109	128
EXCEPTION COUNTY: BOX ELDER	109	128
EXCEPTION COUNTY: CACHE	109	128
EXCEPTION COUNTY: CARBON	154	172
EXCEPTION COUNTY: DAGGETT	109	128
EXCEPTION COUNTY: DUCHESNE	109	128

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

092492

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: EMERY	154	172
EXCEPTION COUNTY: GARFIELD	109	128
EXCEPTION COUNTY: GRAND	154	172
EXCEPTION COUNTY: IRON	109	128
EXCEPTION COUNTY: JUAB	109	128
EXCEPTION COUNTY: KANE	109	128
EXCEPTION COUNTY: MILLARD	109	128
EXCEPTION COUNTY: MORGAN	109	128
EXCEPTION COUNTY: PIUTE	109	128
EXCEPTION COUNTY: RICH	109	128
EXCEPTION COUNTY: SAN JUAN	109	128
EXCEPTION COUNTY: SANPETE	109	128
EXCEPTION COUNTY: SEVIER	109	128
EXCEPTION COUNTY: SUMMIT	109	128
EXCEPTION COUNTY: TOOELE	108	120
EXCEPTION COUNTY: UINTAH	154	172
EXCEPTION COUNTY: WASATCH	109	128
EXCEPTION COUNTY: WASHINGTON	109	128
EXCEPTION COUNTY: WAYNE	109	128
NON METRO STATE: VERMONT	139	161
MSA: Burlington, VT	170	194
EXCEPTION COUNTY: CHITTENDEN	169	196
EXCEPTION COUNTY: FRANKLIN	144	166
EXCEPTION COUNTY: GRAND ISLE	158	181
EXCEPTION COUNTY: ORANGE	156	180
EXCEPTION COUNTY: WASHINGTON	172	199
EXCEPTION COUNTY: WINDHAM	207	239
EXCEPTION COUNTY: WINDSOR	223	255
NON METRO STATE: VIRGINIA	96	96
MSA: Charlottesville, VA	96	96
MSA: Danville, VA	96	96
MSA: Johnson City-Kingsport-Bristol, TN-VA	93	93
MSA: Lynchburg, VA	86	86
MSA: Norfolk-Virginia Beach-Newport News, VA	137	137
MSA: Richmond-Petersburg, VA	135	135
MSA: Roanoke, VA	93	93
MSA: Washington, DC-MD-VA	209	209
EXCEPTION COUNTY: APPOMATTOX	83	83
EXCEPTION COUNTY: CRAIG	90	90
NON METRO STATE: WASHINGTON	142	165

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

092492

SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM)

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Bellingham, WA	142	184
MSA: Bremerton, WA	142	184
MSA: Olympia, WA	142	184
MSA: Richland-Kennewick-Pasco, WA	194	194
PMSA: Seattle, WA	188	266
MSA: Spokane, WA	156	175
PMSA: Tacoma, WA	168	199
PMSA: Vancouver, WA	207	227
MSA: Yakima, WA	156	164
NON METRO STATE: WEST VIRGINIA	93	93
MSA: Charleston, WV	101	101
MSA: Cumberland, MD-WV	136	136
MSA: Huntington-Ashland, WV-KY-OH	98	98
MSA: Parkersburg-Marietta, WV-OH	98	98
MSA: Steubenville-Weirton, OH-WV	88	88
MSA: Wheeling, WV-OH	90	90
EXCEPTION COUNTY: BERKELEY	133	133
EXCEPTION COUNTY: JEFFERSON	133	133
EXCEPTION COUNTY: MORGAN	133	133
EXCEPTION COUNTY: WIRT	90	90
NON METRO STATE: WISCONSIN	101	109
MSA: Appleton-Oshkosh-Neenah, WI	129	137
MSA: Duluth, MN-WI	94	106
MSA: Eau Claire, WI	120	130
MSA: Green Bay, WI	126	134
MSA: Janesville-Beloit, WI	126	134
PMSA: Kenosha, WI	143	155
MSA: La Crosse, WI	113	124
MSA: Madison, WI	189	200
PMSA: Milwaukee, WI	149	160
MSA: Minneapolis-St. Paul, MN-WI	219	233
PMSA: Racine, WI	141	148
MSA: Sheboygan, WI	102	110
MSA: Wausau, WI	102	110
NON METRO STATE: WYOMING	N/A	N/A
MSA: Casper, WY	258	279
MSA: Cheyenne, WY	153	184
EXCEPTION COUNTY: ALBANY	154	185
EXCEPTION COUNTY: BIG HORN	154	185
EXCEPTION COUNTY: CAMPBELL	258	280

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

092492

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: CARBON	258	280
EXCEPTION COUNTY: CONVERSE	258	280
EXCEPTION COUNTY: CROOK	154	185
EXCEPTION COUNTY: FREMONT	258	280
EXCEPTION COUNTY: GOSHEN	154	185
EXCEPTION COUNTY: HOT SPRINGS	154	185
EXCEPTION COUNTY: JOHNSON	154	185
EXCEPTION COUNTY: LARAMIE	154	185
EXCEPTION COUNTY: LINCOLN	154	185
EXCEPTION COUNTY: PARK	154	185
EXCEPTION COUNTY: PLATTE	154	185
EXCEPTION COUNTY: SHERIDAN	258	280
EXCEPTION COUNTY: SUBLETTE	154	185
EXCEPTION COUNTY: SWEETWATER	258	280
EXCEPTION COUNTY: TETON	154	185
EXCEPTION COUNTY: UINTA	154	185
EXCEPTION COUNTY: WASHAKIE	154	185
EXCEPTION COUNTY: WESTON	154	185

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

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[FR Doc. 92-23885 Filed 9-30-92; 8:45 am]
BILLING CODE 4210-32-C

federal register

Thursday
October 1, 1992

Part VI

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Update of Ambulatory Surgical Center Payment Rates; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPD-760-NC]

RIN 0938-

Medicare Program; Update of Ambulatory Surgical Center Payment Rates

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

ACTION: Notice with comment period.

SUMMARY: This notice implements section 1833(i)(2)(A) of the Social Security Act, which requires that the payment rates for ambulatory surgical center (ASC) services be reviewed and updated annually, and responds to the public comments we received concerning the ASC payment rate update notice with comment published on December 31, 1991 (56 FR 67666), except for those concerning payment amounts for lithotripsy, which will be addressed in another **Federal Register** document.

DATES: *Effective date*: The payment rates contained in this notice are effective for services furnished on or after October 1, 1992.

Comments date: Comments will be considered if we receive them at the appropriate address, as provided below, by 5 p.m. on November 30, 1992.

ADDRESSES: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-760-NC, P.O. Box 26676, Baltimore, MD 21207.

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

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept comments submitted by facsimile (FAX) transmission. In commenting, please refer to file code BPD-760-NC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309-G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690-7890).

FOR FURTHER INFORMATION CONTACT: Joan Sanow, (410) 966-5723.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1832(a)(2)(F)(i) of the Social Security Act (the Act) provides that benefits under the Medicare Supplementary Medical Insurance program (Part B) include services furnished in connection with those surgical procedures that, under section 1833(i)(1)(A) of the Act, are specified by the Secretary and are performed on an inpatient basis in a hospital but that also can be performed safely on an ambulatory basis in an ambulatory surgical center (ASC) or in a hospital outpatient department. To participate in the Medicare program as an ASC, a facility must meet the standards specified under section 1832(a)(2)(F)(i) of the Act and 42 CFR 416.25.

Generally, there are two elements in the total charge for a surgical procedure—a charge for the physician's professional services for performing the procedure and a charge for the facility's services (for example, use of an operating room). Section 1833(i)(2)(A) of the Act authorizes the Secretary to pay ASCs a prospectively determined rate for facility services associated with covered surgical procedures. ASC facility services are subject to the usual Medicare Part B deductible and coinsurance requirements. Therefore, participating ASCs are paid 80 percent of the prospectively determined rate adjusted for regional wage variations. This rate is intended to represent HCFA's estimate of a fair payment that takes into account the cost incurred by ASCs generally in providing the services that are furnished in connection with performing the procedure. Currently, this rate is a standard overhead amount that does not include physician fees and other medical items and services (for example, durable medical equipment) for which separate payment may be authorized under other provisions of the Medicare program.

We have grouped procedures into nine groups for purposes of ASC payment rates. The ASC facility payment for all procedures in each group is established at a single rate adjusted for geographic variation. The rate is a standard overhead amount that covers the cost of services such as nursing, supplies, equipment, and use of the facility. (For an indepth discussion of the methodology and rate setting procedures, we refer the reader to a document we published on February 8, 1990 on these subjects entitled "Updates of Ambulatory Surgical Center Payment Rates" (55 FR 4577).)

Statutory Provisions

- Under section 1833(i)(3)(A) of the Act, the aggregate payment to hospital outpatient departments for covered ASC procedures is equal to 80 percent of the lesser of the following two amounts:

  + The amount paid for the same services that would be paid to the hospital under section 1833(a)(2)(B) of the Act (that is, the lower of the hospital's reasonable costs or customary charges); or

  + The amount determined under section 1833(i)(3)(B)(i) of the Act based on a blend of the lower of the hospital's reasonable costs or customary charges and the amount that would be paid to a freestanding ASC in the same area for the same procedures.

- Under section 1833(i)(3)(B)(i) of the Act, the blend amount for cost reporting periods is the sum of the hospital cost proportion and the ASC cost proportion.

- Under section 1833(i)(3)(B)(ii) of the Act, the hospital cost proportion and the ASC cost proportion for portions of cost reporting periods beginning on or after January 1, 1991 are 42 and 58 percent, respectively.

- Section 1833(i)(2)(A) of the Act requires the Secretary to review and update standard overhead amounts annually.

- Section 1833(i)(2)(A)(ii) of the Act requires that the ASC facility payment rate result in substantially lower Medicare expenditure than would have been paid in the same procedure was performed on an inpatient basis in a hospital.

- Section 1833(i)(2)(A)(iii) of the Act requires that payment for insertion of an intraocular lens (IOL) include payment that is reasonable and related to the cost of acquiring the class of lens involved.

- Section 4151(c)(3) of the Omnibus Budget Reconciliation Act of 1990 (OBRA 90) (Pub. L. 101-508) froze the allowance for IOLs furnished by an ASC at $200 through December 31, 1992.

Implementation

Since September 7, 1982, when we first implemented the ASC benefit, we have expanded the number of covered procedures from 54 to nearly 2400 as of December 31, 1991 and classified the procedures into nine groups. We started updating rates in 1987 on an annual basis; the latest up-date was effective for services furnished on or after December 31, 1991. In the latest update notice, published December 31, 1991, in addition to adding nearly 900 services to be subject to the ASC payment rates, we established that the annual ASC update

would be concurrent with the annual update of the hospital inpatient wage index (56 FR 67666).

On March 12, 1992, the United States District Court for the District of Columbia issued an order that stayed Medicare Part B payment for extracorporeal shock wave lithotripsy (ESWL) as an ASC service until the Secretary publishes all material information relevant to the setting of the ESWL rate, receives comments, and publishes a subsequent final notice.

II. Provision of the Notice

The purpose of this notice is to (a) state the new rates for the ASC services for which there are ASC payment rates; (b) explain the basis of the new rates; (c) discuss the allowance for IOLs furnished by ASCs and (d) discuss the new survey we are conducting.

a. New Rates

As of October 1, 1992, the ASC facility group rates are:

Group 1—$295
Group 2—$395
Group 3—$453
Group 4—$558
Group 5—$637
Group 6—$800 ($600 + $200)
Group 7—$883
Group 8—$930 ($730 + 200)

(There is no rate for Group 9 as it is only for ESWL services and the court stay prohibits us from paying for these services under the ASC benefit at this time. ESWL payment rates are the subject of a separate **Federal Register** notice.)

b. Basis of Rates

We have based the rates on (1) the CPI–U (Consumer Price Index—All Urban Consumers) projected rate of change and (2) data from a survey conducted in 1986.

1. As in 1987, 1989, 1990 and 1991, the rate of change is based on the consumer price index for all urban consumers, which is a generalized index that reflects prices paid for a representative market basket of goods and services. The CPI–U is based on forecasts by Data Resources, Inc.

For the 12-month period beginning April 1, 1992 (the midpoint of the rate period that began October 1, 1991) and ending March 31, 1993 (the midpoint of the rate period that begins October 1, 1992) the projected rate of change is a 3.5 percent increase.

We will use the hospital inpatient wage index that goes into effect October 1, 1992 to calculate payments to individual ASCs. Appended as Addendum A are the wage index for urban areas, the wage index for rural areas and wage index values for certain counties that are deemed urban and whose wage index is computed as a separate urban area.

Below are two examples of how the applicable wage index value is applied to the portion of the ASC payments rate that is attributable to labor costs (34.45 percent) in order to standardize payment amounts for variation across geographical areas.

Example 1

The following is an example of how the payment is determined for a procedure in Group 4 ($558) for an ASC located in Kalamazoo, Michigan. The appropriate hospital wage index value is 1.1709. The labor-related portion is 34.45 percent and the nonlabor-related portion is 65.55 percent.

Wage Adjusted Rate
=[($558×.3445)×1.1709]+($558×.6555)
=($192.23×1.1709)+$365.77
=$225.08+$365.77
=$590.85

The steps set forth in this example are used for calculating payment rates for Groups 1 through 5 and Group 7. These are the groups whose payment rates do not include an allowance for IOLs.

Example 2

The following is an example of how payment is determined for two procedures in Group 8 ($930) performed in an ASC located in Kalamazoo, Michigan. The steps set forth in this example are also used in calculating the payment amount for the procedures in Group 6.

Since the IOL allowance is not subject to the labor adjustment, the $200 allowance must be subtracted from the composite payment rate ($930) before adjusting for labor variation.

Wage Adjusted Rate
=[{($930−200)×.3455}×1.1709]+[(930—$200)×.6555]
=[($730×.3445)×1.1709]+($730×.6555)
=($251.49×1.1709)+$478.52
=$294.47+$478.52
=$772.99

Composite Adjusted Rate
=$772.99+$200
=$972.99

c. IOL Rates

The allowance for IOLs furnished in a Medicare participating ASC is part of the ASC facility payment rate for services provided in conjunction with four surgical IOL insertion procedures:

- CPT codes 66985 and 66986 in payment group 6; and
- CPT codes 66983 and 66984 in payment group 8.

Groups 6 and 8 include only procedures related to the insertion of IOLs. We are increasing the rate of payment for the services involving the insertion of the lens, but the allowance for the lens itself will remain $200.

We set the IOL allowance at $200 in the final **Federal Register** notice we published on February 8, 1990 (55 FR 4526) that implemented a new ASC payment methodology and paid for IOLs furnished by ASCs as a facility service effective March 12, 1990. We based the amount of the allowance on the findings of an Office of Inspector General report issued in March 1988 entitled "Medicare Certified Ambulatory Surgical Centers, Cataract Surgery Costs and Related Issues."

Congress implicitly ratified the $200 allowance that we established in the February 8, 1990 **Federal Register** by freezing at $200 the amount of payment for an IOL furnished by an ASC effective for the period from November 5, 1990 through December 31, 1992. (See section 4151(c)(3) of OBRA 90).

Since implementation of the IOL payment freeze, preliminary evidence supporting a reduction rather than an increase in the current IOL rate has come to our attention. This information suggests that high quality IOLs can be and are being acquired for considerably less than $200, and in at least one case, below $100. We are collecting additional data, however, before considering any adjustments to IOL rates. Any changes in the IOL allowance will be announced in the **Federal Register** in a notice with public comment period.

d. New Survey

We used the cost, charge and utilization data from a survey we conducted in 1986 to establish the methodology and new rate structure that we implemented March 12, 1990. We mailed the survey to nearly 500 Medicare participating facilities and we audited 97 randomly selected facilities to obtain the data.

We have started a new survey to gather more current cost data. We revised the survey form to enhance and refine the quality of data received from ASCs. We sent survey forms to all Medicare certified ASCs (nearly 1400) in July 1992. A representative sample of randomly selected ASCs will subsequently be surveyed to collect cost data on specific high volume ASC procedures. We will announce any rate changes or rate setting methodology changes based on the survey results in the **Federal Register** through notice and comment procedures.

III. Comments and Responses

On December 31, 1991, we published a notice with comment period to implement ASC rate changes and to update the list of ASC procedures (56 FR 67666). We are responding here to the comments we received concerning that notice that are relevant to the payment rate update.

Comment: One hospital association wrote that HCFA had violated the statute by failing to update ASC rates since July 1, 1990, 18 months prior to the December 31, 1991 update.

Response: We do not agree. The Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509) amended the Act to require an annual rather than a periodic update of ASC payment rates. Accordingly, every year since the 1987 statutory deadline for instituting an annual update, HCFA has submitted an ASC update for publication in the Federal Register. The rates announced in this notice incorporate the following previous annual updates:

1988: A new ratesetting methodology including an increase from four to eight payment groups was formulated to reflect the findings of the 1986 Ambulatory Surgical Center Payment Rate Survey (Form HCFA-452).

1989: The eight payment group amounts established in 1988 were increased by 4.88 percent.

1990: The 1989 payment group amounts were increased by 4.21 percent.

1991: The 1990 payment group amounts were increased by 5.1 percent.

We intend to continue to publish updates annually, as required by the last sentence of section 1833(i)(2)(A) of the Act. However, that provision does not preclude us from changing the date of the annual update when justified by program requirements. The October 1 date coincides with the effective date of the annual wage index changes and other PPS changes and thus streamlines the implementation and administration of the provisions for all concerned.

Comment: One hospital association protested that the 1991 increase of 5.1 percent in the ASC facility payment rates was not sufficient to offset the losses resulting from a three month delay in implementation. The commenter wrote that HCFA should either make an additional allowance to offset the delay or make the new rates retroactive to October 1, 1991.

Response: The CPI-U adjustment for inflation that we used is determined on the basis of a four-quarter moving average. Therefore, the quarterly percent change for the period October 1 through December 31, 1991 was taken into account in the overall percent adjustment for an extended rate period that began January 1, 1991 and ended March 31, 1992.

Comment: One hospital association wrote that HCFA should use an index such as the Hospital Market Basket Index instead of the CPI-U to update ASC rates because the CPI-U does not accurately reflect the rate of inflation for items such as labor, medical and administrative supplies, utilities, and professional fees purchased by health care facilities.

Response: We believe that the CPI-U is appropriate for updating ASC rates because it is a more generalized measure of inflation. Although there are certain similarities in surgical costs incurred by ASCs and hospitals, the differences in the overall mix of goods and services outweigh the similarities, and applying the Hospital Market Basket Index would distort ASC payment rates.

Comment: One hospital association encouraged HCFA to undertake as quickly as feasible the new ASC survey and to reevaluate its methodology for analyzing the survey data and establishing the ASC rate structure.

Response: The first part of a new ASC survey was sent to all Medicare certified ASCs in July 1992. It collects charge and utilization data for procedure codes on the list of Medicare covered ASC procedures. The second part of this survey concentrates on costs incurred by ASCs generally in performing selected high volume ASC procedures. We expect 1994 ASC rates to reflect data collected from the new survey. Changes in the ratesetting methodology will be published in the Federal Register in accordance with notice and comment procedures.

Comment: One hospital association encouraged HCFA to continue its collection of data on intraocular lenses (IOLs) and to avoid what it believes to be the flaws and pitfalls in earlier studies.

Response: By the conclusion of the 1992 ASC survey, we expect to have compiled a substantial body of audited data on the actual costs incurred by ASCs in acquiring IOLs. Any subsequent adjustments in the IOL allowance will be published in the Federal Register following the customary notice and comment procedures.

Comment: A hospital association commented that HCFA did not allow adequate lead time for the medical community to evaluate and incorporate the changes resulting from the December 31, 1991 notice, noting that the changes require massive computer systems changes and training of hospital personnel.

Response: Ordinarily, a delay of 30 days in the effective date for notices is provided. However, we waived the 30 day delay because we believed that to further postpone implementation of the ASC payment rates would be contrary to the public interest.

Comment: One hospital association commented that reclassifications granted by the Medicare Geographic Classification Review Board (MGCRB) should be applied to all aspects of hospital payment, and that using different wage indices for different programs creates additional administrative burden on the hospital and an unjustified payment inequity.

Response: Section 1833(i)(3)(A) of the Act stipulates that the aggregate amount for outpatient hospital facility services or rural primary care hospital services furnished in connection with ASC covered procedures be based on, in part, the amount that would be paid if the procedures had been provided in an ambulatory surgical center in the same area. Because ASCs are entities that are distinct and separate from hospitals, there is no mechanism to uniformly match the wage index value of a reclassified hospital with an individual ASC that is located in the same geographic area. Therefore, for the purpose of calculating the ASC proportion defined in section 1833(i)(3)(A) of the Act, a hospital must use the same wage index value that ASCs in the area use even if that hospital uses a reclassified wage index value to determine payments for other services.

Comment: One hospital association asked why we allow hospitals in certain counties that are deemed urban to utilize the reclassified wage value whereas hospitals in other areas cannot use the reclassified wage index value.

Response: The counties listed in the table entitled "Wage Index Values for Counties That Are Deemed Urban—Computed as Separate Urban Areas" published in the December 31, 1991 Federal Register were affected in 1989 by implementation of section 1886(d)(8) of the Act as amended by the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647). We applied these exceptions to the application of the Statewide rural wage index to the ASC rate updates of March 12, 1990 and July 1, 1990. We have continued to treat these counties as exceptions in the December 31, 1991 update notice and the current notice in order to be consistent with the precedent established by earlier ASC updates. However, when we re-base the ASC payment rates utilizing the data currently being gathered by survey, we intend to review the method by which the hospital PPS wage index is applied in determining payments to individual ASCs. In the meantime, we emphasize that the values listed in the December 31, 1991 Federal Register table, "Wage Index for Counties That Are Deemed Urban—Computed as Separate Areas," are intended to apply solely to the calculation of facility payment amounts for ASCs located in

the designated counties. Hospitals located in these counties will use the values in this table only to calculate the ASC proportion as defined in section 1833(i)(3)(A)(ii)(II) of the Act.

Comment: One commenter felt that the payment group assignments for vitrectomy procedures CPT codes 67036, 67038, 67039, and 67040 were inadequate and did not comply with the Medicare law and regulations requiring reasonable payment for ASC facility resource costs. This commenter's position was that the data upon which HCFA based payment rates for vitrectomy codes was flawed and that these codes should be assigned to payment group 9.

Response: Similar comments were submitted during the comment period for our proposed notice published in the **Federal Register** on December 7, 1990 (55 FR 50590); we responded to those comments in the document we published on December 31, 1991 (56 FR 67666). We have nothing to add at this time, but we intend to review payment group classification for all Medicare approved ASC procedures upon completion of the 1992 ASC payment rate survey.

Comment: One commenter asked what the payment rate was for a cataract procedure when an intraocular lens (IOL) is not inserted at the time the procedure is performed, and whether the $200 IOL allowance is paid when the lens is inserted at a later time, subsequent to the cataract removal.

Response: Cataract removal procedures on the list of Medicare covered ASC procedures that do not include insertion of an intraocular lens (IOL) are CPT codes 66830, 66840, 66850, 66852, 66920, 66930, and 66940. The $200 IOL allowance is not included in payment for any of these codes.

The two CPT codes on the list of Medicare covered ASC procedures that involve separate insertion of an IOL, subsequent to cataract extraction, are CPT codes 66985 and 66986. The $200 IOL allowance is included in the total payment amount for each of these two procedures.

Comment: One commenter asked us to define what characterizes an ASC as specializing in IOL insertions.

Response: An ASC, either single specialty or multiple specialty, in which at least half of the procedures performed are IOL insertions, is considered to be an ASC that specializes in IOL insertions.

Comment: One commenter asked us to define what constitutes a multi-specialty ASC.

Response: We consider an ASC that furnishes services involving more than one surgical specialty (e.g., urology, orthopedic, and general surgical procedures) to be a multi-specialty ASC.

We also received several comments on the covered procedures list we published December 31, 1991. We limited our solicitation of comments solely to deletions from the list that were not previously proposed as deletions. None of the comments were directed at these deletions so we are not responding to them here. Comments received on ESWL services will be addressed in a forthcoming **Federal Register** document on that subject.

IV. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any notice such as this that results in effects meeting one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

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

Actuarial estimates of the cost of updating the ASC rates by 3.5 percent are as follows:

PROJECTED MEDICARE COSTS

[In millions]

FY 1993	FY 1994	FY 1995	FY 1996	FY 1997
$20	$30	$40	$50	$60

Since this notice will not meet the $100 million criterion, a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

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 general notice would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all ASCs and hospitals are considered to be small entities.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a notice may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 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.

It is possible that small rural hospitals may believe the updated rates are inadequate compared to the costs likely to be incurred in performing ASC procedures. While the updated ASC rates do not fully recognize actual cost increases to hospitals, the payment methodology applicable to hospitals for furnishing ASC procedures is based on a blended amount which is determined based on 42 percent of actual hospital costs and 58 percent of ASC payment rates. For the portion of the blended payment amount that is based on a hospital's actual costs, cost increases resulting from inflation are fully recognized.

Under section 1833(i)(3)(A) of the Act, Congress mandated the method of determining payments to hospitals for ASC-approved procedures performed in an outpatient setting. Congress believed some comparability should exist in the amount of payment to hospitals and ASCs for similar procedures. However, Congress recognized that hospitals have certain overhead costs that ASCs do not and allowed for a blending of the payment. Finally, the total impact of these rates would also depend upon the number of Medicare beneficiaries a hospital services and the case-mix variation. For these reasons, we have determined, and the Secretary certifies, that this notice will not have a significant effect on a substantial number of small rural hospitals. Therefore, we have not prepared a small rural hospital impact analysis.

Although we believe an impact analysis on small rural hospitals is not required, this notice could have a significant impact on a substantial number of ASCs. Therefore, we believe that a regulatory flexibility analysis is required for ASCs. In addition, we are voluntarily providing a brief general discussion of the impact this notice may have on hospitals.

1. Impact on ASCs

We are updating the 1991 ASC payment rates, which were published in the **Federal Register** on December 31, 1991 (56 FR 67666). Although these new rates incorporate the estimated annual rate of change in the CPI-U for the period April 1, 1992 through March 31, 1993 (a 3.5 percent increase), there are other factors affecting the actual payments that ASCs may receive.

First, variations in an ASC's Medicare case mix will affect the size of the ASC's aggregate payment increase. Although the ASC payment rates were uniformly inflated by the CPI–U for the period April 1, 1992 through March 31, 1993, the IOL payment allowance which is currently set at $200 per lens has not been adjusted. (A discussion of our rationale for retaining the $200 IOL allowance is presented in the following paragraphs.) The actual increase in total payments for a multi-specialty ASC will be about 3.2 percent as compared to the 3.5 percent increase in the CPI–U. ASCs that perform a lower than average percentage of procedures involving insertion of an IOL will receive an increase that more closely approximates the increases in the CPI–U, while those that perform a higher than average percentage of IOL insertion procedures may expect a somewhat lower increase in their aggregate payments.

With regard to the IOL payment, we set the IOL allowance at $200 in the final **Federal Register** notice published on February 8, 1990 (55 FR 4526) that implemented a new ASC payment methodology and paid for IOLs furnished by ASCs as a facility service effective March 12, 1990. We based the amount of the allowance on the findings of an Office of Inspector General report issued in March 1988 entitled "Medicare Certified Ambulatory Surgical Centers, Cataract Surgery Costs and Related Issues."

Congress implicitly ratified the $200 IOL allowance that we established in the February 8, 1990 **Federal Register** by freezing at $200 the amount of payment for an IOL furnished by an ASC effective for the period beginning November 5, 1990 through December 31, 1992. (See section 4151(c)(3) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508.)

Since implementation of the IOL payment freeze, preliminary evidence supporting a reduction rather than an increase in the current IOL allowance has come to our attention. This information suggests that high quality IOLs can be and are being acquired by ASCs for considerably less than $200. In its February 1992 report to the Senate and House Committees on the Budget entitled "Reducing the Deficit: Spending and Revenue Options," the Congressional Budget Office points out that if Medicare paid $100 for IOLs furnished at all sites as of January 1, 1993, savings to Medicare would total $1 20 million for FY '93. Any changes in the IOL allowance, however, will be based upon additional data and analysis and will be announced through notice and comment procedures in the **Federal Register.**

A second factor determining the effect of the change in the payment rates is the percentage of total revenue an ASC receives from Medicare. The larger the proportion of revenues an ASC receives from the Medicare program, the greater the impact of the updated rates being implemented by this document. The percentage of revenues derived from the Medicare program depends on the volume and types of services furnished. Since Medicare patients account for at least 60 percent of all cataract cases performed in ASCs, an ASC that performs a high percentage of cataract procedures will probably receive a higher percentage of its payments from Medicare than would an ASC with a case mix comprised largely of noncataract cases. For an ASC that receives a large portion of its revenue from the Medicare program, the changes implemented by this notice will likely have a greater influence on the ASC's operations and management decisions than they will have on an ASC that receives a large portion of revenue from other sources.

In general, however, we expect the changes implemented by this notice to affect ASCs positively by raising the rates upon which payments are based.

2. Impact on Hospitals

For ASC-approved procedures performed in an outpatient setting, hospitals are paid based on the lowest of their aggregate cost, aggregate charges or a blend of 58 percent of the applicable wage-adjusted ASC rate and 42 percent of the hospital specific amount. It should be noted that the weight of the ASC portion of the blended payment amount is offset to a degree when hospital costs, as, for example, in the case of cataract procedures in Groups 6 and 8, are as much as double the ASC rate. Further, while an ASC rate increase is being implemented by this notice, it may not in every instance keep pace with actual hospital cost increases.

Another element that may reduce the effect on hospital outpatient payments of the ASC rate increase is the application of the lowest payment screen in determining payments. Applying the lowest of costs, charges, or a blend can result in some hospitals being paid entirely on the basis of a hospital's costs or charges. In those instances, the increase in the ASC rates will have not effect on hospital payments.

V. Paperwork Reduction Act

This notice does not impose any information collection requirements; consequently, it need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3511).

VI. Response to Comments

Because of the large number of items of correspondence we normally receive on a notice with comment period, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble, and if we proceed with the final rule, we will respond to the comments in the preamble to the final rule.

VII. Waiver of Notice of Proposed Rulemaking

We ordinarily publish a proposed notice and invite prior public comment in the **Federal Register** before publishing a final notice. The proposed notice includes a reference to the legal authority under which it is proposed and the terms and the substance of the proposed notice or a description of the subjects and issues involved. However, this procedure can be waived when an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and its reasons in the notice issued.

In this notice with comment period, we respond to public comments received on a prior notice (56 FR 67666) and announce the annual update of the ASC payment rates.

It would be impracticable, unnecessary and contrary to the public interest to publish a proposed notice and solicit comments before implementing the update. We now time the updates to coincide with the wage index used for PPS and to propose the updates with the wage index used for PPS and to propose the updates without the wage index would be an incomplete proposal and would be of reduced value; the final wage index for PPS is not ready for publication in time to be included in a proposed notice for ASC payment updates. We therefore believe it to be contrary to the public interest to publish a proposed notice and find good cause to waive it.

VIII. Waiver of 30-Day Delay in Effective Date

We ordinarily publish notices such as this subject to a 30-day delay in the

effective date. However, we can waive that delay for good cause when required in the public interest. The provisions of this notice are effective October 1, 1992, to coincide with the PPS update. These provisions will increase payment to ASCs by 3.5 percent (as modified by any changes to the wage indices). To delay the effective date until 30 days after the notice is published would delay the increased payments to the ASCs. Therefore, we find good cause to waive the delay in effective date.

Authority: Sections 1832(a)(2)(F) and 1833(i) (1) and (2) of the Social Security Act (42 U.S.C. 1395k(a)(2)(F) and 13951(i) (1) and (2)); 42 CFR 416.120, 416.125, and 416.130

Catalog of Federal Domestic Assistance Programs No. 93.744, Medicare—Supplementary Medical Insurance Program.

Dated: August 24, 1992.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

Dated: September 14, 1992.

Louis W. Sullivan,

Secretary.

ADDENDUM—WAGE INDEX FOR URBAN AREAS

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Abilene, TX	0.9425
Taylor, TX	
Aguadilla, PR	0.4566
Aguada, PR	
Aguadilla, PR	
Isabela, PR	
Moca, PR	
Akron, OH	0.8917
Portage, OH	
Summit, OH	
Albany, GA	0.8046
Dougherty, GA	
Lee, GA	
Albany-Schenectady-Troy, NY	0.8953
Albany, NY	
Greene, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Albuquerque, NM	1.0119
Bernalillo, NM	
Alexandria, LA	0.8272
Rapides, LA	
Allentown-Bethlehem-Easton, PA-NJ	0.8945
Warren, NJ	
Carbon, PA	
Lehigh, PA	
Northampton, PA	
Altoona, PA	0.9235
Blair, PA	
Amarillo, TX	0.8735
Potter, TX	
Randall, TX	
*Anaheim-Santa Ana, CA	1.1751
Orange, CA	
Anchorage, AK	1.4170
Anchorage, AK	
Anderson, IN	0.9579
Madison, IN	

ADDENDUM—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Anderson, SC	0.7255
Anderson, SC	
Ann Arbor, MI	1.1379
Washtenaw, MI	
Anniston, AL	0.7928
Calhoun, AL	
Appleton-Oshkosh-Neenah, WI	0.9219
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
Arecibo, PR	0.3952
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
Quebradillas, PR	
Asheville, NC	0.8735
Buncombe, NC	
Athens, GA	0.7770
Clarke, GA	
Jackson, GA	
Madison, GA	
Oconee, GA	
*Atlanta, GA	0.9592
Barrow, GA	
Butts, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
Atlantic City, NJ	1.0604
Atlantic, NJ	
Cape May, NJ	
Augusta, GA-SC	0.9397
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Aurora-Elgin, IL	0.9459
Kane, IL	
Kendall, IL	
Austin, TX	0.9595
Hays, TX	
Travis, TX	
Williamson, TX	
Bakersfield, CA	1.0863
Kern, CA	
*Baltimore, MD	1.0151
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
Bangor, ME	0.9060
Penobscot, ME	
Baton Rouge, LA	0.9085
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
Battle Creek, MI	0.9095
Calhoun, MI	

ADDENDUM—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Beaumont-Port Arthur, TX	0.9600
Hardin, TX	
Jefferson, TX	
Orange, TX	
Beaver County, PA	1.0160
Beaver, PA	
Bellingham, WA	1.0492
Whatcom, WA	
Benton Harbor, MI	0.8163
Berrien, MI	
*Bergen-Passaic, NJ	0.8370
Bergen, NJ	
Passaic, NJ	
Billings, MT	0.9321
Yellowstone, MT	
Biloxi-Gulfport, MS	0.8059
Hancock, MS	
Harrison, MS	
Binghamton, NJ	0.9256
Broome, NY	
Tioga, NY	
Birmingham, AL	0.8766
Blount, AL	
Jefferson, AL	
Saint Clair, AL	
Shelby, AL	
Walker, AL	
Bismarck, ND	0.8678
Burleigh, ND	
Morton, ND	
Bloomington, IN	0.7833
Monroe, IN	
Bloomington-Normal, IL	0.8655
McLean, IL	
Boise City, ID	0.9753
Ada, ID	
*Boston-Lawrence-Salem-Lowell-Brockton, MA	1.1804
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Boulder-Longmont, CO	1.0736
Boulder, CO	
Bradenton, FL	0.8727
Manatee, FL	
Brazoria, TX	0.8943
Brazoria, TX	
Bremerton, WA	0.9631
Kitsap, WA	
Bridgeport-Stamford-Norwalk-Danbury, CT	1.1900
Fairfield, CT	
Brownsville-Harlingen, TX	0.8597
Cameron, TX	
Bryan-College Station, TX	0.9485
Brazos, TX	
Buffalo, NY	0.8905
Erie, NY	
Burlington, NC	0.7936
Alamance, NC	
Burlington, VT	0.9354
Chittenden, VT	
Grand Isle, VT	
Caguas, PR	0.4586
Caguas, PR	
Gurabo, PR	
San Lorenz, PR	
Aguas Buenas, PR	
Cayey, PR	
Cidra, PR	
Canton, OH	0.8449
Carroll, OH	
Stark, OH	
Casper, WY	0.8887

ADDENDUM—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Natrona, WY	
Cedar Rapids, IA	0.7528
Linn, IA	
Champaign-Urbana-Rantoul, IL	0.8741
Champaign, IL	
Charleston, SC	0.8328
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
Charleston, WV	0.9688
Kanawha, WV	
Putnam, WV	
*Charlotte-Gastonia-Rock Hill, NC-SC	0.9462
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
Charlottseville, VA	0.9611
Albermarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
Chattanooga, TN-GA	0.9194
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Cheyenne, WY	0.7773
Laramie, WY	
*Chicago, IL	1.0513
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA	1.0977
Butte, CA	
*Cincinnati, OH-KY-IN	0.9817
Dearborn, IN	
Boone, KY	
Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN-KY	0.7379
Christian, KY	
Montgomery, TN	
*Cleveland, OH	1.0734
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Medina, OH	
Colorado Springs, CO	0.9812
El Paso, CO	
Columbia, MO	0.9502
Boone, MO	
Columbia, SC	0.8937
Lexington, SC	
Richland, SC	
Columbus, GA-AL	0.7368
Russell, AL	
Chattanoochee, GA	
Muscogee, GA	
*Columbus, OH	0.9669
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	
Corpus Christi, TX	0.8509
Nueces, TX	
San Patricio, TX	
Cumberland, MD-WV	0.8184
Allegeny, MD	
Mineral, WV	
*Dallas, TX	0.9634
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	
Danvile, VA	0.7823
Danville City, VA	
Pittsylvania, VA	
Daveport-Rock Island-Moline, IA-IL	0.8467
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton-Springfield, OH	0.9727
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Daytona Beach, FL	0.8903
Volusia, FL	
Decatur, AL	0.7484
Decatur City, AL	
Lawrence, AL	
Morgen, AL	
Decatur, IL	0.8282
Macon, IL	
*Denver, OC	1.0753
Adams, CO	
Arapahoe, CA	
Denver, CO	
Douglas, CO	
Jefferson, CO	
Des Moines, IA	0.9167
Dallas, IA	
Polk, IA	
Waren, IA	
*Detroit, MI	1.0822
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
Saint Clair, MI	
Wayne, MI	
Dothan, AL	0.7566
Dale, AL	
Houston, AL	
Dubuque, IA	0.8371
Dubuque, IA	
Duluth, MN-WI	0.9513
St. Louis, MN	
Douglas, WI	
Eau Claire, WI	0.8484
Chippewa, WI	
Eau Claire, WI	
El Paso, TX	0.8710
El Paso, TX	
Elkhart-Goshen, IN	0.7833
Elkhart, IN	
Elmira, NY	0.8848
Chemung, NY	
Enid, OK	0.8909
Garfield, OK	
Erie, PA	0.9151
Erie, PA	
Eugene-Springfield, OR	1.0159
Lane, OR	
Evansville, IN-KY	0.9423
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
Fargo-Moorhead, ND-MN	0.9702
Clay, MN	
Cass, ND	
Fayetteville, NC	0.8292
Cumberland, NC	
Fayetteville-Springdale, AR	0.7986
Washington, AR	
Flint, MI	1.1539
Genesee, MI	
Florence, AL	0.7714
Colbert, AL	
Lauderdale, AL	
Florence, SC	0.8425
Florence, SC	
Fort Collins-Loveland, CO	1.0234
Larimer, CO	
*Fort Lauderdale-Hollywood-Pompano Beach, FL	1.0352
Broward, FL	
Fort Myers-Cape Coral, FL	0.9795
Lee, FL	
Fort Pierce, FL	1.1036
Martin, FL	
St. Lucie, FL	
Fort Smith, AR-OK	0.7928
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
Fort Walton Beach, FL	0.8937
Okaloosa, FL	
Fort Wayne, IN	0.8999
Allen, IN	
De Kalb, IN	
Whitley, IN	
*Fort Worth-Arlington, TX	0.9743
Johnson, TX	
Parker, TX	
Tarrant, TX	
Fresno, CA	1.0733
Fresno, CA	
Gadsden, AL	0.8196
Etowah, AL	
Gainesville, FL	0.8795
Alachua, FL	
Bradford, FL	
Galveston-Texas City, TX	0.9424
Galveston, TX	
Gary-Hammond, IN	0.9592
Lake, IN	
Porter, IN	
Glens Falls, NY	0.9227
Warren, NY	
Washington, NY	
Grand Forks, ND	0.9573
Grand Forks, ND	
Grand Rapids, MI	0.9879
Kent, MI	
Ottawa, MI	
Great Falls, MT	0.9987
Cascade, MT	
Greeley, CO	0.9354
Weld, CO	
Green Bay, WI	0.9581
Brown, WI	
Greensboro-Winston-Salem-High Point, NC	0.9161
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	

ADDENDUM—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Yadkin, NC	
Greenville-Spartanburg, SC	0.8919
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
Hagerstown, MD	0.9154
Washington, MD	
Hamilton-Middletown, OH	0.9149
Butler, OH	
Harrisburg-Lebanon-Carlisle, PA	0.9914
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
*Hartford-Middletown-New Britain-Bristol, CT	1.1905
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
Hickory, NC	0.8663
Alexander, NC	
Burke, NC	
Catawba, NC	
Honolulu, HI	1.1575
Honolulu, HI	
Houma-Thibodaux, LA	0.7341
Lafourche, LA	
Terrebonne, LA	
*Houston, TX	0.9931
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
Huntington-Ashland, WV-KY-OH	0.9434
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
Huntsville, AL	0.8831
Madison, AL	
*Indianapolis, IN	0.9658
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
Iowa City, IA	0.9524
Johnson, IA	
Jackson, MI	0.8882
Jackson, MI	
Jackson, MS	0.7730
Hinds, MS	
Madison, MS	
Rankin, MS	
Jackson, TN	0.8325
Madison, TN	
Jacksonville, FL	0.9047
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
Jacksonville, NC	0.7936
Onslow, NC	
Jamestown-Dunkirk, NY	0.6631
Chatauqua, NY	
Janesville-Beloit, WI	0.8443
Rock, WI	
Jersey City, NJ	1.0648
Hudson, NJ	
Johnson City-Kingsport-Bristol, TN-VA	0.8665
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
Johnstown, PA	0.8609
Cambria, PA	
Somerset, PA	
Joliet, IL	1.0504
Grundy, IL	
Will, IL	
Joplin, MO	0.7953
Jasper, MO	
Newton, MO	
Kalamazoo, MI	1.1705
Kalamazoo, MI	
Kankakee, IL	0.8485
Kankakee, IL	
*Kansas City, KS-MO	0.9584
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
Kenosha, WI	0.8851
Kenosha, WI	
Killeen-Temple, TX	1.1290
Bell, TX	
Coryell, TX	
Knoxville, TN	0.8689
Anderson, TN	
Blount, TN	
Grainger, TN	
Jefferson, TN	
Knox, TN	
Sevier, TN	
Union, TN	
Kokomo, IN	0.9486
Howard, IN	
Tipton, IN	
LaCrosse, WI	0.8952
LaCrosse, WI	
Lafayette, LA	0.8223
Lafayette, LA	
St. Martin, LA	
Lafayette, IN	0.8619
Tippecanoe, IN	
Lake Charles, LA	0.8371
Calcasieu, LA	
Lake County, IL	0.9404
Lake, IL	
Lakeland-Winter Haven, FL	0.7939
Polk, FL	
Lancaster, PA	0.9274
Lancaster, PA	
Lansing-East Lansing, MI	1.0218
Clinton, MI	
Eaton, MI	
Ingham, MI	
Laredo, TX	0.7275
Webb, TX	
Las Cruces, NM	0.7906
Dona Ana, NM	
Las Vegas, NV	1.0626
Clark, NV	
Lawrence, KS	0.7443
Douglas, KS	
Lawton, OK	0.8384
Comanche, OK	
Lewiston-Auburn, ME	0.8324
Androscoggin, ME	
Lexington-Fayette, KY	0.8443
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Scott, KY	
Woodford, KY	
Lima, OH	0.8449
Allen, OH	
Auglaize, OH	
Lincoln, NE	0.8952
Lancaster, NE	
Little Rock-North Little Rock, AR	0.8416
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	0.8688
Gregg, TX	
Harrison, TX	
Lorain-Elyria, OH	0.8892
Lorain, OH	
*Los Angeles-Long Beach, CA	1.2352
Los Angeles, CA	
Louisville, KY-IN	0.9088
Clark, IN	
Floyd, IN	
Harrison, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
Shelby, KY	
Lubbock, TX	0.8788
Lubbock, TX	
Lynchburg, VA	0.8540
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robins, GA	0.8800
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Madison, WI	1.0307
Dane, WI	
Manchester-Nashua, NH	1.0126
Hillsborough, NH	
Merrimack, NH	
Mansfield, OH	0.8389
Richland, OH	
Mayaguez, PR	0.4769
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
San German, PR	
McAllen-Edinburg-Mission, TX	0.7712
Hidalgo, TX	
Medford, OR	1.0041
Jackson, OR	
Melbourne-Titusville, FL	0.8727
Brevard, FL	
Memphis, TN-AR-MS	0.9056
Crittenden, AR	
De Soto, MS	
Shelby, TN	
Tipton, TN	
Merced, CA	1.0310
Merced, CA	

ADDENDUM—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage index
*Miami-Hialeah, FL	0.9950
Dade, FL	
*Middlesex-Somerset-Hunterdon, NJ	1.0405
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
Midland, TX	1.0372
Midland, TX	
*Milwaukee, WI	0.9715
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
*Minneapolis-St. Paul, MN-WI	1.0813
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile, AL	0.8241
Baldwin, AL	
Mobile, AL	
Modesto, CA	1.1383
Stanislaus, CA	
Monmouth-Ocean, NJ	0.9940
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	0.7860
Ouachita, LA	
Montgomery, AL	0.7735
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	0.8427
Delaware, IN	
Muskegon, MI	0.9849
Muskegon, MI	
Naples, FL	1.0320
Collier, FL	
Nashville, TN	0.9393
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
*Nassau-Suffolk, NY	1.2149
Nassau, NY	
Suffolk, NY	
New Bedford-Fall River-Attleboro, MA	1.1708
Bristol, MA	
New Haven-Waterbury-Meriden, CT	1.2090
New Haven, CT	
New London-Norwich, CT	1.1566
New London, CT	
*New Orleans, LA	0.8985
Jefferson, LA	
Orleans, LA	
St. Bernard, LA	
St. Charles, LA	
St. John The Baptist, LA	
St. Tammany, LA	
*New York, NY	1.3455
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
*Newark, NJ	1.0734
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Niagara Falls, NY	0.8398
Niagara, NY	
*Norfolk-Virginia Beach-Newport News, VA	0.8511
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
James City Co., VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
*Oakland, CA	1.4128
Alameda, CA	
Contra Costa, CA	
Ocala, FL	0.8611
Marion, FL	
Odessa, TX	1.0835
Ector, TX	
Oklahoma City, OK	0.9228
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	1.0997
Thurston, WA	
Omaha, NE-IA	0.8985
Pottawattamie, IA	
Douglas, NE	
Sarpy, NE	
Washington, NE	
Orange County, NY	0.9193
Orange, NY	
*Orlando, FL	0.9617
Orange, FL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	0.8148
Davies, KY	
Oxnard-Ventura, CA	1.1787
Ventura, CA	
Panama City, FL	0.8629
Bay, FL	
Parkersburg-Marietta, WV-OH	0.8536
Washington, OH	
Wood, WV	
Pascagoula, MS	0.8767
Jackson, MS	
Pensacola, FL	0.8620
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	0.8706
Peoria, IL	
Tazewell, IL	
Woodford, IL	
*Philadelphia, PA-NJ	1.0947
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
*Phoenix, AZ	1.0424
Maricopa, AZ	
Pine Bluff, AR	0.6976
Jefferson, AR	
*Pittsburgh, PA	1.0123
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	1.0778
Berkshire, MA	
Ponce, PR	0.4599
Juana Diaz, PR	
Ponce, PR	
Portland, ME	0.9253
Cumberland, ME	
Sagadahoc, ME	
York, ME	
*Portland, OR	1.1571
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth-Dover-Rochester, NH	1.0042
Rockingham, NH	
Strafford, NH	
Poughkeepsie, NY	1.0443
Dutchess, NY	
*Providence-Pawtucket-Woonsocket, RI	1.0291
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
Provo-Orem, UT	1.0226
Utah, UT	
Pueblo, CO	0.8718
Pueblo, CO	
Racine, WI	0.9627
Racine, WI	
Raleigh-Durham, NC	0.9461
Durham, NC	
Franklin, NC	
Orange, NC	
Wake, NC	
Rapid City, SD	0.8396
Pennington, SD	
Reading, PA	1.0267
Berks, PA	
Redding, CA	1.0545
Shasta, CA	
Reno, NV	1.1613
Washoe, NV	
Richland-Kennewick, WA	0.9398
Benton, WA	
Franklin, WA	
Richmond-Petersburg, VA	0.9413
Charles City Co., VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
*Riverside-San Bernardino, CA	1.1103
Riverside, CA	

ADDENDUM—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage index
San Bernardino, CA	
Roanoke, VA	0.8281
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, WA	
Rochester, MN	1.1025
Olmsted, MN	
*Rochester, NY	0.9706
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL	0.9279
Boone, IL	
Winnebago, IL	
*Sacramento, CA	1.2257
Eldorado, CA	
Placer, CA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City-Midland, MI	1.0479
Bay, MI	
Midland, MI	
Saginaw, MI	
St. Cloud, MN	0.8915
Benton, MN	
Sherburne, MN	
Stearns, MN	
St. Joseph, MO	0.9410
Buchanan, MO	
*St. Louis, MO-IL	0.9384
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Salem, OR	0.9833
Marion, OR	
Polk, OR	
Salinas-Seaside-Monterey, CA	1.3035
Monterey, CA	
*Salt Lake City-Ogden, UT	0.9928
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX	0.8136
Tom Green, TX	
*San Antonio, TX	0.8448
Bexar, TX	
Comal, TX	
Guadalupe, TX	
*San Diego, CA	1.1929
San Diego, CA	
*San Francisco, CA	1.4521
Marin, CA	
San Francisco, CA	
San Mateo, CA	
*San Jose, CA	1.4893
Santa Clara, CA	
*San Juan, PR	0.4985
Barcelona, PR	
Bayoman, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trojillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Santa Barbara-Santa Maria-Lompoc, CA	1.1800
Santa Barbara, CA	
Santa Cruz, CA	1.1814
Santa Cruz, CA	
Santa Fe, NM	0.9158
Los Alamos, NM	
Santa Fe, NM	
Santa Rosa-Petaluma, CA	1.2973
Sonoma, CA	
Sarasota, FL	0.9777
Sarasota, FL	
Savannah, GA	0.8324
Chatham, GA	
Effingham, GA	
Scranton-Wilkes Barre, PA	0.8912
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
*Seattle, WA	1.0866
King, WA	
Snohomish, WA	
Sharon, PA	0.8910
Mercer, PA	
Sheboygan, WI	0.8868
Sheboygan, WI	
Sherman-Denison, TX	0.9085
Grayson, TX	
Shreveport, LA	0.9295
Bossier, LA	
Caddo, LA	
Sioux City, IA-NE	0.8500
Woodbury, IA	
Dakota, NE	
Sioux Falls, SD	0.8829
Minnehaha, SD	
South Bend-Mishawaka, IN	1.0179
St. Joseph, IN	
Spokane, WA	1.0687
Spokane, WA	
Springfield, IL	0.9292
Menard, IL	
Sangamon, IL	
Springfield, MO	0.8079
Christian, MO	
Greene, MO	
Springfield, MA	0.9614
Hampden, MA	
Hampshire, MA	
State College, PA	0.9897
Centre, PA	
Steubenville-Weirton, OH-WV	0.8708
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA	1.1784
San Joaquin, CA	
Syracuse, NY	0.9912
Madison, NY	
Onondaga, NY	
Oswego, NY	
Tacoma, WA	0.9631
Pierce, WA	
Tallahassee, FL	0.9216
Gadsden, FL	
Leon, FL	
*Tampa-St. Petersburg-Clearwater, FL	0.9244
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
Terre Haute, IN	0.8823
Clay, IN	
Vigo, IN	
Texarkana-TX-Texarkana, AR	0.7903
Miller, AR	
Bowie, TX	
Toledo, OH	0.8710
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka, KS	0.9299
Shawnee, KS	
Trenton, NJ	1.0034
Mercer, NJ	
Tucson, AZ	0.9616
Pima, AZ	
Tulsa, OK	0.8573
Creeks, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
Tuscaloosa, AL	0.8518
Tuscaloosa, AL	
Tyler, TX	0.9833
Smith, TX	
Utica-Rome, NY	0.8398
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.2912
Napa, CA	
Solano, CA	
Vancouver, WA	1.0708
Clark, WA	
Victoria, TX	0.8990
Victoria, TX	
Vineland-Millville-Brndgeton, NJ	0.9645
Cumberland, NJ	
Visalia-Tulare-Porterville, CA	1.0388
Tulare, CA	
Waco, TX	0.7811
McLennan, TX	
*Washington, DC-MD-VA	1.0936
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Stafford, VA	
Waterloo-Cedar Falls, IA	0.8639
Black Hawk, IA	
Bremer, IA	

ADDENDUM—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage Index
Wausau, WI	0.9744
Marathon, WI	
West Palm Beach-Boca Raton-Delray Beach, FL	1.0227
Palm Beach, FL	
Wheeling, WV-OH	0.6923
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	0.9605
Butler, KS	
Harvey, KS	
Sedgwick, KS	
Wichita Falls, TX	0.8169
Wichita, TX	
Williamsport, PA	0.8861
Lycoming, PA	
Wilmington, DE-NJ-MD	1.0680
New Castle, DE	
Cecil, MD	
Salem, NJ	
Wilmington, NC	0.8708
New Hanover, NC	
Worcester-Fitchburg-Leominster, MA	0.9682
Worcester, MA	
Yakima, WA	1.0107
Yakima, WA	
York, PA	0.8609
Adams, PA	
York, PA	
Youngstown-Warren, OH	0.9662
Mahoning, OH	
Trumbull, OH	
Yuba City, CA	1.0159
Sutter, CA	
Yuba, CA	
Yuma, AZ	0.8743
Yuma, AZ	

WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage index
Alabama	0.7130
Alaska	1.3492
Arizona	0.8743
Arkansas	0.6976
California	1.0159
Colorado	0.8412
Connecticut	1.1900
Delaware	0.8568
Florida	0.8727
Georgia	0.7770
Hawaii	0.9614
Idaho	0.9101
Illinois	0.7696
Indiana	0.7833
Iowa	0.7528
Kansas	0.7443
Kentucky	0.7790
Louisiana	0.7381
Maine	0.8324
Maryland	0.8058
Massachusetts	1.1706
Michigan	0.8882
Minnesota	0.8305
Mississippi	0.6960
Missouri	0.7246
Montana	0.8251
Nebraska	0.6992
Nevada	0.9696
New Hampshire	0.9543
New Jersey [1]	
New Mexico	0.8317
New York	0.8398
North Carolina	0.7936
North Dakota	0.7715
Ohio	0.8449
Oklahoma	0.7399
Oregon	0.9603
Pennsylvania	0.8609
Puerto Rico	0.4331
Rhode Island [1]	
South Carolina	0.7657
South Dakota	0.7165
Tennessee	0.7337
Texas	0.7592
Utah	0.9040
Vermont	0.9702
Virginia	0.7823
Washington	0.9631
West Virginia	0.8484
Wisconsin	0.8443
Wyoming	0.8453

[1] All counties within the State are classified urban.

WAGE INDEX VALUES FOR COUNTIES THAT ARE DEEMED URBAN-COMPUTED AS SEPARATE URBAN AREAS

County	Urban area	Wage index
Limestone, AL	Huntsville, AL	0.8477
Marshall, AL	Huntsville, AL	0.8477

WAGE INDEX VALUES FOR COUNTIES THAT ARE DEEMED URBAN-COMPUTED AS SEPARATE URBAN AREAS—Continued

County	Urban area	Wage index
Charlotte, FL	Sarasota, FL	0.9442
Indian River, FL	Fort Pierce, FL	1.0256
Christian, IL	Springfield, IL	0.9189
Macoupin, IL	St. Louis, MO-IL	0.9236
Mason, IL	Peoria, IL	0.8706
Clinton, IN	Lafayette, IN	0.8619
Henry, IN	Anderson, IN	0.9579
Owen, IN	Bloomington, IN	0.7833
Jefferson, KS	Topeka, KS	0.8299
Allegan, MI	Grand Rapids, MI	0.9879
Barry, MI	Battle Creek, MI	0.9095
Ionia, MI	Lansing-East Lansing, MI.	1.0041
Lenawee, MI.	Ann Arbor, MI	1.1058
Shiawassee, MI.	Flint, MI	1.1203
Tuscola, MI	Saginaw-Bay City-Midland, MI.	1.0206
Van Buren, MI.	Kalamazoo, MI	1.1189
Clinton, MO	Kansas City, KS-MO	0.9584
Cass, NE	Omaha, NE	0.8965
Currituck, NC.	Norfolk-VA Beach-Newport News, VA.	0.8511
Genesee, NY.	Rochester, NY	0.9560
Columbiana, OH.	Beaver County, PA	0.9447
Morrow, OH	Mansfield, OH	0.8449
Preble, OH	Dayton-Springfield, OH	0.9727
Lawrence, PA	Beaver County, PA	0.9447
Cherokee, SC	Greenville-Spartanburg, SC.	0.8772
Bedford, VA	Roanoke, VA	0.8163
Fredericksburg City, VA.	Washington, DC-MD-VA.	1.0936
Isle of Wight, VA.	Norfolk-VA Beach-Newport News, VA.	0.8511
Spotsylvania, VA.	Washington, DC-MD-VA.	1.0936
Jefferson, WI.	Milwaukee, WI	0.9599
Walworth, WI.	Milwaukee, WI	0.9599
Jefferson, WV.	Washington, DC-MD-VA.	1.0936
Lincoln, WV	Charleston, WV	0.9535

[FR Doc. 92-23920 Filed 9-30-92; 8:45 am]

BILLING CODE 4120-03-M

federal register

Thursday
October 1, 1992

Part VII

The President

Notice of September 30—Continuation of Haitian Emergency

Federal Register
Vol. 57, No. 191
Thursday, October 1, 1992

Presidential Documents

Title 3—

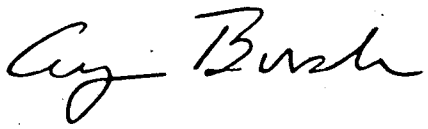
The President

Notice of September 30, 1992

Continuation of Haitian Emergency

On October 4, 1991, by Executive Order No. 12775, I declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the grave events that had occurred in the Republic of Haiti to disrupt the legitimate exercise of power by the democratically elected government of that country. On October 28, 1991, by Executive Order No. 12779, I took additional measures by prohibiting, with certain exceptions, trade between the United States and Haiti. Because the assault on Haiti's democracy represented by the military's forced exile of President Aristide continues to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, I am continuing the national emergency with respect to Haiti in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)).

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
Washington, September 30, 1992.

[FR Doc. 92-24057
Filed 9-30-92, 11:41 am]
Billing code 3195-01-M

Editorial note: For the President's message to Congress on the continuation of the emergency, see issue 40 of the *Weekly Compilation of Presidential Documents.*

Reader Aids

Federal Register

Vol. 57, No. 191

Thursday, October 1, 1992

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	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	512-1557

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

FEDERAL REGISTER PAGES AND DATES, OCTOBER

CFR PARTS AFFECTED DURING OCTOBER

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.

CFR ISSUANCES 1992
January—July 1992 Editions and Projected October, 1992 Editions

This list sets out the CFR issuances for the January—July 1992 editions and projects the publication plans for the **October, 1992** quarter. A projected schedule that will include the **January, 1993** quarter will appear in the first **Federal Register** issue of January.

For pricing information on available 1991—1992 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. The weekly CFR checklist and the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR titles and parts, revision date and price of each volume.

Normally, CFR volumes are revised according to the following schedule:

Titles 1—16—January 1
Titles 17—27—April 1
Titles 28—41—July 1
Titles 42—50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

Titles revised as of January 1, 1992 editions:

Title	
CFR Index	1–199
	200–End
1–2	
	10 Parts:
3 (Compilation)	0–50
	51–199
4	200–399 (Cover only)
	400–499
5 Parts:	500–End
1–699	
700–1199	**11**
1200–End	
	12 Parts:
6 [Reserved]	1–199
	200–219
7 Parts:	220–299
0–26	300–499
27–45	500–599
46–51	600–End
52	
53–209	**13**
210–299	
300–399	**14 Parts:**
400–699	1–59
700–899	60–139
900–999	140–199
1000–1059	200–1199
1060–1119	1200–End
1120–1199	
1200–1499	**15 Parts:**
1500–1899	0–299
1900–1939	300–799
1940–1949	800–End
1950–1999	
2000–End	**16 Parts:**
	0–149
8	150–999
	1000–End
9 Parts:	

Titles revised as of April 1, 1992:

Title	
17 Parts:	**23**
1–199	
200–239	**24 Parts:**
240–End	0–199
	200–499
18 Parts:	500–699
1–149	700–1699
150–279	1700–End
280–399	
400–End	**25**
19 Parts:	**26 Parts:**
1–199	1 (§§ 1.0-1–1.60)
200–End	1 (§§ 1.61–1.169)
	1 (§§ 1.170–1.300)
20 Parts:	1 (§§ 1.301–1.400)
1–399	1 (§§ 1.401–1.500)
400–499	1 (§§ 1.501–1.640)
500–End	1 (§§ 1.641–1.850)
	1 (§§ 1.851–1.907)
21 Parts:	1 (§§ 1.908–1.1000)
1–99	1 (§§ 1.1001–1.1400)
100–169	1 (§ 1.1401–End)
170–199	2–29
200–299	30–39
300–499	40–49
500–599	50–299
600–799	300–499
800–1299	500–599 (Cover only)
1300–End	600–End
22 Parts:	**27 Parts:**
1–299	1–199
300–End	200–End (Cover only)

Titles revised as of July 1, 1992:

Title	
28	**34 Parts:**
	1–299
29 Parts:	300–399
0–99	400–End
100–499	
500–899	**35**
900–1899	
1900–1910 (§§ 1901.1–1910.999)	**36 Parts:**
	1–199
1910 (§§ 1910.1000–End)	200–End*
1911–1925 (Cover only)	
1926	**37**
1927–End	
	38 Parts:
30 Parts:	0–17 (Revised as of Sept. 1, 1992)
1–199	
200–699	18–End (Revised as of Sept. 1, 1992)
700–End	
31 Parts:	**39**
0–199	
200–End	**40 Parts:**
	1–51
32 Parts:	52*
1–189	53–60*
190–399	61–80
400–629	81–85
630–699 (Cover only)	86–99*
700–799	100–149*
800–End	150–189
	190–259*
33 Parts:	260–299*
1–124*	300–399
125–199*	400–424
200–End	425–699
	700–789

790–End

41 Parts:
Chs. 1–100
Ch. 101*
Chs. 102–200 (Cover only)
Ch. 201–End

Projected October 1, 1992 editions:

Title

42 Parts:
1–399
400–429
430–End

43 Parts:
1–999
1000–3999
4000–End

44

45 Parts:
1–199
200–499
500–1199
1200–End

46 Parts:
1–40
41–69
70–89
90–139
140–155
156–165 (Cover only)
166–199
200–499
500–End

47 Parts:
0–19
20–39
40–69
70–79
80–End

48 Parts:
Ch. 1 (1–51)
Ch. 1 (52–99)
Ch. 2 (201–251)
Ch. 2 (252–299)
Chs. 3–6
Chs. 7–14
Ch. 15–End

49 Parts:
1–99
100–177
178–199
200–399
400–999
1000–1199
1200–End

50 Parts:
1–199
200–599
600–End

TABLE OF EFFECTIVE DATES AND TIME PERIODS—OCTOBER 1992

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
October 1	October 16	November 2	November 16	November 30	December 30
October 2	October 19	November 2	November 16	December 1	December 31
October 5	October 20	November 4	November 19	December 4	January 4
October 6	October 21	November 5	November 20	December 7	January 4
October 7	October 22	November 6	November 23	December 7	January 5
October 8	October 23	November 9	November 23	December 7	January 6
October 9	October 26	November 9	November 23	December 8	January 7
October 13	October 28	November 12	November 27	December 14	January 11
October 14	October 29	November 13	November 30	December 14	January 12
October 15	October 30	November 16	November 30	December 14	January 13
October 16	November 2	November 16	November 30	December 15	January 14
October 19	November 3	November 18	December 3	December 18	January 19
October 20	November 4	November 19	December 4	December 21	January 19
October 21	November 5	November 20	December 7	December 21	January 19
October 22	November 6	November 23	December 7	December 21	January 21
October 23	November 9	November 23	December 7	December 22	January 21
October 26	November 10	November 25	December 10	December 28	January 25
October 27	November 12	November 27	December 11	December 28	January 25
October 28	November 12	November 27	December 14	December 28	January 26
October 29	November 13	November 30	December 14	December 28	January 27
October 30	November 16	November 30	December 14	December 29	January 28