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Thursday
May 30, 1991

Briefing on How To Use the Federal Register
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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

WASHINGTON, DC

WHEN: June 25, at 9:00 am
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

NEW ORLEANS, LA

WHEN: July 23, at 9:00 am
WHERE: Federal Building, 501 Magazine St. Conference Room 1120, New Orleans, LA
RESERVATIONS: Federal Information Center 1–800–366–2998

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CE-RM-87-102]

Energy Conservation Program for Consumer Products: Energy Conservation Standards for Two Types of Consumer Products; Correction

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

ACTION: Correction to final rule.

SUMMARY: The Department of Energy (Department or DOE) is correcting a typographical error in the energy conservation standards for refrigerators, refrigerators-freezers, and freezers found in 10 CFR part 430, section 430.32(a). These standards appeared in the **Federal Register** on November 17, 1989 (54 FR 47916) and October 24, 1990 (55 FR 42845).

EFFECTIVE DATE: January 1, 1993.

FOR FURTHER INFORMATION CONTACT:
Carl Adams, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station CE-43, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127.
Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-12, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: The following correction is made to the final energy conservation standards for refrigerators, refrigerator-freezers, and freezers published in the **Federal Register** on October 24, 1990 (55 FR 42847) and which appear at 10 CFR 430.32(a).

J. Michael Davis,
Assistant Secretary, Conservation and Renewable Energy.

PART 430—[CORRECTED]

1. Section 430.32(a) is corrected by revising item 10 in the table to read as follows; paragraph (a) introductory text is republished for the convenience of the reader.

§ 430.32 Energy conservation standards and effective dates.

(a) Refrigerators/refrigerator-freezers/freezers. These standards do not apply to refrigerators and refrigerator-freezers with total refrigerated volume exceeding 39 cubic feet or freezers with total refrigerated volume exceeding 30 cubic feet.

Product class	Energy standards equations (Kwh/yr)/effective dates	
	Jan. 1, 1990	Jan. 1, 1993
* * * *		
10. Chest freezers and all other freezers	(14.8AV+223)	(11.0AV+160)
* * * *		

[FR Doc. 91-12788 Filed 5-29-91; 8:45 am]
BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-CE-30-AD; Amdt. 39-7007]

Airworthiness Directives; Jetstream Model 3101 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting Airworthiness Directive (AD) 91-08-01, which was previously made effective as to all known U.S. owners and operators of Jetstream Model 3101 airplanes by individual letters. The AD specified revising the maximum speed for flaps at 50 degrees from 153/149 knots indicated airspeed (KIAS) to 130 KIAS, and limiting the maximum flap extension to 20 degrees anytime ice is present on the airplane. The AD was issued based upon incidents where the affected airplanes experienced sudden pitch downs, which could result in loss of control of the airplane.

DATES: Effective June 10, 1991, as to all persons except those persons to whom it was made immediately effective by priority letter AD 91-08-01, issued April 2, 1991, which contained this amendment. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of June 10, 1991.

ADDRESSES: Jetstream Service Bulletin No. 27-A-JA 910340, dated March 25, 1991, and Jetstream Service Bulletin 32-JM 7493, Revision 1, dated March 25, 1991, that are discussed in this AD may be obtained from British Aerospace, Manager Product Support, Commercial Aircraft Limited, Airlines Division, Prestwick Airport, Ayrshire, KA9 2RW Scotland; Telephone (44-292) 79888; Facsimile (44-292) 79703; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC, 20041; Telephone (703) 435-9100; Facsimile (703) 435-2628. This information may be examined in the Regional Rules Docket, FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Project Manager, Brussels Aircraft Certification Office, Europe, Africa, Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 322.513.38.30 extension 2710; or Mr. John P. Dow, Sr., Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 601 E. 12th Street, Kansas City Missouri 64106; Telephone (816) 426-6932; Facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION: On April 2, 1991, priority letter AD 91-08-01 was issued and made effective immediately as to all known U.S. owners and operators of Jetstream Model 3101 airplanes. The AD required revising the maximum speed for flaps at 50 degrees from 153/149 knots indicated airspeed (KIAS) to 130 KIAS, and limiting the

maximum flap extension to 20 degrees anytime ice is present on the airplane.

The AD was prompted by a report of an accident in which a Jetstream Model 3101 airplane crashed following flap extension to the 50-degree position for landing. The airplane experienced a sudden pitch down and near total recovery. The airplane had been flown with tile wing and empennage deicing system inoperative, and at the time of the accident had over one inch of ice accretion. This airplane was reported to be traveling in excess of the recommended approach speed. The FAA is aware of two other accidents where the causal factors were not determined to be icing-related but the conditions were similar to those of the airplane involved in the reported accident.

The National Transportation Safety Board (NTSB) requested that other airplane owners or pilots of Jetstream Model 3101 airplanes file post-incident reports of pitch down occurrences that did not result in an accident. Three such reports were filed. In one case, a pilot experienced a pitch down and after landing noticed a buildup of over three inches of rough ice on the leading edge of the horizontal stabilizer. The two other reports were of a similar nature with lesser amounts of ice.

Under the terms of a bilateral airworthiness agreement, the FAA is working with the Civil Aviation Authority (CAA) of the United Kingdom (UK) in conducting a special flight test and evaluation program of the Jetstream Model 3101 airplane. Until this program is completed, possible problem areas are identified, and permanent remedial measures are defined, the FAA reduced the maximum flap operating and extension speeds for flaps at 50 degrees to 130 KIAS, and reduced the maximum flap extension when any ice is visible on the airplane to 20 degrees.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued April 2, 1991, to all known U.S. owners and operators of Jetstream Model 3101 airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations to make it effective as to all persons.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [AMENDED]

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

91-08-01 Jetstream: Amendment 39-7007; Docket No. 91-CE-30-AD. Applicability: Model 3101 airplanes (all serial numbers), certificated in any category.

Compliance: Required as indicated after the effective date of this AD receipt of this AD, unless already accomplished.

To prevent sudden pitch down of the airplane during icing conditions, accomplish the following:

(a) Within the next 10 hours time-in-service (TIS), accomplish the following:

(1) Modify the operating limitations placards located on the flight deck in accordance with Jetstream Alert Service Bulletin (SB) No. 27-A-JA 910340. This modification will limit the maximum flap extension speed at the 50-degree position to 130 knots indicated airspeed (KIAS).

(2) Insert a copy of this AD into the limitations section of the airplane flight manual and operate the airplane in accordance with these limitations.

(b) Within the next 25 hours TIS, accomplish the following:

(1) Fabricate a placard with the words "Do not extend the flaps beyond the 20-degree position if ice is visible on airplane and ensure that the landing gear selector is down prior to landing." Install this placard on the airplane's instrument panel within the pilot's clear view and operate the airplane in accordance with these limitations. Parts of the airplane where ice could specifically be visible include the windshield wipers, center windshield, propeller spinners, or inboard wing leading edges.

(2) Operate the airplane in accordance with BAe CAA-Mandatory Alert Service Bulletin 27-A-JA 910340, dated March 25, 1991, Section 2.B.—*Instruction for Aircraft Operations*, paragraphs (1)(a) and (1)(c) until Amendments P/32, P/49, and P/52 have been received. Upon receipt, incorporate these amendments into Airplane Flight Manual (AFM) HP.4.10 and operate the airplane accordingly. Ensure that Amendment G/10 is incorporated into AFM HP.4.10.

(c) Within the next 150 hours TIS, perform an operational test of the landing gear position indication and warning system to establish whether the warning system operates at the 20-degree or 50-degree position. Accomplish this test in accordance with the instructions in the Jetstream Series 3100 Airplane Maintenance Manual.

(1) If the warning system operates at the 20-degree position, no further action is needed.

(2) If the warning system operates at the 50-degree position, modify the airplane in accordance with the instructions in Jetstream SB 32-JM 7493, Revision 1, dated March 25, 1991.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

(f) The operational test and modifications required by this AD shall be done in accordance with Jetstream Alert SB No. 27-A-JA 910340 and Jetstream SB 32-JM 7493, Revision 1, both dated March 25, 1991. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. Section 552(a) and 1 CFR Part 51. Copies may be obtained from British Aerospace, Manager Product Support, Commercial Aircraft Limited, Airlines Division, Prestwick Airport, Ayrshire, KA9 2RW Scotland; Telephone (44-292) 79888; Facsimile (44-292) 79703; or British

Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC, 20041; Telephone (703) 435-9100; Facsimile (703) 435-2628. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

This amendment becomes effective on June 10, 1991, as to all persons except those persons to whom it was made immediately effective by priority letter AD 91-08-01, issued April 2, 1991, which contained this amendment.

Issued in Kansas City, Missouri, on May 9, 1991.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-12703 Filed 05-29-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-106-AD; Amdt. 39-7011]

Airworthiness Directives; Lockheed Aeronautical Systems Company-Georgia Model 1329-23A, -23D, -23E, and -25 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Lockheed Model 1329-23A, -23D, -23E, and -25 series airplanes, which requires repetitive eddy current inspections of the empennage pivot fitting assembly to detect cracks, and repetitive visual inspections of the attaching fasteners to detect loose, missing, or broken fasteners, and repair or replacement, if necessary. This amendment is prompted by a recent report of cracking and loose fasteners in the empennage pivot fitting assembly where it attaches to the vertical stabilizer spar cap. This condition, if not corrected, could result in failure of the empennage pivot fitting assembly, loss of the empennage, and subsequent reduced controllability of the airplane.

DATES: Effective June 24, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 24, 1991.

ADDRESSES: The applicable service information may be obtained from Lockheed Aeronautical Systems Company-Georgia, Attn: Commercial and Customer Support, Dept. 73-05, Zone 0199, 86 South Cobb Drive, Marietta, Georgia 30063.

This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia; or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas B. Peters, Flight Test Branch, ACE-160A; FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta Georgia; telephone (404) 991-3915.

SUPPLEMENTARY INFORMATION: On November 26, 1984, the FAA issued AD 84-23-01, which required a one-time visual inspection of the JE24-1 empennage pivot fitting where the fitting attaches to the flange of the JE22-1 rear beam of the vertical stabilizer, as described in Lockheed Alert Service Bulletins A329II-55-3 (for Model 1329-25) and A329-299 (for Models 1329-23A, -23D, and -23E), both dated October 19, 1984. [Lockheed subsequently added a procedure to the Handbook of Operating and Maintenance Instructions (HOMI) to repeat this visual inspection annually.] That action was prompted by a report of cracking in the empennage pivot fitting assembly. This condition, if not corrected, could result in failure of the empennage pivot fitting assembly, loss of the empennage, and subsequent reduced controllability of the airplane.

Since issuance of AD 84-23-01, four occurrences of cracking in the empennage pivot fitting assembly recently have been reported; one occurrence was discovered only two months after an annual inspection had been performed. In light of these recent occurrences, the FAA has determined that visual inspections alone are inadequate to detect cracking of the assembly in a timely manner.

The FAA has reviewed and approved Revision 1 to Lockheed Alert Service Bulletins A329II-55-3 and A329-299, both dated April 12, 1991, which describes procedures to perform an eddy current inspection of the JE24 series empennage pivot fitting assembly to detect cracks; a visual inspection of fasteners attaching the empennage pivot fitting assembly to the vertical stabilizer rear beam caps for loose, missing, or broken fasteners, or improper countersinks; and repair or replacement, if necessary.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires repetitive eddy current inspections of the JE24 series empennage pivot fitting assembly to detect cracks, and repair of cracks or replacement of the fitting assembly, if necessary; and repetitive visual inspections of all fasteners attaching the pivot fitting assembly to the vertical stabilizer rear beam caps to detect loose, missing, or broken fasteners, or improper countersinks, and repair or replacement of defective or missing fasteners, if necessary; in accordance with Revision 1 of the service bulletins previously described. In addition, operators are required to submit a report of their inspection findings to the FAA.

Lockheed has advised the FAA that it intends to revise the HOMI to specify performing eddy current inspections of the assembly on an annual basis. The FAA has determined that, based on growth rates and scenarios associated with the subject cracking, eddy current inspections are more effective if performed on an hours time-in-service basis; therefore, the repetitive eddy current inspection interval required by this AD is based upon hours time-in-service.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

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

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an

unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

91-11-13. Lockheed Aeronautical Systems Company-Georgia: Amendment 39-7011. Docket No. 91-NM-106-AD.

Applicability: Model 1329-23A, -23D, and -23E (JetStar) series airplanes, Serial Numbers 5001 through 5162; and 1329-25 (JetStar II) series airplanes, Serial Numbers 5201 through 5240; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent failure of the empennage pivot fitting assembly, loss of the empennage, and subsequent reduction of controllability of the airplane, accomplish the following:

(a) Within the next 10 hours time-in-service, or within 20 days after the effective date of this AD, whichever occurs first, perform an eddy current inspection of the JE24 series empennage pivot fitting assemblies to detect cracks, in accordance with Revision 1 of Lockheed Alert Service Bulletins A329II-55-3 (for Model 1329-25) and A329-299 (for Models 1329-23A, -23D, and -23E); both dated April 12, 1991, as applicable.

Repeat this inspection thereafter at intervals not to exceed 300 hours time-in-service.

(b) If cracks are found as a result of the eddy current inspections required by paragraph (a) of this AD, prior to further flight, replace the JE24 series empennage pivot fitting, or repair the fitting in a manner approved by the Manager, Atlanta Aircraft Certification Office.

After replacement or repair, continue to perform the repetitive eddy current inspections required by paragraph (a) of this AD.

(c) Within 7 days after the initial inspection required by paragraph (a) of this AD, submit a report of the inspection results, positive or negative, to the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349, telefax (404) 991-3606.

Note: Negative results of the repetitive inspections need not be reported.

(d) Within the next 10 hours time-in-service, or within 20 days after the effective date of this AD, whichever occurs first, perform a visual inspection of all fasteners attaching the pivot fitting assembly to the vertical stabilizer rear beam caps to detect loose, missing, or broken fasteners, or improper countersinks, in accordance with Revision 1 of Lockheed Alert Service Bulletins A329II-55-3 (for Models 1329-25) and A329-299 (for Model 1329-23A, -23D, and -23E), both dated April 12, 1991, as applicable. Repeat this inspection thereafter at intervals not to exceed 300 hours time-in-service.

(e) If loose, missing, or broken fasteners, or improper countersinks, where applicable, are found as a result of the visual inspection required by paragraph (d) of this AD, prior to further flight, repair or replace defective or missing fasteners in accordance with Revision 1 of Lockheed Alert Service Bulletins A329II-55-3 (for Models 1329-25) and A329-299 (for Model 1329-23A, -23D, and -23E), both dated April 12, 1991, as applicable.

(f) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Atlanta Aircraft Certification Office, ACE-115A, FAA, Small Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Atlanta Aircraft Certification Office, ACE-115A.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

The inspection and repairs shall be done in accordance with Revision 1 of Lockheed Alert Service Bulletins A329II-55-3 (for Model 1329-25) and A329-299 (for Models 1329-23A, -23D, and -23E), both dated April 12, 1991, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Lockheed Aeronautical Systems Company-Georgia, Attn: Commercial and Customer Support, Dept. 73-05, Zone 0199, 86 South Cobb Drive, Marietta, Georgia 30063. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue S.W., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta Georgia; or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

This amendment (39-7011, AD 91-11-13) becomes effective June 24, 1991.

Issued in Renton, Washington, on May 14, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-12704 Filed 5-29-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-CE-29-AD; Amdt. 39-6988]

Airworthiness Directives; SOCATA Groupe AEROSPATIALE Models TB9, TB10, and TB20 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to SOCATA Groupe AEROSPATIALE Models TB9, TB10, and TB20 airplanes. This action requires an inspection of the horizontal stabilizer balance weights to ensure proper and secure attachment, and modification if found improperly attached or loose. Loose or improperly attached horizontal stabilizer balance weights have been reported on over 30 of the affected airplanes. The actions specified in this AD are intended to prevent adverse airplane handling qualities and possible loss of control of the airplane.

DATES: Effective June 20, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of June 20, 1991. Comments for inclusion in the Rules Docket must be received on or before July 19, 1991.

ADDRESSES: SOCATA Groupe AEROSPATIALE Imperative Service Bulletin No. 57, dated January 1991, that is discussed in this AD may be obtained from SOCATA Groupe AEROSPATIALE, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France; Telephone 62.41.74.26; Facsimile 62.41.74.32; or the Product Support Manager, U.S.; AEROSPATIALE, 2701 Forum Drive, Grand Prairie, Texas 75053; Telephone (214) 641-3614; Facsimile (214) 641-3527. This information may be examined at the Rules Docket at the address below. Send comments on the AD in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-29-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be

inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000 Brussels, Belgium; Telephone (322) 513.38.30 ext. 2710; Facsimile (322) 230.68.99; or Mr. Richard Yotter, Project Manager, Small Airplane Directorate, Airplane Certification Service, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932; Facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on SOCATA Groupe AEROSPATIALE Models TB9, TB10, and TB20 airplanes. The DGAC reported that the horizontal stabilizer balance weights on over 30 of the affected airplanes were either loose or improperly attached. SOCATA Groupe AEROSPATIALE has issued Imperative Service Bulletin (SB) No. 57, dated January 1991, which specifies inspection and modification procedures for the horizontal stabilizer balance weights on Models TB9, TB10, and TB20 airplanes. The DGAC classified this SB as mandatory and issued DGAC AD No. 91-031(A) to assure the continued airworthiness of these airplanes in France. Pursuant to a bilateral airworthiness agreement, the DGAC has kept the FAA fully informed of the above situation.

The FAA examined the findings of the DGAC, reviewed all available information, and has determined that emergency AD action is necessary for products of this type design that are certificated for operation in the United States. Since this condition is likely to exist or develop on other SOCATA Groupe AEROSPATIALE Models TB9, TB10, and TB20 airplanes of the same type design, an emergency AD is being issued to prevent loss of control of the affected airplanes. The action requires an inspection of the horizontal stabilizer balance weights to ensure proper and secure attachment, and immediate modification if found improperly attached or loose. The actions are to be done in accordance with the instructions in SOCATA Groupe AEROSPATIALE Imperative Service Bulletin No. 57, dated January 1991.

Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and that good cause exists for making this amendment effective in less than 30 days. Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking would be needed.

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

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [AMENDED]

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

SOCATA Groupe AEROSPATIALE: Amendment 39-6988; Docket No. 91-CE-29-AD.

Applicability: Model TB9, TB10, and TB20 airplanes (all serial numbers), certificated in any category.

Compliance: Required within the next 25 hours time-in-service after the effective date of this AD, unless already accomplished.

Note: The compliance time referenced in this AD takes precedence over that in the referenced service bulletin.

To prevent adverse airplane handling qualities and possible loss of control of the airplane, accomplish the following:

(a) Inspect the horizontal stabilizer balance weight attachment nuts for proper installation in accordance with the instructions in parts 1 and 2 of SOCATA Groupe AEROSPATIALE Imperative Service Bulletin No. 57, dated January 1991.

(1) If the horizontal stabilizer balance weight attachment nuts are not loose and are properly installed, accomplish the requirements in part 3, of SOCATA Groupe AEROSPATIALE Imperative Service Bulletin No. 57, dated January 1991 and return the airplane to service.

(2) If the horizontal stabilizer balance weight attachment nuts are loose or are improperly installed, prior to further flight, remove, inspect, modify and reinstall the horizontal stabilizer balance weight in accordance with the criteria and instructions in Part 4 of SOCATA Groupe AEROSPATIALE Imperative Service Bulletin No. 57, dated January 1991.

(b) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000, Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add

comments and then send it to the Manager, Brussels Aircraft Certification Office.

(c) The inspection and possible modification required by this AD shall be done in accordance with SOCATA Groupe AEROSPATIALE Imperative Service Bulletin No. 57, dated January 1991. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SOCATA Groupe AEROSPATIALE, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France; or the Product Support Manager, U.S.; AEROSPATIALE, 2701 Forum Drive, Grand Prairie, Texas. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the **Federal Register**, 1100 L Street, NW., Room 8401, Washington, DC.

This amendment becomes effective on June 20; 1991.

Issued in Kansas City, Missouri, on April 19 1991.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-12702 Filed 05-29-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF STATE

Bureau of Economic and Business Affairs

[Public Notice 1404]

22 CFR Part 89

Foreign Prohibitions on Longshore Work by U.S. Nationals

AGENCY: Department of State.

ACTION: Interim final rule with request for comments.

SUMMARY: The interim final rule contains a list, of longshore work by particular activity, of countries where performance of such a particular activity is prohibited by law, regulation or in practice in the country concerned. This list is being issued pursuant to section 258(d) of the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1288, as added by the Immigration Act of 1990, Public Law 101-649 of November 29, 1990.

DATES: *Effective Dates:* May 28, 1991 to December 31, 1991. The Department of State will issue a final rule on or before the last effective date and after it has had an opportunity to review public and agency comments. Interested parties are invited to submit, in duplicate, comments on or before July 1, 1991.

ADDRESSES: For mailing public comments: Office of Maritime and Land Transport (EB/TRA/MA), Bureau of Economic and Business Affairs, room 5826, Department of State, Washington, DC 20520-5816.

FOR FURTHER INFORMATION CONTACT: Stephen Miller, Office of Maritime and Land Transport, Department of State, Washington, DC 20520-5816. (202) 647-6961.

SUPPLEMENTARY INFORMATION: Section 258(d)(2) of the Immigration and Nationality Act of 1952, as amended, (hereinafter: the Act) directs the Secretary of State (hereinafter: the Secretary) to "compile and annually maintain a list, of longshore work by particular activity, of countries where performance of such work by crewmembers aboard United States vessels is prohibited by law, regulation or in practice in the country." As announced in the Notice of Proposed Rulemaking dated February 27, 1991, the Department of State (hereinafter: the Department) is establishing such a list from reports received from United States diplomatic posts abroad concerning relevant laws, regulations and practices of their host countries and from comments received from interested parties.

In the notice of proposed rulemaking, the Department proposed publishing such a list in the form of a proposed rule within 45 days and a final rule not later than 45 days thereafter (proposed at 56 FR 8167, February 27, 1991, as part 138, now being adopted as an interim final rule, part 89). Collection of information regarding longshore rules, regulations and practices of foreign countries has, however, taken longer than anticipated. The Department therefore plans to issue a list in the form of an interim final rule. This will allow implementation of the reciprocity exemption by the effective date set forth in section 203(d) of the Immigration Act of 1990. The Department will issue a final rule not later than December 31, 1991, after it has had an opportunity to review comments submitted by interested members of the public, other government agencies and foreign governments.

On March 3, 1991, the Department directed U.S. diplomatic posts to seek to determine through contacts with appropriate host appropriate government officials and other sources of information (a) which, if any, host country laws or regulations restrict or have the effect of restricting any type of longshore activity by crews of any vessels, and (b) which, if any, host country practices have restricted the crews of U.S. vessels from performing any type of longshore activity normally performed in the country over the past year. Posts were instructed to be as specific as possible in describing such laws, regulations, practices and particular longshore activities.

The Department has in consequence received reports from 109 countries. Of these, embassies in 47 countries reported laws and regulations that restrict U.S. mariners from performing certain activities constituting longshore work. Reports in respect of 11 other countries indicate that the host governments have no such laws and regulations, but that collective bargaining agreements may restrict crews abroad U.S. ships from carrying out certain longshore activities.

Comments From Interested Parties

The Department has received a number of public comments in response to the notice of proposed rulemaking.

The International Council of Cruise Lines (ICCL) advised that legislative history exempting the cruise industry was inserted on ICCL's behalf. The ICCL declares that this was the intention of Congress and its own intention.

The Council of European and Japanese Shipowners' Associations (CENSA) opposes using non-governmental collective bargaining agreements or other industry contracts as a standard for compiling the list of countries prohibiting longshore work by U.S. mariners. CENSA takes the position that such an interpretation of the term "practices" would be contrary to direct provisions of the statute, which CENSA interprets as only applying to governmental restrictions. CENSA notes that in testimony before the House Committee on the Judiciary in connection with H.R. 2138, a predecessor bill to section 203 of the Immigration Act of 1990, proponents of this legislation intended to counter alleged governmental rules, regulations and practices. CENSA also notes the fact that the issue of collective bargaining agreements never emerged in discussions with members of Congress and staff and concludes that this is the reason the final version of the Conference Report omits references to this matter included in earlier drafts.

In addition, CENSA expresses the concern that a proposed rule could violate treaties of Friendship, Commerce and Navigation. CENSA observes that section 258 of the Act has the effect of discriminating against foreign-registered vessels in the United States by denying them the same treatment afforded to U.S.-flag carriers, citizens and nationals. If the proposed rule were to include foreign collective bargaining agreements, which are by nature are flag-blind non-governmental actions,

CENSA considers that the treaties would be violated by denying national treatment to foreign-flag vessels within the United States.

The Canadian American Company (CANAMCO), commenting on behalf of the Canadian Shipowners Association (CSA), states that, to its knowledge, there are no Canadian laws, regulations, or practices that prohibit particular longshore activities by crews on U.S. ships in Canada.

CSA suggests that the Department may wish to clarify the definition of "in practice" in section 258(d)(3). CSA takes the position that the term refers to governmental practices applied throughout a country. CSA points out that draft Conference Report language referring to collective bargaining agreements and industry agreements, contracts, and organizational policies was omitted from the final Conference Report. CSA believes that this omission reflects the intent of Congress not to include collective bargaining and other private agreements and policies. Similarly, CSA recalls that a proposed clause was not adopted that would have directed the Secretary of State to consider activities performed in each coastal region of contiguous countries, rather than on a nation-wide basis, to reflect actual practices in each such region. CSA interprets this deletion as a reflection of congressional intent to refer only to activities that occur nation-wide.

Counsel to the International Longshoremen's Association, AFL-CIO, advises that its client's affiliates and colleagues in foreign countries are gathering information relevant to the establishment of the list, but might not be able to submit the information before the March 29, 1991, deadline for submission of comments. He underscores the need to assemble an accurate list.

In the view of the ILA counsel, the bill has the objective of remedying an inequity which deprived his client and longshoremen generally of rights and protections the Act accords to workers in other fields. He expresses concern that changes to the reciprocity provisions added to the bill during congressional deliberations may yield a different interpretation from that he believes was originally intended. He submits that the Conference Report shows that Congress carefully and articulately delineated exceptions in order to maintain the fundamental objective of preventing foreign mariners from performing longshore work. He further submits that the Department must account for regulations and practices which in law and theory tend to bar, or actually bar, U.S. mariners from performing longshore activities, including contracts, traditions and local political factors.

The Transportation Institute, representing more than 140 U.S.-flag vessel operators engaged in all aspects of maritime transportation in both the domestic and international trades, supports publication of the list as a proposed rule, in order to give vessel operators the opportunity to confirm or challenge the items listed. The Institute further requests the Department to seek public comment before the list is updated each year as required by the Act.

Stolt-Nielsen Inc., in its capacity as managing agent for Stolt Tankers and Terminals (Holdings) S.A., identifies itself as the largest chemical parcel tanker operator in the world, whose ships can simultaneously carry up to 58 different products. Stolt-Nielson emphasizes that many of these products are hazardous and require specialized handling. According to the company, parcel tankers routinely berth at privately owned terminals or specialized public terminals and that the ship's crews perform all cargo handling duties as a matter of established practice around the world. Attached to Stolt-Nielson's comments are a list of reasons why untrained longshoremen should not be involved in the operation of parcel tankers.

The American Great Lakes Ports has submitted comments on behalf of the International Association of Great Lakes Ports (IAGLP). In connection with its policy for cost containment for the St. Lawrence Seaway, the IAGLP opposes any application of the Act which would increase the costs of Great Lakes/Seaway trade. Referring to the definition in the Act, the Association interprets the term "in practice" as general and consistent practices nationwide excluding isolated cases. The IAGLP recalls that the Act specifies a list of countries by particular activity to establish that restrictions on the crews of foreign ships in U.S. ports and waters would only apply to identical activities.

On behalf of the Republic of Cyprus, the Cyprus Maritime Office in New York City urges that the Department not include Cyprus in the list. According to the Government of Cyprus, the prohibition in the Cyprus Port Workers (Regulation of Employment) Law of December 31, 1952, as amended, against longshore work by crewmembers only applies to the operation of on-board cranes, unless the superintendent of the port determines that port workers do not have the special technical knowledge required to handle a particular type of crane. The Government of Cyprus further reports that this law only applies to the ports of Limassol and Larnaca. It also observes that the law applies both to Cypriot and other vessels and does not discriminate in favor of vessels of Cyprus and their crewmembers. The Government of Cyprus draws a parallel to the objective of section 258(d)(2) of ensuring that U.S. mariners have the same rights to perform longshore work in a foreign country as do nationals of that country. The Government of Cyprus notes that the practice of using local longshore workers may reflect economic, historic and other reasons not related to compulsion or discriminatory policies. It cites the case where longshoremen may perform the work more efficiently, quickly, and cheaply than a ship's crew. The Government of Cyprus states that in practice, it allows foreign crewmembers to perform all loading and unloading activities within the definition of longshore work, but Cypriot port workers must receive payment they would have earned for the work. Finally, The Government of Cyprus notes the possible impact that inclusion in the list would have on the national economy of a country with an open registry, such as Cyprus.

Shippers for Competitive Ocean Transport (SCOT) have submitted comments on behalf of its members, which it advises account for over 60 percent of all U.S. liner exports and for major maritime movements of liquid chemical, petroleum products, and dry bulk products. SCOT emphasizes that practices for products in bulk differ significantly from practices for container or break bulk liner shipping. Consequently, SCOT calls upon the Department to gather separate information on longshore activities for liner, dry bulk and tanker shipping. SCOT also takes the position that practices in isolated labor contracts or in individual ports should not be taken into account in compiling the list.

SCOT attaches importance to determining whether foreign countries on the list prohibit activities on board the ship. In particular, SCOT notes that the crews of U.S. and foreign vessels do not normally handle lines on the docks of U.S. ports. SCOT does not believe that the U.S. could take action against the crews of foreign vessels for activities that U.S. crews cannot perform in U.S. ports. SCOT expresses concern that unique longshore labor requirements, particularly for bulk vessels, could render U.S. exports uncompetitive and would significantly increase the risk of harm to the environment, the ship and shore personnel.

The Lake Carriers' Association and the American Iron Ore Association (the Associations) have submitted joint comments urging that Canada not be placed on the list of countries which prohibit U.S. crewmembers of bulk vessels from carrying out longshore activities. The Associations report that the Canadian Government does not prohibit crewmembers of U.S.-flag bulk vessels from performing longshore work as defined in the Act. According to the Associations, U.S. mariners may handle mooring lines on the dock when the vessel is made fast or let go; move the vessel to place it under shoreside unloading equipment; move the vessel in position to unload the vessel onto specific cargo piles, hoppers or conveyor belt systems; operate the cargo related equipment integral to the vessel; and other related activities. The Associations note that these practices have been going on "for decades" and were undoubtedly in practice during the past year.

Standards for Reciprocity Exception

Taking into account the information and comments received to date in response to the notice of proposed rulemaking, the Department is listing those countries where restrictions on longshore activities by crewmembers of U.S. ships are imposed or approved by the foreign government on a national basis

—By law or regulation,
—Through a collective bargaining agreement directly negotiated by the foreign government with other parties, or
—Through restrictions in private collective bargaining agreements imposed or approved by the foreign government.

Within these categories, the Department is listing only those countries where laws, regulations and practices in fact prevent U.S. crewmembers from performing longshore work. The Department is considering possible or hypothetical effects of laws, regulations and practices as evidence of restrictions on U.S. mariners if these crewmembers are in fact able to perform longshore activities.

Because section 258(d) of the Act only refers to the effects on crewmembers of U.S. ships, the list of countries does not include laws, regulations or practices that do not have an effect on the crewmembers of U.S. ships even if they restrict the crews on ships of other countries. Consequently, countries where the Department has determined that no U.S. ships have called in the past year will not be on the list.

The Governments of several countries have informed U.S. Embassies that their laws, regulations and practices do not discriminate against the crews of U.S. ships vis a vis their own or third-country vessels. The Act, however, directs the Secretary to compile a list of countries restricting the crews of U.S. ships, regardless of whether there is discrimination as between crews of U.S. ships and ships of other countries.

Concerning the application of the Act to the loading and discharge of parcel tankers and other specialized bulk carriers, section 258(b)(2) exempts from the definition of longshore work loading or unloading of any cargo for which special regulations have been prescribed by the Secretary of Transportation under chapter 37 of title 46 of the United States Code (relating to carriage of liquid bulk dangerous cargoes), section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), or section 105 or 106 of the Hazardous Materials Transportation Act (49 U.S.C. App. 1804, 1805).

Definition of Longshore Work

Section 258(b) defines the term "longshore work" as "any activity relating to the loading or unloading of cargo, and operation of cargo-related equipment (whether or not integral to the vessel), and the handling of mooring lines on the dock when the vessel is made fast or let go, in the United States or the coastal waters thereof."

In its cable of March 3, the Department of State included this definition as guidance for the posts abroad. Information developed by the Department indicates that there is no international consensus on what constitutes "longshore work". The laws and regulations of many countries which prohibit crews of U.S. ships from performing longshore work do not provide a definition of the term and do not enumerate particular activities which are covered. Other countries specify particular activities exempt from their restrictions on longshore work. It is also possible that given activities covered by the Act's definition of "longshore work" may not be viewed in other countries as "longshore work" for the purposes of their laws or regulations. For example, some countries apply prohibitions to activities on board the ship, while other countries do not even consider shipboard activities as longshore work. In this connection, in order to complete as detailed a list as possible, the Department sought information regarding restrictions on particular shipboard activities, e.g., opening of hatches, rigging of ship's gear and handling of lines. Moreover, the regulations of many countries are not sufficiently detailed to differentiate between practices applying to dry bulk, tanker and liner shipping. Where identified, exceptions from restrictions on longshore work are noted in the list of countries established in accord with section 258(d)(2) of the Act.

Definition of "In Practice"

Section 258(d)(3) defines "in practice" as "an activity normally performed in such country during the one-year period preceding the arrival of such vessel into the United States or coastal waters thereof."

Comments generally centered on three aspects of the term: Application to collective bargaining agreements, the geographic scope of restrictive practices, and the presumptions created by established commercial practice.

Collective Bargaining Agreements

The Department has received a variety of comments regarding the inclusion, as indicative of foreign practice, of collective bargaining agreements that have the effect of restricting the activities of U.S. crewmembers. In this regard, the Department has carefully considered the language and underlying purpose of section 258, as well as its legislative history. Taking all relevant factors into account, the Department has concluded that whether such agreements should be considered foreign practice is determined by the degree of foreign governmental involvement in the collective bargaining agreement, i.e., the extent to which the restrictions in the agreement are in fact imposed or approved by a foreign government. Thus, collective bargaining agreements directly between a foreign state on the one hand, and a labor union, on the other hand, concerning the operation of a public port would constitute foreign practice. Where restrictions in other collective bargaining agreements are either specifically imposed or approved by the foreign government, the Department has also considered the agreement as indicative of foreign practice. In the case of agreements concluded by foreign port authorities, the Department has examined, consistent with these criteria, the degree of foreign government control over the port authority's employment practices. The Department would also include as practice any requirements that vessels comply with restrictions in collective bargaining agreements as a condition for the entry of U.S. crewmembers, with

respect to those restrictions. Purely private agreements between private operators and longshore unions not imposed or approved by the foreign government would not constitute foreign practice.

In accordance with these criteria, the Department is placing Congo and Jamaica on the list because their governments have directly negotiated restrictive agreements with labor unions. Argentina, Belgium, Belize, and Colombia are listed because their governments either give designated labor unions the exclusive right to do certain longshore activities or have approved collective bargaining agreements with such restrictions. Canada, the Dominican Republic, Ecuador, and Korea are not listed because the bargaining agreements were negotiated by private parties without any government intervention. Barbados, Finland, and Ireland are not listed because the port authorities concluding the agreements with the longshore unions are independent of the government with respect to employment practices. The Department is still gathering information concerning collective bargaining agreements in effect in Haiti. Haiti has not been included on the list pending receipt of this information.

Geographic Scope

The Conference Report establishes "general practice" as a test for reciprocity exemptions. A number of comments received by the Department addressed this point. The Department notes that proposed provisions allowing the Secretary of State to examine each region of contiguous countries rather than considering activities on a nation-wide basis were not included in the final bill enacted by the Congress. The Department has concluded that a country where restrictions do not generally prevail throughout that country should not be listed.

Commercial Practice

Several comments observed that carriers may use local longshore workers as a matter of established commercial practice. Carriers may voluntarily employ local workers for reasons other than governmentally imposed or approved constraints. In the absence of evidence of restrictive laws, regulations or practices, the Department presumes that the choice to use local longshoremen results from purely voluntary commercial decisions.

Compensation of Port Workers

Although the Department received no comments on this issue, information from U.S. Embassies revealed that several countries require carriers to compensate local workers for wages foregone if crewmembers perform longshore work. The Department is not including such restrictions as indicative of foreign practices unless it determines that the compensation does not reflect the ordinary market wages for such work.

International Obligations

Some comments raise the point that exclusion of the crews of foreign vessels from longshore work in U.S. ports pursuant to the Act may violate treaties of Friendship, Commerce and Navigation in force between the United States and other countries. The Department has considered the matter and has concluded that no inconsistency with U.S. treaty obligations is apparent.

Opportunity for Public Comments

Several interested parties expressed the desire to comment on the first round of comments submitted in response to the Department's notice of February 27, 1991. For this reason, the Department has included extensive summaries of the comments in this Notice. In accordance with section 258(d)(2) of the Act and 5 U.S.C. 553, the Department will provide public notice in the **Federal Register** before updating the list each year.

Longshore Work in Certain Countries

The situations of certain countries warrant detailed comment.

Cyprus

The Cyprus Maritime Office has stated on behalf of the Government of Cyprus that U.S. crewmembers will not be restricted from doing longshore work. The Department therefore is not including Cyprus on the list.

Panama

The Port Authority of Panama has also submitted a statement asserting that the crews of U.S. ships have the right to do longshore work, on a reciprocal basis. The Department therefore is not including Panama on the list pending confirmation of this statement by the Government of Panama.

Liberia

Liberia has been in a state of internal turmoil since January 1990, with government services operating at a minimal level. An interim National Port Authority is operating the freeport of Monrovia and has witnessed a resumption of commercial shipping since last November. No U.S. vessels have called at Liberian ports in the past year. Therefore in accordance with the general criteria described earlier, the Department is not including Liberia in the list.

Peru

Peruvian regulations formerly reserved for Peruvian stevedores all loading and unloading activities, including those involving equipment integral to the ship, such as hatches and cranes. Decrees passed in 1990 allow shipping companies to contract freely for longshore services. On March 11, 1991, the Peruvian Government abolished the Maritime Labor Control Commission, which had the responsibility for regulating longshore work since 1935. On March 14, the Government declared a state of emergency in the ports and authorized the Ministry of Defense to take control of port operations. U.S. shipping lines report that the crews of their ships have been able to perform longshore activities. For that reason, the Department is not including Peru on the list.

List of Subjects in 22 CFR Part 89

Aliens, Crewmembers, Immigration, Labor, Longshore work.

For the reasons set out in the preamble, 22 CFR chapter I is amended as follows.

Part 89, consisting at this time of § 89.1, is added to read as follows:

PART 138—PROHIBITIONS ON LONGSHORE WORK BY U.S. NATIONALS

§ 89.1 Prohibitions on Longshore work by U.S. nationals, listing by country.

The Secretary of State has determined that, in the following countries, longshore work by crewmembers aboard United States vessels is prohibited by law, regulation, or in practice, with respect to the particular activities noted:

Argentina

(a) Loading and discharge of cargo.

Australia

(a) Handling of cargo or ballast in connection with the loading or discharge of a ship, including rigging of ship's gear, unless there is insufficient shore labor.

(b) Exceptions: Operation of self discharging equipment and other automatic loading/unloading mechanisms.

Belgium

(a) Cargo loading and discharge.

(b) Exception: operation of cargo-related machinery on board the ship.

Belize

(a) Loading and unloading cargo vessels and handling of containers.

(b) Exception: operation of shipboard cranes to load and offload containers.

Brazil

(a) movement of cargo.
(b) lashing or unlashing of containers.
(c) operation of cargo related equipment, whether or not on board the ship.
(d) activities performed by cargo checkers, tally clerks, watchmen, and coopers.

Burma

(a) Loading and discharge of cargo from and in any sea-going vessels coming to any dock, wharf, quay, stage, jetty or pier.
(b) Handling of mooring lines.
(c) Exceptions: Shipboard activities including opening hatches and rigging ship's gear; loading or discharge of cargo when the equipment or cargoes require special handling; and loading or discharge of other cargoes, by special agreement with port authorities.

Chile

(a) Any and all functions relating to the loading and unloading of cargo and other tasks appropriate to a port, wheter on board boats and ships in the port or in the dock area, including the operation of cargo-related equipment, whether or not integral to the vessel, including hatches and rigging of ship's gear.
(b) Exceptions:
(1) Placement and removal of mooring ropes from dock bitts and operation of the capstans aboard the vessel, when under the control of the harbor pilot; and
(2) Doing a vessel's mess and purveying alongside the ship with the provisions, loading and placement of the provisions in the ship's larder or stores.

China, People's Republic of

(a) All longshore activities.

Colombia

(a) All activities related to the loading and discharge of cargo, including operation of cargo-related equipment integral to the vessel.

Congo

(a) All longshore activities.

Costa Rica

(a) Operation of loading and unloading equipment affixed to the pier.

Cote d'Ivoire

(a) All longshore activities.

Egypt

(a) Cargo loading and unloading activities not on board the ship.

El Salvador

(a) Port operations, including the loading and discharge of cargo, the operation of equipment, whether on the ship or not, and the handling of lines.

France

(a) All loading and unloading of ocean-going ships.
(b) Exception: movement of personal belongings and machinery belonging to the ship.

Guatemala

(a) All port operations except for the opening of hatches and entrances to ship storage areas.

Guinea

(a) All longshore activities.

Honduras

(a) All longshore activities, including loading and discharge of cargo, handling of containers, operation of cranes, hoisting machinery and roll-on/roll-off equipment.
(b) Exception: handling of toxic or hazardous materials, with clearances obtained through the national port authority prior to entry into port.

India

(a) All on-board activities relating to loading and discharge of cargo and operation of cargo-related equipment, including rigging of derricks, and opening and closing of hatches.
(b) All movement of cargo on shore.
(c) Berthing vessels and handling of mooring lines on dock when the vessel is made fast or let go.

Indonesia

(a) All longshore activities, including opening of hatches, rigging of ship's gear and line handling, as long as there are Indonesian longshoremen available.
(b) Exceptions: activities for which local workers lack the requisite skills; in an emergency situation, duties ordinarily performed by longshoremen; and loading and discharge of hazardous chemicals at industrial ports if no Indonesian workers are available for the job.

Israel

(a) All longshore activities, including loading and unloading of cargo, operation of cargo-related equipment, and handling of mooring lines.
(b) Exception: jobs related to the maintenance of the ship itself.

Italy

(a) All longshore activities.
(b) Exceptions: operation of automated loading and discharge equipment on board the vessel; and on board activities other than handling of cargo-related equipment, including
(1) Handling of the lifts on ferries,
(2) Preparation of on board derricks, winches and cranes,
(3) Opening and closing of hatches,
(4) Loading and discharge operations relative to barges from LASH vessels,
(5) Installation of bulkheads to secure cargo,
(6) Lashing and unlashing operations, and
(7) Securing of cargo.

Jamaica

(a) Activities normally carried out by stevedores, linesmen, gangmen or longshoremen, including
(1) all on-shore activities dealing with the handling and placement of cargo;
(2) all movement of cargo from or onto ships whether by gangplank or crane;
(3) all stacking and slinging of pallets within the ship's cargo holds;
(4) mooring and unmooring of ships, including handling of mooring lines aboard ships; and
(5) any other activity involving the discharge of cargo into Jamaica.
(b) All activities associated with the discharge of grain and loading of grain products, with the exception of handling of on-board machinery to keep the ship righted.
(c) Exception: direction of supervisors by the ship's officers only insofar as necessary to identify which cargo is to be palletized, shifted, or off-loaded.

Kenya

(a) All longshore activities.

Madagascar

(a) All longshore activities.

Mauritania

(a) All longshore activities.
(b) Exception: supervision by the vessel's master or loadmaster.

Morocco

(a) Handling of any product, creates, boxes, bales or containers destined for unloading.
(b) Exception: any shipboard activities not relating to loading or discharge operations and not having any commercial character, including opening hatches, rigging of ship's gear and line handling.

Mozambique

(a) All longshore activities.

Namibia

(a) Port services and cargo loading and discharge.
(b) Exception: handling of cargo only while it remains on the vessel.

Oman

(a) Longshore work without a labor permit, including loading or discharge of cargo, handling of containers or any other activity not related to a crewman's job on the ship or to basic ship repair.
(b) Exceptions: opening of hatches, rigging of the ship's gear and handling of lines aboard ship.

Pakistan

(a) All longshore activities.
(b) Exceptions: Shipboard activities other than opening of hatches; with prior approval from Ministry of Communications officials, loading or discharge of special cargoes with on-board equipment in cases where dockside equipment operated by longshoremen cannot safely move the cargoes.

Philippines

(a) All longshore activities.

Portugal

(a) All operations associated with loading

or unloading cargo and complementary operations within the port area, including lashing.

(b) Exceptions:

(1) opening and closing of hatches;

(2) rigging of ship's gear;

(3) handling of lines;

(4) military vessels or the operation of military material in areas under military jurisdiction;

(5) the supply of bulk operating fuels and lubricating oils to a ship;

(6) the movement of spare parts, supplies, ship's stores, fuels and lubricants when the quantities to be moved are less than three tons per vessel;

(7) the loading, unloading and transfer of fuels and bulk liquid petroleum products;

(8) the loading, unloading and transfer of chemical products whose characteristics require special handling;

(9) the loading, unloading and packing of fresh, refrigerated or frozen fish from a fishing vessel, except when such cargo is listed on the manifest; and

(10) the movement of goods and materials within naval construction and repair yards or petroleum terminals.

Romania

(a) All longshore activities not on board the ship.

St. Lucia

(a) All longshore activities.

Sierra Leone

(a) All longshore activities on shore.

South Africa

(a) Cargo handling without a license issued by the port authority.

Spain

(a) Longshore operations, including any loading, offloading, stowage and transfer of goods within port intended for maritime transport by ship.

(b) Exceptions include:

(1) handling of goods, material, and machinery belonging to the port authorities;

(2) material of the Ministry of Defense unless operations are carried out by a stowage company;

(3) mail loading and offloading;

(4) private vehicles offloaded by owners or drivers and complementary grip tasks carried out by ship's crew;

(5) offloading, transport to storage and complementary work of fresh fish from ships of less than 100 gross tons capacity or those above this size under special contract when carried out by the crew;

(6) operations carried out within the port directly related to processing plants, industrial zones or canning factories, as long as they are not carried out by a stowage company;

(7) handling of personal belongings of passengers and crewmembers;

(8) loading and offloading of maintenance goods as long as it does not require hiring additional personnel or operations carried out by pipelines;

(9) the use of cranes and tractor devices not assigned to port operations as long as they are used by their regular personnel; and

(10) driving and coupling tractor devices to load and offload trailers as long as it is done on a provisional basis outside port areas to and from loading areas. Driving of any vehicles transporting goods to crane or loading device in truck ship operations, if done on a provisional basis.

Sri Lanka

(a) All longshore activities.

(b) Exceptions: With a waiver granted by the Minister of Ports and Shippping upon application through the ports authority, handling of long lines of ships awaiting unloading and other activities under exceptional circumstances.

Taiwan

(a) Loading and discharge activities, including opening of hatches and rigging of ship's gear.

(b) Handling of mooring lines on the dock for all vessels.

(c) Exceptions: loading and discharge of cargo if the longshoremen cannot handle the cranes of a particular ship; and operation of certain hatch opening equipment.

Thailand

(a) All longshore activities, including opening of hatches, rigging ship's gear and line handling once the ship has berthed.

(b) Exception: operation of onboard cargo machinery integral to the ship.

Togo

(a) Handling of mooring lines on the dock.

Trinidad and Tobago

(a) All longshore activities, including opening hatches, rigging of ship's gear and handling of mooring lines.

Tunisia

(a) All longshore or dock activities, including the operation of on-board hoists.

Turkey

(a) Work done on the pier, including mooring, cargo handling, crane operations and ground vehicle transportation.

(b) Exceptions: activities on board vessels to assist in loading and discharge of cargo.

Uruguay

(a) All longshore activities, including the opening of hatches, rigging of ship's gear and line handling.

(b) Exception: loading and discharge of cargo where Uruguayan workers cannot operate on board loading cranes.

Yemen

(a) All longshore activities.

(8 U.S.C. 1288, Pub. L. 101-649, 104 Stat. 4978).

Dated: May 25, 1991.

Richard E. Hecklinger,

Acting Assistant Secretary, Economic and Business Affairs, Department of State.

[FR Doc. 91-12895 Filed 5-28-91; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 221

[Docket No. R-91-1488; FR-2774-N-04]

RIN 2502-AE95

Mortgage Insurance for Single Room Occupancy Projects, Notice of Extension of Effective Date

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

ACTION: Notice of extension of effective date.

SUMMARY: On April 19, 1991, the Department published a final rule in the **Federal Register** establishing a new program of mortgage insurance for single room occupancy projects. The effective date of this final rule was given as June 1, 1991, with the proviso that, if it became necessary to delay this effective date, HUD would publish a document in the **Federal Register** before June 1, 1991 to announce a different date. The purpose of this document is to change the announced June 1, 1991 effective date to June 15, 1991.

EFFECTIVE DATE: June 15, 1991.

FOR FURTHER INFORMATION CONTACT: Linda Cheatham, Acting Director, Office of Insured Multifamily Development, room 6134, Department of Housing and Urban Development, 451 Seventh Street, SW. Washington, DC 20410, telephone (202) 708-3000. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department published a final rule in the **Federal Register** on April 19, 1991 entitled "Mortgage Insurance for Single Room Occupancy Projects" (56 FR 16198).Under the heading "Effective Date," that rule set forth a date of June 1, 1991 with the following additional sentence, "If it is necessary to delay this effective date, HUD will publish a document in the **Federal Register** prior to June 1, 1991 doing so."

The Department has found, and notice is hereby given, that it is necessary to extend the effective date of this final rule on Mortgage Insurance for Single Room Occupancy Projects from June 1, 1991 to June 15, 1991.

Dated: May 22, 1991.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 91-12663 Filed 5-29-91; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Regulatory Program; Revision of Administrative Rule

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of the proposed continuation of Revised Program Amendment Number 39 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This amendment is intended to satisfy a requirement placed on the Ohio program as part of OSM's approval of Ohio Revised Program Amendment Number 39. The amendment states that Ohio will require that all operators fence, cover, or use other appropriate methods to exclude wildlife from ponds that contain hazardous concentrations of toxic-forming materials.

EFFECTIVE DATE: May 30, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 2242 South Hamilton Road, Room 202, Columbus, Ohio 43232; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

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

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Submission of Amendment

On February 22, 1990, Ohio submitted Revised Program Amendment Number 39 to the Ohio program (Ohio Administrative Record No. OH-1284). The revised amendment was intended to make the Ohio program consistent with Federal regulations. On September 18, 1990, OSM approved, with certain exceptions, Ohio Revised Program Amendment Number 39 (55 FR 38319). As part of that approval, OSM required Ohio to further amend its program to require that all operators fence, cover, or use other appropriate methods to exclude wildlife from ponds that contain hazardous concentrations of toxic-forming materials.

By letter dated March 1, 1991 (Ohio Administrative Record No. OH-1470), Ohio submitted a proposed continuation of Ohio Revised Program Amendment Number 39. This proposed continuation of the amendment would revise the Ohio Administrative Code (OAC) Section 1501:13-9-11 by reiterating the Federal language from 30 CFR 816.97(e)(4) requiring that all operators fence, cover, or use other appropriate methods to exclude wildlife from ponds that contain hazardous concentrations of toxic-forming materials.

OSM announced receipt of the proposed amendment in the March 27, 1991, **Federal Register** (56 FR 12690), 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 April 26, 1991.

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 Ohio program.

In the preamble to OSM's partial approval of Program Amendment Number 39R on September 18, 1990 (55 FR 38325), the Director of OSM required that:

> Ohio amend its program to require that operators fence, cover, or use appropriate methods to exclude wildlife from ponds that contain hazardous concentrations of toxic-forming materials.

Subsequently, Ohio proposes to amend OAC 1501:13-9-11 by adding a new paragraph (D)(3) to require that all operators fence, cover, or use other appropriate methods to exclude wildlife from ponds that contain hazardous concentrations of toxic-forming materials. Upon review, OSM has determined that the proposed amendment fully satisfies the Federal requirement at 30 CFR 935.16(a). The Director finds, therefore, that the proposed amendment is substantively identical to and no less effective than the corresponding Federal regulation at 30 CFR 816.97(e)(4). Consequently, the required program amendment codified at 30 CFR 935.16(a) is satisfied and can be removed.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the March 27, 1991, **Federal Register** ended on April 26, 1991. No public comments were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Ohio program. The U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, and the U.S. Department of Agriculture, Soil Conservation Service, responded that they had no comments on the proposed amendment. No other comments were received.

V. Director's Decision

Based on the above findings, the Director is approving the continuation of Revised Ohio Program Amendment Number 39, as submitted on March 1, 1991. The Director is amending 30 CFR part 935 to implement this decision. As explained in the finding, this amendment satisfies the required amendment at 30 CFR 935.16(a) and, therefore, the Director is revising the Federal rules to remove this requirement.

This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

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 which 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 such provisions and that EPA concurrence is, therefore, unnecessary.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exception from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 15, 1991.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

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

PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

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

2. In § 935.15, a new paragraph (xx) is added to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(xx) The following amendment to the Ohio permanent regulatory program, as submitted by letter dated March 1, 1991, is approved effective May 30, 1991: The continuation of Revised Program Amendment Number 39 which adds a new rule concerning excluding wildlife from toxic ponds at Ohio Administrative Code (OAC) Section 1501:13-9-11(D)(3).

§ 935.16 [Amended]

3. In § 935.16 paragraph (a) is removed and reserved.

[FR Doc. 91-12714 Filed 5-29-91; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[OGD 05-91-23]

Special Local Regulations for Marine Events, American Diabetes Association Choptank River Swim, Choptank River Bridge, Cambridge, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of Implementation of 33 CFR 100.512.

SUMMARY: This notice implements 33 CFR 100.512 for the swim portion of the American Diabetes Association Triathalon. The event will be held on June 2, 1991 in the Choptank River. The swim portion of the triathalon will consist of approximately 400 swimmers racing across the Choptank River. The course will begin at the sandy beach on the west side of the Gateway Marina entrance on the north shore to the Choptank River and end at Great Marsh Point on the opposite shore. These regulations restrict vessel navigation in the regulated area during the swim portion of the triathalon.

EFFECTIVE DATES: The regulations in 33 CFR 100.512 are effective from 7 a.m. to 2 p.m., June 2, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, (804) 398-6204.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

Mr. Fletcher Hanks, Race Chairman for American Diabetes Association Choptank River swim, submitted an application requesting permission to hold the swim portion of this triathalon on June 2, 1991. Since a portion of the Choptank River must be closed to traffic during this portion of the event, the special local regulations in 33 CFR 100.512 are implemented.

Dated: May 22, 1991.

H.B. Gehring,

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

[FR Doc. 91-12734 Filed 5-29-91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 05-91-22]

Special Local Regulations for Marine Events; Harborfest 1991; Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.501.

SUMMARY: This notice implements 33 CFR 100.501 for Harborfest 1991, an annual event held in the Waterside area of the Elizabeth River between Norfolk and Portsmouth, Virginia. These special local regulations are needed to control vessel traffic within the immediate vicinity of Waterside due to the confined nature of the waterway and expected vessel congestion during the Harborfest 1991 activities. The effect will be to restrict general navigation in the regulated area for the safety of participants and spectators.

EFFECTIVE DATES: The regulations in 33 CFR 100.501 are effective for the following periods: 10 a.m. to 9 p.m., June 7, 1991. 8 a.m. to 11 p.m., June 8, 1991. 8:30 a.m. to 6:30 p.m., June 9, 1991.

If inclement weather causes the postponement of the fireworks display on June 8, 1991, the regulations will be in effect until 11 p.m., June 9, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, (804) 398-6204.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Fifth Coast Guard District, and Lieutenant Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

Norfolk Harborfest, Inc. has submitted an application dated April 5, 1991 to hold Harborfest 1991 on June 7, 8, and 9, 1991, in the Waterside area of the Elizabeth River. This area is covered by 33 CFR 100.501 and generally includes the waters of the Elizabeth River between Town Point Park, Norfolk, Virginia, the mouth of the Eastern Branch of the Elizabeth River, and Hospital Point, Portsmouth, Virginia. Since this event is of the type contemplated by this regulation and the safety of the participants and spectators viewing this event will be enhanced by the implementation of special local regulations for the Elizabeth River, 33 CFR 100.501 will be in effect during Harborfest 1991. Harborfest 1991 will be a three-day event sponsored by Norfolk Harborfest, Inc. The event will consist of aerobatic demonstrations, an air/sea rescue demonstration, fireworks, and numerous other water events, to include a parade of sailboats and several boat and raft races. Because commercial vessels will be permitted to transit the regulated area between events, commercial traffic should not be severely disrupted. In addition to regulating the area for the safety of life and property, this notice of implementation also authorizes the Patrol Commander to regulate the operation of the Berkley drawbridge in accordance with 33 CFR 117.1007, and authorizes spectators to anchor in the special anchorage areas described in 33 CFR 110.72aa.

Dated: May 22, 1991.

H.B. Gehring,

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

[FR Doc. 91-12735 Filed 5-29-91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 05-91-24]

Special Local Regulations for Marine Events; National Flag Day Fireworks Display; Fort McHenry, Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the National Flag Day firework display. The fireworks will be launched from a barge anchored approximately 120 yards northeast of Fort McHenry Range Front Light (LLNR 7550), Patapsco River, East Channel, Baltimore, Maryland. These regulations are necessary to control spectator craft and to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: These regulations are effective from 6 p.m. to 11:30 p.m., June 14, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, (804) 398-6204.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Adherence to normal rulemaking procedures would not have been possible. Specifically, the sponsor's application to hold the event was not received until May 3, 1991, leaving insufficient time to publish a notice of proposed rulemaking in advance of the event.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Fifth Coast Guard District, and Lieutenant Monica L. Lambardi, project attorney, Fifth Coast Guard District Legal Staff.

Background and Purpose

The National Flag Day Foundation, Inc. submitted an application to hold a fireworks display on June 14, 1991. As part of the application, the National Flag Day Foundation, Inc. requested that the Coast Guard provide control of spectator and commercial traffic during the fireworks display.

Discussion of Regulations

The fireworks will be launched from a barge anchored approximately 120 yards northeast of Fort McHenry Range Front Light (LLNR 7550), Patapsco River, East Channel, Baltimore, Maryland. These regulations are necessary to control spectator craft and to provide for the safety of life and property on navigable waters during the event. A portion of the East Channel will be closed during the fireworks display. Since the main shipping channel will not be closed for an extended period, commercial traffic should not be severely disrupted.

Regulatory Evaluation

This final rule is not considered major under Executive Order 12291 and not significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. This regulation will only be in effect for several hours, and the impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*)., the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small Entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since the impact of this regulation on non-participating small entities is expected to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b), that this regulation, will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

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

Environmental Assessment

This final rule has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Final Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations is temporarily amended as *follows:*

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-T0524 is *added to read as follows:*

§ 100.35-T0524 Patapsco River, East Channel, Fort McHenry, Baltimore, Maryland.

(a) *Definitions.* (1) Regulated area. The waters of the Patapsco River

bounded by the arc of a circle with a radius of 600 feet and with its center located at latitude 39°15'52.0" North, longitude 76°34'36.0" West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Coast Guard Group Baltimore.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a)(1) of these regulations, but may not block a navigable channel.

(c) *Effective Dates:* These regulations are effective from 6:00 p.m. to 11:30 p.m., June 14, 1991.

Dated: May 22, 1991.

H.B. Gehring,

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

[FR Doc. 91-12736 Filed 5-29-91; 8:45 am]

BILLING CODE 4910-14-M

Maritime Administration

46 CFR Part 222

RIN No. 2133-AA90

[Docket No. R-138]

Statements, Reports, and Agreements Required to be Filed

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Removal of rule.

SUMMARY: 46 CFR 222.1 requires the filing of informational statements by shipbuilders, ship operators and affiliates, and certain persons employed or retained to represent them before the Secretary of Transportation, the Maritime Subsidy Board, the Maritime Administration (MARAD), or Congress with respect to matters under specified authorities. Since the statutory authority for this filing requirement was repealed by Public Law 101-225 on December 12, 1989, there is no longer any legal basis for a regulation requiring such filing. Part 222.2 requires that the operators of vessels engaged in the oceanborne foreign trade of the United States file Container/Trailer Reports with MARAD. The information that MARAD has been collecting is now available from other sources, which eliminates MARAD's need to require the submission of the information. The remaining provisions of 46 CFR part 222, §§ 222.3 through 222.5, relate to the penalty for failing to file these reports and the procedure for petitioning for relief from the imposition of such penalty.

Accordingly, 46 CFR part 222 is unnecessary and is being removed in its entirety.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brown, Chief, Division of Statistics, Maritime Administration, 400 Seventh Street, SW., room 8117, Washington, DC 29590, tel. (202) 366-2277.

SUPPLEMENTARY INFORMATION: As authorized by former section 807 of the Merchant Marine Act, 1936, as amended (Act), 46 App. U.S.C. 1225, MARAD has been collecting statements from shipbuilders, ship operators, and persons employed or retained by them or by any affiliate to present, advocate, or oppose, before Congress or any committee thereof, or before the Secretary of Transportation, the Maritime Subsidy Board, or the Maritime Administration, any matter within the scope of the Shipping Act, 1916, as amended, the Merchant Marine Act, 1920, as amended, or the Act. Since section 807 of the Act was repealed on December 12, 1989, by section 307(7) of Public Law 101-225, there is no longer any legal authority for MARAD to require the submission of this information by regulation. Also, as authorized by section 212(A) of the Act (46 app. U.S.C. 1122a), MARAD has been collecting the Container/Trailer Report-Foreign Trade (form MA-578A) from operators of vessels engaged in the foreign waterborne commerce of the United States. The data collected from the reports are entered into a data base from which statistical reports are compiled.

The Container/Trailer Report has been used to assist the Maritime Administration in determining essentiality of services and U.S.-flag service requirements, and in supporting the Maritime Subsidy Board formal hearing procedures in connection with the amendment of existing Operating-Differential Subsidy contracts. Container information is frequently requested from MARAD by shipping companies, U.S. port authorities, investment banks, government agencies and others for use in forecasting trends, in planning for port development, and as criteria for financial investment. The MARAD publication Containerized Cargo Statistics, form MA-578A, has been derived from the container data. Approximately 8,460 forms MA-578A have been submitted annually to MARAD by over 230 respondents. Information reported on form MA-578A is now available through other data sources.

The Bureau of the Census includes a "containerized" indicator in the commodity movement monthly tape files which are purchased and processed by MARAD. This indicator provides the same information as the form MA-578A, with the exception of TEU's (Twenty-foot Equivalent Units). TEU data can be obtained monthly on a carrier and trade area basis from a commercial source at a lower price than MARAD's current processing cost. Obtaining the information from a commercial source would also relieve vessel operators of the reporting burden associated with filing the forms MA-578A. Since MARAD can obtain containerized cargo information from other sources, and these other sources have gained acceptance in the shipping industry, the reporting burden on the operators of filing forms MA-578A can no longer be justified. As the two reporting requirements in 46 CFR part 222 are, respectively, without legal authority and available from alternative sources, that part is being removed. There will be an estimated resulting net annual cost savings to MARAD of over $37,000. The annual reduction in the cost to the public of complying with the reporting burden that MARAD is eliminating is estimated to be over $40,000.

List of Subjects in 46 CFR Part 222

Administrative practice and procedure, maritime carriers, penalties, and reporting requirements.

PART 222—[REMOVED]

Accordingly, under the Secretary's authority, 46 app. U.S.C. 1114, 46 CFR part 222 is removed.

By order of the Maritime Administrator.

Dated: May 23, 1991.

James E. Saari,

Secretary.

[FR Doc. 91-12724 Filed 5-29-91; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 33

RIN 1018-AA50

Refuge-Specific Fishing Regulations

March 12, 1991.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) hereby amends certain regulations in 50 CFR part 33 that pertain to fishing on individual national wildlife refuges (NWRs). Refuge fishing programs are reviewed annually to determine whether the regulations governing fishing on individual refuges should be modified. Changing environmental conditions, State and Federal regulations and other factors affecting fish populations and habitats may warrant such amendments. The modifications ensure the continued compatibility of fishing with the purposes for which the individual refuges involved were established and, to the extent practical, make refuge fishing programs consistent with State regulations.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Marx, Division of Refuges, Fish and Wildlife Service, 1849 C Street, NW., MS 670-ARLSQ, Washington, DC 20240; Telephone 703-358-2043.

SUPPLEMENTARY INFORMATION: 50 CFR part 33 contains the provisions that govern fishing on NWRs. Fishing is regulated on refuges to (1) ensure compatibility with primary refuge purposes, (2) properly manage the fishery resource and (3) protect other refuge values. On many refuges, the Service policy of adopting State fishing regulations is an adequate way of meeting these objectives. On other refuges it is necessary to supplement State regulations with refuge-specific fishing regulations which will ensure that the Service meets its management responsibilities, as outlined under the section entitled "Conformance with Statutory and Regulatory Authorities." These regulations may list the seasons, methods of taking fish, descriptions of open areas and other provisions. The Service has previously issued refuge-specific fishing regulations in 50 CFR part 33. These regulations are issued only after final publication in the **Federal Register** of the opening of a wildlife refuge to fishing.

This rule amends and supplements certain refuge-specific regulations in 50 CFR part 33, §§ 33.5 through 33.55, which pertain to fishing on individual refuges in their respective alphabetically listed State.

The policy of the Department of the Interior (Department) is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. On November 13, 1990, at FR 47350, the Service published a proposed rulemaking to amend certain regulations in 50 CFR part 33 and invited the public to comment. No comments were received. Therefore, the proposed refuge-specific fishing regulations are here published, with minor technical corrections, as a final rulemaking

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act (NWRSAA) of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act (RRA) of 1962 (16 U.S.C. 460k) govern the administration and public use of NWRs. Specifically, section 4(d)(1)(A) of the NWRSAA authorizes the Secretary of the Interior (Secretary), under such regulations as he may prescribe, to permit the use of any area within the National Wildlife Refuge System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access when he determines that such uses are compatible with the major purposes for which such areas were established.

The RRA authorizes the Secretary to administer refuges within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purposes for which the refuge was established. The RRA also authorizes the Secretary to issue regulations to carry out the purposes of the Act.

Fishing plans are developed for each fishing program on a refuge prior to its opening to fishing. In many cases, refuge-specific fishing regulations are included as part of fishing plans to ensure the compatibility of the fishing programs with the purposes for which the refuge was established. Compliance with the NWRSAA and RRA is ensured when fishing plans are developed and the determinations required by these Acts are made prior to the addition of the refuge to the list of areas open to fishing in 50 CFR part 33. Continued compliance is ensured by annual review of fishing programs and regulations.

Economic Effect

Executive Order 12291 requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

These amendments to the codified refuge-specific fishing regulations make relatively minor adjustments to existing fishing programs. The regulations are not expected to have any gross economic effect and will not cause an increase in costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographic regions. The benefits accruing to the public are expected to exceed the costs of administering this rule. Accordingly, the Department has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The information collection requirements contained in part 33 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018-0014. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes for which the areas were established. The information requested in the application form is required to obtain a benefit.

The public reporting burden for the application form is estimated to average six minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments on the burden estimate or any other aspect of this form to the Information Collection Officer, U.S. Fish and Wildlife Service, MS 224 ARLSQ,

Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018-0014), Washington, DC 20503.

Environmental Considerations

Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(2)(C)) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) is ensured when fishing plans are developed and the determinations required by these Acts are made prior to the addition of refuges to the list of areas open to sport fishing in 50 CFR part 33. Refuge-specific fishing regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a particular refuge. The changes in this rulemaking will not significantly alter the existing uses of the refuges involved.

Information regarding the conditions that apply to individual refuge fishing programs, any restrictions related to public use on the refuge, and a map of the refuge are available at refuge headquarters. This information can also be obtained from the Regional Offices of the Service at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon, Pacific Islands Territory and Washington: Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 911 NE 11th Ave., Portland, Oregon 97232-4181; Telephone (503) 231-6214.

Region 2—Arizona, New Mexico, Oklahoma and Texas: Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766-1829.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin: Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725-3507.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Puerto Rico, Tennessee and the Virgin Islands: Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303; Telephone (404) 331-0833.

Region 5—Connecticut, Delaware, District of Columbia, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia: Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158; Telephone (617) 965-9222.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming: Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236-8145.

Region 7—Alaska: Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; Telephone (907) 786-3538.

Nancy Marx, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC, is the author of this document.

List of Subjects in 50 CFR Part 33

Fishing, Reporting and recordkeeping requirements, Wildlife refuges.

PART 33—[AMENDED]

Accordingly, part 33 of chapter I of title 50 of the *Code of Federal Regulations*, is amended as set forth below:

1. The authority citation for part 33 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

2. Section 33.2 is amended by removing the three undesignated paragraphs following paragraph (e) and adding a new paragraph (f) to read as follows:

§ 33.2 General regulations and information collection requirements.

* * * * *

(f) The information collection requirements contained in part 33 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018-0014. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes for which the areas were established. The information requested in the application form is required to obtain a benefit. The public reporting burden for the application form is estimated to average six minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments on the burden estimate or any other aspect of this form to the Information Collection Officer, U.S. Fish and Wildlife Service, MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018-0014), Washington, DC 20530.

3. Section 33.5 is amended by adding paragraphs (d) (3) and (4) as follows:

§ 33.5 Alabama.

* * * * *

(d) *Wheeler National Wildlife Refuge.* * * *

(3) Entry and use of airboats and hovercraft is prohibited on all waters within the refuge boundaries.

(4) Entry and use of personalized watercraft, such as but not limited to, jetskis, watercycles, and waterbikes are prohibited on all waters within the boundaries of the refuge except that portion of the Tennessee River and Flint Creek from its mouth to mile-marker three.

4. Section 33.8 is amended by revising paragraph (f)(1) as follows:

§ 33.8 Arkansas.

* * * * *

(f) *White River National Wildlife Refuge.* * * *

(1) Fishing is permitted from March 1 through October 31 except as posted and as follows: Fishing is permitted year-round in LaGrue, Essex, Prairie, and Brooks Bayous, Big Island Chute, Moon Lake next to Highway 1, the portion of Indian Bay south of Highway 1, the Arkansas Post Canal and adjacent drainage ditches, and those borrow ditches located adjacent to the west bank of that portion of the White River Levee north of the Arkansas Power and Light Company powerline right-of-way.

* * * * *

5. Section 33.9 is amended by removing paragraphs (a), (c) and (h); redesignating paragraph (b) as (a); redesignating paragraphs (d), (e), (f) and (g) as (b), (c), (d) and (e) respectively; redesignating paragraphs (i), (j) and (k) as (f), (g) and (h) respectively; and revising newly redesignated paragraphs (b) and (h)(2) as follows:

§ 33.9 California.

* * * * *

(b) *Delevan National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following condition: Fishing is permitted during daylight hours only from February 1 through October 15.

* * * * *

(h) *San Luis National Wildlife Refuge.* * * *

(2) Only the use of pole and line or rod and reel is permitted.

6. Section 33.12 is amended by adding paragraph (a)(5) as follows:

§ 33.12 Delaware.

(a) *Prime Hook National Wildlife Refuge.* * * *

(5) The use of air-thrust watercraft is not permitted.

7. Section 33.17 is amended by revising paragraphs (a)(1), (b)(3), and (c)(1) through (4) and removing paragraphs (c)(5) through (8) as follows:

§ 33.17 Illinois.

(a) *Chautauqua National Wildlife Refuge.* * * *

(1) From December 15 through October 15 bank fishing is permitted and all refuge waters are open to fishing. From October 16 through December 14 bank fishing is permitted in the posted area that extends from the Recreation Area to the break in the cross dike and along Boatyard #3 to 100 feet west of the radial gate structure, from boats in Goofy Ridge Ditch, and in all waters within the Public Hunting Area. Fishing is permitted during daylight hours only.

* * * * *

(b) *Crab Orchard National Wildlife Refuge.* * * *

(3) It is unlawful to take largemouth bass between 12' to 15" in length from Little Grassy Lake; there is no minimum length limit on largemouth bass in effect on Devils Kitchen Lake.

* * * * *

(c) *Mark Twain National Wildlife Refuge.* * * *

(1) Fishing is permitted all year in the Big Timber Division, Iowa, including Turkey and Otter Island, and in the Gardner Division, Illinois.

(2) Fishing is permitted in the Louisa Division, Iowa, from February 1 until the start of the Iowa waterfowl hunting season with the exception of certain designated areas adjacent to the Port Louisa Road that are open all year.

(3) Fishing is permitted in the Keithsburg Division, Illinois, from January 1 through September 15. Bank fishing at the Spring Slough access is permitted all year.

(4) Fishing is permitted in the Calhoun, Batchtown, and Gilbert Lake Division, Illinois, from December 16 through October 15.

* * * * *

8. Section 33.22 is amended by revising paragraphs (c)(1) through (5) and (f), and removing paragraph (c)(6) as follows:

§ 33.22 Louisiana.

* * * * *

(c) *Catahoula National Wildlife Refuge.* * * *

(1) Fishing is permitted from one hour before sunrise until one-half hour after sunset. Only pole and line or rod and reel fishing is permitted.

(2) Boat launching on all refuge waters is permitted only at designated boat ramps. Boats with motors over the maximum size listed are prohibited, whether or not the motors are used for power. Boats may not be left on the refuge overnight.

(3) Cowpen Bayou is open to fishing year-round. Only nonmotorized boats or boats with electric motors are permitted.

(4) Duck Lake, all outlet waters, and all flooded woodlands are open to fishing and boating from March 1 through October 31.Only nonmotorized boats or boats with motors of 10 horsepower or less are permitted.

(5) Muddy Bayou is open to fishing from March 1 through October 31. Only nonmotorized boats or boats with electric trolling motors are permitted.

* * * * *

(f) *Lacassine National Wildlife Refuge.* Fishing and crayfishing are permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing and crayfishing are permitted from one hour before sunrise until one hour after sunset during the period of March 1 through October 15.

(2) Only pole and line or rod and reel fishing is permitted. Crayfish may be taken only with drop nets or hand lines. The use or possession of any other type of fishing and crayfishing gear is prohibited.

(3) No person may take or possess more than 100 pounds of crayfish per vehicle per day.

(4) Only boats with motors totaling 25 horsepower or less are permitted in the Lacassine Pool. Entry and use of airboats and hovercraft is prohibited on all waters within refuge boundaries. Boats may not be left on the refuge overnight.

(5) Access into refuge marshes and ponds outside the Lacassine Pool is permitted by walking, poling, paddling or rowing. The use of outboard motors in these area is prohibited.

(6) Boat access to the Lacassine Pool is prohibited from November 1 to March 1.

* * * * *

9. Section 33.27 is amended by revising paragraph (e) as follows:

§ 33.27 Minnesota.

* * * * *

(e) *Tamarac National Wildlife Refuge.* * * *

(1) Fishing is permitted in North Tamarac Lake and Wauboose Lake all year, in accordance with State seasons.

(2) Fishing is permitted on Two Island Lake, Blackbird Lake and Lost Lake from the first day of the State walleye season through Labor Day.

(3) Bank fishing only is permitted in an area 50 yards on either side of the Ottertail River Bridges on County Roads #26 and #126 during State seasons.

* * * * *

10. Section 33.28 is amended by redesignating paragraph (b) as paragraph (c) and adding new paragraph (b) as follows:

§ 33.28 Mississippi.

* * * * *

(b) *Mathews Brake National Wildlife Refuge.* Fishing and frogging are permitted on designated areas of the refuge subject to the following condition: The designated waterfowl sanctuary is closed to entry from December 1 through March 15.

* * * * *

11. Section 33.32 is amended by adding new paragraph (c) as follows:

§ 33.32 Nevada.

* * * * *

(c) *Sheldon National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Big Springs Reservoir—only nonmotorized boats are permitted.

(2) Dufurrena Ponds—only float tubes and similar flotation devices are permitted.

(3) McGee Pond—only individuals 12 years of age and under, or 65 years of age and older, or handicapped individuals, are permitted to fish.

12. Section 33.40 is amended by revising paragraph (b)(2) as follows:

§ 33.40 Oklahoma.

* * * * *

(b) *Salt Plains National Wildlife Refuge.* * * *

(2) Fishing is permitted from April 1 through October 15.

* * * * *

§ 33.41 [Amended]

13. Section 33.41 is amended by removing paragraph (g)(4) and redesignating paragraph (g)(5) as paragraph (g)(4).

14. Section 33.53 is amended by revising paragraphs (b) (1) and (2), and adding (b)(3) as follows:

§ 33.53 Wisconsin.

* * * * *

(b) *Necedah National Wildlife Refuge.* * * *

(1) Fishing is permitted in Areas 1, 2, 4, and 5 according to State seasons and

regulations, except that the Suk Cerney Pool in Area 5 is open only from December 15 through September 15.

(2) Fishing is permitted in all waters of Area 3 that are located south of the Turkey Track Road and north of the Sprague-Mather Road including the Goose and Sprague Pools from December 15 through March 15 and from June 1 through September 15.

(3) Non-motorized boats are permitted in all areas that are open at the time of fishing.

* * * * *

15. Section 33.55 is amended by adding new paragraph (a)(3) as follows:

§ 33.55 Pacific Islands Territory.

(a) *Johnston Atoll National Wildlife Refuge.* * * *

(3) Taking of fish by the use of spear "guns" is prohibited. Hand-propelled spears or "Hawaiian Slings" consisting of a single shaft propelled by a rubber tube are permitted for underwater taking of fish.

* * * * *

Dated: March 12, 1991.

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 91-12667 Filed 5-29-91; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 901184-1042]

Groundfish of the Gulf of Alaska

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

ACTION: Notice of closure; request for comments.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the remaining share of the total allowable catch amounts (TACs) for sablefish allocated to hook-and-line gear in the combined Southeast Outside/East Yakutat District of the Eastern Regulatory Area (SEO/EYK) of the Gulf of Alaska for the 1991 fishing year is needed as a bycatch amount to support directed fisheries in that area for remaining groundfish species. The Secretary of Commerce is prohibiting further directed fishing for sablefish by vessels using hook-and-line gear in the SEO/EYK. This action is necessary to prevent the hook-and-line share of sablefish in that area from being exceeded before the end of the fishing year. The intent of this action is to promote optimum use of groundfish while conserving sablefish stocks.

DATES: *Effective* from 12 noon, Alaska local time (A.l.t.), on May 25, 1991, through December 31, 1991. *Comments* are invited for 15 days following the effective date of this notice.

ADDRESSES: Comments should be mailed to Dale R. Evans, Chief, Fisheries Management Division, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668, or be delivered to 9109 Mendenhall Mall Road, Federal Building Annex, Suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone within the Gulf of Alaska (GOA) management area under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and was implemented by regulations appearing at 50 CFR 611.92 and parts 620 and 672.

Section 672.20(a)(1) of the implementing regulations establishes an optimum yield (OY) range of 116,000 to 800,000 metric tons (mt) for all groundfish species in the GOA management area. The TAC for target species and the "other species" category are specified annually within the OY range and are apportioned among the regulatory areas and districts.

The 1991 TAC specified for sablefish in the SEO/EYK District is 4,950 mt (March 1, 1991, 56 FR 8723). The portion of that TAC assigned to hook-and-line gear is 4,700 mt.

Under §§ 672.20(c)(2) and 672.24(c)(3)(i), if the Regional Director determines that the share of the sablefish TAC assigned to any type of gear in any regulatory area or district is likely to be reached, the Regional Director may establish a directed fishing allowance. In establishing a directed fishing allowance, the Regional Director shall consider the amount of sablefish that will be taken as incidental catch in directed fishing for other species in the same regulatory area or district. If the Regional Director establishes a directed fishing allowance and that allowance is or will be reached, he will prohibit directed fishing for sablefish in the specified regulatory area or district by that gear type.

The Regional Director has determined that the remaining hook-and-line gear share of sablefish in the SEO/EYK District of the Eastern Regulatory Area, 235 mt, will be necessary as bycatch to support remaining groundfish fisheries in that district. With this action the Regional Director is establishing a directed fishing allowance of 4,465 mt for the SEO/EYK and is prohibiting directed fishing for sablefish taken with hook-and-line gear in the SEO/EYK District of the Eastern Regulatory Area, effective 12:00 noon, A.l.t., May 25, 1991. After the closure, in accordance with § 672.20(g)(2), amounts of sablefish retained on board hook-and-line vessels in the SEO/EYK District of the Eastern Regulatory Area at any time during a trip must be less than 4 percent of the total amount of all other fish species retained at the same time by the vessel during the same trip.

Classification

This action is taken under §§ 672.20 and 672.24 and is in compliance with Executive Order 12291.

Immediate effectiveness of this notice is necessary to prevent excessive harvest of sablefish by hook-and-line gear that will occur if amounts of the sablefish TACs that are allocated to hook-and-line gear are exceeded and retention of sablefish is prohibited. Therefore, the Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment or to delay its effective date. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: May 24, 1991.

David S. Crestin,

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

[FR Doc. 91-12771 Filed 5-24-91; 2:55 pm]

BILLING CODE 3510-22-M

50 CFR Part 683

[Docket No. 910354-1111]

RIN 0648-AD74

Western Pacific Bottomfish and Seamount Groundfish Fisheries

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

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement Amendment 4 to the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (FMP). This rule requires bottomfish vessel operators intending to fish within 50 nautical miles (nm) of certain islands in the Northeastern Hawaiian Islands (NWHI) to notify NMFS prior to such fishing and to carry observers aboard their vessels if directed to do so by the Director, Southwest Region, NMFS (Regional Director). This rule also authorizes the Regional Director to change the size of the area in which observers might be required after consultation with the Western Pacific Fishery Management Council (Council). This action is intended to ensure adequate collection of data on interactions between the bottomfish fishery and marine mammals or endangered and threatened species in the NWHI. This rule also standardizes the fishing permit application process and contains a technical revision to clarify the restriction against overlapping permits for the Ho'omalu and Mau Zones in the NWHI.

EFFECTIVE DATE: This action becomes effective at 0000 hours local time May 26, 1991.

ADDRESSES: Copies of the amendment are available from Kitty B. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813 (808–523–1368).

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Fisheries Management Division, Southwest Region, NMFS, Terminal Island, California (213) 514–6660, or Alvin Katekaru, Pacific Area Office, Southwest Region, NMFS, Honolulu, Hawaii (808) 955–8831.

SUPPLEMENTARY INFORMATION: This rule implements Amendment 4 to the FMP, which was prepared by the Council and approved by the Secretary of Commerce in 1985. This amendment is intended to ensure that fishing under the FMP will not result in adverse impacts on endangered and threatened animals in the NWHI.

Prior to implementation of the FMP, NMFS issued a biological opinion pursuant to section 7(b) of the Endangered Species Act (ESA) concerning the potential impacts on threatened and endangered species associated with the bottomfish and seamount groundfish fishery. The opinion stated that the proposed FMP would not likely jeopardize any threatened or endangered species nor adversely affect any critical habitat for such species, and the opinion recommended that NMFS and the Council document marine mammal and sea turtle interactions with the fishery. Criteria also were established for reinitiating consultation under the ESA. The main concern with regard to the bottomfish fishery has been entanglement of Hawaiian monk seals and turtles with fishing gear; therefore, the FMP prohibits the use of bottom set gill nets and bottom trawls in the NWHI.

However, concerns about the impact of the fishery on monk seals were deepened as a result of reports received in April 1990 that monk seals were being hooked by pelagic longline fishermen in the NWHI. The NMFS Honolulu Laboratory sent a field party to French Frigate Shoals in May to conduct a survey of the monk seals and turtles on the beaches for evidence of interaction with the pelagic fishery. Nine dead monk seals were found, well within the range for numbers of carcasses normally reported each year, but injuries were observed on several animals ranging from gaping wounds to abrasions that could not be attributed to shark attack, male monk seal harassment, or other natural causes.

NMFS Special Agents interviewed captains and crews of 28 vessels returning from the NWHI. Insufficient information was received for agents to take enforcement action; however, there was enough consistency in the reports to raise concern that measures were needed to obtain definitive information on possible impacts from the longline fishery as well as the bottomfish fishery.

At a meeting on June 20, 1990, the Council heard reports from its Pelagic Plan Monitoring Team and its Scientific and Statistical Committee on the dramatic increase in the number of vessels in the Hawaiian pelagic longline fishery. The reports indicated the possible effects this increase might have on the harvest and stocks of pelagic resources and discussed the potential for interactions between the pelagic longline and bottomfish fisheries and protected species, primarily the Hawaiian monk seal.

The Council voted to propose that NMFS implement the following emergency actions: (1) A permit and logbook reporting system for the pelagic longline fishery, and (2) a program to place observers on selected longline and bottomfish vessels operating within a 50-nm study zone around certain islands in the NWHI. Permit requirements were already in effect for the bottomfish fishery. The Council indicated it would follow up with an FMP amendment to institute these measures on a permanent basis.

NMFS concurred with the Council's request and promulgated emergency regulations for the NWHI bottomfish fishery effective for a 90-day period beginning November 27, 1990 (55 FR 49050, November 26, 1990). The regulations were extended for a second 90-day period ending May 25, 1991 (56 FR 5159, February 8, 1991). The regulations stipulate that no bottomfish vessel can fish within 50-nm of certain islands in the NWHI (French Frigate Shoals, Gardner Pinnacles, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Islands, and Kure Island), unless the operator of the vessel has provided the Regional Director with an opportunity to place an observer aboard the vessel for that trip to document whether there are any interactions with protected species and if so, the particulars of the interactions. The estimated cost to NMFS for placing observers on selected bottomfish vessels was $60,000 per year, based on an estimate of 15 observer trips per year using staff in Honolulu.

The primary reason the Council proposed this observer requirement on an emergency basis was the precarious condition of the Hawaiian monk seal, listed as an endangered species under the Endangered Species Act, which made it imperative that accurate and site-specific data on interactions be collected immediately. If interactions were in fact occurring, then the effects of such interactions could be evaluated and solutions to any problems could be identified quickly. Therefore, in the Council's and NMFS' view, it was crucial that the rule go into effect on an emergency basis. This concern deepened after further reports, in January 1991, of monk seals observed with hooks embedded in their bodies and severe injuries that appear to be the result of interactions with longline fishing operations.

Amendment 4 implements these emergency measures for the bottomfish fishery on a permanent basis. In the Council's view, the conditions that generated the need for emergency action continue to exist, and implementation of Amendment 4 will provide for continuation of data collection necessary to arrive at long-term solutions to conservation problems facing the bottomfish fishery.

The proposed rule to implement Amendment 4 was published at 56 FR 11166 (March 15, 1991). With the Council's concurrence, the proposed rule varied from the emergency rule in several ways. In addition to continuing

the requirement of notifying the Regional Director before fishing within 50-nm of the islands listed in the emergency rule, the proposed rule would extend this requirement to include the waters within 50-nm of Nihoa Island, Necker Island, and Maro Reef. These areas are referred to as protected species study zones. These regulations would also authorize the Regional Director to adjust the size of the protected species study zones after consultation with the Council, if the Regional Director determines that the fishery is not adversely affecting any threatened or endangered species. The final rule adds a definition of protected species study zones for clarification throughout the rule.

The proposed rule also proposed revision of certain permit application requirements, consistent with the streamlining of the permit process for federally permitted fisheries in the western Pacific region. In addition, it proposed a technical correction to § 683.21(a)(4). In that paragraph, the word "groundfish" was proposed to be revised to read "bottomfish," making the paragraph consistent with the original intent and language of the bottomfish fishery limited access program, which was established by Amendment 2 to the FMP. This revision would not affect the stocks or the fishery.

This final rule differs from the proposed rule in one respect. The protected species study zones have been defined as the waters within 50-nm of certain islands of the NWHI, measured from the midpoints of those islands. Coordinates are listed for each island. No other changes in the rule were deemed necessary following public review and comment.

Public Comments Received and Responses

Comment

The Marine Mammal Commission (Commission) recommended that the proposed measure be revised to require annual observer coverage of at least 30 percent of the bottomfish fishing trips to the NWHI to assure that interactions avoid lethal takings of monk seals. The Commission noted that the environmental assessment (EA) for this action suggested that, at 1989 fishing levels, this would be an appropriate level of coverage. The Commission also recommended that the EA for this action be revised to describe evidence of interactions between monk seals and fishermen this year and to indicate the numbers of observers that had been placed on bottomfish fishing vessels under the 1990 emergency regulations.

Response

The final rule does not specify a target level of observer coverage due to uncertainty about the level of fishing in the NWHI and the inflexibility that would result if the regulations set forth a specific target. In 1990, there were 15 active vessels in the NWHI, which made 82 trips. However, only four vessels were active in the Ho'omalu Zone (i.e., the limited entry zone) and only 23 trips were made. This is considerably below the 1989 activity level, and NMFS estimates that the 1991 fishery will not be substantially greater than 1990. The Ho'omalu Zone encompasses most of the monk seal habitat in the NWHI. It is quite possible that NMFS will arrange for observer coverage on more than 30 percent of all bottomfishing trips to this area given the relatively low level of fishing activity. On the other hand, if observer reports indicate there is no interaction occurring, it may not be necessary to maintain a 30 percent rate of coverage indefinitely. It would be unnecessarily cumbersome if NMFS were required to amend the regulations whenever it adjusted the rate of observer coverage.

With respect to observer coverage under the emergency rule, two complete bottomfish fishing trips have been observed with no documented interactions to date. It can also be noted that there have been no additional reports since January of monk seals with hooks in them or with injuries suggesting interaction with either the bottomfish fishery or the pelagic longline fishery.

Comment

The U.S. Fish and Wildlife Service (FWS) commented that the process for changing the size of the protected species study zone was predisposed to reducing the size of the zone. FWS also urged that NMFS fully fund and staff the observer program to ensure adequate coverage.

Response

The final rule does not preclude enlargement of the study zone. However, because there is virtually no bottomfish habitat beyond the 50-nm radii of the protected species study zones, it is unlikely there could be any interactions between the bottomfish fishery and monk seals or other protected animals beyond the study zones. With respect to funding of the observer coverage, longline fishing within a new protected species zone in the NWHI has been prohibited by an emergency rule (56 FR 15842, April 18, 1991). Observers who might have been assigned to longline vessels will be available for assignment to bottomfish fishing vessels. NMFS is committed to placing a sufficient number of observers to ensure a sound basis for future actions if needed to protect monk seals from interactions with the bottomfish fishery.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) has determined that Amendment 4 to the FMP and its implementing rule are necessary for the conservation and management of the bottomfish resources of the Western Pacific Region and are consistent with the Magnuson Fishery Conservation and Management Act (Magnuson Act) and other applicable law.

The Council prepared an EA for this amendment. The Assistant Administrator has determined that there will not be a significant impact on the environment. A copy of the amendment containing the EA may be obtained from the Council (see **ADDRESSES**).

The Assistant Administrator has determined that this is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. The final rule will not have a cumulative effect on the economy of $100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse impacts are anticipated on competition, employment, investments, productivity, innovation, or competitiveness of U.S.-based enterprises.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. The reason for this conclusion is that the rule will not impose significant costs on the fishery. The observer program costs generally are borne by NMFS. Observer salaries, provisions, and supplies are paid for by NMFS, and a vessel owner or operator can be reimbursed for insurance costs associated with coverage of the observer. Also, if a vessel is forced to curtail operations due to observer illness or injury, there is a process to reimburse the vessel for lost fishing time. It is recognized that displacement of a crew member by an observer could adversely affect revenues and profits from a particular trip, and the capability of the vessel to carry an observer without severe economic impacts will be among the factors considered in deciding whether an observer should be

required for that trip. In NMFS' view, the impacts on the fishery will be less than if more conservative management (e.g., area closures) were required to ensure that no adverse impacts would occur to monk seals. In summary, no significant impacts are expected. Therefore, a regulatory flexibility analysis was not prepared.

This final rule contains a collection-of-information requirement subject to the provisions of the Paperwork Reduction Act. This requirement was established by the emergency rule as a result of the observer program. Vessel owners or operators who intend to fish within the protected species study zones around the NWHI must notify the Regional Director so that NMFS has the opportunity to place an observer aboard their vessels. Placing observers aboard bottomfish vessels in the NWHI ensures the collection and processing and analysis of data needed for sound management decisions. Observers will ensure the collection of data and document whether there are adverse interactions with protected species and the particulars of the interactions. The public reporting burden for this collection-of-information is 2 minutes for the pre-trip notification. This collection-of-information has been approved by the Office of Management and Budget, OMB Control Number 0648–0214.

This rule also contains a revised reporting requirement whereby information requested from bottomfish permit applicants would be standardized as part of an effort by NMFS to consolidate into one form the different application forms now being used for fisheries permits in the western Pacific region. An applicant for a NWHI bottomfishing permit would use the same application form and provide the same information on vessel owner, vessel operator, and vessel, as a person who applies for a precious corals, crustaceans, or pelagic longline fishing permit. The public reporting burden for this collection-of-information is estimated to average 15 minutes per application. The permit requirement has been approved by the Office of Management and Budget under the title Southwest Region Federal Fisheries Permits (OMB Control Number 0648–0204).

Comments on the collections of information and/or suggestions on how to reduce the burden can be sent to the Regional Director, Southwest Region, NMFS, (see **ADDRESSES**) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, ATTN: Paperwork Reduction Projects 0648–0204 and 0648–0214, Washington, DC 20503.

The Assistant Administrator has determined that the final rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Hawaii. This determination was submitted for review by the responsible state agency under section 307 of the Coastal Zone Management Act. The State of Hawaii agreed with the determination.

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

Fishery operations under this rule are not likely to jeopardize the continued existence of any endangered or threatened species or result in destruction or adverse modification of any critical habitat. This conclusion is based on a biological opinion issued by NMFS in May 1991.

Amendment 4 and its implementing regulations will not have an adverse impact on marine mammals.

In order to afford maximum opportunity for public comment and participation, the Administrative Procedure Act (5 U.S.C. 553) requires that, generally, final rules be published not less than 30 days before they become effective. This 30-day period may be shortened or waived if the rulemaking agency publishes with the rule an explanation of what good cause justifies an earlier date. This rule, implementing Amendment 4 to the FMP, makes permanent certain management measures that were promulgated, with a request for public comments, by emergency rule on November 27, 1990. The public has had opportunities to comment on that emergency rule as well as to participate in the development of Amendment 4. The emergency rule is effective through May 25, 1991. To prevent a lapse in the management regime, which includes urgent measures necessary to protect the endangered Hawaiian monk seals, this rule should be effective when the emergency rule expires. However, the public comment period on the proposed rule ended on April 26, 1991, and, although this rule has been published as expeditiously as possible, it is not possible to provide a full 30 days before the emergency measures will expire. Accordingly, good cause is found for making this rule effective on May 26, 1991.

List of Subjects in 50 CFR Part 683

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 23, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 683 is amended as follows:

PART 683—WESTERN PACIFIC BOTTOMFISH AND SEAMOUNT GROUNDFISH FISHERIES

1. The authority citation for part 683 continues to read as follows:

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

2. In § 683.2, the following definitions are added in alphabetical order, to read as follows:

§ 683.2 Definitions.

* * * * *

Pacific Area Office means the Pacific Area Office, Southwest Region, National Marine Fisheries Service, 2570 Dole Street, Honolulu, HI 96822.

Protected species study zones means the waters within a specified distance, designated by the Regional Director pursuant to § 683.29(d) of this part, around the following islands of the NWHI and as measured from the following coordinates: Nihoa Island 23°05′ N. 161°55′ W., Necker Island 23°35′ N. 164°40′ W., French Frigate Shoals 23°45′ N. 166°15′ W., Gardner Pinnacles 25°00′ N. 168°00′ W., Maro Reef 25°25′ N. 170°35′ W., Laysan Island 25°45′ N. 171°45′ W., Lisianski Island 26°00′ N. 173°55′ W., Pearl and Hermes Reef 27°50′ N. 175°50′ W., Midway Island 28°14′ N. 177°22′ W., and Kure Island 28°25′ N. 178°20′ W. Until further notice by the Regional Director the protected species study zones will encompass waters within 50 nautical miles of the geographical coordinates listed above.

* * * * *

Sexual harassment means any unwelcome sexual advance, request for sexual favors, or other verbal and physical conduct of a sexual nature which has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

3. In § 683.6, new paragraphs (i), (j), and (k) are added to read as follows:

§ 683.6 Prohibitions

* * * * *

(i) Fishing within any protected species study zone in the Northwestern Hawaiian Islands without notifying the Regional Director of the intent to fish in these zones as required under § 683.29.

(j) Fishing without an observer after having been directed to do so by the Regional Director as required under § 683.29.

(k) Forcibly assault, impede, intimidate, interfere with, influence, attempt to influence, or harass (including sexual harassment) an observer by conduct that has the purpose or effect of unreasonably interfering with the observer's work performance, or that creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

4. In § 683.21 paragraphs (a)(4), (b), (d), (e)(2), and (g) are revised to read as follows:

§ 683.21 Permit requirements for the Northwestern Hawaiian Islands.

(a) * * *

(4) No vessel owner may have permits for a single vessel to harvest bottomfish in the Ho'omalu Zone and the Mau Zone at the same time.

(b) *Applications.* (1) An application for a permit under this section must be submitted to the Pacific Area Office by the vessel owner, or a designee of the owner, at least 15 days before the date the applicant desires to have the permit be effective.

(2) Each application must be submitted on a form that is obtained from the Pacific Area Office and contains at least the following information:

(i) Type of application; whether the application is for a new permit or a renewal; and whether it is for the Mau Zone or the Ho'omalu Zone;

(ii) Owner's name, social security number, mailing address, and telephone numbers (business and home);

(iii) Name of the partnership or corporation, if the vessel is owned by such an entity;

(iv) Primary operator's name, social security number, mailing address, and telephone numbers (business and home);

(v) Relief operator's name;

(vi) Name of the vessel;

(vii) Official number of the vessel;

(viii) Radio call sign of the vessel;

(ix) Principal port of the vessel;

(x) Length of the vessel;

(xi) Engine horse power;

(xii) Approximate fish hold capacity;

(xiii) Number of crew;

(xiv) Construction date;

(xv) Date vessel purchased;

(xvi) Purchase price;

(xvii) Type and amount of fishing gear carried on board the vessel;

(xviii) Position of the applicant in the corporation, if the vessel is owned by such an entity;

(xix) Signature of the applicant; and

(xx) Date of signature.

* * * * *

(d) *Change in application information.* Any change in the information specified in paragraph (b)(2) of this section must be reported to the Pacific Area Office 10 days before the effective date of the change. Failure to report such changes may result in termination of the permit.

(e) * * *

(2) If an incomplete or improperly completed permit application is filed, the Regional Director will notify the applicant in writing of the deficiency. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

* * * * *

(g) *Renewal.* An application for renewal must be submitted to the Pacific Area Office in the same manner as described in paragraph (b) of this section.

* * * * *

5. A new § 683.29 is added to read as follows:

§ 683.29 Observers.

(a) The owner or operator of a fishing vessel subject to this part shall inform the Pacific Area Office by telephone, (808) 955-8831, at least 72 hours (not including weekends and holidays) before leaving port, of his or her intent to fish within the protected species study zones defined in § 683.2 of this part. The notice must include the name of the vessel, name of the operator, intended departure and return date, and a telephone number at which the owner or operator may be contacted during the business day (8 a.m. to 5 p.m.) to indicate whether an observer will be required on the subject fishing trip.

(b) The Pacific Area Office will advise the vessel owner or operator of any observer requirement within 72 hours (not including weekends or holidays) of receipt of the notice. If an observer is requried, the owner or operator will be informed of the terms and conditions of observer coverage, and the time and place of embarkation of the observer.

(c) All fishing vessels subject to this part must carry an observer when directed to do so by the Regional Director.

(d) The Regional Director may change the size of the protected species study zones defined in § 683.2 of this part:

(1) If the Regional Director determines that a change in the size of the study zones would not result in fishing for bottomfish in the NWHI that would adversely affect any species listed as threatened or endangered under the Endangered Species Act;

(2) After consulting with the Council; and

(3) Through a notice in the **Federal Register** published at least thirty (30) days prior to the effective date or through actual notice to the permit holders.

(e) All observers must be provided with sleeping, toilet, and eating accomodations at least equal to that provided to a full crew member. A mattress or futon on the floor or a cot is not acceptable in place of a regular bunk. Meal and other galley privileges must be the same for the observer as for other crew members.

(f) Female observers on a vessel with an all-male crew must be accommodated either in a single-person cabin or, if reasonable privacy can be ensured by installing a curtain or other temporary divider, in a two-person cabin shared with a licensed officer of the vessel. If the cabin assigned to a female observer does not have its own toilet and shower facilities that can be provided for the exclusive use of the observer, then a schedule for time-sharing of common facilities must be established and approved by the Regional Director prior to the vessel's departure from port.

[FR Doc. 91-12726 Filed 5-24-91; 2:55 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 104
Thursday, May 30, 1991

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

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1924, 1941, and 1943

Amendments of Portions of Farmer Programs Insured Loan Making Regulations

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations to require a debt service margin of at least 5 percent on insured Farmer Programs loans. This action is necessary to improve borrowers' chances for success through prudent planning, by allowing for a minimum 5 percent margin over debt repayment in the projected plan of operation. Such a requirement will allow the Agency to assist/continue with those applicants/borrowers who have a reasonable chance to succeed in their farming operation. The intended effect is to reduce losses within the Farmer Programs insured loan portfolio and to increase the number of borrowers moving to conventional credit sources.

DATES: Written comments must be submitted on or before July 1, 1991.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, USDA, room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: David R. Smith, Senior Loan Officer, Farmer Programs Loan Making Division, Farmers Home Administration, USDA, South Building, 14th and Independence Avenue SW., Washington, DC 20250, telephone (202) 382-1645.

SUPPLEMENTAL INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be nonmajor because it will not result in an annual effect on the economy of $100 million or more.

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to Notice 7 CFR Part 3015, subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 24, 1983), Farm Operating Loans and Farm Ownership Loans are excluded with the exception of nonfarm enterprise activity from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loan Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940-J.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.416—Soil and Water Loans
10.404—Emergency Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Discussion of the Proposed Rule

Loans made to FmHA applicants are governed mainly by the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1921 et. seq.). FmHA, unlike commercial lenders has loaned the full value of security to farming operations based on plans of operation reflecting no planned cash reserve/contingency over and above their debts. Existing FmHA insured loan making regulations do not require any planned cash contingency or debt service margin in the proposed plan of operation.

The Agency in accordance with OMB directives is required to improve loan quality and reduce losses through financial management of FmHA loan programs. GAO/RCED-89-9 Report, "Sounder Loans Would Require Revised Loan-Making Criteria," recommended that FmHA issue regulations to improve the cash flow analysis used in loan making decisions by incorporating an allowance to cover contingencies and equipment replacement. Continuation with the present policy of not requiring a debt service margin will not promote prudent planning and will contribute to continued FP losses and deterioration of the FP loan portfolio.

The Agency proposes to amend subpart B of part 1924, subpart A of part 1941, and subparts A and B of part 1943 by revising the "feasible plan" definition to incorporate the 5 percent debt service margin. One exception to this requirement is made for annual production loans to delinquent borrowers in accordance with § 1941.14 of subpart A of part 1941 of this chapter. Another exception is made for when a servicing action, in accordance with subpart S of part 1951 of this chapter, is completed in conjunction with an initial or subsequent loan request. The latter exception complies with section 353 (c)(3) of the CONACT (7 U.S.C. 2001 (c)(3)) which indicates that any amount up to 105 percent of debt payment requirements is considered adequate.

List of Subjects

7 CFR Part 1924

Agriculture, Construction management, Construction and repair, Energy conservation, Housing, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing.

7 CFR Part 1941

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth.

7 CFR Part 1943

Credit, Loan programs—Agriculture, Recreation, Water resources.

Therefore, as proposed, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1924—CONSTRUCTION AND REPAIR

1. The authority citation for Part 1924 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Management Advice to Individual Borrowers and Applicants

2. Section 1924.57 is amended by adding a new paragraph (c)(5)(iv) to read as follows:

§ 1924.57 Planning.

* * * * *

(c) * * *

(5) * * *

(iv) Provide at least a 5 percent debt service margin, except as provided in § 1941.14 of subpart A of part 1941 of this chapter, for annual production loans to delinquent borrowers, and except for servicing actions made under subpart S of part 1951 of this chapter in conjunction with an initial or subsequent loan request. The debt service margin is to provide for risk and uncertainties associated with the family operation so as to support the projection that the total estimated cash income will equal or exceed the total estimated cash outflows for the planned period. The debt service margin will be calculated in accordance with the "Debt service margin" definition in § 1941.4 of subpart A of part 1941 of this chapter.

* * * * *

PART 1941—OPERATING LOANS

3. The authority citation for part 1941 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Operating Loan Policies, Procedures, and Authorizations

4. Section 1941.4 is amended by adding in alphabetical order a "Debt service margin" definition and by adding a new paragraph (d) to the "Feasible plan" definition to read as follows:

§ 1941.4 Definitions.

* * * * *

Debt service margin. The balance available after payment of the total amount due on all debts in Table K of Form FmHA 431-2, "Farms and Home Plan," expressed as a percentage of the total amount due this year in Table K. The margin is calculated by subtracting the total amount due on all debts in Table K from the balance available in line 16 of Table J of the Farm and Home Plan. This remainder is then divided by the total amount due this year in Table K and expressed as a percent of the total amount due.

Example:

Balance available (Line 16)	$100,000
Total due on all debts (Table K)	93,000
Remainder	$7,000

$7,000 divided by
$93,000=.075×100=7.5 percent margin

* * * * *

Feasible plan. * * *

* * * * *

(d) Provide at least a 5 percent debt service margin, except as provided in § 1941.14 of subpart A of part 1941 of this chapter, for annual production loans to delinquent borrowers, and except for servicing actions made under subpart S of part 1951 of this chapter in conjunction with an initial or subsequent loan request. The debt service margin is to provide for risk and uncertainties associated with the family operation so as to support the projection that the total estimated cash income will equal or exceed the total estimated cash outflows for the planned period. The debt service margin will be calculated in accordance with the "Debt service margin" definition in this section.

* * * * *

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

5. The authority citation for Part 1943 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Insured Farm Ownership Loan Policies, Procedures and Authorizations

6. Section 1943.4 is amended by adding a new paragraph (d) to the "Feasible plan" definition to read as follows:

§ 1943.4 Definitions.

* * * * *

Feasible plan. * * *

* * * * *

(d) Provide at least a 5 percent debt service margin, except as provided in § 1941.14 of subpart A of part 1941 of this chapter, for annual production loans to delinquent borrowers, and except for servicing actions made under subpart S of part 1951 of this chapter in conjunction with an initial or subsequent loan request. The debt service margin is to provide for risk and uncertainties associated with the family operation so as to support the projection that the total estimated cash income will equal or exceed the total estimated cash outflows for the planned period. The debt service margin will be calculated in accordance with the "Debt service margin" definition in § 1941.4 of subpart A of part 1941 of this chapter.

* * * * *

Subpart B—Insured Soil and Water Loan Policies, Procedures and Authorizations

7. Section 1943.54 is amended by adding a new paragraph (d) to the "Feasible plan" definition to read as follows:

§ 1943.54 Definitions.

* * * * *

Feasible plan. * * *

* * * * *

(d) Provide at least a 5 percent debt service margin, except as provided in § 1941.14 of subpart A of part 1941 of this chapter, for annual production loans to delinquent borrowers, and except for servicing actions made under subpart S of part 1951 of this chapter in conjunction with an initial or subsequent loan request. The debt service margin is to provide for risk and uncertainties associated with the family operation so as to support the projection that the total estimated cash income will equal or exceed the total estimated cash outflows for the planned period. The debt service margin will be calculated in accordance with the "Debt service margin" definition in § 1941.4 of subpart A of part 1941 of this chapter.

* * * * *

Dated: April 11, 1991.

La Verne Ausman,

Administrator, Farmers Home Administrator.

[FR Doc. 91-12784 Filed 5-29-91; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[IA-026-90]

RIN 1545-AP61

Extension of Time for Making Elections; Public Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing relating to the Commissioner granting taxpayers an extension of time for making certain elections under the Internal Revenue Code.

DATES: The public hearing will be held on Monday, June 3, 1991, and will continue, if necessary, on Tuesday, June 4, 1991, beginning at 10 a.m. Outlines of oral comments must have been received by May 15, 1991.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Felicia A. Daniels of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-566-3935, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 9100 of the Internal Revenue Code. The proposed regulations appeared in the **Federal Register** for Friday, April 5, 1991, at page 14041 (56 FR 14041).

The rules of § 601.601 (a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desired to present oral comments at the hearing on the proposed regulations should have submitted not later than Wednesday, May 15, 1991, an outline of oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9 a.m.

An agenda showing the scheduling of the speakers will be made available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

Dale D. Goode,

Federal Register Liaison Officer Assistant Chief Counsel (Corporate).

[FK Doc. 91-12942 Filed 5-29-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 902

Alaska Permanent Regulatory Program

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

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: OSM is announcing receipt of additional explanatory information and revisions pertaining to a previously proposed amendment to the Alaska permanent regulatory program (hereinafter, the "Alaska program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The additional explanatory information and revisions pertain to permit application requirements, environmental resource information requirements, reclamation and operation plan, permit application review procedures, exploration activities, bonding requirements, performance standards, inspection and enforcement requirements, lands unsuitable for mining and general provisions. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards.

This notice sets forth the times and locations that the Alaska program and proposed amendment to that program are available for public inspection and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4 p.m., m.d.t. June 14, 1991.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the Alaska program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Room 2128, Casper, Wyoming 82601-1918, Telephone: (307) 265-5776.

Samuel M. Dunaway, Jr., Acting Director, Department of Natural Resources, Division of Mining, P.O. Box 107016, Anchorage, Alaska 99510-7106, Telephone: (907) 762-2170.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Director, Casper Field Office, on telephone number (307) 265-5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Alaska Program

On March 23, 1983, the Secretary of the Interior approved the Alaska program. General background information on the Alaska program, including the Secretary's findings and the disposition of comments can be found in the March 23, 1983 **Federal Register** 48 FR 12274. Subsequent actions concerning Alaska's program and program amendments can be found at 30 CFR 902.15.

II. Proposed Amendment

By letter dated February 2, 1990 (Administrative Record No. AK-C-01). Alaska submitted a proposed amendment to its program pursuant to SMCRA. Alaska submitted the proposed amendment in response to letters dated May 7, 1986, June 9, 1987, and December 16, 1988 sent by OSM in accordance with 30 CFR 732.17(d).

The regulations that Alaska proposes to amend are: Article 3, General Permit Application Information Requirements; Article 4, Environmental Resource Information Requirements; Article 5, Reclamation and Operation Plan; Article 6, Processing of Permit Applications; Article 7, Permitting for Special Categories of Mining; Article 8, Exploration; Article 9, Small Operator Assistance Program; Article 10, Bonding; Article 11, Performance Standards; Article 12, Inspection and Enforcement; Article 13, Process for Indentifying Land Unsuitable for Mining; and Article 17, General Provisions.

Alaska also submitted proposed policy statements addressing the following subjects: Policy Statement A, Maintenance of Records; Policy Statement B, Small Operator Assistance; Policy Statement C, Public Notice of Blasting; Policy Statement D, Surface Water Information; Policy Statement E, Scope of the Cumulative Hydrologic Impact Assessment; Policy Statement F, U.S. Fish and Wildlife Service Information Requests; and Policy Statement G, Determining Peak Discharge for Hydrologic Designs.

The amendment package also contains proposed Guidelines for Conducting Premining Vegetation Inventories and Determining Revegetation Success and revised petition forms for designating lands as

unsuitable for mining as well as terminating such designations.

OSM published a notice in the February 14, 1990 **Federal Register** (55 FR 5226) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. AK-C-06). The public comment period ended March 16, 1990.

By letter dated March 14, 1990 (Administrative Record No. AK-C-15) the Alaska Coal Association notified OSM of its opinion that certain portions of the proposed Alaska program amendment were not made available for adequate public review at the State level. The Alaska Coal Association requested that OSM extend the public comment period in order to allow interested parties sufficient time to review the material. When contacted by OSM, the Alaska Department of Natural Resources, Division of Mining, agreed that additional time was needed for review of the policy statements, revegetation success guidelines, and lands unsuitable for mining forms. The State indicated that interested parties would be notified of additional time for review and copies of the material would be made available.

OSM published a notice in the March 30, 1990 **Federal Register** (55 FR 11958) announcing the reopening and extension of the public comment period (Administrative Record No. AK-C-22). The public comment period closed April 16, 1990.

During its review of the amendment, OSM identified concerns related to: Article 3, General Permit Application Information Requirements; Article 4, Environmental Resource Information Requirements; Article 5, Reclamation and Operation Plan; Article 8, Exploration; Article 9, Small Operator Assistance Program; Article 11, Performance Standards; and Article 17, General Provisions. OSM notified Alaska of these concerns by letter dated February 8, 1991 (Administrative Record No. AK-C-28). Alaska responded in a letter dated May 7, 1991 by submitting additional explanatory information (Administrative Record No. AK-C-30).

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Alaska program amendment to provide the public an opportunity to reconsider the adequacy of the amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Alaska program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

List of Subjects in 30 CFR Part 902

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 21, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 91-12715 Filed 5-29-91; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 913

Illinois Permanent Regulatory Program; Permit Issuance

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

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period on proposed amendments to the Illinois permanent regulatory program (hereinafter referred to as the Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment was initiated by the Illinois Department of Mines and Minerals (Department) to make the requirements of the Illinois program no less effective than the Federal program. The proposed amendments concern changes made to the Illinois Surface Coal Mining Land Conservation and Reclamation Act (State Act) and the Illinois Administrative Code (IAC), title 62, Mining, chapter I. OSM announced receipt of the proposed amendment to the Illinois Administrative Code in the April 1, 1991, **Federal Register** (56 FR 13300) and in the same notice opened the public comment period and provided opportunity for comment on the revised State Act.

This notice sets forth the times and locations that the Illinois program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m., on July 1, 1991. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on June 24, 1991. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on June 14, 1991.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. James F. Fulton, Director, Springfield Field Office, at the address listed below. Copies of the Illinois program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contracting OSM's Sprinfield Field Office.

Office of Surface Mining Reclamation and Enforcement, Sprinfield Field Office, 511 West Capitol, Suite 202, Springfield, Illinois 62704, Telephone: (217) 492-4495.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Director, Springfield Field Office, (217) 492-4495.

SUPPLEMENTARY INFORMATION:

I. Background

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. Information pertinent to the general background of the Illinois 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 June 1, 1982, **Federal Register** (47 FR 23883). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 913.11, 913.15, 913.16, and 913.17.

II. Discussion of Proposed Amendment

On August 29, 1990, the Illinois General Assembly amended section 2.11(d) of the State Act, Ill. Rev. Stat. 1989, ch. 96½, par. 7902.11(d), in order to make the issuance of coal mine permits in Illinois consistent with the counterpart provisions of section 514(c) of SMCRA. On March 14, 1991, Illinois submitted a copy of House Bill 3743 (Administrative Record No. IL-1153) which contained this amendment. The statute change consisted of the deletion of the working "and no hearing is requested under subsection (c) of this section." Revised § 2.11(d) now reads "If

the application is approved under either subsection (a) or (b) of this section, the permit shall be issued."

This amendment of the State Act required that part 1773 of title 62 of the Illinois Administrative Code also be amended. Therefore, in order to make the requirements of the Illinois program no less effective than the Federal program, the Department by letter dated March 5, 1991 (Administrative Record No. IL-1144), submitted proposd changes to the State regulation at 62 IAC 1773.19, which sets forth the Department's requirements for permit issuance. The proposed changes include the addition of the word "and" in subsection (b)(1); the deletion of subsection (b)(2), which required a 30-day waiting period for permit issuance after mailing written notification of the Department's final permit decision as provided in 62 IAC 1773.19(a); and the renumbering of subsection (b)(3) to (b)(2). The regulation now reads:

(b) The permit shall be deemed to be issued when: (1) The permit application, as originally submitted or as modified, is approved by the Department; and (2) Permit fees and reclamtion bond, in the form and amounts set by 62 Ill. Adm. Code 1777.17 and 1800, have been received and accepted by the Department.

III. Public Comments Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendments satisfy the applicable program approval criteria of 30 CFR 732.15.

If the amendments are deemed adequate, they will become part of the Illinois program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the OSM Springfield Field Office will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. on June 14, 1991. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public, and, if possible, notices of meetings will be posted at the locations under "**ADDRESSES.**" A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 21, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 91-12716 Filed 5-29-91; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL-3917-3]

Proposed Change in Volatility Regulations for Gasoline; Northeastern Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to amend phase I federal gasoline and alcohol blend volatility regulations for the portion of Arizona bordered by New Mexico and Utah, north of 34 degrees latitude and east of 111 degrees longitude. The effect of this amendment would be to change the phase I summertime volatility standard for the portion of Arizona described from 9.0 to 9.5 pounds per square inch (psi), limited to the month of August, 1991. This action is proposed in response to a petition dated August 22, 1990 received by EPA from Giant Industries Arizona and other refiners.

DATES: The Agency does not plan to hold a public hearing on this proposed amendment unless one is requested. A hearing will be held if requested by June 13, 1991. Comments on this proposal must be received no later than July 1, 1991. If a public hearing is held, comments must be received 30 days after the hearing. Please direct all correspondence to the addresses shown below.

ADDRESSES: Materials relevant to this rulemaking have been placed in Docket A-91-03 by EPA. The docket is located at the Air Docket Section (LE-131), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, in room M-1500 Waterside Mall and may be inspected from 8:30 a.m. to 12 noon and from 1:30 p.m. to 3:30 p.m. Monday through Friday. A reasonable fee may be charged for copying docket material.

Comments should be submitted (in duplicate if possible) to the Air Docket Section at the above address. A copy should also be sent to Ms. Anne-Marie Cooney at the EPA address listed below. U.S. Environmental Protection Agency, Office of Air and Radiation, 401 M Street, SW. (EN-397F), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Anne-Marie Cooney (202) 382-2640.

SUPPLEMENTARY INFORMATION:

Introduction

This notice describes EPA's proposed action to revise the Reid vapor pressure (RVP) standard for the northeastern part of Arizona for the month of August, 1991. The remainder of this preamble is divided into two parts. The first provides the background for this proposed action, with respect to chronology and broad issues involved. The second section presents EPA's proposed action and rationale.

Background

EPA has received a petition, dated August 22, 1990, to reconsider its phrase I volatility regulations from Giant Industries Arizona, Inc., Bloomfield Refining Company, and Thriftway Marketing Company. The petition requests that EPA change the August standard for northeastern Arizona.

On August 19, 1987, the Agency proposed a two-phase reduction in summertime gasoline volatility (52 FR 31274). On March 22, 1989 (54 FR 11868), EPA published a notice of final

rulemaking promulgating phase I of these volatility control regulations. These phase I regulations included a list of applicable standards for geographical areas throughout the 48 contiguous states and the District of Columbia for the period of May 1 through September 15, effective June 1, 1989.[1]

In the final rule for the phase I program, the entire State of Arizona has a federal volatility standard of 9.0 psi for the month of August. The petition requests that the August volatility standard be amended to 9.5 psi for northeastern Arizona.

The petitioners base their request on the following facts. On June 18, 1990, the American Society for Testing and Materials (ASTM) voted to change the volatility classification for northeastern Arizona from "A" to "A/B", eliminating the distinction between northeastern Arizona and northern New Mexico for all months except January. They further argue that the northeastern part of Arizona is more similar to northern New Mexico in terms of climate, altitude, and population density than it is to the rest of Arizona. The petitioners argue that the difference in EPA's volatility standard poses a number of practical problems for refiners attempting to serve both the northern New Mexico and northeastern Arizona markets. Therefore, they request that EPA amend its classification for northeastern Arizona to be consistent with recent changes in ASTM classifications for the area.

On November 30, 1990, EPA wrote a letter to Governor Rose Mofford of Arizona, conveying the concerns that had been raised by the petition. In the letter, EPA presented the issues raised and requested the Governor's opinion as to whether EPA should begin rulemaking to amend volatility regulations for northeastern Arizona. On January 18, 1991, a response was received from the Arizona Department of Environmental Quality. The letter stated that the State supports the petition because of climatic and geographic reasons, the isolation of the area, and the fact that the area does not have a current or potential ozone problem.

The effect of the proposed amendment would be to change the federal Phase I volatility standard for northeastern Arizona from 9.0 to 9.5 psi, for the month of August, 1991. This change is limited to this one month, as beginning with the summer of 1992, EPA's phase II gasoline and alcohol blend volatility regulations will become effective.

[1] In 1989, the standards did not go into effect until June 1.

Proposed Action

In response to the petition described above, EPA is proposing to change the phase I volatility standard for northeastern Arizona from 9.0 to 9.5 psi for the month of August, 1991. Based on the petition itself and the letter from the Arizona DEQ, EPA believes that the proposed action is justified because of the following considerations. The petitioners are refiners in northern New Mexico who serve the New Mexico and northeastern Arizona markets in the Four Corners region of the Rocky Mountains. The difference in EPA's phase I volatility standard for northern New Mexico and northeastern Arizona poses practical problems for refiners seeking to serve both markets. In particular, unless the refiner has redundant blending facilities, it cannot serve the smaller Arizona market during the month of August under the phase I standards. The part of Arizona in question is not served by products pipelines and most of the area's demand for petroleum products is supplied by local refineries, such as the petitioners'. Northeastern Arizona and northern New Mexico are similar in climate and topography. The portion of Arizona in question is in attainment for ozone [2] and has a low population density. Finally, the proposed change would be effective for only one month, August 1991, before phase II standards become effective in 1992.

EPA is holding a 30 day comment period on this notice of proposed rulemaking. Public comments received on or before July 1, 1991 will be considered in EPA's final rulemaking. If a public hearing is held, comments must be received 30 days after the hearing. All comments will be available for inspection during normal business hours at the EPA office listed in the addresses section of the notice.

Commenters desiring to submit proprietary information for consideration should clearly distinguish such information from other comments to the greatest possible extent, and clearly label it "Confidential Business Information." Submissions containing such proprietary information should be sent directly to the contact person listed above, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket.

Information covered by such a claim of confidentiality will be discussed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentially accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the commenter.

[2] See, 40 CFR 81.303

Environmental Impact

The proposed amendment is not expected to have any adverse environmental effect. The portion of Arizona affected has a low population density and does not have an ozone problem. The Amendment would affect only one month (August) in 1991.

Economic Impact

The rule will not have a substantial impact. It will allow flexibility for refiners seeking to serve both the Northern New Mexico and northern Arizona markets, and may result in cost savings for consumers.

Administration Requirements

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment, a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant impact on a substantial number of small entities. In such circumstances, a regulatory flexibility analysis is not required.

The expected impact of the rule on small entities is negligible. This proposed rule does not impose additional regulatory requirements on small entities.

According, I hereby certify that these regulations will not have a significant impact on a substantial number of small entities. These regulations, therefore, do not require a regulatory flexibility analysis.

Under Executive Order 12291, the Agency must judge whether a regulation is "major" and thus subject to the requirement to prepare a regulatory impact analysis. The proposed rule published today is not major because the rule will not result in an effect on the economy of $100 million or more, will not result in increased costs or prices, will not have significant adverse effects on competition, employment, investment, productivity, and innovation, and will not significantly disrupt domestic export markets. Therefore the Agency has not prepared a regulatory impact analysis under the Executive Order.

This regulation was submitted to the Office of Management and Budget

(OMB) for review as required by Executive Order No. 12291 and cleared without comment.

This proposed rulemaking does not include any new information collection requirements. Information collection requirements in the regulations promulgated on March 22, 1989, were approved by OMB under the Paperwork Reduction Act, 44 U.S.C. et seq., and have been assigned OMB control number 2060-0178.

Authority for the action proposed in this notice is granted to EPA by sections 114, 211, and 301 of the Clean Air Act (42 U.S.C. 7414, 7545, and 7601).

List of Subjects in 40 CFR Part 80

Fuel Additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: May 21, 1991.

William K. Reilly,

Administrator.

For the reasons set forth in the preamble, part 80 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 80—REGULATIONS OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 will continue to read as follows:

Authority: Sections 114, 211 and 301(a) of the Clean Air Act as amended, 42 U.S.C. 7414, 7545, and 7601(a).

2. Section 80.27(a) is proposed to be amended by replacing the entry under the Arizona heading with the following two entries, to read as follows:

§ 80.27 Controls and prohibitions on gasoline volatility.

(a) * * *

APPLICABLE STANDARDS [1]

[(1) 1989-1991]

State	May	June	July	Aug.	Sept.
* * * * * *			*		
Arizona:					
North of 34 degrees latitude and east of 111 degrees longitude	9.5	9.0	9.0	9.5	9.5
All areas except North of 34 Degrees latitude and east of 111 degrees longitude	9.5	9.0	9.0	9.0	9.5
* * * * * *			*		

[1] Standards are expressed in pounds per square inch (psi).

[FR Doc. 91-12761 Filed 5-29-91; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 80

[FRL-3960-21]

Regulation of Fuels and Fuel Additives; Definition of Substantially Similar

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advanced notice of proposed interpretive rule.

SUMMARY: This action announces EPA's intent to propose a definition of the term "substantially similar," as used in section 211(f)(1)(B) of the Clean Air Act (Act), with respect to diesel fuel and fuel additives. Section 211(f)(1)(B), effective November 15, 1990, expands the prohibitions of section 211(f)(1) to include diesel fuel and fuel additives. The prohibitions of 211(f)(1) apply to fuels and additives which are not "substantially similar" to those used in emissions certification. Hence, this definition will enable manufacturers to determine whether their diesel fuels or fuel additives are covered by or excluded from the prohibitions of section 211(f)(B) of the Act. Such a definition should also reduce the potential burdens on manufacturers and on EPA for processing waivers for fuels and additives under section 211(f)(4). EPA invites comments for its consideration in drafting a proposed "substantially similar" definition for diesel fuel and diesel fuel additives.

DATES: Comments should be submitted on or before July 29, 1991.

ADDRESSES: Copies of the information relative to this application are available for inspection in public docket A-91-27 at the Air Docket (LE-131) of the EPA, room M-1500, 401 M Street, SW., Washington, DC 20460, (202) 382-7548, between the hours of 8:30 a.m. to noon and 1:30 pm to 3:30 p.m. weekdays. Any comments from interested parties should be addressed to this docket with a copy forwarded to Mary T. Smith. Director, Field Operations and Support Division (EN-397F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: David J. Kortum, Environmental Engineer, Field Operations and Support Division (EN-397F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 475-8841.

SUPPLEMENTARY INFORMATION: Section 211(f)(1)(B) of the Act makes it unlawful, effective November 15, 1990, for any manufacturer of a fuel and fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel and fuel additive for use by any person in motor vehicles manufactured after model-year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. Thus, section 211(f)(1)(B) expands the prohibitions of 211(f)(1)(A), which applies only to light-duty vehicles for which EPA has promulgated a definition of "substantially similar" only with respect to unleaded gasoline.[1] Since the term "substantially similar" in section 211(f)(1) is not defined in the Act, the intent of this rulemaking is to interpret the term "substantially similar" in regard to diesel fuel and diesel fuel additives and thus make more explicit which products are prohibited by section 211(f)(1)(B).

Fuels and fuel additives which are "substantially similar" to those used during a 1975, or subsequent model year certification, are excluded from the section 211(f)(1)(B) prohibitions. For those fuels or fuel additivies which are not "substantially similar," and have not been first introduced into commerce prior to November 15, 1990, manufacturers may apply for a waiver of the section 211(f)(1)(B) prohibitions. The definition of "substantially similar" enables manufacturers to determine whether their fuels or fuel additives are covered by, or excluded from, the

[1] An interpretive rule defining the term "substantially similar" under section 211(f)(1)(A) was promulgated for unleaded gasoline at 46 FR 38582 (July 28, 1981), and revised at 56 FR 5352 (February 11, 1991).

prohibitions of section 211(f)(1)(B) of the Act. Thus, this definition should reduce the potential burdens on those manufacturers and on EPA for processing waivers for fuels and additives under section 211(f)(4).

Discussion

The Agency's preliminary investigation of the composition of diesel fuel indicates that diesel fuel elemental composition is similar to gasoline: diesel fuel is a heterogenous mixture of hydrocarbon cmpounds and additives primarily composed of carbon, hydrogen, oxygen, nitrogen, and sulfur. The levels of additives added to diesel fuel appear to be similar to the levels of additives in gasoline. Therefore, the Agency's inclination in formulating a proposal for diesel fuel under section 211(f)(1)(B) is to take a similar approach as was taken for unleaded gasoline in defining the term "substantially similar" under section 211(f)(1)(A). Generally, the unleaded gasoline definition has proved to be acceptable by industry and workable for the Agency.

Such an approach would include the following: (1) Placing a limit on the elemental composition of diesel fuel and diesel fuel additives, probably limiting it to carbon, hydrogen, oxygen, sulfur, and nitrogen. The Agency is aware that certain manufacturers of diesel fuel utilize additives containing other elements. However, the Agency is unaware of the extent of use of these additives for certification purposes; (2) Placing an upper limit on the amount of an additive which may be present. The "substantially similar" definition for gasoline places an upper limit on each additive of 0.25 weight percent and the Agency sees no reason why the same limit would not be appropriate for diesel fuel. Furthermore, the Agency is unaware of any use of additives in diesel which are not completely hydrocarbon in nature and used at relatively high levels (such as with oxygenates in unleaded gasoline). Likewise, EPA is not aware of any high-level non-hydrocarbon additives currently added to certification diesel fuel. The Agency sees no reason why sulfur must be limited beyond the already promulgated sulfur content regulations for diesel fuel which limit the sulfur content of diesel fuel to 0.05 weight percent (*See* 55 FR 34120, August 21, 1990.); (3) Limiting impurities [2] to trace levels of elements which are gaseous at Standard Temperature and Pressure (STP); (4) Finally, the Agency is inclined to require diesel fuel to meet the traditional industry specifications for diesel fuel, such as American Society of Testing and Materials (ASTM) Standard D 975.

Comments

The Agency requests comments on all aspects of an interpretation of the definition of "substantially similar" in regard to diesel fuel and fuel additives. While all manufacturers of diesel fuels and additives are required to be registered by the EPA under 40 CFR 79, and provide compositional data, and while certification diesel fuels must meet certain specifications under 40 CFR 86, EPA lacks specific information on which fuels and additives have been used in certification. Specifically, the Agency requests comments on diesel fuel and certification diesel fuel in the areas of: (1) Elemental composition, (2) levels of additives, and, (3) information on the chemical and physical properties of diesel fuels, especially in regard to ASTM D 975. Comments are also requested on the approach, outlined above, for composing a "substantially similar" definition for desel fuel.

Dated: May 21, 1991.

William K. Reilly,

Administrator.

[FR Doc. 91-12759 Filed 5-30-91; 8:45 am]

BILLING CODE 6560-50

[2] An impurity is that substance which is present through contamination, or remains naturally, after processing of the fuel is completed (56 FR 5355, February 11, 1991).

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8360

[WO-702-4830-15-24 1A]

RIN 1004-AB91

Visitor Services: Rules of Conduct

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) is proposing a mandatory safety belt regulation that would apply to visitors occupying the front seats of motor vehicles operated on roadways on Federal lands managed by the BLM (public lands) lying within States that do not have in effect a mandatory safety belt law, or that have enacted such a law but the law does not apply to public lands or may not be enforced by the BLM. Under current BLM regulations at 43 CFR 8365.1-7, the use of safety belts by visitors is required only on public lands in States that have a mandatory safety belt law in effect. Requiring use of safety belts is expected to reduce risk of injury or death in vehicle accidents on public lands, and contribute to the reduction of societal costs caused by such incidents.

DATES: Comments should be submitted by July 29, 1991. Comments received or postmarked after the above date may not be considered in the decisionmaking process on the final rule.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, room 5555, Main Interior Building, 1849 C Street, NW., Washington, DC 20240. Comments will be available for public review at this address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Paul Lynch, Chief, Safety Staff, 202-653-8851.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management (BLM) currently administers over 270 million acres of public lands. The Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1701 *et seq.*) requires the BLM to provide, among other things, for outdoor recreation and the regulation of human occupancy and use on these lands. In most cases, recreation access is gained by using motorized vehicles. The BLM administers and operates approximately 50,000 miles of roads open to the public. In addition, thousands of miles of unimproved roads and trails cross through or over public lands.

According to the National Highway Traffic Safety Administration and the National Safety Council, all States having substantial amounts of public lands with road traffic on them have mandatory safety belt laws, except for North and South Dakota. Also, according to the National Highway Traffic Safety Administration, all 50 States and the District of Columbia have mandatory child restraint laws. FLPMA (43 U.S.C. 1733) authorizes the BLM to cooperate with the regulatory and law enforcement officials of any State or political subdivision thereof in the enforcement of the laws and ordinances of such State or its subdivision. State and local agencies quite often are unable to provide appropriate levels of enforcement of safety belt requirements in the public land setting. The public lands attract visitors from other areas, placing an additional burden on local agencies not staffed for such temporary increases in population. In 1990, there

were about 57,000,000 recreational visits recorded to public lands.

The Department of the Interior and the BLM strongly support the use of appropriate restraint systems by vehicle occupants. The proper wearing of safety belts may reduce accidents, and the potential reduction in personal injuries and fatalities that would result is highly desirable. The Department of the Interior itself requires safety belt use for its on-duty employees (Departmental Manual: Safety and Health Handbook, chapter 16.3.E).

The BLM safety belt regulation proposed in this rule would require that a motor vehicle operator and all front seat passengers be restrained by a properly fastened, safety belt while the motor vehicle is in motion. The burden of compliance would be placed on the operator: the proposed regulation prohibits operating a motor vehicle in motion unless all front seat passengers and the operator are restricted by a properly fastened safety belt. Children, as defined by applicable State law, are required to be restrained in accordance with State law. A person convicted of violating this or any other BLM regulation promulgated under the authority of FLPMA would be subject to a maximum penalty as defined by law, currently a $1,000 fine or 12 months imprisonment or both.

The safety belt regulation in this rule is intended to apply on all public lands that are open to visitors. In States that do have a mandatory safety belt law in effect that can be enforced on BLM lands, the BLM will continue to enforce the applicable State safety belt law, regardless of whether the provisions of the State law are identical to or different from the provisions of this rule. If the law of a State does not apply to the public lands or prevents BLM enforcement of that State's mandatory safety belt requirements on public lands, the BLM will adhere to and enforce the provisions of this rule.

The rule would not apply if a motor vehicle operator or passenger is occupying a front seat that was not originally equipped with a safety belt by the vehicle manufacturer, nor would it apply to an operator or passenger with a medical condition that prevents restraint by a safety belt or other occupant-restraining device. The rule provides that safety belts shall conform to applicable United States Department of Transportation standards, which are imposed on manufacturers. The intent is to require factory- or professionally-installed safety belts as opposed to home-made or jury-rigged belts, and to allow vehicle operators to rely on the vehicle manufacturer, not to require them to consult Federal regulations to make sure their equipment is satisfactory.

The rule would apply only to those vehicles ordinarily used for transportation on public roads, as opposed to farm, construction, work, or off-road recreation vehicles that occasionally appear on public roads.

The BLM intends that this regulation be observed and enforced primarily through signs, text in brochures, and incidental public contact, not through checkpoints or other enforcement contacts that are not initiated as the result of another violation.

The primary authors of this rule are Walter Johnson, Chief, Division of Law Enforcement, and Paul Lynch, Chief, Safety Staff, Bureau of Land Management. The staffs of the National Park Service and the National Highway Traffic Safety Administration were consulted informally during the development of this rule and provided valuable advice and assistance.

It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule, and under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that it will not have a significant economic impact on a substantial number of small entities. These findings are based on the fact that the overall economic effects of this rule are negligible: It would impose no additional costs on any group or class of individuals. The BLM will incur costs associated with the installation of signs and the development of other public information programs in all affected areas. These administrative costs could be significant in some areas, depending on the road inventory and the number of access points. Additionally, as required by Executive Order 12630, the Department has determined that the rule would not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 43 CFR Part 8360

Penalties, Public lands, Reporting and recordkeeping requirements, Traffic safety, Vehicles, Wilderness.

In consideration of the foregoing, and under the authorities stated below, part 8360, group 8000, subchapter H, chapter II, subtitle B of title 43 of the Code of Federal Regulations is amended as follows:

PART 8360—VISITOR SERVICES

1. The authority citation for part 8360 continues to read as follows:

Authority: 43 U.S.C. 1701 *et seq.*, 43 U.S.C. 315a, 16 U.S.C. 1281c, 16 U.S.C. 670 *et seq.*, 16 U.S.C. 460*l*–6a, 16 U.S.C. 1241 *et seq.*

2. Section 8360.0–5 is amended by adding paragraph (e) to read as follows:

§ 8360.0–5 Definitions.

* * * * *

(e) "Vehicle" means any motorized transportation conveyance designed and licensed for use on roadways, such as an automobile, bus, or truck.

Subpart 8365—Rules of Conduct

3. Section 8365.1–3 is amended by redesignating the existing section as paragraph (a), and adding paragraph (b) to read as follows:

§ 8365.1–3 Vehicles.

* * * * *

(b)(1) The operator of a motor vehicle is prohibited from operating a motor vehicle in motion, unless the operator and each front seat passenger is restrained by a properly fastened safety belt that conforms to applicable United States Department of Transportation standards, except that children, as defined by State law, shall be restrained as provided by State law.

(2) Paragraph (b) applies on public lands, or portions thereof, that are located within a State in which there is not State law in effect that requires the mandatory use of a safety belt by the vehicle operator and any front seat passenger. It also applies on public lands, or portions thereof, located within a State in which the mandatory safety belt law of the State does not apply to the public lands or in which any provision of State law renders the mandatory safety belt law of the State unenforceable by the authorized officer as to acts or omissions occurring on the public lands.

(3) This section does not apply to an operator or a passenger of a motor vehicle occupying a seat that was not originally equipped by the manufacturer with a safety belt, nor does it apply to an operator or passenger with a medical condition that prevents restraint by a safety belt or other occupant restraining device.

(4) An authorized officer may not stop a motor vehicle for the sole purpose of determining whether a violation of paragraph (b)(1) of this section is being committed.

Dated: April 17, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-12729 Filed 5-29-91; 8:45 am]

BILLING CODE 4310-84-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1313

[Ex Parte No. 387 (Sub-No. 963)]

Railroad Transportation Contracts

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to preclude the amendment of any contract more than 90 days after its expiration date and to require that contracts be amended to reflect any automatic extensions of expiration dates. The Commission is experiencing a problem storing the large volume of confidential rail contracts filed by carriers pursuant to section 10713 of the Interstate Commerce Act (49 U.S.C. 10713). The problem results primarily from our inability to determine from our files which contracts are active or may be reactivated, and which have been permanently terminated and can be destroyed or stored off-site.

The proposed action will alleviate the Commission's storage problem for confidential rail contracts and will significantly enhance the integrity of the Commission's files, while continuing to provide carriers and shippers with what should be more than adequate flexibility.

DATES: Comments are due on July 1, 1991.

ADDRESSES: Send comments (an original and 10 copies) referring to Ex Parte No. 387 (Sub-No. 963) to: Interstate Commerce Commission, Office of the Secretary, Case Control Branch, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: James W. Greene (202) 275-1795, or Charles E. Langyher, III (202) 275-7739, TDD for hearing impaired (202) 275-1721).

SUPPLEMENTARY INFORMATION:

Our regulations allow a confidential rail contract to be reinstated after it has expired, but do not impose a restriction on the length of time after the expiration date that it can be reinstated (49 CFR 1313.3(c)). Thus, we have no way of knowing which of the expired contracts might be reactivated.

Additionally, many of the confidential rail contracts have expiration dates that are automatically extended, unless one of the parties gives notice of its intention to let the contract expire. Filers do not amend their contracts to reflect such expirations or extensions, and we are therefore unable to tell from our files whether such contracts are still active after the initial expiration date.

Under the Act and our regulations, whenever a contract is amended or reinstated, the entire contract is again subject to the Commission's jurisdiction and review, just as though it were an entirely new contract. Thus, we must maintain ready access to all contracts as long as they might be subject to reinstatement or amendment by the filer. This requirement, in conjunction with the matters discussed above, has resulted in the Commission being required to retain all confidential rail contracts on-site. Clearly, this is an unwarranted expense and an unnecessary encumbrance on the efficient conduct of the Commission's business.

Some action is clearly warranted to alleviate the severe housekeeping problem the Commission currently has with the storage of contracts. To limit the time in which the Commission will need to retain expired contracts, we will not permit amendment of any contract at a time more than 90 days after expiration of the contract. We expect that most, if not all, contract amendments will be filed well in advance of the 90 day limitation. We do not foresee any circumstances in which the proposed limitation will impose an unreasonable burden on carriers or shippers.

Energy and Environmental and Energy Considerations

We preliminarily conclude that the proposed rule revision will not affect significantly either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

We preliminarily conclude that this action will not have a significant impact on a substantial number of small entities.

List of Subjects in 49 CFR part 1313

Administrative practice and procedure, Agricultural commodities, Forest and forest products, Railroads.

Decided: May 14, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1313 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1313—RAILROAD CONTRACTS ENTERED INTO PURSUANT TO 49 U.S.C. 10713

1. The authority citation for Part 1313 would continue to read as follows:

Authority: 49 U.S.C. 10321 and 10713; 5 U.S.C. 553.

2. In § 1313.7, paragraph (d) is redesignated as paragraph (e), a new paragraph (d) is added and the introductory text and paragraph (e)(1) of redesignated paragraph (e) are revised to read as follows:

§ 1313.7 Contract filing, title pages, and numbering.

* * * * *

(d) *Modification of contract termination dates.* (1) An amendment extending a contract expiration date must be filed with the Commission prior to such expiration date. An amendment reactivating an expired contract, as provided for in § 1313.3(c), will not be accepted more than 90 days after such expiration date.

(2) A contract that provides for optional renewal or extension, whether by mutual agreement, unilateral action or lack of action, must be amended to reflect such renewal or extension. Any contract not so amended will expire on the initial expiration date specified therein. An amendment reactivating such a contract will not be accepted more than 90 days after its expiration date.

(3) A contract that provides for optional earlier termination, whether by mutual agreement, unilateral action or lack of action, and any other contract that is terminated before the termination date specified therein, must be amended to reflect such earlier termination. Said amendment must be filed within 90 days after such earlier termination.

(e) *Application for Relief from Requirements of paragraphs (a), (b) (c), or (d) of this section.* (1) Application for relief from one or more of the requirements of paragraphs (a), (b), (c) or (d) of this section shall be submitted to the Suspension/Special Permission Board.

* * * * *

[FR Doc. 91-12750 Filed 5-29-91; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 56, No. 104
Thursday, May 30, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Request for Applications from Persons Interested in Designation to Provide Official Services in the Geographic Areas Currently Assigned to the Idaho (ID) and Lewiston (ID) Agencies and the State of Utah (UT)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. The Service announces the designations of three agencies will terminate, according to the Act, and requests applications from persons interested in designation to provide official services in the specified geographic areas. The official agencies are the Idaho Grain Inspection Service, Inc. (Idaho), the Lewiston Grain Inspection Service, Inc. (Lewiston), and the Utah Department of Agriculture (Utah).

DATES: Applications must be postmarked on or before July 1, 1991.

ADDRESSES: Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-447-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes the Administrator of the Service to designate any qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

The Service designated Idaho, located at 1199 East County Road, Pocatello, ID 83205; Lewiston, located at 1450 3rd Avenue North, Lewiston, ID 83501; and Utah, located at 350 North Redwood Road, Salt Lake City, UT 84116, to provide official inspection services under the Act on December 1, 1988.

Section 7(g)(1) of the Act provides that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act.

The designations of Idaho, Lewiston, and Utah terminate on November 30, 1991.

The geographic area presently assigned to Idaho, in the State of Idaho, pursuant to section 7(f)(2) of the Act, that will be assigned to the applicant selected for designation is as follows: The southern half of the State of Idaho up to the northern boundaries of Adams, Valley, and Lemhi Counties.

The geographic area presently assigned to Lewiston, in the State of Idaho, pursuant to section 7(f)(2) of the Act, that will be assigned to the applicant selected for designation is as follows: The northern half of the State of Idaho down to the northern boundaries of Adams, Valley, and Lemhi Counties.

The geographic area presently assigned to Utah, pursuant to section 7(f)(2) of the Act, that will be assigned to the applicant selected for designation, is the entire State of Utah.

Interested persons, including Idaho, Lewiston, and Utah, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning December 1, 1991, and ending November 30, 1994. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: May 22, 1991.

J. T. Abshier,
Director, Compliance Division.

[FR Doc. 91-12754 Filed 5-29-91; 8:45 am]
BILLING CODE 3410-EN-F

Request for Applications from Persons Interested in Designation to Provide Official Domestic Services in Portions of Illinois (IL) and Indiana (IN)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), authorizes the Administrator of the Service to designate persons to perform official services under the Act. The Service asks persons interested in providing official domestic services in the vicinity of Chicago, Illinois, to submit an application for designation. The Service has been and will continue to provide such official domestic services in this geographic area, as specified below, until a decision can be made in this matter. The Service will continue to provide services to all export port locations in this area.

DATES: Applications must be postmarked on or before July 1, 1991.

ADDRESSES: Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. All applications will be made available for public inspection at this address at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-447-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and

Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes the Administrator of the Service to designate any qualified applicant to provide official domestic services in a specified area after determining that the applicant is better able than any other applicant to provide such official domestic services. The Service asks persons interested in providing official domestic services in the vicinity of Chicago, Illinois, to submit an application for designation. The Service has been and will continue to provide such official domestic services in this geographic area, as specified below, until a decision can be made in this matter. The Service will continue to provide services to all export port locations in this area. These are: Cargill Burns Harbor Elevator, Portage, Indiana; Cargill Elevator, Chicago, Illinois; Continental "B", Chicago, Illinois; Continental "C", Chicago, Illinois; Rialto Elevator, Chicago, Illinois; Gateway Elevator, Chicago, Illinois.

Section 7(g)(1) of the Act provides that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures rescribed in section 7(f) of the Act. Designation in this geographic area will be for a period not to exceed 3 years. The geographic area, in the States of Illinois and Indiana, that will be assigned to the applicant selected for designation, pursuant to section 7(f)(2) of the Act, is as follows:

Bounded on the North by the northern Illinois State line;

Bounded on the East by the eastern Illinois State line; across the Illinois-Indiana State line; the northern Indiana State line east to Interstate 94;

Bounded on the South by Interstate 94 west to the Indiana-Illinois State line; the Indiana-Illinois State line south to the northern Will County line; the northern Will County line west to Interstate 55; and

Bounded on the West by Interstate 55 northeast to Interstate 294; Interstate 294 north to Interstate 94; Interstate 94 north to the northern Illinois State line.

Interested persons are hereby given an opportunity to apply for designation to provide official domestic services in the geographic area specified above under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official domestic services in the above-mentioned geographic area.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: May 22, 1991.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 91-12755 Filed 5-29-91; 8:45 am]

BILLING CODE 3410-EN-F

Sioux City (IA) and Tischer (IA) Designation

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Service announces the designation of the Sioux City Inspection and Weighing Agency, Inc. (Sioux City), and A. V. Tischer and Son, Inc. (Tischer), to provide official services under the United States Grain Standards Act, as amended (Act). The Service also announces the removal of certain exceptions within the areas that Aberdeen Grain Inspection, Inc. (Aberdeen), Fremont Grain Inspection Department, Inc. (Fremont), and Tischer are designated to serve.

EFFECTIVE DATE: July 1, 1991.

ADDRESSES: Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-447-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the January 2, 1991, Federal Register (56 FR 65), the Service announced that the designations of Sioux City and Tischer terminate on June 30, 1991, and asked persons interested in providing official services within a specified geographic area to submit an application for designation. Applications were to be postmarked by February 1, 1991.

Sioux City applied for designation in the entire area currently assigned to that agency, except for: Farmers Elevator Company, and Feeders Mill & Elevator, Inc., both in Platte, Charles Mix County, South Dakota (located inside Aberdeen's area); Charter Oak Grain & Seed, and Delanty Grain Company, both in Charter Oak, Crawford County, Iowa (located inside Fremont's area); and Gooch Seed Mill, and Ernie's Seed & Field Service, both in Storm Lake, Buena Vista County, Iowa (located inside Tischer's area). The Tischer, Aberdeen, and Fremont agencies are contiguous to the Sioux City agency.

Tischer applied for designation in the entire area currently assigned to that agency, as well as Gooch Seed Mill, and Ernie's Seed & Field Service, both in Storm Lake, Buena Vista County, Iowa.

Aberdeen applied for designation to serve Farmers Elevator Company, and Feeders Mill & Elevator, Inc., both in Platte, Charles Mix County, South Dakota, in addition to the area they are already designated to serve.

Fremont applied for designation to serve Charter Oak Grain & Seed, and Delanty Grain Company, both in Charter Oak, Crawford County, Iowa, in addition to the area they are already designated to serve.

The Service named and requested comments on the applicants for designation in the March 8, 1991, Federal Register (56 FR 9934). Comments were to be postmarked by April 22, 1991. The Service received no comments by that deadline.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and according to section 7(f)(1)(B), determined that Sioux City, Tischer, Aberdeen, and Fremont are able to provide official services in the geographic areas for which they applied.

Effective July 1, 1991, and terminating June 30, 1994, Sioux City and Tischer are designated to provide official inspection services in the above specified geographic areas.

Effective July 1,1991, and terminating November 30, 1993, for Aberdeen and August 31, 1992, for Fremont these agencies are designated to provide official inspection services in the above specified geographic areas in addition to the area they are already designated to serve.

Interested persons may obtain official services by contacting Sioux City at 712-255-8073, Tischer at 515-955-7012, Fremont at 402-721-1270, and Aberdeen at 605-225-8432.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: May 22, 1991.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 91-12758 Filed 5-29-91; 8:45 am]

BILLING CODE 3410-EN-F

Request for Comments on the Designation Applicants in the Geographic Areas Currently Assigned to the Louisville (KY), Minot (ND), and Tri-State (OH) Agencies

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Service requests interested persons to submit comments on the applicants for designation in the geographic areas currently assigned to Louisville Grain Inspection Services, Inc. (Louisville), Minot Grain Inspection, Inc. (Minot), and Tri-State Grain Inspection Service, Inc. (Tri-State).

DATES: Comments must be postmarked on or before July 15, 1991.

ADDRESSES: Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. SprintMail users may respond to [HDUNN/FGIS/USDA]. Telecopier users may send responses to the automatic telecopier machine at 202-447-4628, attention: Homer E. Dunn.All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-447-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the April 2, 1991, **Federal Register** (56 FR 13447), the Service asked persons interested in providing official services within the Louisville, Minot, or Tri-State geographic areas to submit an application for designation. Applications were to be postmarked by May 2, 1991. Minot applied for the entire Minot area. Tri-State applied for the entire Tri-State area. Louisville, J. W. Barton Grain Inspection Service, Inc., a designated official agency, (Barton), and Tri-State each applied for the entire Louisville area. Barton would accept less than the entire area as long as it included the Consolidated Grain & Barge Co., facilities in Louisville, Kentucky, and Jeffersonville, Indiana, and Indiana Farm Bureau Co-op Association, Inc., Gold Proof Elevator in Louisville, Kentucky. Tri-State would accept less than the entire area and is especially interested in Jefferson, Clark, and Floyd counties, Indiana, and the northern Kentucky area including Scott, Fayette, Jessamine, Woodford, Anderson, Spencer, Bullitt, and Jefferson counties and points north thereof.

The Service is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants for designation. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. The Service will publish notice of the final decision in the **Federal Register**, and the Service will send the applicants written notification of the decision.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: May 22, 1991.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 91-12757 Filed 5-29-91; 8:45 am]

BILLING CODE 3410-EN-F

Cancellation of Fostoria Grain Inspection's Designation and Request for Applications from Persons Interested in Designation to Provide Official Services in Northwestern Ohio (OH)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: Robert B. Whitta dba Fostoria Grain Inspection (Fostoria), asked the Service to cancel his designation, effective November 30, 1991. The Service asks persons interested in providing official services in the geographic area currently assigned to Fostoria to submit an application for designation.

DATES: Applications must be postmarked on or before July 1, 1991.

ADDRESSES: Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. All applications will be made available for public inspection at this address at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-447-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the United States Grain Standards Act, as amended (Act), authorizes the Administrator of the Service, to designate any qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

Section 7(g)(1) of the Act provides that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act.

The Service designated Fostoria, located at 626 West Fourth Street, Fostoria, OH 44830, for the period beginning October 1, 1989, and ending September 30, 1992. Fostoria requested voluntary cancellation of its designation, effective November 30, 1991.

The geographic area presently assigned to Fostoria, in the State of Ohio, that will be assigned to the applicant selected for designation is as follows:

Bounded on the North by the northern and eastern Fulton County lines; the eastern Henry County line; the northern and eastern Wood County lines; the northern Sandusky County line east to State Route 590;

Bounded on the East by State Route 590 south to Seneca County; the northern Seneca County line east to State Route 53; State Route 53 south to Wyandot County; the northern Wyandot County line; the northern Crawford County line east to State Route 19; State Route 19 south to U.S. Route 30;

Bounded on the South by U.S. Route 30 west to the western Hancock County line; and

Bounded on the West by the western Hancock County line; the southern Henry County line west to State Route 108; State Route 108 north to U.S. Route 24; U.S. Route 24 southwest to the Henry County line; the western Henry and Fulton County lines.

Interested persons are hereby given an opportunity to apply for designation to provide official services in the Northwestern Ohio area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the Northwestern Ohio area is for the period beginning December 1, 1991, and ending November 30, 1994. Parties wishing to apply for designation should contact the

Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in the Northwestern Ohio area.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: May 22, 1991.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 91-12756 Filed 5-29-91; 8:45 am]

BILLING CODE 3410-EN-F

Food and Nutrition Service

National Advisory Council on Maternal, Infant and Fetal Nutrition; Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Council meeting:

Date and Time: June 17-19, 1991, 8:30 a.m.

Place: Food and Nutrition Service, Park Office Center, 3101 Park Center Drive, Eighth Floor Conference Room, Alexandria, Virginia 22302.

Purpose of Meeting: The Department will meet with an ad hoc work group, composed of volunteers from the Council, to discuss the reviews of nutritional risk criteria used in, and food packages issued by, the Special Supplemental Food Program for Women, Infants, and Children (WIC), as mandated by sections 123 (b) and (c) of Public Law 101-147, enacted November 10, 1989. No recommendations will be developed; rather, the purpose of the meeting is to prepare the ad hoc work group to assist the Department in discussing the reviews with the full Council when it meets in September.

Agenda: The agenda for the ad hoc work group meeting will focus on discussion of issues related to nutritional risk criteria and food package reviews, such as which nutritional risk criteria are currently used to determine eligibility for the WIC Program, the relationship of such criteria to the WIC participant priority system, the appropriateness of the foods issued in the various WIC food packages, which nutrients should be targeted by the WIC Program, and the bioavailability of iron.

The ad hoc work group meeting is open to the public, and members of the public may participate, as time permits. Members of the public should be aware, however, that this meeting of the ad hoc work group, a voluntary sub-group of the full Council, is merely a preliminary working session, preparatory in nature to the full Council meeting scheduled for September 18-20, 1991. Written statements may be filed by members of the public with the Council before or after the meeting. A separate notice will be published in the **Federal Register** prior to the full Council meeting in September.

Persons wishing to file written statements or to obtain additional information about this meeting should contact Tama Eliff, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, room 540, Alexandria, Virginia 22302, (703) 756-3730.

Dated: May 22, 1991.

Betty Jo Nelsen,

Administrator.

[FR Doc. 91-12777 Filed 5-29-91; 8:45 am]

BILLING CODE 3410-30-M

Forest Service

Bald Mountain Timber Sale

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the USDA Forest Service will prepare an Environmental Impact Statement to disclose the environmental consequences of the proposed Bald Mountain Timber Sale located on the La Porte Ranger District, Plumas National Forest, Plumas County, California. The Bald Mountain Timber Sale is approximately four air miles north of the town of La Porte, California in Township 21 N. and Range 9 E., Mt. Diablo Meridian. The Forest Service invites written comments on this proposal. A full environmental analysis will be conducted. The Draft Environmental Impact Statement (DEIS) will be published in July 1992 and the Final Environmental Impact Statement (FEIS) will be available for review in November 1992.

DATES: Comments concerning the scope of analysis should be received in writing by July 14, 1991.

ADDRESSES: Submit written comments and suggestions to Charles W. Smay District Ranger, P.O. Drawer 369, Challenge, CA 95925.

FOR FURTHER INFORMATION CONTACT: Jerry Bertagna, Program Accomplishment Forester, phone 916-675-2462, who can answer questions related to this project.

SUPPLEMENTARY INFORMATION: The Plumas National Forest Land and Resource Management Plan provides direction for management of the project area which is located within the Little Grass Management Area (Management Area #15), which was designated in the Forest Plan to be managed under the Recreation Area, Visual Retention, Bald Eagle Habitat, Visual Partial Retention, and Timber Emphasis Prescriptions. The proposed action within this Management Area would use a variety of logging systems to harvest approximately 11.7 million board feet of timber through application of unevenaged silvicultural systems. A range of alternatives for this project will be considered, one of which would be a no action alternative.

John Palmer, Acting Forest Supervisor, Plumas National Forest, Quincy, California, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). Some initial scoping and analysis have been completed for this proposed project. Comments received during the original scoping will be retained and considered in the analysis. The Forest Service will be seeking information, comments and assistance from federal, state and local agencies, other individuals and organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the DEIS. The scoping process includes:

1. Identifying potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring alternatives to the proposed project.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the proposed timber sale area.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by July 1992. At that time the EPA will publish a notice of availability of the DEIS in the Federal Register. The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency's Notice of Availability appears in the **Federal Register**. It is very important that those interested in the management of the Bald Mountain Timber Sale participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits

of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

After the comment period for the DEIS ends, the comments received will be analyzed and considered by the Forest Service in preparation of the FEIS. The FEIS is scheduled to be completed by November 1992. The Forest Service is required to respond to comments received (40 CFR 1503.4). The responsible official will consider comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal.

The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Dated: May 20, 1991.

John Palmer,

Acting Forest Supervisor.

[FR Doc. 91-12666 Filed 5-29-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-015]

Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative reviews.

SUMMARY: On March 4, 1991, the Department of Commerce published the preliminary results of its administrative reviews of the antidumping finding on television receivers, monochrome and color, from Japan. The reviews cover one manufacturer/exporter of this merchandise to the United States and various periods from August 19, 1983 through February 28, 1986.

We gave interested parties an opportunity to comment on our preliminary results.

Based on our analysis of the comments received and the correction of certain clerical errors, we have changed the final results for all of the reviews. The final margins range from 0.01 percent to 2.79 percent.

EFFECTIVE DATE: May 30, 1991.

FOR FURTHER INFORMATION CONTACT: Maura Kim or Melissa G. Skinner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington DC 20230; telephone: (202) 377-3601 or (202) 377-4851.

SUPPLEMENTARY INFORMATION:

Background

On March 4, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 8983) the preliminary results of its administrative reviews of the antidumping finding on television receivers, monochrome and color, from Japan (36 FR 4597, March 10, 1971). We have now completed these administrative reviews in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

Imports covered by the reviews are shipments of television receivers, monochrome and color, from Japan. Television receivers include, but are not limited to, units known as projection televisions, receiver monitors, and kits (containing all parts necessary to receive a broadcast television signal and produce a video image). Not included are certain monitors not capable of receiving a broadcast signal, certain combination units, and certain subassemblies not containing the components essential for receiving a broadcast television signal and producing a video image. During the review periods, television receivers, monochrome and color, were classifiable under item numbers 684.9230, 684.9232, 684.9234, 684.9236, 684.9238, 684.9240, 684.9245, 684.9246, 684.9248, 684.9250, 684.9252, 684.9253, 684.9255, 684.9256, 684.9258, 684.9262, 684.9263, and 684.9255 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under item numbers 8528.10.80 and 8528.20.00 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

These reviews cover one manufacturer/exporter to the United States of Japanese televisions, Victor Company (Victor), and various periods from August 19, 1983 through February 28, 1986.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from one domestic party to the proceeding, Zenith Electronics Corporation (Zenith) and Victor, the respondent.

Certain comments by Victor concerned clerical errors. We have corrected the following such errors in the computer programs for the final results: We removed programming language which set the home market selling department's expenses, and the adjustment for differences in physical characteristics, at values equal to zero in the partial fifth review; we calculated Victor's selling department's expenses for direct sales to unrelated parties in the partial fifth and sixth reviews separately from its other sales; we deducted one additional discount and cash rebate from foreign market value in the partial fifth and sixth reviews; we used the correct amount of uncollected U.S. commodity tax in the U.S. for model C-14N in the seventh review. Contrary to Victor's assertion, in our preliminary determination we had in fact deducted inventory carrying costs from home market price in the sixth review.

We note that in its brief, Zenith listed several issues that had been raised in separate prior proceedings, and that there is nothing else on this record concerning these issues. Zenith explains that it chose not to reargue these issues in this proceeding and merely raised them in the hope that the Department would change its views. Since Zenith decided not to address these issues in this proceeding, we will not address them either.

Comment 1: Victor argues that its direct home market sales to unrelated customers are sold in a different "channel of trade" than its home market sales to related companies, and, therefore, are not in the ordinary course

of trade. It argues further that the fact that its direct sales in the home market constituted only a small percentage of total home market sales as another reason that they were not in the ordinary course of trade. As a result, Victor reasons that these sales should be excluded from the analysis of home market sales. Additionally, Victor raises the point that the direct home market sales should not be considered, because they were in minimal quantities, noting that the Department did not require Victor to report its sales to two of its sales companies, San-In and Okinawa Victor, because they were also in minimal quantities.

Department's Position: We disagree. Victor sells television in the home market through two different channels of trade; most of its sales are through its related sales companies, but some sales are directly to unrelated customers. Victor provided no justification or support for its claim that its direct home market sales to unrelated customers are outside the ordinary course of trade. Victor has consistently sold through both channels of trade, and examination of the direct sales during these periods of review provides no evidence that they were made for unusual reasons or under unusual circumstances. Moreover, the mere fact that direct sales represent only a small percentage of total home market sales does not signify that the sales are outside the ordinary course of trade. In fact, Victor's claim that sales in such small quantities are outside the ordinary course of trade is an assertion unsupported by any evidence on the record. Accordingly, we considered these sales as being within the ordinary course of trade and have included them in our analysis of home market sales. For the purpose of these reviews, we decided that Victor need not report a minimal number of sales to two of its smallest sales companies, not because we did not consider them to be within the ordinary course of trade, but because the number of sales involved was insignificant in relation to the total number of sales already reported for this channel of trade, and because inclusion of these sales would have had *de minimis* effect on the margin. Since Victor's direct home market sales were made in a different channel of trade and we needed information on both channels of trade, because these sales might have had an impact on margins, and because we considered them in the ordinary course of trade we included them in our analysis of home market sales.

Comment 2: Victor aruges that the Department should not have separately calculated home market and U.S. inventory carrying costs, since Victor had already calculated and included these expenses in its claimed interest expenses.

Department's Position: We disagree. We did not use Victor's inventory carrying cost figures because they were incorrectly calculated. Victor used inventory balances from the beginning and end of the review period, as representative of the entire period; however, this practice could potentially distort inventory carrying costs in that it captures costs from only a portion of the review period. We have determined that an average of Victor's monthly inventory balances more accurately accounts for Victor's actual inventory carrying costs because an average of the twelve monthly balances is not susceptible to the distortions that might result from, using only two daily balances. Therefore, in lieu of using Victors' reported average inventory balance, as is our practice we used the average of Victor's monthly inventory balances to calculate Victor's inventory carrying costs. We deducted the resulting inventory carrying costs from the foreign market value and U.S. price, as applicable.

Comment 3: Victor argues that the Department should not have calculated Victor's home market and U.S. direct credit expenses, but should have used the information it submitted.

Department's Position: We did not use Victor's direct credit expense figures because they were incorrectly calculated. It is our normal practice to use monthly accounts receivable balances rather than beginning and ending balances for the review period, because examining only these two daily balances is not likely to present as accurate an accounting of a firm's direct credit expenses of the entire review period. A noted in *Comment 2*, use of balances from only the beginning and end of the review period might lead to distorted results because two daily balances do not capture normal fluctuations in accounts receivable balances. Therefore, in lieu of using Victor's average accounts reeceivable balances to calculate the direct credit expense. We deducted the resulting direct credit expense from FMV and U.S. price, as applicable.

Comment 4: Victor argues that the Department's calculation of U.S. inventory carrying costs should be based on landed costs of the merchandise, rather than unit resale prices.

Department's Position: We agree. U.S. inventory carrying costs should be calculated on the landed costs of the merchandise, rather than the unit resale prices, because the merchandise is valued while in inventory at landed costs. Therefore, in these final results we have calculated U.S. inventory carrying costs based on landed costs.

Comment 5: Victor argues that the Department should adjust both home market resale prices, and U.S. resale prices, for discounts and cash rebates, for the purpose of calculating direct credit expenses.

Department's Position: We agree in part. For the purpose of calculating direct credit expenses, we adjusted home market resale prices and U.S. resale prices for those discounts and cash rebates which were granted before or by the date of sale. We did not adjust U.S. resale prices for Volume Incentive Rebates or Extra Profit Incentive Programs, nor did we adjust home market resale prices for Discount for Employees to Establish Independent Retail Outlets, Victor Shop Rebates, general volume incentive rebates, and Color Television Incentive Rebates, because Victor only granted them when the customer had met conditions which could only have occurred after the sale date. Therefore, for these discounts and rebates which were granted after the sale date, we did not adjust the U.S. and home market resale prices for the purpose of calculating direct credit expenses, since Victor incurred a credit cost on full sale prices.

Comment 6: Victor claims that its U.S. subsidiary included time on the water in its reported time in inventory. Therefore, it argues that the Department's separate adjustment for imputed credit expenses, or the credit expenses incurred for time on the water, should be omitted in these final results.

Department's Position: We agree and have ensured a single deduction of imputed credit expenses from U.S. prices in these final results.

Comment 7: Victor argues that the Department should deduct certain movement and direct selling expenses from its general expenses (GE) when calculating constructed value (CV).

Department's Position: We agree in part. In these final results in calculating CV, we have deducted brokerage, handling, and inland freight from general expenses. We also made deductions for the following direct selling expenses because they were included in the GE which we used to calculate CV: Warranty expenses, advertising and sales promotion expenses, and royalties. However, we did not make Victor's requested adjustment to CV for U.S. direct selling

expenses, because we had already deducted them from U.S. price.

Comment 8: Victor argues that the Department added home market packing twice to CV.

Department's Position: We agree. Victor included its cost of packing in the cost of manufacture. Accordingly, in these final results we removed the double counting of packing to CV.

Final Results of the Review

As a result of the comments received and the correction of certain clerical errors, we have revised our preliminary results for Victor, and we determine the margins to be:

Manufacturer/ Exporter	*Review No.*	*Period of review*	*Margin (%)*
Victor	5	8/19/83-3/31/84	0.01
Victor	6	4/01/84-2/28/85	2.79
Victor	7	3/01/85-2/28/86	0.90

The Department will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 35.40 percent, based on the margin for Victor in the eleventh review, covering the period from March 1, 1989 through February 28, 1990, will be required for Victor. For any shipments of this merchandise manufactured by Funai, Fujitsu General, Hitachi, Matsushita, Mitsubishi, NEC, Sanyo, Seiko Epson, Sharp, or Toshiba, the case deposit will continue to be the same as the rates published in the final results of the administrative reviews for these firms (56 FR 5392, February 11, 1991). Since these reviews cover periods which have been superceded by more recent reviews, the rates in this notice do not affect the cash deposit rate for any firm.

These administrative reviews and notices are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce Regulations (19 CFR 353.22).

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-12775 Filed 5-29-91; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Determination: Certain Welding Quality Continuous Cast Steel Billets

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of short-supply determination on certain welding quality continuous cast steel billets.

SHORT-SUPPLY REVIEW NUMBER: 48.

SUMMARY: The Secretary of Commerce ("Secretary") hereby grants short supply for 10,000 metric tons of certain welding quality continuous cast steel billets for May–June 1991 under article 8 of the U.S.-Finland steel arrangement.

EFFECTIVE DATE: May 23, 1991.

FOR FURTHER INFORMATION CONTACT: James Rice or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230 (202) 377-2667 or (202) 377-0159.

SUPPLEMENTARY INFORMATION: On April 23, 1991, the Secretary of Commerce ("Secretary") received an adequate short-supply petition from American Steel and Wire Corporation ("ASW") for 10,000 metric tons of certain welding quality continuous cast steel billets for May–June 1991. ASW requested short supply because it alleges no domestic producer can meet its specifications for the product and its potential Finnish supplier has exhausted its regular export license allocation. This request is made under article 8 of the Arrangement Betweeen the Government of Finland and the Government of the United States of America Concerning Trade in Certain Steel Products ("the U.S.-Finland steel arrangement"). The Secretary conducted a short-supply review on this product, pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1866 (1989) ("the Act"), and § 357.102 of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.102 ("Commerce's Short-Supply Procedures").

The requested grades and physical specifications are as follows:

Grade/Quantity requested:

70S-3	2,700	metric tons
70S-6	6,300	metric tons
ER70S-7	1,000	metric tons
Total	10,000	metric tons

Cross-section: 130mm (± 2mm);
Length: 9.4M–10.3M (no shorts);
Twist: 5 degrees maximum over length of billet;
Straightness: 13mm maximum out-of-straight in any 1.5m, 76mm maximum out-of-straight over billet length;
Ends: Perpendicular to longitudinal axis. Tapered cuts are unacceptable. Mushroomed ends must not exceed 6mm per side. No open or split ends. Detachable saw burrs, fins, or shear lips must be minimized;
Surface: Billet must be commercially free of cracks, mechanical defects and other melting/casting type surface discontinuities. Pinhole defects shall not exceed 2mm in depth;
Squareness: Rhomboid sections with uneven diagonals more than 8mm are unacceptable;
Corner Radius: 6mm (± 2mm);
Cast: Must be continuous (direct) cast billets;
Other: Must be B.O.F. steel.

On April 24, 1991, the Secretary established an official record on this short-supply request (Cast Number 48) in the Central Records Unit, room B-099, Import Administration, U.S. Department of Commerce, at the above address. A notice of this short-supply review and request for comments was published in the **Federal Register** (56 FR 19983) on May 1, 1991. Questionnaires were sent to the following eight companies on April 24, 1991: Bethlehem Steel Corporation ("Bethlehem"), Georgetown Steel Corporation ("Georgetown"), Inland Steel Industries ("Inland"), North Star Steel Texas, Inc. ("North Star") Raritan River Steel Company ("Raritan"), Republic Engineered Steels ("Republic"), the Timken Company ("Timken"), and USS/Kobe Steel Company ("USS/Kobe"). Responses to the questionnaries were due no later than May 3, 1991. All comments to the **Federal Register** notice by interested parties were due no later than May 8, 1991, and replies to those comments were to be filed no later than May 13, 1991.

Questionnaire Responses: The Department received adequate questionnaire responses from six of the eight parties to which it sent questionnaries. Raritan and North Star did not respond. Timken indicated that it does not have the capability to produce this size billet meeting ASW's specifications. Inland stated that it could not produce the grades requested by ASW. Georgetown indicated that they are currently in the process of becoming a "qualified supplier" to ASW for these billets, but that they could not supply ASW until the third quarter of 1991 at the earliest. Georgetown also noted that they are working with ASW's two

customers, L-TEC Welding and Cutting Systems ("L-TEC") and National Standard Corporation ("National Standard"), to supply them with wire rod in the three noted grades. Bethlehem, Republic, and USS/Kobe indicated they could supply the entire 10,000 metric tons, meeting ASW's specifications, with the exception that it would be ingot cast. In addition, Republic admitted that to meet the 31-34 foot length requirement, it would have to "double convert" its ingots.

The Department also received comments from L-TEC and National Standard specifying that the billets must be continuous cast. L-TEC stated that "when, on our purchase orders to ASW we specify Dalsbruk billets, it is understood that we require direct billet cast steel." National Standard stated that the billets they require "must be direct cast material for our welding application."

ASW submitted comments to the questionnaire responses on May 10, 1991. These comments addressed the questionnarie responses of Bethlehem, Republic, and USS/Kobe.

ASW stated that Bethlehem cannot provide direct cast billets, nor could they report product analysis at the beginning and end of a cast, as the specifications dictate. Instead, according to ASW, Bethlehem can only report their heat ladle analysis. Regarding Republic's questionnaire response, ASW simply stated that Republic "clearly cannot meet our specification" regarding billet length or direct casting. ASW acknowledged that USS/Kobe did provide ASW with trial ingot casts of 70S-6 and ER70S-7, but that the results of this trial were not acceptable. ASW also stated that USS/Kobe is not interested in purchasing 130mm molds to cast these billets.

Analysis: The key issue in this short-supply review is the reasonableness of ASW's specification that the requested material be direct or continuous cast. Three domestic producers stated that they could generally meet all of ASW's specifications for this product, except that the material would be ingot cast. ASW's specifications, and the supporting comments submitted by L-TEC and National Standard, indicate that the mateiral must be direct cast. In this case, the direct casting requirement is dictated by ASW's customers, and ASW has a history of purchasing only direct cast billets meeting these specifications. The House Report to the Steel Trade Liberalization Act addresses both of these issues in deciding whether specifications should be considered reasonable. Regarding the necessity of ASW to follow the specifications of its customers, the House Report states that the Secretary should be "sensitive to the position of certain manufacturers who purchase steel for the production of an intermediate product under specifications prescribed by another unrelated manufacturer who uses the intermediate product in the production of a new and different product." H.R. No. 263, 101st Cong., 1st Sess. 15 (1989). Moreover, the Secretary is urged "to be particularly sympathetic to the needs of such steel purchasers to acquire steel with those particular specifications in order to be able to supply its own customers." *Id.* In addition, Dalsbruk has supplied ASW with substantial quantities of direct cast welding quality billets since 1989, and the House Report states that "if the petitioner has been purchasing the same steel product for the same end use, with the same requested specifications from all its sources for a significant period of time, then such specifications should be considered reasonable." *Id.* at 14.

Conclusion: Since ASW's requirement that these billets be direct cast is specified by ASW's customers and since ASW has been purchasing this product since 1989, the Secretary must consider the specification to be reasonable. No domestic suppliers of welding quality steel billets are able to produce this material meeting the direct cast specification. Therefore, the Secretary determines that short-supply exists with respect to this requested product. Pursuant to section 4(b)(4)(A) of the Act, the §357.102 of Commerce's Short-Supply Procedures, the Secretary grants a short-supply allowance for 10,000 metric tons of the requested billets for May-June 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-12776 Filed 5-29-91; 8:45 am]

BILLING CODE 3510-DS-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review of Final Determination in the Scope Exclusion Request made by the Department of Commerce, International Trade Administration, Import Administration, respecting Oil Country Tubular Goods from Canada, filed by The Algoma Steel Corporation, Limited with the United States Section of the Binational Secretariat on May 16, 1991.

SUMMARY: On May 16, 1991, The Algoma Steel Corporation, Limited, filed a Request for Panel Review with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the Final Determination in the Scope Exclusion Request respecting Oil Country Tubular Goods from Canada made by the International Trade Administration, Import Administration, Import Administration File Number A-122-506. The Binational Secretariat has assigned Case Number USA-91-1904-01 to this Request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The panel review in this matter will be conducted in accordance with these Rules.

Rule 35(2) requires the Secretary of the responsible Section of the FTA Binational Secretariat to publish a notice that a first Request for Panel Review has been received. A first Request for Panel Review was filed with the United States Section of the Binational Secretariat, pursuant to Article 1904 of the Agreement, on May

16, 1991, requesting panel review of the final determination described above.

Rule 35(1)(c) of the Rules provides that:

(a) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is June 17, 1991);

(b) a Party, investigating authority or interested person that does not file a Complaint may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is July 1, 1991); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: May 24, 1991.

Caratina L. Alston,

Deputy U.S. Secretary, FTA Binational Secretariat.

[FR Doc. 91-12713 Filed 5-29-91; 8:45 am]

BILLING CODE 3510-GT-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Language Institute Board of Visitors

AGENCY: Defense Language Institute Foreign Language Center.

ACTION: Notice of meeting.

SUMMARY: The Defense Language Institute Board of Visitors will hold a semi-annual open meeting at the Defense Language Institute Foreign Language Center, Presidio of Monterey, California.

DATES: August 27-28, 1991.

ADDRESSES: Those desiring to attend should contact Dr. Martha Herzog, Commandant, Defense Language Institute, ATTN: ATFL-DIC, Presidio of Monterey, California 93944-5006, for further details.

Dated: May 23, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-12672 Filed 5-29-91; 8:45 am]

BILLING CODE 3810-01-M

Joint Defense Policy Board/Defense Science Board Task Force on Nonstrategic Nuclear Forces

ACTION: Notice of Task Force Meeting.

SUMMARY: The Joint Defense Policy Board/Defense Science Board Task Force on Nonstrategic Nuclear Forces will meet in closed session on June 12-13, 1991 from 0900 until 1700 at 2560 Huntington Avenue (suite 500), Alexandria, VA 22303.

The mission of the Joint Defense Policy Board/Defense Science Board Task Force is to provide the Secretary of Defense, Deputy Secretary of Defense, Under Secretary of Defense for Policy and the Under Secretary of Defense for Acquisition with independent, informed advice and opinion concerning major matter relating to nonstrategic nuclear force policy and acquisition. At the meeting the Task Force will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this Joint Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: May 23, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 91-12673 Filed 5-29-91; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Low Observable (LO) Technology

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Low Observable (LO) Technology will meet in closed session on June 12-13, July 23-24, and September 12-13, 1991 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will handle all Defense Science Board activity associated with LO technology and Counter Low Observable (CLO) technology.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92-463, as amended (5 U.S.C. app. II (1988)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: May 23, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-12674 Filed 5-29-91; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Review of the B-2

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Review of the B-2 will meet in closed session on June 20, 1991 in Seattle, Washington, and on June 21, 1991 at the Northrop Corporation, Pico Rivera, California.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will review the B-2 program with emphasis on the flight test program and reductions of program costs.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. App. II, (1988)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c) (1) (1988), and that accordingly these meetings will be closed to the public.

Dated: May 23, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-12675 Filed 5-29-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by June 14, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addresed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting and/or Recordkeeping burden and (6) Abstract. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: May 23, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Expedited.

Title: Public Libraries Data Collection—Federal-State Cooperative System (FSCS).

Abstract: The FSCS is an annual census of the status of 9000 public libraries, with data aggregated at the regional, state, and national levels. Federal, State and local officials use the data for evaluation, planning, monitoring, budgeting, administration and policy.

Additional Information: An expedited review is requested because this data collection has been done in the past two years and the data for this fiscal year is due to the Department in July, 1991. This data collection was developed with significant State involvement. In fiscal year (FY) 1989, the data collection has a 100% response rate and participation by States is voluntary. However, this information collection has never received OMB approval. The importance of this data collection cannot be overstated. If these data are not collected, there would be no current, national data on the status of and rapid changes in the public libraries. In order to continue to obtain national data in a timely manner for this fiscal year, the Department is requesting an expedited review.

Frequency: Annual.

Affected Public: State or local governments.

Reporting Burden:
Responses: 51.
Burden Hours: 1224.

Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.

BILLING CODE 4000-01-M

DRAFT

U.S. DEPARTMENT OF EDUCATION

NATIONAL CENTER FOR EDUCATION STATISTICS

PUBLIC LIBRARIES DATA COLLECTION - FEDERAL-STATE COOPERATIVE SYSTEM

(FSCS)

FY 1991 COLLECTION

STATE LIBRARIAN AUTHORIZATION OF FSCS

These data for the state of _____ have been compiled by our State's FSCS data coordinator, who has performed the required editing functions.

I hereby authorize, that to the best of my knowledge and belief, this submission of these data to NCES constitutes our State's data.

_____
State Librarian's Name

_____
State Librarian's signature and date of signature

Dear Chief Officer:

The National Center for Education Statistics (NCES) of the U.S. Department of Education requests your participation in the 1991 Public Libraries Data Collection - Federal-State Cooperative System (FSCS). Your State is one of 50 States and the District of Columbia from whom we are requesting these data. NCES is authorized to collect these data by the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988 (PL 100-297).

FSCS is an annual census of the status of the nation's nearly 9000 public libraries. Your participation will not only result in the availability of data at the local public library level, but will enable NCES to aggregate these data at the regional, state, and national levels. FSCS provides descriptive information about public libraries, including, staffing, revenues, expenditures, circulation, size of collection, hours of operation, and use by the public. Recently you were mailed a copy of "Public Libraries in 50 States and the District of Columbia: 1989" which contains data from the 1990 FSCS.

State library agencies' 100% response rate for the 1990 FSCS collection is one indication of your commitment to FSCS. In fact, FSCS has been cited as a model of State/Federal cooperation, and I would like to thank you for your contribution to making that possible.

FSCS has been the first national NCES data collection to be collected, edited, and tabulated completely in machine readable form. This technology was developed to keep the overall response burden to a minimum, an average of 24 hours per state.

June and July are designated as the FSCS data collection months. Your FSCS Coordinator serves as NCES' contact for data collection in your State and mailings of diskettes and instructions for the collection go directly from NCES to the Coordinators. As in the past, NCES staff will work cooperatively with your coordinator to ensure the quality and timeliness of data for each State, and therefore the integrity of the national totals. Submissions are due to NCES by July 31, 1991.

Beginning with this data collection, we have introduced a Chief Officer sign-off, giving you the opportunity to authorize your State's submission (Attachment). Your Coordinator will request your signature prior to submitting the data.

Technical assistance for your State's submission is available from NCES. If you anticipate needing such assistance, please notify Carrol Kindel as soon as possible at NCES (202) 219-1371. Ron Hall, Acting Associate Commissioner for Postsecondary Education Statistics, and Carrol are also available to answer any other

questions vou may have regarding this data collection.

Public reporting burden for this collection of information is estimated to average 24 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Please send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington D.C. 20202-4651; and to the Office of management and Budget, Paperwork Reduction Project 1850-NEW, Washington, D.C. 20503.

I thank you for your cooperation in this very important effort.

Sincerely,

Emerson J. Elliott
Acting Commissioner

DRAFT

[FR Doc. 91-12685 Filed 5-29-91; 8:45 am]
BILLING CODE 4000-01-C

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 July 1, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, 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 Mary P. Liggett at the address specified above.

Dated: May 23, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: New.
Title: Title VII Data Collection and Evaluation System, Development Bilingual Education Grants Program.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden:
Responses: 26.
Burden Hours: 3,120.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will collect factual and relevant evaluation information regarding the Developmental Bilingual Education Program. The Department will use this information to document the programs achievement and effectiveness, and to research and improve the effectiveness of the program.

Office of Educational Research and Improvement

Type of Review: Extension.
Title: Final Performance Report for HEA title II-B, Final Performance Report for HEA title II-C.
Frequency: Annually.
Affected Public: Non-profit institutions.
Reporting Burden:
Responses: 80.
Burden Hours: 320.
Recordkeeping Burden:
Recordkeepers: 80.
Burden Hours: 80.
Abstract: This form is used to determine the use of grant funds awarded by the Library Career Training Program. The Department uses the information to evaluate project performance.

Office of Vocational and Adult Education

Type of Review: Revision.
Title: Application for Vocational and Adult Education Direct Grant Programs.
Frequency: Annually.
Affected Public: Individuals or households; state or local governments; non-profit institutions.
Reporting Burden:
Responses: 1032.
Burden Hours: 92,880.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used to apply for funds under Vocational and Adult Education direct grant programs. The Department uses the information to make grant and cooperative agreement awards.

[FR Doc. 91-12683 Filed 5-29-91; 8:45 am]
BILLING CODE 4000-01-M

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by June 24, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., new, revision, extension,

existing, or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting and/or Recordkeeping burden and (6) Abstract. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: May 24, 1991.

Mary P. Liggett,

Acting Director, Resources Management.

Office of Special Education and Rehabilitative Services

Type of Review: Expedited

Title: Application for Grants Under Disability and Rehabilitation Research.

Abstract: This form will be used by State Educational agencies to apply funding under the Disability and Rehabilitation Research program.

Additional Information: An expedited review is requested in order to keep the grant awards under the Program of Disability and Rehabilitation Research in FY 1991. This application contains Part II of the Budget Information, Standard Form 424 (Application for Federal Assistance), Standard Form 424B (Assurances), Lobbying Certifications, Debarment Certifications, Drug-Free Certifications, and Lobbying Activities Disclosures. There are no proposed changes to the instructions for the program narrative.

Frequency: Annually

Affected Public: State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.

Reporting Burden:
Responses: 800.
Burden Hours: 16,000.

Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.

BILLING CODE 4000-01-M

INSTRUCTIONS FOR COMPLETION OF PART III

NATIONAL INSTITUTE ON DISABILITY AND REHABILITATION RESEARCH

PROJECT NARRATIVE FOR NEW AND CONTINUATION APPLICATIONS

Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U. S. Department of Eduction, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820-0027, Washington, D. C. 20503.

The successful narrative should include the basic information described below and, excluding resumes of key personnel, should be limited to:

* 100 pages for applications for Rehabilitation Research and Training Centers, Rehabilitation Engineering Centers, and Special Projects and Demonstrations for Spinal Cord Injury

* 40 pages for application under the Research and Demonstrations Projects, Knowledge Dissemination and Utilization Projects, and Field-Initiated Research programs

* 20 pages for applications under the Innovation Grants program

* 12 pages, which is the regulatory limit, for applications under the Fellowship Program

Should the proposed project be funded, the information provided in the "project narrative' will form the basis for evaluating progress for continuation funding. The narrative for continuation applications must include the accomplishments, unanticipated obstacles and future plans of the project. The applicant must also revise budget statements for the program. Please refer to 34 CFR 75.118(b)

The narrative for new applications may be organized under the major headings in the regulations governing the specific programs. The applicant must respond to the selection criteria for each program listed below.

Research and Demonstration Projects - 34 CFR 351. Selection

Page 2.

criteria for this program can be found in 34 CFR 350.34.

Rehabilitation Research and Training Centers - 34 CFR 352.31.

Rehabilitation Engineering Centers - 34 CFR 353.31.

Rehabilitation Research and Training Centers - 34 CFR 354. Selection criteria for this program can be found in 34 CFR 350.34.

Research Fellowships Program - 34 CFR 356.30.

Field-Initiated Projects - 34 CFR 357.32

Innovation Projects - 34 CFR 358.32.

Special Projects and Demonstrations for Spinal Cord Injuries - 34 CFR 359.31.

Research Training and Career Development Program - 34 CFR 360.31.

Americans with Disabilities Program - 34 CFR 355. Selection criteria for this program can be found in 34 CFR 350.34 as amended by the supplemental selection criteria contained in the FY '91 priorities related to this program.

DRAFT

[FR Doc. 91-12717 Filed 5-29-91; 8:45 am]
BILLING CODE 4000-01-C

[CFDA No: 84.217]

Ronald E. McNair Post-Baccalaureate Achievement Program; Inviting Applications for New Grants for Fiscal Year 1991

Purpose of Program: The purpose of this program is to provide grants to enable institutions of higher education to prepare low-income, first-generation college students, and students from groups underrepresented in graduate education, for doctoral study. Projects assisted under this program may provide, at the undergraduate and graduate levels, services such as—(1) Opportunities for research or other scholarly activities; (2) summer internships; (3) seminars and other educational activities designed to prepare students for doctoral study; (4) tutoring; (5) academic counseling; and (6) activities designed to assist participants in securing admission to and financial assistance for enrollment in graduate programs.

Eligible Applicants: Institutions of higher education are eligible to receive grants under this program.

Deadline for Transmittal of Applications: July 15, 1991.

Deadline for Intergovernmental Review: September 13, 1991.

Applications Available: May 30, 1991.

Available Funds: $1,400,000.

Estimated Range of Awards: $80,000—$120,000 per year.

Estimated Average Size of Awards: $116,000.

Estimated Number of Awards: 10–12.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85 and 86.

The Secretary uses the selection criteria published under § 75.210 of EDGAR. The Secretary assigns the fifteen points reserved in § 75.210(c) as follows: 10 points to selection criterion (3)—Plan of operation—in § 75.210 (3) for a total of 25 points for that criterion; 3 points to selection criterion (4)—Quality of key personnel—in § 75.210 (4) for a total of 10 points for that criterion; and 2 points to selection criterion (7)—Adequacy of Resoruces—in § 75.210 (7) for a total of 5 points for the criterion.

For Applications or Information Contact: May J. Weaver, U.S. Department of Education, 400 Maryland Avenue, SW., room 3060, ROB #3, Washington DC 20202–5249. Telephone: (202) 708–4804. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–80–877–8339 (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. 1070d–1b(d).

Dated: May 15, 1991.

Michael J. Farrell,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 91–12684 Filed 5–29–91; 8:45 am]

BILLING CODE 4000–01–M

Student Financial Aid Programs In Which Race, Color or National Origin Is a Factor

AGENCY: Department of Education.

ACTION: Notice of request for comments.

SUMMARY: The Assistant Secretary is publishing this notice of Request for Comments (notice) to solicit from all interested parties written comments on student financial aid programs in which race, color, or national origin is a factor and, in particular, the constraints, if any, that title VI of the Civil Rights Act of 1964, 42 U.S.C. 200d, imposes on those programs. These comments are intended to provide the Secretary and the Assistant Secretary with the most comprehensive information possible on this issue, including information on the nature and extent of the financial aid programs, the reasons underlying the programs, the limitations that may be imposed on the programs by title VI, and the feasibility of alternative methods of promoting higher education opportunities for members of minority groups.

SUPPLEMENTARY INFORMATION: Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color and national origin in programs and activities that receive Federal financial assistance. Title VI applies to the financial aid programs of colleges and universities that receive Federal funds. Some of these programs or specific assistance plans administered thereunder take race or national origin into account in the award of financial aid.

This notice asks questions about different types of financial aid programs that consider race or national origin as a factor in the award process. One type of financial aid program is a "minority-limited" financial aid program. This means any scholarship, fellowship, loan, work-study, or other financial aid program in which eligibility requirements include membership in a particular racial or national origin group, thereby excluding individuals of other racial or national origin groups from eligibility for that particular program. Factors such as academic merit or financial need may also be a consideration in determining who will receive financial aid, but the program nonetheless is available only for members of a certain racial or national origin group.

Another type of program referred to in the notice is a "plus" program. This means a financial aid program open to students of all races and national origin groups, but under which a student's membership in a particular racial or national origin group is considered to be a positive or "plus" factor in the selection process.

All inquiries in this notice referring to "colleges or universities" refer to all postsecondary institutions that are extended Federal financial assistance.

Inquiries for Public Comment

1. Are students of particular races or national origin groups who desire to attend college, or to pursue a particular profession requiring postsecondary education, being denied the opportunity due to financial reasons? If so, what is the nature and extent of that denial and how can it best be addressed?

2. What types of minority-limited financial aid programs exist today? How many dollars are available in those programs on an annual basis? How many students are aided? What are the reasons for limiting the aid to members of particular races or national origin groups? What are the reasons for selecting particular races or national origin groups as the ones eligible for the aid?

3. Should financial aid programs be analyzed for consistency with title VI in the same way as the Supreme Court analyzed admissions in *Regents of the University of California* v. *Bakke*, 438 U.S. 265 (1978)? In *Bakke*, the Court held that a university's setting aside of certain medical school admission slots for minorities violated title VI, but that the school could lawfully consider race as a "plus" factor in an individual's file (considered along with other objective and subjective factors) in order to promote a diverse student body contributing to a robust exchange of ideas. Should the same line be drawn regarding financial aid? Are there any material differences between admissions programs and financial aid programs that would make financial aid programs outside the scope of *Bakke*?

4. Is it consistent with title VI for a college or university to establish, award, administer, solicit, list, approve, or provide facilities or other services for, a minority-limited financial aid program?

Does it depend on whether the program is funded by a private source that has imposed the limitation to members of specified races or national origin groups? Does it depend on the circumstances giving rise to and the rationales for the minority-limited aid programs? If so, what are the circumstances (e.g., court order, desegragation plan of the Office for Civil Rights of the Department of Education, underrepresentation at the particular institution, underrepresentation in specific professions) and rationales rendering some programs lawful?

5. Do minority-limited financial aid programs funded out of an institution's own unrestricted funds have an adverse effect on non-minority students' financial aid opportunities? If not, why not? If so, can the effect be quantified or estimated? Is any adverse effect eliminated at those colleges and universities that commit to meeting the demonstrated financial needs of all their students?

6. Could the objectives of minority-limited programs be achieved through race-neutral programs focused on students who are disadvantaged economically, educationally or in some other respect? If not, why not? Could the objectives be achieved through plus financial aid programs? If not, why not?

7. What standards should be applied in determining whether particular minority-limited financial aid programs are consistent with title VI?

8. If any existing financial aid programs in which race, color or national origin is a factor are determined to be inconsistent with title VI, what steps should the Department take to bring institutions into compliance with title VI, without harming students?

9. Please advise the Department of any other information or views concerning minority-limited or plus programs that you believe the Department should consider.

DATES: All comments should be received on or before July 15, 1991. Comments will be available for public inspection at the offices of the Office for Civil Rights, at the address listed below.

ADDRESSES: Written comments and requests for further information should be sent to: Jeanette J. Lim, Acting Director, Policy Development Division, Office for Civil Rights, U.S. Department of Education, 330 C Street SW., Washington, DC 20202. Telephone (202) 732-1637. Individuals who are hearing-impaired may call (202) 732-1663 for TDD services.

Authority: 42 U.S.C. 2000d.

Dated: May 23, 1991.

Michael L. Williams,

Assistant Secretary for Civil Rights.

[FR Doc. 91-12719 Filed 5-29-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Task Force on the Department of Energy National Laboratories; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, as amended), notice is hereby given of the following advisory committee task force meeting:

Name: Secretary of Energy Advisory Board Task Force on the Department of Energy National Laboratories.

Date and Time: Monday, June 24, 1991, 8:30 a.m.-5 p.m.

Contact: Dr. E. Fenton Carey, Designated Federal Officer, 1000 Independence Avenue SW., Washington, DC 20585, Telephone: (202) 586-7092.

Purpose: The Task Force will provide advice to the Secretary of Energy on the research, development, energy, and national defense responsibilities, activities, and operations of the Department of Energy's (DOE) National Laboratories and the Department's management of those laboratories.

Tentative Agenda

Monday, June 24, 1991.

8:30 a.m. Closed Meeting to discuss national security issues relating to the future roles and mission of the DOE weapons laboratories.

5 p.m. Adjourn.

Closed Meeting: Pursuant to section 10(d) of the Federal Advisory Committee Act, Public Law 92-463, as amended (5 U.S.C. App.), and 42 U.S.C. 7234(b), the meeting will be closed to the public in the interest of national security.

Issued: Washington, DC, on: May 23, 1991.

Edwin F. Inge,

Deputy Advisory Committee Management Officer.

[FR Doc. 91-12785 Filed 5-29-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP88-28-000, et al.]

Nora Transmission Company, et al.; Natural Gas Certificate Filings

May 21, 1991.

Take notice that the following filings have been made with the Commission:

1. Nora Transmission Co.

[Docket No. CP88-28-009]

Take notice that on May 14, 1991, Nora Transmission Company (Nora), 3500 Park Lane, Pittsburgh, Pennsylvania 15275, filed in Docket No. CP88-28-009 a request pursuant to section 7(c) of the Natural Gas Act to amend the order issued October 26, 1989, in Docket No. CP88-28-003, as amended, to extend the authorized term of an interruptible transportation service for an additional year, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Nora states that it is currently authorized to transport up to 10,000 Mcf of natural gas per day on an interruptible basis, for Equitable Resources Exploration, a division of Equitable Resources Energy Company (EREX) for a term expiring on October 22, 1991. Nora proposes to extend the authorization for an additional year. No other changes are proposed.

Comment date: June 11, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Columbia Gas Transmission Corp.
Columbia Gulf Transmission Co.
Columbia Gulf Transmission Co.
Southern Natural Gas Co.

[Docket Nos. CP91-2078-000, CP91-2079-000, CP91-2080-000, CP91-2081-000]

Take notice that on May 17, 1991, Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicants' addresses and transportation blanke

[1] These prior notice requests are not consolidated.

certificates are shown in the attached appendix B.

Comment date: July 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2078-000 (5-17-91)	Manville Sales Corporation (End-user).	1,300 1,040 474,500	Various	Various	3-15-91, ITS Interruptible.	ST91-8640-000, 3-10-91.
CP91-2079-000 (5-17-91)	Kerr-McGee Corporation (Producer).	40,000 10,000 3,650,000	OTX	OTX	2-1-91, ITS-2, Interruptible.	ST91-8460-000, 4-4-91.
CP91-2080-000 (5-17-91)	Catex Energy, Inc. (Marketer).	100,000 15,000 5,475,000	OLA	LA	4-1-91, ITS-2, Interruptible.	ST91-8457-000, 4-6-91.
CP91-2081-000 (5-17-91)	Shell Gas Trading Company (Marketer).	60,000 60,000 21,900,000	OTX, OLA, TX, LA, MS, AL.	SC	3-14-91, IT, Interruptible.	ST91-8591-000, 3-19-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

Applicant's address	Blanket docket
Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314	CP86-240-000.
Columbia Gulf Transmission Company, P.O. Box 683, Houston, Texas 77001	CP86-239-000.
Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202-2563	CP88-316-000.

3. Panhandle Eastern Pipe Line Co.

[Docket No. CP91-2041-000]

Take notice that the above referenced company (Applicant) filed in the respective docket a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of a shipper under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice request which is on file with the Commission and open to public inspection.[2]

Information applicable to the transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket number and initiation date of the 120-day transaction under § 284.223 of the Commission's Regualtions has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the servie for the shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule.

Comment date: July 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (dated filed:	Applicant	Shipper name	Peak day,[1] average annual	Points of		Start up date, rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-2041-000 5-17-91 [3]	Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, TX, 77251-1642.	Kal Kan Foods, Inc.	700 700 255,500	Co, KS, MI, OH, OK, TX, WY.	Il	12-1-89, PT-1	CP86-585-000, ST91-8425-000.

[1] Quantities are shown in Dt. unless othewise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.
[3] The request was tendered for filing on May 14, 1991, however, the fee required by Section 381.208 of the Commission's Rules was not paid until May 17, 1991. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

4. Trunkline Gas Co. et al.

[Docket Nos. CP91-2043-000, CP91-2044-000, CP91-2045-000, CP91-2046-000]

Take notice that the above referenced company (Applicant) filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed

[3] These prior notice requests are not consolidated.

transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: July 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Applicant	Shipper name	Peak average, day, annual [1]	Points of		Start up date rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-2043-000 5-15-91	Trunkline Gas Company, P.O. Box 1642, Houston, TX 77251-1642.	Citizens Gas Supply Corporation.	200,000 100,000 40,000,000	TX, IL, LA, TN, Off LA, Off TX.	LA	4-10-91 PT-I	CP86-586-000, ST91-8394-000.
CP91-2044-000 5-15-91	Trunkline Gas Company, P.O. Box 1642, Houston, TX 77251-1642.	Clinton Gas Transmission, Inc.	5,000 5,000 1,825,000	TX, IL, LA, TN, Off LA, Off TX.	IL	4-1-91, PT-I	CP86-586-000, ST91-8387-000.
CP91-2045-000 5-15-91	Trunkline Gas Company, P.O. Box 1642, Houston, TX 77251-1642.	Panhandle Trading Company.	25,000 25,000 9,125,000	Off LA, IL, LA, TN, TX, Off TX.	KY	4-4-91, PT-I	CP86-586-000, ST91-8390-000.
CP91-2046-000 5-15-91	Trunkline Gas Company, P.O. Box 1642, Houston, TX 77251-1642.	Access Energy Corporation.	60,000 60,000 21,900,000	LA, TX, IL, TN, Off LA, Off TX.	IL	4-1-91, PT-I	CP86-586-000, ST91-8393-000.

[1] Quantities are shown in Mcf unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date 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.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12700 Filed 5-29-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10959-001—Georgia]

Clinton Pumped Storage Corp.; Surrender of Preliminary Permit

May 22, 1991.

Take notice that the Clinton Pumped Storage Corporation, permittee for the Lynn Mountain Project, located on Brandy Brook, in Clinton County, New York, has requested that its preliminary permit be terminated. The preliminary permit was issued on October 29, 1990, and would have expired on September 30, 1993. The permittee states that the proposed project would not be economically feasible.

The permittee filed the request on April 22, 1991, and the preliminary permit for Project No. 10959-000 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12690 Filed 5-29-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10935-001—Georgia]

Lynne B. Pyle and Hoke Thomas; Surrender of Preliminary Permit

May 22, 1991.

Take notice that Lynne B. Pyle and Hoke Thomas, permittees for the Lower Mulberry Creek Hydropower Project, located on Mulberry Creek, Harris County, Georgia, has requested that their preliminary permit be terminated. The preliminary permit was issued on August 16, 1990, and would have expired on July 31, 1993. The permittee states that the request is due to the death of one of the permittees.

The permittee filed the request on April 2, 1991, and the preliminary permit for Project No. 10935 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12691 Filed 5-29-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-3-22-002]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 21, 1991.

Take notice that CNG Transmission Corporation ("CNG"), on May 16, 1991, pursuant to section 4 of the Natural Gas Act ("NGA") and in compliance with Ordering Paragraph (C) of the May 1, 1991, order in this docket, filed the following revised tariff sheet to Volume No. 1 of CNG's FERC Gas Tariff:

Substitute Fourth Revised Sheet No. 31

The proposed effective date for this tariff sheet is March 1, 1991.

CNG states that the purpose of this filing is to amend CNG's last quarterly PGA filing to reflect the elimination of "as-billed" producer demand charges from the current ceiling rates. CNG also states that the filing does not affect the rates that CNG will actually charge pursuant to the interim filing made on February 22, 1991, in Docket No. TF91-2-22-000 and accepted by letter order of the Director issued March 5, 1991.

CNG states that copies of the filing were served upon CNG's customers as well as interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 29, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12687 Filed 5-29-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-6-22-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 22, 1991.

Take notice that CNG Transmission Corporation ("CNG"), on May 20, 1991, pursuant to section 4 of the Natural Gas Act, the Stipulation and Agreement approved by the Commission on October 6, 1989, in Docket Nos. RP88-217-000, et al., and section 12.9 of the General Terms and Conditions of CNG's FERC Gas Tariff, and Order Nos. 528 and 528-A, filed six (6) copies of the following revised and original tariff sheets to First Revised Volume No. 1 of CNG's FERC Gas Tariff:

Second Revised Sheet No. 45
Third Revised Sheet No. 45
Fourth Revised Sheet No. 53
First Revised Sheet No. 54
Original Sheet No. 55
Fourth Revised Sheet No. 211
Original Sheet No. 211A
First Revised Sheet No. 212A
Second Revised Sheet No. 212A

The proposed effective date for Second Revised Sheet No. 45 and First Revised Sheet No. 212A, is May 21, 1991. The proposed effective date for the remaining tariff sheets is June 20, 1991.

CNG states that the purpose of this filing is to flow through changes in take-or-pay costs allocated to CNG by two of its pipeline suppliers. CNG proposes in the filing to reflect the changes in the allocation of take-or-pay costs proposed by:

(1) Transcontinental Gas Pipe Line Corporation ("Transco") in its April 1, 1991, filing in Docket No. RP91-130. Transco's filing was accepted by the Commission on May 1, 1991. Also, CNG is proposing to flowthrough to its customers the take-or-pay charges in Transco's May 1, 1991 filing in Docket No. RP91-147.

(2) Texas Gas Transmission Corporation ("Texas Gas") in its April 10, 1991, filing in Docket No. RP91-134. Texas Gas's filing was accepted by the Commission on May 10, 1991.

CNG states that copies of the filing were served upon CNG's customers as well as interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, 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 May 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12695 Filed 5-29-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-123-001]

Canyon Creek Compression Co.; Changes in FERC Gas Tariff

May 22, 1991.

Take notice that on May 15, 1991, Canyon Creek Compression (Canyon) submitted for filing copies of the revised tariff sheets, listed on appendix A attached to the filing, to become effective May 1, 1991, in compliance with an order issued by the Commission on April 30, 1991.

Canyon states that the revised tariff sheets result in a rate decrease and reflect the elimination of (1) the $150,000 working capital allowance for Canyon's prepayment to its operator, (2) the $54,301 working capital allowance for interest on the ACA charge and (3) the efficiency adjustment of $142,612. Canyon further states that the revisions transform Canyon's filing from a rate increase to a rate decrease. Canyon states that it has also revised §§ 2.2(b) and 2.2(c) of Rate Schedules FCS and ICS, respectively, to provide for a thirty day notification procedure prior to suspension of service for nonpayment.

Canyon states that although the filing reflects elimination of the efficiency

adjustment, Canyon reserves its right to file for another efficiency adjustment in this proceeding, as contemplated by the Suspension Order. Canyon further reserves its right to raise in its rehearing, to be filed on or before May 30, 1991, issues which are, among other things, the subject of this compliance filing.

Canyon seeks any waivers which may be necessary to permit the tendered tariff sheets to take effect May 1, 1991.

Canyon states that copies of the filing have been mailed to Canyon's jurisdictional sales customers, interested state regulatory agencies, and all parties set out on the official service list in Docket No. RP91-123-000.

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 Rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12692 Filed 5-29-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-82-003]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 22, 1991.

Take notice that Columbia Gas Transmission Corporation (Columbia) on May 15, 1991, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective on March 4, 1991:

Second Substitute First Revised Sheet No. 76

Columbia states that the tariff sheet is being submitted pursuant to the provisions of Ordering Paragraph (B) of the Federal Energy Regulatory Commission's May 1, 1991 "Order Accepting Compliance Filing Subject to Conditions" in the above-referenced proceeding.

Columbia states that copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12696 Filed 5-29-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-136-020]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

May 21, 1991.

Take notice that on May 13, 1991, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to become effective on December 5, 1990:

Second Substitute Original Sheet No. 33
Second Substitute Original Sheet No. 41

National states that its filing is made in compliance with the Commission's letter order dated April 16, 1991 in the above-captioned proceeding. The Order rejected three tariff sheets for non-compliance with the Commission's Order of February 7, 1991, which required National to refile Rate Schedule FT and IT tariff sheets to treat extended FT and IT service as a continuation of service under which a shipper does not lose priority by the renewal or extension of the underlying service agreement. The Order further directed National to refile the attached tariff sheets to conform to the intent of the February 7, 1991 Commission Order.

National states that copies of this filing were served upon the Company's jurisdictional customers and the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

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 Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 29, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell

Secretary.

[FR Doc. 91-12688 Filed 5-29-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-155-000]

Northwest Alaskan Pipeline Co.; Tariff Changes

May 21, 1991.

Take notice that on May 16, 1991, Northwest Alaskan Pipeline Company ("Northwest Alaskan"), 295 Chipeta Way, Salt Lake City, Utah 84158-0900, tendered for filing in Docket No. RP91-155-000, Twenty-Eighth Revised Sheet No. 5 to its FERC Gas Tariff Original Volume No. 2.

Northwest Alaskan states that it is submitting Twenty-Eighth Revised Sheet No. 5 reflecting a decrease in total demand charges for Canadian gas purchased by Northwest Alaskan from Pan-Alberta Gas Ltd. ("Pan-Alberta") and resold to three of Northwest Alaskan's four U.S. purchasers, Northern Natural Gas Company ("Northern"), Panhandle Eastern Pipe Line Company ("Panhandle") and Pacific Interstate Transmission Company ("PIT") under Rate Schedules X-1, X-2, and X-4, respectively, and an increase in total demand charges to Natgas U.S. Inc. ("Natgas") under Rate Schedule X-3.

Northwest Alaskan states that it is submitting Twenty-Eighth Revised Sheet No. 5 pursuant to the provisions of the amended purchase agreements between Northwest Alaskan and Northern, Panhandle, Natgas and PIT, and pursuant to Rate Schedules X-1, X-2, X-3, and X-4, which provide for Northwest Alaskan to file 45 days prior to the commencement of the next demand charge period (July 1, 1991 through December 31, 1991) the demand charges and demand charge adjustments which Northwest Alaskan will charge during that period.

Northwest Alaskan requests that Twenty-Eighth Revised Sheet No. 5 become effective July 1, 1991.

Northwest Alaskan states that a copy of this filing has been served on Northwest Alaskan's customers.

Any person desiring to be heard or to protest said filing should file a petition 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. All such petitions or protests should be filed on or before May 29, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12689 Filed 5-29-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-94-007]

Trailblazer Pipeline Co.; Proposed Changes in FERC Gas Tariff

May 21, 1991.

Take notice that on May 9, 1991, Trailblazer Pipeline Company (Trailblazer) submitted for filing Eleventh Revised Sheet No. 4 of Original Volume No. 1 and Third Revised Sheet No. 4 of Original Volume No. 1A, to be a part of its FERC Gas Tariff. Trailblazer states that these sheets were submitted in compliance with the Federal Energy Regulatory Commission Order issued April 9, 1991 at Docket Nos. RP84-94-000, *et al.* (April 9 Order) and reflect the lower rates under a settlement approved by the Commission with modifications in the April 9 Order. Filing of these sheets reflects acceptance by Trailblazer of the settlement as modified by the April 9 Order. An effective date of June 1, 1991 is requested for these tariff sheets.

Trailblazer states that a copy of this filing was mailed to Trailblazer's customers, interested state regulatory agencies and all parties set out in the official service list at Docket No. RP84-94-000, *et al.*

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 rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 29, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12693 Filed 5-29-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-152-001]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 22, 1991.

Take notice that Williams Natural Gas Company (WNG) on May 17, 1991, tendered for filing Substitute Fourth Revised Sheet No. 9 to its FERC Gas Tariff, First Revised Volume No. 1 to be effective June 7, 1991.

WNG states that the above referenced tariff sheet is being filed to correct a typographical error on Fourth Revised Sheet No. 9 filed May 8, 1991.

WNG states that copies of its filing were served on all jurisdictional customers and interested state Commissions.

Any persons desiring to protect said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before May 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12694 Filed 5-29-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-40-005]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 22, 1991.

Take notice that Northern Natural Gas Company ("Northern") on May 20, 1991, tendered for filing an amendment to its November 30, 1990 filing proposing changes to its FERC Gas Tariff. Northern has requested that the proposed filing become effective July 1, 1991, instead of June 1, 1991, as proposed in its Amendment to its November 30, 1990 filing. Northern proposes no other changes to that filing.

Northern states that it seeks to postpone the effective date of its filing because a Settlement was filed with the Commission on March 1, 1991 and said Settlement will allow this docket to be concluded in an orderly manner.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12697 Filed 5-29-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-224-000, RP89-203-000, RP-139-000, and RP91-69-000]

Southern Natural Gas Co.; Informal Settlement Conference

May 22, 1991.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday May 30, 1991, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contract Betsy R. Carr at (202) 208-1240 or James A. Pederson at (202) 208-2158.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12698 Filed 5-29-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 90-33-NG]

Power City Partners, L.P.; Final Order Granting Long-Term Authorization to Import Natural Gas from Canada

AGENCY: Department of Energy, Office of Fossil Energy;

ACTION: Notice of a final order granting long-term authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued a final order granting Power City Partners. L.P., authority to import at Massena, New York, up to 21,000 Mcf per day and a total of 111.3 Bcf of Canadian natural gas through October 31, 2007. Power City would buy the gas from Husky Oil Operations Ltd. and its affiliate Canterra Energy Ltd., to fuel a new 79.9 megawatt cogeneration facility which Power City plans to build at an Aluminum Company of America smelting plant in the Town of Massena. Transportation from the international border would be provided by St. Lawrence Gas Company (St. Lawrence).

Previously, on March 20, 1991, Power City was granted conditional authority to import this gas suject to the entry of a final option and order after DOE assessed the potential environmental impacts associated with the proposal, as required by the National Environmental Policy Act (NEPA) of 1969. DOE determined that the authorization does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA and, therefore, no environmental impact statement is required.

A copy of the 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, May 23, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-12786 Filed 5-29-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-07-NG]

Spot Market Corp.; Order Granting Blanket Authorization to Import Canadian Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import Canadian natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Spot Market Corporation blanket authorization to import up to 300 Bcf of Canadian natural gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, U.S. Department of Energy, 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, May 23, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-12787 Filed 5-29-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed; Week of April 19 Through April 26, 1991

During the week of April 19 through April 26, 1991, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: May 22, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of April 19 Through April 26, 1991]

Date	Name and location of applicant	Case No.	Type of submission
4/22/91	Texaco/East Main Texaco Service Station, Memphis, Tennessee.	RR321-60	Request for Modification/Rescission in the Texaco Refund Proceeding. If Granted: The March 21, 1991 Decision and Order (Case No. RF321-11583 & RF321-13867) issued to East Main Texaco Service Station would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
4/23/91	James L. Schwab, Spokane, Washington	LFA-0115	Appeal of an Information Request Denial. If Granted: The April 16, 1991 Freedom of Information Request Denial issued by the Office of Administrative Services would be rescinded, and James L. Schwab would receive access to DOE documents concerning his termination as a DOE contractor employee

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of April 19 Through April 26, 1991]

Date	Name and location of applicant	Case No.	Type of submission
4/23/91	Gulf/Dock Rabon Gulf, Conway, South Carolina	RF300-19	Request of Modification/Rescission in the Gulf Refund Proceeding. If Granted: The March 8, 1991 Dismissal Letter (Case No. RF300-11003) issued to Dock Rabon Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
4/23/91	Ray Marchand Oil Company, Inc., Lowell, Massachusetts.	LEE-0024	Exception to the Reporting Requirements. If Granted: Ray Marchand would not be required to file Form EIA-782B, "Reseller/Retailers' Monthly Petroleum Product Sales Report."
4/23/91	Texaco/Barker's Texaco Service, Memphis, Tennessee.	RR321-61	Request for Modification/Rescission in the Texaco Refund Proceeding. If Granted: The March 22, 1991 Decision and Order (Case No. RF321-10499 & RF321-13871) issued to Barker's Texaco Service would be modified regarding the firm's application for refund activities in the Texaco refund proceeding.
4/25/91	Gulf/North Trimble Car Wash, Inc., Woodbridge, Virginia.	RR300-20	Request for Modification/Rescission in the Gulf Refund Proceeding. If Granted: The March 26, 1991 Dismissal Letter (Case No. RF300-11053), issued to North Trimble Car Wash, Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
4/26/91	B.M.F. Enterprises, Waverly, Ohio	LFA-0116	Appeal of an Information Request Denial. If Granted: The April 16, 1991 Freedom of Information Request Denial issued by C.S. Przybylek would be rescinded, and B.M.F. Enterprises would receive access to information in the RFO No. 1W0025 package.

REFUND APPLICATIONS RECEIVED

[Week of April 19 through April 26, 1991]

Name of refund proceeding/name of refund applicant:	Case No.	Date Received
Ward Pavements, Inc.	RF307-10185	4/22/91
Steffens Keystone.	RF333-2	4/22/91
Zapata Offshore Drilling Corp.	RF326-261	4/23/91
Chesley Pruet Drilling Company.	RF326-262	4/23/91
Amerada Hess Corporation.	RF326-263	4/23/91
Consolidated Edison Co. of NY.	RF332-7	4/23/91
Chrysler Motors Corp.	RF272-38	4/23/91
Ellis Shell Service.	RF315-10143	4/24/91
Supreme Petroleum Co. of NJ.	RF326-264	4/24/91
Fuel Distributors	RF326-265	4/24/91
Alice Cude	RF326-266	4/24/91
Beyer & Fortner, Inc.	RF333-3	4/26/91
R.L. Gaude Co., Inc.	RF333-4	4/26/91
Montaur Auto Service Co.	RF333-5	4/26/91
Townsend Oil Corp.	RF333-6	4/26/91
Vince Stein, Inc	RF333-7	4/26/91
Crude Oil refund applications, received.	RF272-89285 thru RF272-89299.	4/19/91 thru 4/26/91
Gulf Oil refund applications received.	RF300-16447 thru RF300-16598.	4/19/91 thru 4/26/91
Texaco refund applications received.	RF321-14822 thru RF321-14959.	4/19/91 thru 4/26/91

[FR Doc. 91-12789 Filed 5-29-91; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders During the Week of April 15 Through April 19, 1991

During the week of April 15 through April 19, 1991, the decisions and order summarized below were issued with respect to applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Request for Exception

Leemon Oil, 4/17/91, LEE-0019 Reporting Requirements

Leemon Oil filed an Application for Exception from the Energy Information Administratiion (EIA) reporting requirements. The firm sought relief from filing Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report," and Form EIA-821, entitled "Annual Fuel Oil and Kerosene Sales Report." In considering the request, the DOE found that the firm was not adversely affected by the reporting requirement in a way that was significantly different from the burden borne by similar reporting firms. Accordingly, excedption relief was denied with respect to the filing of Form EIA-782B and Form EIA-821.

Refund Applications

BIC Corporation, Ronson Consumer Products Corporation, 4/19/91, RF272-28268, RF272-65000

The DOE issued a Decision and Order concerning Applications for Refund filed by Bic Corporatin and Ronson Consumer Products Corporation in the subpart V crude oil refund proceeding. The Applicants' claims were based on purchases of butane and naphtha, which they retailed to end-users, and on other petroleum products that they used in connection with their retailing operations. The DOE denied the Applications because the Applicants failed to provide the detailed showing of injury that is required of resellers and retailers in the subpart V crude oil refund proceeding.

Exxon Corporation/A.H. Smith, 4/19/91, RF307-9361

The DOE issued a Decision and Order concerning an Application for Refund filed by A.H. Smith Associates in the Exxon Corporation special refund proceeding. The application was based on purchases of Exxon products by A.H. Smith, a sole proprietor during the consent order period, who later transferred all assets and liabilities to a partnership with his two sons. That partnership, A.H. Smith Associates, was granted the refund based on the purchases made by Mr. Smith because the firm was a continuation of the same business. The sum of the refund granted was $3,040 ($2,180 principal plus $860 interest).

Gulf Oil Corporation/Price's Gulf Service, 4/17/91, RF300-9142

In the Gulf Oil Corporation special refund proceeding, the Department of Energy denied an Application for refund filed by Energy Watch, Inc. on behalf of Price's Gulf Service (Price's), a gasoline

retailer. The record did not contain sufficient information to allow DOE to approve a refund for Price's. After repeated specific requests for information relating to the Applicant's ownership and operation of this station the Applicant submitted a self-serving affidavit. Such an affidavit is not sufficient to support a refund claim. Accordingly, the application was denied.

HPI Industries, Inc., 4/19/91, RF272-61733

The Department of Energy (DOE) issued a Decision and Order granting refund monies from crude oil overcharge funds to HPI Industries, Inc. (HPI) based upon its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Using the definition of end-user set forth in City of Annapolis, the DOE determined that HPI was eligible for a refund based upon its purchases of five of the substances listed in its Application, and ineligible for thirteen other substances for which it had sought restitution. The refund granted to HPI was $7,199.

J.H. Rudolph & Co., Inc., 4/18/91, RA272-37

The Department of Energy (DOE) issued a Supplemental Order to J.H. Rudolph & Company, Inc. in connection with the subpart V Crude Oil Proceedings. The DOE granted the applicant, Case No. RF272-344, a refund amount of $113,213 in *J.H. Rudolph & Company, Inc.*, 21 DOE ¶ 85,115 (1991). Subsequent to receiving the refund check, the applicant notified the DOE that it intended to claim a lower gallonage figure. Therefore, the DOE rescinded the original refund amount and granted the applicant the correct refund amount of $24,939.

Suburban Propane Corp./Ozona Butane Co., Inc., 4/18/91, RR299-1

Ozona Butane Co., Inc. (Ozona) filed a Motion for Reconsideration in the Suburban Propane Gas Corp. special refund proceeding requesting that the DOE reconsider its determination in *Suburban Gas Corp./Ozona Butane Co., Inc.* 20 DOE ¶ 85,807 (1990) (*Ozona*). In *Ozona*, the DOE denied Ozona's pricing claim in the Suburban proceeding because Ozona was unable to establish what volume of petroleum products it purchased from Suburban. Ozona's allocation claim was also denied because the firm was unable to show that its claim was not spurious. In the Motion for Reconsideration, DOE once again denied both claims, as Ozona had still not provided a reliable gallonage schedule on which to base a pricing refund, nor had it provided any new information or new arguments to show that it was entitled to a refund based on an allocation claim.

Texaco Inc./Fred A. Thomas Co., Barnett Oil Co., Inc., Twin City Ready Mix, Inc., 4/16/91, RF321-3526, RF321-4760, RF321-3548, RF321-4442, RF321-4443

The DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning five Applications for Refund filed by resellers of Texaco refined pertroleum products. Each applicant had included "Delivery for Our Account" (DFOA) transactions in its volume claim. Since DFOA volumes do not constitute purchases, the DOE determined that the applicants were not entitled to refunds based on those gallons. The applicants elected the applicable presumption of injury and were therefore not required to demonstrate injury. Two applicants received refunds equal to their full allocable shares, and one recieved a refund amount equal to 50 percent of its allocable share. The total of the refunds granted in this Decision is $23,951, ($19,395 principal plus $4,556 interest).

Texaco, Inc./Gonzalez Texaco, 4/19/91, RF321-14774

The DOE issued a Supplemental Order concerning an Application for Refund filed in the Texaco Inc. special refund proceeding by Energy Refunds, Inc. (ERI) and Horacio Gonzalez on behalf of Gonzalez Texaco, a retail outlet in Alice, Texas. In *Texaco Inc./Gonzalez Texaco*, Case Nos. RF321-1541 *et al.*, (October 25, 1990), Mr. Gonzalez was granted a refund of $1,844 based on purchases made by Gonzalez Texaco from March 1973 to March 1978. However, the DOE subsequently learned Mr. Gonzalez did not operate the station during that time period. Accordingly, the DOE directed ERI and Mr. Gonzalez to remit the entire refund amount plus the interest that would have accrued had the erroneous payment remained in the escrow account.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications,which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Co./Carl Robbins & Son L. P. Gas Co. et al.	RF304-1171	*04/16/91*
Atlantic Richfield Co./Sonny's Arco et al.	RF304-11066	*04/18/91*
Atlantic Richfield Co./Steffen's Arco et al.	RF304-9214	*04/19/91*
Bell of Pennsylvania.	RF272-3220	*04/19/91*
Ben Franklin Stores, Inc.	RF272-15494	*04/15/91*
Ben Franklin Stores, Inc.	RD282-15494	*04/15/91*
Dayco Products, Inc.	RF272-49885	*04/17/91*
Dayco Products, Inc.	RF272-49885	*04/17/91*
Excambia Treating Co.	RF272-27793	*04/16/91*
Escambia Treating Co.	RD272-27793	.....
Exxon Corporation/ Mel's Car Care Center.	RF307-10182	*04/16/91*
Federated Co-Ops, Inc.	RF272-45074	*04/15/91*
Fletcher Oil & Refining Co./ Diamond Oil Company.	RF329-2	*04/17/91*
Greenway Co-Op Service Co. et al.	RF272-72545	*04/16/91*
Gulf Oil Corp./ Assad Gulf et al.	RF300-11146	*04/17/91*
Gulf Oil Corp./ Butler Oil Company.	RF300-11175	*04/16/91*
Parton Oil Company, Inc.	RF300-11385	.....
Gulf Oil Corp./ City Service Station et al.	RF300-11721	*04/17/91*
Long Mile Rubber Company, Inc. et al.	RF272-75645	*04/19/91*
Mutual Redevelopment Houses.	RF272-9452	*04/19/91*
Jefferson Asphalt Co., Inc.	RF272-24823	.....
Shell Oil Company/ Downtown Shell et al.	RF315-65	*04/18/91*
Tesoro Petroleum Corporation/ City of Bryan et al.	RF326-256	*04/17/91*
Texaco Inc./231 Texaco.	RF321-13477	*04/16/91*
Two Thirty One Texaco.	RF321-13859	.....
Texaco Inc./ Corrente Service Station et al..	RF312-2231	*04/17/91*
Texaco Inc./ Crowe Peele Texaco.	RF321-13117	*04/17/91*

Crow Peele Texaco.	RF321-14422	04/17/91
Texaco Inc./Del-Ray Texaco et al.	RF321-98	04/17/91
Texaco Inc./ Gillmore Oil Co., Inc. et al.	RF321-6651	04/18/91
Texaco Inc./R.C. Miller Co., Inc. et al.	RF321-1710	04/19/91
Texaco Inc./Tri-County Oil and Gas, Inc. et al.	RF321-3686	04/19/91
The L.E. Myers Co.	RF272-6447	04/18/91
The L.E. Myers Co.	RD272-6447	.....
Rollins, Inc	RF272-7180	.....
Rollins, Inc	RF272-7168	.....
West Coast Oil Company Jeffries Bros. Inc.	RF328-2	04/16/91
Witco Chemical Corporation/ Tenn-Penn Oil Company.	RF115-8	04/19/91

Dismissals

The following submissions were dimissed:

Name	Case No.
Arapaho Texaco	RF321-0030
Austin's Gulf Service	RF300-15544
B/J Delivery Service	RD272-71321
Belair Gulf	RF300-12882
Belair Gulf	RF300-15824
Bennetts Gulf	RF300-15775
Bernard Zinzler, Inc	RF272-60291
Brenk's Texaco	RF321-6387
Brule County Highway Dept	RF272-86610
Carlo Gaudenti	RF300-15549
Clara Mass Medical Center	RF272-86940
Daniel's Gulf	RF300-13710
Dewey Davis Tire Center	RF300-15702
Dick's Service Station	RF300-15084
Durham County Schools	RF272-77360
Durham North Carolina City Schools.	RF272-77231
Elmer Whittaker	RF315-8753
Emery's Texaco	RF321-203
George Oberhausen	RF321-14228
George Oberhausen	RF321-14229
Hanes Corp	RF300-15641
Holiday Gulf	RF300-15789
Jack's Gulf	RF300-15785
Johasky & Donati Gulf	RF300-15776
Lincoln County Board of Education	RF272-77359
Memorial Sloan Kettering Cancer Center.	RF272-86891
Mulherns Service Station	RF321-13869
National Tool & Mfg. Co	RF272-64270
North Main Gulf	RF300-15825
Pamlico County School District	RF272-81344
Pat S. Todd Oil Co., Inc	RF300-15779
Roy & Benny's	RF300-15569
Schulenberg Food Mart	RF300-15525
Shea & Gardner	LFA-0107
Shelton's Gulf Service	RF300-14208
Sierra County, New Mexico	RF272-86498
Sparkman's Gulf	RF300-15522
Steward St. Gulf	RF300-15038
Thomasville City School District	RF272-81329
Tipton's Gulf	RF300-15554
Towson Gulf	RF300-15767
Wallace Gulf	RF300-15788
Warwick Valley Central School District.	RF272-80065
Westgate Texaco Service	RF321-14192
Westside Transport, Inc	RF272-70286
Westside Transportation, Inc	RF272-70286
Whitener Enterprises, Inc	RF300-11409
Wilmington Medical Center	RF300-15664

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: May 22, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91-12790 Filed 5-29-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3952-1]

Clean Air Act; Enforcement Authority Guidance

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice, guidance on using the order authority under section 112(r)(9) of the Clean Air Act, as amended, and on coordinated use with other order and enforcement authorities.

SUMMARY: The Clean Air Act Amendments of 1990 include a provision granting EPA authority to take administrtive action or obtain judicial relief when an accidental release or threatened accidental release of certain extremely hazardous substances poses an imminent and substantial endangerment to the public health, welfare, or the environment. The Act requires EPA to publish guidance on the use of the order authority and its coordinated use with other specified EPA authorities. This notice fulfills that mandate for guidance to EPA regions and states.

FOR FURTHER INFORMATION CONTACT: Lyse Helsing, Chemical Emergency Preparedness and Prevention Office, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Background

Following the 1984 chemical tragedy in Bhopal, India, the Environmental Protection Agency (EPA or the Agency) began a voluntary program to encourage chemical emergency preparedness, response, and prevention. Many elements of that program were incorporated into the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), also known as title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Section 305(b) of EPCRA required EPA to conduct a study of emergency systems for detecting, monitoring, and preventing chemical accidents. The results of that study, published in Review of Emergency Systems (EPA, 1988), indicated that accident prevention requires an integrated approach that combines both management practices and technologies. As part of its prevention program, EPA has been collecting information on prevention practices and the causes of accidents, and has been conducting chemical safety audits of facilities.

In the Clean Air Act Amendments of 1990 (CAAA), Congress adopted a number of provisions aimed at reducing the number and severity of chemical accidents. The accident prevention requirements for which EPA is responsible are included primarily in the new subsection (r) of section 112 of the Clean Air Act (42 U.S.C. 7412). Subsection (r) requires EPA to develop a list of at least 100 substances, with threshold quantities. This list of substances will define in part the applicability of "reasonable regulations," including risk management plans, that EPA shall promulgate by November 15, 1993. Subsection (r) also establishes a chemical safety and hazard investigation board to investigate chemical accidents. Under subsection (r) and other CAAA provisions, EPA will conduct research on topics related to chemical accident prevention.

Section 112(r)(9), as amended, grants EPA authority to take civil and administrative action under certain circumstances and requires EPA to publish guidance on this order authority by May 15, 1991. This notice is published in response to that mandate to provide guidance on the use of the order authority and its coordination with other EPA statutory authorities.

This guidance discusses the order authority granted under section 112(r)(9) and the other statutory "emergency

powers"[1] with which this new authority will be coordinated. Specifically, section 112(r)(9) requires coordinated use with the following statutory authorities: sections 113, 114, and 303 of the Clean Air Act (CAA); section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); sections 3007, 3008, 3013, and 7003 of the Solid Waste Disposal Act, also known as the Resource Conservation and Recovery Act (RCRA); sections 311(c), 308, 309, and 504(a) of the Federal Water Pollution Control Act, also known as the Clean Water Act (CWA); sections 1445 and 1431 of the Safe Drinking Water Act (SDWA); and sections 5 and 7 of the Toxic Substances Control Act (TSCA). For each of the order authorities above the discussion focuses on the substances covered, the types of releases covered, the actions available to EPA (judicial and administrative), notification and consultation requirements, and any significant limitations. Other authorities cited in the CAAA are also described in brief.

Notice: This notice is published in compliance with section 112(r)(9) of the Clean Air Act, as amended, and is intended solely as guidance. It does not represent final Agency action nor is it ripe for judicial review. This is not intended, nor can it be relied upon, to create any rights enforceable, by any party in litigation with the United States. EPA officials may decide to follow the guidance provided in this Notice or to vary from it, depending on the specific circumstances presented. The Agency also may change this guidance at any time without public notice.

Section 112(r)(9) Order Authority

Section 112(r)(9) states that when the Agency "determines that there may be an imminent and substantial endangerment to the human health or welfare or the environment because of an actual or threatened accidental release of a regulated substance, the (Agency) may secure such relief as may be necessary to abate such danger or threat." The section 112(r)(9) order authority applies to actual or threatened accidental releases of certain substances regulated under section 112(r). Section 112(r)(2)(A) defines an accidental release to mean "an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source." The section 112 order authority applies only to stationary air pollution sources. Under this authority, EPA may initiate a civil action. EPA may also, after notice to the relevant state, take other actions, including issuing administrative orders, as may be needed to protect human health. The statute requires the Agency to take action under the authority of CAA section 303, as discussed below, rather than the authority granted in section 112(r)(9), whenever the authority granted in section 303 is adequate to protect human health and the environment.

The authority is also limited to releases of regulated substances and other extremely hazardous substances. Under section 112(r), regulated substances mean those substances listed under subsection (r)(3). This provision requires the Agency to develop a list of at least 100 substances that are known to pose the greatest risk of causing death, injury, or serious adverse effects to human health or the environment from accidental release. EPA shall promulgate this list by November 15, 1992. Congress listed 16 substances that are to be included on the initial list: Chlorine, ammonia, anhydrous ammonia, methyl chloride, ethylene oxide, vinyl chloride, methyl isocyanate, hydrogen cyanide, hydrogen sulfide, toluene diisocyanate, phosgene, bromine, anhydrous hydrogen chloride, hydrogen flouride, anhydous sulfur dioxide, and sulfur trioxide.

The order authority may be exercised in two ways. First, the United States may file an action in Federal district court in the district in which the release or threatened release occurs. The court has the power to grant such relief, including injunctive relief, as the public interest and the equities of the case may require. Under this authority, there is no requirement that the Agency consult with or notify the state prior to petitioning the district court for relief, although, to the extent feasible, EPA should attempt to notify and consult with state and local authorities. Second, after notice to the state, EPA may take other actions, which include, but are not limited to, issuing administrative orders as may be necessary to protect human health. The statute requires the Agency to take action under CAA section 303 whenever that authority is adequate to protect human health and the environment.

CAA Section 303

In addition to establishing this new order authority under section 112(r)(9), the CAAA amended the existing order authority under CAA section 303. Section 303 previously addressed releases to air that posed an imminent and substantial endangerment only to the health of persons. Section 303 also required EPA to refrain from taking any action until it had information that the state or local authorities had not taken action to abate the endangerment to the health of persons. If the state and local authorities failed to act to abate the danger, the United States could file a civil action in the district court or, if that was not practicable to assure protection of the public health, EPA could issue administrative orders, which were effective for up to 24 hours. Prior to taking any action, EPA was required to confirm with state and local authorities the correctness of the information on which the proposed action was based. The CAAA broadened the scope of this order authority to include pollution sources presenting imminent and substantial endangerment to "public health or welfare, or the environment." Additionally, the amended section 303 order authority empowers EPA to act immediately; while EPA must still consult with state authorities, EPA is no longer required to make a determination that the activity of the state and local authorities is inadequate to abate the danger. The CAAA also lengthened the duration of administrative orders to 60 days.

The section 303 order authority applies to air "pollution" sources, including stationary and mobile sources. The legal threshold for section 303 is that the pollution source or combination of sources must be presenting an "imminent and substanital endangerment to public health or welfare, or the environment." If there exists a non-speculative risk of substantial harm, the Agency may immediately act under the "imminent and substantial endangerment" provisions. This is consistent with the legislative history of CAA section 303, as illustrated by the House Report on the Clean Air Act Amendments of 1977:

> In retaining the words "imminent (and) substantial endangerment to the health of persons", the committee intends that the authority of this section not be used where the risk of harm is completely speculative in nature or where the harm threatened is insubstantial. However, * * * the committee intends that this language be construed by the courts and the Administrator so as to give paramount importance to the objective of protection of the public health. *Administrative and judicial implementation of this authority must occur early enough to prevent the potential hazard from materializing.* (H.R. Rep. No. 294, 95th Cong., 1st Sess. 328 (1977) (emphasis added)).

This interpretation is also consistent with the established definition of

[1] "Emergency powers" is the term used in section 112(r)(9) to described these provisions and will be used throughout this guidance document.

"endangerment" as referring to the risk of harm, not actual harm itself. Thus, EPA may properly take action to abate air releases when a substantial risk of harm is imminent This may be prior to the occurrence of any actual harm, and is appropriate in view of the precautionary nature of the "imminent and substantial endangerment" provisions.

The order authority under section 303 may be exercised in two ways. First, the United States may file an action in the appropriate Federal district court. The court is granted the power to immediately restrain any person causing or contributing to the alleged pollution, or to take such other action as may be necessary. Second, if it is not practicable to assure prompt protection of public health or welfare or the environment by the commencement of a civil action, EPA may issue such administrative orders as may be necessary to protect public health or welfare or the environment. Section 303 administrative orders are effective for a period of not more than 60 days, unless the Agency initiates a civil action before the expiration of that period, in which case the order remains in effect an additional 124 days. Prior to taking any action under section 303, EPA must consult with appropriate state and local authorities and attempt to confirm the accuracy of the information on which the proposed action is based.

In order for the Agency to seek administrative or judicial relief under section 303, the Agency must have evidence that reasonably indicates that air emissions or potential air emissions from a pollution source, or combination of sources, are creating an imminent and substantial endangerment to public health or welfare or the environment. As noted, the CAAA requires EPA to act under section 303, rather than section 112(r)(9) whenever section 303 is adequate to protect human health and the environment. EPA will rely on its CAA section 303 authority unless it is inadequate to protect human health and the environment.

Other Authorities

In determining which legal authorities to rely upon in an action, EPA will also consider the appropriateness of taking action under other emergency powers granted the Agency and will coordinate its use of these authorities to ensure that imminent and substantial endangerment to human health or welfare or the environment are addressed effectivley. CAA section 112(r)(9) mandates that the order authority under this section be coordinated with authorities under five other environmental statutes. The authorities referenced in CAA section 112(r)(9) are discussed in more detail below.

CAA

In addition to the imminent and substantial endangerment provision contained in CAA section 303, the CAA, as amended, also contains more general enforcement provisions. CAA section 112(r)(9) requires that the order authority in that section also be coordinated with the following CAA enforcement authorities:

• Section 113 allows EPA, among other things, to take action based on a finding that a person is in violation of a state implementation plan, permit, or other specified requirements contained in the CAA. The authority under section 113 may be exercised in three ways:

—EPA may initiate a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty. EPA must notify the affected state of the initiation of civil action.

—EPA may issue an administrative compliance order.

—EPA may issue an administrative penalty order. This order is effective only after written notice, and after providing an opportunity for a hearing conducted in accordance with 5 U.S.C. sections 554 and 556.

• Section 114, among other things, provides EPA the authority to enter, obtain records, and inspect monitoring equipment. Under this section, EPA may also require recordkeeping and installation of monitoring equipment.

CERCLA

Section 106 of CERCLA states that "when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility," the President may require the Attorney General to initiate a civil action to secure such relief as may be necessary. The President's authority under this section has been delegated by Executive Order 12580 to the Agency (52 FR 2923, January 29, 1987). In addition, the Agency my also, after notice to the affected state, take other actions including issuing administrative orders, as may be necessary to protect public health and welfare and the environment.

Section 106 refers to actual or threatened releases of CERCLA hazardous substances. These substances primarily are defined by reference to other environmental statutes, including CWA, CAA, TSCA and RCRA; 40 CFR 302.4 lists more than 70 CERCLA hazardous substances. CERCLA hazardous substances include over 1500 radionuclides and characteristic hazardous wastes covered by RCRA. CERCLA section 106 covers releases to all environmental media.[2]

The authority under CERCLA section 106 may be exercised in two ways. First, the Agency may request the Attorney General to file an action in United States district court. The court has the power to grant such relief as the public interest and the equities of the case may require. Under this authority, the Agency is not required to consult with the state prior to petitioning the district court for relief. Second, the Agency may take other actions after notifying the affected state, including, but not limited to, issuing administrative orders as may be necessary to protect public health, welfare or the environment.[3]

RCRA

Section 7003 of RCRA provides EPA authority to pursue civil actions or issue administrative orders "upon receipt of evidence that the past or present handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to health or the environment." EPA may also take other action after notice to the affected state, including, but not limited to, issuing such orders as may be necessary to protect public health and the environment. EPA must provide notice of civil actions to the affected state.

Section 7003 authority applies to persons who in the past have or presently are handling, storing, treating, transporting, or disposing of solid and hazadous wastes. Section 7003 may also be used to abate imminent hazards caused by past treatment, storage, disposal, or transportation practices. Section 7003 authority has no media limitation. Evidence to support the issuance of a RCRA section 7003 order must show that the "handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste

[2] Guidelines for the use of section 106 were published at 47 FR 20664 (May 13, 1982).

[3] Although not cited in CAA section 112(r)(9), CERCLA section 104 authorizes EPA to take any response actions necessary to address a release or a threatened release of a hazardous substance. Pursuant to CERCLA 107, EPA may then recover such response costs. Section 104 also authorizes response actions to address a release or threatened release of a pollutant or contaminant when there is an imminent and substantial threat to the public health or welfare. Section 104 is similar to the authority granted under CWA section 311(c), discussed below. Furthermore, CERCLA section 104 provides the Agency with broad information gathering and access authority.

may present an imminent and substantial endangerment to health or the environment." While the risk of harm must be imminent in order for EPA to act under section 7003, the harm itself need not be. For example, EPA could act if there exists a likelihood that contaminants might be introduced into a water supply which could cause damage after a period of latency.

Section 7003 authority may be exercised in two ways. First, the United States may file an action in Federal district court. The court may restrain any person who has contributed or who is contributing to the handling, storage, treatment, transportation, or disposal of any solid waste or hazardous waste that may present an imminent and substantial endangerment to health or the environment, or may order the person to take other action as may be necessary to protect health or the environment. Second, the Agency may take other actions, including, but not limited to, issuing such orders as may be necessary to protect public health and the environment.

Under section 7003, EPA must give notice to the affected state. In some cases, this may involve more than one state, such as where a facility is located near the border of a state and the hazardous wastes have migrated from the facility into another state(s). The Agency is also required to provide notice to the appropriate local government agencies upon receipt of information that there is hazardous waste at any site which has presented an imminent and substantial endangerment to human health or the environment. The Agency must also require notice of such endangerment to be posted promptly at the site(s) where the waste is located.

In addition to the imminent and substantial endangerment provision contained in RCRA section 7003, there are several other RCRA enforcement authorities. CAA section 112(r)(9) requires that the order authority in that section also be coordinated with the following RCRA enforcement authorities:

- Section 3007 provides EPA the authority to enter any establishment or other place where hazardous wastes are generated, stored, treated, disposed of, or transported from, and obtain records and other information and to inspect and obtain samples.
- Section 3008(a) authorizes the Administrator to address violations of RCRA's subtitle C hazardous waste management requirements. The order authority under section 3008 may be exercised in several ways. Among other things, EPA may issue an administrative order assessing a civil penalty or requiring immediate compliance. Administrative orders may include a suspension or revocation of permits. EPA may also initiate a civil action for relief, including a temporary or permanent injunction, as well as civil penalties. Subsection (h) specifically provides for administrative orders and civil actions requiring corrective action addressing releases of hazardous wastes and hazardous constituents from interim status facilities.
- Section 3013 provides EPA the authority to issue orders requiring a facility owner or operator to conduct monitoring, testing, analysis, and reporting if it is determined that hazardous waste is present at a facility or that the release of any such waste may present a substantial hazard to human health or the environment. The Agency or an authorized state or local authority also may conduct monitoring, testing, and analysis, and recover the cost of doing so. The United States may commence a civil action against any person who fails to comply with an order issued under this section.

CWA

The CAA requires EPA to coordinate the use of CAA section 112(r)(9) with two emergency power provisions under CWA, sections 504(a) and 311(c).[4] Section 504(a) of the CWA states that "upon receipt of evidence that a pollution source or combination of sources is presenting an imminent and substantial endangerment to the health of persons or to the welfare of persons where such endangerment is to the livelihood of such persons," EPA may commence a civil action or take other action that may be necessary.

Section 502(19) defines "pollution" as the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water. This definition limits the applicability of this section to activities that have some effect on water.

Under CWA section 504(a), the United States may file an action in Federal district court. The court is granted the power to immediately restrain any person causing or contributing to the alleged pollution, or to take such other action as may be necessary. Under this authority, the Agency is not required to consult with the state prior to the initiation of a civil suit. The limitation on this authority is that section 504(a) is not designed to protect the environment generally, but only to protect "the health of persons" and the "welfare of persons where such endangerment is to the livelihood of such persons, such as inability to market shellfish."

The second CWA emergency power provision cited in CAA section 112(r)(9) is section CWA 311(c), as amended by the Oil Pollution Act of 1990. Amended section 311(c) states that to "ensure effective and immediate removal of a discharge, and mitigation or prevention of a substantial threat of a discharge, of oil or a hazardous substance," the President may remove or arrange for the removal of such a discharge, direct or monitor all actions to remove the discharge, and remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available.

Under section 311(a)(14), a "hazardous substance" is defined as any substance designated pursuant to section 311(b)(2). The list of hazardous substance promulgated under section 311(b)(2) is set forth at 40 CFR 116.4. The removal authority applies to discharges and threats of discharges: (1) Into or on the navigable waters; (2) on the adjoining shorelines to the navigable waters; (3) into or on the waters of the exclusive economic zone; or (4) that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States.

In accordance with the National Contingency Plan and other applicable contingency plans, the President may intervene directly to take charge of, or to monitor a removal. The President *must* direct all Federal, state, and private removal actions if the discharge from a vessel, offshore facility, or onshore facility is of such a size or character as to be a substantial threat to the public health or welfare of the United States.

In addition to the emergency power provisions contained in the CWA, there are several other general enforcement provisions. CAA section 112(r)(9) requires that the order authority in that section also be coordinated with the following CWA enforcement authorities:

- Section 308 of the CWA authorizes EPA to require monitoring, record maintenance, and reporting by owners or operators of point sources, and entitles EPA to enter and at reasonable times to sample discharges, inspect equipment, and copy records.
- Section 309 provides a number of mechanisms for enforcement action against persons in violation of specified

[4] Although not cited in the CAA, section 311(e) of the CWA also provides the Agency with authority to seek such judicial relief as is necessary to address an imminent and substantial threat to the public health or welfare because of an actual or threatened release of oil or a hazardous substance into or upon the navigable waters of the United States.

requirements contained in the CWA. The authority under section 309 of the CWA may be exercised in three ways:

—EPA may issue an order requiring compliance. Compliance orders must be provided to the state in which the violation occurred and to corporate officers, if a corporation is subject to such an order. A compliance order enforcing against a violation of section 308 shall not take effect until the person to whom it is issued has had an opportunity to confer with the Agency concerning the alleged violation.

—EPA may commence a civil action in Federal district court for appropriate relief, including civil penalties. Notice of the commencement of such action must be given immediately to the appropriate state.

—EPA may assess penalties in administrative proceedings against a person who violates provisions of the CWA, including discharges without authorization under section 301(a), failure to comply with pre-treatment requirements established under section 307, and failure to provide information pursuant to section 308. The Agency must consult with the state in which the violation occurs before assessing any penalty. Additionally, EPA "shall provide public notice of and reasonable opportunity to comment on the proposed issuance of such order" to interested persons.

SDWA

Section 1431 of the SDWA states that "upon receipt of information that a contaminant which is present in or is likely to enter a public water system or an underground source of drinking water may present an imminent and substantial endangerment to the health of persons," EPA may, if state and local authorities have not acted appropriately, issue orders or take civil action.

Section 1431 order authority applies to contaminants that are present in or are likely to enter a public water system or an underground source of drinking water (including private wells or future sources of drinking water). Section 1401(6) defines a contaminant as any physical, chemical, biological, or radiological substance or matter in water.

The Agency may take action where: (1) A contaminant is present in or likely to enter a public water system or underground source of drinking water; (2) the contaminant may present an imminent and substantial endangerment to human health; and (3) the appropriate state or local authority has not acted to protect public health. EPA may act on information that a danger to health exists or may exist, but is not required to have uncontroverted proof that persons will be injured.

The action that the Agency may take under section 1431 may include, but is not limited to, issuing orders and commencing a civil action. EPA may issue orders as may be necessary to protect the health of persons including orders for the provision of alternative water supplies by the person(s) who caused or contributed to the endangerment. The United States also may file an action in Federal district court for appropriate relief, including a restraining order or permanent or temporary injunction. EPA may not take any action under this section unless the appropriate state and local authorities have not acted to protect the health of persons. To the extent practicable, in light of the endangerment, the Agency shall consult with state and local authorities in order to confirm the corrections of the information on which the proposed action is based and to ascertain the actions which the state and local authorities are or will be taking.

In addition to the imminent and substantial endangerment provision discussed above, CAA section 112(r)(9) requires that the order authority under that section be coordinated with the authority in SDWA section 1445. Section 1445 authorizes EPA to enter a facility to determine compliance and to inspect records and other information. This section also requires recordkeeping and monitoring for all water supplies and for persons subject to a primary drinking water regulation, to an applicable underground injection control program, or to certain permit requirements.

TSCA

Section 7 of TSCA applies to an "imminently hazardous chemical substance or mixture or any article containing such a substance or mixture." Section 7(f) defines an "imminently hazardous chemical substance or mixture" as a chemical substance or mixture which presents an imminent and unreasonable risk of serious or widespread injury to health or the environment. The risk to health or the environment will be considered imminent if it is shown that the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance or mixture, or any combination of such activities, is likely to result in injury to health or the environment before a final rule issued under TSCA section 6 can protect against such risks.

The United States may file an action in Federal district court for: (1) Seizure of an imminently hazardous chemical substance or mixture; (2) relief against any person who manufactures, processes, distributes in commerce, uses, or disposes of an imminently hazardous chemical substance or mixture; or (3) both seized and relief. The court may grant temporary or permanent relief as may be necessary to protect health or the environment. Such relief may include the issuance of a mandatory order requiring notification to the purchaser of an imminently hazardous chemical substance or mixture of the risk associated with it; public notice of such risk; recall; the replacement or repurchase of such substance, mixture, or article; or any combination of these actions.

In addition to the imminent and substantial endangerment provision discussed above, CAA section 112(r)(9) requires that the order authority under that section be coordinated with TSCA section 5. Section 5 applies to persons who manufacture new chemical substances and who manufacture or process any chemical substance for a significant new use.

In addition to the authorities cited in the CAAA, EPA notes that the Occupational Safety and Health Administration (OSHA) also has authority to address potential hazards posed by accidental releases. EPA and OSHA are coordinating their enforcement efforts under a Memorandum of Understanding, signed on November 23, 1990.

Conclusion

Each of the six environmental statutes discussed in this document contains an emergency power provision similar to that contained in CAA section 112(r)(9). These emergency power provisions allow the Agency to take action when it obtains evidence that a situation presents an "imminent and substantial endangerment" to human health and, in most cases, to the environment. There are, however, important factors in the specific provisions of these statutes that will affect decisions about which provision(s) to rely upon in an enforcement action.

While the general aim of these provisions is the abatement, removal, mitigation, or remediation of hazardous or endangering environmental conditions, there are important differences in definitional coverage or exclusions which should be considered. The application of these differences to a given set of facts should serve as an aid in determination of an appropriate legal

mechanism for response. It is also important to keep in mind the legislative purposes for enactment of the statute, or in some cases such as this, the statutory section within which the provision under consideration resides. As discussed below, these provisions cover different substances and different media, and often have different consultation requirements.

The emergency provisions cover different but sometimes overlapping lists of substances. CAA section 303 covers air pollutants, RCRA section 7003 covers solid and hazardous waste, CWA section 504(a) covers water pollution, SDWA section 1431 covers contaminants, and TSCA section 7 covers imminently hazardous chemical substances or mixtures. CERCLA section 106 covers CERCLA hazardous substances, which are listed in 40 CFR 302.4 and, by reference, include substances addressed by CAA, RCRA, CWA, and TSCA. In selecting the appropriate statutory authority, it is important to be cognizant of the definitional differences of the substances addressed by the various provisions. For example, the universe of substances regulated under CAA section 112(r)(9) will encompass an initial list of at least 100 substances under CAA section 112(r)(3) that pose the greatest risk of death, injury, or serious adverse health effects to human health or the environment, as well as other extremely hazardous substances. While there may be fewer substances listed under CAA section 112(r)(3) than under sections 101(14) and 102(a) of CERCLA, the section 112(r)(3) list may well cover substances that are excluded from regulation under CERCLA.

While some emergency power provisions of the six different statutes are media-specific, others are not. Media-specific statutes include the CAA (releases affecting air), the CWA (releases affecting water and adjoining shorelines), the SDWA (releases likely to enter a public water system or an underground source of drinking water). In contrast, CERCLA and RCRA apply to releases to all media (i.e., "the environment" defined broadly). TSCA section 7 applicability is defined by characteristics of chemicals rather than types of releases.

In general, these emergency power provisions provide EPA with judicial and administrative remedies. That is, under these provisions EPA may initiate a civil action and issue administrative orders. In some cases, EPA is authorized to take other action as may be necessary. These statutory provisions, however, contain different requirements regarding consultation with, or notice to, the affected state or local authorities. Under CAA section 303, EPA must consult with state and local authorities and attempt to confirm the accuracy of the information on which the proposed action to be taken is based. Under CERCLA section 106, EPA may issue administrative orders only after notice to the affected state. Under RCRA section 7003, EPA must provide notice to the affected state of any civil action and may issue administrative orders only after providing notice to the affected state. Under SDWA section 1431, EPA may take action if the state and local authorities have not acted appropriately; EPA also shall consult with state and local authorities in order to confirm the corrections of the information on which the proposed action is based, to the extent practicable. Under CWA section 504(a) and TSCA section 7, EPA is not required to consult with the state prior to initiating an action.

In light of the differences in these emergency power provisions, EPA will determine on a case-by-case basis the authority, or combination of authorities, to rely upon in a particular action, based on the authority that is most appropriate in addressing an imminent and substantial endangerment to human health or welfare, or the environment. This will involve a consideration not only of the law, regulations (if any), policy or guidance, and the particular facts involved, but also of the degree and urgency of the problem.

Dated: May 21, 1991.

William K. Reilly,

Administrator.

[FR Doc. 91-12760 Filed 5-29-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of March 26, 1991

In accordance with § 217.5 of its rules regarding availability of information, there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on March 26, 1991.[1] The Directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that economic activity weakened further in the opening months of 1991. In February, total nonfarm payroll employment fell sharply further, especially in manufacturing, and the civilian unemployment rate rose to 6.5 percent. Industrial output also declined markedly again in February, with cutbacks evident in a wide range of industries. Advance indicators point to further weakness in business fixed investment in coming months, notably in nonresidential construction. On the other hand, after declining considerably in previous months, retail sales turned up in February; consumer sentiment appears to have rebounded sharply in recent weeks. Housing starts jumped in February, retracing a sizable decline in January but remaining at a low level. The nominal U.S. merchandise trade deficit increased somewhat in January but was considerably below its average rate in the fourth quarter. Energy prices fell substantially further in January and February, but prices of other consumer goods and services rose more rapidly than in preceding months. Wage increases have moderated in recent months.

Short-term interest rates have declined slightly since the Committee meeting on February 5-6. In longer-term markets, rates on Treasury bonds have risen appreciably, owing at least in part to heightened expectations of a recovery in U.S. economic activity. Risk premiums on corporate debt instruments have declined, and stock prices have moved up considerably on balance. The trade-weighted value of the dollar in terms of the other G-10 currencies increased very sharply over the intermeeting period.

Growth of M2 and M3 strengthened substantially in February, reflecting rapid expansion in liquid retail deposits; partial data suggest appreciable further growth in March.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability, promote a resumption of sustainable growth in output, and contribute to an improved pattern of international transactions. In furtherance of these objectives, the Committee at its meeting in February established ranges for growth of M2 and M3 of 2-1/2 to 6-1/2 percent and 1 to 5 percent, respectively, measured from the fourth quarter of 1990 to the fourth quarter of 1991. The monitoring range for growth of total domestic nonfinancial debt was set at 4-1/2 to 8-1/2 percent for the year. With regard to M3, the Committee anticipated that the ongoing restructuring of thrift depository institutions would continue to depress its growth relative to spending and total credit. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. Depending upon progress toward price stability, trends in economic activity, the behavior of the monetary aggregates, and developments in foreign exchange and domestic financial markets, somewhat greater reserve restraint or

[1] Copies of the Record of policy actions of the Committee for the meeting of March 26, 1991, are available upon request to The Board of Governors of the Federal Reserve System, Washington, DC 20551.

somewhat lesser reserve restraint might be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with growth of M2 and M3 over the period from March through June at annual rates of about 5-1/2 and 3-1/2 percent, respectively.

By order of the Federal Open Market Committee, May 22, 1991.

Normand Bernard,

Deputy Secretary, Federal Open Market Committee.

[FR Doc. 91-12712 Filed 5-29-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N-0191]

Generic Drug Program; Expedited Review for Economically Important Drug Products; Request for Recommendations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting comments and recommendations regarding an expedited abbreviated new drug application (ANDA) review process for generic copies of economically important or so-called "blockbuster" drug products. In an effort to improve its generic drug review program, FDA is examining its administrative policies and procedures pertaining to the review and approval of such products. At present, a person who wishes to market a generic drug product must submit and obtain approval of an ANDA or abbreviated antibiotic drug application (AADA) for that product. FDA invites interested persons to submit specific comments and recommendations on a policy of expedited review for generic copies of "blockbuster" drug products and will consider any comments and recommendations it receives in deciding whether such a system should be developed.

DATES: Written comments and recommendations by August 28, 1991.

ADDRESSES: Submit written comments and recommendations to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8049.

SUPPLEMENTARY INFORMATION: FDA is examining its operating policies and procedures pertaining to the review and approval of an ANDA. This action represents a continuation of a plan announced by the Secretary of Health and Human Services and the Commissioner of Food and Drugs on August 18, 1989, to improve FDA's generic drug review program, to ensure the safety and effectiveness of generic drugs, and to further strengthen the generic drug approval system to prevent corrupt and fraudulent practices.

The Drug Price Competition and Patent Term Restoration Act of 1984 (the 1984 amendments) authorized the submission of ANDA's for generic versions of "innovator" or "pioneer" drugs that were first approved after 1962. The 1984 amendments authorize FDA to approve generic versions of approved drugs that have been shown through the ANDA review process to be the same as the pioneer drug. With certain exceptions provided for in the statute, the 1984 amendments require each ANDA applicant to provide information demonstrating, among other things, that: (1) The conditions of use prescribed, recommended, or suggested in the labeling for its proposed drug product have been previously approved for the pioneer drug; (2) the active ingredient in the proposed drug product is the same as that in the pioneer drug or, if the drug has more than one active ingredient, that the other active ingredients are the same as the active ingredients in the pioneer drug; (3) the route of administration, dosage form, and strength of the proposed drug product are the same as those of the pioneer drug; (4) the proposed drug product is bioequivalent to the pioneer drug; and (5) the labeling for the proposed drug product is the same as that for the pioneer drug. (See 21 U.S.C. 355(j)(2)(A).) The 1984 amendments also provide that FDA shall approve or disapprove an ANDA within 180 days after its receipt. (See 21 U.S.C. 355(j)(4)(A).)

To determine the order in which ANDA's would be reviewed, FDA has adopted a "first-in, first-reviewed" policy. This means that, with few exceptions, FDA receives an ANDA in the order in which it is received.

On April 6, 1990, the Honorable John D. Dingell, Chairman of the House Subcommittee on Oversight and Investigations wrote a letter to James S. Benson, the former Acting Commissioner of Food and Drugs to make several comments and suggestions on FDA's ANDA regulations and procedures. One comment stated:

> Another critically important shift in Office of Generic Drug priorities must be implemented quickly. "First-in, first-reviewed" should also be modified to permit expedited review of the ANDA's for the "blockbuster" drugs coming off patent over the next five years. For those drugs which are used by large numbers of Americans at innovator prices and that do not involve extraordinary testing to demonstrate bioequivalence, the FDA should have in place multiple approvals of ANDA's (which meet Waxman-Hatch standards) as the drugs come off patent.

FDA's experience with generic drug products suggests that manufacturers begin developing ANDA's several years before the patent for a listed drug product expires. The number of ANDA's submitted to the agency for any particular drug product depends, in large part, on the annual sales figures for that drug product. Products with high annual sales figures result in more ANDA submissions than those with lower sales figures.

FDA also notes that substantial savings to third-party payers and to consumers may result when generic copies of economically important drugs first become available. This fact has prompted the agency to examine whether an expedited ANDA review process should be created for the first few generic versions of economically important, or so-called "blockbuster," drug products. The agency believes that an expedited review process may result in significant cost savings to consumers and third-party payers, including Federal reimbursement programs, by shortening the time period between the expiration of the patent or exclusivity for a listed drug and the availability of lower priced generic versions of economically important drug products. Therefore, with this notice, FDA invites persons to submit comments and recommendations regarding an expedited ANDA review process for generic versions of "blockbuster" drug products. Comments may address any aspect, including, but not limited to, the following:

1. Should FDA create an administrative process that would expedite agency review of some ANDA's for generic versions of certain important drug products? What would be the costs and benefits to the public, the agency, and the industry of an expedited review process?

2. What legal issues might arise if FDA creates an expedited review process for generic versions of certain important drug products?

3. Assuming that the agency does create an expedited ANDA review process for generic versions of "blockbuster" drug products, how should "blockbuster" drug products be selected? When should such drug products be designated? One possibility would be to designate any drug whose annual retail sales are greater than some fixed amount, e.g., $50 million, as a "blockbuster" drug. These drug products could be identified at some time period, e.g., 2 years, before the expiration of patent terms and market exclusivity.

4. If FDA has already received several ANDA's for a drug product at the time it is designated as a "blockbuster" drug product, should these pending ANDA's also receive priority in the review process? Or should the expedited review process apply only to those ANDA's that are received after the "blockbuster" drug product has been designated?

5. It has been argued that the first ANDA approvals for a particular drug product account for a substantial portion of the price reduction attributable to the availability of generic drug products and that subsequent approvals do not lower drug prices significantly. Therefore, how should an expedited review process be operated? How should an expedited review process be terminated? One option would be to expedite review only for a limited number of ANDA's for a generic version of a "blockbuster" drug product. Subsequent ANDA's would be reviewed under the first-in, first-reviewed policy. However, because there can be no assurance that ANDA's accepted for expedited review will ultimately be approved, this process could not be relied upon to assure the timely availability of generic versions of "blockbuster" drugs. Consequently, how many ANDA's should receive expedited reviews? Another option would be to adopt an expedited review process for all ANDA versions of a "blockbuster" drug until a sufficient number of ANDA's are approved to achieve a substantial price reduction. Once a sufficient number is approved, a "first-in, first-reviewed" policy would be reinstated. Yet how many ANDA approvals for a particular drug product are necessary to achieve a substantial price reduction?

6. How should ANDA's for generic versions of "blockbuster" drug products be reviewed relative to other ANDA's and amendments? Should FDA review all ANDA's and amendments for generic versions of "blockbuster" drug products before reviewing or approving any other ANDA's and amendments?

The agency also invites comments on any other aspects of this issue, including alternative approaches that might better ensure the safety, effectiveness, uniformity, and timely approval of generic drug products. FDA will review all comments and recommendations submitted in response to this notice in deciding whether to develop an expedited ANDA review process for certain generic drug products.

Interested persons may, on or before August 28, 1991, submit written comments and recommendations to the Dockets Management Branch (address above). Two copies of any recommendations are to be submitted, except that individuals may submit one copy. Recommendations are to be identified with the docket number found in brackets in the heading of this document. Received recommendations may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 24, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-12780 Filed 5-29-91; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Atlanta District Office, chaired by John H. Turner, District Director. The topic to be discussed is seafood safety.

DATES: Saturday, June 15, 1991, 1 p.m. to 2 p.m.

ADDRESSES: Citadel Mall, 2070 Sam Rittenburg Blvd., suite 200, Charleston, SC.

FOR FURTHER INFORMATION CONTACT: Ruth Feeley, Public Affairs Specialist, Food and Drug Administration, 60 Eighth St., NE., Atlanta, GA 30309, 404-347-7355.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: May 22, 1991.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-12781 Filed 5-29-91; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Notice of Hearing; Reconsideration of Disapproval of North Carolina State Plan Amendment (SPA)

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

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on July 10, 1991, at 10 a.m. in the 7th floor Conference Room, 101 Marietta Tower, Atlanta, Georgia to reconsider our decision to disapprove North Carolina State Plan Amendment 90-14.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by June 14, 1991.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, Suite 110, Security Office Park, 7000 Security Blvd., Baltimore, Maryland 21207, Telephone: (301) 597-3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove North Carolina State Plan amendment (SPA) number 90-14.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

North Carolina SPA 90-14 proposes changes to the State's payment plan for long-term care services. This amendment to the State's payment plan for long-term care services would modify, for State-operated nursing facilities (NFs) only, the prospective direct care rate calculation effective April 1, 1990. This portion of the amendment would exclude only State-operated NFs from the 80th percentile cap for prospective direct care rate calculations effective April 1, 1990. Effective November 1, 1990, this amendment would also establish a restrospective (i.e., cost based) payment methodology using Medicare principles of reimbursement for these same facilities.

Federal regulations at 42 CFR 430.12(c) require a State plan to be amended to reflect new or revised Federal statutes or regulations or material change in any phase of State law, organization, policy, or State agency operation. In accordance with Federal regulations at 42 CFR 447.253(f), the Medicaid agency must also comply with the public notice requirements in section 42 CFR 447.205 when it is proposing significant changes to its methods and standards for setting payment rates for long-term care facility services. Section 42 CFR 447.205(d)(1) requires that the notice be published before the proposed effective date of the change. Sections 42 CFR 447.205(c) and (d) set forth additional requirements regarding the content and publication of the notice.

The issue in this matter is whether the State's proposed amendment to its payment plan for long-term care services significantly changes its methods and standards used for setting payment rates for long-term care facility services, and therefore must comply with Federal regulations at 42 CFR 447.253(f).

The plan amendment was submitted by the State of North Carolina on June 28, 1990, together with assurances and related rate information. The State did publish a public notice for its proposed cost settlement payment methodology for State-operated NFs which met the requirements at 42 CFR 447.205 on October 31, 1990. However, the State did not publish public notice for its proposed payment rate calculation that would be effective April 1, 1990. Accordingly HCFA believes the effective date for the amendment cannot be April 1, 1990. HCFA approved the amendment with an effective date of November 1, 1990, the day following the publication of the State's public notice.

In the State's letter dated December 20, 1990, the State indicated the Federal regulations at 42 CFR 447.253(f) and 42 CFR 447.205 regarding public notice were not applicable to this proposed amendment. In the State's view, these facilities qualify for an exception to the Medicare cost limits due to the atypical services provided by these facilities. Moreover, the State indicates that this proposal would implement the best reimbursement solution to the particular problem of funding the high nursing cost required to serve a small segment of the Medicaid population for the long-term care needs of patients with severe mental illness. Therefore, the State indicated that modification of the methods and standards used for setting payment rates for providers of State-operated NFs does not represent a significant change necessitating prior public notice.

Regardless of the State's intentions to recognize the services provided by State-operated NFs as atypical, HCFA believes that the proposed plan amendment represents a significant change in the methods and standards used by the State to set payment rates. HCFA supports the State's right to grant exceptions to the Medicare costs limits as set forth in 42 CFR 413.30(f)(1) and as explained in section 6005.1D of the State Medicaid Manual. However, the State is still obligated to abide by the provisions set forth at 42 CFR 447.253(f) when proposing significant changes to the methods and standards used to set payment rates.

As stated in **Federal Register** notices at pages 47966-47967 of September 30, 1981 and pages 56049-56050 of December 19, 1983, the goal is to assure opportunity for public comment on any major or significant changes in methods or standards. The sole determinant factor of significance is the degree to which the State is proposing to modify its payment methods and standards. HCFA believes the revision to the State's payment plan to exclude State operated NFs from the 80th percentile direct care payment rate limitation constitutes a significant change to the methods and standards used to set payment rates for providers of State-operated NFs.

The notice to North Carolina announcing an administrative hearing to reconsider the disapproval of its State plan amendment reads as follows:

May 22, 1991.

Mrs. Barbara D. Matula, Director, Division of Medical Assistance,

Department of Human Resources, 1985 Umstead Drive, Raleigh, North Carolina 27603.

Dear Mrs. Matula: I am responding to your request for reconsideration of the decision to disapprove North Carolina State Plan Amendment (SPA) 90-14.

North Carolina SPA 90-14 relates to the State Medicaid plan for payment of long-term care services. This amendment to the State's payment plan for long-term care services would modify, for State-operated nursing facilities (NFs) only, the prospective direct care rate calculation effective April 1, 1990. This portion of the amendment would exclude only State-operated NFs from the 80th percentile cap for prospective direct care rate calculations effective April 1, 1990. Effective November 1, 1990, this amendment would also establish a retrospective (i.e., cost based) payment methodology using Medicare principles of reimbursement for these same facilities.

This issue in this matter is whether the State's proposed amendment to its payment plan for long-term care services significantly modifies its methods and standards used in setting payment rates for long-term care facility services, and therefore must comply with Federal regulations at 42 CFR 447.253(f). This regulation provides that a State must comply with the public notice requirements at 42 CFR 447.205 when proposing significant changes for setting payment rates for inpatient hospital or long-term care facility services. This regulation requires notice to be published prior to the effective date of the amendment.

I am scheduling a hearing on your request for reconsideration to be held on July 10, 1991, at 10 a.m. in the 7th floor Conference Room, 101 Marietta Tower, Atlanta, Georgia. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR part 430.

I am designating Mr. Stanley Krostar as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 597-3013.

Sincerely,

Gail R. Wilensky,

Administrator.

Authority: Section 1116 of the Social Security Act 42 U.S.C. section 1316); 42 CFR 430.18.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: May 22, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 91-12664 Filed 5-29-91; 8:45 am]

BILLING CODE 4120-03-M

Public Health Service

Title XV of the Public Health Service Act, as Amended; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority from the Secretary of Health and Human Services to the Assistant Secretary for Health on April 5, 1991, I have delegated to the Director, Centers for Disease Control, with authority to redelegate, all the authorities vested in the Assistant Secretary for Health under title XV of the Public Health Service Act (42 U.S.C. 300k *et seq.*), as amended (section 2 of Pub. L. 101-354, the Breast and Cervical Cancer Mortality Prevention Act of 1990). This delegation excludes the authority to promulgate regulations and to submit reports to Congress.

This delegation became effective upon date of signature. In addition, I have affirmed and ratified any actions taken by the Director, Centers for Disease Control, or his subordinates which, in effect, involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: May 3, 1991.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 91-12782 Filed 5-29-91; 8:45 am]

BILLING CODE 4160-18-M

Americans with Disabilities Act of 1990; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority of April 5, 1991 by the Secretary of Health and Human Services to the Assistant Secretary for Health, I have delegated to the Director, Centers for Disease Control, with authority to redelegate, the authority vested in the Assistant Secretary for Health under section 103(d) of the Americans with Disabilities Act of 1990, Public Law 101-336, as amended hereafter. This delegation excludes the authority to promulgate regulations and to submit reports to Congress.

This delegation became effective upon date of signature. In addition, I have affirmed and ratified any actions taken by the Director, Centers for Disease Control, or his subordinates which, in effect, involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: May 3, 1991.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 91-12783 Filed 5-29-91; 8:45 am]

BILLING CODE 4160-18-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Assistant Secretary for Public and Indian Housing

[Docket No. N-91-3273]

Submission of Proposed Information Collection to OMB—Public and Indian Housing Drug Elimination Program NOFA

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposal.

DATES: June 19, 1991.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by title and docket number and should be sent to both of the following:

Wendy Sherwin Swire, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Joan Campion, Rules Docket Clerk, Department of HUD, 451 Seventh Street, room 10276, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street SW., room 4142, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for expedited processing, an information collection package with respect to a Notice of Funding Availability (NOFA) for the Public and Indian Housing Drug Elimination Program.

The funds for this program were appropriated by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1991 (Pub. L. 101-507, approved November 5, 1990).

Under Drug Elimination Program, HUD intends to provide $140,775,000 for grants to public housing agencies and Indian housing authorities for the purpose of eliminating drug-related crime in public and Indian housing projects.

In addition to giving the amounts available for funding the Drug Elimination Program for FY 1991, the NOFA describes: (1) The nature and scope of eligible program activities; (2) the requirements and procedures for applicants to follow; (3) the selection criteria for applications.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review as required by the Paperwork Reduction Act (44 U.S.C. chapter 35):

(1) Title of the information collection proposal: Public and Indian Housing Drug Elimination Notice of Funding Availability.

(2) Office of the Agency to collect the information: Office of the Assistant Secretary for Public and Indian Housing

(3) Description of the need for the information and its proposed use: The information is needed for the purpose of evaluating activities proposed for funding by applicants. The information comprises the application by eligible applicants who compete for funding under this program.

(4) Agency form number: Not applicable at this time.

(5) Members of the public who will be affected by the proposal: Public Housing Agencies (PHAs), and Indian Housing Authorities (IHAs).

(6) How frequently information submissions will be required: One time.

(7) An estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response: See the Chart under the heading "Findings and Certifications" below.

(8) Type of request: Revision of existing request.

(9) The name and telephone number of an agency official familiar with the proposal: David Caprara, Office of Public and Indian Housing, (202) 708-0950.

A summary of the information collection requirements of the Drug Elimination Program NOFA are set forth following my signature in this notice as an exhibit only. The paperwork burden

is stated on a chart under the heading "Reporting Burden".

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 16, 1991.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

Proposal: Notice of Funding Availability for 1991—Public and Indian Housing Drug Elimination Program.

Office: Office of Drug-Free Neighborhoods.

Description of the Need for the Information and Its Proposed Use: This information collection is required in connection with the issuance of a Notice of Funding Availability (NOFA) that announces the availability of $141,775,000 for the Public and Indian Housing Drug Elimination Program. The information is needed for the purpose of evaluating activities proposed for funding by applicants. The information comprises the application by eligible applicants who compete for funding under this program.

Form Number: None.

Respondents: Public Housing Agencies (PHAs), and Indian Housing Authorities (IHAs).

Frequency of Submission: One time.

Reporting Burden:

Section of NOFA affected	No. of respondents	No. of respondents per response	Total annual responses	Hours per response	Total hours
I(c)(f)	300	1	300	6	1,800
III (entire)	500	1	500	70	35,000
Total annual reporting burden					36,800

Total Estimated Burden Hours: 36,800.

Status: Reinstatement.

Contact: Julie Fagan HUD (202) 708–1197; Wendy Sherwin Swire, OMB (202) 395–6880.

Date: May 16, 1991.

Supporting Statement for Information Collection—Notice of Fund Availability for the Public and Indian Housing Drug Elimination Program—FY 1991

A. Justification

1. This revised information collection is required in connection with HUD's issuance of a Notice of Fund Availability that will announce the availability of $140,775,000.00 in grant funds appropriated by the National Affordable Housing Act of 1990, approved November 28, 1990, Section 581, Public Law 101–625. Before the National Affordable Housing Act amendments to the Drug Elimination Program, a final rule, codified as 24 CFR part 961, was issued by HUD, July 2, 1990. A revised rule for the Drug Elimination Program is being proposed that will amend 24 CFR part 961. The requirements of this Notice of Fund Availability will provide guidance for applicants that will implement changes for this year's funding while the rulemaking is pending.

Public Housing Agencies and Indian Housing Authorities are eligible to apply for Drug Elimination grants for drug elimination activities in public and Indian housing projects. Grant funds may be used for one or more of the following activities to eliminate drug-related crime: security personnel/protective services, physical improvements to enhance security, employment of investigators, voluntary tenant patrols, drug prevention programs, funding of Resident Management Corporations (RMCs) and Resident Councils (RCs) to develop security and drug abuse prevention programs involving site residents.

There are several sections of the Notice of Fund Availability that impose information collection requirements:

Section I(c)(f) Drug Prevention, (3) Drug Treatment—Applicants must be able to demonstrate the ability to provide comprehensive drug treatment programs which include drug free residential, intensive outpatient, and aftercare components on-site, or to provide formal referral arrangements to other treatment programs not on or around the assisted projects in instances where the resident is able to obtain treatment costs from sources other than this program.

Section III. Application Submission Requirements (entirety): Applicants must submit Standard Grant Application Form SF–424 and SF–424A with narrative describing each major program and its related cost; plan for addressing the problem of drug related crime on the premises of the housing including an assessment of the severity of the drug-related crime problem, as reflected by crime statistics or other information prepared from surveys, on-site reviews/management reviews; statistical indicators; research of studies conducted by local officials, and analysis and critique of a particular drug-related crime problem; specify the measures that are important in evaluating the success of the plan and indicate the method by which the applicant will gather and analyze this information; a narrative discussion of the applicant's current activities to eliminate drug-related crime in its targeted projects; a narrative discussion of the applicant's strategy for addressing the problem of drug-related crime in each project; a description of each component of the applicant's strategy, including activities to be undertaken with funding under this program and how these components interrelate. The applicant's comprehensive drug elimination strategy must include management practices, enforcement/security techniques, and a combination of drug abuse prevention, intervention, referral, and treatment programs including cost for each component of the strategy, timetable, estimate of the results that each component of the strategy is expected to achieve for each year that the strategy is in effect and upon its completion. The resources that the applicant may reasonably expect to be available at the end of the grant term to continue the anti-drug related effort and how they will be allocated to plan initiatives. Summary of any written resident and resident organization comments submitted to the applicant. Applicant certifications for assessment of its drug-related crime problem, description of current activities being undertaken to address the problem of drug-related crime problem, description of current activities being undertaken to address the problem of drug-related crime in its projects, and the information provided under the applicant's strategy for addressing the problem(s) are both accurate and complete; for maintenance of a drug-free workplace as required by the Drug-Free Workplace Act of 1988;

for compliance with the requirements of Section 319 of the Department of Interior Appropriations Act (HUD Interim Rule, February 26, 1990) prohibiting grantees from lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific, contract, grant, or loan; for chief executive officer of a State or a unit of general local government (including an Indian tribe) to certify that grant funds provided under this NOFA will not substitute for activities currently being undertaken by the jurisdiction to address the problem of drug-related crime in the projects; for Resident Management Corporation (RMC) or Resident Council (RC), or other involved resident group where an RMC or RC does not exist, for a project proposed for funding under this program that the grant application was jointly prepared with the applicant; for Letters of commitment from governmental or private entities that describe the financial or other resources that the entity agrees to provide for the applicant's anti-drug related crime efforts under this program; and applicants applying for treatment program funding must certify that the relevant single state agency or authority with drug program coordination responsibilities has been notified and consulted concerning its application.

2. Information provided by the applicant will be reviewed by HUD and evaluated against rating criteria for possible grant funding. HUD will review and determine the feasibility and effectiveness of the plan for addressing the problem of drug-related crime and the strategies the applicant will use as part of the application process for the Drug Elimination Program. Applicants will be notified of their selection/rejection. If the information were not collected, there would be no guarantee that the anti-drug plan/strategy would be effective nor could they be held fully accountable for using the funds for eligible activities.

3. We have not considered the use of improved technology since there is no other way to get the information except directly from the applicant.

4. There will be no duplication of information.

5. There is no similar information already available which could be used or modified for use for the purpose described in 2.

6. We attempted to minimize the burden on the applicant by using standard forms and by leaving the exact format (narrative/description) of the required information requirements up to the applicants.

7. The information cannot be collected less frequently.

8. There are no special circumstances that require the collection to be conducted in a manner which is inconsistent with the guidelines in 5 CFR 1320.6.

9. There has been no outside consultation on this information collection.

10. No assurances of confidentiality is provided.

11. No sensitive questions are asked.

12. We do not estimate that there will be any additional cost to the Federal Government. The applications will be reviewed in accordance with HUD's existing review and monitoring requirements. Annual cost to the respondent is estimated to be minimal since the application submission may be prepared by the Public Housing Agencies, Indian Housing Authorities, RMCs and RCs.

13. We estimate that the information requirements of the proposed NOFA will have the following reporting burden:

Section of NOFA affected	No. of respondents	No. of respondents per response	Total annual respondents	Hours per respondents	Total hours
I(f)(1)(3)	300	1	300	6	1,800
III (entirety)	500	1	500	70	35,000
Total Annual Reporting Burden					36,800

14. Not applicable.

15. The collection of this information will not be published for statistical use.

The following is an excerpt from an as-yet unpublished notice of funding availability (NOFA) for the 1991 Drug Elimination Program. The purpose of this publication is to inform the public of the information collection that will be contained in the NOFA.

Excerpts From the Unpublished Public Housing Drug Elimination Program Notice of Funding Availability—FY 1991

I. Purpose and Substantive Description:

* * * * *

(c) Eligibility

* * * * *

(f) *Programs to reduce the use of drugs.* Programs that reduce the use of drugs in and around the premises of public and Indian housing projects, including drug abuse prevention, intervention, referral and treatment programs are permitted under this program.

(1) *Drug Prevention.* Programs that will be considered for funding under this program must provide a comprehensive drug prevention approach for public and Indian housing residents that will address the individual resident and his or her relationship to family, peers, and the community. Prevention programs must include activities designed to identify and change the factors present in public or Indian housing that lead to drug-related problems, and thereby lower the risk of drug usage. Many components of a comprehensive approach, such as refusal and restraint skills training programs or drug-related family counseling, may already be available in the community of which the housing project of the applicant is a part, and the applicant must act to bring those available program components onto the premises. The salary of a coordinator whose responsibilities would include finding out what community resources are already available and bringing these resources onto the premises, or providing residents referrals to them, as components of a comprehensive drug prevention program is an eligible activity under this paragraph. Activities that should be included in these programs are:

(i) Drug education opportunities for public and Indian housing residents. The causes and effects of illegal drug usage must be discussed in a formal setting to provide both young people and adults the working knowledge and skills they need to make informed decisions to confront the potential and immediate dangers of illegal drugs. Grantees may contract with drug education professionals to provide appropriate training or workshops. The drug education professionals contracted to provide these services shall be required to base their services upon the needs assessment and program plan of the

grantee. These educational opportunities may be a part of resident meetings, youth activities, or other gatherings of public and Indian housing residents.

(ii) Family and other support services. Drug prevention programs must demonstrate that they will provide directly or otherwise make available services designed to distribute drug education information, to foster effective parenting skills, and to provide referrals for treatment and other available support services in the project or the community for public and Indian housing families.

(iii) Youth services. Drug prevention programs must demonstrate that they have included groups composed of young people as a part of their prevention programs. These groups must be coordinated by adults with the active participation of youth to organize youth leadership, sports, recreational, cultural and other activities involving public and Indian housing youth. The dissemination of drug education information, the development of peer leadership skills and other drug prevention activities must be a component of youth services. Activities or services funded under this program may not also be funded under the Youth Sports Program.

(iv) Economic/educational opportunities for residents and youth. Drug prevention programs should demonstrate a capacity to provide public and Indian housing residents the opportunities for interaction with or referral to established higher education or vocational institutions with the goal of developing or building on the residents skills to pursue educational, vocational and economic goals. The program must also demonstrate the ability to provide public and Indian housing residents the opportunity to interact with private sector businesses in their immediate community for the same desired goals.

(2) *Intervention.* The aim of intervention is to identify and refer public and Indian housing resident drug users and to assist them in modifying their behavior or, if necessary, to obtain early treatment. The applicant must establish a program with the goal of preventing drug problems from continuing once detected. The training of housing staff and residents for this purpose is an eligible activity under this paragraph, as is the employment of a coordinator to establish and implement the program.

(3) *Drug Treatment.* Drug treatment programs designed to reduce use of drugs in and around public and Indian housing are made eligible under this program. The cost of leasing, acquiring, constructing or rehabilitating the facility space for a drug treatment program is not an eligible expense, but the costs of staffing and reasonable expenses for furnishing and equipping a facility are eligible expenses.

(i) Treatment funded under this program shall be in or around the premises of housing projects to provide tenants more effective and economic treatment. For the purposes of this program, "in and around" means within, or immediately adjacent to, the physical boundaries of a public or Indian housing project.

(ii) Treatment professionals hired under this program are required to meet all relevant State, tribal, or local training or continuing training, insurance, licensing, or other similar requirements.

(iii) Funds awarded under this program are targeted towards the development and implementation of new treatment programs, or the improvement of, or expansion of existing programs on-site in public and Indian housing developments.

(iv) Each proposed drug treatment program should address the following goals:

(A) increase resident accessibility to drug treatment services,

(B) decrease criminal activity in and around public and Indian housing projects by reducing illicit drug use among public and Indian housing residents, and

(C) provide services designed for youth and/or maternal drug abusers, i.e., prenatal/post parium care, specialized counseling in women's issues, parenting classes.

(v) Treatment programs should meet the following criteria:

(A) Applicants must be able to demonstrate the ability to provide comprehensive drug treatment programs which may include drug-free residential, intensive outpatient, and aftercare components, all of which must be on-site. Applicants may provide the service of formal referral arrangements to other treatment programs not in or around the assisted projects in instances where the resident is able to obtain treatment costs from sources other than this program.

(B) Family/collateral counseling.

(C) Linkages to educational/vocational counseling.

(D) Therapeutic approaches which have proven effective with similar populations will be considered, e.g., therapeutic community approaches, cognitive restructuring approaches which empower residents to address their recovery, behavioral approaches with emphasis on educational and vocational accomplishments.

(E) Coordination of services to appropriate local drug, HIV-related service agencies, state mental health and public health programs.

(vi) Applicants must demonstrate a working partnership with the Single State Agency or current state licensure provider, to coordinate, develop and implement the drug treatment proposal.

(vii) The Single State Agency or state licensure must certify that the drug treatment provider(s) has provided drug treatment services to similar populations, identified in the application, for two prior years.

(viii) The Single State Agency must certify that the drug treatment proposal is consistent with the state treatment plan; and that the treatment provider(s) meets all individual and state licensing requirements.

(4) Funding is not permitted for treatment of residents at residential treatment programs not in or around the premises of the public or Indian housing projects.

(5) Funding is not permitted for insurance for residents for drug treatment.

(6) Funding is not permitted for detoxification procedures, short term or long term, designed to reduce or eliminate the presence of toxic substances in the body tissues of a patient.

(7) Funding is not permitted for the leasing, acquisition, construction or rehabilitation of drug treatment facilities.

(8) Funding is not permitted for maintenance drug programs. Maintenance drugs are medications that are prescribed regularly for a long period of supportive therapy (e.g., methadone maintenance), rather than for immediate control of a disorder.

(9) Funding is not permitted to subgrantees until they obtain required insurance coverage.

(10) Funding is not permitted for T-shirts, caps, (except tenant patrol uniforms) buttons, advertising campaigns, rallies, marches, or community celebrations.

(11) The administrative costs related to screening or evicting residents for drug-related crime is not permitted.

(12) Funding is not permitted for the purchase of vehicles for youth activities.

(13) Funding is permitted for the leasing of vehicles for youth activities.

* * * * *

III. Checklist of Application Submission Requirements

The application requirements consist of the following procedures:

(a) An application package may be obtained from the local HUD field office having jurisdiction over the public or Indian housing authority making application, or by calling HUD's Drug Information and Strategy Clearinghouse, telephone 800-245-2691. The application package contains information on all exhibits and certifications required under this NOFA.

(b) For assistance in completing the application or information on training/workshops, the public or Indian housing authority may contact the local HUD field office or Drug-Free Neighborhoods Division, Office of Resident Initiatives, Public and Indian Housing, Department of Housing and Urban Development, telephone 202-708-3502 or 202-708-3503.

(c) To qualify for a grant under this program, an applicant must submit an application to HUD that contains the following:

(1) Standard Grant Application Form SF-424 and SF-424A with narrative describing each major program and its related cost.

(2) A plan for addressing the problem of drug-related crime on the premises of the housing for which the application is being submitted that provides the following information:

(i) An assessment of the severity of the drug-related crime problem, as reflected by crime statistics or other information prepared in accordance with Section I(d)(1) (A) and (B), above, of this NOFA.

(A) The assessment provided under paragraph (i) can be accomplished through a variety of methods, using more than one existing source of information. Some examples of assessments include: surveys; on-site reviews/management reviews; statistical indicators (such as type of crimes, area where the offenders reside, age of offenders, school attendance, health service referrals, grade point averages, vandalism costs, vacancy rates, unemployment rates, library check out records, etc.); research or studies conducted by local officials; and analysis and critique of a particular drug-related crime problem.

(ii) The applicant must specify the measures that it believes to be important in evaluating the success of the plan, including goals that relate back to the assessment data provided under paragraph (i); discuss the types of information the applicant will need to measure the plan's success; and indicate the method by which the applicant will gather and analyze this information.

(iii) The plan must include a narrative discussion of the applicant's current activities to eliminate drug-related crime in its targeted projects, including its efforts to implement eviction and screening procedures to determine an applicant's suitability for public housing (consistent with the requirements of 42 U.S.C. 3604(f) and 24 CFR 100.202, and 29 U.S.C. 794 and 24 CFR part 8.4 which deal with individuals with disabilities); to implement a plan to reduce vacancies; or to undertake other management practices to eliminate drug-related crime in the applicant's projects. Actions and initiatives in the plan that can be sustained over a period of years beyond the grant term shall be identified. The applicant should also describe its experience in implementing and managing other HUD grant programs (e.g., CIAP, youth sports, child care, etc.), and other Federal anti-drug related crime programs; describe the current activities being undertaken by community and governmental entities, project residents, or RMCs or RCs, to address the problem of drug-related crime in the projects proposed for assistance; and provide a listing of the names of agencies or other entities (including the applicant) currently providing assistance to address the drug-related crime problem in the targeted projects and describe what assistance they are providing.

(iv) A narrative discussion of the applicant's strategy for addressing the problem of drug-related crime in each of the projects proposed for assistance must be included in the plan. The discussion must indicate how the applicant's proposed strategy will respond to its demonstrated need in the targeted projects, and offer a realistic approach for dealing with the applicant's drug-related crime problem, taking into account the nature and extent of the problem, the amount of funding requested under this program, and the local and other non-HUD funding and other resources that reasonably may be expected to be available to combat the problem. At a minimum, the discussion must include the following information for each of the projects proposed for assistance:

(A) A description of each component of the applicant's strategy, including activities to be undertaken with funding under this program (narrative describing each major activity and its related cost), and how these components interrelate. The applicant should specifically address whether it plans to implement a comprehensive drug elimination strategy that involves management practices, enforcement/security techniques, and a combination of drug abuse prevention, intervention, referral, and treatment programs. In addition, the applicant should indicate how its proposed activities will complement, and be coordinated with, current services.

(B) The anticipated cost of each component of the strategy, and the financial and other resources (including funding under this program, and from other resources) that may reasonably be expected to be available to carry out each component, and a discussion of how funding decisions were reached;

(C) A timetable for beginning and completing each component of the strategy;

(D) An estimate of the results that each component of the strategy, as well as the overall strategy, is expected to achieve for each year that the strategy is in effect and upon its completion.

(E) The resources that the applicant may reasonably expect to be available at the end of the grant term to continue the anti-drug related effort and how they will be allocated to plan initiatives that can be sustained over a period of years;

(F) The role of residents, and RMCs and RCs where they exist, in planning and developing the grant application and strategy, and in implementing the applicant's plan. The applicant must also provide the name of the RMC or incorporated RC that will develop any security and drug abuse prevention programs involving site residents. The applicant must also describe the role of any other entities (e.g., local and State governments and community organizations) in planning and carrying out the strategy; and describe the funds or other resources (e.g., staff or in-kind resources) to be provided by resident or community organizations, local and State governments, and project tenants to implement the plan strategy.

(G) If grant amounts are to be used for physical improvements, a statement as to how these improvements will be coordinated with the applicant's modernization program under 24 CFR part 968 or 24 CFR part 905;

(H) If grant amounts are to be used for prevention, intervention or treatment programs to reduce the use of drugs in and around the premises of public or Indian housing projects, a statement by the applicant as to the nature of the program, a discussion of how the program represents a prevention, intervention or treatment strategy, and how the program will further the PHA's or IHA's strategy to eliminate drug-related crime in the projects proposed for assistance.

(3) Summary of any written resident and resident organization comments submitted to the applicant.

(4) A certification by the applicant that:

(i) The applicant's assessment of its drug-related crime problem, and the problems associated with drug-related crime, is based upon the best available objective data; and that the description of current activities being undertaken by the applicant to address the problem of drug-related crime in its projects, and the information provided under regarding the applicant's strategy for addressing the problem of drug-related crime in its projects are both accurate and complete.

(ii) The applicant will maintain a drug-free workplace in accordance with the requirements of the Drug-Free Workplace Act of 1988, 24 CFR part 24, subpart F. (Applicants may submit a copy of their most recent drug-free workplace certification, which must be dated within the past year.)

(iii) The applicant will comply with the requirements of Section 319 of the Department of the Interior Appropriations Act (Pub. L. 101-121, approved October 23, 1989), as implemented in HUD's interim final rule published in the **Federal Register** on February 26, 1990 (55 FR 6736). This statute generally prohibits recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific, contract, grant, or loan.

(5) A certification by the chief executive officer of a State or a unit of general local government (including an Indian tribe), in which the projects proposed for assistance are located that:

(i) Grant funds provided under this part will not substitute for activities currently being undertaken by the jurisdiction to address the problem of drug-related crime in these projects;

(ii) Any additional security and protective services to be provided under this program meet the requirements of this program as indicated in this NOFA;

(iii) The relevant governmental jurisdiction will take the actions described in the applicant's strategy under its plan;

(iv) That the locality is meeting its obligations under the Intergovernmental Agreement with the PHA or IHA, particularly with regard to law enforcement services. Whether or not a locality is meeting its obligations under the Intergovernmental Agreement with the applicant, the CEO for the locality must describe the current level of law enforcement services being provided to the projects proposed for assistance. If the jurisdiction is not meeting its obligations under the Intergovernmental Agreement, the CEO should identify any special circumstances relating to its failure to do so.

(6) If applying for voluntary tenant patrol funding, a certification from the chief of the local law enforcement agency, that the law enforcement agency has entered into, or will enter into, a cooperation agreement with the voluntary tenant patrol, in accordance with the requirements of this program;

(7) A certification by the RMC or RC, or other involved resident group where an RMC or RC do not exist, for a project proposed for funding under this program that the grant application was jointly prepared with the applicant, and that the applicant's description of the activities that the resident group will implement under the program is accurate and complete.

(8) Letters of commitment from governmental or private entities that describe the financial or other resources (e.g., staff or in-kind resources) that the entity agrees to provide for the applicant's anti-drug related crime efforts under this program.

(9) If applying for treatment program funding, a certification that the applicant has notified and consulted with the relevant single state agency or authority with drug program coordination responsibilities concerning its application; that the drug treatment provider(s) has provided drug treatment to a similar population for at least two years; that the proposed drug treatment project is consistent with the state treatment plan; and that the treatment providers meet all individual state licensing requirements.

[FR Doc. 91-12662 Filed 5-29-91; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-01-5440-10 ZBAF]

Proposed State of California Indemnity Selection; Subsequent Low-Level Radioactive Waste Facility, San Bernardino County

AGENCY: Bureau of Land Management, Interior.

ACTION: Amending notice of availability of final EIS/EIR.

SUMMARY: This notice amends the Notice of Availability (**Federal Register**, May 8, 1991) of the joint final EIS/EIR prepared by the Bureau of Land Management and the California Department of Health Services. The Notice of Availability stated that comments on the final EIR/EIS would be accepted until June 3, 1987. To ensure that interested persons will have an opportunity to review the final EIS/EIR, the comment period has been extended to July 3, 1991. The joint EIS/EIR covers the proposed State of California indemnity selection for 1000 acres, issuance of a right-of-way, and identification of a site for a low-level radioactive waste disposal facility which will be licensed by the State of California for 30 years. The proposed facility is located at Ward Valley, about 23 miles west of the City of Needles, San Bernardino County.

DATES: Public comment period is extended from June 3, 1991 to July 3, 1991. Comments received after that date may be considered in the Record of Decision.

ADDRESSES: Written comments may be sent to: District Manager, Desert District, Bureau of Land Management, Attn: LLRW, 6221 Box Springs Blvd., Riverside, CA 92507.

Dated: May 22, 1991.

Jean Rivers-Council,

Acting District Manager.

[FR Doc. 91-12711 Filed 5-29-91; 8:45 am]

BILLING CODE 4310-40-M

[MT-930-4212-10; MTM-17858]

Reversion of Lands to the Department of the Interior Under the Provisions of the Act of Congress Dated April 15, 1924, 43 Stat. 99, and Opening of Public Lands; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Act of April 15, 1924, 43 Stat. 99, 131.92 acres of public lands have reverted to the Department of the Interior. This notice announces when those lands will be open to surface entry and mining. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-255-2935.

SUPPLEMENTARY INFORMATION: The Act of Congress dated April 15, 1924, 49 Stat. 99, transferred the former Fort Keogh Military Reservation from the Department of the Interior to the Department of Agriculture for use by that department for experiments in stock raising and growing of forage crops. The

Act provided that if the lands were no longer used or needed for the purposes for which they were transferred those lands would revert to and become subject to the control and jurisdiction of the Department of the Interior. Under the reversionary provisions of this Act, the following—described lands were returned to the Department of the Interior:

Principal Meridian

(MTM-17858)

T. 7 N., R. 46 E.,
Sec. 14, lots 6 and 7;
Sec. 15, lot 3;
Sec. 22, lots 1, 4 and 5;
Sec. 23, lots 2 and 3.

The areas described aggregate 131.92 acres in Custer County.

1. At 9 a.m. on July 1, 1991, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on July 1, 1991 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

2. At 9 a.m. on July 1, 1991 the land will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provision of existing withdrawals, and other segregations of record. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: April 19, 1991.

Thomas P. Lonnie,

Acting State Director.

[FR Doc. 91-12669 Filed 5-29-91; 8:45 am]

BILLING CODE 4310-DN-M

[NM-010-4212-13/GPO-0109]

Realty Action; Exchange of Lands in New Mexico; Correction

In notice document 91-6145 on page 11268 in the issue of Friday, March 15, 1991, make the following correction:

1. The legal description under New Mexico Principal Meridian, T. 17 N., R. 23 E., Sec. 27, "S½", should read "S½SW¼".

Dated: May 20, 1991.

Steve Henke,

Acting Associate District Manager, Albuquerque, NM.

[FR Doc. 91-12700 Filed 5-29-91; 8:45 am]

BILLING CODE 4310-FB-M

[OR-090-01-4212-13: GP1-233; OR 39411]

Realty Action; Exchange of Public Lands; Lane County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; exchange of public lands in Lane County, Oregon.

SUMMARY: The following described public land has been examined and determined to be suitable for transfer out of Federal ownership by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Willamette Meridian, Oregon

T. 17 S., R. 9 W.
Sec. 13: E½SW¼
T. 22 S., R. 1 W.
Sec. 19: Lot 21
Sec. 29: Lots 1, 2

Containing 198.76 acres in Lane County.

In exchange for these lands, the United States will acquire the following described lands from Bohemia Inc.:

Willamette Meridian, Oregon

T. 15 S., R. 6 W.
Sec. 33: SW¼NW¼
T. 16 S., R. 7 W.
Sec. 20: Metes and Bounds in SW¼SW¼
Sec. 30: Metes and Bounds in N½NE¼
T. 16 S., R. 8 W.
Sec. 28: S½SE¼

Containing 201.24 acres, more or less, in Lane County.

The purpose of the exchange is to improve the resource management program of the Bureau of Land Management and the property management program of Bohemia, Inc. The public lands to be exchanged are relatively isolated parcels, noncontiguous to other BLM lands and in some cases lacking legal access. The private lands being offered have important timber, fisheries and wildlife habitat values. These lands will be managed for multiple use along with the adjoining public lands. The public interest will be well served by making this exchange.

The value of the lands to be exchanged is approximately equal, and the acreage will be adjusted to bring the values as close as possible upon completion of the final appraisal of the lands. Full equalization of values will be achieved by payment to the United States of funds in an amount not to exceed 25 percent of the total value of the public land to be transferred. All mineral rights will be transferred with the surface, except for 48.39 acres of the offered land where Bohemia Inc. does not own the mineral rights.

The exchange will be subject to:

1. All valid existing rights, including any right-of-way, easement, permit or lease of record.

2. A reservation to the United States of a right-of-way for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

Publication of this notice in the **Federal Register** segregates the public land, described above, from appropriation under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this notice will terminate upon issuance of patent or in two years, whichever occurs first.

DATES: On or before July 15, 1991, interested parties may submit comments to the Eugene District Manager at the address shown below. Any objections will be reviewed by the Oregon State Director, Bureau of Land Management, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

ADDRESSES: Detailed information concerning this exchange, including the environmental assessment, is available for review at the Eugene District Office, P.O. Box 10226 (1255 Pearl Street), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Ronald Wold, Eugene District Office, at (503) 683-6403.

Date of Issue: May 20, 1991.

Ronald L. Kaufman,

District Manager.

[FR Doc. 91-12670 Filed 5-29-91; 8:45 am]

BILLING CODE 4310-33-M

Fish and Wildlife Service

Meeting, Klamath River Basin Fisheries Task Force

AGENCY: Department of the Interior.

ACTION: Notice of meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. I), this notice announces a meeting of the Kalamath River Basin Fisheries Task Force, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss et seq.). The meeting is open to the public.

DATES: The Klamath River Basin Fisheries Task Force will meet from 1 p.m. to 5 p.m. on Monday, June 17; from 8 a.m. to 5 p.m. on Tuesday, June 18; and from 8 a.m. to 5 p.m. on Wednesday, June 19, 1991.

PLACE: The meeting will be held at the Red Lion Motor Inn, 1929 4th Street, Eureka, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1030 South Main), Yreka, California 96097-1006, telephone (916) 842-5763.

SUPPLEMENTARY INFORMATION: For background information on the Task Force, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639). On June 17-19, 1991, the Task Force will meet to discuss an amendment to the long-range restoration plan. The amendment is to include policies for the upper Klamath River basin, above. Iron Gate Dam. The Task Force will also discuss and recommend for Federal funding, project proposals to make up the Fiscal Year 1992 Restoration Program work plan. A public comment period is provided each afternoon of the meeting.

Dated: May 20, 1991.

William E. Martin,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 91-12668 Filed 5-29-91; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Outer Continental Shelf; Availability; Proposed Notice of Sale, Western Gulf of Mexico, Oil and Gas Lease Sale 141

Gulf of Mexico Outer Continental Shelf (OCS); Notice of Availability of Proposed Notice of Sale, Western Gulf of Mexico, Oil and Gas Lease Sale 141.

With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, as amended, provides the affected States the opportunity to review the proposed Notice of Sale.

The proposed Notice of Sale for Sale 141, Western Gulf of Mexico, may be obtained by written request to the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, or by telephone (504) 736-2519.

The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is scheduled for mid-1992.

This Notice of Availability is hereby published, pursuant to 30 CFR 256.29(c), as a matter of information to the public.

Dated: May 22, 1991.

Thomas Gernhofer,

Acting Director, Minerals Management Service.

[FR Doc. 91-12705 Filed 5-29-91; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Cape Cod National Seashore, South Wellfleet, MA; Cape Cod National Seashore Advisory Commission; 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 1 section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, June 21, 1991.

The Commission was reestablished pursuant to Public Law 99-349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet for a regular business meeting which will convene at Park Headquarters, Marconi Station, South Wellfleet, Massachusetts at 1 p.m. for the following reasons:

1. Adoption of Agenda
2. Approval of Minutes of Previous Meeting
3. Old Business
4. Reports of Officers
5. Superintendent's Report
6. Recommendation Concerning Salt Pond House
7. Status of Race Point Road Project
8. Joshua A. Nickerson Conservation Fund
9. New Business
10. Agenda for Next Meeting
11. Date for Next Meeting
12. Communications/public comment
13. Adjournment

The business meeting is open to the public. It is expected that 15 persons will be able to attend the session in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Cape Cod National Seashore, South Wellfleet, MA 02663.

Dated: May 20, 1991.

Cynthia E. Kryston,

Acting Regional Director.

[FR Doc. 91-12778 Filed 5-29-91; 8:45 am]

BILLING CODE 4310-70-M

National Capital Region; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission will be held on Tuesday, June 11, 1991, at 1:30 p.m., at the Commission of Fine Arts, 5th and F Streets, NW., suite 312, Washington, DC.

The Commission was established by Public Law 99-652, for the purpose of advising the Secretary of the Interior or the Administrator of the General Services Administration, depending on which agency has jurisdiction over the lands involved in the matter, on policy and procedures for establishment of (and proposals to establish) commemorative works in the District of Columbia or its environs, as well as such other matters concerning commemorative works in the Nation's Capital as it may deem appropriate. The Commission evaluates each memorial proposal and makes recommendations to the Secretary or the Administrator with respect to appropriateness, site location and design, and serves as an information focal point for those seeking to erect memorials on Federal land in Washington, DC, or its environs.

The members of the Commission are as follows:

James Ridenour, Chairman, Director, National Park Service, Washington, DC.

George M. White, Architect of the Capitol, Washington, DC.

Honorable Andrew J. Goodpaster, Chairman, American Battle Monuments Commission, Washington, DC.

J. Carter Brown, Chairman, Commission of Fine Arts, Washington, DC.

Glen Urquhart, Chairman, National Capital Planning Commission, Washington, DC.

Honorable Sharon Pratt Dixon, Mayor of the District of Columbia, Washington, DC.

Honorable Richard G. Austin, Administrator, General Services Administration, Washington, DC.

Honorable Richard B. Cheney, Secretary of Defense, Washington, DC.

The purpose of the meeting will be to review and take action on the following:

I. Review of Preliminary Design

(a) Memorial to Women who Served in the Armed Forces for America.

(b) National Peace Garden.

II. Review of Proposed Legislation

(a) S. 239 and H.J. Res. 159, to authorize the Alpha Phi Alpha Fraternity to establish a memorial to Martin Luther King, Jr., in the District of Columbia.

(b) S.J. Res. 103 and H.J. Res. 178, to authorize the National Committee of Airmen Rescued by General Mihailovich to erect a monument to General Draza Mihailovich in Washington, DC.

(c) S. 781, to authorize the American Forum for Political Education to establish a memorial to Mahatma Gandhi in the District of Columbia.

(d) H.R. 132, to provide for the establishment of a memorial on Federal land within the District of Columbia to honor individuals who have served as volunteers in the Peace Corps.

(e) H.J. Res. 155, to authorize the Association for an African-American National Monument to Promote History and Culture, Inc., to establish a memorial in the District of Columbia or its environs to honor the history and culture of African Americans.

(f) H.R. 662, to direct the Secretary of the Interior to display the flag of the United States of America at the apex of the Vietnam Veterans Memorial.

(g) H.R. 1624, to provide for the establishment of a memorial on Federal land within the District of Columbia to honor members of the Armed Forces who served in World War II.

(h) S. 855 and H.R. 1744, to amend Public Law 99-572 concerning the Korean War Veterans Memorial.

(i) Draft legislation to amend Public Law 99-652, the Commemorative Works Act.

Dated: May 23, 1991.

Edward J. Drotos,

Regional Director, National Capital Region.

[FR Doc. 91-12779 Filed 5-29-91; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-520 and 521 (Preliminary)]

Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China and Thailand

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of preliminary antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution and preliminary antidumping investigations Nos. 731-TA-520 and 521 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China and Thailand of carbon steel butt-weld pipe fittings, under 360 millimeters (14 inches) in inside diameter,[1] provided for in subheading 7307.93.30 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by July 8, 1991.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201, as amended by 56 FR 11918, Mar. 21, 1991), and part 207, subparts A and B (19 CFR part 207, as amended by 56 FR 11918, Mar. 21, 1991).

EFFECTIVE DATE: May 22, 1991.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202-252-1200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on May 22, 1991, by the U.S. Fittings Group, Washington, DC.

[1] For purposes of these investigations, such fittings may be finished or unfinished.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in these investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on June 12, 1991, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Elizabeth Haines (202-252-1200) not later than June 10, 1991, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before June 17, 1991, a written brief containing information and arguments pertinent to the subject matter of these investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to these investigations must be served on all other parties to these investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: May 24, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-12886 Filed 5-29-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 332-267]

Effects of Greater Economic Integration Within the European Community on the United States

AGENCY: United States International Trade Commission.

ACTION: Deadline for submissions in connection with the fourth followup report.

SUMMARY: The Commission has commenced work on the fourth in a series of followup reports updating its initial report issued in July 1989 in connection with investigation No. 332-267, The Effects of Greater Economic Integration Within the European Community on the United States. The reports were requested under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) by the House Committee on Ways and Means and the Senate Committee on Finance in a letter received on October 13, 1988. Notice of the institution of the investigation and scheduling of a public hearing was published in the **Federal Register** of December 21, 1988 (53 FR 51328), and notice of the procedure to be followed in followup reports was published in the **Federal Register** of September 20, 1989 (54 FR 38751).

The report on the initial phase of the investigation was sent to the Committees on July 17, 1989. Followup reports were sent to the Committees on March 30, 1990, September 28, 1990, and March 29, 1991. Copies of the reports, The Effects of Greater Economic Integration Within the European Community on the United States, may be obtained by calling 202-252-1809, or from the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Requests can also be faxed to 202-252-2186.

The fourth followup report will be sent to the Committees on April 30, 1992.

EFFECTIVE DATE: April 23, 1991.

FOR FURTHER INFORMATION CONTACT: For further information on the investigation contact Ms. Kim Frankena at (202) 252-1265 or Ms. Joanne Guth at 202-252-1264.

WRITTEN SUBMISSIONS: Interested persons are invited to submit written statements concerning the investigation. Written submissions to be considered by the Commission for the fourth followup report should be received by the close of business on December 12, 1991. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

Issued: May 20, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-12769 Filed 5-29-91; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-39 (Sub-No. 16X)]

St. Louis Southwestern Railway Co.—Abandonment Exemption—in Pulaksi, Lonoke, and Jefferson Counties, AR

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by St. Louis Southwestern Railway Company of 35.79 miles of rail line in Pulaski, Lonoke, and Jefferson Counties, AR; subject to standard labor protective conditions and an historic preservation condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 1, 1991. Formal expressions of intent to file an offer [1] of financial assistance with 49 CFR 1152.27(c)(2) must be filed by June 10, 1991, petitions to stay must be filed by June 14, 1991, and petitions for reconsideration must be filed by June 24, 1991. Requests for a public use condition must be filed by June 10, 1991.

ADDRESSES: Send pleadings referring to Docket No. AB-39 (Sub-No. 16X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245 (TDD for hearing impaired: (202) 275-1721).

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) 275-1721.)

Decided: May 22, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-12749 Filed 5-29-91; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31874]

South Dakota Railway Co.; Modified Rail Certificate

On April 26, 1991, the South Dakota Railway Company (SDRC) filed a notice for a modified certificate of public convenience and necessity under 49 CFR 1150.23 to operate approximately 83.3 miles of line, between milepost 0.0, at a point known as Napa Junction, SD, and milepost 83.3, in Platte, SD, acquired by the State of South Dakota from the Chicago, Milwaukee, St. Paul, and Pacific Railroad Company (MILW) after the line was approved for abandonment

[1] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987).

by the United States District Court for the Northern District of Illinois, Eastern Division.[1] The State subsequently leased the line to the Napa-Platte Regional Railroad Authority (NPRRA).

On March 30, 1989, SDRC entered into a 5-year agreement with NPRRA under which SDRC would operate and maintain the line. (SDRC, however, did not commence operations at that time.) SDRC intends to interchange and connect traffic with the Burlington Northern Railroad Company at Napa Junction.

This notice involves the lease of property, which is defined by the regulations of the Advisory Council on Historic Preservation as potentially having an adverse effect on properties. SDRC shall maintain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470.

This notice must be served on the Association of American Railroads (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

Dated: May 22, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-12748 Filed 5-29-91; 8:45 am]

BILLING CODE 7035-01-M

[1] Section 5 of the Milwaukee Railroad Restructuring Act transferred jursidction over MILW abandonments from this Commission to the United States District Court for the Northern District of Illinois, Eastern Division (Court), which had jursidcition over MILW's reorganization. The Court thereafter directed this Commission to report to it concerning abandonment of certain MILW lines. In Docket No. AB-7 (Sub-No. 88), Richard Oglivie, Trustee of the Property of the Chicago, Milwaukee, St. Paul, and Pacific Railroad Company—Abandonment—in South Dakota, Iowa, and Nebraska (not printed), served May 14, 1980, the Commission recommended that the Court authorize abandonment, which the Court subsequently did.

Release of Waybill Data for Use By Intermodal Policy Division (IPD), Association of American Railroads

The Commission has received a request from the Intermodal Policy Division, Association of American Railroads (AAR) for permission to use certain data from the Commission's 1989 ICC Waybill Sample.

A copy of the request (WB573-5/9/91) may be obtained from the ICC Office of Economics.

The Waybill Sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data (Ex Parte 385 (Sub-No. 2)) are codified at 49 CFR 1244.8.

Contact: James A. Nash (202) 275-6864.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-12751 Filed 5-29-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collections Under Review

May 23, 1991.

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, Mr. Edward H. Clarke, on (202) 395-7340 and to the Department of Justice's Clearance Officer, Mr. Larry E. Miesse, on (202) 514-4312.

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. Larry E. Miesse, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Revision of a Currently Approved Collection

(1) NCJRS Registration for Service Form.

(2) NIJ 1431/2, NIJ 131/7. National Institute of Justice, Office of Justice Programs.

(3) Annually.

(4) Individuals or households, State or local governments. The National Institute of Justice was established to meet technical information needs of the law enforcement, criminal justice, juvenile justice, and investigative communities. Information is collected and used only by the National Criminal Justice Reference Service (NCJRS) to tailor its products and services.

(5) 65,000 annual respondents at .034847 hours each.

(6) 2,272 estimated annual burden hours.

(7) Not applicable under 3504(h).

New Collections

(1) Nondiscrimination on the basis of disability in State and Local Government Service.

(2) No form number. Coordination and Review Section, Civil Rights Division.

(3) Recordkeeping.

(4) State or local governments. Under title II of the Americans with Disabilities Act (ADA), State and local governments are required to evaluate their current services, policies, and practices for compliance with the ADA. Under certain circumstances, such entities must also maintain the results of such self-evaluation on file for public review.

(5) 25,000 annual recordkeepers at 6 hours each.

(6) 150,000 estimated annual burden hours.

(7) Not applicable under 3504(h).

(1) Nondiscrimination on the Basis of Disability in State and Local Government Services (Transition Plan).

(2) No form number. Civil Rights Division.

(3) Recordkeeping burden only.

(4) State or local governments. Under the Americans with Disabilities Act,

State and local governments cannot discriminate against individuals with disabilities in operating services, programs, and activities. If physical changes to existing facilities are required, certain of such entities must prepare a transition plan and make it available for public inspection.

(5) 6,000 annual respondents at 8 hours each.

(6) 48,000 estimated annual burden hours.

(7) Not applicable under 3504(h).

(1) Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities (Certification).

(2) No form number. Civil Rights Division.

(3) One time only.

(4) State or local governments. Under Title II of the Americans with Disabilities Act (ADA), upon application from State or local government, the Assistant Attorney General for Civil Rights may certify that a State or local building code meets the minimum accessibility and usability standards set forth in the ADA regulations.

(5) 200 annual respondents at 16 hours each.

(6) 3,200 estimated annual burden hours.

(7) Not applicable under 3504(h).

Larry E. Miesse,

Department Clearance Officer, Department of Justice.

[FR Doc. 91-12727 Filed 5-29-91; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 532-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Employment and Training Administration.

Petition for Adjustment Assistance/Solicitud De Asistencia Para Ajuste 1205-0192; ETA 8560 & ETA 8559.

On occasion.

Form No.	Affected Public	Respondents	Frequency	Average Time Per Response
ETA 8560	Individuals or households	1,400	On occasion	15 minutes
ETA 8559	Individuals or households	1,400	On occasion	15 minutes

Petition used by American workers applying to U.S. Department of Labor for eligibility to receive worker trade adjustment assistance in accordance with provisions of the Trade Act of 1974 as amended. The petition initiates action on part of the Department to determine if workers are eligible.

Extension

OSHA.

Ethylene Oxide.

1218-0108.

On Occasion.

Business or other for-profit; small business or organizations. Respondents *97; 8* total hours; *.08* hrs. per response; *0* form. The purpose of this standard and its information collection requirements is to provide protection for employees from adverse health effects associated with occupational exposure to Ethylene Oxide. The standard requires that OSHA have access to various records to ensure that employers are complying with disclosure provisions of the Ethylene Oxide standard.

Signed at Washington, DC this 23rd day of May, 1991.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 91-12767 Filed 5-29-91; 8:45 am]

BILLING C' 4510

Employment and Training Administration

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of May 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for

adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,495; General Engines, Inc., Thorofare, NJ.

TA-W-25,461; Granby Manufacturing, Granby, MO.

TA-W-25,554; Irvin Automotive/Takata, Inc., Dandridge, TN.

TA-W-25,553; Hoover Tool & Die Co., Warren, MI.

TA-W-25,483; Trani Fashions, Inc., Jersey City, NJ.

TA-W-25,545; F-Dyne Electrics, Inc., Bridgeport, CT.

TA-W-25,490; Cor-Mac Vanguard Machinery, Edison, NJ.

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specificed.

TA-W-25,580; Pennsylvania Power Co., Bruce Mansfield Plant, Shippingport, PA.

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,556; The McFarland Co., Harrisburg, PA.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-25,534; Graphics Plus, Inc., Bridgeport, CT.

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,540; South Haven Rubber Co., South Haven, MI.

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,582; Stearns & Foster, South Brunswick, NJ.

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,532; Edgewater Steel Co., Oakmont, PA.

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,552; Hartco-Tibbals Flooring Co., Oneida, TN.

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,438; Tandy Magnetic Media Div. of Tandy Electronics, Santa Clara, CA.

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,538; North Star Steel Pennsylvania, Milton, PA.

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,658; Zenith Corp., Glenview, IL & Operating at The Following Locations: A; Chicago-Austin, IL, B; Chicago-Kostner, IL, C; Franklin Park, Chicago, IL, D; Northlake, IL, E; Uniondale, NY, F; Springfield, MO, G; Lenexa, KS, H; (Bayly Outlet), Greely, CO, I; Plano, TX, J; Dallas, TX, K; Douglas, AR, L; San Francisco, CA, M; So. San Francisco, CA, N; Santa FE Springs, CA.

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA-W-25,569; MRC Bearings, Philadelphia Plant, A Unit of SKF USA, Inc., Philadelphia, PA.

A certification was issued covering all workers spearated on or after March 8, 1990.

TA-W-25,463; Hazlehurst Lingerie, Hazlehurst, GA.

A certification was issued covering all workers spearated on or after February 14, 1990.

TA-W-25,456; Duncraft, Inc., New York, NY.

A certification was issued covering all workers spearated on or after February 11, 1990.

TA-W-25,460; General Motors Corp., CPC Van Nuys, Van Nuys, CA.

A certification was issued covering all workers separated on or after February 14, 1990.

TA-W-25,615; Bridgestone/Firestone, Inc., Decatur, IL.

A certification was issued covering all workers separated on or after March 20, 1990

TA-W-25,542; Bridgestone/Firestone, Inc., Oklahoma City, OK.

A certification was issued covering all workers separated on or after March 4, 1990.

TA-W-25,546; Freeman Shoe Co., Beloit, WI.

A certification was issued covering all workers separated on or after April 14, 1991.

TA-W-25,618; Country Miss, Inc., Walterboro, SC.

A certification was issued covering all workers separated on or after March 21, 1990.

TA-W-25,619; Country Mills, Inc., Easton, PA.

A certification was issued covering all workers separated on or after March 21, 1990.

TA-W-25,436; Sylvania Shoe Manufacturing Corp., McSherrystown, PA.

A certification was issued covering all workers separated on or after February 11, 1990.

TA-W-25,437; Sylvania Shoe Manufacturing Corp., Greencastle, PA.

A certification was issued covering all workers separated on or after February 11, 1990.

TA-W-25,574; North American Philips Lighting, Warren, PA.

A certification was issued covering all workers separated on or after March 6, 1990.

TA-W-25,584; Xerox Corp., Pomona, CA.

A certification was issued covering all workers separated on or after March 6, 1990.

TA-W-25,551; Grant Norpac, Inc., Traverse City, MI.

A certification was issued covering all workers separated on or after November 22, 1990 and before March 1, 1991.

TA-W-25,575; Ocean Products, Inc., Headquarter Portland, ME.

A certification was issued covering all workers separated on or after February 18, 1990 and before April 1, 1991.

TA-W-25,576; Ocean Products, Inc., Eastport, ME.

A certification was issued covering all workers separated on or after February 18, 1990 and before April 1, 1991.

TA-W-25,577; Ocean Products, Inc., DeBois, ME.

A certification was issued covering all workers separated on or after February 18, 1990 and before April 1, 1991.

TA-W-25,578; Ocean Products, Inc., East Machias, ME.

A certification was issued covering all workers separated on or after February 18, 1990 and before April 1, 1991.

TA-W-25,570; National Industries, Inc., Plant #5, Wetumpka, AL.

A certification was issued covering all workers separated on or after February 25, 1990.

TA-W-25,571; National Industries, Inc., Plant 31, West Montgomery, AL.

A certification was issued covering all workers separated on or after February 25, 1990.

TA-W-25,572; National Industries, Inc., Plant #3, Montgomery, AL.

A certification was issued covering all workers separated on or after February 25, 1990.

TA-W-25,573; National Industries, Inc., Plant #7, Union Springs, AL.

A certification was issued covering all workers separated on or after February 25, 1990.

TA-W-25,614; Bayly Corp., Denver, CO & Operating at The Following Locations: TA-W-25,614A; (Waco Apparel), Waco, TX B; (Bayly Distribution Center), Newnan, GA, C; (Morey Boogie/Bayly), Burbank, CA, D; (O.P./Bayly) Tustin, CA, E; (O'Neill/Bayly Santa Cruz, CA, F; (Ocean Warehouse) Fort Collins, CO, G; (Ocean Warehouse) Greeley, CO, H; (Bayly Outlet), Greeley, CO, I; (Ocean Warehouse) Bloomington, IN.

A certification was issued covering all workers separated on or after March 19, 1990.

I hereby certify that the aforementioned determinations were issued during the month of May, 1991. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 22, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-12768 Field 5-29-91; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 91-47]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration (NASA) announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee.

DATES: June 27, 1991, 8:30 a.m. to 4:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Federal Building 10B, room 625, 600 Independence Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine L. Smith, Office of Aeronautics, Exploration and Technology (OAET), National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2367.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee was established to provide overall guidance and direction to the aeronautics research and technology activities in the Office of Aeronautics, Exploration and Technology. The Committee, chaired by Mr. Phil M. Condit, is composed of 17 members. The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the committee members and other participants).

Type of Meeting: Open.

Agenda:

June 27, 1991.

8:30 a.m.—Opening Remarks.
8:45 a.m.—NASA and OAET Update.
9 a.m.—Report on NASA Advisory Council Meeting.
9:15 a.m.—Fiscal Year 1992 Budget Status and Fiscal Year 1993 Preliminary Budget and Plans.
10:30 a.m.—NASA Aeronautics Flight Research Strategy.
12:30 p.m.—Special Topics.
1:30 p.m.—Ad Hoc Study Reports.
2:45 p.m.—Ad Hoc Study Proposals.
3:15 p.m.—Discussion and Topics for Next Meeting.
4:30 p.m.—Adjourn.

Dated: May 22, 1991.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91-12709 Filed 5-29-91; 8:45 am]

BILLING CODE 7510-01-M

[Notice 91-48]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee and the Aerospace Research and Technology Subcommittee.

DATES: June 24, 1991, 8:30 a.m. to 4:30 p.m.; June 25, 1991, 8:30 a.m. to 4:30 p.m.; June 26, 1991, 8:30 a.m. to 4:30 p.m.; June 27, 1991, 8:30 a.m. to 4:30 p.m.; and June 28, 1991, 8:30 a.m. to 4:30 p.m.

ADDRESSES: The McLean Hilton at Tysons Corner, The Franklin Sherman Amphitheater, 7920 Jones Branch Drive, McLean, VA 22102.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Smith, Office of Aeronautics, Exploration and Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2367.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance to the Office of Aeronautics, Exploration, and Technology (OAET) on space systems and technology programs. The Aerospace Research and Technology Subcommittee (ARTS) was formed to provide technical support for the SSTAC and to conduct ad hoc interdisciplinary studies and assessments. The Committee, chaired by Dr. Joseph F. Shea, is composed of 17 members. The Subcommittee is composed of 32 members. The meeting will be open to the public up to the seating capacity of the room (approximately 100 persons including the Committee and Subcommittee members and other participants).

Type of Meeting: Open.

Agenda:

June 24, 1991.

8:30 a.m.—Plenary Session.

10:30 a.m.—Mission Needs.
3 p.m.—Panel Discussion.
4:30 p.m.—Adjourn.
June 25, 1991.
8:30 a.m.—External Perspectives.
10:30 a.m.—Integrated Technology Plan Overview.
1 p.m.—Thrust Working Groups.
4:30 p.m.—Adjourn.
June 26, 1991.
8:30 a.m.—Technology Working Groups.
4:30 p.m.—Adjourn.
June 27, 1991.
8:30 a.m.—Technology Working Groups Continued.
4:30 p.m.—Adjourn.
June 28, 1991.
8:30 a.m.—Wrap-Up Working Groups.
1 p.m.—Plenary Wrap-Up.
4:30 p.m.—Adjourn.

Dated: May 22, 1991.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91-12710 Filed 5-29-91; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303(a).

DATES: Request for copies must be received in writing on or before July 15, 1991. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and or private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. General Services Administration, Federal Supply Service (N1-137-91-2). Reduction in retention period for records relating to information provided to customers.

2. Department of Health and Human Services, Health Care and Financing Administration (N1-440-91-2). End Stage Renal Disease exception requests.

3. Department of Health and Human Services, Health Care Financing Administration (N1-440—91-1). Files relating to potential cases of dual coverage (Medicare and employer sponsored group health coverage).

4. Department of the Interior, Minerals Management Service (N1-473-91-2). Records accumulated in reviewing and recommending actions on competitive reservoir proposals.

5. Department of Justice, Foreign Claims Settlement Commission (N1-299-91-2). Miscellaneous working papers, form letters, and other routine documentation, Polish and Czechoslovakian claims programs.

6. Department of the Labor, Office of Federal Contract and Compliance Programs (N1-448-90-2). Comprehensive records disposition schedule.

7. National Aeronautics and Space Administration, Marshall Space Flight Center (N1-255-91-6). SKYLAB Project administrative support files and results of routine tests and inspections.

8. National Aeronautics and Space Administration, Marshall Space Flight Center (N1-255-91-7). Technical reference files and logistic support records for minor Research and Development projects.

9. National Aeronautics and Space Administration, Marshall Space Flight Center (N1-255-91-8). Saturn Launch Vehicle Project administrative support files and results of routine tests and inspections.

10. National Aeronautics and Space Administration, Marshall Space Flight Center (N1-255-91-9). Test schedules and log books for rocket engines.

11. National Aeronautics and Space Administration, Marshall Space Flight Center (N1-255-91-10). High Energy Astronomy Observatories Project Office administrative support and scheduling records.

12. National Security Agency, Information Resources Management (N1-457-91-2). Release of this schedule for public inspection is precluded pursuant to provisions of Public Law 86-36.

13. Peace Corps of the United States (N1-362-91-5). Office of Training and Program Support administrative, subject and case files.

14. United States Postal Service (N1-28-91-10). Post Office Department motion picture film, 1964-65, that is duplicative, of poor quality, or lacking in historical value.

15. Regulatory Information Service Center (N1-220-91-4). Case files relating to publication of the Unified Agenda of Federal Regulations and the Regulatory Program of the United States Government.

16. Department of State, United States Mission to the United Nations (N1-84-90-5). Facilitative records.

17. Tennessee Valley Authority, Purchasing (N1-142-90-4). General correspondence file.

18. Tennessee Valley Authority, Purchasing (N1-142-90-6). Facilitative records relating to the Employment Opportunity Program.

19. Tennessee Valley Authority, Purchasing (N1-142-91-7). Bellefonte Nuclear Plant Repowering Task Force Study.

20. Department of Transportation, Office of the Secretary (N1-398-91-1). Office of Departmental Accounting and Financial Information System program files.

21. Department of the Treasury, Office of Thrift Supervision, Financial and Administrative Management (N1-483-91-1). Administrative records of the Deputy Assistant Director.

Dated: May 16, 1991

Don W. Wilson,

Archivist of the United States.

[FR Doc. 91-12701 Filed 5-29-91; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL ENDOWMENT FOR THE ARTS AND THE HUMANITIES

Office of Public Partnership Advisory Panel; Amended Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice of a meeting of the Office of Public Partnership Advisory Panel (States Program Overview and Challenge III Section) to the National Council on the Arts to be held June 6, 1991, from 9 a.m.-4 p.m. (originally published May 21, 1991, 56 FR 23308) should be amended to read:

"A portion of this meeting will be open to the public from 8:30 a.m.-9 a.m. and 9:45 a.m.-4 p.m. The topics will be opening remarks, action on minutes, proposed changes in Challenge program, guidelines/review for Arts Projects in Underserved Communities, recommendation on NASAA cooperative agreement for Information Service, AIDS Working Group report, proposed application questions for regional organizations, proposed regional funding formula, and other business.

"The remaining portion of this meeting from 9 a.m.-9:45 a.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, as amended, this session will be closed to the public pursuant to subsection (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 from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-12816 Filed 5-29-91; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Earth Sciences; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Public Law 92-463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to provide oversight review of the activities in Education and Human Resources within the Division of Earth Sciences. The entire meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

Name: Advisory Committee for Earth Sciences/Committee of Visitors.

Dates: June 24 and 25, 1991.

Time: 8 a.m. to 5 p.m. each day.

Place: Room 1243, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Agenda: Oversight review of Education and Human Resources activities, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Contact: Dr. Ian D. MacGregor, Acting Division Director, Division of Earth Sciences, Room 602, National Science Foundation, Washington, DC, (202) 357-9591.

Dated: May 24, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-12770 Filed 5-29-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

NUMARC/BWROG/NRC Appendix J Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

SUMMARY: A meeting will be held to discuss material on 10 CFR part 50, Appendix J, "Leakage Rate Testing of Containments of Light-Water-Cooled Nuclear Power Plants," that NUMARC will submit. This will address eight issues the BWROG Containment Testing Committee brought up at the May 1991 ACRS Subcommittee and full Committee meetings on this rule.

DATES: Tuesday, June 25, 1991, 9 a.m..

ADDRESSES: White Flint North, room 4B11.

FOR FURTHER INFORMATION CONTACT: Mr. Gunter Arndt, Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492-3814.

Dated at Rockville, Maryland, this 16th day of May 1991, for the Nuclear Regulatory Commission.

Lawrence C. Shao,

Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 91-12737 Filed 5-29-91; 8:45 am]

BILLING CODE 7590-01-M

Nuclear Safety Research Review Committee; Meeting

In accordance with the requirements of the Federal Advisory Committee Act (FACA), the Nuclear Safety Research Review Committee (NSRRC) will hold its next meeting on June 13 and 14, 1991. The meeting will be held at the Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland. The meeting will be open to public attendance. The NSRRC provides advice to the Director of the Office of Nuclear Regulatory Research (RES) on matters of overall management importance in the direction of the NRC's program of nuclear safety research. The purpose of this meeting is to review the NRC's recently reorganized advanced reactor research program.

Thursday, June 13, 1991

8 a.m.-noon: The Director of RES will present background and an overview of 6 advanced reactor types (AP600, SBWR, PIUS, MHTGR, ALMR, and CANDU 3). The Director of the Division of Advanced Reactors of NRR will discuss the schedule of

design certification and prototype licensing of advanced reactors. The Director of the Division of Regulatory Applications of RES will discuss a list of early research needs for passive LWRS.

1 p.m.–6 p.m.: Six reactor vendors will make presentations on their safety research programs for the advanced reactors. The likely order of presentation is: AP600, SBWR, PIUS, MHTGR, ALMR, and CANDU 3.

Friday, June 14, 1991

8 a.m.–noon: NRC Staff and contractors will present the status of ongoing and new advanced reactor research projects.

1 p.m.–3 p.m.: Continuation of NRC staff and contractor presentations.

3 p.m.–4 p.m.: Committee discussions.

4 p.m.: Adjourn.

Members of the public may file written statements regarding any matter to be discussed at the meeting. Members of the public may also make requests to speak at the meeting, but permission to speak will be determined by the committee chairperson in accordance with procedures established by the committee. A verbatim transcription will be made of the NSRRC meeting and a copy of the transcript will be placed in the NRC's Public Document Room in Washington, DC.

Inquiries regarding this notice, any subsequent changes in the status of the meeting, the filing of written statements, requests to speak at the meeting, or the transcription, may be made to the Designated Federal Officer, Dr. Ralph O. Meyer (telephone: 301/492–3904), between 8:15 a.m. and 5 p.m.

Dated this 24th day of May, 1991, in Rockville, Maryland.

Andrew L. Bates,

Acting Advisory Committee Management Officer.

[FR Doc. 91–12744 Filed 5–29–91; 8:45 am]

BILLING CODE 7590–01–M

Solicitation of Public Comments on Generic Issue 23, "Reactor Coolant Pump Failure;" and Draft Regulatory Guide; Issuance, Availability; Correction

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: General notice; correction.

SUMMARY: This document corrects a general notice which was published in the **Federal Register** on April 19, 1991; 56 FR 16130. This notice is necessary to correct the address for submittal of comments on the general notice. The comment period expires on July 31, 1991.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7758.

SUPPLEMENTARY INFORMATION:

In the **Federal Register** of April 19, 1991, make the following change:

In the third column on page 16131, in the first complete paragraph, starting on line seven, remove the words, "the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch," and add "Chief, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555."

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Office of Administration.

[FR Doc. 91–12741 Filed 5–29–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. STN 50–601]

Westinghouse Electric Corporation; Availability of Safety Evaluation Report and Preliminary Design Approval Related to the Preliminary Design of the Standard Nuclear Steam Supply Reference System, RESAR SP/90

The U.S. Nuclear Regulatory Commission has published its Safety Evaluation Report related to the Preliminary Design of the Standard Nuclear Steam Supply Reference System, RESAR SP/90, and has issued a Preliminary Design Approval to Westinghouse Electric Corporation for the RESAR SP/90, Docket No. STN 50–601 (NUREG–1413).

Copies of the Report have been placed in the NRC's Public Docket Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, for review by interested persons. Copies of the Report may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082. GPO deposit account holders may charge order by calling 202–275–2060. Copies are also available from the National Technical Information Service, Springfield, Virginia 22161.

Dated at Rockville, Maryland, this 22nd day of May 1991.

For the Nuclear Regulatory Commission.

Jerry N. Wilson,

Acting Director, Standardization Project Directorate, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 91–12739 Filed 5–29–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–254 and 50–265]

Commonwealth Edison Co. (Quad Cities Nuclear Power Station, Units 1 and 2); Exemption

I.

The Commonwealth Edison Company (CECo, the licensee) is the holder of Operating License No. DPR–29, which authorizes operation of Quad Cities Nuclear Power Station (QCNPS) Unit 1, and Operating License No. DPR–30, which authorizes operation of QCNPS Unit 2. These licenses provide, among other things, that QCNPS Units 1 and 2 are subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The station is composed of two boiling water reactors at the licensee's site located in Rock Island County, Illinois.

II.

On November 19, 1980, the Commission published revised 10 CFR 50.48, "Fire Protection," and a new appendix R to 10 CFR part 50, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979," regarding fire protection features of nuclear power plants required to satisfy the general design criterion related to fire protection (Criterion 3, appendix A to 10 CFR part 50). The revised 10 CFR 50.48 and appendix R to 10 CFR part 50 (appendix R) became effective on February 17, 1981. Section III of appendix R contains 15 subsections, lettered A through O, each of which specified requirements for a particular aspect of the fire protection features at a nuclear power plant. Two of these sections, III.G, "Fire Protection of Safe Shutdown Capability," and III.J, "Emergency Lighting," were included in the licensee's exemption requests.

III.

By letter dated September 30, 1987, the licensee requested exemptions from the requirements of appendix R for separation of redundant reactor vessel pressure and level indicating instruments in the Unit 1 reactor building and separation of redundant suppression pool level indicating

instruments in the Unit 1 and Unit 2 reactor buildings.

By letter dated October 1, 1987, the licensee supplemented its September 30, 1987 submittal by making a request for two additional exemptions from the requirements of appendix R. These additional exemption requests concerned lack of emergency lighting for the suppression pool level instrumentation and the need to pull fuses to preclude spurious component operation in order to achieve stable hot shutdown.

By letter dated November 23, 1987, the licensee revised the October 1, 1987 submittal. In its new submittal, the licensee deleted the exemption pertaining to the separation of redundant reactor pressure indication. The licensee also modified some of the wording related to emergency lighting and penetration seals.

By letter dated April 11, 1990, the licensee requested modifications in combustible loading definitions used in exemption requests submitted to the NRC on June 25, 1986. The original exemption requests were evaluated by the staff and approved in the Exemption dated August 18, 1989.

The following list briefly describes the exemptions from appendix R requested by the licensee. Details of these exemption requests and the staff's evaluation are contained in the previously mentioned letters from the licensee and the letter to the licensee dated February 25, 1991, which are located in the Public Document Room.

1. Exemptions from the technical requirements of section III.G.2.b of appendix R to the extent that 20 feet of horizontal space free of intervening combustibles and area-wide suppression is not provided within the fire area containing redundant reactor vessel level indicating instrumentation for each unit.

2. An exemption from section III.G.2.b of appendix R for lack of adequate separation between redundant suppression pool level indicators for Fire Areas RB-1 and RB-2 in Units 1 and 2, respectively. In addition, detection and suppression are not provided.

3. An exemption from section III.J of appendix R to the extent that emergency lights are not provided for the suppression pool level sight glasses for Unit 1 and Unit 2.

4. An exemption from the requirements of appendix R to the extent that fuse pulling, which could constitute a "repair," is required to prevent spurious equipment operation during hot shutdown.

5. A modification to exemption requests previously approved by the NRC by safety evaluation (SE) dated July 21, 1988. The licensee has requested that combustible loading values identified in the original request for exemption submittal dated June 25, 1986, be modified.

IV.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), these exemptions (listed above) are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present to justify granting the exemptions; namely, that application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the rule. The special circumstances of each CECo exemption request was reviewed in detail by the staff's SE dated February 25, 1991. In general, the underlying purpose of the rule is to accomplish safe shutdown in the event of a single fire and to maintain the plant in a safe shutdown condition. These goals are achieved by assuring that sufficient undamaged equipment is available to support safe shutdown in the event of a fire within the area of concern. In the areas for which an exemption is being requested, passive as well as active fire protection features assure that any single fire will not result in the loss of safe shutdown capability. These features include manual actions, automatic suppression, and early detection of fires in their incipient stages. The fire protection features, in conjunction with low combustible loadings, provide a high degree of assurance that a single fire will not result in a loss of safe shutdown capability. In addition, the special circumstances of 10 CFR 50.12(a)(2)(iii) apply in that compliance would result in costs that significantly exceed those contemplated when the regulation was adopted. Providing additional protection features, as would be required to meet the regulations, would not result in a significant increase in the level of protection and would result in undue costs and resource expenditures for the licensee in additional engineering, procurement of materials, fabrication, and installation. Accordingly, the Commission hereby grants exemptions for the conditions listed in Section III above.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the quality of the human environment (56 FR 8371).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland this 21st dav of May 1991.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-12738 Filed 5-29-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-368]

Entergy Operations, Inc.; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Entergy Operations, Inc. (the licensee) to withdraw its September 17, 1987, application for proposed amendment to Facility Operating License No. NFP-6 for the Arkansas Nuclear One, Unit No. 2, located in Russellville, Arkansas.

The proposed amendment would have revised the Technical Specifications relating to change out of station batteries and changes in the battery tests.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on December 21, 1987 (52 FR 48348). However, by letter dated May 15, 1991, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated September 17, 1987, as amended July 22, 1988, August 23, 1989, and May 22, 1990, and the licensee's letter dated May 15, 1991, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Dated at Rockville, Maryland this 22d day of May, 1991.

For the Nuclear Regulatory Commission.

Sheri R. Peterson,

Project Manager, Project Directorate IV-1, Division of Reactor Projects III, IV, and V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-12740 Filed 5-29-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70-3070-ML; ASLBP No. 91-641-02-ML]

Louisiana Energy Services, L.P.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the Federal Register, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding, to rule on petitions for leave to intervene, and to conduct an adjudicatory hearing on the record.

Louisiana Energy Services, L.P.

Claiborne Enrichment Center
Special Nuclear Material License

This Board is being established pursuant to an Order issued by the Commission on May 15, 1991 (56 FR 23310, published May 21, 1991), entitled "Notice of Receipt of Application for License, Notice of Availability of Applicant's Environmental Report, Notice of Consideration of Issuance of License, and Notice of Hearing and Commission Order." The proposed license would authorize Louisiana Energy Services, L.P. (LES or Licensee), to possess and use byproduct, source, and special nuclear material and to enrich natural uranium to a maximum of 5 percent U-235 by the gas centrifuge process. The plant, to be known as the Claiborne Enrichment Center (CEC), would be constructed near Homer, Louisiana, in Claiborne Parish, Louisiana. The Applicant and the NRC Staff shall be parties to the proceeding.

The Atomic Safety and Licensing Board will conduct an adjudicatory hearing on the record under the authority of sections 53, 63, 189, 191, and 193 of the Atomic Energy Act of 1954, as amended, in accordance with 10 CFR part 2, Rules of Practice for Domestic Licensing Proceedings.

The Board is comprised of the following administrative judges:

Morton B. Margulies, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.
Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.
Frederick J. Shon, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

All correspondence, documents and other materials shall be filed with the judges in accordance with 10 CFR 2.701.

Issued at Bethesda, Maryland, this 23rd day of May 1991.

B. Paul Cotter, Jr.,
Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 91-12743 Filed 5-29-91; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 30-12319-CivP; ASLBP No. 90-618-03-CivP]

Tulsa Gamma Ray, Inc., (Material License No. 35-17178-01, EA No. 89-223); Hearing Notice

May 22, 1991.

Please Take Notice that an evidentiary hearing will be held in the captioned proceeding commencing at 9:30 a.m. o'clock, local time, on June 25, 1991 in room 411 (Grand Jury Room), U.S. Courthouse, 333 West 4th Street, Tulsa, Oklahoma 74103.

It is so *Ordered.*

For the Atomic Safety and Licensing Board.

Dated: May 22, 1991.

Morton B. Margulies,
Chairman, Administrative Law Judge.

[FR Doc. 91-12742 Filed 5-29-91; 8:45 am]
BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, July 11, 1991, Thursday, August 1, 1991, Thursday, August 15, 1991, Thursday, September 12, 1991, Thursday, September 26, 1991.

The meetings will start at 10:45 a.m. and will be held in room 5A06A, Office of Personnel Management Building, 1900 E Street NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issued discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, room 1340, 1900 E Street NW., Washington, DD 20415 (202) 606-1500.

Dated: May 15, 1991.

Anthony F. Ingrassia,
Chairman, Federal Prevailing Rate Advisory Committee.

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BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-6894; 34-29226; International Series Release No. 274; File No. S7-14-91]

American Depositary Receipts

AGENCY: Securities and Exchange Commission.

ACTION: Advance notice of possible commission action and request for information and public comment.

SUMMARY: In light of increasing interest by U.S. investors in the securities of foreign issuers, the Securities and Exchange Commission (the "Commission") is undertaking a review of the American depositary receipt ("ADR") marketplace. Information and comment are being sought with regard to the functioning and characteristics of the ADR marketplace as well as with regard to various regulatory issues under the federal securities laws. As part of this review, the Commission will study the information and comments received in response to this release and will determine whether rulemaking or other action is necessary or appropriate.

DATES: Comments should be received by September 30, 1991.

ADDRESSES: Comment letters should refer to File No. S7-14-91 and be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. The Commission will make all comments available for public inspection and copying in its Public Reference Room at the same address.

FOR FURTHER INFORMATION CONTACT: Anita Klein or Paul Dudek, Office of International Corporate Finance, (202) 272-3246, or Angela Yeats, (202) 272-3303, Division of Corporation Finance, or Eugene Lopez, Office of Automation & International Markets, (202) 272-2828, Division of Market Regulation.

I. Introduction

In recent years, investment in foreign securities by United States investors has increased dramatically and, as technological advances and regulatory initiatives bring about more globalized securities markets, such investment can be expected to continue to increase.[1] One of the principal means used by U.S. investors to hold foreign equity securities (other than Canadian issuers' securities) is the American depositary receipt ("ADR").[2] The Commission is undertaking a review of the ADR market and of the manner in which such market is and should be regulated. The Commission's review has been prompted by certain practices and developments relating to ADRs which have come to its attention, including the proposed establishment of sponsored and unsponsored ADR facilities for the securities of the same issuer.

As a part of this review, the Commission today is soliciting public comment on a variety of issues relating to ADRs and ADR market participants which arise under the Securities Act of 1933 (the "Securities Act")[3] and the Securities Exchange Act of 1934 (the "Exchange Act"), including the effect of any changes in the regulatory scheme on the operation of both the primary and secondary ADR markets.[4] In addition to responding to the questions presented in this release, the Commission encourages commenters to provide any information to supplement, or correct, the information and assumptions contained herein regarding the functioning of the ADR market, the roles of market participants, the advantages and disadvantages of duplicate ADR facilities, the nature and expectations of ADR investors, and the other matters discussed. The Commission particularly welcomes the views of foreign issuers and U.S. and foreign investors.

II. Background

A. Description of ADRs

An ADR[5] represents an ownership interest in a specified number of securities that have been deposited with a depositary by the holder of such securities.[6] The securities that are so deposited ("deposited securities") are typically equity securities of a foreign issuer,[7] and the depositary is typically a U.S. bank or trust company.[8] In exchange for the deposited securities, the depositary issues a negotiable certificate representing the ADRs.

The ADR arrangement provides several benefits to U.S. investors in foreign securities over owning securities directly, including facilitation of share transfers and conversion of dividends paid in a foreign currency.[9] In the past few years, new applications for the ADR arrangement have been developed. ADRs have been used in connection with mergers and acquisitions,[10] restructurings,[11] foreign government debt offerings[12] and funding of employee benefit and compensation plans.[13] In addition, offerings of ADRs have been made under Rule 144A.[14]

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[1] It is estimated that in 1990, U.S. investors purchased approximately $130.9 billion, and sold approximately $122.5 billion, of foreign equity securities. U.S. Treasury Bulletin p.93 (Mar. 1991). In 1980, U.S. investors purchased approximately $10.0 billion, and sold approximately $7.9 billion, of foreign equity securities. U.S. Treasury Bulletin (various issues).

[2] It is estimated that the total dollar volume of ADR trading in 1990 was approximately $125 billion. The Bank of New York, 1990 ADR Market Review and Year End Newsletter (Feb. 1991). The estimated dollar volume in 1983 was approximately $1.8 billion. Kesler, The ADR Weathers the Storm, Euromoney Spec. Supp. 1 (Feb. 1988).

[3] 15 U.S.C. 77a *et seq.*

[4] 15 U.S.C. 78a *et seq.*

[5] Since 1983, the Commission's regulations have made a distinction between ADRs and American depositary shares ("ADSs"). Under this distinction, an ADR is the physical certificate that evidences ADSs (in much the same way a stock certificate evidences shares of stock), and an ADS is the security that represents an ownership interest in deposited securities (in much the same way a share of stock represents an ownership interest in a corporation). Although conceptually accurate, some confusion has resulted from this distinction, and it appears that ADR market participants largely do not differentiate between ADRs and ADSs. As a result, it appears appropriate to eliminate the ADR/ADS distinction. In this release, the term "ADS" is not used, and the term "ADR" may, depending on its context, refer to either the physical certificate or the security evidenced by such certificate.

[6] An ADR may represent one security of a foreign issuer or fractions or multiples of a security of a foreign issuer. The ratio of such securities represented by one ADR (referred to by market participants as the "multiple") is intended to compensate for differences between traditional pricing levels between U.S. and foreign markets. For example, ADRs will often represent two or more securities of a U.K. issuer because sales prices on a per share basis for such securities are generally lower than comparable U.S. securities. Likewise, ADRs will often represent a fraction of one security of a Japanese issuer because sales prices on a per share basis for such securities are generally higher than comparable U.S. securities.

[7] ADRs may also be issued in respect of debt securities.

[8] The Bank of New York, Bankers Trust Company, Citibank N.A., Morgan Guaranty Trust Company of New York, and Security Pacific National Trust Company (New York) are the only depositaries known to be active at this time. Although all of those entities are banks, the Commission does not require that a depositary be a bank.

[9] See Loos, Deflecting the Raging Bull, Euromoney Spec. Supp. 21 (Feb. 1988); Moxley, The ADR: An Instrument of International Finance and a Tool of Arbitrage, 8 Vill. L. Rev. 19 (1962).

[10] Recent examples of mergers and acquisitions involving the issuance of ADRs include the acquisition of AVX Corporation by Kyocera Corporation, the merger of Hanson Trust PLC and Kidde Inc., the acquisition by Reuters PLC of Rich Co. and of Instinet Corp., the acquisition by Ratners Group PLC of Kay Jewelers, Inc. and the acquisition by British Petroleum PLC of The Standard Oil Company of Ohio. See McGoldrick, ADRs as Acquisition Currency, Global Fin. Magazine Spec. Rep. (1989); Dugan, Your Flexible Friend From the States, Euromoney 71 (Dec. 1989); Oldfield, ADRs: An Emerging Force in Cross-Border Deals, 23 Int'l M&A 57 (Jan./Feb. 1989); Loos, New Addition to the M&A Armoury, Euromoney Spec. Supp. 28 (Feb. 1988).

[11] For example, Racal Electronics spun off its cellular telephone subsidiary, Racal Telecom, in a 4.5 million ADR issue valued at $150 million. See McGoldrick, For ADRs, It Pays to Get Into Debt, Euromoney 103, 104 (Dec. 1988).

[12] See, e.g., R. Cooper and J. Burton, French Sow Their OATs in the U.S., Euromoney 85 (Oct. 1988).

[13] For example, an ADR-funded benefit plan is said to help British Airways maintain favorable relations with U.S. employees by ensuring equal treatment with U.K. employees. Loos, *supra* n. 9 at 25.

[14] Information obtained by the Division of Corporation Finance indicates that, as of May 1, 1991, at least 8 out of 22 equity offers by foreign issuers undertaken under Rule 144A involved the issuance of ADRs.

Of the approximately 1,550 foreign issuers that as of the end of 1990 were filing or submitting reports under the Exchange Act, there were approximately 502 issuers whose securities were traded through unsponsored ADR facilities registered with the Commission, and 302 issuers whose securities were traded through registered sponsored ADR facilities.[15] These facilities relate to shares of companies in numerous and diverse countries ranging from Australia to Zambia. The preponderance of trading, however, occurs in ADRs for companies incorporated in Western Europe and Japan.

ADRs are not held only by U.S. investors; to some extent non-U.S. investors also hold them. In addition to ADRs, International depositary receipts, Continental depositary receipts and European depositary receipts also trade in the international markets. International depositary receipts are used by non-U.S. traders and investors for investment in non-U.S. markets. European depositary receipts primarily are used to facilitate the trading of Japanese companies' securities in European markets. The Commission requests comment on the development of these instruments, their effect on the ADR market, and the nature of the regulatory scheme applicable to such instruments.[16]

B. Unsponsored and Sponsored ADR Facilities

ADR facilities may be established as either "unsponsored" or "sponsored." While ADRs issued under these two types of facilities are in some respects similar (for example, each ADR represents a fixed number of securities on deposit with a depositary), there are distinctions between them relating to the rights and obligations of ADR holders and the practices of market participants.[17]

1. Unsponsored Facilities

"Unsponsored" ADR facilities generally are created in response to a combination of investor, broker-dealer and depositary interest. Most often, a depositary is the principal initiator of a facility because it perceives U.S. investor interest in a particular foreign security and recognizes the potential income which may be derived from a facility. In other cases, one or more brokers familiar with U.S. investor interest and U.S. trading activity in a foreign issuer's securities may request that a depositary create a facility in order to facilitate trading.[18]

A depositary may establish an unsponsored facility without participation by (or even necessarily the acquiescence of) the issuer of the deposited securities, although typically the depositary, to promote good issuer relations, requests a letter of non-objection from such issuer prior to the establishment of the facility. If the issuer is neither a reporting issuer under the Exchange Act, nor exempt from such reporting pursuant to the "information supplying" exemption provided thereunder, the depositary requests that the issuer establish such exemption.[19] If the issuer does so, thereafter the depositary files a registration statement on Form F-6 for the ADRs. Once the registration statement becomes effective, the depositary begins to accept deposits of securities of the foreign issuer and to issue ADRs against such deposits. Deposited securities are usually held by a custodian appointed by the depositary (often a bank) in the country of incorporation of the foreign issuer.

Holders of unsponsored ADRs generally bear all the costs of such facilities. The depositary usually charges fees upon the deposit and withdrawal of deposited securities, the conversion of dividends into U.S. dollars, the disposition of non-cash distributions, and the performance of other services.[20] The depositary of an unsponsored facility frequently is under no obligation to distribute shareholder communications received from the issuer of the deposited securities or to pass through voting rights to ADR holders in respect of the deposited securities.

2. Sponsored Facilities

A "sponsored" ADR facility is established jointly by an issuer and a depositary.[21] Sponsored ADR facilities are created in generally the same manner as unsponsored facilities, except that the issuer of the deposited securities enters into a deposit agreement with the depositary [22] and signs the Form F-6 registration statement. The deposit agreement sets out the rights and responsibilities of the issuer, the depositary and the ADR holders. Like unsponsored ADR facilities, sponsored ADR facilities usually involve the use of a foreign custodian to hold the deposited securities.

With sponsored facilities, the issuer of the deposited securities generally will bear some of the costs relating to the facility (such as dividend payment fees of the depositary), although ADR holders continue to bear certain other costs (such as deposit and withdrawal fees).[23] Under the terms of most sponsored arrangements, depositaries agree to distribute notices of shareholder meetings and voting instructions, thereby ensuring that ADR holders will be able to exercise voting rights through the depositary with respect to the deposited securities. In

[15] Bankers Trust Co., The ADR Universe (Jan. 1991). Canadian companies constitute approximately 61% of foreign issuers that file or submit reports under the Exchange Act. However, the securities of Canadian companies generally are not represented by ADRs.

[16] Some ADR market participants have predicted that international receipts might eventually replace ADRs. See Keslar, Taking American Out of ADR? Euromoney Spec. Supp. 6 (Feb. 1988).

[17] Some of these differences are inherent to the two different ADR types; *i.e.*, they are a function of the different levels of issuer involvement. Other differences are attributable largely to industry custom and practice. For example, the fact that proxy and other corporate information is not passed on to unsponsored ADR holders but is passed on to sponsored ADR holders is not an inherent difference. The differences between sponsored and unsponsored facilities may raise issues in the event of duplication of sponsored facilities by unsponsored facilities. See *infra* sections II.B.3. and III.C.

[18] Several broker-dealers active in the ADR market have informed the Commission's staff that unsponsored facilities are increasingly being initiated by the depositaries themselves, and that broker-dealer involvement in the creation of unsponsored ADRs is minimal.

[19] See Rule 12g3-2(b), 17 CFR 240.12g3-2(b). See also *infra* section II.D.1 for a description of the requirements relating to registration of ADRs under the Securities Act.

[20] Both depositaries and brokers-dealers have noted in discussions with the Commission's staff, however, that in unsponsored arrangements, depositaries are less likely to charge fees to brokers for issuance of ADRs where another facility for the same deposited securities exists. Indeed, according to some market participants, it is not atypical for a depositary to pay brokers a rebate in order to encourage the deposit of securities in such facilities.

[21] Certain depositaries describe sponsored facilities in terms of three categories, based on the extent to which the issuer of the deposited securities has accessed the U.S. securities market. A "Level 1 facility" is a sponsored facility the ADRs of which trade in the "Pink Sheets." (See *infra* n. 33 and accompanying text.) Level 2 refers to ADRs quoted on the National Association of Securities Dealers' Automated Quotation system ("NASDAQ") or listed on a national securities exchange when the ADRs have not been offered in a U.S. public offering. Level 3 denotes ADRs quoted on NASDAQ or listed on a national securities exchange after a U.S. public offering of ADRs. Levels 1, 2 and 3 generally indicate lower to higher degrees of issuer involvement with the facility and lower to higher amounts of information made available by the issuer to the public.

[22] Each ADR holder also becomes a party to such agreement through its acceptance of the ADR. See infra n. 63 and accompanying text.

[23] The allocation of responsibility for fees is a matter of contract between the issuer, the depositary and the ADR holders and is set forth in the deposit agreement. Also, see Evans, Banks Vie to Sponsor Foreign Stock, 155 American Banker 16 (June 20, 1990) (regarding the willingness of some depositaries to pay foreign issuers for the right to handle a sponsored facility).

addition, the depositary usually agrees to provide shareholder communications and other information to the ADR holders at the request of the issuer of the deposited securities. Although the terms of deposit for sponsored ADR facilities differ from those for unsponsored facilities, sponsorship in and of itself does not result in different reporting or registration requirements with the Commission.

3. Duplication of ADR Facilities

Unsponsored ADR facilities are frequently duplicated; that is, after one depositary has established a facility for a particular deposited security, other depositaries establish their own facilities for the same deposited security. Such duplication can occur without the approval of either the foreign issuer or the original depositary. Duplicate facilities exist for the securities of approximately 77% of foreign issuers with securities represented by unsponsored ADR facilities in the U.S. market.[24] In many cases, several depositaries have duplicated the original unsponsored facility.[25] When unsponsored ADR facilities are duplicated, the duplicate ADRs are assigned the same CUSIP number [26] given to the original unsponsored ADRs and, as discussed below, all such ADRs generally are considered fungible with each other and trade without regard to the identity of the depositary.

While the Commission has raised no objection to duplication of unsponsored ADR facilities since at least the early 1970s, the Commission staff has discouraged the creation of multiple ADR facilities when the result would be a disorderly trading market or confusion among investors.[27] The Commission staff and, until recently, ADR market participants have taken the position that an unsponsored facility could not co-exist with a sponsored ADR facility for the same deposited securities because of resulting market disorder or confusion. Thus, if a sponsored facility existed, no other depositary could create another facility for the same securities. Similarly, if a sponsored facility were created after the establishment of one or more unsponsored ADR facilities, the depositaries of the unsponsored facilities would effect a transfer of the deposited securities and the related ADR holders to the new sponsored facility and terminate their unsponsored facilities.[28]

On March 12, 1990, however, a registration statement on Form F-6 was filed with the Commission to register ADRs representing ordinary shares, (Aus)$0.25 par value per share, of Sons of Gwalia N.L., an Australian company.[29] By that filing, the depositary intended to create an unsponsored facility duplicating an existing sponsored ADR facility of another depositary. Since the time of the Sons of Gwalia filing, a number of letters have been received commenting on the proposed duplication and Commission staff has had discussions with ADR market participants with respect to the consequences of unsponsored duplication of sponsored facilities.[30] Strong views both in favor of and in opposition to such duplication have been expressed. Proponents of permitting such duplication have argued that duplication would be beneficial to investors and issuers because it would have the effect of increasing competition and lowering fees. In addition, they question the basis for not allowing duplication, claiming that unsponsored ADR facilities can be structured to provide all of the rights and privileges to ADR holders that a sponsored facility provides and thereby minimize any potential for market disorder or confusion. Opponents of duplication have argued that market confusion and disruption would result from the co-existence of sponsored and unsponsored facilities, and that by their very nature sponsored and unsponsored facilities cannot confer the identical rights to ADR holders. They have also stated that foreign companies will become reluctant to create sponsored facilities or even to enter or remain in the U.S. capital markets if they cannot maintain control over which entity handles ADRs representing their securities.[31]

C. The ADR Market

ADRs are traded in the United States in substantially the same manner as domestic issuers' equity securities. Some foreign issuers, seeking to increase visibility, improve liquidity and increase access to U.S. capital markets, choose to list their ADRs on the New York Stock Exchange (the "NYSE"), the American Stock Exchange (the "Amex") or another national securities exchange, or to have their ADRs quoted on NASDAQ.[32] Other foreign issuers choose to have trading in their ADRs conducted in the U.S. over-the-counter ("OTC") market. ADRs are traded in the OTC market through market makers that publish quotations or indications of interest in the "Pink Sheets," a daily listing of market maker quotations operated by the Commerce Clearing House/National Quotation Bureau, or through the OTC Bulletin Board Service ("Bulletin Board"), an electronic service operated by the National Association of Securities Dealers, Inc. ("NASD").[33]

The rules of the NYSE and the Amex require that ADRs listed on those exchanges be sponsored.[34] Similarly, NASDAQ has for several years strongly recommended to issuers of deposited securities that they sponsor an ADR

[24] Bankers Trust Co., The ADR Universe (Jan. 1991).

[25] As a result, there are many more unsponsored ADR facilities in existence than there are issuers whose securities are represented by unsponsored ADR facilities. One bank estimates that there are over 1,400 unsponsored ADR facilities in existence. Bankers Trust Co., The ADR Universe (Jan. 1991).

[26] To enable automated recordkeeping of ownership interests, uniform identification procedures have been developed by the Committee on Uniform Security Identification Procedures ("CUSIP"), a committee of the American Bankers Association ("ABA"). CUSIP has developed a system of identifying securities issues by assigning to each individual issue a unique CUSIP number. Operating under a contract with the ABA, Standard and Poor's Corporation assigns a CUSIP number to a security based on uniform criteria for their issuance.

[27] *See* Division of Corporation Finance staff letter to Dean Egly, Morgan Guaranty Trust Company Co. (Sept. 12, 1972). In discussing the circumstances under which the duplication of unsponsored facilities would be permitted under Form F-6, a December 30, 1983 staff letter of the Division of Corporation Finance noted in passing that the attempted duplication of a sponsored ADR facility on an unsponsored basis could result in the type of market disorder and investor confusion that the Commission would wish to prevent, and that therefore such duplication was discouraged.

[28] In the latter case, negotiated fees for cancellation generally are paid by the issuer of the deposited securities (or sometimes the depositary of the new sponsored facility) to the depositaries of the unsponsored facilities.

[29] See Commission file number 33-33617.

[30] The staff of the Divisions of Corporation Finance and Market Regulation have met or spoken with representatives of: The American Stock Exchange, Axe Core Investors Inc., the Bank of New York, Bankers Trust, Chemical Bank, Citibank, The Depository Trust Company, Merrill Lynch, Morgan Guaranty, Morgan Stanley, the National Association of Securities Dealers, the New York Stock Exchange, Salomon Brothers, Security Pacific, and Shearson Lehman.

[31] See *infra* section III.C. Depositaries have indicated to the Commission that a significant duplication effort is likely to be undertaken.

[32] In 1989, the dollar volume for ADRs traded on the NYSE was $40.8 billion, representing the trading of 1.2 billion ADRs. NYSE Fact Book, March 1990. NASDAQ reported that in 1989 for 92 ADR issues quoted on NASDAQ, share volume was 1.8 billion shares, with a dollar volume of $17.4 billion. NASDAQ Fact Book, 1990, at 17.

[33] In the Bulletin Board, the quotations for unsponsored ADRs are displayed in static form and may be updated only twice daily. Brokers for investors wanting to trade in securities quoted in the Pink Sheets or on the Bulletin Board generally contact one of the listed market makers in the securities.

[34] See NYSE Constitution and Rules, "Listing and Delisting of Securities," § 103.04; Amex Constitution and Rules, "Listing Standards and Requirements," section 220.

facility before NASDAQ includes their ADRs for quotation.[35] Both sponsored and unsponsored ADRs trade in the OTC market. At the end of 1990, of the 336 sponsored ADR facilities, 66 were listed on NYSE, 4 were listed on Amex, and 55 were quoted on NASDAQ.[36]

The recent trend in the creation of ADR facilities has been away from unsponsored arrangements toward sponsorship. One depositary estimates that the overall percentage of sponsored facilities in the U.S. markets has grown from 12% in 1986 to 38% in June 1990.[37]

1. Trading of ADRs and Deposited Securities

Purchasers and sellers of ADRs include retail customers, institutional investors, arbitrageurs and brokers.[38] According to market participants, under typical circumstances, approximately 90% of the activity in the ADR market involves purchases and sales of existing ADRs in the U.S. trading markets.[39] The remaining activity involves either the purchase of foreign securities and the deposit of those securities into a facility to create new ADRs, or the surrender of ADRs and the withdrawal of deposited securities from a facility. In thinly traded issues, however, the extent to which ADRs need to be created or surrendered to meet market demand may be higher. Broker-dealers, acting in response to customer or proprietary orders to purchase or sell the securities of a specific foreign issuer, appear to be the ADR market participants principally involved in the creation and surrender of ADRs.

The costs of creating or surrendering ADRs and of trading the deposited securities directly in the foreign market discourage the ready deposit and withdrawal of deposited securities.[40] The depositary may charge a fee for the issuance of new ADRs and the surrender of existing ADRs. In addition, the purchase or sale of a security in a foreign market may entail other costs, such as a transaction tax, a local brokerage commission or a custodian fee. Taken together, these costs tend to make it too expensive to create or surrender ADRs on an ad hoc basis.

2. Trading Prices for ADRs

The prices at which ADRs trade on an exchange and in the NASDAQ and OTC markets reflect several variables. The value of the deposited security as determined by the issuer's performance, the price of the deposited security in its primary foreign market and the overall performance of such market are some of the variables. The ADR trading price is also a function of foreign currency exchange rates and the attendant costs in carrying a position that may be affected by adverse currency changes during the period an investor holds the ADR. The costs involved in the establishment, trading, and administration of the facility also affect ADR trading prices. According to broker-dealers involved in the ADR market, the trading price of an ADR typically reflects the average costs involved in the creation of ADRs and the withdrawal of deposited securities. In certain situations brokers may receive some form of a rebate from a depositary, although the price to the investor purchasing the ADR may or may not reflect a net price of costs less any rebate.[41]

When sufficient spreads develop between prices for deposited securities in foreign markets and prices for ADRs in the United States because of, for example, inefficient market dissemination of news about the issuer of the deposited securities, arbitrage opportunities arise. Active traders sell ADRs if, after taking into account transaction costs, such ADRs are trading at a premium to the deposited security. Similarly, if the ADR is trading at a discount to the deposited security after taking into account transaction costs, arbitrageurs purchase the ADRs in the United States, withdraw the deposited securities from the ADR facility, and then sell the deposited securities at a profit in a foreign market. This arbitrage activity limits the degree to which ADR prices in the U.S. markets can be expected to diverge from prices in foreign markets for the deposited security.

3. Custody, Clearance and Settlement for ADRs

The clearance and settlement process for ADRs generally is the same as for other domestic securities that are traded in U.S. markets.[42] Indeed, one of the chief attractions of ADRs is that investors can own an interest in securities of foreign issuers while holding securities that can trade, clear and settle within automated U.S. systems and within U.S. time periods. If investors directly held foreign securities instead of holding ADRs, their transactions in those securities would be subject to the unfamiliar and sometimes less prompt clearance and settlement processes in the security's foreign trading market.

Like other equity securities, ADRs generally are eligible for deposit at U.S. clearing agencies that provide centralized custody and book-entry delivery facilities for their participants (*i.e.*, member banks and broker-dealers). Although some ADRs are held in custody elsewhere, the Commission's

[35] NASDAQ has no specific rule requiring that ADRs be sponsored for inclusion on NASDAQ.

[36] See Bankers Trust Co., The ADR Universe (Jan. 1991) for information about the total sponsored facilities. Information with respect to listing and quotation was obtained directly from representatives of the exchanges identified and NASDAQ. The percentage of ADR facilities listed on a national securities exchange or quoted on NASDAQ has not been changing significantly. In 1989, approximately 282 of 1,757 facilities (16%) were listed or quoted; in 1990, approximately 293 of 1795 facilities (16%) were listed or quoted. In order for an ADR facility to be listed on a national securities exchange or quoted on NASDAQ, the foreign issuer is required to be a reporting issuer under the Exchange Act. (See *infra* n. 66 and accompanying text.) An exception has been made, however, with respect to ADRs so listed or quoted prior to the effectiveness of such requirement. As a result, ADRs for securities of three foreign issuers are listed on the Amex, and ADRs for securities of approximately 38 foreign issuers are quoted on NASDAQ, even though such issuers are not reporting. All of these ADRs are unsponsored.

[37] Letter dated October 15, 1990 to Linda Quinn, Director, Division of Corporation Finance from Kenneth Lopian, Vice-President, The Bank of New York.

[38] The staff has obtained no specific numbers indicating the composition of investors in the ADR market. Based on conversations with brokers and depositaries, however, it appears that 15% to 20% of the ADR market is made up of retail investors and the remainder is made up of institutions or brokers. Typically, brokers are engaged in arbitrage.

[39] The Commission's staff was informed by depositaries and several broker-dealers active in the trading of ADRs.

[40] At least one broker has noted, however, that certain customers may find it economically advantageous to purchase the securities in the foreign market, absorb the attendant costs, and cause the creation of new ADRs for trading. As explained below, the arbitrage possibilities presented when the price of the ADR diverges from that of the deposited securities may make it economically advantageous for an investor to seek creation of additional ADRs in a particular facility.

[41] Reportedly, where there is competition among depositaries caused by duplication of facilities, the depositary does not always charge a fee for issuance of unsponsored ADRs and sometimes will pay a rebate (in the $.03 to $.05 per share range) for deposits. On the other hand, in sponsored arrangements, generally there is no waiver of the issuance fee by the depositary. Fees for withdrawal of deposited securities from sponsored and unsponsored facilities usually range within $.03 to $.05 per share.

[42] Generally, "regular-way" transactions in equity securities settle on the fifth business day after the date of the trade. Transactions among broker-dealers executed on exchanges, through NASDAQ, or in the OTC market settle through clearing corporations (such as National Securities Clearing Corporation) on a net basis with deliveries on the books of a securities depository (such as The Depository Trust Company, or "DTC"). Delivery of securities and payment of funds between a broker-dealer and its customer generally occur through the mail or face-to-face (for retail customers) or by debit and credit to accounts at securities depositories where the customer's custodian bank and the broker-dealer maintain accounts for that purpose (for institutional customers).

staff has been told that the large majority of ADRs in the U.S. markets are held in custody at DTC, a registered clearing agency that is the largest securities depository in the United States. DTC maintains securities in custody in its vaults on a fungible basis, and makes computerized bookkeeping entries of movements of securities between accounts of DTC participants. Such a custody and book-entry recordkeeping arrangement permits transactions in securities deposited at DTC to settle without the need for physical handling and delivery of receipts.

At DTC, sponsored ADRs are treated the same as ordinary U.S. equity securities. ADR certificates are sent to the depositary (or other transfer agent) for registration in DTC's nominee name, deposited into DTC, and kept in custody by DTC on a fungible basis. All dividends are received from the one depositary, and shareholder communications are received from that depositary or the issuer of the deposited securities and are easily distributed to those DTC participants who are the record ADR holders on DTC's books. Sponsored ADRs are eligible for DTC's Fast Automated Transfer ("FAST") service, which expedites the transfer process when participants seek to withdraw securities from their DTC accounts in their own names or in the names of their customers.[43]

Duplicate unsponsored ADR issues have been viewed as having sufficiently similar terms of deposit that they are assigned the same CUSIP number and treated as fungible securities for clearing agency processing. Nevertheless, duplicate unsponsored ADRs do require special processing treatment at clearing agencies. For example, DTC has adopted special procedures for the deposit and safekeeping of unsponsored ADRs. DTC requires its participants to identify the depositary named on the ADR certificate at the time participants deposit ADRs into DTC. DTC sends those receipts to the appropriate depositary for reissuance in DTC's nominee name and DTC maintains custody of those certificates in safekeeping. Because all unsponsored duplicate ADRs for the same class of deposited security bear the same CUSIP number, DTC does not record ownership interests in a specific depositary's receipts. When a participant submits a withdrawal request to DTC, DTC generally delivers any receipt with that CUSIP number in its vault without regard to the issuing depositary, unless the participant making the withdrawal request is one of the depositaries. In the latter case, DTC uses its best efforts to deliver that depositary's receipts.

The rights of participants and their customers who keep ADRs in accounts at clearing agencies can be affected by the clearing agencies' manner of dealing with duplicate facilities for the same class of deposited securities.[44] First, because the depositary usually acts as transfer agent for ADRs, the clearing agency (such as DTC) receives dividend and other distribution payments from multiple transfer agents. In the case of cash dividends, each depositary separately receives a dividend payment in foreign currency from the issuer of the deposited securities and then converts that payment into U.S. currency. Because the payments and conversions may occur at different times and at different rates, DTC may receive different dividend payments from each depositary. In the case of distributions other than cash dividends, it would not be uncommon for amounts paid to DTC by each depositary to vary, based on the differing sale proceeds each depositary is able to obtain and on the differing amounts for fees and expenses each depositary deducts. Because the ADRs are held in a fungible bulk and no DTC participant is identified as owning the ADRs of any particular depositary, DTC cannot allocate distributions based on ownership of a specific depositary's ADRs. Accordingly, for distributions other than cash dividends, DTC has adopted a policy of "blending" or averaging the payments received and paying all holders at the same rate. According to DTC, however, development by the depositaries of standard exchange rates for converting such distributions has reduced the need for blending payments. With respect to the distribution of cash dividends, the Commission's staff has been informed that depositaries generally are paying the same amounts to DTC and blending therefore is not necessary.

Second, substantial concerns about the effect on clearing agency customer's rights may arise to the extent depositaries refuse to accept ADRs of other depositaries with duplicate facilities in connection with the withdrawal of deposited securities by ADR holders. Various ADR market participants have indicated that where there are duplicate unsponsored facilities, depositaries have traditionally treated all ADRs as fungible and permit deposited securities to be withdrawn from their facilities against the surrender of ADRs issued by other depositaries.[45] Some depositaries, however, have indicated to the Commission's staff that they no longer accept in all circumstances the ADRs of other depositaries. Because persons holding ADRs through clearing agencies are not entitled to the delivery of ADRs of any specific depositary, such persons may be placed in a position of effecting withdrawals of deposited securities through depositaries not of their choosing. Such persons also may be unaware of the increased difficulty of withdrawal arising from this non-fungible treatment of ADRs.

Third, processing times for withdrawal requests of duplicate unsponsored ADRs can take longer than for withdrawals of sponsored ADRs. Because of the existence of several depositaries, each acting as transfer agent for the ADRs issued under its facilities, withdrawals of duplicate unsponsored ADRs from the clearing agencies are not eligible for the expedited FAST transfer system. When a withdrawal request for duplicate unsponsored ADRs is made, DTC must physically remove certificates from its safekeeping facilities and send them to the depositary for registration in the withdrawing participant's name.

Fourth, potential processing difficulties arise if there is disagreement over ADR cancellation fees among depositaries when one depositary is selected by the issuer of the deposited securities to provide a sponsored ADR facility. When a sponsored facility is created after the establishment of unsponsored facilities, the unsponsored ADRs are exchanged for sponsored ADRs.[46] The depositaries with unsponsored facilities charge the issuer or the depositary that will be handling the sponsored ADR a cancellation fee. Sometimes those fees have been disputed and the processing of withdrawal requests and establishment

[43] Under FAST, DTC's position in an issue of ADRs is held in a jumbo certificate at the transfer agent for the ADRs (usually the depositary). When DTC notifies the transfer agent that a transfer should take place, the transfer agent issues a new certificate against the jumbo certificate, eliminating the need for DTC to withdraw certificates physically from its safekeeping facilities and surrender them.

[44] Indeed, the rights of participants or their customers could be affected in any circumstance where a custodian cannot record ownership of specific certificates with the same CUSIP number. As a result, similar concerns would be likely to exist with respect to any duplicate ADR facilities. See infra section III.C.

[45] Subsequently, the depositary that had accepted such ADRs would present them to the issuing depositary, and an appropriate number of deposited securities would be transferred from the issuing depositary to the accepting depositary.

[46] See *supra* n. 28 and accompanying text.

of the sponsored facility are delayed until negotiations are concluded.

Finally, because clearing agencies do not distinguish between ADRs of different duplicate unsponsored facilities, a depositary cannot effect a distribution of shareholder communications received from the issuer of the deposited securities unless such depositary provides a sufficient number of copies of such communications for distribution to all ADR holders (including holders of ADRs issued by other depositaries). Also, the fungibility of ADRs causes difficulties in respect of the distribution and tabulation of proxy cards. Although DTC indicates that it has established arrangements for proxy voting on occasion whereby DTC sends an omnibus proxy to the largest depositary, which in turn sends the appropriate parts to the other depositaries, such procedure does not necessarily assure the pass-through of voting rights to the ultimate ADR holders.

4. Securities Lending

Settlement practices and periods involved in the purchase of foreign securities vary significantly from market to market and as compared with U.S. practices and periods. Because of such differences (particularly the length of time that settlement often takes in certain foreign markets), depositaries indicate that significant problems and delays could arise in the ADR trading process if the issuance of an ADR were always delayed until the deposit of the foreign security. One resulting practice of depositaries which has come to the Commission's attention is that of lending deposited securities. Securities lending by depositaries appears to take two forms. In the first form, straight lending of deposited securities is made in return for collateral, the borrower's commitment to return deposited securities at a later date, and a fee. Such lending, reportedly, is limited. The other form of lending practiced by depositaries occurs when an ADR is issued and delivered to a person who has not yet delivered to the depositary the "deposited" securities. This "pre-release lending," which appears to be an industry-wide practice, often occurs where the securities to be deposited have been purchased in a foreign market but clearance and settlement have not taken place yet. Although the effect of this type of lending may be similar to that of straight lending, pre-release lending appears to be more common.

Certain depositaries have established guidelines as to the amount of pre-release lending they will undertake, *e.g.*, 15% to 20% of the total amount of ADRs outstanding in the facility, although such limitations are not absolute. At least some depositaries undertake pre-release lending only upon the deposit of collateral that is marked to market daily and after certification from the borrower that it has purchased the securities and will deposit them upon settlement. While some depositaries provide the right to demand the return of an ADR issued in a pre-release lending situation (either after a pre-determined period or after notice), few appear to prevent the borrower from transferring the pre-released ADR or withdrawing the not yet "deposited" security before it has been deposited. Withdrawal requests in that case presumably are satisfied by delivery of a security deposited by another ADR holder.

Since no regulatory limitations are imposed on the amount of ADRs that may be issued on a pre-released basis, pre-release lending can reach levels far in excess of the self-imposed guidelines described above. For example, according to some depositaries, pre-release lending has reached on some occasions a level greater than 100% of the amount of shares deposited in a facility. As a result, it is possible that investors who have in fact delivered securities to a depositary would be unable to withdraw them from a facility because the depositary had delivered all deposited securities to holders surrendering pre-released ADRs. Although the depositary may have the right under pre-release arrangements to foreclose on collateral securing the pre-release loan and to demand delivery of deposited securities from the person to whom it made the pre-release loan, the exercise of such remedies does not assure the investor seeking withdrawal of deposited securities that he or she will be able to receive prompt delivery of such securities as required by Form F-6.

D. Regulatory Treatment

1. Securities Act Registration

For purposes of the Securities Act, ADRs and deposited securities are considered separate securities, each subject to the registration requirements unless an exemption is available. When a foreign issuer or its affiliate is selling securities to the public in the United States, the securities must be registered with the Commission.[47] While the issuer may choose to sell such securities in ADR form, the use of ADRs to facilitate a public offering does not affect the registration requirement with respect to the foreign issuer's securities. As a result, when there is a public offering of securities in ADR form, both the ADRs and the deposited securities must be registered.

ADRs also may be issued, however, when neither the issuer nor an affiliate is engaging in a public offering of the deposited securities.[48] In that case, registration of the deposited securities is not required. For example, when a person who purchased securities of a foreign issuer in the secondary markets decides to deposit them in an ADR facility, an exemption is ordinarily available for that transaction with respect to the deposited securities.[49] In contrast, the issuance of ADRs upon such a deposit constitutes a public offering of the ADRs which must be registered.

In 1983, the Commission adopted Form F-6 specifically for the registration of ADRs under the Securities Act.[50] Form F-6 provides that the issuer of the ADRs for purposes of the Securities Act is the "legal entity created by the agreement for the issuance of ADRs." [51] Under Form F-6, the depositary signs the registration statement on behalf of that entity, but a depositary signing in that capacity is not deemed to be an issuer, a person signing the registration statement or a person controlling the issuer. If the registration statement relates to a sponsored facility, it must also be signed by the issuer of the deposited securities, its principal officers, a majority of its board of directors and its authorized representative in the United States.

a. *Eligibility requirements for use of Form F-6.* To register ADRs on Form F-6, the deposited securities must be

[47] ADRs are registered on Form F-6 and the deposited securities are usually registered on Form F-1, F-2, F-3 or F-4.

[48] In 1990, approximately 232 initial registrtion statements on Form F-6 were filed to register ADRs that did not involve the concurrent registration of deposited securities, and approximately 6 such registration statements were filed that did involve the concurrent registration of deposited securities.

[49] See *e.g.*, section 4(1), 15 U.S.C. 77d(1), which exempts from registration transactions by persons other than the issuer, underwriter or dealer, and Section 4(3), 15 U.S.C. 77d(3), which exempts from registration certain transactions by dealers following a distribution.

[50] Securities Act Release No. 6459 (March 24, 1983) [48 FR 12348]. Form F-6 consolidated and replaced former Forms S-12 and C-3, which also were forms adopted specifically for the registration of ADRs.

[51] Form S-12 also provided that the issuer of ADRs for purposes of the Securities Act would be the legal entity created by the agreement for the issuance of the ADRs. Securities Act Release No. 3593 (November 17, 1955) [20 FR 8986].

registered or exempt from registration under the Securities Act.[52] In addition, an ADR holder must be able to withdraw the deposited securities evidenced by its ADR at any time, subject only to certain enumerated limitations.[53] Further, Form F-6 may be used for the registration of ADRs only if, as of the filing date of the Form F-6 registration statement, the issuer of the deposited securities either is (or is concurrently becoming) a reporting issuer under the Exchange Act, or is exempt from the reporting requirements of the Exchange Act by virtue of rule 12g3-2(b) thereunder. Rule 12g3-2(b) provides an exemption from the reporting requirements under the Exchange Act for foreign private issuers that furnish to the Commission material information that they publicly file or publish abroad pursuant to law or stock exchange requirements or that they distribute to their security holders.[54]

This last eligibility requirement was not a condition to use of prior forms for the registration of ADRs.[55] As a result, in recognition of the immediate competitive disadvantages to depositaries that would be unable to duplicate previously registered unsponsored facilities, the Commission's staff issued a conditional waiver with respect to such requirement shortly after the adoption of Form F-6. Such waiver applied only to ADR facilities duplicating facilities that had been established prior to the adoption of Form F-6.[56] This waiver was withdrawn in September 1989 because the Commission staff believed that sufficient time had passed to eliminate the earlier concerns.[57] At the request of depositaries claiming that those concerns continued to exist and that market disruptions would occur in the absence of a waiver, the Commission's staff created a new waiver based upon a depositary providing to the Commission on a continuous basis information regarding the issuer of the deposited securities that is substantially equivalent to that which would be provided by the issuer under rule 12g3-2(b).[58]

b. *Disclosure Required by Form F-6.* Pursuant to Form F-6, the registrant must provide in the prospectus a description of the ADRs being registered.[59] The registrant also must disclose the availability at the Commission's offices of information about the issuer of the deposited securities pursuant to the periodic reporting requirements of the Exchange Act or pursuant to the Rule 12g3-2(b) exemption.[60] In addition, all fees and charges imposed on the ADR holder must be described.[61] The depositary may omit such fee information if it provides a general description of the fees and undertakes to provide a separate fee schedule upon request.[62] The disclosures required by Form F-6 are virtually always set forth in the ADR certificate, and such certificate serves as a prospectus. In addition, certificates for unsponsored ADRs contain the full contractual terms of the ADRs, not just a description of such terms. The ADR certificate is, in essence, a contract between the depositary and each holder of ADRs represented thereby, as well as a prospectus.[63]

Among the exhibits that must be filed with a Form F-6 registration statement are the deposit agreement (if any), other agreements relating to the custody of the deposited securities or the issuance of the ADRs, material contracts between the depositary and the issuer of the deposited securities relating to such securities, and an opinion of counsel regarding the legality of the ADRs.[64] In addition, a depositary must furnish the name of each dealer who has deposited shares against the issuance of ADRs within the past six months, proposes to deposit shares, or participated in the creation of the ADR plan of issuance.[65]

2. Exchange Act Reporting

When a foreign private issuer lists ADRs on a national securities exchange or has ADRs quoted on NASDAQ, it becomes subject to the periodic reporting requirements under the Exchange Act.[66] As a result, such issuer

[52] Form F-6, General Instruction I.A.(2).

[53] Form F-6, General Instruction I.A.(1). The ability to withdraw the deposited securities may be limited only by: (i) Temporary delays caused by closing the transfer books or the deposit of shares in connection with voting at a shareholders' meeting or the payment of dividends; (ii) payment of fees, taxes or similar charges; and (iii) compliance with laws relating to ADRs or the withdrawal of deposited securities.

[54] 17 CFR 240.12g3-2(b).

[55] Form F-6, General Instruction I.A.(3). Under former Form S-12, there were no requirements intended to assure that the issuer of the deposited securities would make available to ADR investors current information with respect to its business and operations. Former Form S-12 required that the latest available annual report to stockholders of the issuer of the deposited securities be submitted as an exhibit to registration statements on such form. In addition, depositaries were required to undertake to furnish to the Commission copies of stockholder reports and other communications from the issuer of the deposited securities received by such depositaries in their capacity as holders of the deposited securities.

[56] Division of Corporation Finance staff letter to ADR depositaries (Dec. 30, 1983). Included in the conditions for the waiver were requirements that: (i) The duplicating depositary make reasonable efforts to cause the issuer of the deposited securities to comply with rule 12g3-2(b) and so represent in the Form F-6 registration statement, (ii) the duplicating depositary furnish to the Commission whatever information it received as holder of the deposited securities and so undertake in the Form F-6 registration statement, (iii) unless at that time General Instruction I.A.(3) was met, the waiver terminate and the remaining shares in the duplicating facility be deregistered at the time of exhaustion of the securities registered in the duplicated facility (*i.e.*, the time when all securities registered under such facility have been issued) and the duplicating depositary so undertake in the Form F-6 registration statement, and (iv) rule 466 [17 CFR 230.466] not be used in connection with the F-6 registration statement.

[57] Division of Corporation Finance staff memorandum to ADR depositaries (Sept. 28, 1989).

[58] See Security Pacific National Trust Company (Mar. 28, 1990) and Chemical Bank (Nov. 28, 1990). Other conditions for the waiver were requirements that: (i) The duplicated facility have been established prior to the adoption of Form F-6 and not be exhausted, (ii) the depositary make certain specified efforts to have the issuer of the deposited securities register its securities under the Exchange Act or establish the Rule 12g3-2(b) exemption which then result in the refusal of such issuer to do so, (iii) the ADR certificate disclose the above matters and that the depositary is furnishing certain information to the Commission, (iv) Rule 466 not be used in connection with the F-6 registration statement and (v) the depositary undertake to deregister unsold ADRs when the duplicating facility becomes exhausted. The staff has temporarily eliminated the conditions relating to exhaustion pending the Commission's review of ADRs. See Chemical Bank (Sept. 24, 1990).

[59] See Form F-6, item 1. The description must comply with Item 202(f) of Regulation S-K [17 CFR 229.202(f)] which requires disclosure of the terms of deposit, including procedures for voting, dividend collection and distribution, transmission of notices, reports and proxy soliciting materials, and restrictions upon the right to withdraw and deposit the underlying securities.

[60] Form F-6, item 2.

[61] Form F-6, Item 1. The type of service for which a fee is charged, and the amount and recipient of such fee must be described. Regulation S-K, item 202(f)(3) [17 CFR 229.202(f)(3)].

[62] Form F-6, item 4(c) and Instruction I.B. Former Form S-12 required the depositary to print the fee schedule on the ADR. The Commission revised the requirement to facilitate changes in fees. Securities Act Release No. 6459, *supra* n. 50. ADR holders must be notified thirty days in advance of any change in fees.

[63] In the case of sponsored facilities, the deposit agreement constitutes the contract between the issuer of the deposited securities, the depositary and the holders of ADRs. ADR holders are deemed to have agreed to all terms in the deposit agreement by their acceptance and holding of ADRs.

[64] Form F-6, Item 3.

[65] Form F-6, Item 3. Pursuant to item 4 of Form F-6, the depositary must undertake to update this information semi-annually.

[66] Section 13(a) of the Exchange Act, 15 U.S.C. 78m(a). When ADRs are listed on a national securities exchange, both the ADRs and the deposited securities are required to be registered under section 12(b) of the Exchange Act, 15 U.S.C. 78l(b). When ADRs are to be quoted on NASDAQ, under Form F-6 and Rule 12g3-2(d)(3), only the deposited securities are required to be registered under Section 12(g) of the Exchange Act, 15 U.S.C. 78l(g). In both cases, such registration gives rise to the periodic reporting requirements.

will be required to file annual reports in accordance with the Commission's Form 20-F (which requires financial statements reconciled to U.S. generally accepted accounting principles) and to submit other materials to the extent such materials are required to be prepared pursuant to home market regulations. When a foreign private issuer has ADRs traded in the OTC market, it may either (a) comply with the periodic reporting requirements or (b) establish and maintain an exemption from such requirements by furnishing to the Commission in accordance with rule 12g3-2(b) such annual reports, shareholder communications and other materials as are required to be prepared pursuant to home market regulations. So long as the ADRs are not listed on a U.S. securities exchange or quoted on NASDAQ and so long as an issuer maintains its exemption under rule 12g3-2(b), a sponsored ADR facility will not by itself result in a foreign issuer having to comply with the periodic reporting requirements.[67]

Most foreign private issuers, whether or not subject to the periodic reporting requirements, are exempt from the Commission's proxy regulations,[68] and their directors, officers and 10 percent shareholders are not subject to the stock ownership reporting requirements and short-swing profit recapture provisions.[69]

Any foreign or U.S. person who acquires, either directly or through ADRs, more than five percent of the equity securities of a foreign issuer that is subject to the periodic reporting requirements must report such acquisition to the issuer and the Commission and must otherwise comply with the Commission's regulations under sections 13(d) and 13(g) of the Exchange Act.[70] For purposes of calculating beneficial ownership of securities for these purposes, ADRs are not considered a separate class of equity securities. A reporting obligation under section 13(d) is determined by ownership of the class of deposited securities, including ownership of those securities through ADRs. Any foreign or U.S. person who makes a tender offer for ADRs or deposited securities of a reporting foreign issuer is subject to the Commission's tender offer regulations.[71] Acquisitions of and tender offers for securities of foreign private issuers which have established and maintain the exemption under rule 12g3-2(b), or which are reporting solely pursuant to section 15(d) of the Exchange Act, are not subject to such regulations.

III. Request for Comment

A. Are Any Changes Necessary or Appropriate to the Registration Process?

There follows three principal areas of inquiry in relation to the existing registration process for ADRs under the Securities Act. First, is the substantive disclosure required by Form F-6 sufficient for the protection of investors? Second, should depositaries and/or issuers of deposited securities be required to assume responsibility for the disclosures in a Form F-6 registration statement and to accept certain liabilities under the Securities Act in respect thereof? Third, what information regarding ADRs, if any, should investors receive or have access to in connection with purchases of ADRs, and which market participants should be responsible for the provision or continued holding of such information?

As to each of these principal areas, the Commission is concerned that commenters address: (1) The effectiveness of disclosure (as presently required or as proposed by the commenters to be amended) vis-a-vis substantive regulation to achieve the results suggested by the commenters, (2) the impact on characteristics of the ADR market (as developed to date or as proposed by the commenters to be developed), particularly liquidity, ease of entry, competitiveness, and breadth of participation in the ADR market, and (3) the costs, and the allocation of costs among market participants, added to or removed from the ADR market as a result of the commenters' suggestions.

1. Registration Under the Securities Act

a. *Information about the issuer of the deposited securities.* As presently structured, the prospectus contained in a Form F-6 registration statement need disclose only information regarding the depositary arrangement. No information about the issuer of the deposited securities (other than its identity) need be included in the prospectus. However, as previously noted, Form F-6 requires that the issuer of the deposited securities be reporting under the Exchange Act or furnishing to the Commission certain information it makes public in its home country.[72] Comment is requested as to whether information about the issuer of the deposited securities should continue to be made indirectly available to investors through the Form F-6 eligibility requirement or whether information should be made directly available to investors by a requirement that it be contained in the prospectus itself. If the latter is required, what type of information should be provided, and would incorporation by reference to material available through the Commission be appropriate? What would be the advantage of such incorporation by reference as compared to reliance on the Form F-6 eligibility requirement? Commenters should estimate the cost of provision of information for direct F-6 availability or (if additional cost is involved) for incorporation by reference.

b. *Information about the deposited securities.* Form F-6 does not require prospectus disclosure of information regarding the deposited securities. While procedures for passing through voting and other rights are required to be disclosed, a description of such rights with respect to the deposited securities is not specifically required. For instance, information regarding limitations on foreign ownership of deposited securities, foreign currency exchange controls and other limitations affecting ADR holders are not items of disclosure required by Form F-6. Such disclosure may currently be available from other sources. For example, where the deposited securities are being registered concurrently under the Securities Act, investors would receive a prospectus that includes such disclosure. Such information also may be available through the Commission in a document filed under the Exchange Act.

Comment is requested regarding whether Form F-6 should be amended so that the rights arising from ownership of the deposited securities must be disclosed when such disclosure is not included in other documents filed with or submitted to the Commission. If so, what information about the deposited

[67] Whether or not a sponsored or unsponsored ADR facility for an issuer's securities exists, a foreign private issuer may become subject to the periodic reporting requirements under the Exchange Act if it has not established and maintained an exemption under Rule 12g3-2(b) and it has more than 500 shareholders worldwide, 300 or more shareholders in the United States, and $5 million in total assets worldwide. Rules 12g-2 and 12g3-2(a), 17 CFR 240.12g-2 and 240.12g3-2(a).

[68] Section 14(a) of the Exchange Act, 15 U.S.C. 78n(a).

[69] See Section 16 of the Exchange Act, 15 U.S.C. 78p. Rule 3a12-3, 17 CFR 240.3a12-3. Canadian foreign private issuers are not always eligible for such exemption. The Commission has proposed extending this exemption to all Canadian foreign private issuers. Securities Act Release No. 6879 (Oct. 22, 1990) [55 FR 45896, 45898].

[70] 15 U.S.C. 78m(d) and 78m(g).

[71] Sections 13(e), 14(d) and 14(e) of the Exchange Act, 15 U.S.C. 78m(e), 78n(d) and 78n(e).

[72] See *supra* n. 54 and accompanying text.

securities should be required by Form F-6?

c. *Sponsored and unsponsored facilities.* Form F-6 disclosure requirements do not vary based upon whether the ADR facility is sponsored or unsponsored. Comment is solicited regarding whether the involvement or non-involvement of the issuer of the deposited securities should be prominently disclosed in the ADR and whether the consequences of such involvement or lack thereof should be disclosed. Should a higher degree of information regarding the deposited securities and their issuer be required if such issuer participates in the formation of the facility, regardless of whether a public offering of the deposited securities is being undertaken? Should summary information about other existing facilities relating to the same class of deposited securities be disclosed in the F-6 or in the ADR?

d. *Rights of ADR holders.* Currently depositaries [73] have few absolute obligations with respect to ADR holders. In a typical unsponsored ADR facility, the depositary has complete discretion with respect to the exercise of voting rights. The depositary is not obligated to notify ADR holders about any meeting of holders of the deposited securities or to distribute to ADR holders the proxy information, annual reports or other materials it receives from the issuer of the deposited securities. While Form F-6 mandates that the depositary undertake to make available at its principal office information that it receives as record holder of the deposited securities, the depositary does not agree to distribute to unsponsored ADR holders any shareholder communications.

Should Form F-6 continue to allow registration of ADRs whose depositaries are obligated to afford holders only the right of prompt withdrawal of the deposited securities, or should it be amended to allow registration of ADRs only when ADR holders are granted certain rights in addition to the right of prompt withdrawal? Commenters favoring additional requirements for registration should provide examples of detriment to ADR holders, and all commenters should estimate the anticipated impact, if any, on continuous development of the ADR market as a result of their positions. Comment is also solicited with respect to whether the Commission should mandate that ADR holders be given the opportunity to exercise voting rights with respect to the deposited securities. If so, in what manner should the depositary be required to facilitate the ADR holders' voting? To what extent would the imposition of such requirements deter issuers from sponsoring ADR facilities or deter entities from acting as depositaries? Also, should the depositary be required to distribute all shareholder communications to ADR holders? To what extent are shareholder communications provided only in a foreign language, does this result in problems or concerns for ADR holders, and what action, if any, should the Commission take to address such problems or concerns? Again, commenters favoring imposition of additional requirements on depositaries should provide examples of benefit or detriment to ADR holders, should estimate the cost of fulfilling such requirements, and should suggest how such cost should be allocated among market participants, and all commenters should estimate the anticipated impact on continued development of the ADR market as a result of their positions.

Comment is also sought as to the differences between the structure, operation and regulation of ADRs and the structure, operation and regulation of International depositary receipts, Continental depositary receipts, European depositary receipts and other foreign counterparts of ADRs.

e. *Distributions.* Generally, after deductions for fees, expenses and taxes, an unsponsored ADR holder, as the beneficial owner of the deposited security, is entitled to distributions of cash, securities and other property with respect to the deposited securities if such distributions are consistent with the Securities Act and other laws. With respect to distributions of rights, some unsponsored facilities provide that warrants for such rights will be distributed if such distribution is consistent with applicable law, while other unsponsored facilities leave such distribution entirely to the discretion of the depositary. When non-cash distributions are received by the depositary with respect to the deposited securities, if the depositary determines that it is not feasible or lawful to pass through such distribution to ADR holders in kind, the depositary may either sell the securities or property so received and distribute the proceeds to ADR holders, or retain for the benefit of ADR holders the securities or property received. Depositaries generally have complete discretion as to the action taken.

With respect to the blending of distribution payments to ADR holders by clearing agencies, as described above, [74] comment is solicited with regard to whether such blending has damaged or benefitted ADR holders in the past or whether such blending should be regulated, with suggestions as to the method, cost and allocation of cost of regulation. For example, should different CUSIP numbers for the ADRs of each depositary be required? Should clearing agencies record ownership interests in ADRs on a depositary-by-depositary basis and pass through all distributions to ADR holders based on the amount paid by the depositary issuing each ADR? Alternatively, should the ADR facility simply disclose the potential for differences in distributions and the possibility of blending? Commenters are requested to address these issues both in terms of existing duplicate unsponsored facilities and in terms of unsponsored facilities that duplicate sponsored facilities. Commenters should also address the impact of their positions in terms of liquidity in the ADR market.

f. *Fees and expenses.* The disclosure required by Form F-6 in connection with the fees and expenses charged by depositaries [75] is usually stated in terms of the maximum fee that could be charged. From discussions with depositaries and others, it appears that in practice the fees for deposit and withdrawal of deposited securities vary widely from no fee at all to the stated maximum fee. Particularly in the case of deposits and withdrawals through brokers, fees are often negotiated on a case-by-case basis. Further, it appears that when dividends or other distributions are paid, there is no disclosure of the currency conversion rate used or the fees and expenses deducted by the depositary or others before payment. As a result of the general nature of the depositaries' fee disclosure or the absence of such disclosure, ADR holders may have limited awareness of both the types and the amounts of charges.[76] Comment is

[73] In a typical sponsored facility, the depositary undertakes at the request of the issuer of the deposited securities to arrange for the exercise of voting rights, the distribution of proxy information and the forwarding of shareholder communications to the ADR holders.

[74] See *supra* text accompanying nn. 44-45.

[75] See *supra* section II.D.1.b. for a description of the disclosure requirements of Form F-6.

[76] See, *e.g.*, R. Piper, Euromoney Stops the Rip-Off, Euromoney at 47 (Feb. 1989). According to this article, at least in unsponsored facilities, a fee is charged at most stages of the process of remittance of cash dividends from the custodian to the depositary (which allegedly charges for currency conversion and for handling the payment, while also benefiting from holding the money interest-free for 10 to 14 days), from the depositary to DTC, from DTC to the brokers who are the record holders, from the brokerage house to its local branch, and from the branch to the beneficial holder or its nominee.

sought as to the extent to which such rates, fees and expenses are not known to ADR holders. Comment also is solicited on whether there is a need for more specific prospectus or other disclosure about fees. If more disclosure is deemed necessary, should the focus be on identification of every event that would result in a fee or expense deduction, or should the disclosure also include more specific estimates of the amount being charged? To the extent that such fees or charges are imposed by persons other than depositaries, should the depositaries be responsible for disclosing them? What consideration should be given to the practice of individual negotiation of fees?

g. *Depositaries' semi-annual reports.* The Commission also is seeking comment with respect to the semi-annual reports depositaries undertake to furnish to the Commission beginning six months after the effective date of a Form F-6 registration statement.[77] Information regarding the issuance and retirement of ADRs (among other things) is required in such reports. An examination of Commission records with respect to these reports suggests an inattention to these undertakings.[78] The information also appears to be of limited utility.[79]

Comment is solicited with respect to whether the Commission should continue to collect information about the operation of ADR facilities following effectiveness of the registration statement, and with what frequency. Is it appropriate or necessary for the Commission to monitor the number of ADRs issued by depositaries when depositaries are themselves responsible for maintaining issuance and withdrawal records? Is there other information easily available to depositaries and useful to ADR holders that the Commission should collect?

h. *Information regarding the issuer in grandfathered ADR facilities.* The Commission's staff has waived the Form F-6 information provision eligibility requirement for new ADR facilities that duplicate a facility created prior to adoption of Form F-6,[80] thereby expanding the number of facilities where investors have no assured access to information about the issuer of the deposited securities.[81] Commenters are requested to address how the Commission should balance the competing interests of furthering investor protection by providing for availability of information about the issuer of the deposited securities and accommodating depositaries' desire to establish facilities to compete with those created prior to adoption of Form F-6 that imposed an information availability requirement. Should the Commission discontinue the waiver of the Form F-6 eligibility requirement? Should the waiver be provided if the depositary or one or more other persons or entities interested in the facility undertakes to provide information substantially equivalent to that which an issuer would provide under rule 12g3-2(b)? Are there circumstances, as (for example) where the extent and transparency of the principal markets for the deposited securities overseas reflect issuer-oriented information that is widely available to U.S. investors even if not formally provided to the Commission, in which the waiver should be provided regardless of the absence of such an undertaking?

2. Should Depositaries or Issuers Assume Responsibility for the Registration Statement?

Market participants appear to have accepted the arrangement under which the legal entity created by the agreement for the issuance of ADRs is deemed the "issuer" of the ADRs and the registrant under Form F-6. In essence, no person or entity has the liability of an issuer under Section 11.[82] Does it continue to be appropriate that neither the depositary nor the issuer of the deposited securities assumes responsibility for the content of the registration statement? Should the issuer of the deposited securities expressly assume liability as "issuer" of the ADRs if the issuer of the deposited securities sponsors the ADR program? Should the depositary assume section 11 liability, either as "issuer" or as another signatory to the registration statement, for the entire registration statement or for specified portions of the registration statement? Commenters favoring change should give examples of detriment to ADR holders from the absence of such responsibility. Would full or partial assumption of liability significantly affect the manner in which issuers of deposited securities and depositaries approach the ADR marketplace? Is there a cost associated with such assumption of liability, and how is that cost anticipated to be allocated among participants in the ADR market?

3. What Information Should ADR Investors Receive?

It appears that purchasers of ADRs do not receive uniform levels of information regarding their investments. For example, some investors may not be aware that they have purchased ADRs in lieu of direct purchases of the securities of a foreign issuer nor may they be aware of the differences among duplicate facilities.[83] Some purchasers may not be fully apprised of the factors that determine the price of an ADR. Moreover, regarding the fees that influence the pricing of ADRs, certain institutional investors may be able to obtain ADRs at a lower cost than other investors, with the price of the ADR to such institutional investors reflecting all or a portion of the rebates that a broker-dealer may receive from a depositary.

Reportedly, under certain circumstances, broker-dealers may receive a discount either on the fees normally charged for the issuance of ADRs or on other fees associated with an ADR facility. Further, there apparently have been instances when depositaries have paid broker-dealers to deposit foreign issuer shares into their particular facilities instead of a competing facility for the same shares. The Commission is soliciting information regarding how frequently and under what circumstances depositaries make such concessions on fees, the dollar amount of such concessions, and whether such concessions are made to market participants other than broker-dealers. Further, the Commission seeks comment on the extent to which such concessions are calculated into or otherwise affect the purchase and sales prices of ADRs quoted and charged to investors and the frequency and manner in which investors are informed of these concessions. Finally, the Commission seeks comment on whether current practices regarding fee concessions are appropriate; is there any need for regulation by the Commission or a self-

[77] See item 4(a) of Form F-6.

[78] A staff survey of such reports for the period from 1987 through 1990 indicated timely compliance for less than 20% of registered ADR facilities.

[79] The reports must include information regarding: The number of ADRs issued and the number of ADRs retired during the period covered by the report, the amount of ADRs outstanding and the number of ADR holders as of the last day of such period, and the name of each dealer known to be depositing securities to acquire ADRs. None of this data, however, is reported on a cumulative basis.

[80] A recent staff survey indicates that approximately 43% of the foreign issuers with securities represented by ADRs are not reporting or otherwise providing current information to the Commission.

[81] It appears that approximately 25% of foreign issuers with securities currently represented by ADRs had sponsored or unsponsored facilities established prior to the adoption of Form F-6.

[82] "This altogether laudable demonstration of administrative flexibility means that nobody has the liability of an 'issuer' under section 11 so far as Form F-6 is concerned." Loss & Seligman, Securities Regulation, p. 775, n. 74 (3d ed. 1989).

[83] See *supra* text accompanying nn. 44-46.

regulatory organization? If such regulation is deemed necessary or appropriate, the nature of such regulation should be described. Is the proposed entry of additional depositaries into the marketplace, and the proposed duplication of ADR facilities, likely to affect the competitive environment of the ADR marketplace in a manner detrimental or beneficial to ADR holders with respect to these matters?

Should ADR investors routinely be given or be entitled to receive either specific or general information regarding ADRs and the ADR marketplace? If so, what forms of written or oral disclosures should be required to be made or to be available to investors, which characteristics of ADRs should be the subject of such disclosure, and which ADR market participants should be responsible for the dissemination of such disclosure? Have there been examples of market failure or market adaptation arising out of the absence or presence of disclosure information? Would it be appropriate to differentiate between investors in terms of investment expertise or other criteria in determining the form and content of the disclosure to be provided? Commenters should estimate the additional cost inherent in their positions, and should suggest how such cost is likely to be allocated among market participants.

B. Should the Exchange Act Treatment of ADRs Be Modified?

Under current regulations, ADRs that are traded on NASDAQ or in the OTC market are not necessarily subject to a separate reporting requirement under the Exchange Act,[84] but ADRs that are listed on a national securities exchange are subject to such a separate requirement.[85] There appears to be little practical significance in this separate requirement. Although listed ADRs are not the securities of the foreign issuer but rather of the legal entity created by the depositary, it appears to be common practice for the reports of foreign issuers to satisfy the reporting requirements for both the deposited securities and listed ADRs.

The Commission is soliciting comment on whether the reporting exemption applicable to non-listed ADRs should be extended to listed ADRs. Alternatively, the exemption applicable to non-listed ADRs could be eliminated, and the Commission could require periodic reporting with respect to all ADRs. In this connection, comment is requested with respect to whether information other than that currently required to be included in depositaries' semi-annual reports should be required to be included in such reports.[86] If periodic reporting is required, should depositaries, issuers of deposited securities or some other persons be responsible for compliance, and should different reporting requirements be applicable to sponsored and unsponsored facilities?

C. Duplication of Facilities

A great deal of concern has been expressed over the potential impact on the ADR market of duplication of sponsored facilities by unsponsored facilities. After preliminary study, it appears to the Commission that the unsponsored duplication of sponsored ADR facilities would not, in and of itself, create a risk of market disorder and investor confusion different from that presented by duplication of unsponsored ADRs, provided the unsponsored ADRs provide rights equivalent to those provided by the sponsored ADRs and are viewed by the market as fungible. The basic issues to be addressed therefore seem to be: what would constitute non-fungible ADRs, what are the consequences to the market of the development of non-fungible ADRs for the same deposited security, and what are the responsibilities of depositaries, market intermediaries, the Commission and self-regulatory organizations in dealing with non-fungible securities.

In light of the sharp disagreement among ADR market participants, comment is requested regarding whether a sponsored facility and an unsponsored facility for the same deposited security would inherently result in non-fungible securities, or whether the duplicating facility could be structured so that the material terms of deposit, such as timing and amount of dividends, distribution of shareholder communications and pass-through of voting rights and securities distributions, are so similar that sponsored and unsponsored ADRs should be viewed by investors as, and should be traded, cleared and settled as, fungible securities. Should exchange or NASDAQ trading of a sponsored ADR be viewed as a *per se* material difference that would render the unsponsored ADR trading in a different market non-fungible?[87] Are there other examples of material differences in rights or privileges that would result in non-fungibility, such as: Access to a closed foreign currency exchange market only for holders of the sponsored ADRs, extension of a dividend reinvestment plan only to holders of the sponsored ADRs, and dividend withholding benefits under foreign tax laws only for holders of the sponsored ADRs? Are there limitations imposed by law on foreign ownership of an issuer's securities that could result in unique aspects of a sponsored facility that would constitute material differences from an unsponsored one and thus require non-fungible treatment?

The Commission requests comment on what other factors would bear on whether duplicate facilities result in fungible or non-fungible ADRs, whether sponsored or unsponsored. Could the identities or practices of the depositaries potentially be a material difference causing non-fungibility? While the choice of any one of the depositaries currently active in the ADR market might not result in such a determination, absent eligibility requirements for persons wishing to act as ADR depositaries is it likely that an assessment of the relative financial stability of the depositaries could become a factor in the determination?

ADR market participants also disagree on how the unsponsored duplication of sponsored ADRs (on either a fungible or non-fungible basis) would affect the market. Comment therefore is being solicited with regard to what the effects on the ADR market would be if such duplication proceeded, including implications (positive or negative) for liquidity, ease of entry, competitiveness and breadth of participation in the ADR market. Does the effect differ based upon whether the duplicate ADRs are fungible? What effect would either fungible or non-fungible duplication have on foreign

[84] ADRs (other than listed ADRs) are exempt from the registration requirements under section 12(g) of the Exchange Act. Rule 12g3-2(c) [17 CFR 240.12g3-2(c)]. Consequently, such ADRs are also exempt from the reporting requirements under the Exchange Act. A reporting obligation may arise under Section 15(d) of the Exchange Act [15 U.S.C. 78p(d)], although such obligation is suspended if the depositary furnishes all semi-annual reports required under Form F-6. Rule 15d-3 [17 CFR 240.15d-3].

[85] Under section 12(b), all securities listed on a national securities exchange are required to be registered under the Exchange Act and are thus subject to the reporting requirements under the Exchange Act. There is no exemption similar to rule 12g3-2(c) for listed ADRs.

[86] See *supra* Section III.A.1.g.

[87] Section 12(*f*) of the Exchange Act provides a legal basis for rulemaking to govern the duplication on a non-fungible basis of a sponsored facility whose ADRs and deposited securities are quoted on NASDAQ or listed on an exchange. That section provides generally that it is unlawful for an issuer with a class of securities registered under section 12 to issue any securities in a form which contravenes such rules and regulations as the Commission may prescribe as necessary or appropriate for the prompt and accurate clearance and settlement of transactions in securities.

issuers that currently maintain sponsored facilities or that may in the future enter the U.S. capital markets through a sponsored facility?

What steps, if any, should be taken by the Commission and the self regulatory organizations to address the issues raised by duplicate non-fungible ADRs for the same underlying security? Should duplicate unsponsored ADRs that are not fungible with sponsored ADRs trade in the same U.S. securities market (i.e., on the same securities exchange, on NASDAQ or in the OTC market) as the sponsored ADRs? [88] What disclosures are necessary or appropriate in a registration statement relating to such non-fungible duplicate ADR's?

Additionally, should the Commission adopt requirements as to how non-fungible duplicate ADRs must be distinguished? One such potential method would be for the non-fungible ADRs to bear different CUSIP numbers. In such case, ADRs of one depositary would not be deemed "good delivery" for ADRs of another. The use of different CUSIP numbers could bring with it some disadvantages. While the CUSIP numbers indicate differences, they do not give an indication of the nature of such differences. In addition, many market participants have expressed a strong belief that requiring different CUSIP numbers would itself stop trading of one or both of the facilities' ADRs as well as create an undesirable level of market confusion, particularly in the area of clearance and settlement. They do not believe the confusion would be mitigated in practice by informing ADR investors of the differences between facilities. Comment is solicited with respect to whether the use of different CUSIP numbers would result in market confusion, and if so, the most likely sources of such confusion.

Under the CUSIP number method of distinguishing duplicate facilities, the question arises as to who should determine fungibility and on what basis. Should a foreign issuer be able to insist on a different CUSIP number or other means of assuring non-fungibility for a sponsored facility?

The required use of different ADR multiples for duplicate facilities has been suggested as another method for distinguishing non-fungible facilities. While different multiples may distinguish such facilities for some purposes, this alternative may not distinguish them in all cases. [89] Clearing agencies at present distinguish between securities only on the basis of CUSIP numbers. If duplicate ADRs had different multiples but nonetheless had the same CUSIP number, difficulties could arise because clearing agencies could not determine which ADR a holder owns. In cases where depositaries pay different dividend amounts, or otherwise treat ADR holders differently, it may not be possible for clearing agencies to determine which rights apply to specific holders. Comment is solicited with regard to alternative methods for distinguishing among non-fungible ADR facilities.

The Commission invites comment on whether investors, broker-dealers, depositaries, clearing agencies, self-regulatory organizations, and issuers would be able to distinguish consistently among non-fungible ADRs for the same deposited security under the CUSIP method or any other alternative. Would they be able to identify the differences between such ADRs?

It appears that the co-existence of duplicate sponsored and unsponsored facilities could give rise to the same processing practices and effects on ADR holders that occur when duplicate unsponsored facilities co-exist, [90] such as the potential need for blending distribution payments and special safekeeping procedures by clearing agencies? If so, should the Commission require duplicating depositaries to adopt procedures to address these concerns? Should the Commission require clearing agencies to establish specific procedures for determining which of their participants own ADRs of a particular depositary where the ADRs of several depositaries have been assigned the same CUSIP number and subsequently different CUSIP numbers are assigned to such ADRs because a material difference resulting in non-fungibility has developed between the ADRs of the various depositaries?

As noted at the outset of this subsection, the issues regarding duplication of ADR facilities appear to apply similarly to unsponsored and sponsored ADR facilities. Traditionally, the market has treated duplicate unsponsored ADR facilities as fungible. However, some market participants have suggested that this may be eroding to some degree. Do material differences in those multiple unsponsored facilities exist such that they should no longer be considered fungible? Are investors adequately protected if these duplicate ADRs continue to be traded as the same security?

Finally, should depositaries, brokers, dealers and clearing agencies be required to include the designation of an ADR as sponsored or unsponsored in the name of the security, including in confirmations and account statements? Are there other responsibilities that depositaries, broker-dealers and clearing agencies should bear with respect to informing the investor community about the non-fungible duplicate ADRs?

D. Should the Commission Regulate the Activities of Depositaries?

There are currently no Commission rules that regulate the conduct or operations of depositaries as such. The relationship between a depositary and holders of ADRs is based on the contract embodied in the ADR certificate (and in the case of sponsored facilities the deposit agreement with the issuer of the deposited securities). As discussed above, other than provisions relating to holders' rights to withdraw deposited securities, the Commission does not require that such contract contain any specific protections or rights in favor of ADR holders. Other regulatory agencies may provide a degree of oversight in respect of the activities of existing depositary banks. In view of the fact that such other regulatory agencies' concerns focus on the protection of constituencies other than ADR investors, and given that unregulated foreign or domestic entities may seek to act as depositaries, is there a need for greater oversight of depositaries' activities? Do certain depositary practices (such as securities lending [91] and discretion as to distributions [92]) have such potential to result in market disruption and investor harm as to justify Commission regulation? Are there examples of disruption or investor harm? What are the likely costs of such regulation, and how are they likely to be allocated among ADR market participants?

There are also currently no Commission rules providing for the qualification or registration of entities

[88] As discussed *infra* at n. 36, some unsponsored facilities are listed on a national securities exchange or are quoted on NASDAQ. The exchanges generally permit only sponsored facilities to be listed. The NASD encourages ADR facilities quoted in NASDAQ to be sponsored. Commenters are requested to address whether such facilities should continue to remain so listed or quoted when the issuer of the deposited securities seeks to establish a non-fungible sponsored facility that will be so listed or quoted.

[89] For instance, how much distinction would be made when an investor wishes to buy ADRs representing 100 deposited shares if one facility has a multiple of 5 and the other facility has a multiple of 10?

[90] See *supra* Section II.C.3.

[91] See *supra* Section II.C.4.

[92] See *supra* Section III.A.1.e.

that act as depositaries. Although the traditional functions of a depositary come within the definition of "transfer agent" under the Exchange Act, [93] and although all entities currently acting as depositaries with respect to publicly traded ADRs are registered with the Commission or other appropriate regulatory agencies as transfer agents, [94] entities which act as depositaries are not necessarily required to be so registered. [95] Thus, under the Commission's regulations, any foreign or U.S. person may act as a depositary, may cause the legal entity to sign and file a registration statement on Form F-6, and may issue ADRs against the deposit of shares.

It appears that the transfer agent functions generally have been performed at least as well for ADRs as they have been performed for other equity securities. This appears true at least in part because the existing depositaries are large banks that are transfer agents familiar with those functions and not because of any legal requirement. The Commission requests comment on the need to require that ADRs be handled by a registered transfer agent. Many of the same concerns that led to registration and regulation of transfer agents under the Exchange Act could potentially be raised with respect to transfer agents for ADRs. [96] For example, transfer delays can lead to delay in transaction processing, loss of records and positions, financial loss, and loss of investor confidence in the markets. [97]

The Commission requests that commenters address whether the Commission should directly regulate depositaries. In particular, the Commission seeks commenters' views with respect to the following matters. Should the Commission regulate the operations or practices of depositaries? Should the Commission require depositaries to be registered as transfer agents? Alternatively or supplementally, should the Commission develop qualification standards or registration procedures applicable to depositaries as such, and if so, what should such standards or procedures be? Should Form F-6 require disclosure of the financial condition of the depositary?

The Commission also solicits comment as to whether any of the securities lending activities of depositaries should be subject to limitation or regulation. Should lending be subject to defined conditions, such as the maintenance of a specified level of collateral consisting of only certain permitted types of liquid securities? Should a distinction be drawn between pre-release lending and other forms of securities lending? Is regulation or limitation needed if full disclosure of the lending practices of the depositary is made in the prospectus?

E. Costs and Benefits of Modifications to the Regulatory System

The Commission invites commenters to provide views and data as to the costs and benefits associated with possible changes discussed herein in comparison to the costs and benefits of the existing regulatory framework for ADRs.

Dated: May 23, 1991.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-12680 Filed 5-29-91; 8:45 am]

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[93] Section 3(a)(25) of the Exchange Act [17 U.S.C. 78c(a)(25)] defines a transfer agent as "any person who engages on behalf of an issuer of securities or on behalf of itself as an issuer of securities in (A) countersigning such securities upon issuance; (B) monitoring the issuance of such securities with a view to preventing unauthorized issuance, a function commonly performed by a person called a registrar; (C) registering the transfer of such securities; (D) exchanging or converting such securities; or (E) transferring record ownership of securities by bookkeeping entry without physical issuance of securities certificates."

[94] Section 17A(c) of the Exchange Act [17 U.S.C. 78q-1(c)].

[95] The registration obligation applicable to transfer agents does not extend to those entities that perform transfer agent functions solely with respect to securities which are not required to be registered under section 12 of the Exchange Act (subject to certain exceptions). As discussed supra at nn. 84-85, ADRs that are not listed on a national securities exchange are not required to be so registered. Also, in the case of ADRs which are registered under Section 12, a depositary may avoid registration as a transfer agent if such depositary employs a registered transfer agent to undertake the transfer agency functions with respect to the ADRs issued by such depositary.

[96] In the early 1970s, Congress held extensive hearings to investigate the securities industry's paperwork problems, including transfer problems, and ultimately enacted the Securities Act Amendments of 1975 (Pub. L. No. 94-29, 89 Stat. 97 (1975)), which includes provisions for the registration and regulation of transfer agents and clearing agencies under section 17A. See, *e.g.*, Clearance and Settlement of Securities Transactions, Hearings on S.3412, S.3297, and S.2551 Before the Subcom. on Banking, Housing and Urban Affairs, 92d Cong., 2d Sess. (1972).

[97] See, *e.g.*, Securities Exchange Act Release No. 13636 (June 16, 1977) [42 FR 32404] and Securities Exchange Act Release No. 19860 (June 19, 1983) [48 FR 28231].

[Release No. 34- 29215; File No. S7-8-90]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Amendment to the National Market System Plan

Pursuant to rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on May 13, 1991, the Options Price Reporting Authority ("OPRA") submitted to the Securities and Exchange Commission ("Commission") an amendment to its National Market System Plan to reflect changes to OPRA's existing News Service Direct Connection Agreement. The Commission is publishing this notice to solicit comments from interested persons on the amendment.

I. Description and Purpose of the Amendment

Previously, all new services have received OPRA data directly from OPRA's processor in New York City, and have paid the related direct access charge. Now, at least one news service has proposed accessing OPRA data indirectly, via a data feed from an OPRA vendor. In order to accommodate such indirect access, OPRA has changed the designation of its former "News Service Direct Connection Agreement" to "News Service Agreement," has added provisions expressly authorizing a news service to receive OPRA data from a vendor, and has adopted a new News Service Pass-Through Fee payable by indirect access new services in lieu of, and equal in amount to, the direct access fee. OPRA has characterized the other amendments to the Agreement as being for purposes of making updating changes or editorial and not substantive in nature.

II. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 553, will be available for inspection and copying in the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549. Copies of such

filing also will be available at the principal office of OPRA. All submissions should refer to File No. S7-8-90 and should be submitted by June 20, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 22, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-12677 Filed 5-29-91; 8:45 am]

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[Release No. 34- 29214; File No. S7-8-90]

Options Price Reporting Authority; Notice of Filing and Summary Effectiveness of Amendment to its National Market System Plan to Establish Fee for Radio Paging Market Data Service and Rider to Vendor Agreement to be Used in Connection with the New Fee

Pursuant to Rule IIAa3-2 under the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on May 9, 1991,[1] the Options Price Reporting Authority ("OPRA") submitted to the Securities and Exchange Commission ("Commission") an amendment to its national market system plan that would establish a new fee for vendors who wish to offer a radio paging market data service, and a rider to OPRA's vendor agreement to be used in connection with the new fee.[2]

I. Description and Purpose of the Amendment

OPRA has authorized the establishment of a fee to be paid by vendors who furnish a radio paging market data service to the customers of radio paging companies or their own customers via text display radio pagers. The radio paging market data service fee is proposed to be established at a monthly rate of $1.00 for each text display paging device that is enabled to receive the service.

The purpose of the new fee is to permit vendors to offer to their customers a service whereby a limited amount of options market data may be transmitted via radio paging companies to text display pagers. Since only limited information can be transmitted to text display pagers as a result of bandwidth constraints, OPRA has determined not to require persons who have access to such pagers to become OPRA subscribers and pay subscriber fees to OPRA. Instead, OPRA intends to charge vendors who offer this service at the monthly rate of $1.00 per device. The fees OPRA will receive on this basis are estimated to be substantially below the aggregate subscriber fees that would be payable if a radio paging market data service could be offered only to OPRA subscribers.

II. Summary Effectiveness of the Amendments

Pursuant to rule 11Aa3-2(c)(4) under the Act, the Commission may, upon publication of notice of the amendment in the **Federal Register**, summarily put into effect on a temporary basis not to exceed 120 days an amendment to a national market system plan. The Commission must first determine, however, that such action is necessary or appropriate in the public interest, for the protection of investors and maintenance of fair and orderly markets, to remove impediments to and perfect the mechanisms of a National Market System, or otherwise in furtherance of the purposes of the Act. The Commission believes the amendment meets these standards.

The amendment will serve the public interest by increasing the availability of market information to brokers, dealers and investors. Approving it summarily will make information available sooner to vendors that have already expressed an interest in the service and have worked closely with OPRA to develop the fee and the rider that are the subject of the filing. The amendment simply provides an additional means of obtaining OPRA data that customers may elect to receive.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are files with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 553, will be available for inspection and copying in the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available at the principal office of OPRA. All submissions should refer to File No. S7-8-90 and should be submitted by June 20, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 22, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-12678 Filed 5-29-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29216; File No. S7-8-90]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Amendment to the Dial-Up Market Data Service Rider to OPRA's Vendor Agreement

Pursuant to rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on April 29, 1991, the Options Price Reporting Authority ("OPRA") submitted to the Securities and Exchange Commission ("Commission") an amendment to the Dial-Up Market Data Service Rider to OPRA's Vendor Agreement.

OPRA has designated this proposal as involving solely technical or ministerial matters, permitting it to become effective upon filing, pursuant to the terms of rule 11Aa3-2(c)(3)(iii) under the Act. The Commission is publishing this notice to solicit comments from interested persons on the amendment.

I. Description and Purpose of the Amendment

The Dial-Up Market Data Service Rider to OPRA's Vendor Agreement was initially filed under rule IIAa3-2 at the time OPRA first authorized the dial-up computer market data service fee in November, 1988. In its filing, OPRA stated that the purpose of this amendment is: (1) To eliminate references to the 300-baud printer service, which was originally the subject of a separate fee and rider that was incorporated into the dial-up computer fee and rider in November 1988, but which is no longer offered or proposed to be offered by any vendor; (2) to shorten the required record retention period from six to three years; and (3) to make certain non-substantive, technical editorial changes to certain provisions

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[1] The amendment was originally filed on April 9, 1991. The original filing was withdrawn by the subsequent filing.

[2] OPRA has requested that the radio aging service be put into effect summarily pursuant to rule 11Aa3-2(c)(4) under the Act. That section empowers the Commission to summarily put into effect on a temporary basis a Plan amendment "if the Commission finds that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act."

that discuss OPRA's and the participant market's liability.

II. Solicitation of Comments

Pursuant to rule 11Aa3-2(c)(3) under the Act, the amendment became effective upon filing with the Commission. The Commission may summarily abrogate the amendment within 60 days of its filing and require refiling and approval of the amendment by Commission order pursuant to rule 11Aa3-2(c)(2), if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors and maintenance of fair and orderly markets, to remove impediments to and perfect the mechanisms of a National Market System, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 553, will be available for inspection and copying in the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available at the principal office of OPRA. All submissions should refer to File No. S7-8-90 and should be submitted by June 20, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 22, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-12679 Filed 5-29-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29227; File No. SR-CSE-91-02]

Self-Regulatory Organizations; Cincinnati Stock Exchange; Order Approving Proposed Rule Change Relating to Public Agency Order Guarantees at Opening

On March 20, 1991, the Cincinnati Stock Exchange ("CSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b-4 thereunder,[2] a proposed rule change to amend CSE rules 11.9(c)(v) and 11.9(n)(1) of the Exchange's National Securities Trading System [3] rules relating to public agency guarantees at the opening.

The proposed rule change was noticed in Securities Exchange Act Release No. 29036 (April 1, 1991), 56 FR 14405 (April 9, 1991). No comments were received on the proposal.

The CSE proposes to amend its rule 11.9(c)(v), which describes the functions of a Designated Dealer,[4] by adding the words "up to 2,099 shares" in the paragraph describing the obligation of the Dealer of the Day [5] to execute opening public agency and marketable limit orders at the national best bid or offer. Amended Rule 11.9(c)(v) would require Designated Dealers to guarantee the execution, up to 2,099 shares, at the opening price (the Intermarket Trading System best bid or offer) of CSE opening public agency market orders and limit orders which are priced better than such opening price.

The CSE also proposes to amend its rule 11.9(n)(1) governing Public Agency Guarantees, by adding the words "up to 2,099 shares" in the paragraph describing public agency opening market orders and limit orders better than the opening price. Amended rule 11.9(n)(1) would provide that public agency opening market orders and limit orders better than the opening price which are entered prior to the opening, up to 2,099 shares, shall be executed at the opening price.

The Exchange states that the purpose of the proposed rule change is to make explicit that a Designated Dealer's obligation, as Dealer of the Day, to guarantee the execution of public agency market and marketable limit orders extends only to orders of 2,099 shares or less. The Exchange states that although this requirement has been assumed to be the general rule for public agency guarantees and is explicit in the paragraph dealing with intra-day guarantees,[6] it is not explicit in the paragraphs on opening orders.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, and in particular with section 6(b)(5), in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6(b)(5) of the Act.[7] Section 6(b)(5) of the Act requires, among other things, that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission believes that the proposed amendments should further the objectives of section 6(b)(5) by clarifying that a Designated Dealer's obligation to guarantee execution of public agency market and marketable limit orders at the opening extends to 2,099 shares or less. The proposed amendments should remove any ambiguity in existing rules 11.9(c)(v) and 11.9(n)(1) with respect to a Designated Dealer's obligations. This proposal should result in clear and consistent guidelines for Designated Dealers and provide notice to the public of the extent of a Designated Dealer's obligation to public agency guarantees at the opening.

The Commission notes that the proposal's 2,099 share obligation for Designated Dealers at the opening conforms CSE rules 11.9(c)(v) and 11.9(n)(1) with the 2,099 share obligation for Designated Dealers in the CSE's other National Securities Trading System rules. First, CSE rule 11.9(n)(2) provides that public agency market orders and marketable limit orders of 2,099 shares or less entered after the

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1990).

[3] The National Securities Trading System is an electronic securities communication and execution facility through which bids and offers of competing dealers and public orders are consolidated for review and execution by Exchange members of approved dealers. *See* CSE rule 11.9(a).

[4] A Designated Dealer is a proprietary member who maintains a minimum net capital of at least the greater of $100,000 or the amount required under Rule 15c3-1 of the Act, and who has been approved by the Exchange's Securities Committee to perform market functions by entering bids and offers for securities designated by the Securities Committee to be traded in the CSE's National Securities Trading System ("designated issues") into that System. See CSE rule 11.9(a)(3).

[5] The CSE's Rules provide that if there are two or more Designated Dealers in a designated issue, unless the Exchange's Securities Committee has approved one member as a primary Designated Dealer, the guarantee obligations under the Rules rotate among such Designated Dealers on a daily basis. See CSE rule 11.9(c)(iv).

[6] See CSE rule 11.9(c)(iv).

[7] 15 U.S.C. 78f (1988).

opening are guaranteed execution. Second, CSE rule 11.9(n)(3) requires that a Designated Dealer of the Day accept and guarantee executions on all public agency market orders and marketable limit orders for 2,099 shares or less in accordance with the CSE's rules. Similarly, rule 11.9(c)(iv) requires a Designated Dealer to guarantee the execution of 2,099 shares of public agency market orders and marketable limit orders in designated issues for which he or she is the Designated Dealer. The Commission, therefore, believes that the proposed amendments should contribute to the overall consistency of a Designated Dealer's obligations in the National Securities Trading System rules and may result in improved execution of public customer orders.

It Therefore is Ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Dated: May 23, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-12733 Filed 5-29-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29228; File No. SR-NASD-91-24]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Compensation in Connection With Roll-Ups of Direct Participation Programs

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 20, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change [1] as described in items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend appendix F to article III, section 34 of the NASD Rules of Fair Practice ("Appendix F") to prohibit members from, *inter alia*, receiving differential compensation in connection with the solicitation of roll-up transactions. Below is the text of the proposed rule change. Proposed new language is italicized.

Proposed Amendments to Article III, Section 34

Appendix F

Sec. 1

Application of Appendix F

No member or person associated with a member shall participate in a public offering of a direct participation program or a roll-up of a direct participation program except in accordance with this Appendix.

Sec. 6

Solicitation of Consents

(a) No member shall receive compensation for soliciting votes or tenders from limited partners in connection with a roll-up of a direct participation program or programs, irrespective of the form of entity resulting from the roll-up (i.e., a partnership, real estate investment trust or corporation), unless such compensation: (i) is payable and equal in amount regardless of whether the limited partners votes affirmatively or negatively on the proposed roll-up; (ii) in the aggregate, does not exceed 2% of the exchange value of the newly created securities; and (iii) is paid regardless of whether the limited partners reject the proposed roll-up.

(b) No member or person associated with a member shall participate in the solicitation of votes or tenders in connection with the roll-up of a direct participation program unless the general partner or sponsor proposing the roll-up agrees to pay all solicitation expenses related to the roll-up, including all preparatory work related thereto, in the event the roll-up is not approved.

(c) For purposes of Appendix F, a "roll-up" or "roll-up of a direct participation program" is a transaction involving an acquisition, merger or consolidation of at least one direct participation program, not currently listed on a registered national securities exchange or the Nasdaq System, into another public direct participation program or a public corporation or public trust.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) On October 3, 1990, the House Subcommittee on Telecommunications and Finance opened hearings in Washington, D.C. to determine whether legislative or regulatory action is necessary to curb perceived abuses in the roll-up area that include customer protection, aftermarket performance, fairness, and disclosure concerns. The NASD has undertaken a review of issues relating to the participation by members in roll-ups of existing limited partnerships into new limited partnerships, real estate investment trusts, or corporations. The NASD has determined that most roll-up arrangements only permit NASD members soliciting limited partners in a roll-up to receive a commission when the investor votes "yes" on the proposed transaction. The NASD has also found that the arrangements prohibit members from receiving any compensation for soliciting "yes" votes unless a sufficient number of "yes" votes are received to consummate the transaction. The NASD is concerned regarding the foregoing compensation arrangements on the basis that they create a conflict of interest for the member, or the appearance of a conflict of interest, since such compensation arrangements may give members an unwarranted incentive to recommend approval of the transaction.

Request for Member Comments

The NASD issued Notice to Members 90-79 (December 1990) for membership comment on a proposed amendment to appendix F that would prohibit differential compensation. A copy of the Notice was filed with the proposed rule change as exhibit 2. Comments were

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[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30-3(a)(12) (1990).

[1] The NASD submitted an amendment to the proposed rule change which edits the discussion of solicitation expenses. This notice has been amended to reflect the change. See letter from Suzanne E. Rothwell, Associate General Counsel, NASD to Katherine A. England, Branch Chief, SEC, dated May 21, 1991. The amendment is available for inspection and copying in the Public Reference Room.

requested on the arrangements described above, as well as on several unresolved issues relating to the amendment proposed in the Notice and roll-ups generally. Comment was requested on whether a 2% commission creates a conflict of interest sufficient to sway members to solicit "yes" votes when the member believes the roll-up transaction is inappropriate or disadvantageous to clients. Second, specific comment was requested on whether payments to members should be permitted to be contingent on a sufficient number of "yes" votes being received to complete the transaction. Third, members were asked to suggest any other viable alternatives that would address differential compensation concerns short of a prohibition.

The NASD received fifty-four comment letters in response to Notice to Members 90-79. A copy of the comment letters and an alphabetical list of the commentators was attached to the rule filing as exhibit 3. Eighty-nine percent of the commentators (48 of the 54) believe that the practice of paying brokers only for "yes" votes is unfair and should be prohibited. The commentators agreed that differential compensation creates in actual or perceived conflict of interest for the member while virtually guaranteeing that the roll-up will be approved, potentially to the detriment of the limited partner investors. Commentators indicated that the general partners' ability to pay only for "yes" votes is their principal tool in gaining approval of roll-up transactions.

Commentators stated that differential compensation arrangements restrict participation in the solicitation to only those firms that will recommend approval of the roll-up, thus denying investors objective advice on how to vote. Commentators also stated that investors should have access to impartial advice and analysis of the proposed roll-up, particularly from the member where they maintain their account. Members who originally sold the limited partnership interests are excluded from soliciting if they are unwilling to recommend a "yes" vote, and their clients are subject to a barrage of telephone calls from other members soliciting their "yes" vote. Commentators also stated that differential compensation arrangements damage the credibility of members, place a "bounty" on the heads of limited partners and establish an unfair bias toward approval of the transaction.

The commentators also indicated that the amendment proposed in Notice to Members 90-79 prohibiting differential compensation should be extended to also prohibit arrangements which provide that payment of solicitation compensation is contingent on approval of the transaction by limited partners. They believe that this arrangement is tantamount to paying for "yes" votes because a monetary incentive still exists to recommend only a "yes" vote.

Commentators also noted that if members are required to be paid for any vote, there would most likely be a greater number of roll-ups that are not approved and, yet, the limited partners would bear the costs of the transaction. A large number of commentators argued that if the transaction is not approved by the limited partners, the general partner or sponsor proposing the transaction should bear the costs of the solicitation. The commentators believe that the general partner and sponsor will have a strong incentive to propose roll-up transactions that are structured fairly and can be endorsed by NASD members if the general partner and sponsor is required to bear the cost of solicitation if the transaction is not consummated.

Description of Proposed Rule Change to Appendix F

Based on the comments received in response to Notice to Members 90-79 (December 1990), the NASD is hereby proposing to amend appendix F to add new section 6 to regulate the receipt of compensation by members in connection with a roll-up of a direct participation program.

Definition of Roll-Up. The NASD is proposing to define the term "roll-up" and "roll-up of a direct participation program" in new section 6(c) to appendix F. The proposal specifies that a "roll-up" is an "acquisition, merger or consolidation of at least one direct participation program, not currently listed on a registered national securities exchange or the NASDAQ System into another public direct participation program or a public corporation or a public trust." The proposed rule change would only apply to roll-ups of one or more direct participation programs that are not publicly-traded, since investors in publicly traded partnerships have the ability to sell their units if they disagree with the proposed roll-up. Further, the proposed rule change would not apply to roll-ups of direct participation programs in a transaction in which the securities of the resulting entity were issued in a private placement under section 4(2) of the Securities Act of 1933 and are, therefore, restricted. The proposed rule change is intended to only be applicable to the roll-up of one or more direct participation programs, whether or not the limited partnerhsip interests are restricted or publicly-tradeable. Moreover, the proposed rule change would apply to a roll-up of different types of entities so long as one of the entities is a direct participation program. e.g. the roll-up of a real estate investment trust and a direct participation program into another entity.

Limitation on Compensation. Subsection (a) to proposed section 6 to appendix F establishes restrictions on the manner in which a member may receive compensation for soliciting votes or tenders from limited partners in connection with a roll-up. First, under subprovision (i), a member may only receive solicitation compensation if such compensation is payable to the member regardless of whether the member receives affirmative or negative votes on the proposed roll-up. Second, also under subprovision (i), a member may only receive solicitation compensation if such compensation is the same for both affirmative and negative votes by limited partners on the proposed roll-up.

Third, under subprovision (ii), the solicitation compensation may not exceed 2 percent of the exchange value of the newly created securities. It is important to note, that this limitation only applies to that compensation paid to a member for soliciting votes. A member may be paid fees and be reimbursed for expenses in addition to receiving the 2% solicitation fee, so long as the aggregate of all compensation paid to members participating in the offering does not exceed the 10% guideline, plus 0.5% for due diligence, as required under section 5(b) to appendix F. The NASD does not, however, anticipate that total compensation paid to members will approach the 10% compensation guideline and, in accordance with its usual procedures, would request support for any unusual fee or reimbursement of expenses to ensure that the 2% limitation on solicitation fees is not circumvented.

Third, subprovision (iii) to subsection 6(a) would require that solicitation compensation be paid to members regardless of whether the limited partners approve or reject the proposed roll-up. As set forth above, this provision is intended to ensure that payment of the solicitation fees to a member is not contingent on approval of the roll-up by limited partners which would provide an incentive to members to solicit only "yes" votes.

Allocation of Solicitation Expenses. Proposed subsection (c) to section 6 to appendix F would prohibit a member from participating in the solicitation of votes or tenders in connection with a

roll-up of a direct participation program unless the general partner or sponsor had agreed to pay all solicitation expenses incurred in connection with the transaction in the event the roll-up is not approved. The rule also specifies that the expenses include all preparatory work related to the solicitation. Thus, such expenses would include all expenses normally incurred by a member in soliciting votes, consents or tenders in connection with a roll-up, regardless of whether the member, sponsor or general partner paid the expense. Solicitation expenses would include direct marketing expenses such as postage and telephone costs, broker-dealer fact sheets, and legal and other fees relating to the solicitation but would not include other expenses normally paid by the issuer such as issuer's counsel, accounting fees and printing costs not related to the solicitation.

Conforming Rule Change

Section 1 to appendix F sets forth the scope of the application of appendix F. The section provides that Appendix F only applies to public offerings of a direct participation program in which a member participates. The NASD is proposing to amend section 1 to expand the scope of appendix F to include participation by a member in a roll-up of a direct participation program. As set forth above, the terms "roll-up" and "roll-up of a direct participation program" are defined in proposed subsection 6(c).

(b) The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act, in that the proposed rule change will promote just and equitable principals of trade and contribute to the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. One comment was received in response to Notice to Members 90–79 (December 1990) that the proposed rule change would unfairly discriminate against direct participation program roll-ups. The comment is discussed in item C below.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or others

The proposed rule change was published for comment in Notice to Members 90–79 (December 1990). 54 comments were received in response thereto. Of the 54 comment letters received, 48 were in favor of the proposed rule change and 6 were opposed. The views of commentators in favor of the proposed rule change and those that made comments in response to the NASD's request for comment on three unresolved issues are discussed above in item A. Following is a disucssion of the six negative comments received from the American Bar Association, D. A. Davidson & Co., the Robert A. Stanger Company, the Investment Program Association, Krupp Securities Corporation, and W.P. Carey & Co., Inc.

The commentators in opposition to the proposed rule change to prohibit differential compensation for the solicitation of votes and tenders in roll-ups of direct participation programs believe that the proposed amendment unreasonably discriminates against roll-ups since payment for "yes" vote arrangements are used for other transactions such as debt restructurings and exchange offers. They suggest instead: (1) Enhanced disclosure; (2) use of a "qualified independent soliciting dealer" who has no material affiliation with the partnerships being combined or the entity to be created by the roll-up; (3) elimination of all compensation for votes; or (4) a prohibition on payments for "yes" votes only for those transactions determined to be unfair to investors.

With respect to the first comment—that the proposed prohibition on differential solicitation compensation is discriminatory against roll-ups—the NASD believes that the hearings of the House Subcommittee on Telecommunications and Finance have indicated that there are abuses in connection with the roll-ups of direct participation programs, although there has not been an empirical study of roll-ups as to whether such abuses do, in fact, exist. The NASD notes, however, that the direct participation program interests that are subject to the rule change are illiquid, limited life investments, with voting rights, and the program is structured for a specific payout to the general partner under specific circumstances. When a roll-up occurs, it is generally to a corporate entity with unlimited life, the voting rights of the limited partners may be changed, and frequently there is an acceleration of the payment of cash flow to the general partners. Thus, roll-up transactions frequently involve a significant change in the character and structure of the investment.

With respect to the suggestions for enhanced disclosure, the NASD determined that the need for additional disclosure of the risks of the roll-up is a matter that is within the jurisdiction of the Securities and Exchange Commission's rules and regulations. With respect to the suggestion to not limit differential compensation but, instead, to require the participation of a "qualified independent soliciting dealer," the NASD believes that the proposed rule change is a better solution to the potential abuses that result from the payment of differential compensation for solicitation of votes in connection with a roll-up.

The NASD does not believe that it would be appropriate or in the interest of investors to prohibit members from receiving any compensation in connection with soliciting roll-up votes. The result of such a prohibition would be that no member would participate in the solicitation, potentially depriving investors of independent advice regarding the terms of the roll-up and leaving the solicitation to entities that are not regulated by the NASD.

Finally, with respect to the recommendation that the NASD only prohibit solicitatioin fees for "yes" votes where it determines the structure of the roll-up is unfair to investors, the NASD has determined not to adopt this recommendation. The NASD believes that payment only for "yes" votes regardless of the merits of the roll-up can lead to abuses. The investor should be able to obtain the independent advice of the soliciting broker/dealer.

The issue of payment only for "yes" votes, moreover, appears to the NASD to be separate from the issue of whether members should participate in the solicitaion of any votes in connection with a roll-up that is inherently unfair to investors. Other comments were received from commentators that suggested that the NASD address other roll-up arrangements, including payment of a fee for the fairness opinion that is contingent on the success of the roll-up. The NASD has been and will continue to review the structure of roll-up

transactions to determine whether members should participate in soliciting votes in connection with roll-up structures that are inherently unfair to investors. The NASD will address any other issues raised by commentators as part of this review.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: A. By order approve such proposed rule change, or B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number, SR-NASD-91-24, and should be submited by June 14, 1991.

For the Commissiion, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: May 23, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-12732 Filed 5-29-91; 8:45 am]

BILLING CODE 8010-01-M

TENNESSEE VALLEY AUTHORITY

Privacy Act of 1974; Proposed New Routine Uses

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Proposed new routine use for TVA-2, "Personnel Files—TVA."

SUMMARY: This publication gives notice, as required by the Privacy Act, of TVA's intention to establish a new routine use for the system of records entitled TVA-2, "Personnel Files—TVA." Details of the proposed new routine use are described below. The full text of TVA-2 appears at 55 FR 34817-18 (August 24, 1990), 56 FR 19137 (April 25, 1991), and 56 FR 22902, May 17, 1991.

DATES: Comments must be received by July 1, 1991.

ADDRESSES: Comments should be sent to Ronald E. Brewer, Privacy Act Officer, Tennessee Valley Authority, 1101 Market Street (EB 4B), Chattanooga, TN 37402-2801.

FOR FURTHER INFORMATION CONTACT: Ronald E. Brewer, 615-751-2520.

TVA-2

SYSTEM NAME:

Personnel Files—TVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information related to education; qualifications; work history; interests and skills; test results; performance evaluation; career counseling; personnel actions; job description; salary and benefit information; service dates, including other Federal and military service; replies to congressional inquiries; medical data; and security investigation data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831-831dd; Executive Order 10577; Executive Order 10450; Executive Order 11478; Executive Order 11222; Veterans' Preference Act of 1944, 58 Stat. 387, as amended; Equal Employment Opportunity Act of 1972, Pub. L. 92-261, 86 Stat. 103; various sections of title 5 of the United States Code related to employment by TVA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To contractors and subcontractors engaged at TVA's direction in providing support services to TVA in connection with mailing materials to TVA employees or other related services.

Louis S. Grande,

Vice President, Information Services.

[FR Doc. 91-12671 Filed 5-29-91; 8:45 am]

BILLING CODE 8120-08-M

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

Transportation for Individuals With Disabilities; Advisory Committee Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Urban Mass Transportation Administration announces the following committee meeting.

Name: The Americans With Disabilities Act Federal Advisory Committee.

Time and Dates: 9 a.m.-5 p.m., June 19-22.

Place: Department of Transportation, room 2230, 400 Seventh Street, SW., Washington DC, 20590.

Status: The meeting is open to the public.

Purpose: The purpose of this committee is to advise the Secretary of the Department of Transportation and the Administrator of the Urban Mass Transportation Administration on a rulemaking to be conducted by them to implement the Americans With Disabilities Act of 1990 (ADA).

Matters to be Discussed: The committee will discuss various issues raised by the Department of Transportation in its April 4, 1991, Notice of Proposed Rulemaking implementing the ADA (56 FR 13856), as well as comments submitted to the Department in response to the proposed rule. During the four-day meeting, the Advisory Committee may break up into smaller discussion groups to enhance discussion of specific issues, as well as meet as a committee of the whole.

Specific topics to be covered may include:

Paratransit as a complement to fixed route service. This includes defining who is eligible for service and comparability of the paratransit service, identification of service criteria, circumstances under which a transportation provider can request a waiver from requirements based on undue financial burden, contents and review of the plan, and possible phase-in of the plans' requirements.

Rail service, including the requirement for one-car per train to be accessible, retrofitting of key stations, and requirements when altering a station.

The definition of accessible vehicles.

Operational requirements.

Contact Persons for More Information: Office of the Secretary: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 Seventh St., SW., room 10424, Washington, DC 20590. Telephone 202-366-9306 (voice); 202-755-7687 (TDD). UMTA: Susan E. Schruth, Office of the Chief Counsel, UMTA, DOT, 400 Seventh St., SW., room 9316, Washington, DC 20590, 202, 366-4011. A taped copy of this notice is available upon request.

Dated: May 24, 1991.

Brian W. Clymer,

Administator.

[FR Doc. 91-12725 Filed 5-29-91; 8:45 am]

BILLING CODE 4910-57-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 104
Thursday, May 30, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

May 22, 1991.

The following notice of meeting is pubished pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-49), U.S.C. 552B:

DATE AND TIME: May 29, 1991, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 938th Meeting—May 29, 1991, Regular Meeting (10:00 a.m.)

CAH-1.
Docket No. EL88-24-002, Saco River Salmon Club
CAH-2.
Project No. 4669-025, Rancho Riata Hydro Partners
CAH-3.
Project No. 3574-003, Continental Hydro Corporation
CAH-4.
Omitted
CAH-5.
Project No. 2516-014, Potomac Edison Company
CAH-6.
Omitted
CAH-7.
Project No. 9711-002, Inghams Corporation
CAH-8.
Project No. 9712-002, Beardslee Corporation
CAH-9.
Project Nos. 6786-015 and 6962-014, Yankee Hydro Corporation
Project No. 9694-008, Power Resources Development Corporation
CAH-10.
Project No. 9558-002, Cary Falls Corporation
CAH-11.
Project No. 2370-000, Pennsylvania Electric Company

Consent Agenda—Electric

CAE-1.
Docket Nos. ER91-166-000 and ER91-173-000, Nantahala Power and Light Company
CAE-2.
Docket No. ER91-351-000, Montana Power Company
Docket No. EL90-10-000, Central Montana Electric Power Cooperative, Inc. v. Montana Power Company
CAE-3.
Docket No. ER90-587-000, Nevada Power Company
CAE-4.
Docket No. ER91-323-000, Southern Companies
CAE-5.
Omitted
CAE-6.
Docket No. EF90-5161-000, United States Department of Energy—Western Area Power Administrative
CAE-7.
Docket Nos. ER91-143-003, Public Service Company of New Hampshire
Docket No. ER91-235-001, New England Power Company
CAE-8.
Docket Nos. E-7777-000, 013 (Phase II) and ER76-296-001, Pacific Gas and Electric Company
Project Nos. 2735-027, 1988-015 and 233-003, Pacific Gas and Electric Company
CAE-9.
Docket No. EL90-40-001, Gulf Power Company
CAE-10.
Omitted
CAE-11.
Docket No. EL90-42-000, Ohio Power Company, Complainant v. American Municipal Power-Ohio, *et al.*, Respondents
Docket No. EL91-1-000, American Municipal Power Company-Ohio, Inc., *et al.* Complainants v. Ohio Power Company and American Electric Power Company, Inc., Respondents
CAE-12.
Docket No. QF90-175-001, West Financial Services, Inc.
CAE-13.
Docket No. QF85-312-001, Inter-Power of New York, Inc.

Consent Agenda—Oil and Gas

CAG-1.
Docket No. RP91-140-000, Questar Pipeline Company
CAG-2.
Docket No. RP91-143-000, Great Lakes Gas Transmission Limited Partnership
CAG-3.
Docket No. RP91-144-000, Great Lakes Gas Transmission Limited Partnership
CAG-4.
Docket No. RP91-148-000, Great Lakes Gas Transmission Limited Partnership
CAG-5.
Docket No. TA91-1-55-000, Questar Pipeline Company
CAG-6.
Docket No. RP91-150-000, Northwest Pipeline Corporation
CAG-7.
Docket No. RP91-131-000, Northern Natural Gas Company
CAG-8.
Docket No. RP91-138-000, Florida Gas Transmission Company
CAG-9.
Docket No. RP91-145-000, Florida Gas Transmission Company
CAG-10.
Docket No. RP91-141-000, Williston Basin Interstate Pipeline Company
CAG-11.
Docket No. RP91-142-000, CNG Transmission Corporation
CAG-12.
Docket No. RP86-136-017, National Fuel Gas Supply Corporation
CAG-13.
Docket Nos. RP86-169-018, RP86-105-019 and RP87-25-007, ANR Pipeline Company
CAG-14.
Docket No. RP91-146-000, Algonquin Gas Transmission Company
CAG-15.
Docket Nos. RP91-147-000 and GT91-26-000, Transcontinental Gas Pine Line Corporation
CAG-16.
Docket No. TM91-6-43-000, Williams Natural Gas Company
Docket Nos. TM91-5-22-000 and RP91-51-003, CNG Transmission Corporation
CAG-18.
Docket No. TM91-6-26-000, Natural Gas Pipeline Company of America
CAG-19.
Docket No. TM91-3-34-000, Florida Gas Transmission Company
CAG-20.
Docket No. TQ91-3-28-000, Panhandle Eastern Pipe Line Company
CAG-21.
Docket Nos. RP88-27-024, 025, RP88-264-020, 021, RP89-138-009 and 010, United Gas Pipe Line Company
CAG-22.
Docket Nos. TA91-1-59-000, 001, 003 and TM91-2-59-000, Northern Natural Gas Company
CAG-23.
Docket No. TA90-1-29-000, Transcontinental Gas Pipe Line Corporation
CAG-24.
Docket Nos. TA91-1-9-000, TM91-2-9-000 and RP91-16-000, Tennessee Gas Pipeline Company
CAG-25.

Docket Nos. RP88-267-011 and 008, South Georgia Natural Gas Company
CAG-26.
Docket No. RP91-49-000, Arkla Energy Resources
CAG-27.
Docket No. GT91-25-000, Viking Gas Transmission Company
CAG-28.
Docket Nos. GT91-13-000 and 001, Algonquin Gas Transmission Company
CAG-29.
Docket Nos. IS91-29-000 and 001, Point Arguello Pipe Line Company
CAG-30.
Docket No. PR91-13-000, Transco-Louisiana Intrastate Pipeline Company
CAG-31.
Docket No. RP91-29-000, Tennessee Gas Pipeline Company
CAG-32.
Docket No. RP91-107-002, Williams Natural Gas Company
CAG-32.
Docket Nos. RP91-104-001 and RP91-106-001, Transwestern Pipeline Company
CAG-34.
Docket No. RP91-111-002, North Penn Gas Company
CAG-35.
Docket Nos. RP91-98-001 and RP91-51-004, CNG Transmission Corporation
CAG-36.
Docket Nos. RP88-67-045 and CP90-186-003, Texas Eastern Transmission Corporation
CAG-37.
Docket No. RP91-68-004, Penn-York Energy Corporation
CAG-38.
Docket Nos. RP87-62-012 and RP86-148-008, Pacific Gas Transmission Company
CAG-39.
Docket No. TA91-1-37-003, Northwest Pipeline Corporation
CAG-40.
Docket No. TA91-1-31-003, Arkla Energy Resources
CAG-41.
Docket No. TQ91-2-1-003, Alabama-Tennessee Natural Gas Company
CAG-42.
Docket Nos. TM91-4-16-001 and RP91-47-003, National Fuel Gas Supply Corporation
CAG-43.
Docket No. RM87-34-066, Regulation of Natural Gas Company Pipelines After Partial Wellhead Decontrol
CAG-44.
Docket Nos. RP86-10-010 and CP86-110-002, Williston Basin Interstate Pipeline Company
CAG-45.
Docket Nos. TQ90-4-49-002 and RP90-113-002, Williston Basin Interstate Pipeline Company
CAG-46.
Docket Nos. TA91-1-17-002 and TM91-1-17-001, Texas Eastern Transmission Corporation
CAG-47.
Docket Nos. RP90-132-001 and 004, United Gas Pipe Line Company
CAG-48.
Docket Nos. RP89-97-001 and TM90-3-37-002, Northwest Pipeline Corporation
CAG-49.
Docket Nos. RP91-82-002 and RP90-108-009, Columbia Gas Transmission Corporation
Docket No. RP90-107-008, Columbia Gulf Transmission Corporation
CAG-50.
Docket No. RP90-192-004, Texas Gas Transmission Corporation
CAG-51.
Docket Nos. RP89-119-000, 005, 007, RP89-208-000, 001, 003, 005, RP90-58-000, 001, RP90-64-000, 001, RP61-000, 001, TM90-3-18-001 and TM91-2-18-000, Texas Gas Transmission Corporation
CAG-52.
Docket No. CP89-1119-001, Texas Gas Transmission Company
CAG-53.
Docket No. RM91-2-006, Mechanisms for Passthrough of Pipeline Take-or-Pay Buyout and Buydown Costs
Docket Nos. RP86-119-017, TA84-2-9-018 and TA85-1-6-006, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc.
CAG-54.
Docket No. RP91-8-000, Olympic Pipeline Company
CAG-55.
Omitted.
CAG-56.
Docket No. RP90-86-000, MIGC, Inc.
CAG-57.
Docket No. RP84-53-000, 010, 011, 012 and 013, Ozark Gas Transmission System
CAG-58.
Docket No. RP88-259-031 and RP89-136-016, Northern Natural Gas Company
CAG-59.
Docket No. GP90-7-000, Barbara T. Fasken
CAG-60.
Docket Nos. GP91-3-000 and GP91-4-000, Meridian Oil, Inc.
CAG-61.
Omitted.
CAG-62.
Omitted.
CAG-63.
Docket No. CP91-1278-001, Pittsburgh Corning Corporation
CAG-64.
Docket Nos. CP87-115-002, RP88-228-001, RP88-249-001, RP89-4-002, RP89-29-001, RP89-84-001, RP89-149-001 and RP87-26-001, Tennessee Gas Pipeline Company
CAG-65.
Docket No. CP90-1317-001, Tennessee Gas Pipeline Company
CAG-66.
Docket No. CP91-534-001, Panhandle Eastern Pipe Line Company
CAG-67.
Docket Nos. CP89-637-000, 001, 002, 004, 005 and 006, ANR Pipeline Company
Docket Nos. CP88-178-002, Trunkline Gas Company
Docket Nos. CP90-1726-000 and 001, Great Lakes Gas Transmission Company
Docket Nos. CP90-687-000, 001, 002 and 003, Transcontinental Gas Pipe Line Corporation
Docket Nos. CP89-638-000, 001, 002 and 003, CNG Transmission Corporation
Docket Nos. CP90-688-000, 001 and 002, Texas Gas Transmission Company
CAG-68.
Docket No. CP91-1027-001, Transcontinental Gas Pipe Line Corporation
CAG-69.
Omitted
CAG-70.
Docket No. CP91-1985-000, Tennessee Gas Pipeline Company
CAG-71.
Docket No. CP91-1949-000, Black Marlin Pipeline Company
CAG-72.
Docket No. CP91-1945-000, Algonquin Gas Transmission Company
CAG-73.
Docket No. CP91-1938-000, Viking Gas Transmission Company
CAG-74.
Docket No. CP91-1918-000, Trunkline Gas Company
CAG-75.
Docket No. CP90-1297-000, Williams Natural Gas Company
CAG-76.
Docket No. CP90-262-000, Northern Natural Gas Company
CAG-77.
Docket No. CP90-1105-000, Panhandle Eastern Pipeline Company
Docket No. CP90-1073-000, MIGC, Inc.
CAG-78.
Docket No. CP90-2281-000, Pontchartrain Natural Gas Company
Docket No. CP90-2282-000, Bayou Interstate Pipeline System
CAG-79.
Docket No. CP90-2310-000, Southern Natural Gas Company
CAG-80.
Docket No. CP91-454-000, Ohio River Pipeline Corporation
Docket No. CP91-455-000, Ohio River Pipeline Corporation and Indiana Gas Company, Inc.
CAG-81.
Omitted
CAG-82.
Docket No. CP91-1546-000, American Distribution Company (Alabama Division)
CAG-83.
Docket No. CP88-557-001, Koch Hydrocarbon Company
CAG-84.
Docket No. CP90-1567-000, National Fuel Gas Supply Corporation
CAG-85.
Docket Nos. RP88-227-001, CP90-767-002 and CP78-221-005, Paiute Pipeline Company
Docket No. CP90-848-002, Northwest Pipeline Corporation
CAG-86.
Docket No. RP90-104-008, Texas Gas Transmission Corporation
CAG-87.
Docket Nos. CR91-126-000, 001, CP91-1669-000, CP91-1670-000, CP91-1671-000, CP91-1672-000 and CP91-1673-000, United Gas Pipe Line Company
CAG-88.
Docket No. RP91-83-001, United Gas Pipe Line Company

Hydro Agenda

H-1.
Reserved.

Electric Agenda

E-1.
Docket No. ER91-243-000, Edgar Electric Energy Company and Boston Edison Company. Order on rate filing.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR-1.
Omitted.

PR-2.
Docket Nos. CP89-1281-010, and TA90-1-26-003, Natural Gas Pipeline Company of America. Order on rehearing.

II. Producer Matters

PF-1.
Reserved

III. Pipeline Certificate Matters

PC-1.
Docket Nos. CP88-570-000 and 003, Mobile Bay Pipeline Project
Docket No. CP87-415-002, Florida Gas Transmission and Southern Natural Gas Company
Docket No. CP88-437-000, Tennessee Gas Pipeline Company
Docket No. CP89-464-000, Florida Gas Transmission Company, Southern Natural Gas Company and Tennessee Gas Pipeline Company
Docket No. CP89-511-000, Texas Eastern Transmission Corporation and ANR Pipeline Company
Docket No. CP89-512-000, Texas Eastern Transmission Corporation
Docket Nos. CP89-513-000 and CP89-517-000, Southern Natural Gas Company
Docket No. CP89-523-001-Transcontinental Gas Pipe Line Corporation, Florida Gas Transmission Company, Tennessee Gas Pipeline Company, Texas Eastern Transmission Corporation and ANR Pipeline Company
Docket No. CP89-522-000, *et al.*, Transcontinental Gas Pipe Line Corporation and Florida Gas Transmission Company
Docket No. CP89-523-000, *et al.*, Tennessee Gas Pipeline Company, Southern Natural Gas Company, ANR Pipeline Company and Texas Eastern Transmission Corporation
Docket No. CP88-474-000, Texas Eastern Transmission Corporation. Order on settlement and certificate applications.

PC-2.
Docket No. CP89-471-000, 001, 002, CP88-393-000 and CP88-394-000, Gateway Pipeline Company. Order on certificate application.

Lois D. Cashell,
Secretary.

[FR Doc. 91-12843 Filed 5-24-91; 4:33 pm]

BILLING CODE 6717-01-M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 91-11851.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, May 23, 1991, 10:00 a.m.

The following item was continued to the meeting of May 23, 1991:

Presidential Primary and General Election Regulations: Final Rules and Explanation and Justification.

DATE AND TIME: Tuesday, June 4, 1991, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, June 6, 1991, 10:00 a.m..

PLACE: DATE: 999 E Street, NW., Washington, DC. (Ninth floor).

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Advisory Opinions:
1991-14: Kentucky Republican Party
1991-15: Georgia Democratic Party
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376-3155.

Delores Harris,
Administrative Assistant, Office of the Secretariat.

[FR Doc. 91-12959 Filed 5-28-91; 3:13 pm]

BILLING CODE 6715-01-M

FEDERAL LABOR RELATIONS AUTHORITY

TIME AND DATE: 10 a.m., Tuesday, June 4, 1991.

PLACE: 500 C Street, SW., Washington, D.C., Room 206.

STATUS OF MEETING: Open to the public.

MATTER TO BE CONSIDERED:

Oral argument in proceedings on remand in:

National Treasury Employees Union and U.S. Department of the Treasury, Internal Revenue Service, Case No. 0-NG-1350, 27 FLRA 976 (1987)

CONTACT PERSON FOR MORE INFORMATION: Alicia N. Columna, Director, Case Control Office, Federal Labor Relations Authority, (202) 382-0748.

Dated: May 28, 1991.

Solly Thomas,
Executive Director.

[FR Doc. 91-12965 Filed 5-28-91; 4:05 pm]

BILLING CODE 6727-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [56 FR 22512 May 15, 1991].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Monday, May 13, 1991.

CHANGE IN THE MEETING: Additional item.

The following additional item was considered at a closed meeting on Tuesday, May 21, 1991, at 2:30 p.m.

Institution of injunctive action.

Commissioner Fleischman, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Ronald Mueller at (202) 272-2200.

Dated: May 22, 1991.

Jonathan G. Katz,
Secretary.

[FR Doc. 91-12389 Filed 5-24-91; 4:56 pm]

BILLING CODE 8010-01-M

federal register

Thursday
May 30, 1991

Part II

Environmental Protection Agency

40 CFR Part 268

Land Disposal Restrictions; Potential Treatment Standards for Newly Identified and Listed Wastes and Contaminated Debris; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[FRL-3959-1]

Land Disposal Restrictions; Potential Treatment Standards for Newly Identified and Listed Wastes and Contaminated Debris

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking (ANPRM) and request for comment and data.

SUMMARY: The Agency today is requesting data and comments on possible BDAT and treatment capacity for many wastes that have been identified and listed as hazardous since the enactment of the Hazardous and Solid Waste Amendments (HSWA) in November 1984. These include newly listed wastes generated from the production of ethylene dibromide (EDB), ethylenebisdithiocarbamic acid (EBDC), methyl bromide, dinitrotoluene, toluenediamine, unsymmetrical dimethylhydrazine (UDMH), ortho-toluidine (U328), para-toluidine (U353), and 2-ethoxyethanol (U359). The Agency, in addition, is soliciting data and comment on potential approaches for developing treatment standards for two newly listed wastes from petroleum refining (i.e., F037 and F038), and for contaminated debris. The Agency also is soliciting comment on possible modifications to existing land disposal restriction (LDR) provisions that may simplify the implementation of the BDAT treatment standards; potential universal treatment standards for various categories of wastes; conversion of treatment standards for various F and K wastes from standards based on scrubber waters to those based on conventional wastewater treatment; modifications to the treatment standards for F001–F005 solvent wastes; modifications of treatment standards for lab packs; and potential concentration-based treatment standards based on recovery of chromium from various hazardous wastes.

The Agency specifically is soliciting comment and data on the following as they pertain to the wastes identified in today's notice: state-of-the-art treatment and recycling technologies; waste characterization; waste minimization (as demonstrated both here and abroad); factors affecting treatment performance that should be considered by the Agency during sampling/analysis efforts; on-site and off-site treatment capacity requirements; and information on the costs for setup and operation of any current and alternative treatment technologies for these wastes.

DATES: The comment period on waste minimization and issues presented in section III A.–D. of today's notice ends July 29, 1991. Comments on all other aspects of today's notice must be submitted on or before July 1, 1991.

ADDRESSES: The public must send an original and two copies of their comments to EPA RCRA Docket (OS-305), U.S. Environmental Protection Agency, room M2427, 401 M Street SW., Washington, DC 20460. Place the Docket Number F-91-CDP-FFFFF on your comments. The EPA RCRA Docket is located at the above address, and is open from 9 a.m. to 4 p.m. Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (202) 475-9327. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $.20 per page.

EPA is asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (TEXT) format or a word processing format that can be converted to ASCII (TEXT). It is essential to specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow EPA to convert the comments into one of the word processing formats utilized by the Agency. Please use mailing envelopes designed to physically protect the submitted diskettes. EPA emphasizes that submission of comments on diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter. Rather, EPA is experimenting with this procedure solely as an attempt to expedite our internal review and response to comments. For further information on the submission of diskettes, contact the Waste Treatment Branch at the phone number listed below.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424-9346 (toll-free) or (703) 920-9810 locally. For technical information on BDAT, contact the Waste Treatment Branch, Office of Solid Waste (OS-322-W), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (703) 308-8434. For technical information on capacity analyses, contact the Capacity Branch, Office of Solid Waste (OS-321-W) (703) 308-8440.

SUPPLEMENTARY INFORMATION:

Outline

I. Background
- A. Statutory/Regulatory Requirements
- B. Development and Identification of BDAT

II. Requests for General Comments and Data
- A. Request for Comment and Data on Pollution Prevention for Newly Identified Wastes
- B. General Approach to the Development of BDAT for Newly Identified Wastes
- C. General Approach to the Analysis of Capacity for Newly Identified Wastes
- D. Newly Identified Mixed Radioactive Hazardous Wastes

III. Potential Modifications to Existing BDAT
- A. Potential for Establishing Universal BDAT Standards
- B. Conversion of Wastewater Standards Based on Scrubber Waters
- C. Potential Revisions to the F001–F005 Spent Solvent Treatment Standards
- D. Potential Modifications to Existing Treatment Standards for Lab Packs
- E. Recovery as BDAT for Concentrated Metal-bearing Wastes

IV. Potential BDAT for Contaminated Debris
- A. Relationship of Today's Notice to EPA's "Contaminated Media Cluster"
- B. Applicability of Existing Land Disposal Restriction Treatment Standards and Superfund 6A and 6B Guides
- C. Development of Potential Regulatory Definitions for Debris
- D. Potential Regulatory Structure for Treatment Standards
- E. Development of BDAT for Contaminated Debris
- F. Analysis of Capacity Data for Debris

V. Potential BDAT for Specific F, K, and U Listed Wastes Promulgated After 1984
- A. Additional Organic U Wastes
- B. Recent Petroleum Refining Wastes (F037 and F038)
- C. Wastes from the Production of Unsymmetrical Dimethylhydrazine (K107, K108, K109, and K110)
- D. Waste from the Production of Dinitrotoluene and Toluenediamine (K111 and K112)
- E. Wastes from the Production of Ethylene Dibromide (K117, K118, and K136)
- F. Wastes from the Production of Ethylenebisdithiocarbamic Acid (K123, K124, K125, and K126)
- G. Wastes from the Production of Methyl Bromide (K131 and K132)

I. Background

A. Statutory/Regulatory Requirements

The Hazardous and Solid Waste Amendments (HSWA), enacted on November 8, 1984, specify dates when particular groups of hazardous wastes are prohibited from land disposal unless "* * * it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous" (RCRA section 3004 (d)(1), (e)(1), (g)(5); 42 U.S.C. 6924 (d)(1), (e)(1), (g)(5)).

The amendments also require the Agency to set "* * * levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized" (RCRA section 3004(m)(1), 42 U.S.C. 6924(m)(1)). Wastes that meet the treatment standards established by EPA are not prohibited and may be land disposed.

The land disposal restrictions (LDRs) are effective when promulgated unless the Administrator grants a national capacity variance from the otherwise applicable date and establishes a different date (not to exceed two years beyond the statutory deadline) based on "* * * the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment will be available" (RCRA section 3004(h)(2), 42 U.S.C. 6924(h)(2)). The Administrator may also grant a case-by-case extension of the effective date for up to one year, renewable once for up to one additional year, when an applicant successfully makes certain demonstrations (RCRA section 3004(h)(3), 42 U.S.C. 6924(h)(3)). A case-by-case extension can be granted whether or not a national capacity variance has been granted.

In response to these requirements, EPA promulgated five regulations; Solvents and Dioxins, November 7, 1986 (51 FR 40572); California List, July 8, 1987 (52 FR 25760); First Third, August 17, 1988 (53 FR 31138); Second Third, June 23, 1989 (54 FR 26594); and Third Third, June, 1, 1990 (55 FR 22520). These rulemakings set treatment standards for all hazardous wastes that were identified and listed in 40 CFR 261.21, .22, .23, .24, .31, .32, and .33 prior to November, 1984. Land disposal of these wastes in underground injection wells was regulated in separate rules for Solvents and Dioxins, California List, and First Third wastes (see 53 FR 28188, 53 FR 30908, and 54 FR 25416, respectively).

RCRA further requires the Agency to make land disposal prohibition determinations for hazardous wastes that are newly identified or listed in 40 CFR part 261 after November 8, 1984, within six months of the date of identification or listing (RCRA section 3004(g)(4), 42 U.S.C. 6924(g)(4)). The statute does not, however, provide for an automatic prohibition (referred to as a "hard hammer") of land disposal of such wastes if EPA fails to meet this deadline.

The Third Third rule, promulgated on May 8, 1990, set treatment standards for five newly identified wastes. Today's notice suggests possible treatment standards for approximately twenty more newly listed hazardous wastes, and for contaminated debris, and requests comments and data. (Other newly identified and listed hazardous wastes along with a discussion of potential standards for contaminated soil will be addressed in a forthcoming ANPRM in the **Federal Register**.)

B. Development and Identification of BDAT

A general overview of the Agency's approach in performing analysis of BDAT for hazardous wastes can be found in section III.A.1. of the preamble to the final rule for Third Third wastes (55 FR 22535, June 1, 1990). The framework for the development of the entire Land Disposal Restrictions program was promulgated in the Solvents and Dioxins rule (51 FR 40572 (November 7, 1986)).

The following steps outline the general procedures that EPA follows in the development of waste code-specific treatment standards:

(1) Characterize and divide the wastes to be regulated into treatability groups (by waste code) based on similarities in physical and chemical properties of the wastes and constituents.

(2) Screen all applicable technologies to identify potential BDAT for each treatability group.

(3) Screen the treatment data from "demonstrated" "available" technologies with regard to the design and operation of the equipment, the quality assurance/quality control (QA/QC) analyses of the performance and operating data, and the accuracy and precision of the analytical tests used to assess treatment performance.

(4) Statistically evaluate the individual performance data for each of the various treatment technologies (where data from more than one technology are available) to determine the "best." Where data exist for only one technology, the Agency uses best engineering judgment to assess whether that technology represents the best applicable technology for that particular waste and whether the data indicate that the treatment system was well-designed and well-operated.

(5) Determine which constituents to regulate such that the technologies will be well-operated, thus assuring consistent achievement of best treatment.

(6) Develop the waste code-specific treatment standards accounting for all QA/QC measures.

Treatment standards are expressed either as maximum constituent-specific concentrations allowed in the waste (or in an extract of the treated waste), as a specific technology (or group of technologies), or as a combination of these. Although the statute provides discretion to establish treatment standards as either levels or methods of treatment, EPA would rather set concentration-based treatment standards whenever possible, because they provide the regulated community with flexibility in choosing treatment technologies, and encourage the investigation and development of new and alternative technologies. (This does not, however, supersede the prohibitions on dilution to achieve the concentration-based treatment standard. See, for example, 55 FR 22656.) In addition, establishing concentration-based standards provides a means of ensuring that treatment technologies are consistently operated at conditions that will result in the best demonstrated performance.

In section III.A.1. of the Third Third final rule (55 FR 22535–22542 (June 1, 1990)), EPA discussed several additional issues that are important in determining compliance with the treatment standards, including: The applicability of treatment standards to treatment residues identified as "derived-from" wastes and to waste mixtures; impermissible switching of wastewater and nonwastewater standards (with specific discussions of issues associated with characteristic wastes); placing facility-specific monitoring and compliance requirements in waste analysis plans; and the relationship of concentration-based standards to detection limits and practical quantitation limits (PQLs).

II. Requests for General Comments and Data

In previous notices, the Agency promulgated listings for certain wastes as hazardous under 40 CFR part 261. Although data on waste characteristics and current management practices have been gathered as part of the administrative record for each listing rule, the Agency has not completed its evaluation of the usefulness of these data for developing specific BDAT treatment standards or assessing the capacity to treat (or recycle) these newly listed wastes. As a result, EPA is soliciting comments on the completeness of the existing listing data (as found in the administrative record for the notices for the proposed and final listing actions for each waste) and is requesting

additional data and information with respect to treatment and capacity.

In order to expedite EPA's review of all comments and data submitted in response to this notice, EPA is requesting that the comments and data be voluntarily identified by the section headings and subheadings (or numbers) of today's notice. For example, comments on the "potential modifications to existing treatment standards for lab packs" could be identified by that title or by "III.D.", its subheading number. EPA recognizes that many comments may actually apply to several headings or subheadings (e.g., a comment on lab packs of debris could be identified as a comment for either III.D., lab packs, or IV., debris). In this case, the commenter should select the identification that they deem most appropriate, or simply identify the comment as a "general comment". While EPA does screen all comments for applicability to all areas discussed in today's notice, this identification procedure is expected to significantly expedite EPA's review process, particularly when coupled with the voluntary submission of comments on computer diskettes (as requested in the **ADDRESSES** section of today's notice).

A. Request for Comment and Data on Pollution Prevention for Newly Identified Wastes

EPA has made substantial progress over the years in improving environmental quality through its media-specific pollution control programs. Standard industrial practice for pollution control has concentrated largely on "end-of-pipe" treatment or land disposal of hazardous and nonhazardous wastes. HSWA established, however, a national policy of reducing or eliminating wastes as expeditiously as possible (RCRA Section 1003(b)). EPA also realizes that programs emphasizing management of pollutants after they have been generated have limitations. EPA believes that reducing or eliminating discharges and/or emissions to the environment through the implementation of cost-effective source reduction and environmentally sound recycling practices can produce additional environmental benefits. Many businesses are already incorporating pollution prevention programs into their strategic planning. Such programs may decrease the volume and/or toxicity of wastes by altering production to incorporate source reduction or recycling.

Under Sections 3002(b) and 3005(h) of HSWA, hazardous waste generators are required to certify that they have a program in place to reduce the volume or quantity and toxicity of hazardous waste to the degree determined by the generator to be economically practicable. EPA encourages generators to pursue source reduction and environmentally sound recycling wherever possible to reduce the need for the costs of subsequent treatment, storage, and disposal. Waste minimization planning programs have been suggested by EPA and mandated by some States.

To aid the regulated community, EPA has produced documents such as Draft Guidance to Hazardous Waste Generators on the Elements of a Waste Minimization Program; Notice and Request for Comment (54 FR 111 (June 12, 1989)) and The EPA Manual for Waste Minimization Opportunity Assessments (EPA 600/2-88/025, April 1988). Several States also have enacted waste minimization legislation (e.g., Massachusetts Toxics Use Reduction Act of 1989; Oregon Toxics Use Reduction and Hazardous Waste Reduction Act, House Bill 3515, July 2, 1989). Additional States have legislation pending that will mandate some type of pollution prevention program and/or facility planning, and many others offer technical assistance to companies that seek alternatives to treatment, storage, and disposal of waste.

Successful reduction in waste generation often does not require complex and/or expensive process changes. There are many relatively simple and easily implemented engineering solutions that will achieve this goal. Evaluation of adherence to existing process control measures, along with slight modifications of these measures, can often result in significant volume reduction. These evaluations also may point out the need for more complex engineering evaluations (e.g., mixing effectiveness, process temperatures and pressures, and reagent grade selection). Simple physical audits of current waste generation and in-plant management practices for the wastes can also yield positive results. These audits often turn up simple, easily implemented practices that do not involve complicated engineering analyses. They may point out, for example, the need for the repair and/or replacement of leaking pipes, valves, and simple equipment. In addition, they may identify the need to modify inspection and/or maintenance schedules.

Waste minimization opportunities for the manufacturing processes generating the wastes identified in today's notice may result in significant reductions in waste generation and, thus, considerable cost savings for industry. The Agency is interested in comments and data on such opportunities, including both successful and unsuccessful attempts to reduce waste generation, volume, or toxicity. It is also possible that, owing to previous implementation of waste minimization procedures, some facilities or specific processes have little potential for decreases in waste generation rates or toxicity.

For the wastes identified in today's notice, the Agency is particularly interested in such specific information as: Data on the quantities of wastes that have been or could be reduced; a way to calculate achievable percentage reductions (accounting for changes in production rates); potential reduction in toxicity of the wastes; the results of waste audits; and potential cost savings that can be (or have been) achieved.

EPA is currently investigating new approaches that would incorporate waste minimization techniques into the BDAT process. BDAT standards could potentially be developed that somehow use source reduction and recycling technologies as the methods for controlling hazardous constituents in the waste. One approach could involve the use of alternative mass-balance limitations for some constituents as they remain in the treatment residuals after application of best available source reduction and/or recycling techniques. For example, the concentration of heavy metals and total cyanides in electroplating wastewater treatment sludges (e.g., F006 wastes) have been demonstrated to be reducible through the use of various source reduction and recycling techniques implemented in the manufacturing process prior to treatment. Thus, implementation of waste minimization practices prior to generation and subsequent stabilization of the wastewater treatment sludges would significantly reduce not only the total mass of hazardous constituents, but also the total volume of wastes destined for land disposal units. Such a result would accord well with the mandate of section 3004(m) to promulgate standards that reduce waste toxicity or mobility in a way that "minimizes" threats to human health and the environment. (Data currently available indicate that stabilization can often result in a significant increase in total waste volume when complying with current BDAT treatment standards.) In addition, there may be situations where specifying the use of a treatment or recovery technology might provide more effective protection than

relying on concentration-based or mass-based treatment standards.

All of this is not to say that the Agency will require waste minimization as BDAT, especially by identifying a specific technology that must be used. While the Agency believes that waste minimization is important, we also believe that there should be flexibility in the program in order to encourage innovation so as to find new and better methods to control hazardous wastes. Thus, the Agency welcomes comments on whether, and if so, how waste minimization could be factored into the development of BDAT.

B. General Approach to the Development of BDAT for Newly Identified and Listed Wastes

While the Agency has established a waste management hierarchy that favors source reduction, recycling, and recovery over conventional treatment, it is inevitable that some wastes will be generated. (See EPA's Pollution Prevention Strategy, January 1991.) Thus, standards based on treatment using BDAT will need to be developed for these wastes. The Agency recognizes that there may be some special situations where the generation of a particular waste can be totally eliminated, but this is unlikely for most wastes.

The Agency intends to develop BDAT treatment standards for newly identified and listed wastes based on the transfer of performance data from the treatment of wastes with similar chemical and physical characteristics or similar concentrations of hazardous constituents. It also is likely that the treatment standards for these wastes will be established for both wastewater and nonwastewater forms and on a constituent-specific basis. These constituents are not necessarily limited to those identified as present in the wastes in today's notice.

The technologies forming the basis of the treatment standards, in general, are determined by whether the wastes contain organics and/or metals. For wastes containing primarily organics, the Agency has found that incineration and other thermal destruction techniques can destroy most organics to concentrations at or near the limit of detection as measured in the ash residues. Many people are concerned about environmental impacts of incinerating hazardous wastes, however, and prefer that alternative treatment technologies be used for wastes that must be treated. While the Agency believes that incineration and other thermal destruction technologies achieve a level of relatively complete destruction of organics, EPA typically establishes concentration-based standards based on these data rather than requiring the wastes to be incinerated. Thus, any alternative technologies that can achieve these levels may be used, unless otherwise restricted. In fact, where alternative destruction or removal technologies cannot achieve these levels, but achieve reasonably comparable results, the Agency may promulgate adjusted treatment standards achievable by both incineration and these technologies (e.g., the promulgated treatment standards for petroleum refinery wastes (K048–K052) are achievable by critical fluid extraction, thermal desorption, or incineration).

Since metals are never destroyed, any wastes containing metals must be directly reused, extracted for recovery, chemically stabilized, or generated such that the metals are in a chemical state where the metals are substantially immobile or otherwise rendered less toxic. Wastes containing both organics and metals are usually first subject to some destruction technology, and since metals typically concentrate in the ash and/or scrubber water sludges, these additional residues may have to be chemically stabilized.

Wherever feasible, the Agency is considering transferring BDAT treatment standards for both wastewater and nonwastewater forms of the newly identified and listed wastes from the list of treatment standards in F039, the listing for multi-source leachate, promulgated in the Third Third final rule (see 40 CFR 268.41 and 43 for standards applicable to F039 wastes). These treatment standards were developed not only for F039 but also for the corresponding U and P wastes and for many of the F and K wastes. The standards were based on the use of several treatment technologies performed on a wide variety of waste matrices, thus ensuring that the treatment standards are achievable for a wide variety of wastes. The standards for the nonwastewater forms of F039 are known to be achievable by thermal destruction techniques, such as incineration, or burning in boilers or industrial furnaces, while those for the F039 wastewaters are achievable by multiple wastewater treatment technologies. If a newly identified or listed waste or a new waste contains chemicals that are not currently regulated in F039 wastes, EPA will develop treatment standards for these constituents and may then propose to add them to the treatment standards for F039. (The Final BDAT Background Document for U and P Wastes/Multi-source Leachate is available from NTIS (National Technical Information Service), 5285 Port Royal Road, Springfield, Virginia 22161, (703) 487–4600. The NTIS numbers for the three-volume set are PB90–234337, PB90–234345, and PB90–234352.)

A similar situation may apply to lab packs intended for land disposal. In the Third Third final rule, EPA promulgated regulations allowing generators to dispose of small quantities of U and P wastes (commercial chemical products) in either "organometallic" or "appendix IV" lab packs, or in "organic" or "appendix V" lab packs, depending on the particular material being disposed. If a waste that is newly identified or listed is not already included in either appendix IV or V, EPA anticipates proposing to add the new waste code to the appropriate appendix.

In order to determine whether existing treatment standards such as those established for F039 can be transferred, the Agency is soliciting the following data and information on these newly identified and listed wastes; technical descriptions of the treatment systems that are currently used for these wastes; descriptions of alternative technologies that might be currently available or anticipated as applicable; performance data for the treatment of these wastes (in particular, constituent concentrations in both treated and untreated wastes, as well as information on the equipment design and optimum operating conditions); information on known or perceived difficulties in analyzing treatment residues or specific constituents; quality assurance/control information for all data submissions; and information on the costs for setup and operation of any current and alternative treatment technologies for these wastes.

C. General Approach to the Analysis of Capacity for Newly Identified and Listed Wastes

1. Data Availability

In determining whether to make land disposal prohibitions for a given waste immediately effective, EPA must evaluate the availability of capacity to treat that waste. The Agency performs capacity analyses to determine the amount of alternative treatment or recovery capacity available to accommodate the volumes of waste that will be affected by the land disposal prohibition. If adequate capacity exists, the waste is restricted from further land disposal. If adequate capacity does not exist, EPA may grant a national capacity variance for the waste for up to two

years, or until adequate alternative treatment capacity becomes available, whichever is sooner. To perform the necessary capacity analyses, the Agency needs reliable data on current waste generation, waste management practices, available alternative treatment capacity, and planned treatment capacity.

For previous land disposal restriction rules, the Agency performed capacity analyses using data from national surveys, including the 1981 Mail Survey, the 1986 National Screening Survey, the 1987 National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities (the TSDR Survey), and the 1987 National Survey of Hazardous Waste Generators (the Generator Survey). The Agency conducted the TSDR Survey to obtain comprehensive data on the nation's capacity for managing hazardous waste and on the volumes of hazardous waste being land disposed. The Generator Survey includes data on waste generation, waste characterization, and hazardous waste treatment capacity in units exempt from RCRA permitting. Data from the TSDR and Generator Surveys were use in capacity analyses for the First Third, Second Third and Third Third LDR rules.

Although the TSDR and Generator Surveys were conducted in 1987, data from these surveys reflect 1986 waste generation and waste management practices. These surveys cannot be used to determine the volumes of newly listed and identified waste requiring treatment, since the majority of these wastes were not listed as hazardous until after 1986 and, therefore, were not included in the surveys. In addition, these surveys may not contain adequate information on currently available capacity to treat newly listed and identified wastes because the data reflect 1986 capacity and do not include facility expansions or closures that have occurred since then. Although adjustments have been made to these data to account for changes in waste management through 1990, this was not done on a consistent basis across all waste management practices. For these reasons, the Agency requests data on currently available treatment capacity to determine whether adequate capacity exists to treat newly listed and identified wastes.

EPA has compiled data from available sources including proposed and final listing rules, regulatory impact analyses (RIAs), background information documents (BIDs), the National Survey of Solid Waste from Mineral Processing Facilities, and the Petroleum Refining Data Base. Even with these sources, however, gaps in the capacity-related data for newly listed and identified wastes remain. Much of the data are several years old and may not reflect current waste generation and management practices. In particular, data from the proposed and final listing rules are often incomplete, and, in some cases, no data on waste generation or management are included, since these rules focus on the characteristics that render a waste hazardous, rather than on waste generation and management. The RIAs and BIDs frequently use estimated data based on assumptions rather than on data collected directly from generators. The National Survey of Solid Waste from Mineral Processing Facilities does contain data for some of the mineral processing wastes; however, not all mineral processing wastes were included in the survey. The Petroleum Refining Data Base reflects 1983 data and does not include all petroleum refineries. For these reasons, EPA requests additional data on the waste generation and management of newly listed and identified wastes to perform capacity analyses for these wastes.

2. Waste Management Practices

To perform capacity analyses, the Agency needs to determine the volumes of hazardous waste that will require treatment prior to land disposal. The volumes of waste requiring treatment depend, in turn, on the waste management practices employed by the hazardous waste generators. Hazardous waste that is currently treated to LDR standards on-site does not require additional commercial treatment capacity. Hazardous waste generators may also manage their waste using practices exempt from RCRA regulations. For example, hazardous wastes discharged to POTWs or navigable waters without any intervening land disposal are not subject to the LDR treatment standards (i.e., they are restricted and not prohibited, and therefore subject only to recordkeeping requirements. See, e.g., 55 FR 22662.) Some generators may manage their waste entirely in RCRA-exempt tanks and thus likewise may not be affected by the treatment standards; others may recycle their waste immediately after generation and not land dispose it.

Other waste management practices can also affect capacity analyses. Generators may co-manage hazardous waste with nonhazardous waste or may dewater hazardous waste, thus changing the volume of waste requiring treatment. Newly listed and identified wastes mixed with regulated hazardous waste may currently undergo treatment and, thus, have been accounted for in the capacity analyses for past rulemakings. Additionally, the hazardous waste treatment technologies may generate additional wastes in the form of residuals that also will be subject to the LDRs.

As stated above, some generators already treat their hazardous waste on-site. Other generators may decide to construct on-site treatment capacity, if it is economically feasible. Since capacity analyses determine the availability of commercial treatment, wastes that are treated on-site are not included in the estimate of the volumes requiring commercial alternative treatment capacity. Nevertheless, the Agency must still obtain information on the volumes of waste that are or will be treated on-site. However, to the extent that residuals from the treatment of hazardous waste are generated, the Agency also needs to account for these residuals in its capacity analysis. EPA requests information on the volumes of waste that are or will be treated on-site or at captive facilities, the residuals generated from treatment, as well as any planned changes in on-site capacity.

Much of the data on waste management practices for newly listed and identified wastes were collected prior to the listing of those wastes. The added costs of managing a regulated hazardous waste may have induced generators to minimize or recycle their waste or otherwise alter their management practices. Any change in management practices will affect the volumes of waste requiring commercial treatment capacity.

As can be seen from the above discussion, to perform capacity analyses, EPA requests information on current and future waste management practices for newly listed and identified wastes, including the volumes of waste that are recycled, mixed with or co-managed with other waste, discharged under Clean Water Act provisions, injected underground via a regulated unit, and the volumes and types of residuals that are generated by the various management practices applicable to newly listed and identified wastes (e.g., treatment residuals).

3. Availability of Treatment

The availability of adequate commercial treatment capacity for wastes not otherwise treated determines whether or not a waste is granted a national capacity variance. The commercial hazardous waste management industry is extremely dynamic. National commercial

treatment capacity changes as new facilities come on-line, as new units and new technologies are added at existing facilities, and as facilities expand existing units. The available capacity at commercial facilities also changes as facilities change their commercial status (e.g., changing from a fully commercial to a limited commercial or captive facility). In addition, the amount of utilized treatment capacity changes as variances granted for previous LDR rules expire and as economic and regulatory conditions change the baseline demand for various treatment technologies. To determine the availability of capacity for treating newly listed and identified wastes, the Agency needs to consider currently available capacity, as well as the timing of any future changes in available capacity.

Commercial combustion capacity for sludges and solids is an important and extremely dynamic component of the nation's hazardous waste management system. Previous LDR rules have substantially increased demand for this technology. Historically, there has been a shortage of capacity for this treatment; however, the increased demand for sludge/solid combustion has encouraged this sector to expand. EPA requests current data on the availability of sludge/solid combustion capacity as well as any planned expansions at combustion facilities in order to determine whether adequate capacity will be available for those newly listed and identified wastes that may require sludge/solid combustion.

Waste characteristics such as pH level, BTUs, anionic character, and physical form may also limit the availability of certain treatment technologies. For these reasons, the Agency requests data and comments on waste characteristics that might limit or preclude the use of any treatment technologies.

EPA requests data from facilities capable of treating hazardous wastes on their current treatment capacity and information on any plans they may have in the future to expand or reduce existing capacity. The Agency also is requesting comments from companies that may be considering developing new hazardous waste treatment capacity. Specifically, EPA requests information on the determining factors involved in making decisions to build new treatment capacity.

4. EPA's Current Plans Concerning Capacity

In cases where important information for conducting capacity analysis for newly listed and identified wastes is not currently available, EPA may conduct additional data collection efforts to obtain the necessary data. The Agency could target the facilities generating large volumes of newly listed or identified wastes to obtain additional capacity-related data. The Agency may also collect additional information from the hazardous waste management industry on currently available treatment capacity.

The Agency is using this notice to present available data on newly listed and identified wastes. Whenever possible, the sources of the data are indicated. In this notice, EPA also presents key issues and preliminary assessments of capacity for newly listed and identified wastes. In addition, this notice presents a wide variety of potential approaches and assumptions the Agency could evaluate to develop capacity assessments for newly listed and identified wastes. EPA is requesting specific data and comments on currently available data and the possible approaches to capacity analyses from generators of newly listed and identified wastes. The data submitted to the Agency will be used in the LDR capacity analyses for newly listed and identified wastes and to corroborate case-by-case variance determinations, as well as for other types of analyses (e.g., economic and cost impact analyses, regulatory impact analyses, market studies).

As noted, capacity information is important for many decisions and policies. To ensure the quality of this information, EPA must collect and validate the relevant data, and otherwise develop the pertinent data base, prior to analysis. This often is an iterative process which can be lengthy. EPA stresses that all knowledgeable parties should provide us with their data, comments and concerns as early as possible for the wastes and issues addressed by this notice.

D. Newly Identified Mixed Radioactive Hazardous Wastes

Radioactive mixed wastes (RMW) are unique hazardous wastes because of dual regulation by the Atomic Energy Act (AEA) for the radioactive components and by RCRA for the hazardous waste components. The hazardous waste components of RMW must meet all applicable treatment standards for each waste code prior to its disposal, unless the wastes are managed in land disposal units that have been granted a no-migration petition. Treating RMW presents, however, a major difficulty: Achieving the treatment standards for hazardous wastes while at the same time ensuring that the AEA safety and handling requirements for radioactive materials are met. In some instances, this may be resolved by establishing specific treatment standards for specific types of RMW, as the Agency did in the Third Third rule (see 40 CFR 268.42, table 3), or by establishing site-specific variances for the waste.

RMW consists of hazardous waste mixed with high-level radioactive wastes, transuranic (TRU) wastes, or low-level radioactive wastes. High-level radioactive wastes are spent fuel from commercial nuclear reactors or wastes from the production of atomic weapons. TRU wastes contain elements with atomic numbers greater than 92 (the atomic number for uranium) and pose greater radioactive hazards than the low-level wastes because they contain long-lived alpha radiation emitters. Low-level radioactive wastes include radioactive wastes that are not classified as high-level or TRU wastes.

All treatment standards that have been promulgated to date for RMW were in the Third Third final rule. Except for four specific types of RMW that have unique BDAT treatment standards, all promulgated treatment standards for RCRA listed and characteristic wastes also apply to the corresponding RMW. The Agency specifically is requesting comment on difficulties the regulated community has encountered with the treatment standards for RMW. EPA particularly is interested in resolving these issues on a more generic basis rather than relying solely on the use of the variance process.

While the Agency does not specifically expect that many of the newly listed F and K wastes listed in today's rule are generated as RMW, the Agency does anticipate that many radioactive wastes will now qualify as hazardous wastes (i.e., RMW) due to the recent toxicity characteristic (TC) rule. In addition, the development of new treatment standards for contaminated debris are expected to be applicable to some RMW. The Agency, therefore, is requesting comment and data about specific RMW that are TC wastes and are considered debris. (Since the TC wastes and contaminated soil will be covered in a forthcoming ANPRM, the 30-day comment period provided in this notice only applies to debris and those specific F, K, and U wastes listed in today's notice.) In addition, EPA requests information and suggestions on special decontamination procedures that have been developed (or may be required) specifically for the removal of the radioactive components of contaminated debris. (These may affect

the selection of appropriate management practices for these wastes.) EPA, therefore, is requesting that readers carefully review today's notice in its entirety for its potential applicability to RMW with respect to generation, treatment, and capacity for all wastes discussed in today's notice.

III. Potential Modifications to Existing BDAT

Section 2002(b) of RCRA authorizes the Administrator to revise, not less frequently than every three years, each regulation promulgated under HSWA. Section 3004(m)(1) likewise directs EPA to revise existing treatment standards "as appropriate." As a result of this authority and a desire for a simplified regulatory framework, EPA is considering whether to propose regulations that would revise treatment standards and/or reduce administrative requirements.

A. Potential for Establishing Universal BDAT Standards

1. Concentration-based Standards for Organics

Facilities that land dispose organic wastes today typically must comply with individual treatment standards that, in some instances, impose slightly different concentration limits. As a possible alternative, EPA is soliciting comment on the concept of establishing universal sets of treatment standards for all organic constituents—one set for wastewaters and a different set for nonwastewaters. These universal sets of organic standards are being considered as a means to simplify owner and operator compliance as well as the Agency's enforcement and compliance monitoring efforts. The universal treatment standards will be particularly helpful where mixtures of wastes are encountered at both on-site and off-site hazardous waste treatment facilities.

Under a universal set of standards, the same organic constituent would have the same concentration standard, no matter what waste code it is in, and the selection of the regulated constituents would become the primary concern of enforcement and compliance monitoring. The applicable concentrations (i.e., standards) would then be limited to those found in the universal sets (depending on whether the wastes were wastewaters or nonwastewaters). This approach is also consistent with the fact that many wastes that are treatable by similar technologies are often appropriately comingled prior to treatment. The development of universal sets of standards would not be intended to modify current restrictions on the comingling of incompatible wastes, impermissible switching of treatability groups, or impermissible dilution and the Agency is not reopening these issues during consideration of whether to pursue universal treatment standards.

EPA solicits comment on the advantages and disadvantages to the establishment of universal treatment standards for organics. Among the potential advantages are that they would provide the regulated community with concentration goals on a constituent-by-constituent basis for which the facility can develop alternative treatment technologies and to direct waste minimization investigations. Universal standards would also provide EPA with a mechanism to streamline the development of BDAT treatment standards for future listing of hazardous wastes under 40 CFR part 261. New listings could be assumed to be treatable to the levels found in the universal set of standards. Facilities could then rebut these assumptions during the rulemaking for the listing of the wastes. This could also provide a mechanism for the Agency to comply with the statutory mandate to develop BDAT within six months of the final listing.

The majority of the existing waste-code specific nonwastewater standards for organics have been established based on data from some form of thermal destruction, typically incineration. This is primarily due to the ability of these thermal devices to destroy organics to levels at or near the detection limit (as measured in the ash). In fact, incineration has been determined to be BDAT for most of the wastes containing organics. The majority of the existing treatment standards for organic constituents in wastewaters have been based on a variety of conventional wastewater treatment technologies. (See also section III.B. of today's notice for a discussion of concentration-based standards for wastewaters and scrubber waters.)

In determining whether to pursue universal treatment standards, the Agency would consider whether to transfer the numerical levels for these universal organic standards from those established for wastewater and nonwastewater forms of F039 multisource leachate. These standards were established based on the premise that they might be used for universal standards. They include over 200 constituent-specific standards which account for all of the organics that can be analyzed consistently in treatment residuals and that are regulated in all of the other waste codes. (See also the discussions in subsequent sections of today's notice concerning potential adjustments to F001–F005 solvents standards.)

2. Potential Establishment of Technology-Based Standards as Alternatives for Many Wastes Containing Hazardous Organics

EPA is contemplating whether to propose a modified technology-specific treatment standard of incineration (currently coded as INCIN in 40 CFR 268.42, table 1) as an alternative treatment standard for most organic-bearing nonwastewaters currently required to comply with the constituent-specific treatment standards listed under 40 CFR 268.43. EPA is considering whether to modify the INCIN standard to require that the incineration unit be operated in compliance with the updated technical operating requirements that were recently promulgated in the Final Rule for Burning of Hazardous Wastes in Boilers and Industrial Furnaces, (55 FR 7134), February 21, 1991. EPA is particularly interested in the possibility of adding to INCIN requirements for monitoring carbon monoxide and hydrocarbons along with metals. These requirements would only apply to those units where INCIN would be applied as an alternative standard.

As another alternative standard, EPA could propose a modified technology-specific treatment standard of fuel substitution (currently coded as FSUBS in 40 CFR 268.42, table 1) as a method of treatment. This would be limited to those organic wastes for which the constituents of concern contain only carbon, oxygen, and hydrogen in their elemental structure. This is based primarily on the lack of air pollution control devices on fuel substitution units that would remove air emissions expected from the combustion of organic constituents with other elements present (such as bromine, fluorine, phosphorus, sulfur, nitrogen and/or metals). The potential establishment of limitations on the concentrations of these other elements is, however, being considered as part of the modifications to the alternative FSUBS standard.

None of the standards mentioned above would be intended to replace the existing concentration-based standards. They would only act as alternatives. That is, if the facility complied with the modified INCIN or FSUBS standards, the current concentration-based standards (as measured in the ash) would no longer be applicable for these wastes. The concentration-based

standards, however, would still apply to residuals treated by methods other than incineration or fuel substitution. EPA, however, is soliciting comment on whether both of these possible alternative standards should include a requirement for the analysis of a significantly reduced number of constituent-specific treatment standards that could serve as surrogates for confirming proper operation of the incineration or fuel substitution unit.

The existing concentration-based standards were developed as a means of ensuring that the incineration or fuel substitution unit was operated properly for the constituents of concern in each waste on a waste code-basis. The concentration-based standards were also established because they provide a greater amount of flexibility in use of alternative technologies compared to technology-specific standards. The existing technology-specific standards of INCIN and FSUBS were intended to accomplish this same goal, but were only established for waste codes where concentration-based standards were not possible.

Comments received during the development of the LDR regulations suggest that some of the BDAT concentration-based standards may be too low to be verified by existing analytical equipment (as indicated by certain commercial facilities). EPA addressed these issues in the Third Third final rule and is not reopening these issues for comment. EPA, however, is currently investigating whether these perceptions are causing wastes to go untreated (i.e., commercial facilities refusing to accept certain wastes for treatment because they cannot detect the residuals at or below the treatment standard). If so, the Agency may propose revisions to the existing BDAT treatment standards on a waste code-basis in order to ensure that these wastes are treated. In general, waste generation and management data on the majority of these wastes appear to indicate that this is not the situation.

These modified technology-based standards could potentially lead to a generic procedure for delisting of ash residues from incineration or fuel substitution units. This generic delisting procedure for ash from hazardous waste incineration must, however, address concerns about the potential presence, in the ash, of leachable toxic metals and toxic organic products formed during the incineration of halogenated organics. One approach to addressing these concerns that could, at the same time, simplify recordkeeping, compliance monitoring, and enforcement, is for the Agency to develop new waste codes for ash, based on the analysis of hazardous constituents in ash prior to stabilization, or possibly based on the type of waste incinerated (e.g., halogenated or nonhalogenated).

3. Concentration-Based Standards for Types of Metal Wastes

The Agency also is considering options for establishing one or more universal sets of TCLP metals standards based on general types of metal-bearing wastes (e.g., metal hydroxide sludges, metal sulfide sludges, slags, ash, and brine salts/sludges) rather than on a waste code basis. The basic physical-chemical composition of the waste (as given by the above examples) is a key factor in determining the level of achievability of treatment. This could potentially allow the establishment of standards (with some potentially below the characteristic levels) that are based on what treatment can consistently achieve for that waste subcategory. All other metal-bearing wastes that would not fit into these metal subcategories would have to be treated to the corresponding existing standards on a waste code-specific basis.

As an example, one set of metal standards could be established for the stabilization of wastewater treatment sludges that consisted of primarily metal hydroxides prior to stabilization—even though facilities could have identified these sludges as combinations of D004 through D011, F006, or derived-from F, K, U, or P wastes. Since one metal may be regulated at different levels depending on the waste code, and since not all metals are regulated for each waste code, a universal set of applicable metal standards could ease the difficulty of sorting out the appropriate treatment standards.

At the same time, there may be certain metals (such as arsenic, mercury, and/or chromium) or waste types (such as brine sludges, glassified slags, refractory bricks, or scrap metal materials) that cannot achieve the levels of treatment achievable in metal hydroxide sludges and, therefore, may need higher treatment standards. This was one of the main reasons EPA could not establish treatment standards for D004 through D011 wastes below the corresponding characteristic levels (i.e., while data indicated that the majority of metal-bearing wastes apparently could be treated to below the characteristic metal levels, there was always at least one waste type per metal that couldn't reach the lower levels that the other data seemed to suggest were achievable). The Agency, thus, is soliciting treatment data and comment on specific subcategories of metal-bearing wastes and treatment standards that could be developed for these subcategories.

Establishment of some sets of treatment standards could potentially lead to the establishment of a simplified generic delisting procedure for certain types of metal-bearing wastes, such as incinerator ash, residues from high temperature metals recovery, and possibly certain stabilized waste types. These standards would probably place certain restrictions on types (or levels) of metals and/or waste types that could be co-treated. These standards may also require analysis for all metals and would have to require analysis for other constituents that might reasonably be expected per metal type. In doing so, the likelihood of sham treatment through improper co-mingling of waste types or constituents could be reduced. See also the discussion of generic delisting for nonwastewater residuals from HTMR processes in section III.E.3. of today's notice.

4. Potential Regulatory Mechanisms to Encourage Development of Alternative Technologies

The Agency is soliciting information and data on the achievability of the existing incineration-based treatment standards utilizing other technologies. In particular, the Agency is interested in biological treatment data for wastes on a waste code-basis.

It is important to emphasize that a universal set of BDAT treatment standards for organics could encourage (but not force) the development of alternative technologies, in that the goals of treatment would be very clear. A further mechanism could be established to encourage alternative technology development by allowing compliance with the concentration-based standards using destructive technologies (chemical, biological, or thermal) that can achieve non-detect levels reasonably close to these "universal" standards. The Agency is soliciting comment and data that could be used to establish a BDAT regulatory procedure that would thus encourage the development of alternative treatment technologies.

B. Conversion of Wastewater Standards Based on Scrubber Waters

On November 22, 1989 (54 FR 48372), EPA proposed as part of the Third Third rule concentration-based treatment standards for numerous listed wastes based on the performance of incineration. For the wastewaters, the treatment standards were based on the

concentration of the constituents of concern in incineration scrubber waters. In the final rule (55 FR 22520), however, EPA altered its approach to setting these standards and promulgated BDAT treatment standards for wastewaters based on actual wastewater treatment data for the constituents of concern. This change was adopted for a number of reasons.

First, it was stated in the final rule for the Second Third wastes (54 FR 26629) and reiterated in the final rule for Third Third wastes (55 FR 22577) that when the Agency had appropriate wastewater treatment data from well-designed and well-operated wastewater treatment units, it preferred to use those data rather than scrubber water data to develop wastewater treatment standards. This is because incineration is not a normal treatment method for wastewaters. In addition, alternative standards were proposed in the Third Third notice for multisource leachate (F039) wastewaters based on a transfer of performance data from various sources, including: the Office of Water's Industrial Technology Division (ITD) and National Pollution Discharge Elimination System (NPDES) data (specifically from the Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) database); the Hazardous Waste Engineering Research Laboratory (HWERL) database (HWERL is the former name of EPA's Risk Reduction Engineering Laboratory); the Office of Solid Waste's BDAT data (from previous land disposal restriction rules); and additional wastewater treatment data from articles on wet air oxidation (WAO) and powdered activated carbon treatment (PACT).

Second, commenters on the proposed Third Third rule had urged the Agency to develop treatment standards for wastewater forms based on residues from wastewater treatment technologies rather than incineration scrubber waters. Commenters on previous rules had also stated that they felt EPA had performance data from technologies treating wastewaters containing the same or similar constituents that EPA could use to develop BDAT treatment standards. Commenters emphasized that these performance data represented the treatment of organic-containing wastewaters better than incineration scrubber waters alone. Finally, commenters on the proposed rules for the First Third, Second Third, and Third Third wastes almost unanimously supported the option of promulgating wastewater treatment standards based on the performance of specific wastewater treatment rather than incinerator scrubber water constituent levels.

The Agency reviewed all of the aforementioned data during the Third Third comment period to determine whether it could be considered BDAT. In reviewing these data, the Agency considered influent concentrations of the treated constituent, whether the treated stream was representative of that U, P, F, or K wastewater, and how achievable the detection limit was in similar or other matrices based on other data received. Upon conclusion of these analyses, the Agency revised the proposed wastewater standards for most of the Third Third F, K, U and P wastes based on the data received prior to proposal: Constituent-specific concentration-based standards as found in F039 wastewaters. Detailed information on the development of the wastewater treatment standards can be found in the amendment to the background document titled "Final Best Demonstrated Available Technology (BDAT) Background Document for U and P Wastes and Multi-Source Leachates (F039)," Volume A: Wastewater Forms of Organic U and P Wastes and Multi-Source Leachates (F039) for Which There Are Concentration-Based Treatment Standards." (This document can be found in the RCRA docket for the Third Third final rule.)

As part of the First Third and Second Third rules, EPA promulgated treatment standards for wastewater forms of 24 K and U wastes (i.e., K015, K016, K018, K019, K020, K023, K024, K028, K030, K043, K048, K049, K050, K051, K052, K087, K093, K094, U028, U069, U088, U102, U107 and U190). These wastewater treatment standards were based on data from incineration scrubber waters. The Agency is presently analyzing these data to determine whether EPA should modify the concentration-based treatment standards for these wastewaters. The wastes affected by this change come primarily from three general treatability groups: Chlorinated organics, petroleum wastes, and phthalate wastes. The Agency is today providing an opportunity to comment on this possible change, and to submit data.

C. Potential Revisions to the F001–F005 Spent Solvent Treatment Standards

The Agency is investigating the benefits of revisions to the treatment standards for organic constituents in both the nonwastewater and wastewater forms of F001–F005 wastes. The Agency is soliciting comments on possible ways to change the standards as well as any treatment data that may be available to assist in further refinement of the treatment standards. The existing standards, currently listed in 40 CFR 268.41, include concentrations for 25 solvent constituents.

1. Nonwastewater Standards Based on Total versus TCLP Analysis

The Agency is looking at the issue of conversion of nonwastewater treatment standards for organic constituents in F001–F005 spent solvents from the existing TCLP standards to standards based on analysis of total concentrations. The existing treatment standards for nonwastewater forms of F039 (multi-source leachate) would be potential candidates for transfer. Any new F001–F005 standards, however, would not modify the standards for the four solvents that were added to the solvents listings since 1984: Benzene, 2-ethoxyethanol, and 2-nitropropane to F005, and 1,1,2-trichloroethane to F002. Treatment standards for these solvent constituents were promulgated in the Third Third rule and, for the most part, are already based on analysis for total concentrations rather than TCLP.

The Agency also is considering establishing the treatment standards based on the analysis of total constituent concentrations as an option for compliance with the existing F001–F005 leachate standards. Thus, in the course of treating mixtures of other hazardous wastes and F001–F005 solvents, the facility could be considered to be in compliance with the TCLP treatment standards for F001–F005 by demonstrating compliance with the F001–F005 total numbers. This would be consistent with the concept of universal standards as discussed previously in section III.A. of today's notice, and could reduce unnecessary and extra laboratory analysis (i.e., using both TCLP leachate analysis and total analysis for the same constituents).

2. Consistency with Universal Wastewater Standards

In order to be consistent with the concept of universal wastewater treatment standards discussed earlier in section III.A. and B., EPA would also consider whether to convert the existing standards for wastewater forms of F001–F005 to those established for F039 wastewaters. This would result in increases in the concentrations for approximately half of the F001–F005 constituent-specific standards. The majority of these compounds are low-toxicity, water-soluble compounds for which detection limits have been purportedly difficult to achieve at the existing standards (e.g., ethyl ether,

ethyl benzene, acetone, and n-butanol). Some of the increases are relatively insignificant (e.g., ethyl benzene may increase from 50 ppb to 57 ppb). For approximately half of the F001–F005 constituents, the standards would be lowered. These compounds are typically the more toxic of the 25 solvent constituents and tend to be halogenated.

3. Revisions to the Standards for Cresols

In the Solvents and Dioxins rule, the Agency promulgated BDAT treatment standards for "cresols" (a regulated constituent in the F001–F005 treatment standards), but did not distinguish between the various isomers present in cresols. Hence, the Agency determined the concentration-based treatment standard for cresol wastewaters to be 2.82 mg/1 based on the performance of activated carbon adsorption treatment of cresols. For nonwastewaters, the Agency had no data on TCLP extracts of residues from the incineration of cresols (cresylic acid) to use in the derivation of the BDAT treatment standard. EPA used, in part, comparable chemical structure as the basis for transferring treatment data to cresols (cresylic acid) in the spent solvents. The data on which the treatment standard was based was from the incineration of methyl ethyl ketone. The treatment standard of 0.75 mg/1 for nonwastewaters is based on the transferred data.

The Agency also is investigating whether there is merit in a change to the current treatment standards for the constituent "cresols" in F001–F005 wastes. In the Third Third rule, EPA promulgated treatment standards for U052 wastes. U052 is listed as "cresols (cresylic acid)." Cresylic acid is the name given to a mixture of three isomeric cresols (i.e., ortho-cresol, meta-cresol and para-cresol) in which meta-cresol predominates. Analytical methods are usually reported for o-cresol (CAS No. 95–48–7) and a combination of m- and p-cresols because m-cresol and p-cresol cannot be distinguished by the analytical methods. Thus, the Agency promulgated concentration-based standards for U052 based on an analysis for o-cresol and the mixture of m-cresol and p-cresol. The Agency, therefore, is considering whether to transfer the wastewater and nonwastewater treatment standards from U052 wastes to F001–F005 wastes.

4. Modification to the Regulatory Placement of F001–F005 Standards

The Agency also is considering the issue of placement of the F001–F005 treatment standards as they appear in the regulatory tables. The Agency has identified an error in the current placement that often provides confusion in locating the standards. Currently, the standards for F001–F005 nonwastewaters and wastewaters are both found in Table CCWE—Constituent Concentrations in Waste Extract (40 CFR 268.41). The wastewater standards should be in 40 CFR 268.43, Table CCW—Constituent Concentrations in Wastes, because they are based on total analysis and not a TCLP analysis. Furthermore, if the Agency alters the nonwastewater treatment standards from a TCLP standard to a standard based on total waste analysis, the standards will also be in 40 CFR 268.43, Table CCW—Constituent Concentrations in Wastes.

D. Potential Modifications to Existing Treatment Standards for Lab Packs

Potential changes to 40 CFR 268.42 for lab packs are also being examined. In the January 31, 1991 technical amendment to the Third Third final rule (55 FR 3864), the Agency corrected many typographical errors in appendix IV and appendix V of 40 CFR part 268. EPA also noted some inconsistencies in the conceptual placement of these wastes into the appendices. Today's notice provides information on potential modifications in order to simplify the use of the appendices.

1. Potential Limits on Organo-metallic Lab Packs

Appendix IV of 40 CFR part 268 identifies waste codes that may be placed in an organometallic lab pack, while appendix V identifies waste codes that may be placed in an organic lab pack. These two categories of lab packs were established to distinguish those wastes needing chemical stabilization after incineration from those needing only incineration. The current regulation not only requires incineration, but also requires in 40 CFR 268.42(c)(4) that the residues from either type of lab pack must no longer be characteristic for the majority of toxic metals (i.e., they must comply with the treatment standards for D004–D008, D010, and D011) prior to land disposal. Since it is necessary to address the potential presence of metals in the incinerator ash for both appendices, there is little practical difference in application of the standards for the two appendices. EPA is soliciting ideas on regulatory modifications that could simplify the application of these appendices.

Appendix IV allows seven of the eight characteristic metal wastes and F006 wastes (wastewater treatment sludge from certain electroplating operations) to be placed in organometallic lab packs. These wastes may or may not contain organics. Although the Agency intended that these wastes be organometallic, there is no regulatory definition of what constitutes an organometallic. The Agency therefore is investigating whether a regulatory definition of organometallics is necessary, or whether other regulatory requirements should be developed to prevent potential misuse of the existing appendix IV lab pack requirements.

The Agency also is considering requirements that would limit the quantity of organics and metals that lab packs may contain, or, as another option, combining appendix IV and V into one appendix and requiring incineration with subsequent stabilization of the residual incinerator ash to meet the characteristic metals treatment standards.

The Agency also is investigating a limit on total arsenic placed in organometallic lab packs. After incineration of a lab pack containing arsenic, some of this metal may either remain in the incinerator ash or become trapped in the ash in a toxic inorganic form. Although volatile arsenic can be controlled by appropriate air pollution control devices, there is concern regarding the effectiveness of conventional pozzolanic stabilization processes for ash that contains significant amounts of arsenic.

2. Lab Packs from Treatability Studies

In addition to the above issues, the Agency is aware of two other areas (discussed in this and the next subsection) where the development of alternative treatment standards for other types of lab packs could simplify implementation of the land disposal restrictions.

One situation arises for certain lab packs containing residues from hazardous waste treatability studies. These studies take samples of treated and untreated hazardous wastes for analysis of hazardous constituents in order to determine the effectiveness of treatment. There are likely to be residues from the analysis of the wastes (both treated and untreated) that do not represent optimum treatment (i.e., they may fail the treatment standards by only slight amounts, and perhaps for only one constituent), and from samples that were spiked for recovery studies that may be above the promulgated treatment standard.

These samples are usually relatively small. Before the land disposal restrictions, they were disposed of in lab packs. Current regulations require these samples to be treated to below the treatment standards. This typically

means that these samples must be segregated, possibly ground, and most likely mixed with larger batches of untreated wastes. Since there is such a small quantity, there is some logic in mixing these with other wastes in lab packs that are going to be incinerated and/or stabilized. However, as with other lab packs, difficulties arise in verifying concentration-based treatment standards because of the difficulties in obtaining representative samples of the wastes in the treated lab packs.

The Agency is soliciting comment on provisions that might be established for these wastes. One approach for metal-bearing wastes from treatability studies, for example, could be to establish stabilization as a method of treatment with limitations on one or more of the following: A minimum amount of stabilization reagents, a maximum amount of interfering compounds such as organics, or limitations based on the amount or type (i.e., treatability group) of metals or waste codes present. The Agency is interested in comment on this and any other feasible approaches.

3. Lab Packs from Hospitals and Laboratories

In a similar situation, many analytical laboratories and hospitals generate lab packs containing heterogeneous mixtures of debris-like materials, such as broken glass, gloves, syringes, protective gear, empty analytical vials, wipe samples, and broken thermometers. These materials usually are contaminated with small amounts of many wastes and/or chemicals. Since some of these may be wastes or chemicals that otherwise would be prohibited from placement in lab packs, some laboratories may not be able to take advantage of the alternative treatment standards for appendices IV and V. While the treatment standards being developed for contaminated debris may resolve this issue, the Agency also is soliciting comments on regulatory modifications that could be developed.

4. Potential Automatic System for Incorporating Newly Identified and Listed Wastes into Alternative Treatment Standards for Lab Packs

The Agency also is considering ways to establish an automatic system for incorporation of newly identified and listed wastes into appendices IV and V (or a composite version of these). Thus, if the newly identified or listed waste contains organics and metals, then it could be automatically included in appendix IV. If, on the other hand, the waste contains only organics, it could be included automatically in appendix V. The present plan calls for making these decisions during the regulatory determination for listing the wastes.

E. Recovery as BDAT for Concentrated Metal-bearing Wastes

The Agency is soliciting general information on types or subcategories of metal-bearing wastes that are currently amenable to various metals recovery technologies. Preliminary discussions with several commercial recovery vendors appear to indicate that a wide variety of metal-bearing wastes can be technically and economically recovered with existing technologies. These processes typically involve various combinations of pyro-, hydro- and/or electro-metallurgical principles.

The Agency is currently investigating mechanisms that could be used to encourage the use of these processes as alternatives to stabilization and land disposal. One potential mechanism is for the Agency to revise the existing concentration-based metal standards based on stabilization to new concentration-based standards based on the analysis of recovery residues, such as those from high temperature metals recovery (HTMR). The following section of today's notice illustrates how this might work for certain K061 wastes.

1. Potential Revisions to K061 Nonwastewaters in the Low Zinc Subcategory that Contain High Chromium/Nickel

K061 wastes are defined in 40 CFR 261.32 as emission control dust/sludge from the primary production of steel in electric furnaces. While many of the K061 wastes generated from the primary production of steel are generally low in chromium, K061 wastes that specifically are generated from the primary production of stainless and specialty steel typically are rich in chromium and low in zinc (i.e., they are in the K061 low zinc subcategory). This type of K061 waste is one of the easiest materials from which to recover chromium and nickel by HTMR.

On April 12, 1991, the Agency published a notice of a proposed rule for K061 wastes in the high zinc subcategory (56 FR 15020). In this notice, the Agency proposed concentration-based treatment standards based on the analysis of residues from HTMR processes from which zinc was being recovered. The Agency has preliminary data and information on another high temperature metals recovery (HTMR) process consisting of a rotary hearth furnace followed by an electric furnace that can recover chromium and nickel from other K061 wastes (i.e., those in the low zinc subcategory) as well as from a variety of other hazardous wastes.

These other wastes include: K062 (spent pickle liquor), F006 (wastewater treatment sludges from certain electroplating operations), and characteristic wastes such as D002 acid wastes and D007 chromium wastes. These characteristic wastes typically include wastes identified as pickling solutions (acids), plating solutions, batteries, catalysts, chrome-magnesite refractories (i.e., bricks), spent chromic acid, and other air pollution control device (APCD) baghouse dusts that are similar to K061. In order to recover chromium and nickel from these wastes, the wastes typically must meet the following specifications: A minimum of 1.5% (by weight) nickel and chromium, in combination; a maximum of 0.03% total phosphorus, 2.0% copper, 2.0% sodium or potassium chlorides, 5.0% sulfur (10% for lime neutralized and precipitated solids), and 250 ppm total cyanide; and a minimum of 20% solids content with no free liquids.

The Agency is soliciting comment on the potential for establishing concentration-based treatment standards based on the analysis of residues from high temperature metals recovery (HTMR) units recovering chromium and nickel. At the time of this notice, specific concentration-based standards based on this process have not been completely developed, but are expected to be similar to those proposed for K061 wastes in the high zinc subcategory except for nickel and chromium. (See discussion of high chromium/high zinc K061 wastes in the April 12, 1991 proposed rule.) The Agency is considering proposing such standards for K061 wastes in the low zinc subcategory (see the following discussion on applicability to these K061 wastes) and solicits comment on expanding the applicability of these standards to the K062, F006, and characteristic wastes meeting the criteria described above.

For reasons outlined in the April 12, 1991 proposed rule, the concentration-based treatment standards for K061 wastes in the high zinc subcategory were proposed as applicable to 14 metals rather than to only those currently regulated in the low zinc subcategory. The Agency specifically is soliciting information on the applicability of these proposed standards to K061 wastes in the low zinc subcategory. The Agency also is soliciting comment on whether these levels also may be applicable to wastes from HTMR of high chromium/nickel K061 wastes, as well as other hazardous wastes, such as F006 and K062, that may be treated using these technologies

(provided they meet the specifications identified above).

2. Currently Available Capacity Information for K061 Wastes

The American Iron and Steel Institute (AISI) estimated the total 1989 generation of K061, from both stainless and carbon steel production, to be 353,000 tons per year. According to AISI, stainless steel accounts for 19 percent of total steel production; therefore, 1989 high chromium K061 generation is approximately 67,000 tons per year. In the First Third rule, EPA used data from the TSDR Survey to estimate the total generation of K061 to be 345,000 tons per year. The Agency assumed that 75 percent of the K061 volume is from carbon steel. Thus, the remaining 25 percent was assumed to be from stainless steel production, which yields 86,000 tons of high chrome K061 per year. The Agency recently received an estimate from an industry source indicating that 1990 stainless steel K061 generation ranged from 83,000 to 86,000 tons. The Agency needs to confirm the volume of high chromium K061 that is generated.

Indications are that most high chromium K061 potentially could be recycled to recover chromium. The Agency has received information that chromium recovery can be achieved by HTMR and hydrometallurgical/electrometallurgical metals recovery. One HTMR facility is currently processing high chromium K061, and is capable of processing 52,000 tons per year. A hydrometallurgical/electrometallurgical metals recovery facility, which began operations in 1990, may be capable of processing 300 tons of stainless steel K061 per year.

The Agency requests comments on the current high chromium K061 processing capacity, and on any physical, chemical, or materials handling constraints associated with high temperature or hydrometallurgical/electrometallurgical recovery for this waste.

3. Potential Generic Delisting Option for BDAT Nonwastewaters Residues

EPA is considering the idea of a generic delisting for K061 wastes in the low zinc subcategory (and possibly for F006 and K062) that contain recoverable amounts of chromium and/or nickel. This generic delisting, based on compliance with treatment standards for 14 metals, could be proposed as applicable only to nonwastewater residues generated from HTMR processes rather than to those from chemical stabilization. The rationale for limiting this potential action to HTMR residues is that the chemical bonding that occurs under the high temperature and oxidation/reduction conditions within the HTMR units is inherently different from the bonding that forms the basis of cementitious and pozzolanic stabilization. In addition, the kinetics of the reaction forming the bonds in these HTMR processes are superior to the kinetics for bond formation in cementitious reactions. (Cement is not typically considered set for a minimum of 72 hours, and often not considered fully cured until after 28 days.) Stabilization has also been documented as a process that is highly matrix-dependent and prone to chemical interferences. Most commercial stabilization facilities have to develop special mixes for each waste type by selecting additives that will enhance curing time and/or structural integrity (often measured by compressive strength).

While the Agency recognizes some advantages of HTMR recovery of chromium and/or nickel over stabilization, stabilization does provide treatment for the metal-bearing wastes that must be land disposed and cannot be economically recovered. In fact, should the Agency propose or promulgate generic delisting and new treatment standards based on HTMR for K061 wastes in the low zinc subcategory, site-specific delisting still would remain a viable option for stabilized K061 wastes. However, due to the inherent differences between HTMR and stabilization stated above, and the fact that insufficient data currently exists to propose a generic delisting for stabilized wastes, generic delisting levels for HTMR nonwastewater residues would not appropriately be applicable to stabilized K061 residues that have not undergone HTMR. More individualized consideration of stabilization processes is warranted before residues from the process are generically delisted.

Generic delisting for these recovery residues could encourage the use of HTMR as well as other recovery processes. In addition, the Agency believes that HTMR and other recovery processes offer an advantage over stabilization technologies for some metal-bearing wastes, with respect to their resource recovery and the large differences in volumes of treated wastes that require disposal versus the generation of delisted, nonhazardous wastes. The Agency is soliciting comment on all facets of these issues.

IV. Potential BDAT for Contaminated Debris

This section of today's notice presents a discussion of the data currently available to the Agency on contaminated debris, the status of ongoing treatment evaluations, and the approach and options that the Agency is considering for establishing revised treatment standards for contaminated debris. (Today's notice does not involve contaminated soil. A discussion of data and the Agency's approach to develop treatment standards for contaminated soil will be addressed in a forthcoming advanced notice of proposed rulemaking.)

Commenters submitting treatment performance data should include a description of the contaminated debris, complete chemical and physical analysis of the wastes and treatment residuals, and technical descriptions of the treatment method or management practice (including optimum operating conditions). Those planning new tests with the intent of submitting data to EPA are urged to communicate with EPA before testing to confirm that the data developed will meet EPA's QA/QC requirements.

The Agency also is soliciting information on the costs associated with treatment of contaminated debris in order to prepare the regulatory impact analysis. Of interest are technical reports on any of the treatment technologies, with particular emphasis on treatment efficiencies, end concentrations reached and their dependence on untreated concentrations, and costs for set up and operation of the treatment technology.

A. Relationship of Today's Notice to EPA's "Contaminated Media Cluster"

As this notice goes to press, the Agency has begun a broader consideration of contaminated media issues that will have some influence on the issues raised here. In order to improve the overall quality of its regulatory decision making, the Agency has begun to look at groups or clusters of regulations in order to develop more integrated approaches to various environmental problems. One of these regulatory clusters, the "contaminated media cluster", is designed to develop a more integrated Agency approach for its policies and regulations dealing with its waste remediation programs. Over the next several months, the contaminated media cluster project will gather information to develop a comprehensive view of the quantities and types of waste needing remediation, the types of risks they represent, the current statutory and regulatory framework, elements of an effective cleanup process, and the costs and benefits of cleanup. The culmination of that work

will be a regulatory strategy that will include a set of objectives and operating principles for the Agency's remediation programs. The land disposal restrictions (LDR) regulatory effort and the resolution of issues on contaminated debris will be closely coordinated with the regulatory cluster on contaminated media.

B. Applicability of Existing Land Disposal Restriction Treatment Standards and Superfund 6A and 6B Guides

In promulgating LDRs, including treatment standards for solvents and dioxins, California list wastes, and the First, Second, and Third Third wastes, the Agency regulated debris contaminated with these restricted wastes. The land disposal restrictions in 40 CFR part 268 thus generally apply to contaminated debris, including such debris generated from corrective actions and closures at RCRA-regulated land disposal sites, remedial and removal actions at CERCLA (Superfund) sites, and private-party cleanups.

Under the Agency's "contained-in" policy, contaminated media (i.e., debris, soil, groundwater, sediments) that contain RCRA wastes must be managed as if they were hazardous waste until the media no longer contain the hazardous waste (i.e., until decontaminated) or until they are delisted. To date, the Agency has not issued any definitive guidance as to when, or at what levels, environmental media contaminated with hazardous waste no longer contain the hazardous waste. Until such guidance is issued, the Regions or authorized States may determine these levels on a case-specific basis. The Agency also suggests that when making a determination as to when contaminated media no longer contains a hazardous waste that a risk assessment approach be used that addresses the public health and environmental impacts of the hazardous constituents remaining.

The Agency has determined, however, that contaminated debris generally is more difficult to treat than RCRA industrial wastes. Special treatability variance procedures were established for contaminated debris based on the available treatment data that existed at the time. These data were used to develop interim guidance treatment levels (Superfund LDR Guides #6A and #6B, i.e., OSWER Directives 9347.3-06FS and 9347.3-07FS, respectively) for assessing these treatability variances. (Copies of the 6A and 6B guides can be obtained by calling the RCRA Hotline at 1-800-424-9346.)

C. Development of Potential Regulatory Definitions for Debris

The Agency has previously developed definitions for debris that serve as guides in applying the treatment standards. The Agency now is considering and requesting comment on whether regulatory definitions for debris and contaminated debris are necessary or could provide a means of simplifying the implementation of treatment standards. These definitions could be placed either in 40 CFR 260.10 for general application, or in 40 CFR 268.2 for application only to the land disposal restrictions. The Agency has developed preliminary regulatory definitions for debris and contaminated debris that are given below. (The presentation of these suggested definitions in today's notice should not be construed as replacing definitions that appear in other regulatory form.)

Debris means solid material that: (1) Has been originally manufactured or processed, except for solids that are listed wastes or can be identified as being residues from treatment of wastes and/or wastewaters, or air pollution control devices; or (2) is plant and animal matter; or (3) is natural geologic material exceeding a 9.5 mm sieve size including gravel, cobbles, and boulders (sizes as classified by the U.S. Soil Conservation Service), or is a mixture of such materials with soil or solid waste materials, such as liquids or sludges, and is inseparable by simple mechanical removal processes.

Contaminated Debris means debris which contains RCRA hazardous waste(s) listed in 40 CFR part 261, subpart D, or debris which otherwise exhibits one or more characteristics of a hazardous waste (as a result of contamination) as defined in 40 CFR part 261, subpart C.

When soil is agglomerated on debris or compacted/contained inside the nooks and crannies of crumpled debris, it is difficult to separate; this soil typically is separated during the treatment of the debris, however, and may require additional treatment, depending on the process utilized for the treatment of the debris. Any separated soil will be subject to treatment standards for soil.

D. Potential Regulatory Structure for Treatment Standards

Existing treatment standards for most RCRA hazardous wastes are presented on a waste code-basis as leachate concentrations in 40 CFR 268.41, as specified treatment methods in 40 CFR 268.42, and as total constituent concentrations in 40 CFR 268.43. As a result, any revised treatment standards for contaminated debris might logically fall under these regulations. However, the Agency may consider placing new treatment standards for contaminated debris in a new regulatory section or appendix within 40 CFR part 268.

The Agency has identified two key questions concerning any potential regulatory construct. The first is: Should contaminated debris be subcategorized into additional treatability groups? The second is: Should contaminated debris be a separate waste code? Integral to answering these questions is the concept that the hazardous waste is contained on the debris in some manner. The separation of the hazardous waste from the debris becomes, therefore, the primary goal of treatment. While complete separation would logically result in nonhazardous debris, difficulties can arise in ascertaining complete separation. The regulatory construction of treatment standards for debris, thus, may not guarantee a nonhazardous debris, but can provide compliance with the statutory mandate to treat all hazardous waste prior to land disposal in a way that significantly reduces waste toxicity and mobility. The remaining debris would then be considered treated and could be land disposed.

Residues derived from the separation of the hazardous waste from the contaminated debris (except for separated soil residues) could logically carry the waste code or codes of the waste originally contaminating the debris. In an effort to simplify the treatment standards, however, the Agency is considering establishing a few new waste codes specifically for the residues from the treatment of debris.

A similar situation arose for multi-source leachate which, theoretically, could be derived from any combination of waste codes. As a regulatory solution, the Agency created a new listing for multi-source leachate identified as F039 and established treatment standards for approximately 200 constituents for F039.

EPA thus is considering four categories of standards for both contaminated soil and debris: (1) Those for the treated soils; (2) those for the treated debris; (3) those for the nonwastewater residues derived from the treatment of contaminated soil and debris (i.e., residues that are neither soil or debris); and (4) those for wastewater residues derived from the treatment of contaminated soil and debris. (The regulatory structure being considered for contaminated soils will be discussed in a forthcoming advance notice of proposed rulemaking (ANPRM).) The regulatory structure being considered for the treated debris will be discussed later in this section.

Depending upon the separation process that is applied to the contaminated debris, non-debris nonwastewater residues from the separation process may need further treatment. (For example, solvent extraction of a debris material will probably result in a solvent residue that contains the hazardous organics constituents.) The matrix of these residues should be less complex than that of contaminated debris, and could be comprised of any of the BDAT constituents over a range of concentrations. Since the separated materials are actually derived from the hazardous waste that originally was contaminating the debris, one option for developing treatment standards for these residues would be to simply apply the existing applicable treatment standard for that hazardous waste code (if identifiable). One other option is to establish one set of concentration-based treatment standards for such residues (as introduced in the above discussion on the applicability of F039 standards).

In a similar manner, the wastewaters that result from the decontamination of debris also may have to be treated before they can be land disposed. It is intuitively obvious that these wastewaters are significantly less difficult to treat than the contaminated debris, and may be treatable to concentrations similar to the wastewater treatment standards for F039. Again, a transfer of the treatment standards for F039 (except this time, the wastewater standards) for the wastewaters from treating debris could be appropriate because these wastewaters could contain any of the regulated BDAT constituents.

Based on the technical theory behind the development of the treatment standards for multi-source leachate (F039) and the U and P chemicals, one set of wastewater and one set of nonwastewater standards are also a potential solution.

E. Development of BDAT for Contaminated Debris

The physical and chemical characteristics of debris itself suggest that treatability groups may have to be established based on technical limitations on the degree of decontamination that can be achieved. For example, permeable debris that absorbs contamination into its pore spaces may be more difficult to decontaminate than debris that is impermeable. Based on a review of 222 hazardous waste sites that reported debris on the site, the Agency has developed eight preliminary subcategories of debris that may pose different problems in treatment: (1) metallics; (2) brick, concrete, and rock; (3) wood; (4) paper and cloth; (5) rubber and plastics; (6) glass; (7) equipment and structures; and (8) asbestos. The Agency also recognizes that many debris wastes, such as lab packs, are combinations of these subcategories, and pose additional complications in establishing BDAT. (See also a discussion of potential BDAT for lab packs in section III.D. above.)

The treatability of debris is also affected by the physical and chemical characteristics of the chemical contaminants on the debris, and their respective concentrations. For example, it may be reasonable to incinerate a debris material contaminated with high concentrations of toxic organics and low concentrations of metals. Incineration of the same debris material with somewhat higher concentrations of metals, however, may be undesirable because of the anticipated increase in air emissions of metals. A debris material with low concentration of organics and high concentrations of leachable metals may be a good candidate for stabilization (provided it is reasonably friable in the first place). If, however, the organics are too high or one of the metals is arsenic or mercury, conventional stabilization may not be effective, and specialized reagents may be needed. The selection of appropriate technologies, thus, will depend on the interrelationship of the constituent types, their respective concentrations, and the physical subcategories of debris.

The Agency is soliciting comment on these potential debris subcategories with respect to the following: The inclusiveness of these subcategories; the ability to distinguish and separate debris into these subcategories; the quantities of debris encountered in each of the subcategories; and the types of contamination encountered.

1. Treatment Technologies for Contaminated Debris

The single most important issue in establishing concentration-based treatment standards for contaminated debris arises from the effectiveness of obtaining representative samples for analysis. There is a significant potential for error in choosing how and where to sample, and although many debris wastes have been sampled and analyzed, the procedures for both sampling and analyzing (including QA/QC procedures) contaminated debris have not been standardized.

There is a paucity of constituent-specific treatment data for contaminated debris. When it is available, these data show decontamination of debris, but they generally lack sufficient QA/QC information. This lack of QA/QC data probably directly results from complications arising from difficulties in measuring recovery from debris materials.

The Agency is investigating three general categories of treatment for contaminated debris that fulfill the goal of treating debris: to remove or destroy the contaminants or otherwise render the waste less hazardous. The three categories are extraction, destruction, and immobilization.

Extraction technologies are intended to remove the hazardous constituents from the surface or pores of the debris materials and typically rely on physical properties of the contaminant, such as solubility and volatility, and the physical properties of the debris material. Extraction technologies often include physical agitation and removal of contaminated layers of the debris material. EPA currently is investigating the following extraction technologies: Grit blasting, hydroblasting, scarification, drilling and spalling, solvent washing, steam cleaning, vapor-phase solvent extraction, washing, rinsing, soaking, vacuuming, wiping, vibratory finishing, and low-temperature thermal desorption. These technologies are then followed by destructive technologies applied to the extracted materials or extracting media. The decontaminated debris could be disposed of in a hazardous waste (subtitle C) landfill.

Destructive technologies rely on chemical, biological, or thermal oxidation or reduction of the contaminant to a less hazardous compound or form. These technologies are commonly applied directly to debris material and often involve some degree of extraction. EPA currently is investigating the following destructive technologies: Acid etching, bleaching, microbial degradation, photochemical degradation, chemical treatment, electropolishing, flaming, and incineration.

Immobilization technologies rely on the use of a sealant of some sort that prevents leaching of the hazardous constituents by entrapment. Typically, these immobilization technologies involve macroencapsulation rather than microencapsulation, implying a reliance on primarily physical entrapment; however, there is some evidence that some chemical reactions occur which provide the entrapment (particularly with pozzolanic stabilization of metal contaminants). EPA currently is investigating the following immobilization technologies: asbestos

abatement techniques, macroencapsulation, chemical sealing (e.g., K-20 sealant), and pozzolanic stabilization.

Immobilization technologies may require preprocessing of some debris materials by crushing or grinding. The Agency is investigating the following with respect to grinding: The existence and capabilities of machinery for crushing and grinding; limitations that potentially could be established for these operations; limitations on feed composition of the debris materials (i.e., by debris types); and potential for air emissions (including dust, metals, and volatile organics) and/or controls that may be required. In addition, the Agency is investigating the need for limitations on waste/binder ratios for stabilizing debris.

2. Options for Contaminated Debris Treatment Standards

Establishing the use of specific technologies as the treatment standards for contaminated debris under 40 CFR 268.42 would appear to solve the major issues in sampling and analysis of treated debris by eliminating the need for constituent specific analysis of the treated debris. The Agency is requesting comment on the following definitions for treatment standards that the Agency is considering to establish for contaminated debris:

DSTRC (Destruction) means compliance with the requirements of chemical oxidation (CHOXD), chemical reduction (CHRED), biodegradation (BIODG) or incineration (INCIN) identified in 40 CFR 268.42 Table 1; or the use of an equivalent destruction technology that provides sufficient agitation, temperature, and exposure time that a surrogate compound or indicator parameter has been substantially reduced in concentration (e.g., Total Organic Carbon can often be used as an indicator parameter for destruction of many organic constituents that cannot be directly analyzed).

EXTRC (Extraction) means the use of an extraction technology (such as acid washing, liquid-phase solvent extraction, abrasive blasting, drilling and spalling, scarification and grinding, water washing and spray, etc.) with sufficient agitation, temperature, partitioning, exposure time, and/or appropriate solvent/chemical such that the majority of RCRA hazardous contaminants have been significantly reduced in concentration from the surface or pores of the material.

IMMBL (Immobilization) means the use of an immobilization technology (such as macroencapsulation, stabilization and solidification, sealing, etc.) with sufficient curing time, and appropriate chemicals such that the mobility of a majority of RCRA hazardous contaminants has been significantly reduced.

These standards would appear in 40 CFR 268.42 Table 1. As discussed at the introduction of this section on debris, the actual selection of a best technology for any given waste would be highly dependent on the type of debris, type of contaminant, and the concentrations of the contaminant in the debris. The regulated community would then select recommended technologies from a guidance manual or an appendix (yet to be developed) based on contaminant type, debris type, and technology. The key to the use of the specific technology is built into the definitions of the three standards of EXTRC, DSTRC, and IMMBL. The selection of the most appropriate extraction, destruction or immobilization technology would be based on a demonstration of its efficiency through the use of surrogate analysis or engineering judgment that takes into account the type of waste and contaminant as they relate to the type of debris.

These treatment standards for contaminated debris would potentially be applied to the untreated debris. The residual debris after treatment could be land disposed and any extracted media or materials would comply with concentration standards for the respective waste code (or a new set of numbers that could be similar to those for multi-source leachate nonwastewaters). As with all existing BDAT treatment standards, all treatment residues would have to be evaluated for their degree of hazard. Complete removal or decontamination is not necessarily guaranteed through the use of any of these three treatment technologies unless specifically stated in the regulations. (Standards for the residues from treatment of the contaminated debris have been discussed earlier.)

3. Additional Issues with Three Specific Debris Types

In a preliminary assessment, three treatability groups have been identified that may require special consideration: Contaminated asbestos, PCB contaminated debris, and debris with inherent content that causes it to exhibit hazardous characteristics after removal of the contaminating waste.

Asbestos removal and disposal are regulated under 40 CFR part 763, subpart E, appendix D, 40 CFR 763.121 and 40 CFR part 61, subpart M. In the development of the LDR rules, the Agency is considering adopting this approach—that is, contaminated asbestos debris will have the additional requirement that disposal be in a subtitle C facility, provided the waste is otherwise hazardous under RCRA. The Agency is requesting comment on this possible approach.

Decontamination of debris contaminated with PCBs is regulated under 40 CFR 761.60, and surfaces contaminated by PCB spills are regulated under 40 CFR 761.125. In the development of the LDR rules, the Agency is considering this avenue for applicability to debris contaminated with PCBs. The Agency is requesting comment on this approach.

Where debris materials have an inherent composition that is metallic, it may be difficult to demonstrate removal of hazardous metal constituents even after decontamination, particularly for TCLP analysis. For example, chrome-plated fixtures contaminated with a hazardous waste containing metals may be free of surface contamination after the use of an extraction technology but may leach (by the TCLP test) some of the chromium inherent to its composition. Likewise, structural materials painted with lead-based paint may be treated to remove the lead-based paint but may then leach other metals inherent to the material.

Other wastes such as refractory bricks, however, are hazardous primarily because they leach chromium that is inherent to their structure and not necessarily because they are contaminated with other hazardous wastes. (The physical and chemical properties of certain chromium compounds, in conjunction with those of the other inorganics in the brick, form the technical basis of the refractory brick's structural and thermal properties.) Due to the high concentration of metals (some brick contain up to 40% chromium), it may not be possible to treat these materials to nonhazardous levels without adding a tremendous amount of stabilization reagents. EPA is soliciting data on this type of waste that are currently available on the sequential addition of stabilization reagents that might indicate an appropriate cut-off point for addition of reagents such that a significant reduction in leachability of metals could be assured. See also section III.E. of today's notice discussing high temperature thermal recovery of chromium as a potential option for establishing treatment standards for metal-bearing wastes of this type.

The Agency is considering several options for dealing with contaminated debris that are also hazardous due to their inherent metallic content. One alternative is to perform an appropriate extraction of the constituents and wastes that are contaminating the debris and then either macroencapsulate the remaining debris before land disposal or consider the debris treated

for purposes of the land disposal restrictions. Another alternative is to require that certain types of treated debris, e.g., lead pipe or chrome-plated fixtures, be recycled as scrap metal. The Agency is requesting comment on these approaches and on other approaches that may arise due to other types of debris materials captured in the hazardous waste management operations because of their inherent content.

F. Analysis of Capacity Data for Debris

EPA needs to determine the volume of debris contaminated with newly listed and identified wastes that currently are land disposed, in order to assess whether adequate alternative treatment capacity exists to treat these wastes. The Agency has already set LDR effective dates for debris contaminated with solvents and dioxin wastes, California list wastes, and First Third, Second Third, and Third Third wastes. However, the Agency will have to collect and evaluate all data on contaminated debris because EPA's current information is limited.

A comprehensive data base on the generation volumes and characteristics of contaminated debris, and the capacity of treatment technologies is important for the following reasons: To determine the volumes of debris contaminated with newly listed and identified wastes that may require alternative treatment; to assess the available capacity of treatment technologies suitable for debris contaminated with these wastes; and to identify the total volume of affected contaminated debris, which may include debris contaminated with regulated wastes in addition to newly listed and identified wastes.

Given current definitions, a wide range of products, materials, and items can constitute debris. Contaminated debris is generated at hazardous waste site remedial actions. However, the universe of contaminated debris is broader than that of contaminated soil, in that debris is generated by many industries and through many types of activities. The generation of contaminated debris can be classified into three broad categories:

(1) Debris from remedial actions (e.g., Superfund sites, RCRA corrective actions);

(2) Routinely-generated debris (e.g., refractory bricks, discarded drums and containers); and

(3) sporadically-generated debris (e.g., demolition of buildings).

Much of the contaminated debris requiring alternative treatment as a result of the LDRs is likely to be generated at sites other than those where remedial actions are undertaken. Therefore, data available on these sites (e.g., Superfund RODs, RFIs and RFAs) may be of limited use. EPA requests data from any source generating debris that may meet the definitions of contaminated debris.

Data on the generation and management of contaminated debris are generally scarce. In comments to the Third Third proposed rule (54 FR 48372), six commenters submitted data on the generation of contaminated debris from sources other than remedial actions. Specifically, Chemical Waste Management submitted a list of debris wastes it had received and found unsuitable for stabilization. Other reports listing various types of debris are available; however, no volume data are included in these reports other than data from debris at Superfund sites.

The National Survey of Treatment Storage and Recycling Facilities (TSDR Survey) and the National Survey of Hazardous Waste Generators (Generator Survey) contain data on the volumes of contaminated debris reported at RCRA facilities. However, these data are generally incomplete and have limited applicability.

The number and types of allowable management practices specified for contaminated debris will add complexity to the Agency's capacity analysis for contaminated debris. The Agency will be developing a method for measuring the available capacity for such treatment technology groups as destruction, extraction, and immobilization which may be used as general treatment standards for contaminated debris.

For previous capacity analyses, the Agency has examined full-scale, commercially available technologies. For contaminated debris, however, there are several innovative technologies being developed that are under Agency review. In particular, Superfund's ongoing SITE program has developed a number of technologies specifically designed for the treatment of contaminated debris. The Agency requests information on the availability and technical constraints of innovative technologies that can treat contaminated debris.

The Agency plans to consider contaminated debris from various sources other than remedial action sites. The Agency is currently identifying the various items that may meet the definition of debris and the industries and processes by which these items are generated. The volumes affected and the treatment technologies for these debris will determine the extent of the need for alternative treatment for contaminated debris. Thus, the Agency is requesting data on the volumes of routinely generated debris and sporadically-generated debris.

While the Agency plans to focus its capacity analysis of contaminated debris on volumes generated outside of remedial actions, readily available data from Superfund RODs were examined to characterize the volumes of contaminated debris from Superfund sites that may require treatment under the LDRs. The facilities reviewed included both Fund Lead remedial actions and Private Party Lead remedial actions. A significant number of RODs did not distinguish volumes of contaminated soil from contaminated debris. In addition, in recommending remedial technologies, RODs rarely indicated the relative quantities of contaminated debris that would be assigned to each technology. These data indicate that a high percentage of the total contaminated debris volume reported at Superfund sites is generated by relatively few facilities. If the majority of contaminated debris remains within the area of contamination, the LDRs may not be triggered.

The total volume of contaminated debris reported at Superfund sites for which RODs were signed in 1988 and 1989 is approximately 280,000 tons. This volume is likely to underestimate the total volume of contaminated debris generated at these sites. The Agency requests comments on this analysis. The Agency also requests data on contaminated debris subject to remediation at Superfund and RCRA Corrective Action sites including data on the actual volume of contaminated debris at each site; current and planned treatment technologies for contaminated debris; and the starting date and projected duration of cleanup actions involving contaminated debris.

V. Potential BDAT for Specific F, K, and U Listed Wastes Promulgated After 1984

EPA has promulgated a number of hazardous waste listings under 40 CFR 261.31, .32, and .33 since the enactment of HSWA in 1984. This section of today's notice describes the treatment and/or recycling technologies that have been identified for preliminary consideration as BDAT for twenty of these listings. The Agency also identifies potential transfers of existing treatment standards and provides preliminary capacity information that currently is available for these wastes. The Agency emphasizes that these determinations are preliminary in nature, and that any data submitted will be carefully

examined in preparing any proposed BDAT.

This section does not describe EPA's activities for all wastes that have been promulgated since 1984. A forthcoming advance notice of proposed rulemaking will describe EPA's activities for other newly identified and newly listed wastes including: Those recently listed under the TC rule (D018–D043); characteristic wastes from mining and mineral processing; spent potliners from aluminum manufacturing (K088); and listed wastes from wood preserving (F032, F034, and F035). Several wastes from coking operations and chlorotoluene production that currently are being considered for proposal as hazardous also may be addressed in this forthcoming notice.

A. Additional Organic U Wastes

This section addresses the investigation of BDAT and capacity for three specific wastes listed under 40 CFR 261.33 since November, 1984. These are identified with alphanumeric waste codes that start with a "U".

1. Ortho-toluidine and Para-toluidine (U328 and U353)

Ortho-toluidine and para-toluidine, which when discarded become U328 and U353, are manufactured from processes similar to those manufacturing dinitrotoluene and toluenediamine. U328 and U353, thus, may be similar to wastes identified as K111 and K112. The textiles industry and the dyes and pigments industry generate o-toluidine and p-toluidine as intermediates and reagents for printing textiles and making colors fast to acids in the dyeing process. Both compounds also are components in ion exchange column preparation, used as antioxidants in rubber manufacturing, and used as lab reagents in medical glucose analyses.

EPA is considering regulating U328 and U353 wastewaters and nonwastewaters by setting methods of treatment as standards. These methods of treatment appear to be the most appropriate type of treatment standard for these wastes, because the organic compounds for which the wastes are listed are considered to be relatively unstable in water and difficult to quantify. In addition, these two organic compounds resemble other organic compounds, namely 4-chloro-o-toluidine (U049) and o-toluidine hydrochloride (U222) for which similar standards have been promulgated.

The Agency, therefore, is considering the possibility of specifying incineration or thermal destruction as required methods of treatment for the nonwastewater forms of these wastes, and chemical oxidation followed by either biological treatment or carbon adsorption for the wastewater forms of these wastes. (While not a primary technology for wastewaters, incineration could be proposed as an alternative method of treatment for wastewaters.) Because these compounds may be considered to be relatively unstable in water, consistent quantification of o-toluidine and p-toluidine in raw wastes and treated residuals may preclude the development of a concentration-based standard for these wastes, i.e., the alternative to specifying methods of treatment.

EPA solicits detailed comment about: The compositions of these U waste streams, including both organic and possible inorganic components, the need for a dual set of treatment standards (i.e. methods of treatment for organic constituents and concentration-based standards for metals, if present), performance data demonstrating the treatability of these waste streams or similar waste streams by thermal, biological or other treatment processes, and analytical complications encountered or anticipated in quantifying constituents in these wastes.

2. 2-Ethoxyethanol (U359)

Since 2-ethoxyethanol is used in the printing, organic chemical manufacturing, and leather/tanning industries, it is likely that these industries may be generators of U359 wastes. It is used by these industries in various removers, cleansing solutions, and dye baths, as well as a solvent for inks, duplicating fluids, nitrocellulose, lacquers and other substances, and also is a chemical intermediate in 2-ethoxyacetate manufacturing. EPA anticipates that U359 is typically co-treated and co-disposed with F005 solvent wastes that are listed for 2-ethoxyethanol.

EPA is considering regulating U359 wastes by specifying incineration or thermal destruction for U359 nonwastewaters, and chemical oxidation followed by either biological treatment or carbon adsorption for U359 wastewaters. This is primarily because 2-ethoxyethanol is relatively unstable in water and thus particularly difficult to quantify. In the absence of an SW–846 method demonstrated to quantify 2-ethoxyethanol in complex waste matrices, methods of treatment standards are arguable more appropriate than concentration-based standards.

Since F005 wastes that are listed for 2-ethoxyethanol are expected to be similar to U359, the Agency also is considering establishing the standards established for F005 wastes to be the standards for U359. EPA solicits comment on any perceived differences in treatability of F005 wastes and U359, and whether the standards already established for F005 (2-ethoxyethanol) are appropriate for U359.

EPA solicits detailed comment about: The composition of these waste streams, including both organic and possible inorganic components, the need for a dual set of treatment standards (i.e., methods of treatment for organic constituents and concentration-based standards for metals, if present), performance data demonstrating the treatability of these or similar waste streams by thermal, biological or other treatment processes, and analytical complications encountered or anticipated in quantifying constituents of these wastes.

3. Currently Available Capacity Data for U328, U353, and U359

The Agency currently does not have data on the volumes of U328, U353, and U359 generated. The Agency believes that these chemicals are rarely discarded due to their value, and has assumed that these U wastes are not being discarded in significant quantities nor are they being discarded on a continuous basis. Based on these assumptions, there may be sufficient incineration or thermal destruction capacity to treat these wastes, provided incineration is selected as the BDAT. The Agency requests comments on these assumptions. Specifically, the Agency requests data on the generation and management of these wastes as both nonwastewaters and as wastewaters.

B. Recent Petroleum Refining Wastes (F037 and F038)

On November 2, 1990 (55 FR 46354), EPA expanded the list of hazardous wastes generated by the petroleum refining industry to include wastes identified as F037 and F038. These two newly listed wastes are generated from waste management units that produce primary and secondary sedimentation sludges. These sludges have waste characteristics similar to other petroleum refining waste identified as K048 and K051. For a more detailed description of all of these petroleum refining wastes, please refer to the appropriate final rules and listing background documents.

1. Characterization Data

The Agency has two sets of waste characterization data for untreated F037 and F038 wastes. One data set is a

compilation of data submitted by members of the regulated community in response to EPA's February 11, 1985, Notice of Data Availability (50 FR 5637). The other data set consists of waste characterization data collected by EPA and contained in an April 13, 1985, Notice of Data Availability (53 FR 12182).

The majority of the industry-submitted data did not contain enough site-specific information to determine whether each sludge would be classified as either F037 or F038. Therefore, these data were combined and viewed by EPA as waste characterization data for a combination of F037/F038 sludges. The characterization data generated by the Agency were summarized in a final report entitled "Summary of Data and Engineering Analysis Performed for Petroleum Refining Wastewater Treatment Sludges, Final Report." (This document is available in the RCRA docket for the April 13, 1985, Notice of Data Availability (53 FR 12182).) Facility site-specific information, such as schematics of the waste treatment units, were provided in this report. Using this information, each F037 and F038 sludge sample is identified and the corresponding waste characterization data is tabulated and documented.

The characterization data for F037 and F038 indicate that the wastes have not been tested for several organic constituents that are typically present in K048 and K051 (e.g., acenaphthene and anthracene). EPA requests additional characterization data for all organic constituents present in F037 and F038.

2. Potential BDAT

Since F037 and F038 are generated by the petroleum refining industry, and are generated by units similar in design and purpose to API separators and DAF float units generating K048 and K051, all of the applicable and demonstrated technologies for K048 and K051 wastes presumably would be applicable to F037 and F038. EPA, therefore, is examining the feasibility of transferring existing performance data for K048 and K051 to these wastes in order to develop treatment standards. These wastes not only come from similar waste generation operations, but they result from similar raw materials and, thus, are likely to contain similar treatability characteristics. In addition, these waste are often commingled and treated with K048 and K051 and are thus likely to be amenable to the same treatment to approximately the same levels.

EPA utilized data from solvent extraction, thermal desorption, and incineration in order to promulgate treatment standards for organics in the nonwastewater forms of K048 through K052. For the nonwastewater metals in those wastes, BDAT was determined to be stabilization. These technologies likely would be considered BDAT for F037 and F038 nonwastewaters.

Treatment standards for K048 and K051 wastewater organics are based on incinerator scrubber water data. However, for the reasons stated earlier, the Agency is requesting comments on the transferability of multi-source leachate wastewater performance data to F037 and F038. See also the discussion of potential universal treatment standards and the conversion of wastewater treatment standards based on scrubber waters in section III.A. and B. of today's notice, respectively. EPA specifically requests comments documenting the treatment of organics in wastewater forms of F037 and F038 by biological treatment, carbon adsorption, PACT treatment, and wet air oxidation. Based on the multi-source leachate data available on the constituents known to be present in F037 and F038 wastewaters, biological treatment would presumably be able to treat the organics potentially present in F037 and F038. For metals in wastewater forms of K048 through K052, BDAT was determined to be chemical precipitation with lime and sulfide followed by vacuum filtration.

In establishing BDAT for F037 and F038, EPA will be evaluating data and information on the potential impact on the performance of a given treatment technology due to expected variations in the chemical and physical composition of F037 and F038 wastes. The waste characteristics being examined include oil and grease content, heat content (BTU/pound), total suspended solids, total dissolved solids, total organic carbon, pH, fluorides, sulfides, chlorides, water content, and the concentrations of the hazardous constituents. Commenters submitting data on the effects of these parameters should clearly indicate the technologies used, the design and operation parameters used to account for these constituents, and waste characterization data for both untreated or treated wastes.

3. Currently Available Capacity Information

Available data on the quantities of F037 and F038 are derived from the Petroleum Refinery Data Base (PRDB) that was compiled from industry responses to a RCRA Section 3007 request for information. This data base contains unit processes, wastewater treatment, and waste generation data from 1983, for 182 of the 220 petroleum refineries listed in the 1984 Oil and Gas Journal Refining Survey. EPA has information that 204 refineries were operating at the beginning of 1969; of this total, EPA estimates that 149 of the refineries accounted for in the PRDB are expected to generate F037 and F038. This data base, however, provides limited information on management practices.

In the Regulatory Impact Analysis (RIA) for the final F037 and F038 listing, the Agency estimated that 40 to 75 percent of the refineries that generate non-K048 and non-K051 primary wastewater treatment sludge will be affected by the new listing, and that the remaining refineries will be affected by the Toxicity Characteristic (TC) final rule (55 FR 11798). From the PRDB, the Agency estimated that approximately 450,000 tons of non-K048 and K051 primary and secondary sedimentation wastewater treatment sludges are generated each year. Of this quantity, 170,000 to 330,000 tons per year, as generated (based on an average water content of 82 percent) might be affected by the new listing, and 120,000 to 280,000 tons per year might be affected by the TC rule. As with the number of affected refineries, the quantities of sludges affected by the new listing as opposed to the TC rule is uncertain.

4. Potential Overlap with the TC

The rule expanding the universe of wastes exhibiting the toxicity characteristic (TC) was promulgated on March 29, 1990 (55 FR 11798), and became effective on September 25, 1990, for large quantity generators and treatment, storage, and disposal facilities. The rule became effective on March 29, 1991, for small quantity generators. Because a sizeable fraction of the F037 and F038 sludges and/or the wastewaters from which these sludges are generated also may exhibit the TC characteristic, some of these wastes will be regulated as hazardous under the TC rule before the F037 and F038 listing rule becomes effective. The percentage of waste that will exhibit the TC is uncertain, and depends largely on the behavior of oily waste in the Toxicity Characteristic Leaching Procedure (TCLP).

EPA believes that some refineries may respond to the TC rule and the F037 and F038 listing by re-configuring their wastewater treatment process so as to generate sludge in API separators and DAF units. When sludge is generated in these units, it carries the K048 or K051 waste code and is subject to the LDR treatment standards for those wastes (effective November 8, 1990). The exact

quantities of newly identified F037 and F038 sludge that will be handled in this way is unclear, as is the amount of treatment capacity that will be required by the additional quantities of K048 and K051, which were not accounted for previously.

5. Additional Capacity Issues

EPA estimated the average water content of the F037 and F038 sludges as generated to be 82 percent, based on the water content of DAF sludges. Because of their high water content these wastes could be dewatered, which would result in significantly lower volumes requiring treatment. Some of the added dewatering capacity for K048–K052 also may be available for F037 and F038 wastes. Preliminary estimates suggest that standard filter presses can reduce water content to 50 to 60 percent. Additional thermal drying could reduce water content to as little as 4 percent.

The extent of dewatering can significantly effect the volumes of F037 and F038 sludges requiring treatment. For example, if EPA assumes the RIA estimated generation volumes for F037 and F038 sludges and further assumes dewatering to a 50 percent water content, the quantities of newly regulated sludges annually requiring on-site and off-site treatment could be reduced to a range of 104,000 to 201,000 tons. EPA needs updated data on the volumes of these sludges both as generated and after dewatering in order to conduct its capacity analysis.

In addition to the quantities of sludge generated annually, a number of refineries have accumulated large quantities of primary wastewater treatment sludge in surface impoundments. If after the effective date of the F037 and F038 listing the accumulated sludge is removed from the surface impoundments and re-managed by land disposal, it will be subject to regulation as hazardous waste and also subject to the pertinent LDRs after the treatment standards become effective. The Agency estimated in the RIA that about 474,000 tons (based on a water content of 55 percent for sludge sediments accumulated in impoundments) were accumulated in surface impoundments. The quantity of accumulated sludge that will be re-managed by land disposal is uncertain. Further analyses on timing of surface impoundment closures are needed to determine the impact on treatment capacity.

In response to the LDRs for K048 and K051, EPA has been advised that refineries are seeking additional waste treatment alternatives. However, it is unclear whether refineries have planned far enough in advance to develop sufficient capacity to account for F037 and F038 wastes as well (which may have the same BDAT as K048 and K051). Furthermore, EPA does not know whether this increased demand for capacity will be available on-site, off-site, at captive facilities, or how much of it will be for combustion as opposed to solvent extraction and high-temperature thermal distillation. EPA anticipates, however, that facilities whose industrial furnaces and boilers comply with the new provisions finalized in the **Federal Register** in the Boilers and Industrial Furnaces (BIF) Rule, 55 FR 7134 (February 21, 1991), also will be able to provide treatment capacity to treat these wastes.

F037 and F038 wastes are generated in units similar to those that generate K048 and K051. Therefore, the treatment technologies specified for K048 and K051 would probably be applicable to F037 and F038. EPA requests comments on the issues raised in this discussion. Specifically, the Agency requests data on the volumes of F037, F038, K048, and K051 that are being generated and will be generated in the future; the volumes of F037 and F038 which exhibit the TC; the average water content of these wastes as generated and as managed; on-site available or planned de-watering capacity; the current and planned management practices for these wastes; and the accumulated volumes of F037 and F038 in surface impoundments as well as the management plans for these sludges.

C. Wastes from the Production of Unsymmetrical Dimethylhydrazine (K107, K108, K109, and K110)

Four wastes generated in the production of 1,1dimethylhydrazine (UDMH) salts from carboxylic acid hydrazides were listed as hazardous on May 2, 1990 (55 FR 18496). For a detailed description of wastes K107 through K110, refer to the final rule listing these wastes as hazardous.

The Agency also proposed to list two additional wastes, K137 and K138, generated in the production of 1,1-dimethylhydrazine (UDMH) salts from carboxylic acid hydrazides as hazardous on May 2, 1990 (55 FR 18507). These two additional wastes were proposed for listing on the basis of comments received in response to the proposed listings of K107–K110 (49 FR 49556). For a detailed description of K137 and K138, refer to the **Federal Register** notice proposing to list these wastes as hazardous (55 FR 18507).

1. Potential BDAT

EPA is considering establishing BDAT for wastes from the production of UDMH by setting methods of treatment as the standard consistent with the Third Third final rule decision to regulate U098, 1,1-dimethylhydrazine. This decision established incineration as the method for nonwastewater forms of U098, and incineration or chemical oxidation with carbon adsorption for the wastewater form of U098. Treatment methods may be appropriate standards for these wastes because information developed in the Third Third rulemaking (available in the Third Third BDAT Background Document for U and P Wastes and Multi-source Leachate, Volume B) suggests that 1,1-dimethylhydrazine, a principal organic component of these wastes, is unstable in water and, thus, particularly difficult to quantify.

However, EPA also is considering setting concentration-based standards for UDMH wastewater and nonwastewater streams if they turn out to contain significant concentrations of other organic components that are analyzable and can act as surrogates for the dimethylhydrazine compounds by virtue of being more difficult to treat.

In addition to comments evaluating these possible regulatory options, EPA solicits information and comment regarding: The compositions of these waste streams, including both organic and possible inorganic components; the need for a dual set of treatment standards (i.e. methods of treatment for organic constituents and concentration-based standards for metals, if present); performance data demonstrating the treatability of these or similar waste streams by thermal, biological or other treatment processes; and analytical complications encountered or anticipated in quantifying constituents of these wastes. EPA will incorporate these data into any proposal to establish BDAT for these wastes.

2. Currently Available Capacity Data

Data available to the Agency suggest that these wastes are no longer being generated (see 55 FR 18496, May 2, 1990). Wastes K107–Kl10 and K137–K138 are generated when UDMH is produced using a specific production process. However, the only manufacturer using this process reportedly is not producing UDMH, as of May, 1990. EPA requests additional information on whether any generation of K137 and K138 currently is occurring and, if so, what waste volumes are generated and how the wastes are managed.

In addition, if K107 and K108 are being generated, some K107 waste may meet the EPA's definition of D002 corrosive waste (40 CFR 261.22) and some K108 waste may meet the EPA's definition of D001 ignitable waste (40 CFR 261.21). EPA promulgated treatment standards and made capacity determinations for D002 corrosive and D001 ignitable wastes in the Third Third rule (55 FR 22546, 22549), and all K107 and K108 wastes exhibiting those characteristics are presently subject to the D001 and D002 treatment standards.

D. Waste from the Production of Dinitrotoluene and Toluenediamine (K111 and K112)

On October 23, 1985, six wastes (K111 through K116) generated in the production of dinitrotoluene (DNT), toluenediamine (TDA), and toluene diisocyanate (TDI) were listed as hazardous (50 FR 42936). For a detailed description of the wastes, refer to the final rule listing these wastes as hazardous. Treatment standards for four of the six wastes, K113 through K116, were promulgated in the Second Third final rule (54 FR 26623). The Agency is planning to develop treatment standards for the two remaining wastes, K111 and K112.

K111, product wash waters from the production of dinitrotoluene via nitration of toluene, is generated at facilities engaged in manufacturing inorganic chemicals, dyes and pigments, explosives, and organic chemicals in the course of organic synthesis operations. K112, reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene, occurs in intermediate processes at facilities engaged in manufacturing photographic chemicals, plastics and resins, organic chemicals, and textiles and polyurethane, as well as in the production of toluenediamine as an end product.

1. Potential BDAT

EPA is considering how to regulate K111 and K112 wastewaters and nonwastewaters. Setting methods of treatment as standards is one approach, given that the major organic constituents of K111 and K112 (the dinitrotoluenes and toluidines) are relatively unstable in water, and SW-846 (and equivalent) test methods cannot quantify them reliably in order to require the regulated community to do so on a routine basis to prove compliance.

Characterization information indicates that K111 wastes are aqueous liquids with significant quantities of sulfuric and nitric acids, and are likely to be corrosive. Other organic components that could be present and potentially used as surrogates for concentration-based standards are dinitrotoluenes, nitrocresols, nitrophenols, and nitrobenzoic acid. K112 is an aqueous liquid with small quantities of toluenediamines. K111 and K112 wastes also may include metals such as nickel (from catalysts). EPA solicits comment on all possible treatment standards, including a treatment standard where a method such as incineration or chemical oxidation would be specified to ensure treatment of the organics, and concentration-based standards would be specified for the metals. The Agency also solicits analytical composition data for both the organic and metal constituents in the K111/K112 streams.

Incineration for nonwastewaters, and incineration or chemical oxidation followed by activated carbon adsorption for wastewaters are among possible treatment standards for K111 and K112 wastes. However, since information suggests that these wastes are currently treated by biological processes, with or without subsequent activated carbon treatment, EPA particularly is requesting data characterizing the treatability of these wastes in biological systems.

The alternative to establishing treatment standards expressed as required methods is to develop concentration-based standards. Concentration-based standards for the organics in K111 and K112 wastes would be appropriate if the toxic organics anticipated to be present are amenable to quantification in complex matrices. If surrogate organics can be identified that can be reduced significantly through wastewater treatment systems and data demonstrate that these organics are as difficult to treat, EPA may propose concentration-based standards for these wastes. EPA, therefore, solicits analytical data on the composition of these streams, in order to determine whether they contain constituents that can act as analytical surrogates to verify destruction of the organic constituents of concern.

2. Currently Available Capacity Information

The background documents for the proposed rule for the listing of these wastes estimated the annual generation of these wastes to be approximately 470,000 tons of K111 wastewater and 215,000 tons of K112 wastewater. Over 70 percent of the K111 and 75 percent of the K112 wastewaters are treated and discharged under Clean Water Act provisions. The remaining 140,000 tons of K111 and 54,000 tons of K112 are either land disposed or undergo other management practices that are currently unidentified. In the absence of information on the generation of K111 and K112, the Agency may use 195,000 tons as an "upper bound" estimate of the volumes of K111 and K112 wastewaters that are generated annually.

EPA currently does not have information regarding the availability of on-site treatment capacity for these TDI wastes (K111 and K112). In addition, the Agency currently does not have data on the volumes or characteristics of K111 and K112 residuals that may be generated during the treatment of K111 and K112 wastewaters. However, the Agency believes that nonwastewater residuals generated from biological treatment may not require further treatment prior to land disposal; EPA requests comments on this assumption.

Currently available data indicate that 195,000 tons of K111 and K112 wastewaters are generated annually and may require treatment prior to land disposal. The Agency requests additional data on the generation and management of K111 and K112 wastes, on available on-site treatment capacity at generating facilities, and on the volumes of wastewater residuals currently generated.

E. Wastes from the Production of Ethylene Dibromide (K117, K118, and K136)

Three wastes generated in the production of ethylene dibromide (EDB) were listed as hazardous on February 13, 1986 (51 FR 5327). For a detailed description of K117, K118, and K136, refer to the final rule listing these wastes as hazardous. Although EPA banned the use of ethylene dibromide (EDB) in the U.S., EPA believes that EDB wastes may still be generated by pesticide manufacturers intending to sell EDB overseas.

K117 is a liquid stream containing ethylene dibromide, bromoethane, bromochloroethane and chloroform. K118 is a solid waste consisting of spent adsorbents saturated with ethylene dibromide, 1,1,2-tribromomethane, bromochloroethane, bromomethane and bis(2-bromo)ethyl ether. K136 is an organic liquid with high concentrations of ethylene dibromide.

1. Potential BDAT

The EDB wastes K117 and K118 resemble very closely the organobromine wastes U029, U030, U066, U067, U068 and U225 regulated in the Third Third final rule. One standard for these wastes could be the concentration-based standards

developed from the data used to calculate the U029 (bromomethane), U030 (4-bromophenyl phenyl ether), U066 (1,2-dibromo-3-chloropropane), U067 (ethylene dibromide, EDB), U068 (dibromomethane) and U225 (bromoform) Third Third standards, since these data came from incineration of EDB wastes performed and monitored by EPA's Office of Toxic Substances.

Incinerating brominated organic compounds raises the issue of preventing emissions of molecular bromine (Br_2) from the incinerator by shifting the combustion reaction product equilibrium to favor the formation of hydrogen bromide (HBr). Limited data available to EPA suggest that adding sulfur to the combustion mixture prevents generation and subsequent emissions of molecular bromine.

However, EPA realizes that organobromine wastes offer unique opportunities for recycling—at least one facility is known to recover bromine from brominated wastes by thermal processing. Therefore, EPA requests documentation describing attempts at processing discarded organobromine compounds into commercial products. In addition, EPA solicits information documenting attempts, successful and otherwise, to incinerate brominated organic compounds while controlling bromine and bromide emissions from the incinerator stack.

In addition to comments evaluating these possible regulatory options, EPA solicits comment on the following issues: The compositions of these waste streams, including both organic and possible inorganic components; performance data demonstrating the treatability of these or similar waste streams by thermal, biological or other treatment processes; and analytical complications encountered or anticipated in quantifying constituents of these wastes.

2. Currently Available Capacity Information

In the proposed rule for the listing of EDB wastes, the Agency estimated the annual generation of K117 wastewaters to be approximately 26,000 tons, and 150 tons of K118 nonwastewater. The proposed rule does not provide an estimate of the volume of K136 nonwastewater that is generated. EPA's data on the generation of Kl17 and Kl18 reflects 1984 production levels of EDB. However, as already indicated, in 1984, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) banned the use of EDB as a fumigant. Therefore, the production of EDB may have decreased since 1984.

EPA lacks information on the generation of waste K136. However, the Agency believes that this waste, still bottoms from the purification of EDB, is not generated in significant quantities. The Agency also does not have data currently on the volumes of K117, K118, and K136 residuals that may be generated during treatment of EDB wastes.

Data available to EPA indicate that, in 1984, 26,000 tons of K117 and K118 wastes were generated annually. Given the low generation volumes of these wastes, it appears that there is likely to be sufficient capacity to treat K117 and K118. Although there is no volume data for waste K136, the Agency believes that this waste is not generated in large quantities, and that there probably is sufficient capacity to treat this waste if incineration is required. EPA requests comments on its current data and requests additional information on the generation and management of Kl17, K118, and K136 wastes.

F. Wastes from the Production of Ethylenebisdithiocarbamic Acid (K123, K124, K125, and K126)

Four wastes generated in the production and formulation of the fungicide ethylenebisdithiocarbamic acid (EBDC) and its salts were listed as hazardous on October 24, 1986 (51 FR 37725). For a detailed description of K123 through K126, refer to the final rule listing these wastes as hazardous.

In general, waste characterization information indicate that K123 wastes are aqueous liquids, K124 wastes are caustic aqueous liquids, K125 wastes are filtration and distillation solids, and K126 wastes are dry dust-like solids. Ethylene thiourea appear to be the primary organic component of all four wastes.

1. Potential BDAT

A potential means of establishing treatment standards for K123, K124, K125, and K126 wastes is to specify methods of treatment as BDAT. Methods of treatment may be appropriate for these wastes because the principal organic components of these wastes are ethylenebisdithiocarbamic acid (EBDC) and ethylene thiourea, both of which are relatively unstable in water and thus may be particularly difficult to quantify. EBDC, as U114, and ethylene thiourea, as U116, were regulated in the Third Third rulemaking, both with methods of treatment as standards. The methods of treatment which appear particularly appropriate for K123 through K126 wastes are incineration or thermal destruction for nonwastewaters, and incineration, thermal destruction, or chemical oxidation with activated carbon for wastewaters.

Concentration-based standards are alternatives to specifying treatment methods. EPA will only set concentration-based standards for organics in K123 through K126 wastes provided the wastes contain significant concentrations of the organics that are consistently amenable to quantification in complex matrices (i.e., the treatment residues) or provided surrogate treatment parameters can be identified. Available data suggest that none of the hazardous organic constituents of concern in K123 through K126 wastes are easily quantified in treatment residues from treatment of other types of wastes. Nevertheless, to determine whether concentration-based standards are appropriate for the organics in these four wastes, EPA solicits analytical data on their composition in both treated and untreated wastes. If other constituents or parameters can be identified that can act as analytical surrogates (i.e., indicators to verify destruction of the organic constituents of the stream that are difficult to analyze), EPA may be able to propose concentration-based standards using these surrogates. EPA also requests treatment performance data from attempts to treat these or similar wastes by thermal, biological or other processes. Furthermore, EPA requests composition and treatability data about all metal components of this waste.

2. Currently Available Capacity Information

K124 may meet EPA's definition of corrosive waste (40 CFR 261.22) and, therefore, may be a D002 characteristic waste. The Agency promulgated treatment standards and made capacity determinations for D002 corrosive waste in the Third Third rule (55 FR 22549). K124 waste that is also a D002 waste already may undergo neutralization or other treatment prior to land disposal.

The proposed rule for the listing of these wastes estimated the 1982 generation of EBDC wastes to be approximately 35,000 tons of K123 wastewater, 1,500 tons of K124 wastewater, 500 tons of K125 nonwastewater, and 15 tons of K126 nonwastewater. In the absence of more current data on waste generation, the Agency is likely to use the 1982 generation rates to make a preliminary assessment of capacity. In addition, in the absence of data on waste management practices, the Agency may use the entire volume of waste generated as an "upper bound" estimate

of the volume of waste that will be land disposed and, therefore, require treatment.

Data from the proposed rule for the listing of these wastes indicate that 35,000 tons of K123 and 1,500 tons of K124 wastewaters may require treatment annually. In the Third Third final rule (55 FR 22635, 22647), the Agency estimated that approximately 190,000 tons of biological treatment capacity and 65,000 tons of incineration capacity for liquids was available. Therefore, it appears that there may be sufficient capacity to treat K123 and K124 if biological treatment or incineration is chosen as BDAT.

Data from the proposed rule for the listing of these wastes indicate that 500 tons of K125 and 15 tons of K126 may require treatment annually. The Agency believes that residuals generated from the treatment of K123 and K124 wastewaters are not likely to require further treatment prior to disposal. Therefore, the volume of K123-K126 nonwastewaters requiring sludge or solid combustion may be 515 tons. It appears that there is sufficient capacity to treat these wastes. The Agency requests comments on this analysis and requests additional data on the generation and management of EBDC wastes.

G. Wastes from the Production of Methyl Bromide (K131 and K132)

Two wastes generated during the production of methyl bromide were listed as hazardous on October 6, 1989 (54 FR 41402). For a detailed description of wastes K131 and K132, please refer to the final rule for the listing of these wastes and the listing background documents. K131 wastes are acidic aqueous liquids containing methyl bromide, dimethyl sulfate and sulfuric acid, plus other brominated ethanes and methane- and ethane-based alcohols and ethers. K132 wastes consist of adsorbent solids saturated with liquids containing methyl bromide.

1. Potential BDAT

Methyl bromide and the compounds expected to be contained in the wastes resemble the organobromine compounds that were regulated as U wastes in the Third Third final rule. Appropriate standards for these wastes may be concentration-based standards developed from the data used to calculate the U029 (bromomethane), U030 (4-bromophenyl phenyl ether), U066 (1,2-dibromo-3-chloropropane), U067 (ethylene dibromide, EDB), U068 (dibromomethane) and U225 (bromoform) Third Third standards, particularly considering that this data came from incineration of EDB wastes.

Section V.E., above, discusses issues associated with incinerating and recycling brominated organic compounds. EPA solicits comments on those issues for brominated methane wastes such as these.

In addition to comments evaluating these possible regulatory options, EPA solicits information regarding: The composition of these waste streams, including both organic and possible inorganic components; performance data demonstrating the treatability of these or similar waste streams by thermal, biological or other treatment processes; and analytical complications encountered or anticipated in quantifying constituents of these wastes.

2. Currently Available Capacity Information

In the proposed rule for the listing of these wastes, EPA estimated the annual generation of methyl bromide wastes at maximum capacity to be approximately 14,000 tons of K131 wastewater and 150 tons of K132 nonwastewater.

K131 may meet EPA's definition of corrosive waste (40 CFR 261.22) and, therefore, may be a D002 characteristic waste. The Agency already has promulgated treatment standards and made capacity determinations for D002 corrosive waste in the Third Third rule (55 FR 22549). K131 waste that is also a D002 waste already may undergo neutralization or other treatment prior to land disposal. The Agency does not have any data indicating what fraction of K131 is also D002 characteristic or whether waste treated for corrosivity will require further treatment for organics.

In the absence of data on the current waste management practices for these wastes, the Agency is likely to use the entire volume generated as an "upper bound" estimate of the volume of waste requiring alternate treatment. The Agency does not have data currently on the volumes or characteristics of K131 residual wastes that may be generated during treatment of this waste. However, based on professional judgment, the Agency believes that treatment residuals may not require alternate treatment prior to land disposal.

Data currently available indicate that 14,000 tons of K131 wastewater are generated annually and may require treatment. Data from the proposed rule for the listing of these wastes indicate that 150 tons of K132 is generated annually. Given the relatively low generation volumes, it appears that there is likely to be sufficient capacity to treat both K131 and K132 wastewaters and nonwastewater residuals. The Agency requests comments on this analysis and specifically requests data on the current generation volumes of methyl bromide wastes, and off-site and on-site management practices for these wastes.

Dated: May 20, 1991.

William K. Reilly,

Administrator.

[FR Doc. 91-12512 Filed 5-29-91; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR Parts 51, 52 and 60

Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills; Proposed Rule, Guideline and Notice of Public Hearing

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 52 and 60

[AD-FRL-3780-9]

RIN 2060-AC42

Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and guideline and notice of public hearing.

SUMMARY: This proposal would add subpart WWW to 40 CFR part 60 for control of new sources and would propose emission guidelines and compliance schedules for existing sources under subpart C.

Subpart WWW would limit emissions from certain new and modified municipal solid waste (MSW) landfills. The proposed standards implement section 111(b) of the Clean Air Act (CAA) and are based on the Administrator's determination that emissions from MSW landfills cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The intent of the proposed standards is to require certain new MSW landfills to control emissions to the level achievable by applying the best demonstrated system of continuous emission reduction considering costs, nonair quality health and environmental impacts, and energy requirements.

The proposed emission guidelines implement Section 111(d) of the CAA which requires the Administrator to prescribe regulations under which the States will submit plans for the control of existing emissions of certain air pollutants for which new source performance standards (NSPS) have been established. The intent of the emission guidelines is to initiate State action to develop State regulations controlling air emissions from certain existing MSW landfills to the level achievable by applying the best demonstrated system of continuous emission reduction, considering costs, nonair quality health and environmental impacts, and energy requirements.

If requested, a public hearing will be held to provide interested parties an opportunity for oral presentations of data, views, or arguments concerning the proposed standards and emission guidelines.

DATES: *Comments.* Comments must be received on or before August 1, 1991.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by June 21, 1991, a public hearing will be held on July 2, 1991, beginning at 10:00 a.m. Persons wishing to present oral testimony must contact Ms. Julia Stevens of EPA at (919) 541-5578 by June 21, 1991. Persons interested in attending the hearing should call Ms. Stevens at the same number to verify that a hearing will be held.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Air Docket (LE-131), Attention Docket No. A-88-09, Room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Julia Stevens, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578.

Background Information Document. The background information document (BID), entitled "Air Emissions from Municipal Solid Waste Landfills—Background Information for Proposed Standards and Emission Guidelines," may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Refer to EPA-450/3-90-011(a). The discussion of the proposed section 111(d) emission guidelines in this BID satisfies the requirements of 40 CFR 60.22(b) that information be provided to States on the implementation of the guidelines. Throughout the preamble, this document will be referred to as the BID.

A regulatory impact analysis, entitled "Regulatory Impact Analysis of Air Pollutant Emission Standards and Guidelines for Municipal Solid Waste Landfills" was prepared as required by Executive Order (E.O.) 12291, and is available for review at the EPA's Air Docket Section, 401 M St. SW., Room M1500, Washington, DC.

Docket. Docket No. A-88-09, containing supporting information used in developing the proposed standards and guidelines, is available for public inspection and copying between 8:00 a.m. and 3:30 p.m., Monday through Friday, at the EPA's Air Docket, Waterside Mall, Room M1500, 1st Floor, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information on the regulation of MSW landfills, contact Ms. Alice H. Chow, Standards Development Branch, Emission Standards Division (MD-13), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5626.

For technical information, contact Mr. Mark Najarian, telephone number (919) 541-5393, Chemicals and Petroleum Branch, Emission Standards Division (MD-13), at the above address.

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in reading the preamble to the proposed standards and emission guidelines.

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VI. Administrative Requirements
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D. Office of Management and Budget Review

I. Introduction

A. Summary of Action

This notice proposes standards of performance for new MSW landfills under section 111(b) of the CAA and emission guidelines for existing MSW landfills under section 111(d). The standards and guidelines would require MSW landfills emitting greater than 150 megagrams per year (Mg/yr) (about 167 tons per year (tpy)) of nonmethane organic compounds (NMOC's) to design and install gas collection systems and then combust (with or without energy recovery) the captured landfill gases. This action addresses air emissions from MSW landfills which contribute to ambient ozone problems, air toxic concerns, and potential explosion hazards. The EPA has developed an overall agenda (see "The Solid Waste Dilemma: An Agenda for Action"; EPA/530-SW-89-019; February 1989) to address MSW disposal issues, and today's air emission standards and guidelines are just one component of this agenda. This rule will also have the ancillary benefit of reducing global loadings of methane, a gas under discussion by the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change convened by the United Nations.

B. New Source Performance Standards—General Goals

New source performance standards (NSPS or "standards") implement section 111(b) of the CAA, and are issued for categories of sources which cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. Today's standards would affect MSW landfills whose construction, modification, or reconstruction begins after a standard is proposed. An NSPS requires these sources to control emissions to the level achievable by "best demonstrated technology" (BDT) considering costs and any nonair quality health and environmental impacts and energy requirements. If it is not feasible to prescribe or enforce an emission limit, the CAA authorizes the Administrator to promulgate a design, equipment, or work practice or operational standard, or combination thereof.

C. Emission Guidelines—General Goals

The EPA develops emission guidelines under section 111(d) of the CAA for certain sources covered by NSPS. When an NSPS has been promulgated under section 111(b) for a category of sources, section 111(d) of the CAA requires that States submit plans which establish emission standards for existing sources and provide for implementation and enforcement of emission standards for the designated pollutant. In general, a designated pollutant is one that may cause or contribute to endangerment of public health or welfare but is not "hazardous" within the meaning of section 112 of the CAA and is not controlled under sections 108 through 110 of the CAA. For ease of discussion, existing facilities which emit designated pollutants are considered to be "designated facilities."

The EPA requires that States adopt and submit to the Administrator a plan implementing the section 111(d) guidelines within 9 months after the promulgation of the guidelines. The CAA further requires that the procedure for State submission of a plan shall be similar to the procedure for submission of State implementation plans (SIP's) under section 110 and mandates that EPA shall prescribe a plan according to procedures similar to those in section 110(c) if the State fails to submit a "satisfactory plan."

Section 111(d) requires EPA to approve State emission standards only if they reflect application of the best systems of emission reduction that are reasonably available for designated facilities. Accordingly, EPA has published a BID (Docket No. A-88-09, Item No. III-B-1) for the guidelines which describes available systems of emission control, identifies the best demonstrated systems considering costs, nonair quality health and environmental impacts, and energy requirements, and identifies the emission limitations that reflect the application of such systems. State plans will be approved if they include an emission standard equal to or more stringent than that specified in the guidelines. For health-related pollutants, as is the case for MSW landfill emissions, State emission standards must ordinarily be at least as stringent as the corresponding EPA guidelines to be approved (§ 60.24(c)).

The EPA recognizes, however, that a State may find application of today's proposed guidelines to be unreasonable in some situations and appropriate adjustments may be necessary on a case-by-case basis. The guidelines reflect the EPA's judgment of the degree of control that can be attained by various classes of sources taking into consideration the cost of achieving such emission reductions, nonair quality health and environmental impacts and energy requirements

The development of the emission guidelines are carried out in the context of a nationwide program encompassing an entire class of sources without consideration of the local air quality conditions that must be considered in nonattainment areas or in prevention of significant deterioration (PSD) in accordance with permitting activities associated with the CAA. In some cases, State standards may be more stringent than these guidelines in order to address concerns which are specific to a particular localized air quality situation. Moreover, States that believe additional control is necessary or desirable would be free to do so under Section 116 of the CAA.

D. Overview of This Preamble

This preamble will:

1. Summarize the important features of these proposed standards and guidelines by discussing the conclusions reached with respect to each of the elements in the decision summary.
2. Describe the environmental, energy, and economic impacts of the standards and guidelines.
3. Present a rationale for each of the decisions in the decision summaries for the standards and guidelines.
4. Discuss administrative requirements relevant to these actions.

II. Summary of the Proposed Standards and Guidelines

A. Source Category To Be Regulated

Today's proposed standards and guidelines would apply to certain new and existing MSW landfills. For purposes of these proposed regulations, an MSW landfill is defined as an entire disposal facility in a contiguous geographical space where household waste is placed on or in land. An MSW landfill may receive other types of waste as well.

The proposed NSPS would control air emissions from certain new MSW landfills. A new MSW landfill is defined as a landfill for which construction, modification, or reconstruction commences on or after today's date. The affected facility under the proposed NSPS is each new MSW landfill.

The proposed guidelines would require control for certain existing MSW landfills. An existing MSW landfill is defined as a landfill for which construction commenced prior to today's date. An existing MSW landfill may be active, i.e., currently accepting waste, or having additional capacity available to accept waste, or may be closed, i.e., no longer accepting waste nor having available capacity for future waste

deposition. The designated facility under the proposed guidelines is each existing MSW landfill that has accepted waste since November 8, 1987, or that has capacity available for future use.

B. Pollutant To Be Regulated

The pollutant to be regulated under the proposed standards and guidelines is "MSW landfill emissions." Municipal solid waste landfill emissions, also commonly referred to as "landfill gas," is a collection of air pollutants, including methane and NMOC's, some of which are toxic. The composite pollutant is proposed to be regulated under section 111(b), for new facilities, and is proposed to be the designated pollutant under section 111(d), for existing facilities. In order to reduce the burden and complexity of measuring and monitoring the various constituents of landfill gas, NMOC's are being specified as a surrogate for measurement purposes.

C. Best Demonstrated Technology

The proposed standards for new MSW landfills are based on the conclusion that BDT would require reducing MSW landfill emissions from new MSW landfills emitting 150 Mg/yr (167 tpy) of NMOC's or more with: (1) A well-designed and well-operated gas collection system and (2) a control device capable of reducing NMOC's in the collected gas by 98 weight-percent. The BDT does not specify collection and control systems for new landfills emitting less than 150 Mg/yr (167 tpy) of NMOC's.

The proposed guidelines for existing MSW landfills are based on the conclusion that BDT would require reducing air emissions of existing MSW landfills emitting 150 Mg/yr (167 tpy) of NMOC's or more with the same collection and control devices as required for new landfills. The BDT does not include collection and control systems for existing landfills emitting less than 150 Mg/yr (167 tpy) of NMOC's.

A well-designed and well-operated collection system would, at a minimum: (1) Be capable of handling the maximum gas generation rate, (2) have a design capable of monitoring and adjusting the operation of the system, (3) be able to collect gas effectively from all areas of the landfill that warrant control, and (4) be able to expand by the addition of further collection system components to collect gas from new areas of the landfill as they require control.

The control device included as part of BDT is an open flare capable of reducing NMOC emissions by 98 weight-percent. Open flares are applicable to all affected and designated facilities regulated by the proposed standards and emissions guidelines, respectively.

D. Format for the Standards and Guidelines

The format for the proposed standards and guidelines is a design and operational standard (or guideline) for the gas collection system, and a percent reduction requirement for the control device.

E. Proposed Standards and Guidelines

The major provisions of the proposed standards and guidelines are identical. The proposed standards and guidelines for MSW landfill emissions would require the periodic calculation of the annual NMOC emission rate at each affected or designated facility with a maximum design capacity or 100,000 Mg (111,000 tons) or more. At each facility where the calcualted emission rate is equal to or exceeds the regulatory cutoff of 150 Mg/yr (167 tpy) of NMOC's, the proposed standards and guidelines specify the installation of a well-designed gas collection system and one of several effective control devices to either recover or destroy the collected landfill emissions.

The proposed standards and guidelines are based on the use of active collection systems and open flares operated in accordance with the General Provisions for control devices (40 CFR 60.18). The EPA has also identified several other control devices which may be used to satisfy the 98-percent destruction criterion. The proposed standards and guidelines would allow the use of these control devices as well.

F. Performance Testing and Monitoring

Applicability. All affected and designated facilities would periodically calculate the NMOC emission rate in order to determine if the installation of collection and control systems would be required. The calculation is performed using default values provided in the proposed standards and guidelines. The calculation may also be performed using site-specific data. Proposed Method 25C provides instruction on site-specific sampling of the landfill gas, and is used to determine the concentration of NMOC's. Those landfills emitting less than the regulatory cutoff of 150 Mg/yr (167 tpy) of NMOC's would not need to install control equipment under the proposed standards and guidelines, and would therefore not need to perform additional testing or monitoring.

Compliance Demonstrations. For those landfills that are required to install collection and control systems, compliance with the proposed standards or guidelines for the gas collection system includes calculation of: (1) The maximum expected gas generation rate within the landfill in order to demonstrate that the system is designed to handle this flowrate and (2) the total area of influence of all the extraction wells within the landfill in order to demonstrate that this area equals the total landfill area warranting collection. Compliance also includes maintaining a negative pressure at the point where each extraction component (from the well or trench) is connected to the gas collection header. The EPA is proposing two additional test methods to use in these compliance demonstrations for the collection system. Method 3C would be used to measure nitrogen (N_2) in landfill gas, in order to determine if excessive air infiltration has occurred. Method 2E would be used to determine the landfill gas flowrate from the landfill.

Compliance demonstrations for open flares used in control of landfill emissions are specified in 40 CFR 60.18. If a control device other than an open flare conforming to § 60.18 is used, then the landfill owner or operator would demonstrate compliance with the proposed standards or guidelines by testing to demonstrate 98 percent emission reduction or an outlet NMOC concentration of 20 parts per million volume, dry (ppmvd), at 3 percent oxygen (O_2), using Method 25, to ensure continued compliance. The landfill owner or operator would provide to the Administrator or State agency information on: (1) The operation of the control device and (2) the process parameters that would indicate whether the device is properly operated and maintained. The Administrator may request additional information if warranted.

Monitoring Requirements. Monitoring requirements for the gas collection system would include monthly measurements of gauge pressure in the gas collection header. For the control or recovery system, monitoring would be required of parameters that indicate the gas stream is being continuously routed for destruction or recovery and that 98 percent emission reduction of NMOC's, or 20 ppmvd for enclosed combustors, is being continuously achieved.

G. Reporting and Recordkeeping Requirements

The proposed standards and guidelines include initial notification provisions. In addition, if the maximum design capacity of a landfill equals or exceeds 100,000 Mg (111,000 tons), the owner or operator would periodically

report the NMOC emission rate until such time that either the collection and control systems are installed, or the landfill closes permanently.

Under either the proposed standards or guidelines, there are specific reporting requirements addressing the design and installation of the collection and control systems. If a collection system is designed following the specifications in § 60.758, a notification of intent to install the system would be required within 1 year of the date when the NMOC emission rate reaches 150 Mg/yr (167 tpy). If an operator wishes to install a collection system based on the guidance provided in chapter 9 of the BID, but not conforming in all points to the specifications in § 60.758, a collection system design plan must be submitted for review within 1 year of the date when the NMOC emission rate reaches 150 Mg/yr (167 tpy).

After the installation of collection and control systems, a report of the initial performance test and semiannual reports would be required to verify proper design, operation, and monitoring of the collection and control systems. For those owners or operators installing a collection system based on the specifications provided in § 60.758, the initial performance test report would include the provisions and time table for adding wells as waste accumulates.

The proposed regulations would also require (and the proposed guidelines would specify) that the following records be maintained: The accumulated refuse in place; the periodic calculation of the NMOC emission rate; the collection system design (when applicable), including present and future well or trench locations, depths and spacing; the control device vendor specifications; the initial performance test results; and the monitoring parameters established during the initial performance test of the control device.

H. Compliance Times for the Guidelines

The proposed emission guidelines would stipulate that existing MSW landfills emitting above the regulatory cutoff of 150 Mg/yr (167 tpy) of NMOC's should achieve compliance with the guidelines for collection and control systems within 3 years from the time of promulgation of State regulations. The 3-year time period allows 90 days for the initial report; 2½ years for further site-specific testing (if elected by the owner or operator); preparation and review of a collection system design plan; installation of the collection and control system; and 90 days for a performance test. Some MSW landfills may already have collection and control systems in place, and may already be in compliance with the guidelines or may not require 3 years to bring their systems into compliance, but in most cases 3 years is expected to be required. In the case of existing MSW landfills whose NMOC emission rates reach the regulatory level of 150 Mg/yr (167 tpy) of NMOC's and whose owner or operator elected to perform site-specific testing in determining the NMOC emission rate, 2 years and 9 months would be required to achieve compliance and conduct a performance test, after the date of the first periodic report documenting emissions of 150 Mg/yr (167 tpy) or more. Some landfills could achieve compliance sooner, if the owner or operator elects to install collection and control systems without first performing all the site-specific testing available for the emission rate calculation, or if the testing, design, or installation activities were completed more quickly than expected. But in many cases, about 2½ years would be needed to conduct site-specific testing, design and install the systems, and another 90 days would be needed for a performance test.

The 3-month difference above is the result of what each time period includes. In the first case, the NMOC emission rate of the existing landfill is already greater than 150 Mg/yr (167 tpy) when the State regulations are promulgated. After promulgation, 3 months are allowed for the submittal of the first NMOC emission rate calculation, followed by 2 years and 9 months to complete the installation and testing of the system. In the second case, the NMOC emission rate has not reached 150 Mg/yr (167 tpy), and therefore the landfill would be filing NMOC emission rate reports periodically. The first report is required 3 months after the promulgation of the State regulations. Reporting would continue until the rate reaches 150 Mg/yr (167 tpy), and then 2 years and 9 months are also allowed after the report is filed to complete the installation and testing of the system. Since emissions at existing landfills will increase at varying rates, the period of time between the promulgation of the State regulations and the emission rate report that "triggers" the 2 years and 9 months will also vary from landfill to landfill.

III. Impacts of the Proposed Standards and Guidelines

Environmental, energy, and economic impacts of NSPS or guidelines are normally expressed as incremental differences between facilities complying with the standards or guidelines as proposed and those same facilities if no NSPS or guidelines were in effect. The level that assumes no NSPS or emission guidelines is in place is referred to as the baseline. At present, very few States or local air pollution control agencies have landfill regulations that address NMOC air emissions. Since few new landfills would be affected by these State or local regulations, air emissions from MSW landfills are assumed to be uncontrolled in the baseline. The environmental, energy, and economic impacts were computed relative to this baseline.

For most NSPS and emission guidelines, impacts are expressed in annual terms. In the case of the NSPS and guidelines for landfills, the proposed regulations require controls at a given landfill only after the increasing NMOC emission rate reaches the level of the regulatory cutoff. Additionally, the proposed regulations allow the collection and control devices to be shut down at each landfill after certain criteria are met. Therefore, at two different points in time, even though those points may be only a year or two apart, control may or may not be required at a given landfill. Controls would not be required over the same time period for all landfills. The impacts are a direct result of control; therefore, the annualized numbers for any impact change from year to year.

Because of the variability of impacts of the proposed standards and guidelines over time, EPA has judged that the net present value (NPV) of an impact is a more valuable tool in the decision process for landfills. The use of NPV allows for the evaluation of nationwide costs and benefits which occur over discrete time periods for individual sources. Thus, the impacts presented include both annualized estimates (and fifth year annualized impacts) and estimates expressed in terms NPV in 1992. The use of NPV is noted in the text.

A. Air

For new landfills (i.e., those projected to begin construction after today's date), the undiscounted NMOC emission reduction achievable under the proposed standards is estimated to be 4,080 Mg/yr (4,510 tpy) in 1997, which reflects reductions from baseline emissions of 9,250 Mg/yr (10,200 tpy) from refuse estimated to be in place in new landfills built between 1992 and 1997. Control of 87,800 Mg/yr (96,700 tpy) methane is also achieved from a baseline of 471,000 Mg/yr (519,000 tpy).

For existing landfills, the undiscounted NMOC emission reduction achievable under the proposed guidelines is estimated to be 404,000 Mg/yr (448,000 tpy) in 1997, a 79 percent

reduction from a baseline of 506,000 Mg/yr (557,000 tpy) with the methane reduction estimated to be 9,600,000 Mg/yr (10,500,000 tpy). Baseline methane emissions are estimated to be 18,100,000 Mg/yr (19,900,000 tpy) in 1997. As existing landfills are filled, closed, and replaced by new landfills, the emissions reductions achieved by the guidelines will decrease, while the reductions achieved by the standards will rise proportionately. These emissions reductions are summarized in Table 1.

TABLE 1.—SUMMARY OF NATIONWIDE COST ESTIMATES AND ENERGY IMPACTS FOR COLLECTION AND CONTROL OF AIR EMISSIONS FROM NEW AND EXISTING MSW LANDFILLS AT A STRINGENCY LEVEL OF 150 Mg/Yr [a]

	New landfills	Existing landfills
Potential emissions reduction:		
Net present value (10^6 Mg NMOC)	0.76	11
5th year annualized value (10^5 Mg NMOC)	30	183
Nationwide cost of collection/control (flare):		
Net present value ($10^9)	776	5,871
5th year annualized value ($10^9)	26	246
Nationwide net energy impacts:		
Energy required—flares: Net present value (10^6 Btu)	109,000	810,000
Energy Recovery—Gas Turbines: Net present value (10^6 Btu)	5.7×10^8	4.2×10^9

[a] Net present value is presented in 1992 terms. The 5th year is assumed to be 1997, if these standards are promulgated in 1992. One Mg equals 1.11 tons.

In comparison to the President's proposed initiative of planting a billion trees a year in response to climate change, based on carbon dioxide (CO_2) emissions, EPA has roughly estimated (in 1992 dollars) that 1.1 to 2.0 billion trees would need to be planted at a cost of 0.57 to 1.1 billion dollars in order to achieve an equivalent reduction in CO_2 as achieved by today's proposal. While EPA has attempted to quantify the relationship between the President's tree planting initiative and the equivalent CO_2 reduction achievable in this proposal, it should be noted that ancillary benefits associated with planting trees (such as the establishment of shade and wildlife habitat) could not be quantified.

Carbon dioxide is also an important greenhouse gas contributing to climate change. Under the proposed standard, annual CO_2 emissions would increase, proportional to the relative use of flares compared to energy recovery for control. It should be noted, however, that methane contributes considerably more to climate change on a weight basis than CO_2. Thus, the reduction of methane emissions is expected to have a positive impact on global climate change.

Many constitutents of MSW landfill emissions are carcinogenic or can cause other adverse health effects. The reduction in landfill emissions would result in a reduction of these risks from exposure to these constituents.

The use of energy recovery devices for the control of MSW landfill emissions has the potential to reduce secondary air impacts at coal-fired utility plants. This is because the air impacts of coal-fired energy generation are larger than those of landfill gas-fired energy generation. Since EPA cannot reliably predict how many owners or operators would elect to use energy recovery, the magnitude of this potential impact cannot be quantified at this time.

Certain by-product emissions, such as nitrogen oxides (NO_x), carbon monoxide (CO), NMOC's, sulfur oxides (SO_x), and particulates, may be generated by the combustion devices used to reduce air emissions from MSW landfills. The types and quantities of these by-product emissions vary depending on the control device. However, by-product emissions are very low compared to the achievable NMOC and methane emission reductions. Chapters 4 and 6 of the BID present additional information about the magnitude of potential secondary air impacts.

B. Other Environmental Impacts

Water. Landfill leachate is the primary potential source of water pollution from an uncontrolled landfill. Although there is no data on the effect of gas collection on leachate composition, the amount of water pollution present as NMOC's in the leachate may be reduced under these standards and guidelines.

When landfill gas is collected, organics and water are condensed inside the header pipes of the gas collection system. This waste also contains NMOC's and various toxic substances present in the landfill gas. The pH of this condensate is normally adjusted by adding caustic at the landfill and then routing it to a public treatment facility. This does increase the amount of these substances entering the public water supply. There is insufficient data available to quantify this effect at this time.

Solid Waste. The proposed standards and guidelines will likely have little impact on the quantity of solid waste generated nationwide. The required controls do not generate any solid waste. However, the increased cost of landfill operation resulting from the proposed control requirements may cause greater use of waste recycling and other alternatives to landfill disposal, but quantification of such an impact is not possible at this time.

Implications of the Rulemaking for Superfund. Municipal solid waste landfill sites comprise approximately 20 percent of the sites placed by EPA on the National Priorities List (NPL). Often, remedial actions selected at these sites include venting methane and volatile organic contaminants, and airborne emissions are treated if determined necessary to protect human health and the environment.

The emission standards and guidelines in this rule may affect remedial actions under Superfund for MSW landfills. Section 121(d)(2) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) requires compliance with the substantive standards of applicable or relevant and appropriate requirements (ARAR's) of certain provisions in other environmental laws when selecting and implementing on-site remedial actions. "Applicable" requirements specifically address a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance at a Superfund site. "Relevant and appropriate" requirements are not legally applicable, but may address problems or situations sufficiently similar to those encountered so that their use is well suited to a particular site. See 40 CFR 300.5 (55 FR 8814, 8817, March 8, 1990).

As stated in this preamble, the air emission regulations will apply to new MSW landfills, as well as to those facilities that have accepted waste since November 8, 1987, or that have capacity available for future use. For CERCLA municipal landfill remediations, these requirements would be potential ARAR's for all Records of Decision (ROD's) signed after the rules' promulgation date. The standards and guidelines in this rulemaking, once promulgated, will be applicable for those municipal landfill sites on the NPL that accepted waste on or after November 8, 1987, or that are operating and have capacity for future use. The standards may be determined relevant and appropriate for sites that accepted wastes prior to November 8, 1987. The determination of relevance and

appropriateness is made on a site-specific basis pursuant to 40 CFR 300.400(g) (55 FR 8841, March 8, 1990).

Energy. Regulated landfills with NMOC emission rates of 150 Mg/yr (167 tpy) or more would be required to install a gas collection system and control device. The gas collection system would require a relatively small amount of energy to run the blowers and the pumps. If a flare is used for control, auxiliary fuel should not be necessary because of the high heat content of landfill gas, commonly 1.86×10^7 Joules per standard cubic meter (J/scm) [500 British thermal units per standard cubic foot (Btu/scf)] or more. If a recovery device such as a gas turbine is used, an energy savings would result.

The EPA evaluated the overall energy impacts resulting from the use of flares or gas turbines for control of collected emissions at all affected landfills. The results of this analysis are presented below. The impacts are expressed as NPV in 1992.

If all new landfills opening between 1992 and 1997 requiring control use flares, the annualized energy requirements would be equivalent to about 543 barrels per year of No. 6 fuel oil. If all new controlled landfills are equipped with gas turbines, the energy to run the blowers and pumps would be offset by the recovery of the methane, resulting in annualized energy savings of approximately 2.8 million barrels per year of No. 6 fuel oil.

If all existing controlled landfills use flares, the annualized energy requirements would be equivalent to about 4,030 barrels per year of No. 6 fuel oil. If all existing controlled landfills are equipped with gas turbines, the annualized energy savings is approximately 21 million barrels per year of No. 6 fuel oil.

The actual energy impact for either new or existing landfills would be somewhere between the values for flares and gas turbines. Even the worst-case scenario results in a very small energy requirement, considering that domestic oil use is currently in the range of 15 to 20 million barrels per day or 5 to 7 billion barrels per year.

C. Control Costs and Economic Impacts

Nationwide annualized costs estimates for collection and control of air emissions from new MSW landfills are estimated to be $26 million. The nationwide cost of the proposed guidelines would be approximately $240 million. In comparison to other solid waste-related proposals, the nationwide costs of the recently proposed RCRA Subtitle D rule are estimated to range from $691 per year to $880 million per year and the estimated nationwide costs of the recently promulgated MWC rules are estimated to be $170 million per year for new combustors and $302 million per year for existing combustors.

Preliminary economic analysis indicates that the annual cost of waste disposal may increase by an average of less than $1 per ton for the proposed NSPS and the proposed guidelines. Costs per household would increase less than $3 to $5, when the household is served by a new or existing landfill, respectively. Additionally, less than 10 percent of the households would face annual increases of $30 or more per household as a result of the proposed NSPS and guidelines. However, EPA anticipates that many landfills will elect energy recovery systems, and costs per household for those areas would be less. The EPA has concluded that no households would incur severe economic impacts. For additional information, please refer to the regulatory impact analysis (Docket No. A-88-09, Item No. II-F-1).

IV. Rationale for the Standards and Guidelines for Municipal Solid Waste Landfill Emissions

A. Background

The regulation of MSW landfill emissions originally was considered during deliberations under a RCRA Subtitle D rulemaking. In 1987, the Administrator decided to regulate these emissions under the authority of the CAA. This decision was announced in the **Federal Register** on August 30, 1988 (53 FR 33314).

Today's action proposes standards under the regulatory authority of section 111(b), which will regulate new landfills which commence construction after today's date, and emissions guidelines under the authority of section 111(d), which will regulate existing landfills. The source of landfill emissions is essentially the same at both new and existing landfills; therefore, in general, the control of these emissions would be the same as well. Throughout this preamble, where clear distinctions arise, the rationales for the EPA actions affecting new and existing landfills are discussed separately. Otherwise, the discussion applies to the proposed standards and emission guidelines.

B. Selection of the Source Category

The EPA is proposing to list MSW landfills as a source category which causes, or contributes to, air pollution that endangers public health or welfare. This decision is based on evidence from EPA and State studies that MSW landfills release air pollutants that have adverse effects on both public health and welfare. In this section of the preamble, EPA discusses this evidence.

Municipal solid waste landfill emissions consist primarily of methane and CO_2, with trace amounts of more than 100 different NMOC's such as ethane, toluene, and benzene. These emissions, commonly called "landfill gas," are formed from the anaerobic decomposition of the refuse in MSW landfills. The landfill gas is generated by naturally occurring methanogens that decompose complex organic materials into organic compounds of lower molecular weight. The methane in the landfills acts as a stripping (or transport) gas, moving the NMOC's present in the landfills through the landfill to the atmosphere. There are several concerns for public health and welfare associated with emissions from MSW landfills. These landfill gas emissions have adverse health and welfare effects resulting from NMOC's. These NMOC's contribute to ozone formation; some are known or suspected carcinogens or cause other noncancer health effects. The NMOC's in landfill gas emissions can cause an odor nuisance and the methane has caused explosions and fires resulting from its migration to on- and off-site structures or enclosures. In addition, the proposed rule will have the ancillary benefit of reducing methane, a gas under discussion by the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change, convened by the United Nations.

Emission Estimates. Estimates taken from "The Office of Solid Waste Survey of Municipal Landfills" (Docket No. A-88-09, Item No. II-A-25), a database developed from a MSW landfill survey conducted in 1986, indicate that there were approximately 6,000 active MSW landfills nationwide in 1987. The EPA estimates that NMOC emissions from these landfills total approximately 255,000 Mg/yr (283,000 tpy). The NMOC's are primarily volatile organic compounds (VOC's) contributing to the ambient ozone problem. Roughly 1.0 percent of the NMOC emissions from stationary sources nationwide are emitted by MSW landfills. Additionally, methane emissions from MSW landfills nationwide total approximately 10.5 million Mg/yr (12 million tpy).

The EPA predicts that in the first 5 years after the NSPS goes into effect, about 940 new landfills will be built to accommodate increasing waste production and replace existing landfills that reach capacity and close. Total NMOC emissions from these new landfills would be over 52,000 Mg/yr

(58,000 tpy) when they are filled to design capacity. While it is difficult to project the actual number of new landfills, the emission estimate is mainly a function of the amount of waste generated. Therefore, uncertainty about the number of new landfills does not greatly affect the estimate of the quantity of emissions.

Health Effects. The NMOC's present several hazards to human health. The NMOC's participate in chemical reactions leading to the formation of ozone, which causes health effects. Also, certain NMOC's have cancer risks and cause noncancer health effects.

Ozone is created by sunlight acting on NO_x and NMOC's in ambient air. Ozone leads to alterations in pulmonary function, aggravation of pre-existing respiratory disease, damage to lung structure, and adverse effects on blood enzymes, the central nervous system, and endocrine systems. Ozone also warrants control due to its welfare effects, specifically, reduced plant growth, decreased crop yield, necrosis of plant tissue, and deterioration of certain synthetic materials such as rubber (Docket No. A-88-09, Item Nos. II-A-26, II-I-16, etc.).

There is also concern about cancer risks from landfill NMOC emissions. In reviewing limited emissions data from MSW landfills, EPA identified both known and suspected carcinogens such as benzene, carbon tetrachloride, chloroform, ethylene dichloride, methylene dichloride, perchloroethylene, trichloroethylene, vinyl chloride, and vinylidene chloride. However, toxics emissions data were not available from most MSW landfills. The EPA attempted to apply statistical methods to the limited data to generate the average annual increased cancer incidence and the maximum individual risk (MIR). In evaluating the results of the calculations for annual incidence and MIR, EPA could not determine reasonable estimates of either an annual incidence or the MIR. The EPA believes the uncertainties in the database are too great to calculate credible estimates of the cancer risks associated with MSW landfills.

At least 12 pollutants, such as benzene, chloroform, and ethylene dichloride, contained in MSW landfill emissions, have the potential to produce health effects other than cancer. Noncancer health effects associated with these pollutants include adverse effects on the kidneys, liver, and central nervous system. A qualitative discussion of noncancer health effects is presented in chapter 2 of the BID. However, due to limitations in the data describing the link between emissions and these effects, EPA is unable to quantify the noncancer health effects at this time.

After considering what statutory approach to use in regulating MSW landfill emissions, EPA announced the decision to regulate these emissions under section 111 of the CAA in the **Federal Register** on August 30, 1988 (53 FR 33314). When this decision was made, EPA was cognizant that section 112 of the CAA (which can be used to develop NESHAP) could have been used. However, given the uncertainty and difficulty in setting standards under section 112, EPA decided to proceed with standards development under section 111. Now that EPA is proposing standards to regulate MSW landfills, EPA has found no reason to change that initial decision to regulate these emissions under section 111 of the CAA.

Fire and Explosion. A third reason MSW landfill emissions warrant control is the well-documented danger of fires and explosions, both on- and off-site. Decomposition of the wastes in landfills produces explosive methane gas. If this methane migrates and accumulates in structures or pockets, such as basements, crawl-spaces, utility closets, or false ceilings, fires and/or explosions can result. The EPA has documented many cases of acute injury and death caused by explosions and fires related to municipal landfill gas emissions. In addition to these health effects, the associated property damage is a welfare effect. Furthermore, when the migration of methane and the ensuing hazard are identified, adjacent property values can be adversely affected (Docket No. A-88-09, Item Nos. II-I-6, II-I-7, etc.). Subtitle D of RCRA will require owners and operators of MSW landfills to monitor for methane to ensure that the concentration of methane gas does not exceed either: (1) 25 percent of the lower explosive limit in facility structures, or (2) the lower explosive level as the property border. If either level is exceeded, the owner or operator would be required to develop and implement a methane reduction plan. The control of air emissions under the CAA, which will result in reduced levels of methane, thus reducing the potential for fires and explosions, will complement the RCRA provisions. The risk of fire or explosion has not been quantified due to the difficulty in describing emission levels which can be causally linked to these effects. Chapter 2 of the BID describes these effects in greater detail (Docket No. A-88-09, Item No. III-B-1).

Odor. Another aspect of MSW landfill emissions is the offensive odor associated with landfills. While the nature of the wastes themselves contribute to the problem of odor, the gaseous decomposition products are often characteristically malodorous and unpleasant. Various welfare effects may be associated with odors, but due to the subjective nature of the impact and perception of odor, it is difficult to quantify these effects. Studies indicate that unpleasant odors can discourage capital investment and lower the socioeconomic status of an area. Odors have been shown to interfere with daily activities, discourage facility use, and lead to a decline in property values, tax revenues, and payrolls (Docket No. A-88-09, Item Nos. 11-I-6, 11-I-7, etc.).

Global Climate Change. An ancillary benefit from regulating air emissions from MSW landfills is a reduction in the contribution of MSW landfill emissions to global emissions of methane. Methane is a major greenhouse gas, and is 20 to 30 times more potent than CO_2 on a molecule-per-molecule basis. This is due to the radiative characteristics of methane and other effects methane has on atmospheric chemistry.

There is a general concern within the scientific community that the increasing emissions of greenhouse gases could lead to climate change, although the rate and magnitude of these changes are uncertain. Efforts to reduce the uncertainties regarding the science of global climate change are ongoing within EPA and within the international community. This rule produces the ancillary benefit of reducing methane emissions, a gas under discussion by the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change convened by the United Nations, whether landfill owners and operators comply with the proposed standards through the use of control processes based on combustion or based on recovery.

Conclusion. In light of the level of emissions and potential public health and welfare effects described above, EPA proposes to list MSW landfills as a source category under section 111(b)(1)(A) of the CAA.

C. Selection of the Designated Pollutant

Today's notice designates air emissions from MSW landfills, hereafter referred to as "MSW landfill emissions," as the air pollutant to be controlled. The EPA views these emissions as a complex aggregate of pollutants which together pose a threat to public health and welfare based on the combined adverse effects of the various components. As previously stated, these components are methane and NMOC's, including various toxic substances. A number of factors determine the specific

proportion of each constituent of MSW landfill emissions, such as the composition, age, and amount of waste in the landfill, moisture content and pH of the refuse, climate, and the presence of nutrients and/or toxic substances in the landfill. Landfill management practices, such as waste segregation, may also affect the composition of the emissions generated. Given the variability of these factors, the exact composition of MSW landfill emissions can vary significantly from landfill to landfill and over time. Although the types of compounds are typically the same, the complex mixture cannot be characterized quantitatively in terms of single pollutants. The EPA thus views the complex air emission mixture from landfills to constitute a single designated pollutant.

The EPA has determined that this mixture, MSW landfill emissions, will be designated and regulated under sections 111(b) and 111(d) of the CAA. Section 111 standards can address a broad range of sources and pollutants " * * * which may reasonably be expected to endanger public health or welfare." Municipal solid waste landfill emissions are designated on the basis of both the health and welfare impacts described in the previous section. Although different effects may result from different individual constituents of the landfill gas, the constituents are emitted together and the same control technologies will control all the constituents of MSW landfill emissions. Therefore, control of these constituents can be achieved through regulation of "MSW landfill emissions." Furthermore, MSW landfill emissions may contain 100 or more individual compounds. Although it would be theoretically possible to measure all of the components, such a task would be extremely burdensome, expensive, and impractical. The standards and guidelines EPA is proposing provide a high level of control of total MSW landfill emissions, and avoid the administrative burden and expense of measuring all components of MSW landfill emissions by using NMOC concentration as a surrogate measure.

In conclusion, today's notice proposes to regulate air emissions from MSW landfills as a designated pollutant by the addition of subpart WWW to 40 CFR part 60. This action is warranted by the potential for adverse health and welfare effects posed by MSW landfill emissions as described above under section B, "Selection of the Source Category."

D. Selection of the Affected and Designated Facilities

In summary, EPA is proposing that the affected facility for regulating new sources under section 111(b) of the CAA is each MSW landfill that commences construction on or after today's date. Additionally, today's notice proposes that the designated facility for regulating existing sources under section 111(d) is each existing MSW landfill (i.e., landfill that commenced construction before today's date), if it was receiving waste at any time since November 8, 1987, or has additional capacity which may be filled in the future.

Landfills are also regulated under subtitles C and D of the Resource Conservation and Recovery Act (RCRA). Hazardous waste is regulated under subtitle C, and in general, household and nonhazardous wastes are regulated under subtitle D. The proposed NSPS, however, has been developed under the authority of the CAA. Under RCRA, a landfill means an area of land or an excavation in which wastes are placed for permanent disposal, and which is not a land application unit, surface impoundment, injection well, or waste pile. The Resource Conservation and Recovery Act further defines an MSW landfill as any landfill or landfill unit that receives household waste. This landfill may also receive other types of subtitle D wastes, such as commercial waste, nonhazardous sewage sludge from publicly owned treatment works, construction/demolition waste, and industrial solid waste.

In defining the affected facility as part of an NSPS for an industrial source category, EPA typically determines which emission point or group of points is the appropriate unit (the source) for separate emissions standards in the particular industrial context involved. Today's proposal defines the affected facility as the entire landfill rather than any subdivision of the landfill such as an individual cell. An "entire landfill" is the total landfill property designated for solid waste disposal irrespective of subdividing access roads or multiple ownership. The entire landfill is appropriately covered by the proposed standard because the emissions potential of the landfill, and the magnitude of the associated health and welfare effects, are determined by the total area in which refuse is deposited. Additionally, the controls and their costs estimated for this proposal are also associated with the entire landfill rather than with any smaller subdivision.

In establishing 111(d) guidelines for existing sources, EPA typically defines "designated facilities" (see 40 CFR 60.21(b)). For the same reasons described in selection of the affected facility, the designated facility is the entire landfill. In considering how to define the designated facility under section 111(d), EPA specifically evaluated the applicability of the guideline to inactive landfills. Unlike manufacturing facilities, which typically cease emissions once they have closed, a landfill will generate landfill gas long after closure, in some cases as long as 100 years. During the development of today's proposed standards and guidelines, EPA found that a typical landfill is likely to generate landfill gas at a maximum rate at, or soon after, closure and that the generation rate would steadily decline thereafter. At some time after closure, emissions will no longer be a concern.

Control of closed landfills would pose a number of administrative issues. Based on available information, EPA estimates that there are over 32,000 closed solid waste disposal facilities across the country (53 FR 33324, August 30, 1988). Many of these would be classified as MSW landfills because household waste was deposited in them. The histories of many of these landfills may not be documented by State regulatory programs and would be difficult to locate. An additional concern would be the difficulty in establishing accountability and financial responsibility for the installation and operation of controls at closed facilities for which ownership may be uncertain.

The retroactive application of operating requirements to closed facilities also raises policy concerns. The EPA generally does not require owners of closed sources to implement controls. These sources were presumably operating in compliance with applicable regulations prior to closure and establishing post-closure requirements may place undue burdens on these facilities.

Faced with the administrative and policy complexities of regulating closed facilities, EPA looked for an approach that was likely to lead to reasonable success in reducing emissions without establishing unreasonable requirements. The Hazardous and Solid Waste Amendments to RCRA of 1984 required States to establish a permit program or other system of prior approval to ensure that facilities that receive household hazardous waste or small quantity generator hazardous waste are in compliance with 40 CFR part 257, "Criteria for Classification of Solid

Waste Disposal Facilities and Practices." This permit program was to be established by November 8, 1987. This date was selected as the regulatory cutoff in the emission guidelines for landfills that are no longer receiving wastes because EPA judged States would be able to identify active facilities as of this date. The EPA views this permit program as a readily available resource for States to use in implementing today's guidelines and compliance schedules under section 111(d). Therefore, EPA is proposing to define a designated facility as an existing landfill that received waste on or after November 8, 1987, or has additional capacity which may be filled in the future.

The EPA is requesting comment about the ability of States to identify those landfills which may have closed after November 8, 1987, and the appropriateness of this date as a cutoff for applicability. The EPA typically does not establish operating standards through section 111(d) of the CAA for sources no longer operating. Further, since landfill emissions decline after closure, would it be more appropriate to limit the regulation to those facilities operating on the date of proposal? What additional emissions would occur if the applicability date was moved from November 8, 1987 to the date of proposal? The EPA also requests comments on the model used to estimate landfills emissions and the assumed emission profile.

E. Selection of Best Demonstrated Technology

Introduction. Under section 111(b), EPA proposes that new MSW landfills with annual emissions of NMOC's equal to or greater than 150 Mg/yr (167 tpy) would be required to be controlled through the use of gas collection systems and combustion devices (or equivalent systems). Under section 111(d), EPA would establish guidelines for existing MSW landfills that received refuse on or after November 8, 1987. The guidelines would specify that landfills with annual NMOC emissions equal to or greater than 150 Mg/yr (167 tpy) have collection and control systems. The same level of control has been selected as BDT for new and existing landfills.

Section 111(a)(1)(b) of the CAA requires that standards of performance for new sources reflect the—

> * * * degree of emission limitation and the percentage reduction achievable through application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.

Similarly, section 111(a)(1)(c) requires emission guidelines for existing sources to reflect the—

> * * * degree of emission reduction achievable through the application of the best system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated for that category of sources.

These systems are referred to as BDT for new and existing sources.

This section presents the rationales for selection of BDT for new and existing sources. Subsection 1 describes the gas collection and control technologies EPA evaluated in selecting BDT. The second subsection describes the analyses of regulatory alternatives for new and existing landfills. The rationales for selection of BDT for new and existing sources are presented in subsection 3. Finally, Subsection 4 describes the selection of the format of the standards and guidelines.

1. Discussion of Demonstrated Technologies

Today's standards and guidelines are based on gas collection and add-on control devices or systems. Today's proposed standards and guidelines would require that the air emissions from MSW landfills be collected and directed through an emission control device that achieves recovery or destruction of the NMOC's by at least 98 percent by weight. In selecting BDT for new and existing sources, EPA considered various technologies associated with gas collection and the control devices used to destroy the collected gas. The technologies described below would be equally applicable to both new and existing landfills.

Gas Collection. Typical landfill practices include application of a daily 0.15 meter (m) [6-inch (in.)] earthen cover over newly received refuse and a final cover of up to 0.6 m [2 feet (ft)] in thickness. This practice alone is inadequate to prevent release of MSW landfill emissions which continue through the cover long after the landfill is closed. There is no evidence that thicker final covers do any more than retard the emissions for a short period of time, with little or no effect on the overall mass emissions. In addition, MSW landfill emissions have the potential to migrate through the sides of the landfill or from places where the cover has been eroded over time. Thus, the emissions must be collected and destroyed to prevent release to the air.

One type of gas collection system presently in use is the passive collection system. Passive systems consist primarily of gas extraction wells, each of which may or may not be connected to a flare. However, passive wells are frequently vented to the atmosphere uncontrolled. Uncontrolled passive wells serve primarily to prevent gas migration and reduce fire and explosion hazard. Other public health and welfare concerns are not reduced by uncontrolled passive collection systems. The EPA believes that because these emissions are not reduced by uncontrolled passive collection systems, these systems are an ineffective control technology, and EPA therefore did not consider uncontrolled passive systems further during the selection of BDT.

Theoretically, a passive system could be as effective as an active system if each well or trench were equipped with an effective control device, and if the well or trench spacing were adequate to effectively collect gas from all areas of the landfill. However, due to their shorter radius of influence, an effective passive well system would need many more wells in a given area. The additional wells would result in higher overall costs. The EPA considers such passive well systems as being less cost effective than active systems for compatible volumes of collected gas.

Active collection systems are presently in use at more than 100 landfills and consist of two major components, gas extraction wells and/or trenches, and gas moving components. These systems employ mechanical blowers or compressors to create a pressure gradient, thereby extracting the MSW landfill emissions. The configuration of the wells or trenches and gas moving equipment, and the pressure gradient necessary to collect the emissions effectively without air infiltration from the surface and sides of the landfill, are affected by many site-specific factors. These factors include the gas generation rate, size and depth of the landfill, and refuse and cover permeability. A gas collection header system conveys the emissions to the control device(s).

Well-designed and well-operated gas collection systems, at a minimum, include the following capabilities: (1) The ability to handle the maximum gas generation rate predicted over the life of the equipment; (2) the ability to monitor and adjust the operation of the system as gas generation varies; and (3) the ability to be expanded as needed (i.e., to

collect gas from all areas of the landfill in which refuse has been or will have been deposited for at least 2 years). Chapters 4 and 9 of the BID discuss the considerations necessary in designing an effective gas collection system (Docket No. A-88-09, Item No. III-B-1).

Active collection systems are capable of conveying the emissions to a control device, which destroys or removes the NMOC's and methane, thereby reducing the public health and welfare concerns. Other systems have not been demonstrated to accomplish these goals. Therefore, well-designed and operated active collection systems were considered as an essential component in selection of BDT for MSW landfill emissions. The emission reduction, cost, and other impacts of applying active collection systems, along with control systems, to new and existing landfills are estimated in Subsection 2, "Analysis of Regulatory Alternatives."

Control devices. Gas treatment or control devices are the other major part of a control system for air emissions from MSW landfills. Gas treatment can be performed either by systems that burn the collected gas or by systems that purify the emissions by the removal of the CO_2 and other contaminants to produce pipeline quality gas. Control (treatment) systems that burn the emissions can be further divided into those based on destruction, such as flares and incinerators, and those based on energy recovery, such as boilers, turbines, and internal combustion (I.C.) engines.

Gas purification techniques are used to upgrade landfill gas to pipeline quality natural gas by the removal of water, condensible NMOC's, and CO_2. Since standard natural gas pipelines may not accept gas containing halogenated compounds and sulfur derivatives, removal of these compounds can be a part of a purification process design. Compounds that are removed are often vented to the air. In such cases, the purification system would not reduce the public health and welfare impacts of landfill emissions. The landfill gas generation rate, availability of customers, and local environmental issues are important limiting factors in the decision to install purification systems at MSW landfills. These systems would not be economically feasible for all landfills. Thus, EPA has not used gas purification techniques as a candidate BDT control device. However, even though they are not applicable to all MSW landfills, today's proposed standards and guidelines allow purification processes to be used to control landfill emissions, if gaseous vent streams from purification systems at MSW landfills are routed to control devices where a 98-percent overall reduction in NMOC's is achieved.

Flares are currently being used to control air emissions from MSW landfills. Good combustion in a flare is governed by flame temperature, residence time of NMOC's in the combustion zone, turbulent mixing of the combustion zone, and the amount of oxygen (O_2) available for combustion.

There are basically two types of flares: Open flares (i.e., flame is exposed), and enclosed flares. Open flares generally have one burner tip and can be located at ground level or can be elevated. Enclosed flares are usually composed of multiple gas burner heads and are staged to operate at a wide range of flowrates. They are often located at ground level. Good mixing in enclosed flares is the result of high velocity of the fuel gas at the burner nozzles. The enclosure reduces luminosity, noise, and heat radiation. Chapter 4 of the BID provides additional information about the design, combustion efficiency, by-product emissions, and available test data for flares.

The EPA has established criteria (40 CFR 60.18) to assure (specifying when) open flares achieve at least 98 percent destruction efficiency. This efficiency can be achieved only under certain design and operating parameters, as specified in 40 CFR 60.18. The EPA reviewed data on the flaring of MSW landfill gas using enclosed flares. These data were collected through State and local regulatory agencies. The EPA concluded that properly designed and operated flares, both open and enclosed, can achieve this efficiency with landfill gas. Additionally, flares can consistently achieve a 98-percent or higher destruction efficiency at a lower cost than the other nonrecovery combustion control systems considered. (Cost impacts and economic feasibility of the application of flares are presented in the analysis of regulatory alternatives in Subsection 2.) Thus, EPA has concluded that open flares as an add-on control device are a demonstrated technology for control of landfill emissions and will be considered, along with collection systems, as a basic component in the selection of BDT.

Several other control systems that EPA has determined have the potential to meet the 98-percent destruction criterion are discussed below. While these other techniques may not be technically or economically feasible at all landfills, and are, therefore, not the basis of BDT, they have been demonstrated to reduce emissions and could be used to meet the requirements of the standards or guidelines in cases where they are feasible. At some landfills, use of these techniques rather than flares could reduce the costs of compliance.

A second control method utilizing combustion without energy recovery for control of collected emissions is incineration. Incinerators have been demonstrated to achieve 98 percent or greater reduction, the same control level as flares. Incineration may be more or less expensive than flares, depending on site-specific factors (Docket No. A-88-09, Item No. 11-A-16), but in general they are likely to be more expensive than flares and may not be economically feasible in all cases. Therefore, while EPA would allow the use of incinerators, EPA has not based the calculation of the impacts of BDT on incinerators.

Energy recovery systems have also been demonstrated to achieve 98 percent emission control at landfills where their use is feasible. Energy recovery systems currently used to combust landfill emissions include I.C. engines, gas turbines, and steam-generating boilers. Power produced by these systems may be used to generate electricity or for heating. Each of these is briefly discussed below. Chapter 4 of the BID provides additional details of the operation, by-product emissions, and applicability of each of these systems to the control of MSW landfill emissions. Energy recovery systems have the potential to offset the cost of control. However, the capital cost for these systems is higher than for flares, and a site-specific study would be needed to determine the technical and economical feasibility of installing an energy recovery system for a given landfill. The EPA cannot predict the recovery potential with confidence for all existing or future MSW landfills without performing site-specific analyses. Additionally, EPA believes that landfill operators will themselves select recovery systems when it would make sense economically to do so. Therefore, EPA concluded that it would be inappropriate to further consider these systems in the selection of BDT. The BID for today's proposed standards and guidelines provides additional information that will be useful to landfill owners and operators in making decisions concerning energy recovery. In addition, this topic is discussed in Section K below, "Additional Considerations and Solicitation of Comments."

Internal combustion engines are in use at about 40 landfills. The type of engine used to recover energy from landfills is usually a 4-cycle, spark-ignited engine similar in design to the common gasoline engine. The I.C. engine is being used for landfills because of its short construction time, ease of installation, and operational capacity over a wide range of speeds and loads. Internal combustion engines can be operated to achieve a destruction efficiency of 98 percent or better.

Gas turbines, which generally achieve a destruction efficiency of 98 percent, are in use to recover energy at 18 U.S. landfills (Docket No. A-88-09, Item No. II-B-24). A gas turbine is a heat engine that converts fuel energy into work using compressed hot gas as the working medium. Gas turbines take large amounts of air from the atmosphere, compress it, burn fuel to heat it, then expand it in the power turbine to develop shaft horsepower. Ambient air is compressed and combined with fuel in the combustor. The combustor exhaust stream flows to the power turbine which converts some of the stream's fuel energy to rotary shaft power. This shaft power drives the inlet compressor and an electrical generator. The applicability of gas turbines to a given landfill will depend on the quantity of landfill gas generated, the availability of customers, the price of electricity, and local environmental issues.

At a few landfills, energy recovery is achieved with industrial boilers, i.e., a boiler with a heat input of 2.9 to 29 megawatts (MW) (10 to 100 million Btu/hr), of the watertube design. In a watertube boiler, hot combustion gases contact the outside of heat transfer tubes, which contain hot water and steam. Heat is transferred via these tubes to collection drums, which collect and store the heated water and steam. Landfill gas-fired boilers may be utilized in two ways. On-site landfill gas may be routed to an on-site boiler to produce heat or hot water, or to produce steam, which in turn is fed to a steam turbine to generate electricity. The landfill gas may alternatively be piped and sold to an off-site boiler. Three of the five landfill gas-fired boilers presently operating are utilized as simple heat or hot water sources. There are at least two landfill gas-fired boiler-to-steam turbine facilities currently operating in the United States (Docket No. A-88-09, Item No. II-B-24).

2. Analysis of Regulatory Alternatives

Introduction. The "Discussion of Control Technologies" section indicates that there is basically one approach to reducing landfill emissions—gas collection and control. However, EPA recognizes that not all landfills warrant control, especially given the variability in the quantity of landfill emissions from a specific landfill and the cost of reducing these emissions. In addition, EPA recognizes that landfill emissions increase in quantity as more MSW is added to the landfill and that, after closure of the landfill, emissions decrease to the point that they no longer warrant control. Accordingly, EPA structured its regulatory analysis to decide *if* the installation of controls is warranted and *when* the controls are no longer warranted on a national basis and therefore could be removed. The EPA considered the results of this analysis in selecting BDT for new and existing landfills.

The Database. The EPA developed a database from which the impacts of applying the control technologies discussed above to new and existing landfills. In 1986, EPA sent municipal landfill survey questionnaires to 1,250 of the estimated 6,034 active MSW landfills in the United States. From this survey, EPA received responses for a total of 1,174 active MSW landfills (Docket No. A-88-09, Item No. II-A-25). Of the 1,174 landfills responding, the information provided on location, annual waste acceptance rate, refuse in place, age, depth, and design capacity were complete for 931 landfills. However, site-specific emission rates were not known and, therefore, were not reported to EPA. Because EPA needed emission rate information, it gathered gas generation rate and NMOC concentration information from literature, State and local air pollution control agencies, and industry test reports obtained through the authority of section 114 of the CAA.

The information from the 931 landfills was used with gas generation rate factors and NMOC concentrations to create two subsets of landfills: existing and new landfills. The existing landfills subset comprised all those landfills not closing prior to 1997. The new landfill subset was created by assuming existing landfills that will close between 1992 and 1997 are replaced by new landfills with similar characteristics. Each subset of landfills was evaluated for potential nationwide emission reduction under the regulatory alternatives discussed in the next section of this preamble. An algorithm was developed to track the landfill characteristics on an annual basis; determine annual emission rates; and determine, based on specific regulatory alternatives, if controls would be required and when they could be removed. The algorithm also estimated capital expenditures for initial placement of controls (i.e., flares) and routine equipment replacement, as well as operating and maintenance costs every year controls were in place. This tool allowed the development of regulatory alternatives and an estimation of the number of landfills affected by various regulatory alternatives, the potential emission reduction, and the cost of controlling the affected landfills. The impacts and trends presented in the remainder of this section are derived from this algorithm, and were scaled up from the 931 landfills in the database to estimate the number of landfills nationwide. Additional discussion of this algorithm is provided in Chapter 3 of the BID.

Regulatory Alternatives. Three regulatory alternatives were considered in selecting the standards for new landfills. The same alternatives were also considered in selecting the emission guidelines for existing sources. Each alternative was based on the use of estimated annual NMOC emission rates as the parameter for determining whether control would be required. Under each alternative, demonstrated gas collection and control systems would apply to landfills with annual NMOC emission rates higher than a specified level for that alternative. Annual emission rates were chosen as the cutoff parameter because, in general, it is the most practical way to select and implement the appropriate application of gas collection and control systems to MSW landfills. (See Subsection 4 below, "Selection of the Format of the Standards and Guidelines" for further discussion on this topic.)

Emission rates from a given landfill vary over time. After a landfill opens, emissions gradually increase as more waste is added. At some point in time, emissions may increase enough to warrant the use of gas collection and control devices. Emissions peak at or shortly after closure and then gradually decrease over time. Eventually, as emissions decline, emission reduction benefits of control are reduced and controls are no longer warranted. Therefore, under the regulatory alternatives, EPA would not only be determining the annual emission rate used to affect MSW landfills, but also would be implicitly determining when control systems must be installed and when they may be removed. This is also discussed in Subsection 4 below, and the following section entitled, "Selection of Requirements to Implement Best Demonstrated Technology."

The emission rate cutoff levels specified in Regulatory Alternatives 1, 2, and 3 are 25, 150, and 250 Mg/yr (28, 167, and 278 tpy) of NMOC's, respectively. In selecting regulatory alternatives, EPA performed a preliminary evaluation of many different emission rate cutoffs, ranging from 25 to 500 Mg/yr (28 to 555 tpy) (Docket No. A-88-09, Item No. II-B-32). As the cutoff level is lowered, the emission reduction, cost impact, and number of landfills at which controls must be installed increase. The three levels selected for further analysis (25, 150, and 250 Mg/yr [28, 167, and 278 tpy]) represent values in the high, middle, and low end of the range of impacts.

The emission and cost impacts in the tables are expressed in terms of NPV. Net present value is the value at one point in time of a flow of values across time. For this study, EPA used 1992 NPV's to allow comparison among alternatives with uneven flows of values. In the case for MSW landfills, both control costs and emission reductions vary year by year. Therefore, comparisons of alternative stringency levels include comparisons of net present values for both control costs and emission reductions.

For each regulatory alternative, the number of landfills controlled, national emission reduction, costs, and cost effectiveness were estimated. The costs are based on application of active gas collection systems and flares to those landfills above the specified emission level cutoffs. As described under "Control Devices," these control systems are demonstrated and would reduce emissions by 98 percent when applied to new or existing landfills.

Table 2 presents the number of new landfills at which control would be required and the emissions reductions EPA has predicted would result if the standard is set at 25, 150 or 250 Mg/yr (28, 167, or 278 tpy) for new landfills. The emission reductions for both NMOC's and methane are presented. Table 3 presents the national net annualized cost and cost effectiveness of each regulatory alternative for new landfills, in terms of cost per Mg (ton) of NMOC emission reduction. The incremental cost effectiveness, which compares each alternative to the next less stringent alternative, is also presented. Table 4 presents the number and distribution of new landfills, by capacity, that would be required to install controls under each alternative.

TABLE 2.—EMISSION REDUCTION ACHIEVED AT NEW MSW LANDFILLS FOR THREE REGULATORY ALTERNATIVES[a]

Regulatory alternative	Emission rate cutoff (Mg NMOC/yr)	Number of landfills affected	NMOC emission reduction[b]		CH_4[c] emission reduction[b]	
			Million Mg NMOC	Percent reduction	Million Mg CH_4	Percent reduction
1	25	247	0.99	90	51	82
2	150	87	0.76	69	36	57
3	250	41	0.63	57	27	43

[a] New landfills means those landfills constructed and opened in the first 5 years of the NSPS [between 1992 and 1997] to replace those existing landfills which will close during the same time period.
[b] All emission reductions are expressed as NPV (1992). The numbers presented have been rounded to two significant figures. The actual reduction potentials are given in the text. One Mg equals 1.11 tons.
[c] Methane.
Note: Baseline emissions for new MSW landfills are 1.1 million Mg NMOC and 63 million Mg methane. (NPV 1992.)

TABLE 3.—AVERAGE AND INCREMENTAL COST EFFECTIVENESS AT NEW MSW LANDFILLS FOR THREE REGULATORY ALTERNATIVES

Regulatory alternative	Emission rate cutoff (Mg NMOC/yr)	National annualized cost of control (million/yr)	Average cost effectiveness[a] ($/Mg NMOC)	Incremental cost effectiveness[b] ($/Mg NMOC)
1	25	45.2	1,416	[c] 2,731
2	150	26	1,020	[d] 1,588
3	250	19	897	[e] 897

[a] The average cost effectiveness for each alternative is calculated using the following formula:

$ACE = P_C/P_{ER}$

where:
ACE = average cost effectiveness
P_C = NPV of Operating + Capital Costs
P_{ER} = NPV of NMOC emission reduction

[b] The incremental cost effectiveness of going from one alternative to the next stringent alternative

$ICE = (P_O + P_C)_A - (P_O + P_C)_B / P_{ER}A - P_{ER}B$

where:
ICE = incremental cost effectiveness
P_O = NPV of operating costs
P_C = NPV of capital costs
P_{ER} = NPV of NMOC emission reduction
A = more stringent regulatory alternative
B = less stringent regulatory alternative

[c] Incremental cost effectiveness between Options 2 and 1.
[d] Incremental cost effectiveness between Options 3 and 2.
[e] Incremental cost effectiveness between Option 3 and baseline.
NPV = net present value.

TABLE 4.—DISTRIBUTION OF CONTROLLED NEW LANDFILLS FOR THREE REGULATORY ALTERNATIVES

Design capacity of affected landfills	Regulatory alternative		
	1	2	3
<1 million Mg	58	0	0
1-5 million Mg	121	32	10
5-10 million Mg	29	19	14
>10 million Mg	39	36	17
Total number of affected landfills	247	87	41

Note: One million Mg equals 1.11 million tons.

Tables 5, 6, and 7 present the same information about existing landfills.

TABLE 5.—EMISSION REDUCTION ACHIEVED AT EXISTING MSW LANDFILLS FOR THREE REGULATORY ALTERNATIVES[a]

Regulatory alternative	Emission rate cutoff (Mg NMOC/yr)	Number of landfills affected	NMOC Emission reduction[b]		CH_4[c] Emission Reduction[b]	
			Million Mg NMOC	Percent reduction	Million Mg CH_4	Percent reduction
1	25	1,884	13	92	411	81
2	150	621	10.6	79	266	52
3	250	386	9.6	71	200	39

NOTE: Baseline emissions for existing MSW landfills are 13.6 million Mg NMOC and 509.2 million Mg methane. (NPV 1992.)
[a] EPA projects that some 1,100 of the 6,000 existing active landfills, all of which were receiving wastes in 1992, will close prior to promulgation.
[b] NPV. The numbers presented have been rounded to two significant figures. See the test for the actual reductions potential. One Mg equals 1.11 tons.
[c] Methane.

TABLE 6.—AVERAGE AND INCREMENTAL COST EFFECTIVENESS AT EXISTING MSW LANDFILLS FOR THREE REGULATORY ALTERNATIVES

Regulatory alternative	Emission rate cutoff (Mg NMOC/yr)	National Annualized cost of control (million/yr)	Average cost Effectiveness[a] ($/Mg NMOC)	Incremental cost effectiveness[b] ($/Mg NMOC)
1	25	416	927	2,894[c]
2	150	240	555	2,075[d]
3	250	150	407	407[e]

[a] The average cost effectiveness for each alternative is calculated using the following formula:

$ACE = P_C/P_{ER}$

where:

ACE = avrage cost effectiveness
P_C = NPV of Operating + Capital Costs
P_{ER} = NPV of NMOC emission reduction

[b] The incremental cost effectiveness of going from one alternative to the next stringent alternative

$ICE = (P_O + P_C)_A - (P_O + P_C)_B / {}^{P}ER_A - {}^{P}ER_B$

where:

ICE = incremental cost effectiveness
P_O = NPV of operating costs
P_C = NPV of capital costs
P_{ER} = NPV of NMOC emission reduction
A = more stringent regulatory alternative
B = less stringent regulatory alternative

[c] Incremental cost effectiveness between Options 2 and 1.
[d] Incremental cost effectiveness between Options 3 and 2.
[e] Incremental cost effectiveness between Option 3 and baseline.
NPV = net present value.

TABLE 7.—DISTRIBUTION OF CONTROLLED EXISTING LANDFILLS FOR THREE REGULATORY ALTERNATIVES

Design capacity of affected landfills	Regulatory alternative		
	1	2	3
<1 million Mg	514	59	22
1-5 million Mg	837	266	181
5-10 million Mg	295	111	48
>10 million Mg	238	185	135
Total number of affected landfills	1,884	621	386

Note: One million Mg equals 1.11 million tons.

3. Selection of Best Demonstrated Technology

In the selection of BDT, EPA must weigh the emission reduction associated with application of a control system along with the costs, nonair quality health and environmental impacts and energy requirements associated with these systems. The decision is made separately in this section of the preamble for new and existing landfills, considering the impacts of the regulatory alternatives presented in the previous section and other relevant factors. The decision for new MSW landfills concerns defining BDT for landfills affected by section 111(b); the decision for existing MSW landfills concerns defining BDT for landfills affected by section 111(d). These are separate and distinct decisions.

In the analysis of regulatory alternatives presented below, EPA acknowledges that the discussion is atypical in that there is only one control technology to consider, i.e., the installation of collection systems which convey the collected gases to a control device. The discussion revolves around the question of when it is reasonable to require collection and control systems at a given landfill and when it is not.

However, because of the unique emission characteristics of landfills when compared to more traditional emission units, regulatory alternatives can be created by considering alternative emission levels at which to require the installation of BDT. The installation of BDT at varying NMOC emission levels results in a range of emission reductions, costs and cost-effectiveness values which may be compared and contrasted much as is done in the selection of BDT from among different control technologies.

In considering which alternative to propose as BDT, EPA decided to consider both NMOC's and methane reductions. However, these alternatives presented below are being evaluated and implemented using NMOC's as the engineering basis for the regulatory cutoff. This means that the cost-effectiveness numbers presented do not reflect a dollar value for the reduction of methane. Rather, EPA qualitatively considered the anticipated methane reduction when selecting the regulatory cutoff.

However, the EPA's Division of Global Climate is studying the problem of methane emissions, primarily in relation to the phenomenon of global climate change, and is developing strategies for reducing these emissions. This rulemaking presents considerable potential for methane reductions, resulting in benefits such as the abatement of global warming, reductions in odor nuisance, and potential energy savings resulting from the selection of energy recovery devices to meet the control requirements of the standard and guidelines. As global climate change policy develops, these benefits could lead to the direct consideration of methane reductions along with NMOC reductions in setting these standards and guidelines. In that case, the resultant incremental cost effectiveness, emission reductions and potential energy savings might indicate that a more stringent threshold emission level (using NMOC concentration as the engineering basis) is warranted. Such benefits as reduced global climate change and energy savings are not considered in the following discussion of the regulatory alternatives. Although EPA has decided to consider methane reductions only as an ancillary benefit in this proposal, EPA is soliciting comments on the pros and cons of selecting the threshold emission level based on the direct consideration of both NMOC and methane reductions.

New Landfills. As shown in Table 2, the NMOC emission reduction for new MSW landfills under Regulatory Alternative 3, the least stringent alternative, would be 0.63 million Mg (0.7 million tons), or a 57-percent reduction relative to baseline emissions, on a NPV basis. Regulatory Alternative 2 would result in an additional reduction of 0.13 million Mg (0.14 million tons), while Regulatory Alternative 1 would reduce emissions by another 0.23 million Mg (0.25 million tons) compared with Regulatory Alternative 2. These emission reduction impacts demonstrate that as expected, as the stringency increases (i.e., as the cutoff level becomes smaller) the NMOC emission reductions obtainable increases. Methane emission reductions shown in Table 2 follow the same trend. Under Regulatory Alternative 3, a methane reduction of 27 million Mg (30 million tons) would be achieved, with additional reductions of 9 and 15 million Mg (10 and 17 million tons) achieved by Regulatory Alternatives 2 and 1, respectively. With this in mind, EPA considered the number of landfills and cost and economic impacts of achieving these emission reductions in selecting among the regulatory alternatives.

The EPA first compared Regulatory Alternatives 1 and 2. The EPA found a large increase in the number of affected landfills and the incremental costs for Regulatory Alternative 1 when going from Regulatory Alternative 2 to Regulatory Alternative 1. Regulatory Alternative 1 affects nearly three times as many landfills as Regulatory Alternative 2 while obtaining proportionately smaller NMOC and methane emission reductions. For example, the average emission reduction achieved per landfill (i.e., total additional emission reduction/number of additional landfills controlled) under Regulatory Alternative 1 is approximately one half that achieved on average by the landfills controlled under Regulatory Alternative 2. Furthermore, the majority of the increase in costs is associated with landfills with design capacities <5 million Mg (<5.6 million tons), 25 percent of which have design capacities <1 million Mg (<1.11 million tons), that would only be affected under Regulatory Alternative 1. The national incremental cost effectiveness for Regulatory Alternative 1 would be about $2,731/Mg ($2,452/ton). However, this figure does not include the ancillary bvenefits of methane control, such as the abatement of global climate change, odor reductions, or energy savings resulting from the use of energy recovering control devices, which could be realized under Regulatory Alternative 1. Additionally, more than 30 percent of households served by new MSW landfills installing collection and control systems as a result of Regulatory Alternative 1 would incur annual costs in excess of $10. The EPA believes that the additional cost and the administrative burden of controlling this many additional landfills (particularly, many smaller landfills having design capacities <1 million Mg [<1.11 million tons]) may be unreasonable based on the consideration of NMOC's alone given the relatively small incremental emission reductions achieved. Although EPA has selected Regulatory Alternative 2 for proposal, EPA solicits comments on the pros and cons of Regulatory Alternative 1 in light of the additional environmental benefits that can be achieved by reducing greenhouse gases. The EPA may elect to promulgate such a standard, or a standard incorporating an intermediate alternative, should evolving global climate change policies indicate more control is warranted.

Next, EPA compared Regulatory Alternatives 2 and 3, which would require control at 87 and 41 new landfills, respectively. Regulatory Alternative 2 provides a proportional 21 percent increase in NMOC emission reduction and a proportional 33 percent increase in methane reduction in comparison to Regulatory Alternative 3. These reductions are achieved at costs per unit of NMOC emission reduction comparable to previous decisions of VOC control under Section 111 in cases where cocontrol of air toxics and other concerns are evident. Additionally, the average and incremental cost effectivenesses for NMOC's emission reduction shown in Table 3 do not consider the ancillary benefits of methane reduction, such as global warming abatement, reduction in explosion hazard, and reduction in odor nuisance. Nor do they include any consideration of the potential for energy savings, which would result in cost savings. Although these benefits have not been quantified, they support qualitatively the judgment that the incremental costs of Regulatory Alternative 2 are reasonable. As shown in Table 4, while Regulatory Alternative 2 affects about 46 more landfills than Regulatory Alternative 3, many of those additional landfills have design capacities of 1 million Mg (1.11 million tons) or more. Regulatory Alternative 3 would control about 40 landfills, but would not require control of several very large landfills which emit relatively large quantities of NMOC's (e.g., quantities greater than 150 Mg/yr [167 tpy]), which could pose significant health and welfare risks. Based on economic impact analysis, EPA believes

that neither Regulatory Alternative 2 nor Regulatory Alternative 3 should result in any households served by MSW landfills intalling collection and control systems incurring annual costs greater than $10. Based on this analysis, and considering the ancillary benefits of the significant methane reductions achieved, EPA concludes that Regulatory Alternative 2, and NMOC emission rate cutoff of 150 Mg/yr (167 tpy), results in reasonable economic impacts. Based on these considerations, EPA proposes an NMOC emission rate cutoff of 150 Mg/yr (167 tpy) as BDT (Regulatory Alternative 2) for new landfills.

In selecting Regulatory Alternative 2, EPA judged the application of well-designed gas collection systems and 98 percent efficient recovery/destruction control systems to landfills emitting more than 150 Mg/yr (167 tpy) of NMOC's to represent BDT for new landfills. The EPA finds that this is the best demonstrated technological system of continuous emission reduction for MSW landfills, taking into consideration costs and other relevant factors. Collection systems and control systems with 98 percent efficiency are demonstrated at about 25 landfills, and their application to those new landfills emitting 150 Mg/yr (167 tpy) of NMOC's or more will significantly reduce emissions without causing any unreasonable cost, environmental, or energy impacts.

The EPA believes that these controls are technologically feasible for landfills emitting less than 150 Mg/yr (167 tpy) of NMOC's. In light of growing concerns about global climate change, a more stringent regulatory option may well be reasonable in the future. For instance, if Regulatory Alternative 2 were set at 100 Mg/yr (111 tpy), an additional 6 percent reduction in NMOC's emissions could be achieved (methane emissions would decrease by an additional 9 percent). Only 17 additional new landfills, or a total of 104, would require control. The incremental cost effectiveness would increase only slightly when compared to 150 Mg/yr, from $1,588/Mg to $1,650/Mg. The EPA is still considering whether or not the additional benefits obtained under a stringency level of 100 Mg/yr are reasonable. However, for administrative and financial reasons, regulating to a more stringent level, such as Regulatory Alternative 1, 25 Mg/yr (28 tpy), may or may not be worthwhile. The EPA seeks comments on the pros and cons of a more stringent threshold level.

Existing Landfills. The NMOC emission reduction for existing landfills under Regulatory Alternative 3, the least stringent alternative, would be 9.6 million Mg (10.7 million tons), or a 71-percent reduction relative to baseline emissions. Regulatory Alternative 2 would result in an additional reduction of 1.0 million Mg (1.1 million tons), while Regulatory Alternative 1 would reduce emissions by another 2.4 million Mg (2.6 million tons) compared with Regulatory Alternative 2. As with new landfills, EPA found that these emission reduction impacts demonstrate that as the stringency increases (i.e., as the cutoff level increase) the NMOC emission reductions obtainable also increase. The methan reductions follow the same trend as the NMOC reductions, beginning with a reduction of 200 million Mg (222 million tons) under Regulatory Alternative 3, followed by cumulative reductions of 266 million Mg (295 million tons), and 411 million Mg (456 million tons) under Regulatory Alternative 2 and under Regulatory Alternative 1, respectively.

The number of landfills at which controls would be required, cost, and economic impacts of achieving these emission reductions were then considered in selecting among the three regulatory alternatives.

The EPA first compared Regulatory Alternatives 1 and 2. The EPA found a large increase in the number of affected landfills and the incremental costs for Regulatory Alternative 1 when going from Regulatory Alternative 2 to Regulatory Alternative 1. As was the case for new landfills, Regulatory Alternative 1 affects more than three times as many landfills as Regulatory Alternative 2 while obtaining proportionately smaller NMOC and methane emission reductions. Furthermore, the majority of the increase in cost is associated with landfills with design capacities <5 million Mg (<5.6 million tons) that would only be affected under Regulatory Alternative 1. Nearly nine times as many landfills with design capacities below 1 million Mg (1.11 million tons) would be required to install controls under Regulatory Alternative 1 than under Regulatory Alternative 2. The national incremental cost effectiveness for Regulatory Alternative 1 would be about $2,890/Mg NMOC's ($2,610/ton). However, this figure does not directly consider the ancillary benefits of methane control realized under Regulatory Alternative 1, such as global warming abatement, the reduction of odor nuisance, or the potential for energy savings resulting from the use of energy recovery control devices. Additionally, based on the economic impact analysis presented in BID Chapter 8, EPA believes that as many as 16 percent of the households served by MSW landfills installing collection and control systems in compliance with emission guidelines based on Regulatory Alternative 1 would incur annual costs in excess of $30. The EPA believes that the additional cost and the administrative burden of controlling this many additional landfills (particularly, many smaller landfills, having design capacities <1 million Mg [<1.11 million tons]) may be unreasonable based on the consideration of methane alone, given the relatively small incremental emission reductions achieved. Although EPA selected Regulatory Alternative 2 for proposal, EPA solicits comment on the pros and cons of this alternative, in light of the additional environmental benefits that may be achieved by reducing greenhouse gases. The EPA may elect to promulgate such guidelines, or an intermediate alternative, should evolving global climate change policies indicate that more control is warranted.

Next, EPA compared Regulatory Alternatives 2 and 3. Regulatory Alternative 2 provides a proportional 11 percent increase in NMOC emission reduction and a proportional 33 percent increase in methane reduction in comparison to Regulatory Alternative 3. These reductions are achieved at a per unit cost of emission reduction comparable to previous decisions for VOC control under Section 111 where cocontrol and other concerns are evident. The average and incremental cost effectiveness for NMOC emission reduction (shown in Table 6) do not include the ancillary benefits of methane reduction such as global warming abatement, and reductions of toxic compounds, explosion hazard and odor nuisance. Nor do they include any consideration of the potential energy savings (leading to cost savings) resulting from the selection of energy recovering control devices. Although these benefits have not been quantified, they support qualitatively the judgment that the incremental costs of Regulatory Alternative 2 are reasonable. As shown in Table 7, Regulatory Alternative 2 affects roughly 60 percent more landfills than Regulatory Alternative 3. Of these additional landfills, nearly 85 percent are greater than 1 million Mg (1.11 million tons) in design capacity, and 113 of them, roughly 50 percent, have design capacities in excess of 5 million Mg (5.6 million tons). Regulatory Alternative 3 would not require control at these larger landfills which emit relatively large quantities of NMOC's (between 150 and 250 Mg/yr [167 and 278 tpy]), which

could pose significant health and welfare risks. Based on economic impact analysis, roughly less than 10 percent of the households served by existing MSW landfills installing controls in compliance with Regulatory Alternative 2 would incur annual costs of $30 or more. These costs are based on the use of flares for control, and will be lessened by the selection of energy recovery for control. Based on this analysis, and considering the ancillary benefits of the methane reductions, EPA concludes that Regulatory Alternative 2 would result in reasonable economic impacts. Based on these considerations, EPA proposes Regulatory Alternative 2 (an emission level cutoff of 150 Mg/yr [167 tpy] NMOC) as BDT for existing landfills.

In selecting Regulatory Alternative 2, EPA judged the application of well-designed gas collection systems and 98 percent efficient recovery/destruction control systems to landfills emitting more than 150 Mg/yr (167 tpy) of NMOC's to represent BDT for existing landfills. The EPA finds that this is the best demonstrated technological system of continuous emission reduction for MSW landfills, taking into consideration costs and other relevant factors. The application of collection and control systems to those existing landfills emitting 150 Mg/yr (167 tpy) of NMOC's or more will significantly reduce emissions without causing any unreasonable cost, environmental, or energy impacts.

The EPA believes that these controls are technologically feasible for landfills emitting less than 150 Mg/yr (167 tpy) of NMOC's. However, as stated above, EPA qualitatively considered the estimated methane reduction when selecting the regulatory cutoff. The EPA solicits comments on whether and how to consider reductions of methane more directly in the regulatory decision. For instance, if Regulatory Alternative 2 were set at 100 Mg/yr (111 tpy), an additional 3 percent reduction in NMOC emissions could be achieved, and methane emissions could be reduced by an additional 8 percent. An additional 41 existing landfills, or a total of 307, would require control. The EPA is still considering whether the additional benefits obtained under a stringency level of 100 Mg/yr are reasonable. The EPA seeks comments on the pros and cons and benefits and costs of regulating to a more stringent level, such as Regulatory Alternative 1, 25 Mg/yr (28 tpy) of NMOC.

4. Selection of the Format of the Standards and Guidelines

In developing this rulemaking, the format for the standards and guidelines was determined prior to the selection of BDT. This section describes in greater detail how this format was selected. The format of today's proposed standards and guidelines was selected considering the unique nature of MSW landfills as a source category. The formats for the proposed standards for new sources and the proposed guidelines for existing sources are identical. This is reasonable because BDT is the same for new and existing landfills. Also, since collection and control systems would always be installed at an MSW landfill after a certain amount of refuse has been landfilled and emissions reach a certain level, there would be little difference in the feasibility of installation of controls at new and existing facilities.

This section will present the rationale for each of two formats for the proposed standards and guidelines, one for determining applicability, and one for the specific requirements of the standards.

Format for Applicability. The EPA determined that a format for determining applicability would be necessary because MSW landfill emissions change over time due to the volume of refuse in place, the age of refuse, whether or not the landfill is still accepting waste, and other factors discussed elsewhere. The format for the applicability of the standards proposed today includes both the determination of when controls are to be put in place, and the determination of when controls are no longer required. That is, it is reasonable to collect and control emissions at a given landfill after a certain emission level (or some other criteria such as volume of waste in place) is reached; but it is not reasonable to continue control long after the level of emissions has declined significantly. Establishing an initial applicability criterion focuses control efforts on those landfills with the greatest potential emissions, and associated health and welfare hazards. It avoids large expenditures for control of landfills where emissions are very low and where costs are unreasonable relative to the potential emission reduction achievable. Establishing criteria for removal of controls is also reasonable because, as previously noted, the emission rate and associated health and welfare hazards decline over time after a landfill is closed. At some point, emissions are so low that they pose relatively reduced public health and welfare impacts and the cost of control would no longer be warranted.

The EPA evaluated several parameters in order to establish an appropriate criteria upon which to make the applicability determination. Four options were evaluated in order to determine what parameter or parameters should be used to identify the landfills to be controlled, when controls should be applied, and when they are no longer needed. These options are: (1) Installations based on the amount of refuse in place, with removal based on number of years since closure; (2) both installation and removal based on consideration of costs and emission reductions; (3) both installation and removal based on NMOC emission rate; and (4) installation based on NMOC emission rate, and removal based on consideration of costs and emission reductions. The advantages and disadvantages, as well as the relative effectiveness of each of these options, are discussed below.

The amount of refuse in place is considered to be the easiest of the four options to implement in the proposed standards because it requires a minimum of calculations and requires no projections of future levels of refuse acceptance or emissions. When to remove controls is less straightforward. For this analysis, the number of years after closure was selected.

The refuse in place option costs more than any of the other three options to achieve the same emission reduction. This option also required controls to be installed at more than twice as many landfills as any other option, but did not produce greater emission reduction overall. Thus, EPA discarded this option.

The second option is consideration of cost and emission reductions on a site-by-site basis. This option was the most complex and burdensome of the four, and achieved only marginally more emissions reductions than the next option, which is based on the NMOC emission rate. Although this option has the advantage of being the most cost effective, this option is very difficult to implement. The calculation of cost per unit of emission reduction involves projections of both future emission levels and operating costs. The capital costs of the system are amortized over the useful life of the system, which impacts the cost per unit of emission reduction. Controls are installed when the capital and operating costs per Mg ($/Mg [$/ton]) NMOC reduction meet a certain dollar criterion. The system is later removed when the cost per Mg (ton) falls below the criterion again. The

projections and calculations needed are complex and uncertain, and may involve iterations of this calculation to arrive at a mathematical solution to define the appropriate dollar criterion. In addition to the burden on the owner or operator to make the projections and perform the "real world" calculations, the permit authority would be obligated to judge the projections as well. A variation from the applicant's assumptions would require that all the calculations be repeated, and a very different answer could result. This could introduce inequities in the application of the standards. Finally, for many owners and operators the sophistication of the projections and calculations may necessitate hiring a contractor to prepare the annual compliance report, thereby increasing the cost.

The third option considered in selecting the format for the standards and guidelines was the NMOC emission rate which was previously discussed. The major advantage with this option is that the emission rate cutoff above which controls are required can be selected to maximize the overall emission reduction while avoiding excessive costs. Another advantage to using this option is its close correlation with emission reduction. Although this option is slightly more costly than the cost-effectiveness option for a comparable amount of emission reduction, the difference is not significant. In addition, controls are generally required at fewer landfills under this option, compared to the cost-effectiveness option, while emissions reductions are similar. A final advantage of this option is the relative ease with which it could be developed and implemented. Calculation of emission rate is feasible and less complex and burdensome than calculation of cost per unit of emission reduction.

The final option in this comparison was a combination requiring installation of controls at a given emission rate, and allowing removal based on consideration of cost and emission reduction. Although this combination in theory could combine the advantages of each option, in this evaluation it cost more than the second option, and obtained less emission reduction overall than the third (NMOC emission rate) option. Even though consideration of cost and emission reduction is only used to determine when to remove controls, this option would require almost immediate projections and calculations in order to determine for how long the cost per unit of emission reduction will be reasonable, and when controls can be removed. The complexity and burden this introduces parallels that of the second option.

The Administrator has selected the NMOC emission rate as the parameter to be used to determine when to install and remove controls for these standards and guidelines. This parameter was selected based on its clarity and ease of implementation, its ability to maximize emission reduction, its cost, and the number of landfills which would require control compared to the emission reduction achieved.

Specific Requirements. The format of the standards and guidelines proposed today is a combination of a design and operation standard for the gas collection system, and a percent reduction requirement for the control device. Today's proposed standards require properly designed and operated gas collection systems, and include specifications that are used to evaluate the design and operation of these systems. The standards proposed for the control device require the use of an open flare in compliance with 40 CFR 60.18 or a reduction of the NMOC's by 98 percent by weight.

Section 111 of the CAA requires that performance standards, or emission limits, be prescribed unless, in the judgment of the Administrator, it is not feasible to prescribe or enforce such standards. Specifically, paragraph 111(h)(1) states that

"* * * if in the judgment of the Administrator, it is not feasible to prescribe or enforce a standard of performance, he may instead promulgate a design, equipment, work practice, or operational standard, or combination thereof, which reflects the best technological system of continuous emission reduction * * *"

Paragraph (2) of section 111(h) defines the phrase "not feasible to prescribe or enforce a standard of performance" to mean any situation where the Administrator determines that

"* * * (A) a pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such a pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State or local law, or (B) the application of measurement technology to a particular class of sources is not practicable due to technological or economic limitations."

For MSW landfills, BDT consists of a gas collection system and an effective control device, achieving 98 percent reduction of landfill emissions for landfills with an NMOC emission potential equal to or greater than 150 Mg/yr (167 tpy). In order to set a performance standard for the gas collection system (e.g., collection efficiency), it would be necessary to quantify the landfill gas available for collection in comparison to the amount collected. It is not technically feasible to measure the amount of gas available for collection, only to *estimate* how much is produced, so a collection efficiency cannot be measured. Emission limits are not applicable to gas collection systems. For this reason the Administrator has proposed design, operational, and work practice standards for collection systems. Design features are required that would ensure effective collection of MSW landfill emissions. The standards and guidelines specify that collection systems must be designed and operated to handle that maximum gas generation rate and to collect gas effectively from all areas of the landfill warranting control and require monitoring and appropriate operation of the collection system. Control is warranted within 2 years of initial waste placement for each area or cell in which refuse has been placed.

In the case of the control device, however, percent reduction is directly measurable for most control devices applicable to air emissions of MSW landfills, and the control efficiencies are well-documented (Chapter 4 of the BID, Docket No. A-88-09, Item No. III-B-1). Although flare outlet concentration is infeasible to measure, EPA acknowledges that reduction beyond 98 percent is not only achievable, but common, and has used open (i.e., elevated) flares in the selection of BDT. For this reason, the Administrator has prescribed that control devices must achieve 98 percent reduction efficiency. If flares are used to meet the standards and guidelines they must meet the specifications in 40 CFR 60.18, since percent reduction is not measurable. Refer to the Subsection 1 above, "Discussion of Demonstrated Technologies" for a discussion of control devices EPA believes can achieve the 98-percent reduction requirement. Owners or operators of MSW landfills intending to use other controls are required to demonstrate the same level of emission reduction.

The standards proposed today include provisions allowing an owner or operator to submit a plan to use an alternative collection system and or control device, provided that the owner or operator is able to demonstrate that such system and/or device is able to achieve an equivalent level of control and emission reduction.

F. Selection of Requirements To Implement the Best Demonstrated Technology

1. Introduction

This section describes in detail how the proposed standards and guidelines would be implemented. As discussed in the previous section, EPA has selected as BDT active collection systems and control systems able to reduce NMOC content of the collected gas by 98 percent. These systems are to be installed when the NMOC emission rate at a given landfill is 150 Mg/yr (167 tpy) or more.

First, this section reviews the applicability of the standards and the guidelines, followed by an explanation of the procedures used to determine the site-specific NMOC emission rate. The EPA has developed a tiered method of calculations for determining which affected landfills are required to control, and when to install and remove controls. Conservative defaults were developed for the tiered approach. The discussion of the approach focuses on the defaults generated for Regulatory Alternative 2, 150 Mg/yr (167 tpy) NMOC. Should EPA consider a more stringent cutoff level (i.e., less than 150 Mg/yr [167 tpy]), new defaults will be calculated for that level, using the same methods employed in developing the defaults for Regulatory Alternative 2. The explanation for the method and the differences between the tiers are also presented below. The EPA then presents design considerations for the collection system, and the specifications for the various control devices EPA has determined can be used to demonstrate compliance with the standards or guidelines. Also this section discusses how to use alternative means of emission limitation to comply with the standards and guidelines. The section concludes with a discussion of the requirements and considerations specific to the guidelines proposed under Section 111(d) of the CAA.

Review—Affected Facility (New Source Performance Standards) and Designated Facility (Guidelines). The definition of affected facility under the proposed NSPS is identical to the definition of the designated facility under the proposed guidelines except for the date when construction or modification commences. For the purposes of today's actions, a "municipal solid waste landfill" or "MSW landfill" means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive commercial waste, sludges, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned.

An MSW landfill is regulated as an entire unit (i.e., the landfill is considered either new and is subject to the NSPS or existing and subject to the guidelines) because the total emission potential and associated environmental impacts are determined by the entire landfill. A single landfill would not have portions subject to the NSPS and portions subject to the guidelines.

Applicability of the New Source Performance Standards to New Municipal Solid Waste Landfills. Any MSW landfill on which construction or modification began on or after today's date would be regulated under the NSPS. Although portions of a new landfill may subsequently be closed, the entire landfill will be viewed as one landfill for purposes of determining the design capacity and the NMOC emission rate. If installation of collection and control systems is warranted, these systems are to be installed in all areas as well.

The EPA considered the effect of modifications to existing MSW landfills. By definition, a modification is a "physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies" (40 CFR 60.14). An existing landfill that is modified is subject to the NSPS. Further, changes to an existing facility already subject to the NSPS that result in an increase in the emission rate may make the facility subject to more stringent control requirements under the standard.

The only physical or operational changes under the control of the owner or operator that EPA has determined may increase emissions are increases in the design capacity of a landfill. The EPA considered other possible physical or operational changes that may constitute a modification, but none were identified that would result in a modification pursuant to § 60.14. For example, if an MSW landfill increased its waste acceptance rate, such a change would be analogous to an increase in production rate at a manufacturing facility. Under § 60.14(e)(2), if "an increase in production rate of an existing facility, * * * can be accomplished without a capital expenditure on that facility" it would not be considered a modification, even if the emission rate of the unit increased.

If modification is defined as an increase in design capacity, then the applicability of this definition to existing landfills is important. The EPA knows of no environmental or administrative reason to subject an MSW landfill to both the proposed standards and emission guidelines. The question raised, then, is under what circumstances changes at an existing MSW landfill trigger the NSPS. The EPA considered two situations:

1. If an existing MSW landfill that is less than 100,000 Mg (111,000 tons) and was not previously affected by either the standards or guidelines increased its design capacity above the 100,000 Mg (111,000 tons); and

2. If an existing MSW landfill affected by the emission guidelines expands its design capacity.

The EPA decided the first case would be a modification and trigger the control requirements of 60.752(b) of the proposed NSPS because the existing MSW landfill was never affected by the standards or emission guidelines. If such a landfill is now affected by the standard, there is no dual coverage. In the second case, since the MSW landfill is already affected by the emission guidelines, to trigger the NSPS in addition to the guidelines would be confusing and inappropriate since BDT is the same for both. Therefore, EPA is proposing that once an existing landfill is covered under the emission guidelines, the landfill remains covered under the guidelines. Changes in the design capacity at the affected landfill do not constitute a modification.

Applicability of the Guidelines to Existing Municipal Solid Waste Landfills. Any existing MSW landfill (i.e., a landfill that commenced construction before today's date) that accepted waste on or after November 8, 1987, or has the potential to accept additional waste and has not documented that it is permanently closed, would be a designated facility subject to State regulations under the guidelines proposed under section 111(d). Although portions of an existing landfill may be closed, all portions of the landfill are subject to the guidelines if any portion of the landfill accepted waste on or after November 8, 1987. This means that all areas of the landfill are to be included in the calculation of the design capacity. When the NMOC emission rate is calculated, however, the regulation would allow the exclusion of any areas of the landfill which can be shown to be producing virtually no gas. Collection and control systems are to be installed in all other areas of the landfill except where asbestos deposits are documented.

Control Requirements of the Standards and Guidelines: The emission

control levels of today's proposed standards for new landfills and proposed guidelines for existing facilities are identical. Both new and existing landfills emitting 150 Mg/yr (167 tpy) of NMOC's or more, would be required to install collection and control systems that meet the standard. The determination of whether a landfill emits 150 Mg/yr (167 tpy) or more and must install controls is described below. There are separate requirements for small and large landfills.

Municipal Solid Waste Landfills with Design Capacities Less than 100,000 Mg. Because small landfills are very unlikely to emit 150 Mg/yr (167 tpy) of NMOC's, they would be exempt from control requirements. The only requirements for affected (new) and designated (existing) MSW landfills with design capacities less than 100,000 Mg (111,000 tons) are to file an initial design capacity report, and to report any changes in capacity. These landfills would not be required to perform the more detailed calculations (the tiered approach) to determine their NMOC emission rate. This minimizes the regulatory burden on owners or operators of small MSW landfills.

In establishing the 100,000 Mg (111,000 tons) design capacity exemption, EPA analyzed various factors that could be used to characterize those landfills that EPA considers will be highly unlikely to ever produce NMOC emissions at a rate of 150 Mg/yr (167 tpy) or more. Design capacity and acceptance rate both correlated well with NMOC emission rate. Therefore, these two factors were evaluated as potential criteria upon which to base an exemption.

The exemption in today's standards and guidelines is based on design capacity and not acceptance rate for several reasons. Design capacity is closely related to NMOC emission rate, information on design capacity of landfills is generally available, and it does not change frequently. Design capacity is generally documented in a RCRA or State permit, and any change in design capacity is usually accompanied by a permit revision. An exemption based on acceptance rate would be impractical to implement. Acceptance rate is a less stable statistic than design capacity, and typically fluctuates over time due to changes in demand for landfill space.

The 100,000 Mg (111,000 tons) level was selected as the appropriate level for the design capacity exemption based on an EPA analysis of the data relating capacity to NMOC emissions. This level will relieve many owners and operators of small landfills that will never emit 150 Mg/yr (167 tpy) of the requirement to determine and report the NMOC emission rate annually. The EPA solicits comment providing additional data relating design capacity or refuse in place to NMOC emission rates.

Municipal Solid Waste Landfills with Design Capacities Equal to or Greater than 100,000 Mg. New and existing MSW landfills with design capacities equal to or greater than 100,000 Mg (111,000 tons) would install collection and control systems if their calculated NMOC emissions are over 150 Mg/yr (167 tpy). Landfills with capacities of 100,000 Mg (111,000 tons) or more would calculate and report their NMOC emission rate periodically until closure, or until a complying collection and control system is required and installed. Periodic calculation is required because landfill emissions at active sites tend to increase as refuse in place increases and the organic matter generates additional landfill gas. In lieu of an annual report, owners or operators may elect to submit an estimate of the NMOC emission rate for each of the next 5 years, based on the current amount of refuse in place and the estimated waste acceptance rate for each of the 5 years, provided that the estimated NMOC emission rate is less than 150 Mg/yr (167 tpy) for each of the 5 years reported. The 5-year estimate would be updated and resubmitted at least every 5 years. The standards and guidelines provide a formula and procedures for these calculations, which are discussed in the next subsection. Municipal solid waste landfills with calculated NMOC emission rates equal to or greater than 150 Mg/yr (167 tpy) would install collection and control systems within 2½ years, in compliance with specific design and operating criteria. The periodic calculation of emissions is not required while such collection and control systems are operating.

After closure, emissions from landfills decline as the organic matter that generates landfill gas decomposes. At some point continued operation of the collection and control system is not warranted. Both the standards and the guidelines specify removal of controls would be permitted only after all three of the following conditions are satisfied: (1) The collection and control devices must have been in operation for a minimum of 15 years; (2) the landfill would have to be permanently closed, and (3) the calculated NMOC emission rate must be less than 150 Mg/yr (167 tpy) on three successive test dates which are no closer than 3 months apart, and no longer than 6 months apart. The rationale for these conditions is provided below.

Although EPA has decided that equipment installation and removal should be based principally on the NMOC emission rate, for some landfills this may mean removal could occur relatively soon after installation. This does not make sense when the capital cost has already been incurred and the equipment is still useful, and could be further reducing emissions. These further reductions are obtained for less cost than an equivalent amount of reduction at a new site where capital must be invested "up front." The EPA concluded that after collection and control systems are installed, the systems should be maintained and operated over their entire useful life. Based on engineering/costing principles, the equipment life of control systems was conservatively estimated to be 15 years or more. Based on an EPA study of the impact of a minimum control period, EPA predicts only a small portion of controlled landfills would ever be both closed and emitting below 150 Mg/yr (167 tpy) within 15 years of equipment life. Therefore, both the standards and the guidelines would specify a minimum control period of 15 years.

The EPA analyzed the nature of gas generation from MSW landfills and concluded that emission "peak" at or near the time of permanent closure. Therefore, permanent closure of the entire landfill is also required before collection and control devices could be removed. For purposes of the standards and guidelines, a landfill is considered closed if it meets the RCRA definition of a closed landfill and files a closure report. The recent RCRA proposal (53 FR 33314, August 30, 1988) has defined "closed" as no longer accepting waste and having completed the closure procedures noted in the landfill's closure plan for each cell of a landfill as it closes. The RCRA proposal would also require that a landfill file a permanent record at final closure, such as an attachment to the property deed. The RCRA proposal (53 FR 33314, August 30, 1988) would require a 30-year post-closure period that includes a gas monitoring system. The gas monitoring system proposed under RCRA is different from the gas collection and control system proposed in this action. For existing MSW landfills, the States would have to establish a means of certifying closure when closure has preceded the effective date of the RCRA program.

The third condition for removal of controls is calculations showing that the NMOC emission rate is below 150 Mg/yr (167 tpy). Since the NMOC emission rate at a given landfill may fluctuate

seasonally with changes in temperature, moisture, and other factors, a series of NMOC calculations over three successive time periods would be required. The 3- to 6-month time intervals provide a representation of at least two seasons. This provision helps to assure that collection and control will not be suspended based on one isolated test that may not be representative of the annual emission rate and provides confirmation that the NMOC emission rate has declined to below the cutoff of 150 Mg/yr (167 tpy).

2. Calculation of the Nonmethane Organic Compounds Emission Rate Tiered Approach.

The standards and guidelines provide a tiered system for calculating the NMOC emission rate to determine if the NMOC emission rate is equal to or greater than 150 Mg/yr (167 tpy). A flow diagram of the three tiers is provided in Figure 1. Emission rates vary widely from landfill to landfill and can be established with a high degree of certainty only through testing. Alternatively, a conservative emission model can be used to provide a less precise, yet less costly approach. While such a model would overestimate emissions, the extra precision afforded by source testing it not always warranted. For example, in cases where conservative estimation results in an NMOC emission rate which falls below the 150 Mg/yr (167 tpy) emission rate, testing would not be warranted. Likewise, testing would not be warranted if modeled emissions were substantially above 150 Mg/yr (167 tpy).

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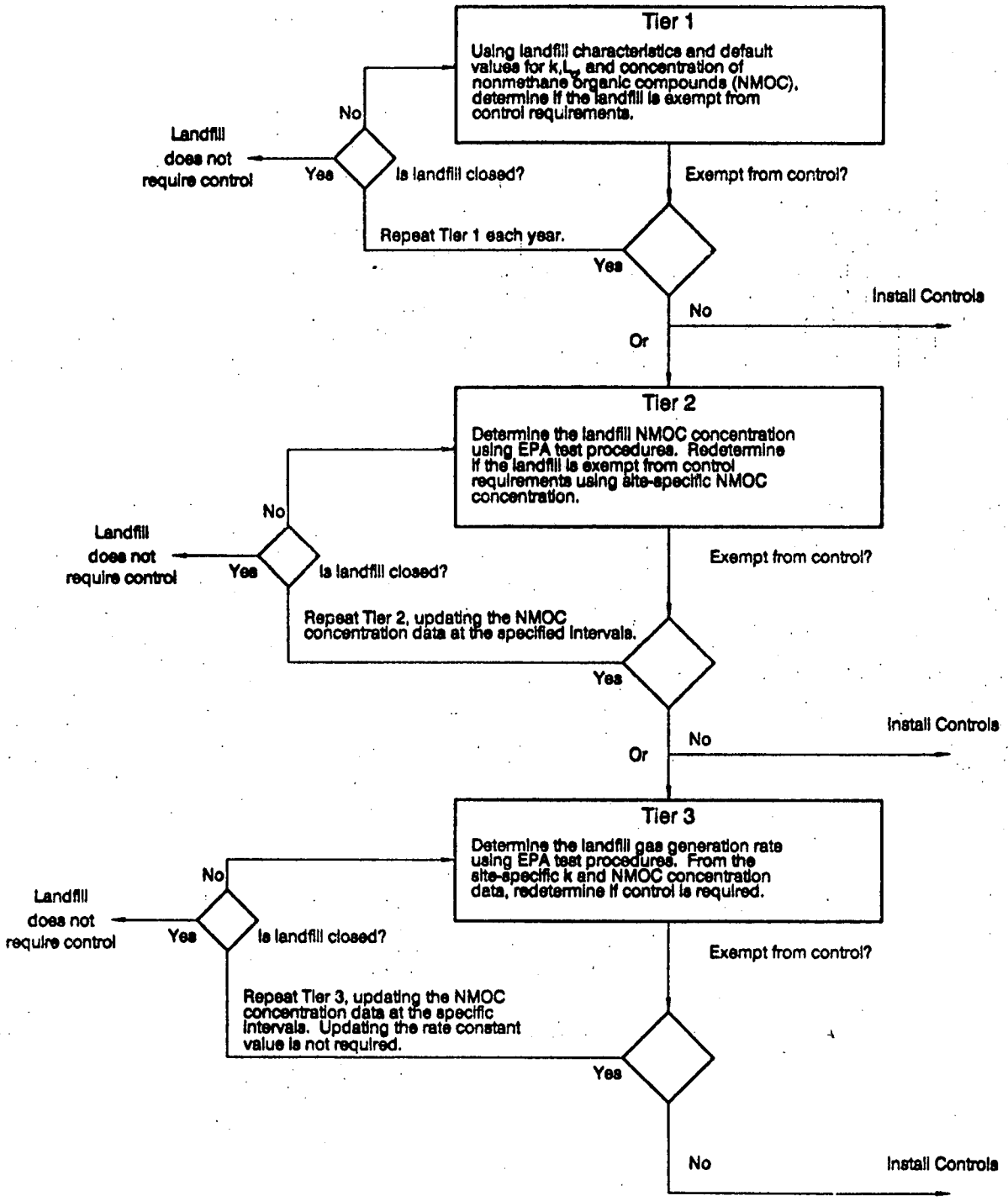

Figure 1. Overall three-tiered approach for determination of control requirements.

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The tiered method of NMOC emission rate calculation was developed to provide landfill owners or operators with the flexibility to choose among several options, each with a different level of precision and cost. The goals of the tiered method are to identify those MSW landfills that are emitting at least 150 Mg/yr (167 tpy) of NMOC's, to reduce the cost and burden of this determination as much as reasonably possible, to allow the use of site-specific data derived from testing, and to permit facilities which exceed the 150 Mg (167 tpy) cutoff to install collection and control systems at any point without being required to complete all the available levels of testing.

All three tiers are based on the calculation of the NMOC emission rate using a first order decomposition rate equation. The model uses site-specific information on landfill age and waste acceptance rate. Three critical emission parameters are combined in the model: k (the refuse decay rate), L_o (the refuse methane generation potential), and the NMOC concentration. The three tiers differ in how the values for these three variables are obtained. The equation is provided in the regulation under § 60.753, "Test Methods and Procedures."

Tier 1. Under Tier 1, the landfill owner or operator combines readily available data about a given landfill with conservative default values for k, the NMOC concentration in the landfill gas, and L_o. The default values for these three variables are specified in the standards and guidelines. These values were established as a result of an EPA analysis of 931 landfills that took part in the Office of Solid Waste (OSW) landfill survey (Docket No. A-88-09, Item No. II-A-25). The objective of the analysis was to produce a set of default values which would distinguish between landfills warranting additional testing or control and those landfills not emitting above 150 Mg/yr (167 tpy). The rationale and approach used in the analysis are presented in the docket (see "Rationale for Selecting Tier 1 Default Values" and "Applicability of Selected Tier 1 Default Values to the 150 Mg/yr Stringency Level" [Docket No. A-88-09, Item Nos. II-B-32 and II-B-40]). Because conservative values for k, L_o, and NMOC concentration are used, Tier 1 would be highly likely to overestimate the NMOC emission rate. For those landfills where the Tier 1 calculation results in an emission estimate below 150 Mg/yr (167 tpy) of NMOC's, collection and control systems would not be installed, but calculations would be repeated periodically, as previously described. For those landfills whose Tier 1 calculations result in an NMOC emission rate equal to or greater than 150 Mg/yr (167 tpy), the owner or operator may either install collection and control systems, or may perform the field measurement procedures detailed in Tier 2 to determine emissions more precisely.

Tier 2. The equation used to calculate NMOC emissions in Tier 2 is the same as in Tier 1, but the landfill owner or operator conducts sampling to determine a site-specific NMOC concentration to substitute for the default value in the equation. Measurement of the NMOC concentration was chosen for Tier 2 because it is variable from landfill to landfill and over time, and the more precise value obtained by sampling and analysis will affect the results of the emissions calculation. Furthermore, NMOC concentration is easier and less expensive to determine than k. Sampling procedures for NMOC concentration are provided in the standards and guidelines, and the samples are analyzed using Method 25C. If the average NMOC concentration from the samples results in a calculated NMOC emission rate below the cutoff of 150 Mg/yr (167 tpy), the owner or operator must demonstrate that there is statistically at least an 80-percent confidence level that the true value is below 150 Mg/yr (167 tpy). The procedures for this demonstration are adapted from standard EPA procedures. If an 80-percent confidence level can be demonstrated, controls would not need to be installed. The EPA judged that an 80-percent confidence level was sufficient because the k and L_o used in Tier 2 will still produce a conservative NMOC emission rate. If the resulting NMOC emission rate is equal to or greater than 150 Mg/yr (167 tpy), the owner or operator may install controls or may perform the field testing procedures detailed in Tier 3 to determine NMOC emissions more precisely.

The EPA has determined that a one-time assessment of the NMOC concentration is inadequate for making a finding that emissions are below 150 Mg/yr (167 tpy) using the Tier 2 approach. The limited data available indicate that of the three parameters effecting NMOC emission rate, k, L_o and NMOC concentration, the NMOC concentration is most likely to vary at a given landfill over time. The standards and guidelines, therefore, specify periodic confirmation of NMOC concentration levels. Two different retest frequencies were chosen so that a landfill whose level of emissions is far below the cutoff of 150 Mg/yr (167 tpy) is not required to retest as frequently as a landfill whose emission rate is close to the cutoff. The testing must be repeated every 5 years for those landfills whose average NMOC mass emission rate is within two standard deviations (95 percent confidence interval) of the 150 Mg/yr (167 tpy) of NMOC's cutoff. However, landfills whose NMOC emission rates are far below the cutoff (i.e., more than two coefficients of variation below the cutoff) would be required to retest only every 10 years. The EPA believes that extreme changes in NMOC concentrations are not likely over periods less than 5 years. While testing of NMOC concentrations is required only every 5 or 10 years, periodic calculation of NMOC emissions would be required as previously described.

Tier 3. If calculated emissions are over 150 Mg/yr (167 tpy) using the site-specific NMOC concentration determined in Tier 2, the owner or operator again has the option of installing controls or proceeding to Tier 3. Under Tier 3, the site-specific MSW landfill methane generation rate constant k, is determined by gas flow testing. Tier 3 distinguishes between MSW landfills with known histories of where and when MSW was deposited and those with little known history. Cluster wells may be used when the history is known, and equal-volume wells when history is not known. (Cluster wells are groupings of three wells fairly close together whereas equal-volume wells are evenly spaced throughout the landfill.) For landfills with known histories, guidance is provided on where to locate cluster wells to provide good estimates of k. For these landfills, the cluster well method allows k to be estimated with greater statistical confidence, and is less expensive than locating equal-volume wells throughout the landfill. However, if landfill history is not known, the equal-volume well method produces estimates with greater statistical confidence. Tier 3 testing is performed using Method 2E, which is proposed to be included in appendix A of 40 CFR part 60 (see proposed Method 2E at the end of this notice).

Calculation of the Nonmethane Organic Compounds Emission Rate for Previously Installed Collection Equipment. For landfills which have a collection system already installed, landfill owners or operators could either use the tier system or sample directly from their existing collections systems to determine the NMOC emission rate.

The standards and guidelines provide formulas and procedures for calculating NMOC emissions using samples and gas flow data obtained from an existing collection system. The EPA has determined that the most accurate estimation of the NMOC emission rate would be obtained by such direct sampling, provided correct procedures are used. Additionally, determining the NMOC emission rate after controls are in place is easier, because it is simpler to obtain the samples and gas flow data. Landfill owners or operators using direct sampling would have to demonstrate that there is not excessive air infiltration into their system, and that there was not positive pressure at any well head when sampling and gas flow tests are performed. The landfill owner or operator must also be able to document that the collection system is effectively collecting landfill gas from all gas producing areas of the landfill. These provisions ensure that the flowrate obtained is accurate. Air infiltration would result in an overestimation, while positive pressure would result in an underestimation.

While this method is optional for determining applicability of the standards or guidelines, it is the only method permitted for determining whether control systems can be removed. As discussed in the preceding section, three conditions must be met in order to remove a collection and control system that is operating in compliance with the standards or guidelines. One of these conditions is that the NMOC emission rate must be below 150 Mg/yr (167 tpy). The formula and procedures for sampling and determining the gas flow directly from the system must be used when calculating the NMOC emission rate for this purpose. The tiered approach is not permitted. These direct sampling procedures provide the most accurate estimate of the NMOC emission rate. It is, therefore, reasonable to require this method of calculation prior to permanent removal of collection and control equipment.

3. Collection System Design

As discussed previously under "Selection of Best Demonstrated Technology," BDT for the collection of MSW landfill emissions is the installation of an effective collection system when the calculated NMOC emission rate equals or exceeds 150 Mg/yr (167 tpy). An effective collection system has the following capabilities: (1) Wells or trenches located to effectively collect gas from all areas of the landfill; (2) gas moving equipment able to handle the maximum landfill gas generation rate predicted over the life of the equipment if an active system is used; (3) design provisions for monitoring and adjusting the operation of individual wells and trenches, if an active system is used; and (4) the ability to expand as new areas require collection.

The proposed standards and guidelines included in today's notice would require a landfill owner or operator to construct the collection and control system according to design specifications stated in the regulations, or according to a collection system design plan that is submitted to EPA or to the State, as appropriate, for review. In addition to these provisions, landfill owners or operators can use Section 111(h)(3) of the CAA to request approval of gas collection systems that provide equivalent control but do not comply with either the specifications in the regulation or with the plan development and review requirements. The plan would be submitted to the appropriate air program office to allow a review of the plan and requests under section 111(h)(3) would be submitted to EPA for consideration.

The EPA realizes that landfill owners or operators that have no experience with gas collection system design may need very detailed specifications on how to design an acceptable system. Therefore, EPA has identified the key attributes of a good collection system and developed detailed specifications on how to design an approvable system. The EPA considered including only extensive design specifications in the regulation itself. However, in order to allow owners and operators flexibility in choosing the most effective collection and control system and to encourage innovation, EPA decided to adopt an approach that gives the owner or operator the option of following exact specifications to demonstrate compliance with the standards. Alternatively, the regulations also allow innovation through a system of design plan submittal and review. These design plans are required to include enough information to ensure that the collection and control system has been properly designed, thus eliminating the need for using the regulatory equivalency provisions of section 111(h)(3) of the CAA. The technology of landfill gas extraction is continuing to evolve, with new and more sophisticated methods of optimizing gas extraction being developed by both landfill owners and developers who are specializing in gas recovery at landfills. Providing only rigid design specifications or requiring the use of section 111(h)(3) would tend to limit this creativity, and prohibit the introduction of innovative systems currently under development.

In the case where the specifications in § 60.758 are not followed, the design plans would be used to ensure that BDT had been designed and would be installed. For active collection systems, this plan would be required to include: (1) A calculation of the maximum expected gas flow over the life of the landfill; (2) specifications for the gas moving equipment, including any future capacity increases planned; (3) a description of the design provisions for future expansion, if the landfill is still accepting waste; (4) the well head or trench vacuum; (5) the radii of influence used for well/trench spacing; (6) the well/trench specifications; and (7) a plot plan of the landfill showing the locations of each well/trench. For passive collection systems, the plan would be required to include: (1) The liner system design and specifications; (2) the landfill pressure determined using portions of Method 2E; (3) a description of the design provisions for future expansion, if the landfill is still accepting waste; (4) the collection/control system pressure drop; (5) the estimated radii of influence; (6) the well specifications, including the liner seal; and (7) a plot plan of the landfill showing the location of each well.

Section 60.758 provides design specifications for active vertical systems only. If these specifications are followed, the submittal of a design plan is not required. The selection of an active horizontal system or a passive system, or the design of an active vertical system not based on the specifications provided in § 60.758, would require that a plan be submitted and reviewed. Design specifications are outlined below for active vertical collection systems and also for active horizontal and passive vertical collection systems to aid landfill owners and operators in developing plans, if they choose not to install an active vertical system using the specifications in § 60.758. They are discussed further in chapter 9 of the BID. Although the collection systems designed under this system may vary considerably, systems are expected, at a minimum, to meet the criteria outlined below and in chapter 9 of the BID in order to demonstrate compliance, unless adequate site-specific justification is provided.

The EPA has provided these specifications in order to assist owners and operators in designing successful systems. The specifications were developed with substantial comment and technical data on alternative designs, materials, and engineering

practices which are being used in designing landfill gas collection systems by representatives from the waste disposal and gas recovery industries. The Agency is interested in additional information about designs and materials which are presently in use at successful sites.

Selection of the collection system type depends on the landfill characteristics and landfill operating practices. The following sections present design considerations and specifications for an active vertical collection system, which EPA has evaluated and determined can most effectively satisfy the criteria above. The standards and guidelines require an active collection system unless the owner or operator can demonstrate that the passive system is capable of achieving a comparable level of collection. Some of the design considerations for active horizontal and passive collection systems are presented as well. An active horizontal trench collection system may be preferred when a landfill employs a layer-by-layer landfilling method. However, considerations such as the presence of a high water table would decrease the collection efficiency for this system. Additional information is provided in chapter 9 of the BID.

Active collection systems. Active collection systems employ mechanical blowers or compressors to create a pressure gradient and extract the landfill gas. Active collection systems consist of various configurations of gas extraction wells and/or trenches and gas moving equipment such as header piping and blowers. Active collection systems can be further categorized as vertical well systems and horizontal trench systems. In vertical systems, extraction wells are installed in the landfill refuse and in the perimeter of the landfill, while in horizontal trench systems, trenches are installed horizontally in layers starting at or near the base of the landfill.

Gas extraction wells or trenches must be configured to collect gas effectively from all areas that warrant collection. For the purposes of today's proposed regulation, any area or cell where refuse has been deposited for at least 2 years warrants control, with two exceptions. Areas where asbestos has been deposited should be excluded, and the regulation provides a method for excluding areas with very low gas generation. Otherwise, extraction wells must be placed throughout the landfill. Each extraction well or trench has a radius of influence within which landfill gas can be effectively collected. The radius of influence determines the spacing between extraction wells or location of trenches. For active systems the well spacing must be adequate to collect the gas generated without overdraw of air into the landfill.

Vertical collection systems. Today's proposed standards and guidelines recommend that EPA Method 2E be used to determine the radius of influence to use in determining vertical well spacing. The method distinguishes between perimeter and interior wells. Wells placed along the perimeter of the landfill are to be placed in the refuse but no more than one perimeter radius of influence from the perimeter of the landfill, and no more than two times the perimeter radius of influence apart. Interior wells are to be placed no more than two times the interior radius of influence apart, and to be positioned in such a way as to cover all areas of the landfill where refuse is placed. The design specifications in § 60.758 provide an alternative method for determining an appropriate radius of influence to use in spacing wells for those owners or operators who have not performed EPA Method 2E. Chapter 9 of the BID provides additional guidance on siting active vertical extraction wells.

Vertical extraction wells for active collective systems are to be constructed of polyvinyl chloride (PVC), high density polyethylene (HDPE) pipe, fiberglass, stainless steel, or a similar nonporous material, at least 0.075 m (3 in.) in diameter. Wells should extend to at least 75 percent of the landfill depth, but should not be deeper than the landfill in order to protect the integrity of the landfill liner. The bottom two-thirds are to be perforated. A minimum requirement for perforations is slots or holes with an open area equivalent to four 0.01 m (½ in.) diameter holes spaced at 90 degrees every 0.1 to 0.2 m (4 to 8 in.). If slotted pipe is used, the width of the slots should not exceed the size of the gravel in which it is placed. The pipe is placed in the center of a 0.6 m (2 ft) diameter bore and the bore is then backfilled with gravel to a level at least 0.3 m (1 ft) above the perforated section. The remainder of the bore is filled with at least 1.2 m (4 ft) of backfill material, then at least 0.9 m (3 ft) of bentonite, and finally material of equal or lower permeability than the cover.

Each well is connected to the collection header pipes by a well head. The well head and assembly must be equipped to allow monitoring and adjustment of the gas flow and the collection of gas samples. Chapter 9 of the BID and EPA Method 2E (at the end of this notice) provide both diagrams and specifications for the well head and assembly.

Landfill gas is conveyed through a gas collection header system by a blower or compressor to the control device. In designing adequate gas moving equipment, blowers or compressors and header pipes need to be sized to handle the maximum landfill gas generation rate expected over the life of the control equipment (normally 15 years). The size and type of compressor or blower depends on total gas flowrate, total system pressure drop, and vacuum requirements. The proposed standards and guidelines give a formula for calculating the maximum expected gas flowrate based on the age of the landfill and the average annual refuse acceptance rate.

The gas collection header system must be designed to handle the addition of new wells as new areas of the landfill require control. Today's standards and guidelines require that additional wells are to be installed in each area of the landfill within 2 years of the first deposition of refuse in that area.

Operation of the active vertical collection system. Gas generation at a given well may vary slightly over time. The EPA has determined that the following monitoring and adjustments are necessary to maximize collection, while minimizing air infiltration. Excessive air infiltration poses a safety hazard, because too much air may lead to an explosion or landfill fire. Nitrogen concentration is used as a surrogate measure for air infiltration. Based on these safety concerns, EPA has determined that N_2 concentration should be maintained under 1 percent by volume. When the N_2 concentration at a well head exceeds 1 percent, a slight closing of the valve at the well head assembly would decrease the flow from that well, which will decrease the vacuum, and should decrease air infiltration.

If the pressure at the well head is positive, the valve should also be opened. If the valve has been fully opened and the measured pressure is still positive, additional wells must be installed and added to the collection system. It should be noted that some systems may exhibit positive pressure at the well head during initial startup. These systems should reach equilibrium within 30 to 60 days.

The EPA is aware of an alternative method used by the South Coast Air Quality Management District (SCAQMD) to determine if a collection system is adequately collecting the landfill gas or if additional wells are required. In this method, surface

emissions are tested for the presence of methane across the landfill. If the concentration is above 50 ppmv, the collection system is considered to be inadequate for that area of the landfill and additional wells or increased suction is required. The EPA has not incorporated this testing method into the standards at this time due to the uncertain concentration at which additional wells would be warranted. Additionally, this method may not detect the lateral migration of the landfill gas. If, however, more data were available to resolve these concerns, EPA would consider the appropriate use of this method in the final standards. The EPA therefore requests technical comments providing additional information and data about the effectiveness of this method for making flowrate adjustment and for determining the need for additional wells.

An additional consideration in the design of an active vertical collection system is condensation of water and organic compounds which may occur in the header pipes due to the cooler temperatures above the surface of the landfill. This condensate should be handled according to RCRA Subtitle D requirements.

Active horizontal collection systems. Although EPA Method 2E is based on a vertical well test, the results of this method can be used to determine the radii of influence in the horizontal direction. Additionally, the design specifications in § 60.758 provide an alternative method for determining an appropriate radius of influence to use for trench spacing in situations where EPA Method 2E has not been performed. Active horizontal trenches should be positioned no more than two times the radius of influence apart in the horizontal direction. Since compaction of the refuse causes refuse permeability to be lower in the vertical direction, EPA recommends a vertical spacing of one-fourth the horizontal spacing.

Horizontal trenches may be constructed of slotted or perforated PVC, HDPE, corrugated steel piping, or a similar suitable nonporous material. Each layer of trenches should be connected to a common header leg that extends to the surface, and connects to the gas header pipes in the same way as active vertical collection systems. One design consideration is whether to pull the vacuum (i.e., actively collect landfill gas) from only one or both ends of the trench. When the vacuum is pulled at only one end, there will be a pressure drop along the length of the trench. The effective length of the trench will be limited by this pressure drop.

The sizing of gas moving equipment for active horizontal systems is evaluated in the same maner as for active vertical systems. Monthly testing of pressure and air content is performed at the common header leg and the adjustments are made at the valve in the header leg. Additional information about horizontal systems is provided in chapter 9 of the BID.

Passive collection systems. Passive gas collection systems rely on the natural pressure gradient (i.e., internal landfill pressure created due to landfill gas generation) or the concentration gradient to convey the landfill gas to the collection system. While EPA believes that active collection systems are the most effective means of collecting landfill gas, passive systems will be allowed when the following two conditions are met: (1) The owner or operator can demonstrate that the well spacing is adequate to effectively collect gas from all areas of the landfill and (2) the landfill is contained by synthetic liners on all sides, including top and bottom. Liners help to prevent lateral gas migration and, thus, increase the volume of gas collected.

Passive wells must be spaced based on field testing to determine the static landfill pressure, and the pressure drop across the control device (typically a flare), flame arrester, and collection header piping. Chapter 9 of the BID provides a diagram to determine the radius of influence after subtracting the pressure drop from the static landfill pressure. This radius of influence is used to space the wells so that gas is collected from every area of the landfill, and the distance between the wells is no more than two times the radius of influence.

The wells must also meet prescribed design criteria (i.e., constructed of PVC or HDPE or other suitable nonporous material, provided with a tight seal around the cap to maintain integrity of the cover). These design criteria are detailed in chapter 9 of the BID.

Monitoring and adjustments are not necessary for passive wells because the wells are under positive pressure and air infiltration is not a concern. Good containment is the principal concern in operating an effective passive collection system.

4. Specifications for Control Systems

As noted previously, for effective control of landfill air emissions, collected landfill gas must be directed through an emission control device that achieves destruction of NMOC's by 98 percent by weight, except for lean-burn I.C. engines, which are discussed below. The EPA has determined that the following control devices are capable of achieving this destruction efficiency and can be used to comply with the standards and guidelines if the specifications described below are met.

Open flares. The selection of BDT for the control device was based on the use of open flares, meeting the specifications in 40 CFR 60.18. Because emissions from open flares cannot be easily measured, the conditions necessary to achieve 98 percent reduction have been detailed in 40 CFR 60.18, and flares meeting those specifications will be acceptable for the purposes of the proposed standards and guidelines.

Enclosed combustion devices. The EPA will also allow the use of enclosed ground flares, which are currently in use at several MSW landfills. These flares are positioned at ground level and are closely enclosed with a shell of fire-resistant walls which extend above the top of the flame. The EPA characterizes enclosed ground flares as "enclosed" combustors. Other kinds of enclosed combustion devices that can be used to comply with the standards and guidelines include boilers, gas turbines, I.C. engines, and incinerators. These enclosed combustors can be used only if they can be shown to meet the 98-percent destruction requirement or to result in an NMOC outlet concentration of 20 ppmvd, as hexane, at 3 percent O_2. Method 25 must be used to measure NMOC concentration for either demonstration.

The EPA is aware that lean-burn I.C. engines are currently in use in NO_x nonattainment areas. However, these engines may not be able to achieve the 98-percent destruction efficiency required in the proposed standard under typical operating conditions. The EPA requests comment about the appropriateness of the use of low-NO_x, lean-burn I.C. engines at MSW landfills in nonattainment areas, and if so, at what destruction efficiency.

Purification systems. Various purification systems can also be used to meet the standards and guidelines. These systems market the purified methane gas. Such systems would comply with the standards or guidelines only if vent streams from the system are routed to any of the control devices above, meeting the same specifications. Alternatively, a demonstration that a total of at least 98 percent destruction of NMOC's is achieved by the control of some portion of the vent streams will be permitted. This second option was developed in consideration that the control of some very minor vents is not warranted when a net reduction of 98

percent can be achieved through the control of the bulk of the vent streams.

5. Implications of the Guidelines for Municipal Solid Waste Landfills With Pre-existing Systems

The EPA is aware that over 100 MSW landfills already have some form of collection and/or control systems in place. Any of these landfills that are subject to the proposed emission guidelines may be required to upgrade their system in order to achieve compliance. In this section the evaluation and upgrading of existing systems is discussed.

Existing collection systems. Today's proposed guidelines would not require that existing collection systems meet all of the design specifications for newly installed systems; however, operating guidelines for existing collection systems are specified by the guidelines. These operating guidelines are designed to insure effective collection of landfill gas from all areas of the landfill and that air infiltration will not exceed safe levels. Under the proposed guidelines, N_2 is used as a measurement surrogate for air infiltration. The guideline specifies that the N_2 content of the collected gas be monitored, and adjustments be made in the flow to maintain the N_2 content slightly below 1 percent. This is to prevent explosions and fires, and is considered a reasonable and necessary requirement for existing as well as new collection systems.

Under the proposed guidelines, the installation of additional wells would occur under either of two conditions. The first condition is the detection of positive pressure at any well head even after the flow is increased as much as possible. Positive pressure indicates that the number of wells is inadequate to collect the total volume of gas that is being generated. The second condition is when wells have not been placed in all areas of the landfill where waste has been deposited for at least 2 years. The wells or trenches already in place could be used, along with pressure probes, to calculate the radius of influence of the wells in the current collection system. The owner or operator could use this radius of influence along with the guidance provided in Chapter 9 of the BID to site additional wells. New wells added to an existing system would have to comply with the design specifications provided in the guidelines. Owners or operators who find they must replace or add additional wells should submit a description of the number and location of additional wells they plan to install to the appropriate State agency along with a schematic of the existing system.

During the development of the proposed guidelines, EPA considered whether or not requiring such upgrades adversely impacts those owners or operators who have already invested in collection systems. However, the cost of upgrading the collection system by the addition of wells is small relative to the cost for a complete system, and was judged reasonable and necessary when the existing wells are inadequate to handle the gas being generated. It is reasonable to expect that landfills that already have systems in place are already paying staff to operate and monitor the equipment. Labor costs are a significant component of the overall collection costs. Thus, EPA does not expect that the replacement or addition of wells would result in significant additional operating costs due to labor.

In those situations where collection systems exist, but the collected emissions are vented to the atmosphere uncontrolled, the collection system must first be evaluated and upgraded if necessary, and then control devices meeting BDT for control devices must be added on. Such a requirement is reasonable because without control, emission reduction does not occur.

Existing control systems. For those MSW landfills where control systems are already in place, but the emission reduction achieved by the current system does not meet the level of emission reduction in the proposed guideline for control devices, the guideline would require the owner or operator to either upgrade or replace the control system to improve the destruction efficiency to meet the State's approved emission limitation.

As explained in Section I below, State emission standards developed pursuant to the guidelines must ordinarily be at least as stringent as the guidelines. However, State standards may be less stringent on a case-by-case basis where compelling justification can be demonstrated in each case. The level of control already achieved at a particular landfill and site-specific economic factors can be considered by the States in developing their standards.

G. Test Methods and Procedures

Test methods proposed in this notice are Method 25C, Method 3C, and Method 2E. Method 25C provides instruction on sampling the landfill gas and is used to determine the NMOC concentration of landfill gas. Method 3C is used to measure the concentration of N_2 in landfill gas and Method 2E is used to determine the flowrate of landfill gas from the landfill.

The proposed methods may be found at the end of this notice. Although these methods were developed with input from many landfill operators who are already involved in some form of landfill gas collection and control, EPA recognizes that some additional parties may have useful input to offer. Therefore, EPA requests technical comments and data, where applicable, on these methods.

Method 25C. A sampling probe is perforated at one end and driven or augured to a depth of 0.9 m (3 ft) below the bottom of the landfill cover. Sampling from the probe is done similarly to Method 25, except that there is no cold trap to collect the moisture. Landfill gas is extracted from the probe with an evacuated cylinder at the rate of 100 milliliters per minute (ml/min) [6.1±0.6 cubic inches per minute (in^3/min)], and the carrier gas bypass valve is used to pressurize the cylinder with helium to approximately 1.060 millimeters (mm) mercury [567 in. water (H_2O)] absolute pressure.

The analysis for the cylinder gas is the same as Method 25, that is, the NMOC content of the sample gas is determined by injecting a portion of the gas into a gas chromatographic column to separate the NMOC from CO, CO_2, and methane. The NMOC are then oxidized to CO_2, reduced to methane, and measured by a flame ionization detector (FID). In this manner, the variable response of the FID associated with different types of organics is eliminated.

The cold trap is excluded from Method 25C because landfill gas is not expected to contain enough water to condense in the cylinder and cause analytical problems.

Method 3C. Method 3C is used to determine the N_2 concentration in landfill gas samples by injecting a portion of the gas into a gas chromatograph (GC) and determining the N_2 concentration by a thermal conductivity detector (TCD) and integrator. The concentrations of methane, CO_2, and O_2 can also be determined.

In Tier 2, when the NMOC concentration in the landfill gas is determined by Method 25C, Method 3C is used as a check on the integrity of the sample. Nitrogen is used as a surrogate for air, and N_2 concentrations of greater than 1 percent in the sample indicate improper sampling probe installation or sampling technique.

In Tier 3, when Method 2E is used to determine the flowrate of landfill gas from the landfill, Method 3C is used to determine the presence of N_2 in a landfill gas sample, which is an indication of infiltration of air into the landfill.

Method 3C is also used to leak check the above ground extraction well apparatus. The landfill gas is extracted from the landfill by a blower and the flowrate is measured by an orifice meter. Leaks in the well piping may affect the flowrate measured by the orifice meter significantly. The concentration of N_2 is measured at the well head sample port and at the outlet sample port, and a difference of greater than 10,000 ppm indicates a leak.

Method 2E. In Tier 3, the landfill owner or operator determines the landfill gas flowrate from the landfill with Method 2E by installing a single cluster of three extraction wells or five wells equally spaced over the landfill. The cluster wells are recommended but may be used only if the composition, age of the refuse, and the landfill depth of the test area can be determined. The construction of the extraction well is specified in the method.

Pressure probes are located along three radial arms 120° apart at distances of 3, 15, 30, and 45 m (10, 50, 100, and 150 ft) from each extraction well. The probes 15, 30, and 45 m (50, 100, and 150 ft) from each well are called deep probes and they extend to a depth equal to one-third the depth of the extraction wells. The three probes located 3 m (10 ft) from the well are called shallow probes and extend to a depth equal to one-sixth of the depth of the extraction wells. The method specifies that the bottom two-thirds of the pressure probes are to be perforated, with the area of the perforations specified in the method. The EPA is aware that alternative perforation patterns or areas are in use and may be applicable to these pressure probes. The EPA is also aware that some landfill gas collection systems are currently designed based on tests using shallow uniform pressure probes with a depth of 3 m (10 ft), rather than a depth which is site-specific. The EPA welcomes comment on alternative designs for effective pressure probes as well as on the relative merits of uniform shallow pressure proble depth versus pressure probe depth determined by the depth of the test well.

After the wells have been installed and the static flowrate of the landfill gas from the wells has been measured, short-term testing is done on each extraction well to determine: (1) The maximum vacuum that can be applied by a blower to the wells without infiltration of air into the landfill and (2) the maximum radius of influence associated with the maximum blower vacuum. The radius of influence is the distance from the extraction well affected by the blower.

A leak check is required to ensure accurate flowrate and safety, using proposed Method 3C. The EPA is aware that portable oxygen meters have been used in similar applications. Therefore, EPA requests comment about the appropriateness of portable oxygen meters, or the use of an alternative chemical species for leak detection in the header system.

Maximum blower vacuum is determined by increasing the vacuum and testing for infiltration of air into the landfill. Infiltration is considered to have occurred when the landfill gas N_2 concentration is greater than 1 percent (using Method 3C) or when one of the shallow probes has a negative gauge pressure. Once infiltration is indicated, the maximum blower vacuum is determined by reducing the blower vacuum until the N_2 concentration is less than 1 percent and the gauge pressures of all of the shallow probes are positive.

The maximum radius of influence is the radial distance from the extraction well affected by the maximum blower vacuum. The deep pressure probes are used to determine this distance.

Once the maximum blower vacuum and the maximum radius of influence have been established, long-term testing begins. Long-term testing consists of withdrawing landfill gas until two void volumes have been extracted. A void volume is the amount of landfill gas in a cylindrical volume defined around the extraction well with a radius equal to the maximum radius of influence.

During the long-term testing, a stabilized flowrate is established and used to determine k, the landfill gas generation constant. The landfill NMOC concentration is determined using Method 25C and then the NMOC mass emission rate is determined by equations in Method 2E.

H. Reporting and Recordkeeping Requirements—New Municipal Solid Waste Landfills

The proposed standards would require owners and operators of all affected facilities to submit notifications of construction or reconstruction as required under the General Provisions (40 CFR 60.7). This notification would include the maximum design capacity of the landfill, data of anticipated start-up, and the anticipated refuse acceptance rate. For the purposes of this proposed standard, startup means the date upon which initial acceptance of waste occurs.

Although an MSW landfill may start up, (i.e., accept refuse) under today's proposed standards and guidelines, the requirement to install collection and control systems will not occur until such time that the calculated NMOC emission rate equals or exceeds 150 Mg/yr (167 tpy). Therefore, the recordkeeping and reporting requirements of today's proposed standards are tailored to this unique characteristic of this source category.

Notifications of construction from MSW landfills with initial design capacities less than 100,000 Mg (111,000 tons) would fulfill all of the recordkeeping and reporting requirements for these landfills. This is because EPA has determined that MSW landfills with a maximum design capacity of 100,000 Mg (111,000 tons) would be highly unlikely to ever emit NMOC's at 150 Mg/yr (167 tpy), the level at which collection and control systems would be required. Changes in the design capacity would have to be reported in an amended design capacity report.

Those landfills with initial or amended design capacities greater than 100,000 Mg (111,000 tons) must submit additional reports, based on the additional requirements of the proposed standard. Each owner or operator of an MSW landfill with a design capacity equal to or greater than 100,000 Mg (111,000 tons) must submit an annual calculation of the NMOC emission rate. Alternatively, the owner or operator could elect to provide an estimate of the NMOC emission rate for each of the next 5 years using the Tier 1 formula and an estimate of the refuse acceptance rate for each of the 5 years, provided that the estimated NMOC emission rate does not exceed 150 Mg/yr (167 tpy) in any of the 5 years reported. The initial annual NMOC emission rate report or the 5-year estimate must be submitted within 90 days of start-up, i.e., refuse acceptance.

The owner or operator must also update and submit the 5-year estimate within at least 5 years of submittal of the first 5-year estimate. If the actual waste acceptance rate exceeds the estimated waste acceptance rate in any of the 5 years for which an estimated NMOC emission rate was reported, a revised estimate must be submitted. The 5-year period reported in the revised 5-year estimate would commence with the year in which the actual waste acceptance rate exceeded the estimated waste acceptance rate. This provision requires the owner or operator to keep track of how quickly the landfill is approaching the level where actual annual calculation and reporting of the emission rate are warranted.

These provisions are intended to prevent the owner or operator from

having to submit an NMOC emission report annually until such time as the landfill NMOC emission rate is actually approaching the level at which collection and control will be required. The EPA's evaluation of landfill emissions indicate that the emission rate increases as refuse accumulates in the landfill, but that the rate is not just a function of landfill mass, but is also affected by how fast the refuse accumulates, as well as the other factors already discussed. Tier 1 provides a conservative estimate of the NMOC emission rate which takes both time and amount of refuse in place into account. By using the Tier 1 formula and these two factors to estimate when collection and control may be warranted, the landfill owner or operator may choose to avoid the annual submittal of the NMOC emission rate calculation until the time approaches when controls will be required.

After the NMOC emission rate calculated using Tier 1 equals or exceeds 150 Mg/yr (167 tpy), the proposed standards would require the submission of a notification of intent to install a collection and control system based on the design specifications in section 60.758, or a collection system design plan for review, within a year. If the landfill owner or operator elects to perform the Tier 2 sampling or Tier 3 testing in order to generate a site-specific NMOC concentration or gas generation rate to use for the calculation of a more precise NMOC emission rate, the recalculated emission rate must be reported within 1 year of the initial Tier 1 calculation as well. If the recalculated emission rate still equals or exceeds 150 Mg/yr (167 tpy), the notification of intent or collection system design plan must also be submitted within the same 1-year time period since the Tier 1 calculation which equaled or exceeded 150 Mg/yr (167 tpy).

In the case of the design plan, EPA or the delegated agency would review and propose any amendments to the design plan. It is expected that such review should be completed and any amendments proposed within 6 months. After final review, 1 year would be permitted for installation, with an additional 90 days allowed for the submission of the initial performance test. Owners or operators electing to design and install a collection system based on the specifications provided in § 60.758 would be allowed 18 months to install the system, and an additonal 90 days for the submission of the initial performance test.

The EPA believes that this time schedule is reasonable because of the nature of the individual tiers. Tier 2 sampling to determine NMOC concentration would require about 6 months to complete, and based on the EPA's evaluation of landfill emissions, is more likely to result in an estimation of NMOC emission rate below the regulatory cutoff. This is because available information on the NMOC concentration and landfill gas flowrate indicate that the NMOC concentration is more variable. Therefore, it is more likely that the default NMOC concentration provided in Tier 1 differs substantially from the NMOC concentration resulting from the performance of Tier 2. However, since EPA believes that the length of time necessary to collect and analyze the samples in some cases may exceed 6 months, a full year from the submission of the Tier 1 calculation will be allowed for submittal of the Tier 2 calculation and design plan, if necessary. In fairness to those owners or operators who begin to design a system after Tier 1 or 2, EPA has not extended the time period allowed for submission of the design plan when owners or operators elect to perform Tier 3 testing. While Tier 3 testing will also require about 6 months, the EPA's analysis indicates that only a few landfills electing to perform the Tier 3 tests will actually obtain a final NMOC emission rate less than 150 Mg/yr (167 tpy). For this reason EPA recommends that those owners or operators performing Tier 3 testing begin to design a collection and control system while the testing proceeds. The Tier 3 test will have value for even those landfills that will still need to install collection systems, because the flowrates obtained may be used in designing the collection system. Additionally, the test wells can serve as collection wells.

After the collection and control systems have been installed and the initial performance test has been completed and submitted, the proposed regulation would require the submission of semiannual compliance reports. These reports would include: (1) Any period in which the value of any of the monitored operating parameters falls outside the ranges identified in the initial performance test, (2) results of all annual performance tests, (3) identification of any periods for which data were excluded from these calculations, and (4) any period when air pollution control equipment malfunction occurred.

The proposed NSPS would also require that certain types of records be maintained. Records of the accumulated refuse in place, collection system design (including proposed and subsequent well or trench spacing), control device vendor specifications, the initial performance test results, and the monitoring parameters established during the initial performance test, must be maintained on site as long as the collection system and control devices are required to be operated.

Any replacement of system components which results in a change in the level of any parameter that is monitored in order to demonstrate 98 percent NMOC destruction efficiency must be entered into this permanent record, and reported in the next semiannual compliance report. Monitoring records and all data and calculations from each semiannual and annual compliance report would be maintained for 2 years following the date of such records, after which they may be discarded.

The reporting and recordkeeping requirements in the proposed standards are necessary to inform enforcement personnel of the compliance status of new MSW landfills that initiate operation. The EPA predicts that the design capacity calculation required to be included in the notification of construction report will exclude a large majority of all new MSW landfills from the further provisions of the proposed standards, and will alert enforcement personnel to the remaining population of landfills that may be required to install collection and control systems in the future.

The annual NMOC emission rate report will serve as a compliance demonstration for all MSW landfills approaching the cutoff NMOC emission rate, and will verify that collection and control systems are not yet warranted at these landfills. This report will not impose an unreasonable burden on MSW landfill owners or operators, amounting to about 2 hours per reporting landfill annually. The EPA analysis of landfill emission factors indicate that gas generation and NMOC concentrations may increase significantly over relatively short periods of time. Therefore, EPA has judged annual reporting of NMOC emission rate is warranted. The alternative of estimates at set intervals as a landfill's emissions increase toward the regulatory cutoff provides relief for landfills emitting at rates well below the cutoff. The inclusion of the anticipated acceptance rate and the 5-year estimate of the NMOC emission rate will help enforcement personnel keep track of when specific landfills are likely to warrant control.

The submission of the collection system design plan, the initial performance test for the control device(s), and subsequent semiannual compliance reports would provide the data and information necessary to ensure continued compliance of controlled MSW landfills with the proposed standards. At the same time, these requirements would not impose an unreasonable burden on MSW landfill owners or operators.

I. Reporting and Recordkeeping Guidelines—Existing Municipal Solid Waste Landfills

As explained previously, the proposed guidelines would achieve the same level of control for existing MSW landfills which have accepted waste at any time since November 8, 1987, or which intend to accept additional waste in the future, as is required for new MSW landfills under the proposed standards. Therefore, State agencies will need the same kinds of information to implement their plans under the proposed guidelines. The minor differences in the requirements necessitated by the differences between new and existing MSW landfills are explained below.

In the case of an existing landfill, the notification of the date of construction would be replaced by the submittal of an initial design capacity report, which would contain the amount of refuse in place in addition to the acceptance rate. This report will fulfill all the reporting and recordkeeping requirements of the guidelines for those existing MSW landfills whose design capacities are less than 100,000 Mg (111,000 tons). For existing MSW landfills whose design capacities are equal to or greater than 100,000 Mg (111,000 tons), this report must also include either the first annual NMOC emission rate report, or an estimate of the NMOC emission rates for the next 5 years. This notification must be submitted within 90 days of the effective date of the EPA-approved State plan.

J. Compliance Times

Demonstrations of compliance for new and existing landfills under the proposed standards and emission guidelines involve two parts. The first is the timely submission of annual or periodic NMOC emission rate reports for affected and designated landfills with NMOC emission rates below 150 Mg/yr (167 tpy). The second aspect of compliance for affected and designated landfills with NMOC emission rates of 150 Mg/yr (167 tpy) or greater involves the timely submission of a notification of intent to install a collection system designed in accordance with the specifications in § 60.758, or submission of a collection system design plan for review, and subsequent installation of a complying collection system. A discussion of the rationale for the frequency of the NMOC emission rate reports was presented under the previous sections on reporting and recordkeeping requirements, and will not be repeated here. After a brief review of the schedule for the NMOC emission rate reports, a discussion of the compliance times for the design and installation of collection and control systems will be presented. Since there is little difference between the design and installation of collection and control systems for new and existing landfills, EPA believes that State plans developed in response to the proposed guidelines should be based on the same overall time intervals.

The first annual NMOC emission rate report must be submitted within 90 days of initial refuse acceptance for new landfills. For existing landfills the first annual NMOC emission rate report should be submitted within 90 days of the date of promulgation of the State emission standard. The initial report may include an estimate of the NMOC emission rate for each of the next 5 years, provided that each of the five estimates is less than 150 Mg/yr (167 tpy). This estimate would permit the owner or operator to report the NMOC emission rate less frequently than annually. Landfills which submit either the annual NMOC emission rate reports or the 5-year estimates in a timely manner are in compliance with the standards until the NMOC emission rate using the EPA's Tier 1 formula and default values reaches 150 Mg/yr (167 tpy).

The time necessary for the installation of collection and control systems proposed under both the standards and the guidelines includes four components. These are: (1) The time between an initial Tier 1 determination that a landfill is emitting above the regulatory cutoff of 150 Mg/yr (167 tpy) of NMOC's and the completion of any additional site-specific sampling or testing to verify this determination, (2) the time needed to prepare and submit a notification of intent to install a collection system designed in accordance with § 60.758 or a collection and control system design plan for review, (3) the time necessary for the design plan (if one has been submitted for review) to be reviewed, and (4) the time necessary to actually install the approved system. The proposed standards and guidelines allow 2½ half years for this combined process. The rationale for this time period is provided below.

Once a 150 Mg/yr (167 tpy) emission rate has been reported using the Tier 1 formulas and defaults, the owner or operator would be required to submit a notice of intent to install a collection system designed in accordance with § 60.758, or a collection system design plan, or data and calculations demonstrating that the site's NMOC emission rate is actually below 150 Mg/yr (167 tpy) using the Tier 2 procedures If further sampling and testing are selected, the site-specific NMOC concentration to use in the Tier 2 calculation of the NMOC emission rate is determined through on-site sampling using Method 25C. The EPA has analyzed how much time would be needed to perform this sampling, and as a result of possible delays in the analysis of the samples, believes that as much as 6 months may be necessary to complete the sampling and analysis, and to submit a revised NMOC emission rate report.

The resulting emission rate may be below the level of the regulatory cutoff, and collection and control systems would not be required at that time. If the revised annual NMOC emission rate still exceeds the regulatory cutoff of 150 Mg/yr (167 tpy) of NMOC's, the owner or operator may again decide to forego further testing and begin to design a collection and control system. Alternatively, the owner or operator may elect to perform Tier 3 testing using Method 2E to determine a site-specific landfill gas flowrate to use in the calculation of the NMOC emission rate. The EPA has determined that Method 2E will also take up to 6 months to complete. Therefore, the proposed standards allow up to 1 year for the performance of site-specific testing and sampling to verify the NMOC emission rate.

Since EPA believes that the majority of owners and operators performing Method 2E to make Tier 3 calculations will actually be required to install collection and control systems either immediately or in the near future, EPA believes that the collection system design phase should coincide with the performance of Method 2E. The EPA has determined that up to 6 months may be needed to produce a design plan of the collection system meeting the specifications of the proposed standards. Therefore, the proposed standards will require the submittal of both the revised NMOC emission rate report and the collection system design plan within 6 months of the earlier NMOC emission rate report revised on

the basis of the NMOC concentration (Tier 2). This would be 1 year after the first Tier 1 emission calculation report with an NMOC emission rate above 150 Mg/yr (167 tpy). Those owners or operators whose Method 2E testing results in an NMOC emission rate below the regulatory cutoff would need to submit the revised NMOC emission rate report including the test results upon which the revised emission rate is based. Subsequent annual NMOC emission rate reports would utilize the landfill gas flowrate obtained through the performance of Method 2E.

The EPA has not required that site-specific sampling and testing be performed by each owner or operator, and cannot predict to what extent owners or operators will elect to sample or test. The sampling and testing would result in a more accurate NMOC emission rate, but are time consuming and may be costly. The compliance times proposed under both the standards and the guidelines reflect the situation in which the owner or operator elect to perform all the site-specific sampling and testing which is permitted.

As detailed below, 6 months are expected for State agency review of those plans submitted for review. Although owners or operators electing to install systems based on the design specifications provided in § 60.758 will not be delayed by the review process, the design and installation of a system installed without review may be more involved than installation of a system installed after review. For this reason, owners or operators electing to design and install systems based on the specifications provided in § 60.758 will be given the same total amount of time between the submission of the notification of intent and the initial performance test report that is given operators submitting designs for review between design submittal and the initial performance test report.

After submittal of the design plan, review and negotiations resulting in changes to the plan may occur. The proposed standards anticipate a total of 180 days (6 months) for the completion of review of the collection system design plan. This period of time could be necessary because the reviewing agency may require the submission of additional data, or revisions to the plan which may require time to resolve. The 180 days are the sum of 60 days for initial review and comment, 60 days for the owner or operator response and design amendment, and 60 days for final review. The EPA acknowledges that this time period may be longer than generally necessary, but since a finding of noncompliance may result if the collection and control systems are not put into place within the specified time periods, EPA wishes to be conservative in its estimation of compliance times. Comment is requested from interested parties, especially States and other agencies likely to be responsible for reviewing the design plans.

Based on limited information from existing landfills at which collection and control systems have already been installed, EPA believes the systems may be installed within 1 year of final plan review. Therefore, the proposed standards allow an additional year after review and approval of the system design for the installation and startup of the system. The EPA believes that 1 year is adequate because the owner or operator would have to consult vendors and suppliers in order to submit the design plan. Therefore, only the time for actual ordering, delivery, or installation of collection and control systems is included, not the time for and possible difficulties in locating vendors. An additional 90 days would be allowed for the submission of the initial performance test of the control system.

The total time permitted for the collection and control system installation and compliance demonstration is, therefore, 3 years. This includes 90 days for the initial Tier 1 calculation and report of an NMOC emission rate of 150 Mg/yr (167 tpy) or more, 1 year for additional site-specific testing and calculations (if elected by the owner or operator) and collection and control system design, 6 months for State or EPA approval of the design plan, 1 year to order and install the collection and control system, and 90 days to conduct a performance test. This 3-year time period is appropriate for existing as well as new landfills. Since, in both cases, controls are installed after refuse is in place, there would not be significant retrofit delays for existing landfills.

K. Additional Considerations and Solicitation of Comments

During the development of today's proposed standards, EPA considered three additional alternatives. These involve the adoption of materials separation requirements in the standards, development of a methane emission limitation, and inclusion of specific energy recovery provisions. These three alternatives are associated with the EPA's goals of pollution prevention as well as providing a direct regulatory approach that responds to broader environmental concerns. The outcome of the EPA's consideration of these alternatives would affect the selection of BDT for MSW landfills. The EPA is not proposing any specific requirements in today's action based on these alternatives. Nevertheless, EPA is specifically requesting comment and information on these alternatives and will consider all comments in the final decisions.

1. Should materials separation requirements be adopted for municipal solid waste landfills under the Clean Air Act?

Materials separation of 25 percent of the solid waste stream had been proposed in the rulemaking for municipal waste combustors (MWC's) (54 FR 52255, December 20, 1989) and public comment was solicited on the requirements. However, due to the wide range of potential economic impacts, and other uncertainties, EPA elected not to include materials separation in the MWC standards at promulgation (56 FR 5488 and 56 FR 5514; February 11, 1991).

During the development of today's proposed standards and guidelines, EPA considered adding a similar requirement for source separation. However, EPA has decided not to include such a requirement in this proposal because the Agency is planning to propose a source separation requirement under the authority of RCRA for MSW landfills. The Agency believes that RCRA is the appropriate vehicle to address the wide-ranging issues associated with solid waste management for landfills.

The EPA requests comments and information on any direct or indirect linkage of materials separation efforts and reduction of air emissions for MSW landfills and any nonair quality health and environmental impacts that can be discerned. In addition, EPA requests comments on using RCRA Subtitle D authority instead of the CAA to address materials separation.

2. Should Best Demonstrated Technology Be Selected Explicitly for Methane?

Estimates of methane emission rates from MSW landfills in the United States are uncertain, but are believed to range from 8 to 18 million Mg/yr (8.9 to 20 million tpy) and are expected to increase annually as solid waste generation increases (Docket No. A-88-09, Item No. II-B-31). This estimate is approximately 7 percent of the total estimated global methane emission rate In light of the contribution of methane to possible global warming, EPA considered whether to develop standard that would directly achieve additional methane control—selecting a regulatory alternative to require control at all

landfills above a prescribed annual methane emission level.

The designated pollutant being proposed today is MSW landfill emissions. This designation represents a collection of air pollutants, including methane and NMOC's . As a surrogate measure for MSW landfill emissions, NMOC's were selected to determine which landfills must install gas collection and control systems. The selection of the NMOC emission level, above which control is required, places the greatest emphasis on nonmethane emissions (the fraction that includes toxic compounds), but also specifically achieves significant methane reductions. Under this approach, a 60-percent emission reduction of methane will be achieved from existing MSW landfills by regulating 12 percent of the existing landfills. To achieve additional methane emission reduction, EPA considered whether to select a separate regulatory cutoff for methane alone, which is discussed below.

Adopting a separate methane emission requirement would address one of the many sources of global warming gases. On the other hand, there are several reasons not to establish a separate methane requirement at this time. First, while EPA believes global warming is a potential public health and welfare concern and that methane is a greenhouse gas, there is still uncertainty as to the rate and magnitude of possible global climate change and the resulting effects. However, as the international community moves toward the Climate Change Convention in 1992, the state of knowledge may change over the next 2 years. In addition, the cost of methane control increases as controls are extended beyond the landfills affected by today's proposed standards to more, and generally smaller, landfills with lower methane emission potential. Third, because methane emissions occur from many sources, EPA believes that any methane control strategy should consider the total problem and all control options. Until this is done, and due to the uncertainties of the estimates and the potentially high cost involved, EPA has no basis at this time for selecting a level of control for landfill methane that would be reasonable relative to other methane sources. It would be inappropriate to focus solely on only one source under the CAA or other statutory framework without the benefit of an overall stragegy. As a result of these considerations, EPA decided not to develop a separate methane emission level for this action.

The EPA requests comment and information on the control of methane in light of the continuing scientific discussion on global warming, the significance of MSW landfills to methane emissions, and suggestions on an overall strategy for control of methane (and other global warming air pollutants).

3. Should Specific Energy Recovery Requirements Be Included?

The EPA considered using energy recovery as a basis for the selection of BDT. Energy recovery at MSW landfills involves collecting and routing gas to energy recovery systems (i.e., I.C. engines, gas turbines, boilers) that could generate electricity, heat, or steam, and therefore, has a positive energy benefit. The use of such systems would further the goal of pollution prevention, since these energy recovery systems can offset some particulate, CO_2, and NO_x emissions from utilties while using an otherwise lost resource. Such offsets do not result when flares are used.

There are currently about 100 MSW landfills using energy recovery in the United States and the number has been growing. In developing these standards, EPA received and reviewed information from numerous MSW landfills currently recovering the landfill gas for energy production. The EPA has concluded, however, that choosing energy recovery for MSW landfills should be a site-specific decision. There are two major reasons for this decision. First, some landfills may not have a market available for the recovered energy. Second, there are many factors that affect the generation of landfill gas and these cannot be predicted with certainty. Therefore, developers of landfill gas energy recovery systems accept risks similar to those of oil and natural gas developers. It is possible for an individual MSW landfill to install energy recovery systems and discover later that the landfill's gas generation does not meet the initial predictions. Such mistakes are costly.

The EPA visited an MSW landfill located in Raleigh, North Carolina, where landfill gas is being collected and routed to a steam-generating boiler offsite. This landfill currently has approximately 2.7 million Mg (3 million tons) of waste in place with 10 years active waste acceptance life remaining. The collection system contains 48 wells and produces 0.034 million cubic meters per day (m^3/day) [1.2 million cubic feet per day (ft^3/day)] of landfill gas. Since its startup, the energy recovery system has been successful and has paid the City of Raleigh a percentage of its revenue.

On the other hand, EPA also visited an MSW landfill located in Greensboro, North Carolina, where a system was installed to purify the landfill gas to high Btu quality for residential use. This landfill, in an area with an expected rainfall similar to that in Raleigh, has approximately 2.7 million Mg (3 million tons) of waste in place since receiving its permit in 1978. The landfill has 15 to 20 years of active waste acceptance life remaining. The collection system contains 48 wells and was designed for flowrates between 0.028 and 0.084 million m^3/day (between 1 and 3 million ft^3/day) of landfill gas. After the start-up of this system, actual landfill gas generation never matched the initial predicted quantities, due in part to low moisture content. Subsequently, the energy recovery project has been suspended.

The EPA considered four options involving energy recovery in the standard. Option I would not require energy recovery in the standard itself, but would provide information to enable the landfill owners or operators to make their own decisions based on site-specific considerations. Option II would require owners or operators to undertake an analysis of energy recovery potential and present the result and decision on energy recovery for comment at a public meeting. Option III would require the owners or operators to perform the analysis following the EPA procedures and require energy recovery for affected landfills if the net costs are projected to break even (i.e., equal to or less than the flaring costs). Option IV would require owners or operators to perform the analysis following the EPA procedures and require energy recovery if the net cost projected is less than a specific amount (i.e., $/Btu) to be determined by EPA.

While all four options further pollution prevention and energy goals, Option II through IV would provide more assurance of the use of energy recovery and pollution prevention. Additionally, Options II through IV would result in significant reductions in methane, a greenhouse gas. However, these options, especially Options III and IV, involve significant financial risks. The EPA's ability to provide formulas for determining where or when net benefits occur for energy recovery is limited. The capability to predict energy recovery for MSW landfills is still developing, a venture that can be risky in light of many factors that affect the amount of gas that can be generated by an MSW landfill. The EPA believes many large MSW landfills will recover energy based on their own initiative. It is expected that both publicly and privately owned MSW landfills, with the

help of consulting firms involved in landfill gas development, will select the least-cost approach—especially where energy recovery would be less costly than flaring.

As a result of considering the factors associated with this alternative, EPA decided not to propose to use energy recovery as the basis for the selection of BDT in this action, but to provide information to assist in these decisions (Option I). However, EPA will continue to consider the remaining options and solicits comment on any of the options and rationales discussed and any preferences for the options, on the problem of MSW landfills with no markets for recovered energy, and on the basis of the reasoning that both publicly and privately owned MSW landfills would recover energy on their own initiative.

4. Should EPA Consider Developing an Alternate Regulatory Cutoff Format?

The EPA selected an annual mass emission rate of NMOC's as the basis of the regulatory format. Specifically, landfills emitting more than 150 Mg/yr of NMOC's must control their landfill gas emissions with an active gas collection system and an add-on control device. Landfills can discontinue the operations of controls only after (1) the annual mass emissions are less than 150 Mg/yr; (2) the landfill is closed; and (3) the controls are in place for at least 15 years. The regulatory format is based on using 150 Mg/yr NMOC as the same regulatory cutoff for both the placement of controls and the "removal" of controls.

During development of the standards and guidelines, questions were raised about having separate annual mass emission rates for the placement and removal of controls. It would be possible to consider having a less stringent emission rate cutoff for the placement of controls and, once the controls are in place, to use a more stringent (or lower) cutoff for the removal of the controls. This approach is based on the assumption that most of the capital (for design plans and construction of active collection systems and control devices) is spent initially. If capital is spent "up front" then the marginal costs of control in the future is less. If it costs less to control future emissions once the system is in place, then the regulatory cutoff associated with the period of control can then be extended by setting a separate and lower regulatory cutoff for the removal of controls, obtaining additional reductions in emissions.

The EPA's approach calls for the same annual emission rate for both placement and removal of controls. In making this decision, EPA modeled the emissions (as dicussed in IV.E.2.) and costs of control for MSW landfills. This model predicts that emissions increase as waste is placed and decrease overtime after closure. The costs, while initially relatively large, are spread out over time reflecting what landfill operators will experience. Based on this modeling, EPA determined that the most efficient means of establishing a cutoff is to use the same emission cutoffs for both placement and removal of controls. Second, the EPA does not disagree that using a less stringent level for placement of controls and a more stringent level for removal of controls may get more emissions reduction. However, if the goal is to get more emission reduction in a cost effective manner, EPA believes, based on its current modeling, that it may make more sense to use a slightly more stringent level for both the placement and removal of controls to maximize emission reduction than to only tighten the requirements for removing the controls.

In EPA's modeling effort, initial costs of controls and costs of replacement of controls (control device, blowers, headers) are calculated every 15 years throughout the period of control. Controls for affected landfills can be placed at any point along the emission profile. For landfills with short control periods, for example, less than 10 years, the cost of control is spent up front with no replacement costs. The EPA expects very few MSW landfills to have very short control periods. For landfills estimated with long periods of control, for example, greater than 50 years, the replacement costs would be needed at least 3 times along with typical operation and maintenance costs for the duration of the control period. In this case, the marginal costs for future control are not necessarily small. The argument to have a lower regulatory cutoff for removal of controls due to lower future control costs would not be met in this case.

Given the complexity of analyzing, selecting, and then implementing separate regulatory cutoffs, the EPA elected to use the same emission rate for both placement and removal of controls. However, given the uncertainty of our analysis, the EPA would consider comments on establishing separate emission cutoffs for the placement and removal of controls.

V. Considerations for Prevention of Significant Deterioration

Today's rulemaking under section 111(b) would establish a new classification of pollutants subject to regulation under the Act: "MSW landfill emissions." A consequence of this action is that PSD rules will now apply to all subject major stationary sources which would have significant increases in this pollutant. Absent any significance levels in the regulations to exempt *de minimis* situations, PSD review would be triggered by any increase in MSW landfill emissions. In order to maintain a manageable review process which focuses resources on environmental priorities, EPA is today proposing significance thresholds for this pollutant.

Today's notice proposes that emissions of NMOC be measured as a surrogate for overall MSW landfill emissions. Further NMOC constitutes a small fraction of overall emissions. Available data on the composition of NMOC is sparse and indicates a high degree of variability. These factors combine to make the selection of *de minimis* difficult. Vinyl chloride, for example, is one component of NMOC and was previously given a 0.9 Mg/yr (1 tpy) *de minimis* level. Some components of NMOC include that overall class of compounds typically referred to as VOC's and these also include various toxic chemicals. For the purpose of controlling ozone formation, EPA has previously established the *de minimis* for VOC at 36 Mg/yr (40 tpy). At this time, EPA proposes a *de minimis* of 36 Mg/yr (40 tpy) MSW landfill emissions expressed as NMOC. In effect this level is more stringent than that chosen for VOC, because NMOC includes photochemically unreactive compounds and less stringent than that chosen for toxics such as vinyl chloride, since NMOC contains many nontoxic compounds. Public comment on the reasonableness of this selection is requested.

In the August 1980 **Federal Register**, EPA provided exemptions from the otherwise required PSD air quality analyses for those sources which could demonstrate that their maximum expected air quality impact could be less that the values indicated (45 FR 52676, 52709). Those air quality values were generally set at levels reflecting a multiple of the lowest detectable ambient concentration that could be measured by available monitoring equipment. The MSW landfill emissions being regulated today present a somewhat different situation in that no ambient monitoring methods exist to measure this specific classification of pollutant. For this reason, the Administrator will not at this time require PSD permit applicants to monitor MSW landfill emissions concentrations, and therefore, no

exemption from this requirement is needed. Applications for permits will, of course, continue to be responsib.e for performing appropriate monitoring for other pollutants.

The EPA recognizes that the determination of significance thresholds for review of increases in MSW landfill emissions is important. Comment on the proposed threshold and approach used to determine the significance threshold is therefore solicited and will be carefully reviewed.

VI. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standards and guidelines in accordance with section 307(d)(5) of the CAA. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket Section address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at the EPA's Air Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) to allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review (except for interagency review materials [Section 307(d)(7)(A)]).

C. Clean Air Act Procedural Requirements

1. Administrator Listing—Section 111

As prescribed by Section 111 of the CAA, as amended, establishment of standards of performance and emission guidelines for MSW landfills is accompanied in this notice by the Administrator's determination that these sources contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The rationale for this determination appears elsewhere in this notice.

2. Periodic Review—Section 111

These regulations will be reviewed 4 years from the data of promulgation as required by the CAA. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

3. External Participation—Section 117

In accordance with Section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. In addition, numerous discussions were held with industry representatives and trade associations during development of the proposed standards and guidelines. The Administrator will welcome comments on all aspects of the proposed regulations, including economic and technological issues.

4. Economic Impact Assessment—Section 317

Section 317 of the CAA requires the Administrator to prepare an economic impact assessment for any new source performance standard promulgated under section 111(b) of the Act. An economic impact assessment was prepared for the proposed regulations and guidelines and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the proposed standards and guidelines to ensure that today's proposal would represent the best system of continuous emission reduction considering costs. The economic impact assessment is included in Chapter 8 of the BID.

D. Office of Management and Budget Reviews

1. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked "Attention: Desk Officer for EPA," as well as to EPA. The final rule will respond to any OMB or public comments on the information collection requirements.

2. Executive Order 12291 Review

Executive Order 12291 requires each Federal agency to determine if a regulation is a "major rule" as defined by the order and "to the extent permitted by law," to prepare and consider a Regulatory Impact Analysis (RIA) in connection with every major rule. Major rules are defined as those likely to result in:

1. An annual cost to the economy of $100 million or more; or
2. A major increase in costs or prices for consumers or individual industries; or
3. Significant adverse effects on competition, employment, investment, productivity, innovation, or international trade.

The EPA has judged the proposed standards and guidelines to limit air emissions from MSW landfills to be major rules based on estimated national control costs (i.e., annualized costs in excess of $100 million). The EPA has prepared a draft RIA that includes estimates of costs, benefits, and net benefits associated with three stringency levels (25, 100, and 250 Mg/yr [28, 111, and 278 tpy] of NMOC). The draft analysis, titled "Regulatory Impact Analysis of Air Pollutant Emission Standards and Guidelines for Municipal Solid Waste Landfills," is available in the docket.

The standards will cost the nation approximately $26 million annually, and the guidelines about $240 million annually. If the costs to individual controlled MSW landfills were added to landfill tipping fees, the results for most affected new landfills would be increases of less than $10 per household per year. For the guidelines the increase for most affected existing landfills would be less than $15 per household per year. These numbers are based on the flare option and on the selection of a regulatory emissions cutoff of 150 Mg/yr (167 tpy) of NMOC for the standards and the guidelines.

The economic impacts of the standards and guidelines are expected to be small. Privately owned landfills that are already closed and must install emissions controls may be significantly impacted by the regulatory alternatives, because they have no easy way of recovering compliance costs. However, there are few closed, privately owned landfills that are affected under any of the regulatory alternatives. All of the regulatory alternatives will stimulate the adoption of energy recovery technologies at affected landfills.

The absence of sufficient exposure-response and valuation information precludes a comprehensive benefits analysis at this time. However, a surrogate benefits analysis indicates that substantial benefits from the egulation are probable.

The draft RIA has been submitted to OMB for review under E.O. 12991. Any written comments from OMB to EPA and any response to these comments will be included in Docket No. A-88-09. This docket is available for public inspection at the EPA's Air Docket Section, which is listed under the **ADDRESSES** section of this notice. A final RIA will be issued at the time of promulgation of the final rulemaking.

E. Regulatory Flexibility Act Compliance

The Regulatory Flexibility Act (RFA) requires consideration of the impacts of proposed regulations on small entities including small businesses, organizations, and jurisdictions. A small business is defined as any business concern which is independently owned and operated and not dominant in its field as defined by the Small Business Administration regulations under Section 3 of the Small Business Act (SBA). Similarly, a small organization is defined by the SBA as a not-for-profit enterprise, independently owned and operated, and not dominant in its field. A small jurisdiction is defined as any government district with a population of less than 50,000 people.

Pursuant to the Provisions of 5 U.S.C. 605(b), I hereby certify that these rules, if promulgated, will not have a significant economic impact on a substantial number of small business entities because the number of small entities that would be affected, if any, is not substantial.

List of Subjects

40 CFR Parts 51 and 52

Air pollution control, Reporting and recordkeeping requirements.

40 CFR Part 60

Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Municipal solid waste landfills.

Dated: May 16, 1991.

William K. Reilly,

Administrator.

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION AND SUBMITTAL OF IMPLEMENTATION PLANS

For reasons set forth in the preamble, it is proposed that parts 51, 52, and 60, chapter I, title 40 of the Code of Federal Regulations be amended as follows:

1. The authority citation for part 51 continues to read as follows:

Authority: Secs. 101(b)(1), 160–169, 171–178, and 301(a) of the Clean Air Act, 42 U.S.C. 7401(b)(1), 7410(b)(1), 7410, 7470–7479, 7501–7508, and 7601(a).

2. Section 51.166 is amended by revising paragraph (b)(23)(i) to read as follows:

§ 51.166 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(23)(i) *Significant* means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emission that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide:
100 tons per year (tpy)
Nitrogen oxides:
40 tpy
Sulfur dioxide:
40 tpy
Particulate matter:
25 tpy of particulate matter emissions
15 tpy of PM_{10} emissions
Ozone:
40 tpy of volatile organic compounds
Lead:
0.6 tpy
Asbestos:
0.007 tpy
Beryllium:
0.0004 tpy
Mercury:
0.1 tpy
Vinyl Chloride:
1 tpy
Fluorides:
3 tpy
Sulfuric acid mist:
7 tpy
Hydrogen sulfide (H_2S):
10 tpy
Total reduced sulfur (including H_2S):
10 tpy
Reduced sulfur compounds (including H_2S):
10 tpy
Municipal solid waste landfills emissions:
40 tpy of nonmethane organic compounds (as measured by Method 25C)

* * * * *

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.21 is amended by revising paragraph (b)(23)(i) to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(23)(i) *Significant* means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emission that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide:
100 tons per year (tpy)
Nitrogen oxides:
40 tpy
Sulfur dioxide:
40 tpy
Particulate matter:
25 tpy of particulate matter emissions
15 tpy of PM_{10} emissions
Ozone:
40 tpy of volatile organic compounds
Lead:
0.6 tpy
Asbestos:
0.007 tpy
Beryllium:
0.0004 tpy
Mercury:
0.1 tpy
Vinyl Chloride:
1 tpy
Fluorides:
3 tpy
Sulfuric acid mist:
7 tpy
Hydrogen sulfide (H_2S):
10 tpy
Total reduced sulfur (including H_2S):
10 tpy
Reduced sulfur compounds (including H_2S):
10 tpy
Municipal solid waste landfills emissions:
40 tpy of nonmethane organic compounds (as measured by Method 25C)

* * * * *

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601.

2. Part 60 is amended by adding a new Subpart WWW to read as follows:

Subpart WWW—Standards of Performance for Municipal Solid Waste (MSW) Landfills

Sec.
60.750 Applicability and designation of affected facility.
60.751 Definitions.
60.752 Standards for air emissions from MSW landfills.
60.753 Test methods and procedures.
60.754 Compliance provisions.
60.755 Monitoring of operations.
60.756 Reporting requirements.
60.757 Recordkeeping requirements.
60.758 Design specifications for active vertical collection systems.

Subpart WWW—Standards of Performance for Municipal Solid Waste (MSW) Landfills

§ 60.750 Applicability and designation of affected facility.

The provisions of this subpart apply to each municipal solid waste (MSW) landfill that began accepting waste on or after May 30, 1991.

§ 60.751 Definitions.

(a) As used in this subpart, all terms not defined herein shall have the meaning given them in the Act or in subpart A of this part.

Closed landfill means a landfill in which refuse is no longer being placed, and in which no additional wastes will be placed without first filing a notification of modification as prescribed under § 60.14.

Commercial solid waste means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

Controlled landfill means any landfill at which collection and control systems are required as a result of the NMOC emission rate. The landfill is considered controlled at the time a collection and control system design plan is submitted in compliance with § 60.752(b)(2)(i).

Design capacity means the maximum amount of waste landfill can accept, as specified in the construction permit issued by the county or State agency responsible for regulating the landfill.

Household waste means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

Industrial solid waste means solid waste generated by manufacturing or industrial processes, that is not a hazardous waste regulated under subtitle C of the Resource Conservation and Recovery Act. Such waste may include, but is not limited to, the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

Landfill means an area of land or an excavation in which wastes are placed for permanent disposal, and which is not a land application unit, surface impoundment, injection well, or waste pile.

Municipal solid waste landfill or *MSW landfill* means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive commercial waste, sludges, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned.

Muncipal solid waste landfill emissions or MSW landfill emissions means any gas derived through a natural process through the decomposition of organic waste deposited in an MSW waste disposal site or from the evolution of volatile organic species in the waste.

NMOC or *NMOC's* means nonmethane organic compounds, as measured according to the provisions of § 60.753.

Sludge means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatement plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

Solid waste means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit requirements under 33 U.S.C. 1342, or sources of special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

§ 60.752 Standards for air emissions from MSW landfills.

(a) Each owner or operator of an MSW landfill having a maximum design capacity less than 100,000 megagrams (Mg) (111,000 tons), shall submit an initial design capacity report to the Administrator as provided for in § 60.756. This report shall fulfill the requirements of this regulation except as provided for in paragraphs (a) (1) and (2) of this section.

(1) An amended design capacity report as provided for in § 60.756(a)(2) is required providing notification of any increase in the design capacity of a landfill subject to the provisions of this subpart, whether the increase results from an increase in the area or depth of the landfill, a change in the operating procedures of the landfill, or any other means.

(2) Any increase in the maximum design capacity of a landfill exempted from the additional provisions of this subpart on the basis of the design capacity cutoff in paragraph (a) of this section, which results in a maximum design capacity equal to or greater than 100,000 Mg (111,000 tons), shall nullify the exemption and subject the owner or operator to the provisions of paragraph (b) of this section.

(b) Each owner or operator of an MSW landfill having a design capacity equal to or greater than 100,000 Mg (111,000 tons) shall calculate an NMOC emission rate for the landfill using the procedures provided in § 60.753. The NMOC emission rate shall be recalculated annually, except as provided for in § 60.756(b)(1)(ii) below. Each owner or operator shall compare the calculated NMOC emission rate to 150 Mg/yr (167 tpy) NMOC.

(1) If the calculated NMOC emission rate is less than 150 Mg/yr (167 tpy), the owner or operator shall:

(i) Submit an annual emission report to the Administrator, except as provided for in § 60.756(b)(1)(ii); and

(ii) Recalculate the NMOC emission rate periodically as provided for § 60.756(b)(1)(ii) until such time as the calculated NMOC emission rate is equal to or greater than 150 Mg/yr (167 tpy) and a collection and control system is installed, or the landfill is closed.

(A) If the calculated NMOC emission rate is equal to or greater than 150 Mg/yr (167 tpy) on any subsequent calculation, the owner or operator shall install a collection and control system in compliance with paragrah (b)(2) of this section.

(B) If the landfill is permanently closed, a closure notification shall be submitted to the Administrator as provided for in § 60.756.

(2) If the calculated NMOC emission rate is equal to or greater than 150 Mg/yr (167 tpy), the owner or operator shall:

(i) Submit either (A) or (B) paragraph (b)(2)(i) of this section:

(A) A notification of intent to install a collection and control system conforming to the specifications provided in § 60.758 below.

(B) A collection and control system design plan to the Administrator or

designated reviewing Agency. The collection and control system shall be designed in conformance to the guidance provided in Chapter 9 of the background information document (BID), EPA-450/3-90-011(a), and shall effectively address the design parameters provided in paragraph (b)(a)(ii) of this section.

(ii) Install a collection and control system within 1½ years of the submittal of the design plan or notification of intent. The collection system shall effectively capture the gas that is generated within the landfill. The collection system shall:

(A) Be designed to handle the maximum expected gas flowrate over the lifetime of the gas control or treatment system equipment from the entire area of the landfill that warrants control over the equipment lifetime;

(B) Collect gas from each area, cell, or group of cells in the landfill in which refuse has been placed for a period of 2 years or more.

(C) Collect gas at a sufficient extraction rate.

(iii) Route the collected gas to a control or treatment system in compliance with paragraph (b)(2)(iii) (A), (B) or (C) of this section.

(A) Route the collected gas to an open flare designed and operated in accordance with 40 CFR 60.18.

(B) Route the collected gas to a control system designed and operated within the parameters demonstrated in the performance test to reduce NMOC's by 98 weight-percent. When an enclosed combustor is used for control, reduction of the outlet NMOC concentration to 20 ppmvd as hexane at 3 percent oxygen shall fulfill this requirement. The ppmvd shall be established by Method 25.

(C) Route the collected gas to a treatment system that processes the collected gas for subsequent sale or use. The sum of all emissions from any atmospheric vent from the gas treatment system shall be subject to the requirements of paragraph (b)(2)(ii)(A) of this section.

(iv) Operate the collection and control device in compliance with §§ 60.754 and 60.755 of this subpart.

(v) The collection and control system may be capped or removed provided the conditions of each of paragraphs (b)(2)(v) (A), (B), and (C) of this section are met:

(A) The landfill must be no longer accepting waste and be permanently closed. A closure report must be submitted to the Administrator as provided for in § 60.766;

(B) The collection and control system must have been in continuous operation a minimum of 15 years; and

(C) Following the procedures in § 60.753(b), the calculated NMOC emission rate must be less than 150 Mg/yr (167 tpy) on three successive test dates. The test dates must be no closer than 3 months apart, and no longer than 6 months apart.

§ 60.753 Test methods and procedures.

(a) The landfill owner or operator shall estimate the NMOC emission rate using either the equation provided in paragraph (a)(1)(i) of this section or the equation provided in paragraph (a)(1)(ii) of this section.

(1)(i) The following equation shall be used if the actual year-to-year acceptance rate is known.

$$Q_T = \sum_{i=1}^{n} 2\,k\,L_o\,M_i\,(e^{-kt_i})\,(C_{NMOC})\,(3.595 \times 10^{-9})$$

where,

Q_T = Total NMOC emission rate from the landfill, Mg/yr

k = landfill gas generation constant, 1/yr

L_o = methane generation potential, m^3/Mg

M_i = mass of refuse in the ith section, Mg

t_i = age of the ith section, yrs

C_{NMOC} = concentration of NMOC, ppmv

3.595×10^{-9} = conversion factor

The NMOC emission rate is the sum of each NMOC emission rate for each yearly submass.

(ii) The following equation shall be used if the actual year-by-year refuse acceptance rate is unknown.

$$M_{NMOC} = 2L_o\,R\,(1 - e^{-kt})\,(C_{NMOC})\,(3.595 \times 10^{-9})$$

where,

M_{NMOC} = mass emission rate of NMOC, Mg/yr

L_o = refuse methane generation potential, m^3/Mg refuse

R = average annual acceptance rate, Mg/yr

k = methane generation rate constant, 1/yr

t = age of landfill, yrs

C_{NMOC} = concentration of NMOC, ppmv as hexane

3.595×10^{-9} = conversion factor

In the absence of site-specific data, the values to be used for k, L_o, and NMOC concentration are 0.02/yr, 230 m^3/Mg, and 8,000 ppmv as hexane, respectively.

(2) The owner or operator shall compare the calculated NMOC mass emission rate to the standard of 150 Mg/yr (167 tpy).

(i) If the calculated NMOC emission rate is less than 150 Mg/yr (167 tpy), then the landfill owner shall submit an emission rate report as provided in § 60.756(b)(1), and shall recalculate the NMOC mass emission rate periodically.

(ii) If the calculated NMOC emission rate is equal to or greater than 150 Mg/yr (167 tpy), then the landfill owner shall either install controls in compliance with § 60.752(b)(2), or determine a site-specific NMOC concentration using the procedures provided in paragraph (a)(3) of this section.

(3) The landfill owner or operator shall estimate the NMOC mass emission rate using the following sampling procedure. The landfill owner or operator shall install a minimum of five sample probes. The owner shall collect and analyze at least one sample of landfill gas from each probe for NMOC concentration using Method 25C. The landfill owner shall recalculate the NMOC mass emission rate using the average NMOC concentration from the collected samples instead of the default value in the equation provided in paragraph (a) of this section.

(i) If the resulting mass emission rate is equal to or greater than 150 Mg/yr (167 tpy), then the landfill owner or operator shall install controls in compliance with § 60.752(b)(2), or determine the site-specific gas generation rate constant using the procedure provided in paragraph (a)(4) of this section.

(ii) If the resulting NMOC mass emission rate is less than 150 Mg/yr (167 tpy), then the landfill owner or operator shall demonstrate that the NMOC mass emission rate is below the level of the standard with 80 percent confidence.

(A) The owner or operator shall use the following equation to determine the number of samples required to show 80 percent confidence:

$$n = \frac{(t_{.20})^2\,s^2}{D^2}$$

where,

n = number of samples required to demonstrate 80 percent confidence.

$t_{.20}$ = student-t value for a two-tailed confidence interval and a probability of .20.

s = standard deviation of the initial set of samples, ppmv.

The landfill owner shall install the required number of probes or 50 probes, whichever is less. At least one sample of landfill gas from each probe must be collected and analyzed using Method 25C.

(B) The landfill owner or operator shall recalculate the NMOC mass emission rate using the new average NMOC concentration in the formula provided in § 60.753(a).

(iii) The landfill owner or operator shall compare the NMOC mass emission rate obtained in paragraph (a)(3)(ii)(B) of this section to the standard of 150 Mg NMOC/yr (167 tpy).

(A) If the NMOC mass emission rate is equal to or greater than 150 Mg/yr (167 tpy), then the owner or operator

shall install controls in compliance with § 60.752(b)(2), or proceed to paragraph (a)(4) of this section.

(B) If the NMOC emission rate is less than 150 Mg/yr (167 tpy), the owner or operator shall submit an annual, or a 5-year estimate of the emission rate report as provided in § 60.756(b)(1)(ii) and shall update the site-specific NMOC concentration using the procedures provided in § 60.753(a)(3) every 5 or 10 years. If the average NMOC mass emission rate plus two standard deviations is less than 150 Mg/yr (167 tpy), the owner or operator shall update the site-specific NMOC concentration every 10 years. If the average NMOC mass emission rate plus two standard deviations is greater than 150 Mg/yr (167 tpy), then the owner or operator shall update the site-specific NMOC concentration every 5 years.

(4) The landfill owner or operator shall estimate the NMOC mass emission rate using a site-specific landfill gas generation rate constant, k. The site-specific landfill gas generation rate constant and the resulting NMOC mass emission rate shall be determined using the procedures provided in Method 2E, which is incorporated by reference. The landfill owner or operator shall compare the resulting NMOC mass emission rate to the standard of 150 Mg/yr (167 tpy).

(i) If the NMOC mass emission rate is equal to or greater than 150 Mg/yr (167 tpy), then the owner or operator shall install controls in compliance with § 60.752(b)(2).

(ii) If the NMOC mass emission rate is less than 150 Mg/yr (167 tpy), then the owner or operator shall submit an annual emission rate report as provided in § 60.756(b) and shall recalculate the NMOC mass emission rate annually, using the site-specific landfill gas generation rate constant and NMOC concentration obtained in paragraph (a)(2) of this section. The calculation of the landfill gas generation rate constant is performed only once, and the value obtained is used in all subsequent annual NMOC emission rate calculations.

(b) After the installation of a collection and control system in compliance with § 60.752(b)(2), the owner or operator shall estimate the NMOC emission rate using the equation below:

$$M_{NMOC}=1.89\times10^{-3}\,Q_{LFG}\,C_{NMOC}$$

where,

M_{NMOC} = mass emission rate of NMOC, Mg/yr
Q_{LFG} = flowrate of landfill gas, m^3/min
C_{NMOC} = NMOC concentration, ppmv

(1) The flowrate of landfill gas, Q_{LFG}, shall be obtained by measuring the total landfill gas flowrate at the common header pipe that leads to the control device using an orifice meter as described in Method 2E.

(2) The average NMOC concentration, C_{NMOC}, shall be determined by collecting and analyzing landfill gas sampled from the common header pipe using Method 25C.

§ 60.754 Compliance provisions.

(a) The following methods shall be used to determine whether the gas collection system is in compliance with § 60.752(b)(2)(ii).

(1) For the purposes of calculating the maximum expected gas generation flowrate from the landfill to determine compliance with § 60.752(b)(2)(ii)(A), the following equation shall be used:

$$Q_m=2L_o\,R\,(1-e^{-kt})$$

where,

Q_m = maximum expected gas generation flow rate, m^3/yr
L_o = refuse methane generation potential, m^3/Mg refuse
R = average annual acceptance rate, Mg/yr
k = methane generation rate constant, 1/yr
t = age of the landfill plus the gas mover equipment life or active life of the landfill, whichever is less, in years.

A value of 230 m^3/Mg shall be used for L_o. If Method 2E has been performed, the value of k determined from the test shall be used: if not, a value of 0.02 $years^{-1}$ shall be used. A value of 15 years shall be used for gas mover equipment life. The active life of the landfill is the age of the landfill plus the estimated number of years until closure.

(2) For the purposes of calculating the area of influence of the gas collection system to determine compliance with § 60.752(b)(2)(ii)(B), the owner or operator should use Method 2E.

(3) For the purpose of demonstrating whether the gas collection system flowrate is sufficient to determine compliance with § 60.752(b)(2)(ii)(C), the owner/operator shall measure gauge pressure in the gas collection header. If a positive pressure exists, the gas collection system flowrate shall be increased until a negative pressure is measured.

(4) If the gauge pressure at a wellhead is positive, the valve shall be opened to restore negative pressure. If negative pressure cannot be achieved, an additional well shall be added.

(b) To determine whether the control device designed and operated according to the parameters established in § 60.18 (for open flares), or for other control devices the parameters in the performance test to reduce NMOC's by 98 weight-percent, is in compliance with § 60.752(b)(2)(iii), the parameters shall be monitored provided in § 60.755.

(c) An owner or operator seeking to demonstrate compliance with § 60.752(b)(2)(iii) using a device other than an open or enclosed flare, boiler, gas turbine, incinerator or I.C. engine shall provide to the Administrator information demonstrating that the standards can be continuously achieved.

§ 60.755 Monitoring of operations.

(a) Each owner or operator seeking to comply with § 60.752(b)(2)(ii) for the gas collection system shall install a sampling port at each well and measure the gauge pressure in the gas collection header on a monthly basis.

(b) Each owner or operator seeking to comply with § 60.752(b)(2)(iii) using an enclosed combustion device shall monitor the residence time and temperature established during the initial performance test to reduce NMOC's by 98 percent. Each owner or operator shall calibrate, maintain, and operate according to the manufacturer's specifications, the following equipment:

(1) A temperature monitoring device equipped with a continuous recorder and having an accuracy of ±1 percent of the temperature being measured expressed in degrees Celsius or ±0.5°C, whichever is greater.

(2) A flow indicator that provides a record of gas flow to the control device at intervals of every 15 minutes.

(c) Each owner or operator seeking to comply with § 60.752(b)(2)(iii) using an open flare shall install, calibrate, maintain, and operate according to the manufacturer's specifications the following equipment:

(1) A heat sensing device, such as an ultraviolet beam sensor or thermocouple, at the pilot light to indicate the continuous presence of a flame.

(2) A flow indicator that provides a record of gas flow to the flare at intervals of every 15 minutes.

(d) Each owner or operator seeking to demonstrate compliance with § 60.752(b)(2)(iii) using a device other than an open flare or a closed combustion device shall provide to the Administrator information describing the operation of the control device and the operating parameters that would indicate proper performance. The Administrator will specify appropriate monitoring procedures.

§ 60.756 Reporting requirements.

(a) Each owner or operator subject to the requirements of this subpart shall submit an initial design capacity report to the Administrator. The initial design capacity report must be submitted within 90 days of the issuance of the

construction or operating permit, or within 30 days of the date construction, or reconstruction as defined under § 60.15, of an affected facility commences, or initial acceptance of refuse, whichever is earlier. The initial design capacity report shall fulfill the requirements of the notification of the date construction is commenced as required under § 60.7(a)(1).

(1) The initial design capacity report shall contain the following information:

(i) A map or plot of the landfill, providing the size and location of the landfill, and identifying all areas where refuse may be landfilled according to the provisions of the State or county permit;

(ii) The maximum design capacity of the landfill. Where the maximum design capacity is specified in the State or county construction or RCRA permit, a copy of the permit specifying the maximum design capacity may be submitted. If the maximum design capacity of the landfill is not specified in the permit, the maximum design capacity must be calculated using good engineering principles. The calculations must be provided, along with such parameters as depth of refuse, refuse acceptance rate, and compaction practices. The State, county, or Administrator may request other reasonable information as may be necessary to verify the maximum design capacity of the landfill.

(2) An amended design capacity report must be submitted to the Administrator, providing notification of any increase in the size of the landfill, whether the increase results from an increase in the permitted area or depth of the landfill, a change in the operating procedures, or any other means which results in an increase in the maximum design capacity of the landfill. The amended design capacity report must be submitted within 90 days of the issuance of an amended construction or operating permit, or the actual use of additional land, or the change in operating procedures which will result in an increase in maximum design capacity, whichever comes first.

(b) Each owner or operator subject to the requirements of this subpart shall submit an annual NMOC emission rate report to the Administrator, except as provided for in paragraph (b)(1)(ii) of this section. The State or county agency or the Administrator may request such additional information as may be reasonably necessary to verify the reported NMOC emission rate.

(1) The annual, or 5-year estimate of the NMOC emission rate shall be calculated using the formula and procedures provided in § 60.753.

(i) The initial NMOC emission rate report shall be submitted within 90 days of the date waste acceptance commences and may be combined with the initial design capacity report required in paragraph (a) of this section. Subsequent NMOC emission rate reports shall be submitted annually thereafter, except as provided for in paragraphs (b)(1) (ii) and (iii) of this section.

(ii) The owner/operator may elect to submit an estimate of the NMOC emission rate for the next 5 years in lieu of the annual report, provided that the estimated NMOC emission rate in each of the 5 years is less than 150 Mg/yr (167 tpy). This estimate must include the current amount of refuse-in-place and the estimated waste acceptance rate for each of the 5 years for which an NMOC emission rate is estimated. All data and calculations upon which this estimate is based must be provided. This estimate must be revised at least every 5 years.

(iii) If the actual waste acceptance rate exceeds the estimated waste acceptance rate in any year reported in the 5-year estimate, a revised 5-year estimate must be submitted. The revised estimate shall cover the five years beginning with the year in which the actual waste acceptance rate exceeded the estimated waste acceptance rate.

(2) The annual, or 5-year estimate of the NMOC emission rate report shall include all the data, calculations, sample reports and measurements used.

(3) Each owner or operator subject to the requirements of this subpart is exempted from the requirements of paragraph (b) of this section after the installation of collection and control systems in compliance with § 60.752(b)(2) during such time as the collection and control system is in continuous operation and in compliance with § 60.754.

(c) Each owner or operator of a controlled landfill shall submit a closure report to the Administrator. For the purposes of this subpart, closure means that refuse is no longer being placed in the landfill, and that no additional wastes will be placed into the landfill without filing a notification of modification as prescribed under § 60.14. The Administrator may request such additional information as may be reasonably necessary to verify that permanent closure has taken place.

(d) Each owner or operator of a controlled landfill shall submit an equipment removal report to the Administrator prior to removal or cessation of operation of the control equipment.

(1) The equipment removal report shall contain the following items:

(i) A copy of the closure report submitted in accordance with paragraph (c) of this section;

(ii) A copy of the initial performance test report demonstrating the 15 year minimum control period has expired;

(iii) Dated copies of the three successive NMOC emission rate reports demonstrating that the landfill is no longer emitting above the level of the standard.

(2) The Administrator may request such additional information as may be reasonably necessary to verify that all of the conditions for removal in § 60.752(b)(2)(v) have been met.

(e) Each owner or operator of a controlled landfill shall submit to the Administrator semiannual reports of the following recorded information. The initial report shall be submitted within 90 days of installation and startup of the collection and control system, and shall include the initial performance test report required under § 60.8.

(1) Exceedance of parameters monitored under § 60.755 (a) and (b)(1).

(2) All periods when the gas stream is diverted from the control device or has no flowrate.

(3) All periods when the control device was not operating.

(4) For control devices using open or enclosed flares, all periods when the pilot flame of the flare was absent.

(f) Each owner or operator seeking to comply with § 60.752(b)(2)(i)(A) shall include the following with the initial performance test report required under § 60.8:

(1) A diagram of the collection system showing vertical extraction well spacing, including the locations of any areas excluded from collection and the proposed sites for the future addition of wells;

(2) The data upon which the radii of influence and the gas mover sizing are based;

(3) The documentation of the presence of asbestos for each area from which collection wells have been excluded based on the presence of asbestos:

(4) The sum of the gas generation rates for all areas from which collection wells have been excluded based on the presence of nondegradable materials and the calculations of gas generation rate for each excluded area; and

(5) The provisions for increasing gas mover capacity with increased gas generation rate, if the present gas mover is inadequate to move the maximum flowrate expected over the life of the landfill.

§ 60.757 Recordkeeping requirements.

(a) Each owner or operator of an MSW landfill subject to the provisions of § 60.752(b) shall keep up-to-date, readily accessible records of the maximum design capacity, the current amount of refuse-in-place, and the year-by-year waste acceptance rate.

(b) Each owner or operator of a controlled landfill shall keep up-to-date, readily accessible records of the following data measured during the initial performance test/compliance determination for the life of the control equipment. Records of subsequent tests must be maintained for a minimum of 2 years.

(1) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 60.752(b)(2)(ii):

(i) The calculated maximum expected gas generation flowrate using Method 2E.

(ii) The calculated area of influence of the extraction wells.

(iii) Gauge pressure in the gas collection header at the point where each well is connected to the gas collection header pipe.

(2) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 60.752(b)(2)(iii) through use of an enclosed combustion device:

(i) The average combustion temperature measured every 15 minutes and averged over the same time period of the performance testing.

(ii) The percent reduction of NMOC determined as specified in § 60.754(b) achieved by the control device.

(3) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 60.752(b)(2)(iii) through use of a boiler:

(i) A description of the location at which the process vent stream is introduced into the boiler or process heater, and

(ii) The average combustion temperature of the boiler or process heater with a design heat input capacity of less than 44 MW (150 million Btu/hr) measured at least every 15 minutes and averaged over the same time period of the performance testing.

(4) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 60.752(b)(2)(iii) through use of an open flare, the flare type (i.e., steam-assisted, air-assisted, or nonassisted), all visible emission readings, heat content determination, flowrate measurements, and exit velocity determinations made during the performance test, continuous records of the flare pilot flame monitoring, and records of all periods of operations during which the pilot flame is absent.

(c) Each owner or operator of a controlled landfill subject to the provisions of this subpart shall keep up-to-date, readily accessible continuous records of the equipment operating parameters specified to be monitored under § 60.755 as well as up-to-date, readily accessible records for periods of operation during which the parameter boundaries established during the most recent performance test are exceeded.

(1) For enclosed combustion devices except for boilers and process heaters with design heat input capacity of 44 MW (150 million Btu/hour) or greater and nonenclosed flares, all 3-hour periods of operation during which the average combustion temperature was more than 28°C (50°F) below the average combustion temperature during the most recent performance test at which compliance with § 60.752(b)(2)(iii) was determined.

(2) For boilers or process heaters, whenever there is a change in the location at which the vent stream is introduced into the flame zone as required under § 60.757(b)(3)(i).

(3) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible continuous records of the indication of flow specified under § 60.755, as well as up-to-date, readily accessible records of all periods when the gas stream is diverted from the control device or has no flowrate.

(4) Each owner or operator subject to the provisions of this subpart who uses a boiler or process heater with a design heat input capacity of 44 MW or greater to comply with § 60.752(b)(2)(iii) shall keep an up-to-date, readily accessible record of all periods of operation of the boiler or process heater. (Examples of such records could include records of steam use, fuel use, or monitoring data collected pursuant to other State or Federal regulatory requirements.)

(5) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible continuous records of the flare pilot flame monitoring specified under § 60.754(c)(1), as well as up-to-date, readily accessible records of all periods of operation in which the pilot flame is absent.

§ 60.758 Design specifications for active vertical collection systems.

(a) Each owner or operator seeking to comply with § 60.752(b)(2)(i)(A) shall site active vertical collection wells throughout all gas producing areas of the landfill that contain refuse that is at least 2 years old using the following procedures:

(1) The interior and perimeter radii of influence shall be determined using field test data as provided in paragraphs (a)(1) (i) and (ii) of this section or using theoretical concepts as provided in paragraph (a)(1)(iii) of this section.

(i) If EPA Method 2E has been performed during the determination of the NMOC emission rate, the radius of influence for the perimeter well determined during the long-term extraction test in Method 2E shall be used in siting perimeter wells. The average of the radii of influence of all interior wells determined during the long-term extraction test in Method 2E shall be used in siting interior collection wells.

(ii) If EPA Method 2E was not performed during the determination of the NMOC emission rate, EPA Method 2E may be performed and the perimeter and interior radii of influence from the field test data shall be used in siting collection wells as provided in paragraph (A) above.

(iii) If EPA Method 2E has not been performed, a single radius of influence may be determined by determining the maximum well vacuum using Figure 1 below by locating the intersection of the landfill depth with the appropriate curve for the cover material used. The proposed well vacuum is compared to the maximum blower vacuum provided for the cover material selected in Figure 1. Using the smaller of the proposed or maximum blower vacuum from Figure 1, the corresponding estimated radius of influence is determined from Figure 2. This radius shall be used in siting both perimeter and interior wells.

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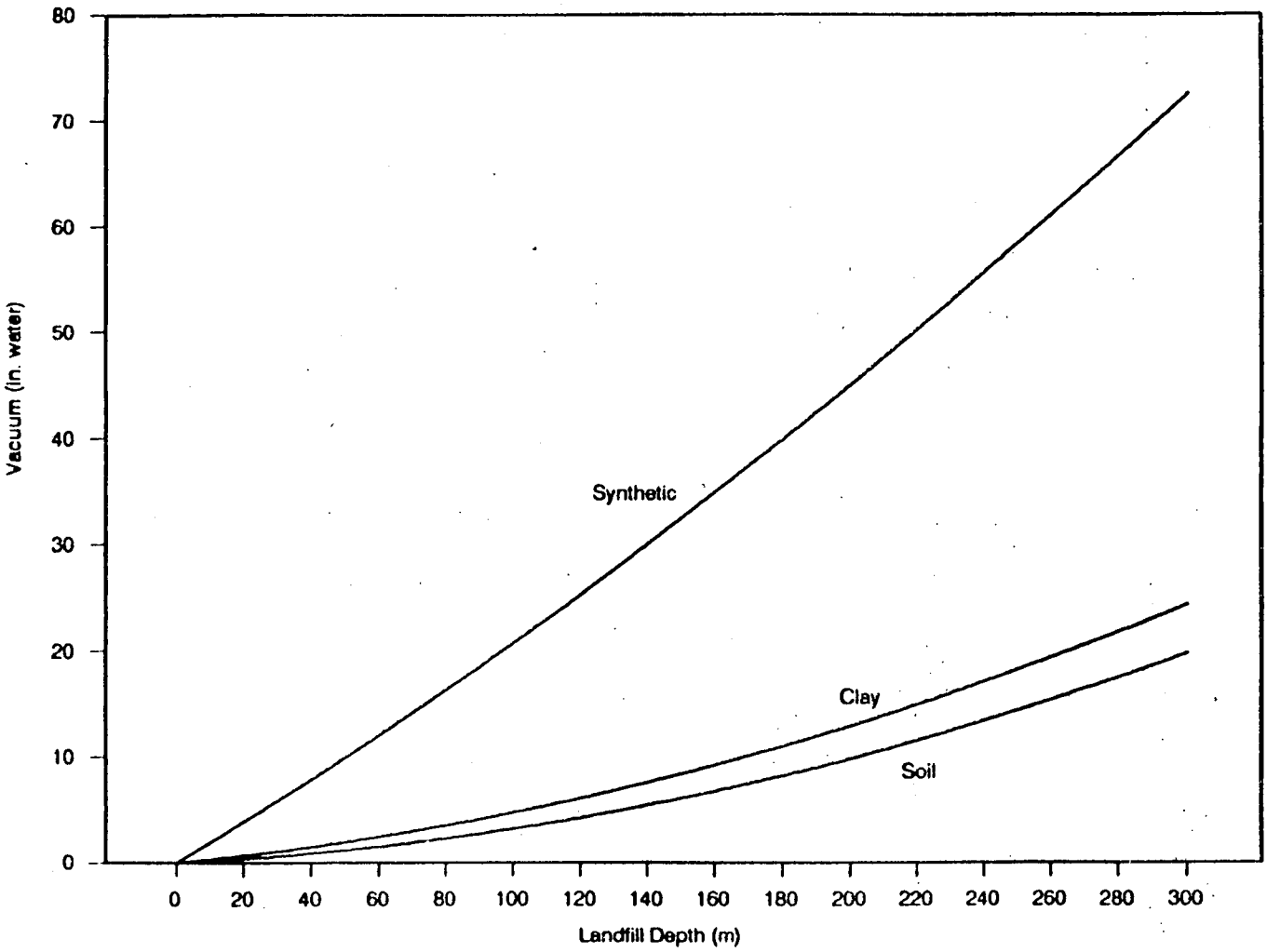

Figure 1 Maximum blower vacuum as a function of landfill depth for three cover types.

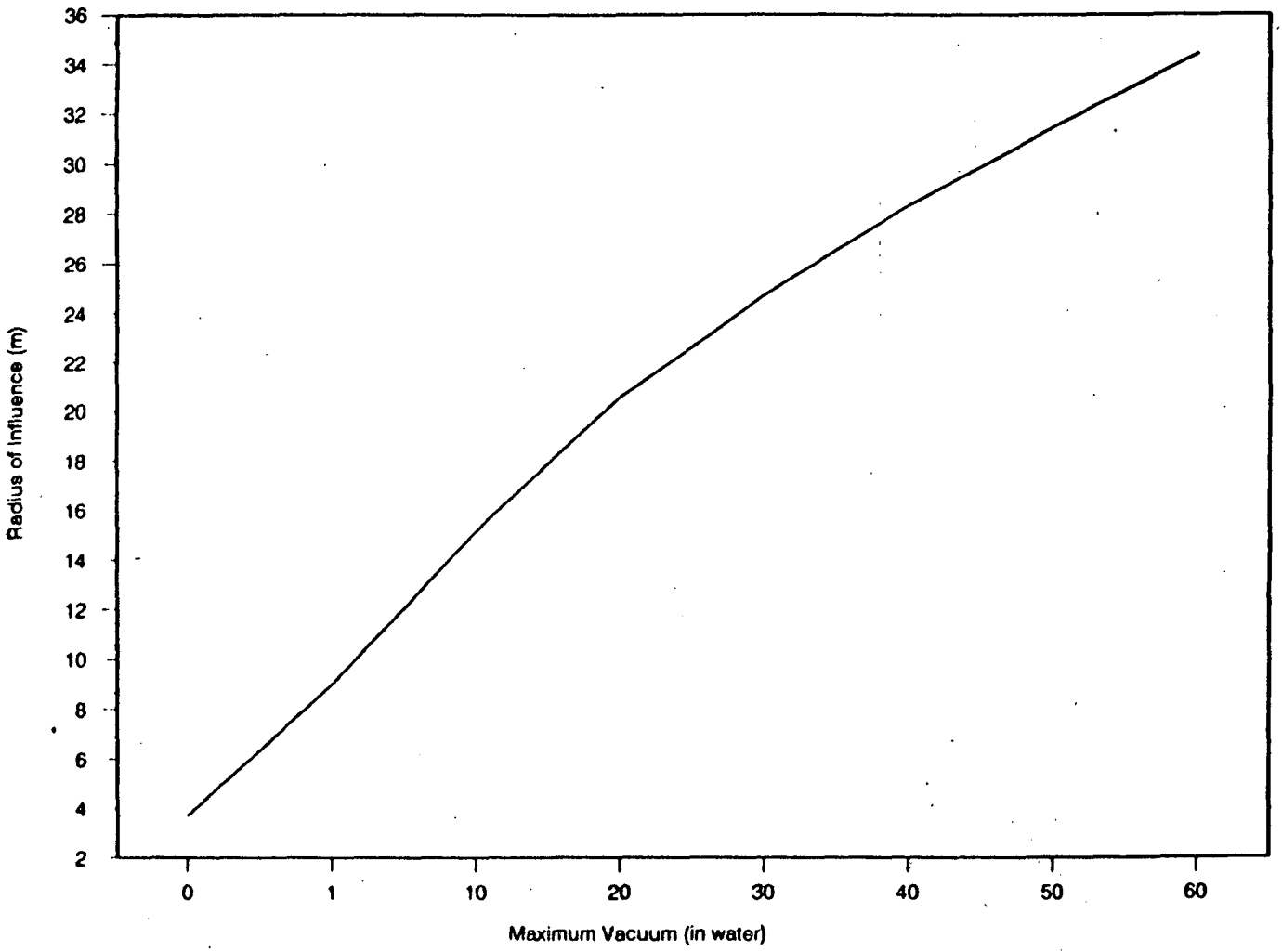

Figure 2. Estimated radius of influence as a function of blower vacuum.

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(2) The radii of influence determined in paragraph (a)(1), of this section, shall be used to site wells along the perimeter of all gas producing areas of the landfill, at a distance no greater than the perimeter radius of influence from the perimeter and no greater than two times the perimeter radius of influence apart.

(3) After siting the perimeter wells, the interior radius of influence determined in paragraph (a)(1), of this section, shall be used to site the interior wells at distances no greater than two times the interior radius of influence apart, and staggered such that essentially all gas producing areas of the landfill containing refuse at least 2 years old are covered by the radii of influence, except as provided by paragraphs (a)(3) (i) and (ii).

(i) Any area of refuse for which documentation of asbestos deposition exists shall be excluded from collection. The documentation must provide the date, location and approximate amount of asbestos deposited in the landfill, and must be provided to the regulatory agency upon request.

(ii) Any nondegradable area of the landfill may be excluded from collection, provided that the total of all excluded areas can be shown to contribute less than one percent of the total amount of emissions from the landfill. A separate emissions estimate shall be made for each section proposed for exclusion, and the sum of all such sections compared to the emissions estimate for the entire landfill. Emissions from each section shall be computed using the following equation:

$$Q_i = 2\,k\,L_o\,M_i\,(e^{-kt_i})\,(C_{NMOC})\,(3.595\times10^{-9})$$

where:

Q_i = NMOC emission rate from the ith section, Mg/yr

k = landfill gas generation constant, 1/yr

L_o = methane generation potential, m^3/Mg

M_i = mass of the degradable refuse in the ith section, Mg

t_i = age of the refuse in the ith section, yrs

C_{NMOC} = concentration of NMOC, ppmv

3.595×10^{-9} = conversion factor

The values for k, L_o, and C_{NMOC} determined in field testing shall be used, if field testing has been performed in determining the NMOC emission rate or the radii of influence. If field testing has not been performed, the default values for k, L_o and C_{NMOC} provided in Tier 1 of the NMOC emission rate determination shall be used. The mass of nondegradable refuse contained within the given section shall be subtracted from the total mass of the section when estimating emissions.

(b) Each owner or operator seeking to comply with § 60.752(b)(2)(i)(A) shall construct each vertical well using the following equipment or procedures:

(1) The landfill gas extraction well shall be constructed of polyvinyl chloride (PVC), high density polyethylene (HDPE) pipe, fiberglass, stainless steel, or other suitable nonporous material, at least 0.075 m (3 in.) diameter. The pipe shall be the lesser of 75 percent of the depth of the refuse or the depth to the water table in length. The bottom two-thirds of the pipe shall be perforated with a minimum of four 0.012 m (½ in.) diameter holes, or other perforations spaced 90 degrees apart every 0.1 to 0.2 m (4 to 8 in.).

(2) A well drilling rig shall be used to dig a 0.60 m (24 in.) diameter hole in the landfill to a depth equal to a minimum of 75 percent of the landfill depth or the pipe length. The extraction well shall be placed in the center of the hole and the hole shall be backfilled with gravel to a level at least 0.3 m (1 ft) above the perforated section. A layer of backfill material at least 1.2 m (4 ft) thick shall be added on top of the gravel. A layer of bentonite at least 0.9 m (3 ft) thick shall be added on top of the backfill material, and the remainder of the hole shall be backfilled with cover material or material equal to the permeability to the existing cover material. A schematic of extraction well installation is shown in Figure 3.

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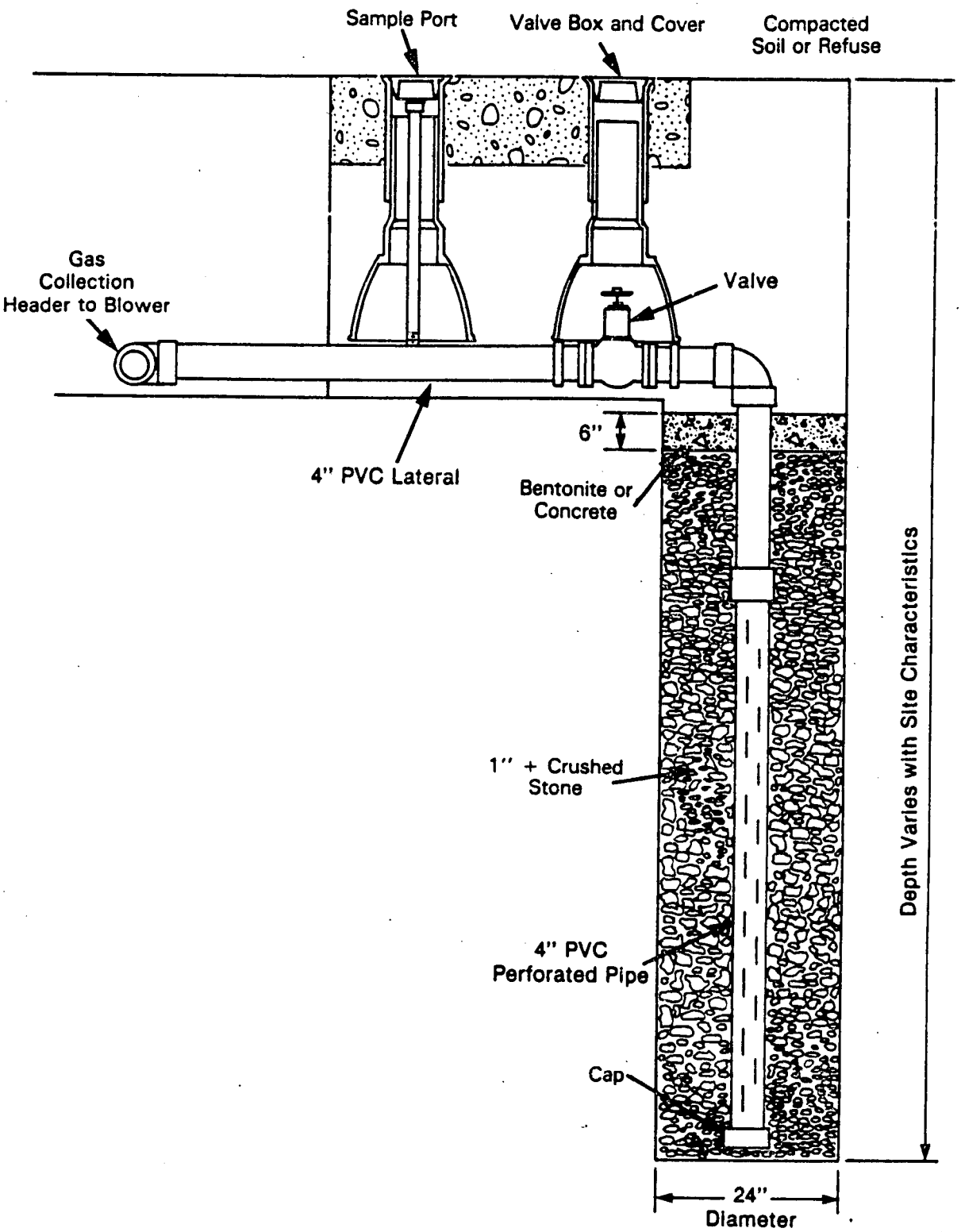

Figure 3. Gas extraction well and well head assembly.

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(3) The well head may be connected to the collection header pipes below or above the landfill surface. The well head assembly shall include a PVC ball or butterfly valve, flanges, gaskets, connectors, access couplings and at least one sampling port. The cap and header pipe shall be constructed of PVC or HDPE. A schematic of the extraction well and well head assembly is illustrated in Figure 3.

(c) Each owner or operator seeking to comply with § 60.752(b)(2)(i)(a) shall convey the landfill gas to a control system in compliance with § 60.752(b)(2)(iii) through the collection header pipe(s). The gas mover (i.e., fan, blower, or compressor) system shall be sized to handle the maximum landfill gas flowrate expected over the life of the gas moving equipment. This maximum flowrate shall be projected using the following equation:

$$\text{Peak Flow } [m^3/yr] = 2L_o R (1 - e^{-kt})$$

where,

L_o = refuse methane generation potential, m^3/Mg refuse

R = average annual acceptance rate, Mg/yr

k = methane generative rate constant, 1/yr

t = age of the landfill plus the gas mover equipment life or active life of the landfill, whichever is less, in years

A value of 230 m^3/Mg shall be used for L_o. If Method 2E has been performed, the value of k determined from the test should be used; if not, a value of 0.2 years $^{-1}$ shall be used.

3. Section 60.30 is amended by adding paragraph (c) to read as follows:

§ 60.30 Scope.

* * * * *

(c) Subpart Cc—Municipal Solid Waste Landfills.

4. Part 60 is further amended by adding the following subpart:

Subpart Cc—Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills

Sec.
60.30c Scope.
60.31c Definitions.
60.32c Designated facilities.
60.33c Emission guidelines for MSW landfill emissions.
60.34c Test methods and procedures.
60.35c Reporting and recordkeeping guidelines.

Subpart Cc—Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills

§ 60.30c Scope.

This subpart contains emission guidelines and compliance times for the control of certain designated pollutants from certain designated municipal solid waste (MSW) landfills in accordance with section 111(d) of the Act and subpart B.

§ 60.31c Definitions.

Terms used but not defined in this subpart have the meaning given them in the Act and in Subparts A, B, and WWW of this part.

MSW landfill means an entire disposal facility in a contiguous geographical space where household waste is placed on land, and for which construction or modification is commenced before May 30, 1991. In the event no construction activity has occurred prior to initial placement of waste in the landfill, initial waste placement shall be viewed as *commenced construction.*

§ 60.32c Designated facilities.

(a) The designated facility to which the guidelines apply is each existing MSW landfill for which construction or modification is commenced before May 30, 1991.

(b) Physical or operational changes made to an existing MSW landfill to comply with the emission guideline are not considered a modification or reconstruction and would not bring an existing MSW landfill under the provisions at Subpart WWW [see § 60.750].

§ 60.33c Emission guidelines for MSW landfill emissions.

(a) For approval, a State plan shall include control of MSW landfill emissions at each MSW landfill meeting the following three conditions:

(1) The landfill has accepted waste at any time since November 8, 1987, or has additional capacity available for future waste deposition;

(2) The landfill has a design capacity of 100,000 Mg (111,000 tons) or greater; and

(3) The landfill has a nonmethane organic compound (NMOC) emission rate of 150 megagrams per year (Mg/yr) [167 tons per year (tpy)] or more.

(b) For approval, a State plan shall include the installation of a well-designed gas collection and control system at each MSW landfill meeting the conditions in paragraph (a) of this section. The State plan shall include a process for State review and approval of the site-specific design plans for the gas collection and control system(s).

(c) For approval, a State plan shall include provisions for the control of collected MSW landfill emissions through the use of control devices meeting the provisions of paragraph (c) (1), (2), or (3) of this section, except as provided in § 60.24.

(1) An open flare designed and operated in accordance with the parameters established in 40 CFR 60.18.

(2) A control system designed and operated so as to reduce NMOC by 98 percent; or

(3) An enclosed combustor designed and operated to reduce the outlet NMOC concentration to 20 ppmvd at 3 percent oxygen, or less.

§ 60.34c Test methods and procedures.

For approval, a State plan must include provisions for the calculation of the landfill NMOC emission rate listed in § 60.753, as applicable, to determine whether the landfill meets the condition in § 60.33c(a)(3).

§ 60.35c Reporting and recordkeeping guidelines.

For approval, a State plan shall include the recordkeeping and reporting provisions listed in §§ 60.756 and 60.757, as applicable, except as provided under § 60.24.

§ 60.36c Compliance times.

(a) Except as provided for under paragraph (b) of this section, planning, awarding of contracts, and installation of MSW landfill air emission collection and control equipment capable of meeting the emission guidelines established under § 60.33c can be accomplished within 30 months after the effective date of a State emission standard for MSW landfills.

(b) For each existing MSW landfill meeting the conditions in § 60.33c(a)(1) and § 60.33c(a)(2) whose NMOC emission rate is less than 150 Mg/yr (167 tpy) on the effective date of the State emission standard, installation of collection and control systems capable of meeting emission guidelines in § 60.33c can be accomplished within 30 months of the date when the condition in § 60.33c(a)(3) is met (i.e., the date of the first annual NMOC emission rate which equals or exceeds 150 Mg/yr [167 tpy]).

5. Part 60 is further amended by adding Methods 2E, 3C and 25C to appendix A to read as follows:

Appendix A—Reference Methods

* * * * *

Method 2E—Determination of Landfill Gas Gas Production Flow Rate

1. *Applicability and Principle*

1.1 Applicability. This method applies to the measurement of landfill gas (LFG) production flow rate from municipal solid waste landfills and is used to calculate the flow rate of nonmethane organic compounds (NMOC) from landfills.

1.2 Principle. Extraction wells are installed either in a cluster of three or at five dispersed locations in the landfill. A blower is used to extract LFG from the landfill. LFG composition, landfill pressures, and orifice pressure differentials from the wells are measured and the landfill gas production flow rate is calculated.

2. *Apparatus*

2.1 Well Drilling Rig. Capable of boring a 0.6-m (24-in.) diameter hole into the landfill to a minimum of 75 percent of the landfill depth. The depth of the well shall not exceed the bottom of the landfill or the liquid level.

2.2 Gravel. No fines. Gravel diameter should be appreciably larger than perforations stated in 2.10 and 3.2.

2.3 Bentonite.

2.4 Backfill Material. Clay, soil, and sandy loam have been found to be acceptable.

2.5 Extraction Well Pipe. Polyvinyl chloride (PVC), high density polyethylene (HDPE), fiberglass, stainless steel or other suitable nonporous material capable of transporting landfill gas with a minimum diameter of 3 in.

2.6 Well Assembly. Valve capable of adjusting gas flow, such as a gate, ball or butterfly valve, sampling ports at the well head and outlet and a flow measuring device, such as an in-line orifice meter or pitot tube. A schematic of the well head assembly is shown in Figure 1.

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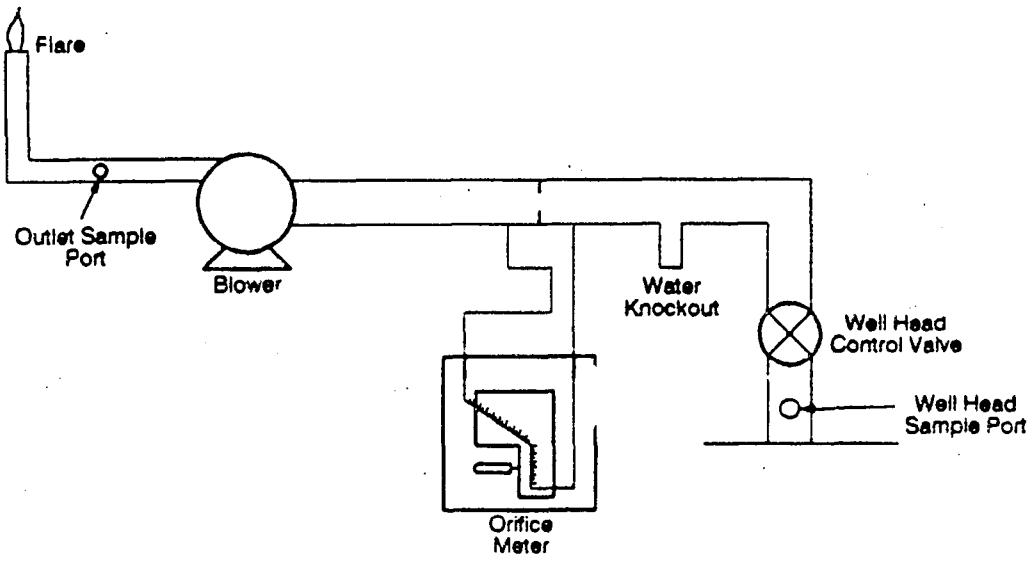

Figure 1. Schematic of above ground assembly.

BILLING CODE 6560-50-C

2.7 Cap. PVC or HDPE.

2.8 Header Piping. PVC or HDPE.

2.9 Auger. Capable of boring a 0.15- to 0.23-m (6- to 9-in.) diameter hole to a depth equal to the top of the perforated section of the extraction well, for pressure probe installation.

2.10 Pressure Probe. PVC or stainless steel (316), 0.025-m (1-in.). Schedule 40 pipe. Perforate the bottom two thirds. A minimum requirement for perforations is slots or holes with an open area equivalent to four 0.006-m (¼-in.) diameter holes spaced 90° apart every 0.15 m (6 in.).

2.11 Blower and Flare Assembly. Explosion-proof blower, capable of extracting LFG at a flow rate of 8.5 m^3/min (300 ft^3/min), a water knockout, and flare or incinerator.

2.12 Standard Pitot Tube and Differential Pressure Gauge for Flow Rate Calibration with Standard Pitot. Same as Method 2, Sections 2.7 and 2.8.

2.13 Orifice Meter. Orifice plate, pressure tabs, and pressure measuring device to measure the LFG flow rate.

2.14 Barometer. Same as Method 4, Section 2.1.5.

2.15 Differential Pressure Gauge. Water-filled U-tube manometer or equivalent, capable of measuring within 0.02 mm Hg (0.01 in. H_2O), for measuring the pressure of the pressure probes.

3. *Procedure*

3.1 Placement of Extraction Wells. The landfill owner or operator may install a single cluster of three extraction wells in a test area or space five wells over the landfill. The cluster wells are recommended but may be used only if the composition, age of the refuse, and the landfill depth of the test area can be determined. CAUTION: Since this method is complex, only experienced personnel should perform the test. Landfill gas contains methane, therefore explosive mixtures may exist at or near the landfill. It is advisable to take appropriate safety precautions when testing landfills, such as refraining from smoking and installing explosion-proof equipment.

3.1.1 Cluster Wells. Consult landfill site records for the age of the refuse, depth, and composition of various sections of the landfill. Select an area near the perimeter of the landfill with a depth equal to or greater than the average depth of the landfill and with the average age of the refuse between 2 and 10 years old. Avoid areas known to contain nondecomposable materials, such as concrete and asbestos. Locate wells as shown in Figure 2.

3.1.1.1 The age of the refuse in a test area will not be uniform, so calculate a weighted average to determine the average age of the refuse as follows:

$$A_{avg} = \sum_{i=1}^{n} f_i A_i$$

where,

A_{avg} = Average age of the refuse tested, yr.

f_i = Fraction of the refuse in the ith section.

A_i = Age of the ith fraction, yr.

3.1.2 Equal Volume Wells. Divide the sections of the landfill that are at least 2 years old into five areas representing equal volumes. Locate an extraction well near the center of each area.

3.2 Installation of Extraction Wells. Use a well drilling rig to dig a 0.6-m (24-in.) diameter hole in the landfill to a minimum of 75 percent of the landfill depth, not to exceed the bottom of the landfill or the liquid level. Perforate the bottom two thirds of the extraction well pipe. A minimum requirement for perforations is holes or slots with an open area equivalent to 0.01-m (½-in.) diameter holes spaced 90° apart every 0.1 to 0.2 m (4 to 8 in.). Place the extraction well in the center of the hole and backfill with gravel to a level 0.30 m (1 ft) above the perforated section. Add a layer of backfill material 1.2 m (4 ft) thick. Add a layer of bentonite 0.9 m (3 ft) thick, and backfill the remainder of the hole with cover material or material equal in permeability to the existing cover material. The specifications for extraction well installation are shown in Figure 3.

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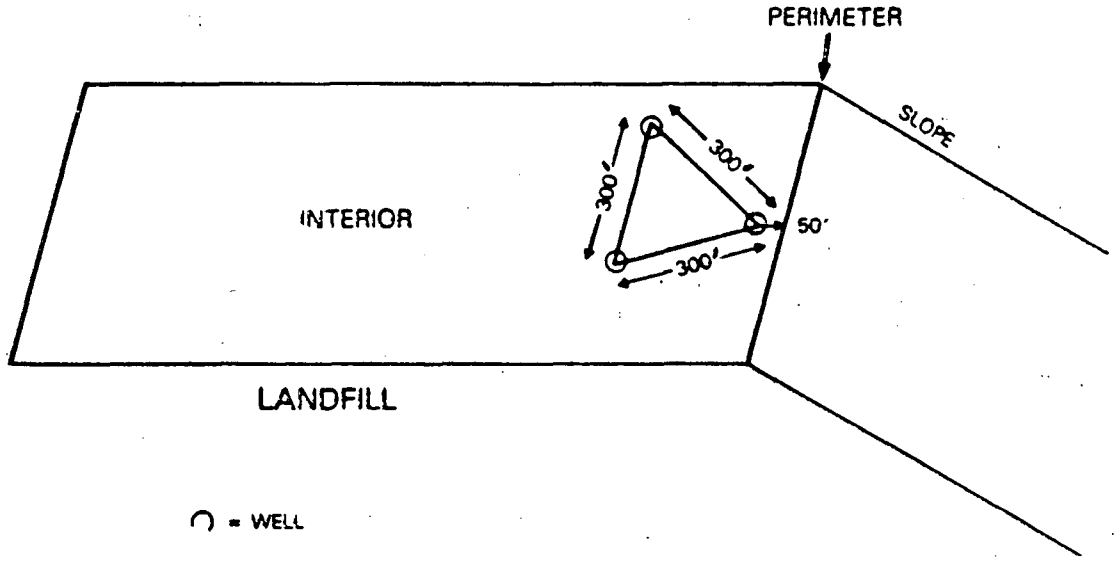

Figure 2. Cluster well placement.

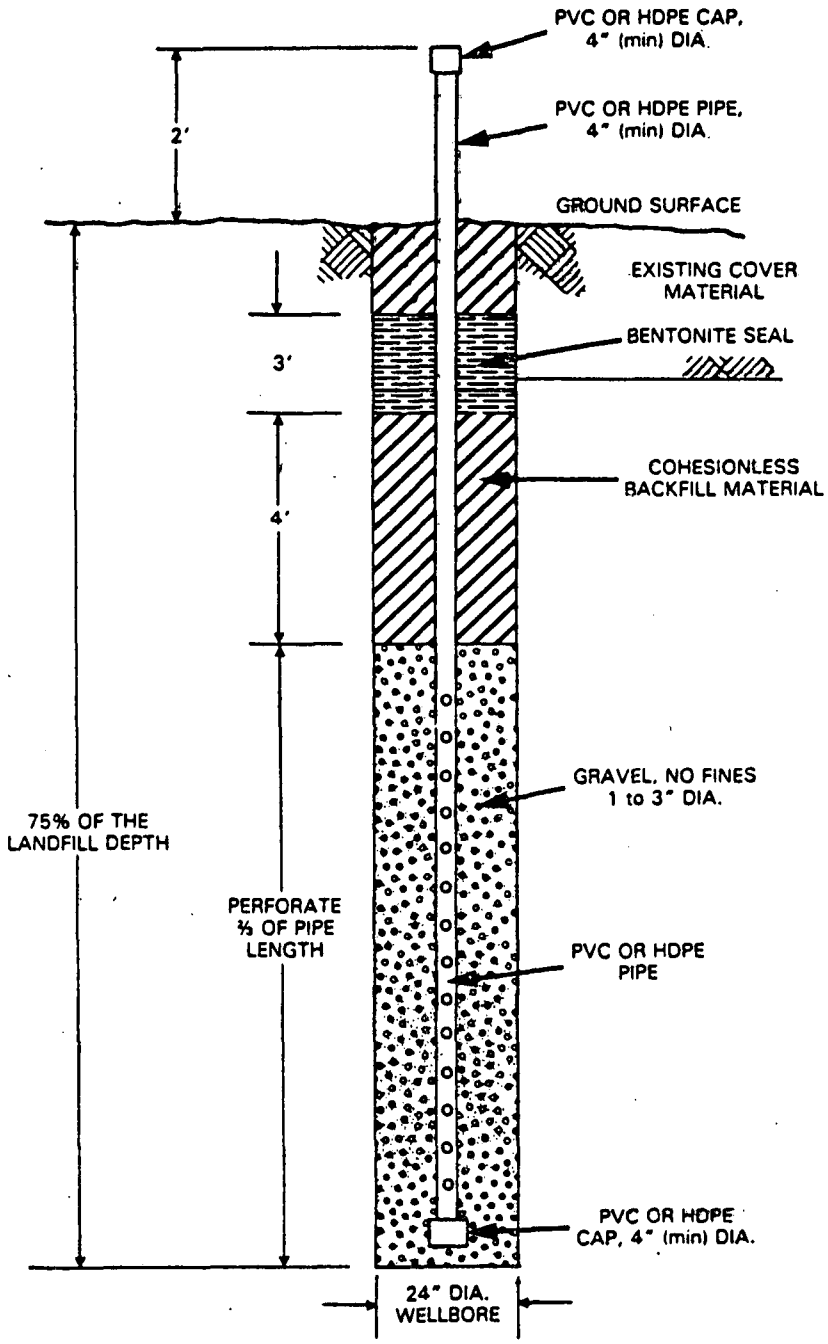

Figure 3. Gas extraction well.

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3.3 Pressure Probes. Locate pressure probes along three radial arms approximately 120° apart at distances of 3, 15, 30, and 45 m (10, 50, 100, and 150 ft) from the extraction well. The tester has the option of locating additional pressure probes at distances every 15 m (50 feet) beyond 45 m (150 ft). Example placements of probes are shown in Figure 4. The 15, 30, and 45 m, (50, 100, and 150 ft) probes from each well, and any additional probes located along the three radial arms (deep probes), shall extend to a depth equal to the top of the perforated section of the extraction wells. All other probes (shallow probes) shall extend to a depth equal to half the depth of the deep probes.

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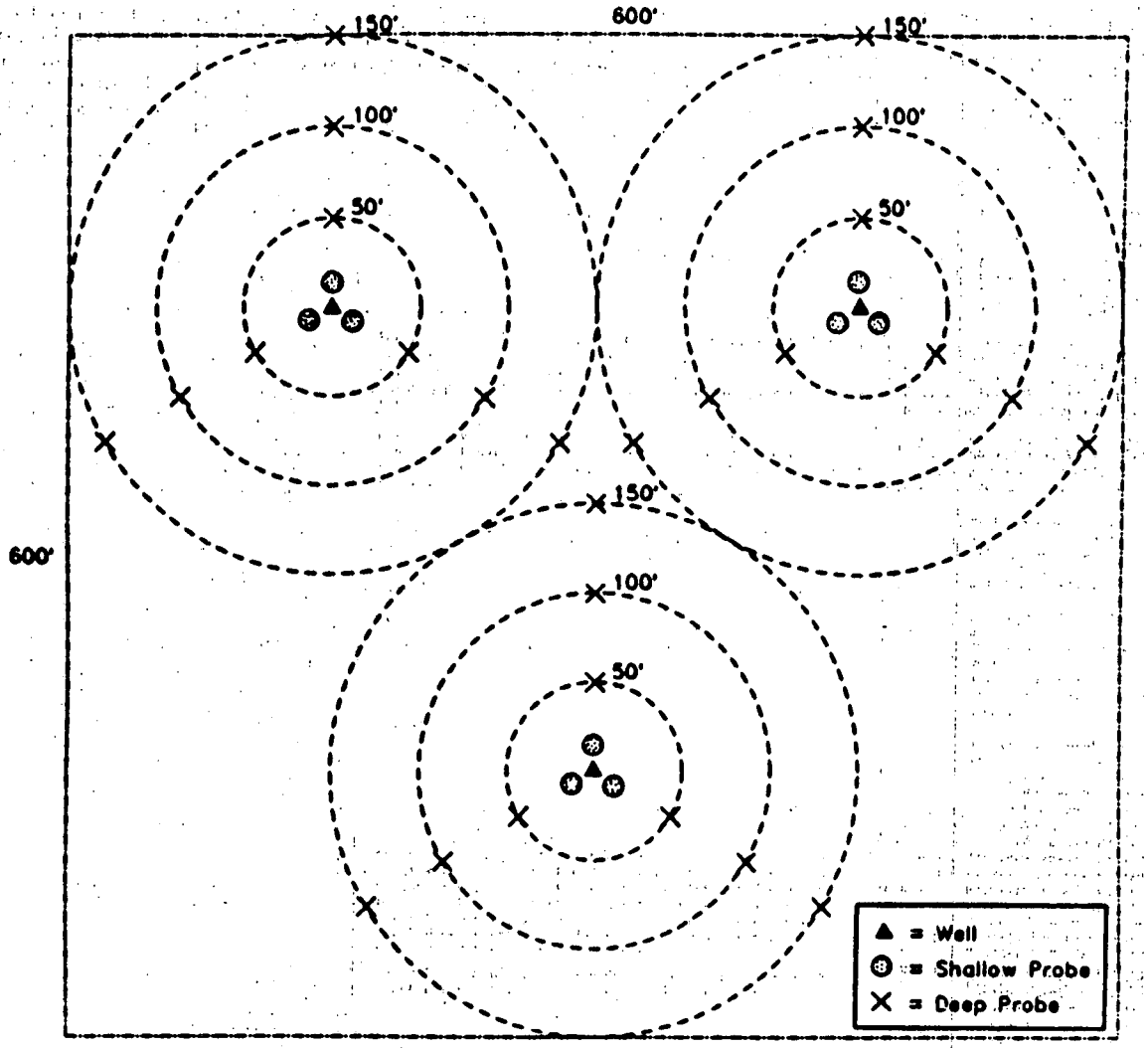

Figure 4. Cluster well configuration

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3.3.1 Use an auger to dig a hole, 0.15- to 0.23-m (6- to 9-in.) in diameter, for each pressure probe. Perforate the bottom two thirds of the pressure probe. A minimum requirement for perforations is holes or slots with an open area equivalent to four 0.006-m (1/4-in.) diameter holes spaced 90° apart every 0.15 m (6 in.). Place the pressure probe in the center of the hole and backfill with gravel to a level 0.30 m (1 ft) above the perforated section. Add a layer of backfill material at least 1.2 m (4 ft) thick. Add a layer of bentonite at least 0.3 m (1 ft) thick, and backfill the remainder of the hole with cover material or material equal in permeability to the existing cover material. The specifications for pressure probe installation are shown in Figure 5.

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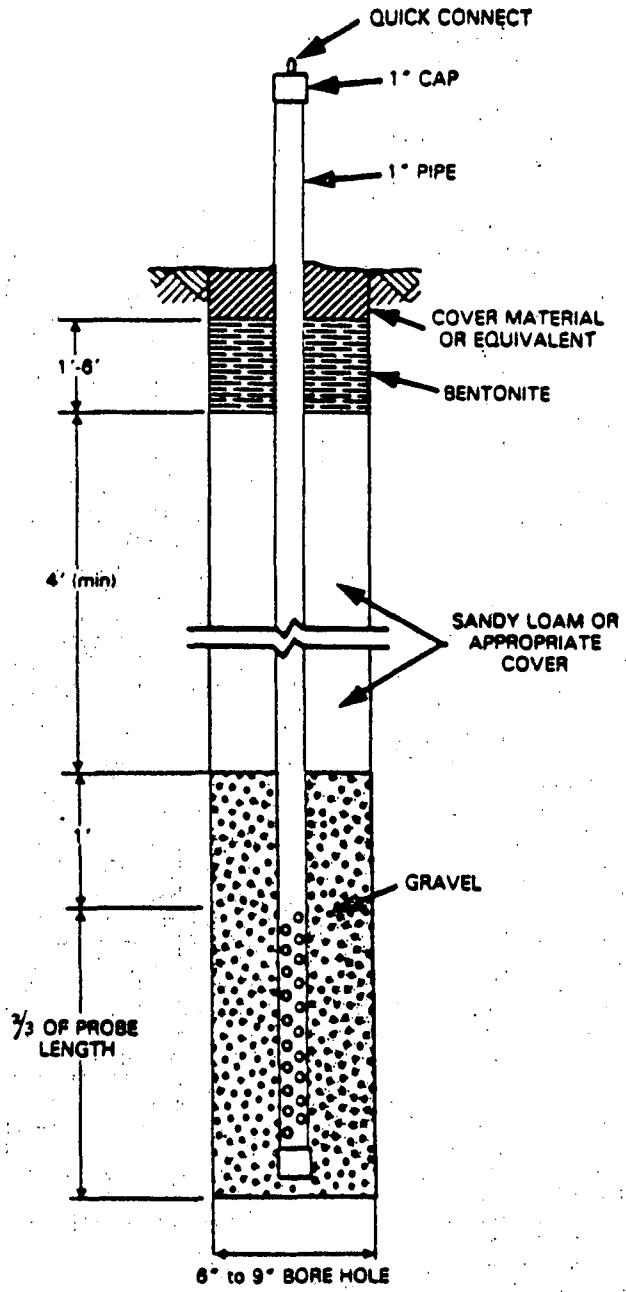

Figure 5. Pressure probe.

BILLING CODE 6560-50-C

3.4 LFG Flow Rate Measurement. Locate flow measurement device, such as an orifice meter, as shown in Figure 1. Attach the wells to the blower and flare assembly. The individual wells may be ducted to a common header so that a single blower and flare assembly and flow meter may be used. Use the procedures in Section 4.1 to calibrate the flow meter.

3.5 Leak Check. A leak check of the above ground system is required for accurate flow rate measurements and for safety. Sample LFG at the well head sample port and at the outlet sample port. Use Method 3C to determine nitrogen (N_2) concentrations. Determine the difference by using the formula below.

$$\text{Difference} = C_o - C_w$$

where,

C_o = Concentration of N_2 at the outlet, ppmv.

C_w = Concentration of N_2 at the wellhead, ppmv.

The system passes the leak check if the differences is less than 10,000 ppmv.

3.6 Static Testing. Close the control valves on the wells during static testing. Measure the gauge pressure (P_g) at each deep pressure probe and the barometric pressure (P_{bar}) every 8 hrs. for 3 days. Convert the gauge pressure of each deep pressure probe to absolute pressure by using the following equation. Record as P_i.

$$P_i = P_{bar} + P_g$$

3.6.1 For each probe, average all of the 8-hr deep pressure probe readings and record as P_{ia}. P_{ia} is used in Section 3.7.6 to determine the maximum radius of influence.

3.6.2 Measure the static flow rate of each well once during static testing.

3.7 Short Term Testing. The purpose of short term testing is to determine the maximum vacuum that can be applied to the wells without infiltration of air into the landfill. The short term testing is done on one well at a time. Burn all LFG with a flare or incinerator.

3.7.1 Use the blower to extract LFG from a single well at a rate at least twice the static flow rate of the respective well measured in Section 3.6.2. If using a single blower and flare assembly and a common header system, close the control valve on the wells not being measured. Allow 24 hrs. for the system to stabilize at this flow rate.

3.7.2 Test for infiltration of air into the landfill by measuing the gauge pressures of the shallow pressure probes and using Method 3C to determine the LFG N_2 concentration. If the LFG N_2 concentration is less than 1 percent and all of the shallow probes have a positive gauge pressure, increase the blower vacuum by 3.7 mm Hg (2 in. H_2O), wait 24 hr, and repeat the tests for infiltration. Continue the above steps of increasing blower vacuum by 3.7 mm Hg (2 in. H_2O), waiting 24 hr, and testing for infiltration until the concentration of N_2 exceeds 1 percent or any of the shallow probes have a negative gauge pressure, at which time reduce the blower vacuum so that the N_2 concentration is less than 1 percent and the gauge pressures of the shallow probes are positive.

3.7.3 At this blower vacuum, measure P_{bar} every 8 hr for 24 hr and record the LFG flow rate as Q_s and the probe gauge pressures for all of the probes as P_f. Convert the gauge pressures of the deep probes to absolute pressures for each 8 hr reading at Q_s as follows.

$$P = P_{bar} + P_f$$

3.7.4 For each probe, average the 8-hr deep pressure probe readings and record as P_{fa}.

3.7.5 For each probe, compare the initial average pressure (P_{ia}) from Section 3.6.1 to the final average pressure (P_{fa}). Determine the furthermost point from the well head along each radial arm where $P_{fa} \leq P_{ia}$. This distance is the maximum radius of influence, which is the distance from the well affected by the vacuum. Average these values to determine the average maximum radius of influence (R_{ma}).

3.7.6 Calculate the depth (D_{st}) affected by the extraction well during the short term test as follows. If the computed value of D_{st} exceeds the depth of the landfill, set D_{st} equal to the landfill depth.

$$D_{st} = WD + R_{ma}^2$$

where,

WD = Well depth, m.

3.7.7 Calculate the void volume for the extraction well (V) as follows.

$$V = 0.40\pi R_{ma}^2 D_{st}$$

3.7.8 Repeat the procedures in Section 3.7 for each well.

3.8 Calculate the total void volume of the test wells (V_v) by summing the void volumes (V) of each well.

3.9 Long Term Testing. The purpose of long term testing is to extract two void volumes of LFG from the extraction wells. Use the blower to extract LFG from the wells. If a single blower and flare assembly and common header system are used, open all control valves and set the blower vacuum equal to the highest stabilized blower vacuum demonstrated by any individual well in Section 3.7. Every 8 hr, sample the LFG from the well head sample port, measure the gauge pressures of the shallow pressure probes, the blower vacuum, the LFG flow rate, and use the criteria for infiltration in Section 3.7.2 and Method 3C to test for infiltration. If infiltration is detected, do not reduce the blower vacuum, but reduce the LFG flow rate from the well by adjusting the control valve on the well head. Adjust each affected well individually. Continue until the equivalent of two total void volumes (V_v) have been extracted, or until $V_t = 2\ V_v$.

3.9.1 Calculate V_t, the total volume of LFG extracted from the wells, as follows.

$$V_t \quad \sum_{i=1}^{n} 60\ Q_i\ t_{vi}$$

where,

V_t = Total volume of LFG extracted from wells, m^3.

Q_i = LFG flow rate measured at orifice meter at the i_{th} interval, m^3/min.

t_{vi} = Time of the i_{th} interval (usually 8), hr.

3.9.2 Record the final stabilized flow rate as Q_f. If, during the long term testing, the flow rate does not stabilize, calculate Q_f by averaging the last 10 recorded flow rates.

3.9.3 For each deep probe, convert each gauge pressure to absolute pressure as in Section 3.7.4. Average these values and record as P_{sa}. For each probe, compare P_{ia} to P_{sa}. Determine the furthermost point from the well head along each radial arm where $P_{sa} \leq P_{ia}$. This distance is the stabilized radius of influence. Average these values to determine the average stabilized radius of influence (R_{sa}).

3.10 Determine the NMOC mass emission rate using the procedures in Section 5.

4. *Calibrations*

4.1 Orifice Calibration Procedure. Locate a standard pitot tube in line with an orifice meter. Use the procedures in Section 3 of Method 2 to determine the average dry gas volumetric flow rate for at least five flow rates that bracket the expected LFG flow rates, except in Section 3.1, use a standard pitot tube rather than a Type S pitot tube. Method 3C may be used to determine the dry molecular weight. It may be necessary to calibrate more than one orifice meter in order to bracket the LFG flow rates. Construct a calibration curve by plotting the pressure drops across the orifice meter for each flow rate versus the average dry gas volumetric flow rate in m^3/min of the gas.

5. *Calculations*

5.1 Nomenclature.

A_{avg} = Average age of the refuse tested, yr.

A_i = Age of refuse in the i_{th} fraction, yr.

A = Age of landfill, yr.

A_r = Acceptance rate, Mg/yr.

C_{NMOC} = NMOC concentration, ppmv as hexane ($C_{NMOC} = C_t/6$).

C_t = NMOC concentration, ppmv (carbon equivalent) from Method 25C.

D = Depth affected by the test wells, m.

D_{st} = Depth affected by the test wells in the short term test, m.

f = Fraction of decomposable refuse in the landfill.

f_i = Fraction of the refuse in the ith section.

k = Landfill gas generation constant, yr^{-1}.

L_o = Methane generation potential, m^3/Mg.

L_o' = Revised methane generation potential to account for the amount of nondecomposable material in the landfill, m^3/Mg.

M_i = Mass of refuse of the ith section, Mg.

M_r = Mass of decomposable refuse affected by the test well, Mg.

P_{bar} = Atmospheric pressure, mm Hg.

P_g = Gauge pressure of the deep pressure probes, mm Hg.

P_i = Initial absolute pressure of the deep pressure probes during static testing, mm Hg.

P_{ia} = Average initial absolute pressure of the deep pressure probes during static testing, mm Hg.

P_f = Final absolute pressure of the deep pressure probes during short term testing, mm Hg.

P_{fa} = Average final absolute pressure of the deep pressure probes during short term testing, mm Hg.

P_s = Final absolute pressure of the deep pressure probes during long term testing, mm Hg.

P_{aa} = Average final absolute pressure of the deep pressure probes during long term testing, mm Hg.
Q_f = Final stabilized flow rate, m^3/min.
Q_i = LFG flow rate measured at orifice meter during the ith interval, m^3/min.
Q_o = Maximum LFG flow rate at each well determined by short term test, m^3/min.
Q_t = NMOC mass emission rate, m^3/min.
R_m = Maximum radius of influence, m.
R_{ma} = Average maximum radius of influence, m.
R_s = Stabilized radius of influence for an individual well, m.
R_{sa} = Average stabilized radius of influence, m.
t_i = Age of section i, yr.
t_t = Total time of long term testing, yr.
V = Void volume of test well, m^3.
V_r = Volume of refuse affected by the test well, m^3.
V_t = Total volume of refuse affected by the long term testing, m^3.
V_v = Total void volume affected by test wells, m^3.
WD = Well depth, m.
ρ = refuse density, m^3 (Assume 0.64 Mg/m^3 if data are unavailable).

5.2 Use the following equation to calculate the depth affected by the test well. If using cluster wells, use the average depth of the wells for WD. If the value of D is greater than the depth of the landfill, set D equal to the landfill depth.

$$D = WD + R_{sa}$$

5.3 Use the following equation to calculate the volume of refuse affected by the test well.

$$V_r = R_{sa}\,\pi\,D$$

5.4 Use the following equation to calculate the mass affected by the test well.

$$M_r = V_r\,\rho$$

5.5 Modify L_o to account for the nondecomposable refuse in the landfill.

$$L_o' = f\,L_o$$

5.6 In the following equation, solve for k by iteration. A suggested procedure is to select a value for k, calculate the left side of the equation, and if not equal to zero, select another value for k. Continue this process until the left hand side of the equation equals zero, ±0.001.

$$k_e^{-k} A_{avg} - \left[\frac{Q_f}{2\,L_o'\,M_r} \right] = 0$$

5.7 Use the following equation to determine landfill NMOC mass emission rate if the yearly acceptance rate of refuse has been consistent (±10 percent) over the life of the landfill.

$$Q_t = 2\,L_o'\,A_r\,(1 - e^{-k\,A})\,C_{NMOC}\,(3.595 \times 10^{-9})$$

5.8 Use the following equation to determine landfill NMOC mass emission rate if the acceptance rate has not been consistent over the life of the landfill.

$$Q_t = 2\,k\,L_o'\,C_{NMOC}\,(3.595 \times 10^{-9}) \sum_{i=1}^{n} M_i\,e^{-k t_i}$$

6. *Bibliography*

1. Same as Method 2, Appendix A, 40 CFR part 60.
2. Emcon Associates, Methane Generation and Recovery from Landfills. Ann Arbor Science, 1982.
3. The Johns Hopkins University, Brown Station Road Landfill Gas Resource Assessment, Volume 1: Field Testing and Gas Recovery Projections. Laurel, Maryland: October 1982.
4. Mandeville and Associates, Procedure Manual for Landfill Gases Emission Testing.
5. Letter and attachments from Briggum, S., Waste Management of North America, to Thorneloe, S., EPA. Response to July 28, 1988 request for additional information. August 18, 1988.
6. Letter and attachments from Briggum, S., Waste Management of North America, to Wyatt, S., EPA. Response to December 7, 1988 request for additional information. January 16, 1989.

* * * * *

Method 3C—Determination of Carbon Dioxide, Methane, Nitrogen, and Oxygen from Stationary Sources

1. *Applicability and Principle*

1.1 Applicability. This method applies to the analysis of carbon dioxide (CO_2), methane (CH_4), nitrogen (N_2), and oxygen (O_2) in samples from municipal landfills and other sources when specified in an applicable subpart of the regulations.

1.2 Principle. A portion of the sample is injected into a gas chromatograph (GC) and the CO_2, CH_4, N_2, and O_2 concentrations are determined by using a thermal conductivity detector (TCD) and integrator.

2. *Range and Sensitivity*

2.1 Range. The range of this method depends upon the concentration of samples. The analytical range of TCD's is generally between approximately 10 ppmv and the upper percent range.

2.2 Sensitivity. The sensitivity limit for a compound is defined as the minimum detectable concentration of that compound, or the concentration that produces a signal-to-noise ratio of three to one. For CO_2, CH_4, N_2, and O_2, the sensitivity limit is in the low ppm range.

3. *Interferences*

Since the TCD exhibits universal response and detects all gas components except the carrier, interferences may occur. Choosing the appropriate GC or shifting the retention times by changing the column flow rate may help to eliminate resolution interferences.

To assure consistent detector response, helium is used to prepare calibration gases. Frequent exposure to samples or carrier gas containing oxygen may gradually destroy filaments.

4. *Apparatus*

4.1 Gas Chromatograph. GC having at least the following components:

4.1.1 Separation Column. Appropriate column(s) to resolve CO_2, CH_4, N_2, O_2, and other gas components that may be present in the sample. One column that has been advertised to work in this case is column CTR I available from Alltech Associates Inc., 2051 Waukegan Road, Deerfield, Illinois 60015. NOTE: Mention of trade names or specific products does not constitute endorsement or recommendation by the U.S. Environmental Protection Agency.

4.1.2 Sample Loop. Teflon or stainless steel tubing of the appropriate diameter. **Note:** Mention of trade names or specific products does not constitute endorsement or recommendation by the U.S. Environmental Protection Agency.

4.1.3 Conditioning System. To maintain the column and sample loop at constant temperature.

4.1.4 Thermal Conductivity Detector.

4.2 Recorder. Recorder with linear strip chart. Electronic integrator (optional) is recommended.

4.3 Teflon Tubing. Diameter and length determined by connection requirements of cylinder regulators and the GC.

4.4 Regulators. To control gas cylinder pressures and flow rates.

4.5 Adsorption Tubes. Applicable traps to remove any O_2 from the carrier gas.

5. *Reagents*

5.1 Calibration and Linearity Gases. Standard cylinder gas mixtures for each compound of interest with at least three concentration levels spanning the range of suspected sample concentrations. The calibration gases shall be prepared in helium.

5.2 Carrier Gas. Helium, high-purity.

6. *Analysis*

6.1 Sample Collection. Use the sample collection procedures described in Methods 3 or 25C to collect a sample of landfill gas (LFG).

6.2 Preparation of GC. Before putting the GC analyzer into routine operation, optimize the operational conditions according to the manufacturer's specifications to provide good resolution and minimum analysis time. Establish the appropriate carrier gas flow and set the detector sample and reference cell flow rates at exactly the same levels. Adjust the column and detector temperatures to the recommended levels. Allow sufficient time for temperature stabilization. This may typically require 1 hour for each change in temperature.

6.3 Analyzer Linearity Check and Calibration. Perform this test before sample analysis. Using the gas mixtures in Section 5.1, verify the detector linearity over the range of suspected sample concentrations with at least three points per compound of interest. This initial check may also serve as the initial instrument calibration. All subsequent calibrations may be performed using a single-point standard gas provided the calibration point is within 20 percent of the sample component concentration. For each instrument calibration, record the carrier and detector flow rates, detector filament and block temperatures, attenuation factor, injection time, chart speed, sample loop volume, and component concentrations. Plot a linear regression of the standard concentrations versus area values to obtain the response factor of each compound. Alternatively, response factors of uncorrected component concentrations (wet

basis) may be generated using instrumental integration. NOTE: Peak height may be used instead of peak area throughout this method.

6.4 Sample Analysis. Purge the sample loop with sample, and allow to come to atmospheric pressure before each injection. Analyze each sample in duplicate, and calculate the average sample area (A). The results are acceptable when the peak areas for two consecutive injections agree within five percent of their average. If they do not agree, run additional samples until consistent area data are obtained. Determine the tank sample concentrations according to Section 7.2.

7. *Calculations*

Carry out calculations retaining at least one extra decimal figure beyond that of the acquired data. Round off results only after the final calculation.

7.1 Nomenclature.

A=Average sample area.
B_w=Moisture content in the sample, fraction.
C=Component concentration in the sample, dry basis, ppmv.
C_t=Calculated NMOC concentration, ppmv C equivalent.
C_{tm}=Measured NMOC concentration, ppmv C equivalent.
P_{bar}=Barometric pressure, mm Hg.
P_{ti}=Gas sample tank pressure after evacuation, mm Hg absolute.
P_t=Gas sample tank pressure after sampling, but before pressurizing, mm Hg absolute.
P_{tf}=Final gas sample tank pressure after pressurizing, mm HG absolute.
P_w=Vapor pressure of H_2O (from Table 3C-1), mm Hg.
T_{ti}=Sample tank temperature before sampling, °K.
T_t=Sample tank temperature at completion of sampling, °K.
T_{tf}=Sample tank temperature after pressurizing, °K.
r=Total number of analyzer injections of sample tank during analysis (where j=injection number, 1 * * * r).
R=Mean calibration response factor for specific sample component, area/ppmv.

7.2 Concentration of Sample Components. Calculate C for each compound using Equations 3C-1 and 3C-2. Use the temperature and barometric pressure at the sampling site to calculate B_w. If the sample was diluted with helium using the procedures in Method 25C, use Equation 3C-3 to calculate the concentration.

$$B_w = \frac{P_w}{P_{bar}} \quad \text{3C-1}$$

$$C = \frac{A}{R(1-B_w)} \quad \text{3C-2}$$

$$C = \left[\frac{\dfrac{P_{tf}}{T_{tf}}}{\dfrac{P_t}{T_t} - \dfrac{P_{ti}}{T_{ti}}}\right] \frac{A}{R(1-B_w)} \quad \text{3C-3}$$

8. *Bibliography*

1. McNair, H.M., and E.J. Bonnelli, Basic Gas Chromatography. Consolidated Printers, Berkeley, CA. 1969.

TABLE 3C-1.—MOISTURE CORRECTION

Temperature, °C	Vapor pressure of H_2O, mm Hg
4	6.1
6	7.0
8	8.0
10	9.2
12	10.5
14	12.0
16	13.6
18	15.5
20	17.5
22	19.8
24	22.4
26	25.2
28	28.3
30	31.8

* * * * *

Method 25C—Determination of Nonmethane Organic Compounds (NMOC) in Landfill Gases

1. *Applicability and Principle*

1.1 Applicability. This method is applicable to the sampling and measurement of nonmethane organic compounds (NMOC) as carbon in landfill gases.

1.2 Principle. A sample probe that has been perforated at one end is driven or augered to a depth of 0.9 m [3 feet (ft)] below the bottom of the landfill cover. A sample of the landfill gas is extracted with an evacuated cylinder. The NMOC content of the gas is determined by injecting a portion of the gas into a gas chromatographic column to separate the NMOC from carbon monoxide (CO), carbon dioxide (CO_2), and methane (CH_4); the NMOC are oxidized to CO_2, reduced to CH_4, and measured by a flame ionization detector (FID). In this manner, the variable response of the FID associated with different types of organics is eliminated.

2. *Apparatus*

2.1 Sample Probe. Stainless steel, with the bottom third perforated. The sample probe shall be capped at the bottom and shall have a threaded cap with a sampling attachment at the top. The sample probe shall be long enough to go through and extend no less than 0.9 m (3 ft) below the landfill cover. If the sample probe is to be driven into the landfill, the bottom cap should be designed to facilitate driving the probe into the landfill.

2.2 Sampling Train.

2.2.1 Rotameter with Flow Control Valve. Capable of measuring a sample flowrate of 100±10 ml/min. The control valve shall be made of stainless steel.

2.2.2 Sampling Valve. Stainless steel.

2.2.3 Pressure Gauge. U-tube mercury manometer, or equivalent, capable of measuring pressure to within 1 mm Hg in the range of 0 to 1,100 mm Hg.

2.2.4 Sample Tank. Stainless steel or aluminum cylinder, with a minimum volume of 4 liters and equipped with a stainless steel sample tank valve.

2.3 Vacuum Pump. Capable of evacuating to an absolute pressure of 10 mm Hg.

2.4 Purging Pump. Portable, explosion proof, and suitable for sampling NMOC.

2.5 Pilot Probe Procedure. The following are needed only if the tester chooses to use the procedure described in Section 4.2.1.

2.5.1 Pilot Probe. Tubing of sufficient strength to withstand being driven into the landfill by a post driver and an outside diameter of at least 0.006 m (0.25 in.) smaller than the sample probe. The pilot probe shall be capped on both ends and long enough to go through the landfill cover and extend no less than 0.9 m (3 ft) into the landfill.

2.5.2 Post Driver and Compressor. Capable of driving the pilot probe and the sampling probe into the landfill. The Kitty Hawk portable post driver has been found to be acceptable. NOTE: Mention of trade names or specific products does not constitute endorsement by the Environmental Protection Agency.

2.6 Auger Procedure. The following are needed only if the tester chooses to use the procedure described in Section 4.2.2.

2.6.1 Auger. Capable of drilling through the landfill cover and to a depth of no less than 0.9 m (3 ft) into the landfill.

2.6.2 Pea Gravel.

2.6.3 Bentonite.

2.7 NMOC Analyzer, Barometer, Thermometer, and Syringes. Same as in Sections 2.3, 2.4.1, 2.4.2, 2.4.4, respectively, of Method 25.

3. *Reagents*

3.1 NMOC Analysis. Same as in Method 25, Section 3.2.

3.2 Calibration. Same as in Method 25, Section 3.4, except omit Section 3.4.3.

4. *Procedure*

4.1 Sample Tank Evacuation and Leak Check. Conduct the sample tank evacuation and leak check either in the laboratory or the field. Connect the pressure gauge and sampling valve to the sample tank. Evacuate the sample tank to 10 mm Hg absolute pressure or less. Close the sampling valve, and allow the tank to sit for 60 minutes. The tank is acceptable if no change is noted. Include the results of the leak check in the test report.

4.2 Sample Probe Installation. The tester may use the procedure in Sections 4.2.1 or

4.2.2. CAUTION: Since this method is complex, only experienced personnel should perform this test. LFG contains methane, therefore explosive mixtures may exist on or near the landfill. It is advisable to take appropriate safety precautions when testing landfills, such as refraining from smoking and installing explosion-proof equipment.

4.2.1 Pilot Probe Procedure. Use the post driver to drive the pilot probe at least 0.9 m (3 ft) below the landfill cover. Alternative procedures to drive the probe into the landfill may be used subject to the approval of the Administrator.

4.2.1.1 Remove the pilot probe and drive the sample probe into the hole left by the pilot probe. The sample probe shall extend at least 0.9 m (3 ft below) the landfill cover and shall protrude about 0.3 m (1 ft) above the landfill cover. Seal around the sampling probe with bentonite and cap the sampling probe with the sampling probe cap.

4.2.2 Auger Procedure. Use an auger to drill a hole through the landfill cover and to at least 0.9 m (3 ft) below the landfill cover. Place the sample probe in the hole and backfill with pea gravel to a level 0.6 m (2 ft) from the surface. The sample probe shall protrude at least 0.3 m (1 ft) above the landfill cover. Seal the remaining area around the probe with bentonite. Allow 24 hours for the landfill gases to equilibrate inside the augered probe before sampling.

4.3 Sample Train Assembly. Just before assembly, measure the tank vacuum using the pressure gauge. Record the vaccum, the ambient temperature, and the barometric pressure at this time. Assemble the sampling probe purging system as shown in Figure 1.

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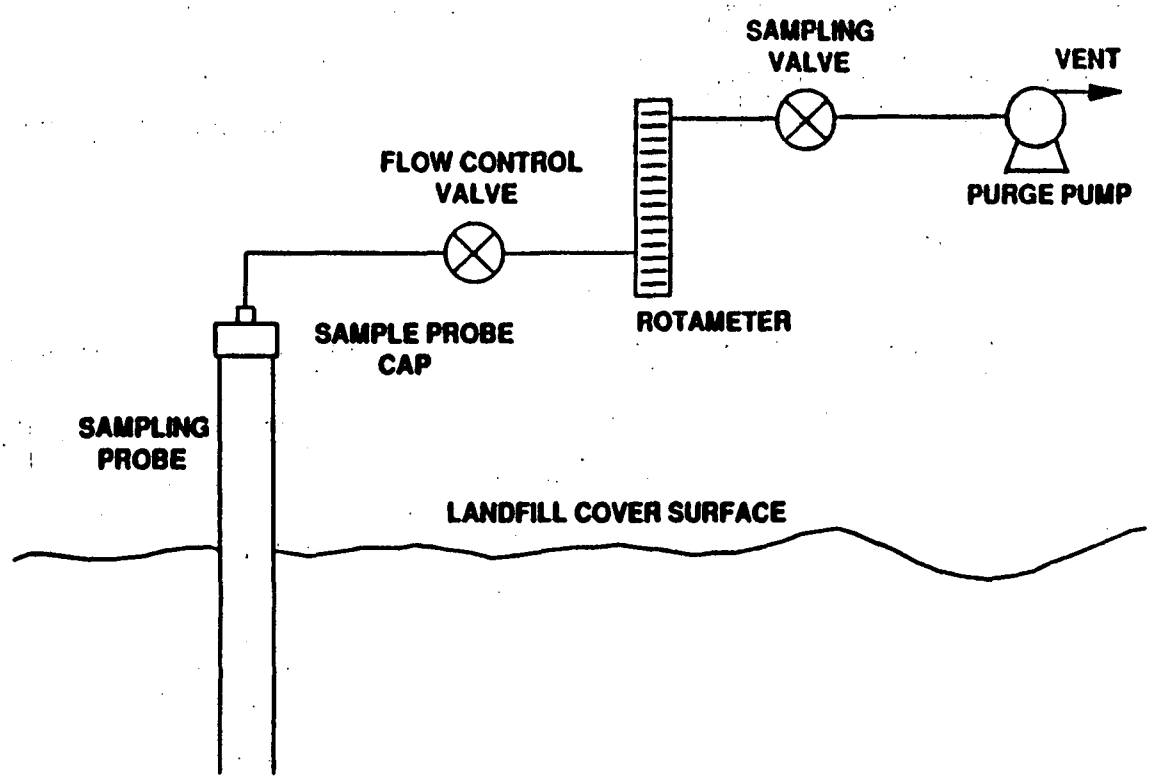

Figure 1. Schematic of sampling probe purging system.

BILLING CODE 6560-50-C

4.4 Sampling Procedure. Open the sampling valve and use the purge pump and the flow control valve to evacuate at least two sample probe volumes from the system at a flow rate of 100±10 ml/min (6.1+0.6 in^3/min). Close the sampling valve and replace the purge pump with the sample tank apparatus as shown in Figure 2. Open the sampling valve and the sample tank valves and, using the flow control valve, sample at a flow rate of 100±10ml/min (6.1+0.6 in^3/min) until the sample tank gauge pressure is zero. Disconnect the sampling tank apparatus and use the carrier gas bypass valve to pressurize the sample cylinder to approximately 1,060 mm Hg (567 in.H_2O) absolute pressure with helium and record the final pressure. Alternatively, the sample tank may be pressurized in the lab. If not analyzing for N_2, the sample cylinder may be pressurized with zero air.

BILLING CODE 6560-50-M

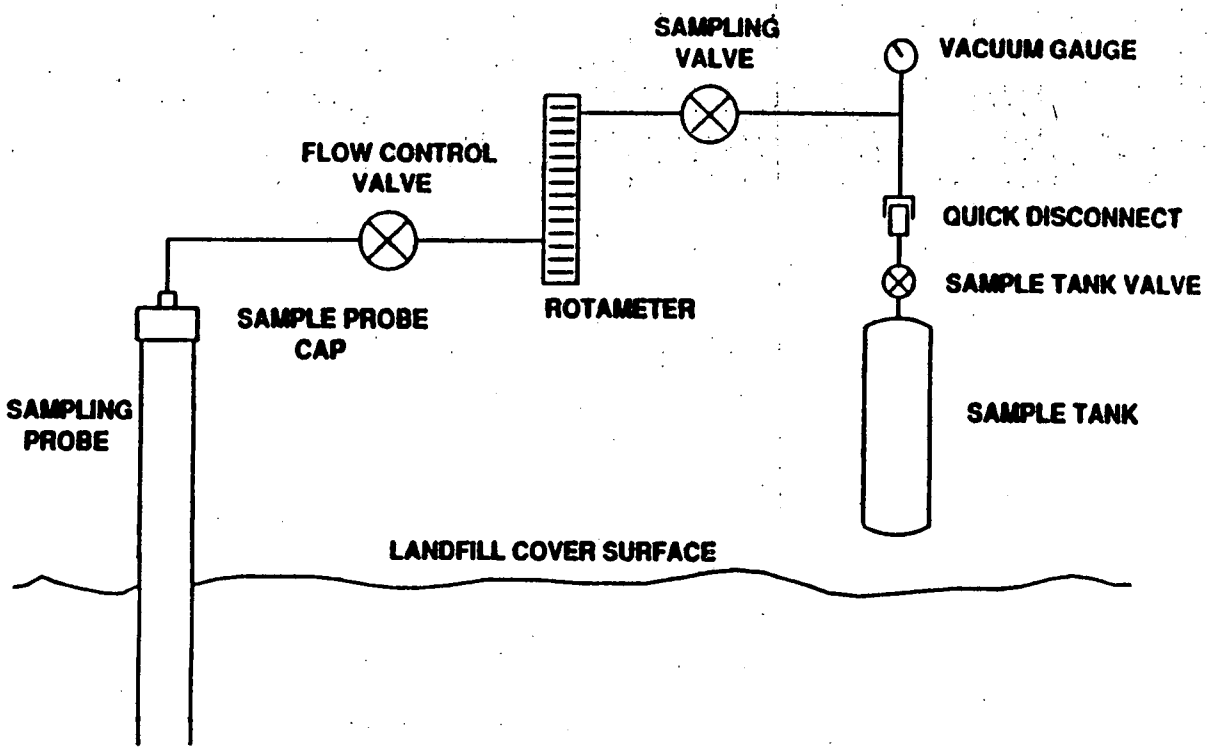

Figure 2. Schematic of sampling train.

BILLING CODE 6560-50-C

4.4.1 Use Method 3C to determine the percent N_2 in the sample. Presence of N_2 indicates infiltration of ambient air into the gas sample. The lanfill sample is acceptable if the concentration of N_2 is less than one percent.

4.5 Analysis. The oxidation, reduction, and measurement of NMOC's is similar to Method 25. Before putting the NMOC analyzer into routine operation, conduct an initial performance test. Start the analyzer, and perform all the necessary functions in order to put the analyzer into proper working order. Conduct the performance test according to the procedures established in Section 5.1. Once the performance test has been successfully completed and the NMOC calibration response factor has been determined, proceed with sample analysis as follows:

4.5.1 Daily Operations and Calibration Checks. Before and immediately after the analysis of each set of samples or on a daily basis (whichever occurs first), conduct a calibration test according to the procedures established in Section 5.2. If the criteria of the daily calibration test cannot be met, repeat the NMOC analyzer performance test (Section 5.1) before proceeding.

4.5.2 Operating Conditions. Same as in Method 25, Section 4.4.2.

4.5.3 Analysis of Sample Tank. Purge the sample loop with sample, and then inject the sample. Under the specified operating conditions, the CO_2 in the sample will elute in approximately 100 seconds. As soon as the detector response returns to baseline following the CO_2 peak, switch the carrier gas flow to backflush, and raise the column oven temperature to 195°C as rapidly as possible. A rate of 30°C/min has been shown to be adequate. Record the value obtained for any measured NMOC. Return the column oven temperature to 85°C in preparation for the next analysis. Analyze each sample in triplicate, and report the average as C_{tm}.

4.6 Audit Samples. Same as in Method 25, Section 4.5.

5. *Calibration and Operational Checks*

Maintain a record of performance of each item.

5.1 Initial NMOC Analyzer Performance Test. Same as in Method 25, Section 5.2, except omit the linearity checks for CO_2 standards.

5.2 NMOC Analyzer Daily Calibration.

5.2.1 NMOC Response Factors. Same as in Method 25, Section 5.3.2.

5.3 Sample Tank Volume. The volume of the gas sampling tanks must be determined. Determine the tank volumes by weighing them empty and then filled with deionized water; weigh to the nearest 5 g, and record the results. Alternatively, measure, to the nearest 5 ml, the volume of water used to fill them.

6 *Calculations*

All equations are written using absolute pressure; absolute pressures are determined by adding the measured barometric pressure to the measured gauge of manometer pressure.

6.1 Nomenclature.

B_w=Moisture content in the sample, fraction.
C_t=Calculated NMOC concentration, ppmv C equivalent.
C_{tm}=Measured NMOC concentration, ppmv C equivalent.
P_b=Barometric pressure, mm Hg.
P_{ti}=Gas sample tank pressure after evacuation, mm Hg absolute.
P_t=Gas sample tank pressure after sampling, but before pressurizing, mm Hg absolute.
P_{tf}=Final gas sample tank pressure after pressurizing, mm Hg absolute.
P_w=Vapor pressure of H_2O (from Table 25C-1), mm Hg.
T_{ti}=Sample tank temperature before sampling, °K.
T_t=Sample tank temperature at completion of sampling, °K.
T_{tf}=Sample tank temperature after pressurizing, °K
r=Total number of analyzer injections of sample tank during analysis (where j=injection number, 1 * * * r).

TABLE 25C-1.—MOISTURE CORRECTION

Temperature, °C	Vapor pressure of H_2O, mm Hg
4	6.1
6	7.0
8	8.0
10	9.2
12	10.5
14	12.0
16	13.6
18	15.5
20	17.5
22	19.8

TABLE 25C-1.—MOISTURE CORRECTION—Continued

Temperature, °C	Vapor pressure of H_2O, mm Hg
24	22.4
26	25.2
28	28.3
30	31.8

6.2 Water Correction. Use Table 25C-1, the LFG temperature, and barometric pressure at the sampling site to calculate B_w.

$$B_w = \frac{P_w}{P_b}$$

6.3 NMOC Concentration. Use the following equation to calculate the concentration of NMOC for each sample tank.

$$C_t = \left[\frac{\dfrac{P_{tf}}{T_{tf}}}{\dfrac{P_t}{T_t} - \dfrac{P_{ti}}{T_{ti}}}\right]\left[\frac{1}{(1-B_w)\,r}\sum_{j=1}^{r} C_{tm}(j)\right]$$

7. *Bibliography*

1. Salo, Albert E., Samuel Witz, and Robert D. MacPhee. Determination of Solvent Vapor Concentrations by Total Combustion Analysis: A Comparison of Infrared with Flame Ionization Detectors. Paper No. 75-33.2. (Presented at the 68th Annual Meeting of the Air Pollution Control Association. Boston, Massachusetts. June 15-20, 1975.) 14 p.

2. Salo, Albert E., William L. Oaks, and Robert D. MacPhee. Measuring the Organic Carbon Content of Source Emissions for Air Pollution Control, Paper No. 74-190. (Presented at the 67th Annual Meeting of the Air Pollution Control Association. Denver, Colorado. June 9-13, 1974.) 25 p.

[FR Doc. 91-12290 Filed 5-29-91; 8:45 am]
BILLING CODE 6560-50-M

federal register

Thursday
May 30, 1991

Part IV

Department of Housing and Urban Development

Office of Housing

Submission of Proposed Information Collection to the Office of Management and Budget; Notices

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Housing

[Docket No. N-91-3271]

Submission of Proposed Information Collection to the Office of Management and Budget

AGENCY: Office of Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) as required by the Paperwork Reduction Act.

ADDRESS: Interested persons may submit comments regarding the paperwork request by referring to the proposal by name and sending them to: Wendy Sherwin Swire, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed application and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). It also is requested that OMB complete its review within twenty one (21) days.

This Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new, an extension, or reinstatement; and (9) the telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 21, 1991.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

Proposal: Collecting Information from Applicants for section 811 Housing Projects for Persons with Disabilities.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: This information will enable HUD to determine whether applicants are eligible, able and capable of sponsoring housing projects for persons with disabilities.

Form Number: New request.

Respondents: Nonprofit organizations applying for Fund Reservations under the Notice of Fund Availability for section 811 Housing for Persons with Disabilities.

Frequency of Submission: One time.

Reporting burden:

	Number of respondents	×	Frequency of response	×	Hrs. per response	=	Burden hours
811 Application	350		1		50.7		15,725

Status: New request.

Contact: Sharon Mizell, HUD (202) 708-2866, Wendy Sherwin, OMB (202) 395-6880.

Date: May 21, 1991.

SECTION 811—APPLICATION SUBMISSION REQUIREMENTS

A. Supporting Statement

Background

Section 202 of the Housing Act of 1959 which provided direct loans for the development of housing for the elderly or handicapped was amended by section 162 of the Housing and Community Development Act of 1987 as it applied to housing for handicapped people. The section 202 program of housing for handicapped people is now replaced by the section 811 program of Supportive Housing for Persons with Disabilities, authorized by the National Affordable Housing Act (NAHA) of 1990. The section 811 program provides capital advances to private nonprofit organizations to expand the supply of supportive housing for persons with disabilities. The section 202 program of housing for the elderly was amended by section 801 of the NAHA and provides capital advances to expand the supply of supportive housing for the elderly. Although section 162 resulted in a separate application package for applicants pursuing the development of housing for handicapped people under the section 202 program, the information collection requirements approved by OMB (OMB clearance 2502-0267) were included in one submission for both segments (elderly and handicapped) of the section 202 program.

Now that section 811 is a separate and distinct program for housing for persons with disabilities, the Department is submitting a separate request for approval of the information collection requirements as they pertain solely to the section 811 program. Since the section 811 program closely resembles the section 202 program for handicapped people, as amended by section 162, in terms of the application submission requirements, the annual burden for the section 811 program will be compared with that portion of the annual burden approved by OMB applicable to the section 202 program (as amended by section 162). The Department is also requesting a separate OMB clearance number for the section 811 program from that approved for the section 202 program.

1. Need for Information

In order to ensure that only eligible private nonprofit organizations are selected, it is important to obtain information from prospective applicants to assist HUD in determining if they have the financial and administrative capacity to develop such a project, whether the proposed population is eligible, and whether the project design and supportive services plan meets the needs of the residents.

These factors are critical in meeting statutory requirements and in protecting the Department's financial interest in projects funded under this program.

Based on our previous years' experience, the Department receives far more applications than available resources can fund. In Fiscal Year (FY) 1990, the Department received 296 applications requesting some 4,418 units

of housing and selected 173 applications for some 2,193 units of housing. Because the program has been changed from a loan to a capital advance program, it is anticipated that the number of applications received will exceed those received in FY 1990. In view of the highly competitive nature of the Section 811 program, it is necessary to have the responses comply with prescribed application requirements in order to form a basis for HUD's evaluation in selecting applications.

The application submission requirements, summarized below, were developed to minimize the front-end expenditure of financial resources by the nonprofit applicants. This is important because only a small percentage of the universe of applications received ultimately are funded.

Contents of Application Requirements: The Application for a section 811 Fund Reservation consists of seven parts with a total of 30 Exhibits. Included with the 30 Exhibits are nine prescribed forms. Six of the nine forms are required, the balance of the forms are either instructions or guide formats for assisting applicants in responding to the Exhibits. The seven components of the application submission requirements are:

Part 1—General
Part 2—Evidence of Ability to Develop and Operate the Housing on a Long-term Basis
Part 3—Financial Capacity and Ability to Develop a Project
Part 4—Need for Supportive Housing in the Area to be Served
Part 5—Preliminary Project Site and Design Information
Part 6—Provision of Supportive Services
Part 7—Certifications and Special Submission Requirements

All of the required application exhibits are specifically identified in § 890.265 of the regulations.

2. The section 811 application submission requirements are necessary to assist HUD in determining an applicant's eligibility and capacity to develop housing for persons with disabilities consistent with prescribed statutory and program criteria. A thorough evaluation of an applicant's qualifications and capabilities is critical in protecting the Federal government's financial interest and to mitigate any possibility of fraud, waste or mismanagement of public funds.

The procedures for information collection require the prospective applicant to submit its section 811 application to the appropriate HUD Field Office by the nationally established deadline date (usually between April and June). HUD Field/Regional Offices evaluate applications based on established criteria (identified in § 890.300 of the regulations), rate the applications and make selection recommendations to Headquarters (usually by the first week of September). Applicants are notified of selection or nonselection by September 30.

The purpose and use of the seven components of the application exhibits are briefly described below:

(a) Part 1—General

Exhibit 1: This Exhibit requires applicants to submit Pages 1 and 3 of the Form HUD-92013, Application for Multifamily Housing Project. The OMB control number for this form is 2502-0029. This Form collects basic information with regard to the proposed project's characteristics. The Form HUD-92013 has been modified to collect two items that are necessary for program operation, but not presently required by the Form. The items are: Metro/nonmetro classification and minority classification. The Form will not be changed, however, the instruction will indicate the following:

(1) Section B—Purpose of Application: Block 3 will be checked as well as the block for Mortgage Insurance. However, the applicant must mark through Mortgage Insurance and write in Section 811 Capital Advance Program. In addition to identifying the capital advance amount under Mortgage/Loan Amount, applicants must identify if funds are to be used in a metro or nonmetro area.

(2) Section K—Names, Addresses and Telephone Numbers: Completed by all Applicants. Information on the Sponsor should be provided in Item 1. Item 2 is reserved for the Owner when it is formed.

In addition, the Sponsor must identify if it is a minority or nonminority organization. A minority organization is one in which more than 50 percent of the board members are minority (i.e., Black, Hispanic, Native American, Asian Pacific, Asian Indian, or Hasidic Jewish).

If members of the development team (i.e., attorney, architect, contractor) are identified, complete where applicable.

The minority classification is necessary to evaluate program effectiveness in meeting the Department's Minority Business Entrepreneurship (MBE) goals and the President's goals expressed in Executive Order 12432.

Exhibit 2: Information requested on Form HUD 92531A-EH, resume of the Housing Consultant and Identity of Interest and Disclosure Certificate are to be submitted if a Consultant is to be involved in the project. The Form provides a suggested format for the Housing Consultant's contract.

Exhibit 3: This Exhibit requests a narrative description of the Sponsor's legal status as a nonprofit entity and includes submission of organizational documents, IRS tax exemption ruling, certified list of all officers and Directors, and a Resolution concerning Conflict of Interest to assure that no officer or director has a financial interest in the project.

Exhibit 4: This Exhibit requests evidence of the Sponsor's legal authority to sponsor the project, to form an Owner after issuance of a fund reservation and to provide sufficient resources to ensure development and long-term operation of the project.

(b) Part 2—Evidence of Ability To Develop and Operate the Housing on a Long-term Basis

Exhibits 5 through 11: These Exhibits request narrative descriptions of the Sponsor's experience in HUD programs by having the Sponsor file a Form-2530, Previous Participation Certificate (OMB number is 2502-0118). As part of this section, the applicant is also required to complete narrative responses in the Exhibits concerning information which will assist HUD in determining the applicant's over-all experience and capacity to carry through with the proposed development over an extended period of time.

In addition, in order to determine the nonprofit organization's ties to the community, including the disabled minority community, in which the proposed project is to be built, the applicant is required to submit a statement evidencing its local community base.

Information regarding any financial defaults or legal action pending against the Sponsor, as well as a certified Board resolution, acknowledging responsibility and pledging support for the project, also is required.

(c) Part 3—Financial Capacity and Ability to Develop a Project

Exhibits 12-14: Information submitted in response to these Exhibits is necessary for an accurate assessment of the Sponsor's financial condition and ability to meet the financial requirements of the program. Under the Section 811 Capital Advance Program, Sponsors are required to provide a Minimum Capital Investment of 0.5 percent of one percent of the approved capital advance amount, not to exceed

$10,000 (required under § 890.250). To this end, a narrative financial history on the Sponsor, as well as copies of financial statements for each of the past three years the Sponsor has been in operation, must be submitted. The Sponsor must also submit a certified Board Resolution indicating its willingness to provide any funds necessary to ensure development of the project.

Finally, if the applicant is applying for funds under HUD's Section 106(b) seed money loan program, the Form HUD-92290 (OMB number 2502-0187) must be submitted.

(d) Part 4—Need for Supportive Housing in the Area To Be Served

Exhibit 15: This Exhibit requests information pertaining to the need for the housing and whether there is a market for the housing in the area to be served.

(e) Part 5—Preliminary Project Site and Design Information

Exhibits 16 and 17: These Exhibits request information necessary to assure that the proposed site is acceptable for the intended use and that the Sponsor has control of the site or has identified the site for which it feels confident it can gain control of within six months of fund reservation notification. This information also indicates whether the Sponsor can obtain proper zoning and whether relocation will be required.

(f) Exhibit 18

This Exhibit requires the Sponsor to describe the proposed housing in terms of the development method, the number and type of projects, number of units and number of residents and whether there will be any residential staff. The Sponsor must also provide a list of all amenities (e.g., air conditioning, carpets, etc.), special spaces (e.g., libraries, game rooms, etc.) and community spaces proposed for the project. If the Sponsor proposes a group home of more than 8 residents, it must submit justification for the increased number of people. This information is evaluated to determine if a project of the size proposed is compatible with and can be integrated into the surrounding neighborhood, is marketable and the increased number of people is necessary for the economic feasibility of the project.

(g) Exhibit 19

This Exhibit requires the Sponsor to submit a schematic drawing of each floor of the project noting the location of special design features and community space, as well as a typical bedroom in a group home and a typical unit in an independent living facility. This information is evaluated to determine if the project is designed to meet the needs of the population to be served.

(h) Part 6—Provision of Supportive Services

Exhibit 20: This Exhibit requires the Sponsor to submit: a narrative description of the disability of the persons to be housed, the need of the proposed occupants, the supportive services to be provided (Form HUD-92013E, Supplemental Application Processing Form, OMB number 2502-0232), how the services will be provided, who will provide them and how they will be funded. The Sponsor must provide evidence of a commitment of funds for the provision of the services. This information is evaluated to determine: whether the Sponsor is proposing to serve an eligible population, whether the Sponsor accurately assessed the needs of the proposed residents; if the plan for the provision of services (staffing and funding) is sufficient; and, if the services will meet the identified needs of the residents.

(i) Part 7—Certifications and Special Submission Requirements

Exhibits 21 through 29: These Exhibits require the Sponsor to submit certifications required by Governmental actions, such as Executive Orders, etc.

Exhibit 30: This Exhibit requires Sponsors proposing group homes to be licensed as intermediate care facilities to provide information regarding the type of services to be provided, their frequency and location; the medical training of staff; a description of any special design features that would not be common to other Section 811 group homes; a statement certifying that residents will participate in an out-of-the-home activity for at least six hours each weekday; and written evidence from the State Medicaid Office that it recognizes the need for a tenant contribution and has agreed to include such in the Medicaid payment to the Sponsor. This information is used to ensure that the ICF will provide primarily housing rather than be a medical facility and that the State Medicaid Agency has agreed to include the tenant contribution in the Medicaid payment to the Sponsor.

In the absence of collecting the above information, the Department would not be able to assess the worthiness of the applications or make sound judgements regarding the potential risk to the Government.

3. Each fiscal year (near the beginning of the funding cycle), HUD issues a Notice pertaining to application submission requirements. Because the Program has changed from prior years, parts of the Application Package had to be revised. In revising the Package, consideration was given to modifying it to require the minimum of information needed by HUD to conduct the program in accordance with the NAHA, statutory and regulatory requirements, and to establish a selection system which is equitable to all participants. The information described under Item 2 above represents the minimum information acceptable to HUD.

4. No duplication exists, as there are no other forms or exhibits used for the purposes specified under Item 2 herein. Also, as mentioned in Item 3 above, HUD reviewed and modified the application submission requirements to assure that only necessary information is being requested of Sponsors.

5. Not applicable. Individual applications are evaluated and rated by HUD on the merits of the responses submitted with the application. Each application is unique. The information contained in each application relates to a particular Sponsor proposing a specific project, design, unit composition, site, etc., and, as such, the information collected from Sponsors will be significantly different per application.

6. Due to the highly competitive nature of the Section 811 program, the application submission requirements were developed in a way to minimize the front-end cost to the nonprofit Sponsor and only require the minimum amount of information needed in HUD's evaluation. This is important due to the fact that only a small percentage of the universe of applications received ultimately get selected. For example, formation of the Owner corporation is no longer required at the Fund Reservation stage, but only for those projects that are funded. Also, the Form HUD-92013 is not required to be completed in its entirety. This Form is the standard form to make an application for a multifamily housing project. If the Sponsor were required to complete the Form in its entirety, a contractor and other development team participants would have to be obtained. Additionally, HUD recognizes that some Sponsors, who are sincerely interested in providing housing, may lack the staff and other facilities to develop such a project. Therefore, in recognition of the need for these Sponsors to use the services of professional housing consultants, HUD permits a reasonable fee for consultant's services to be included in the Section 811 capital advance. The consultant may assist the

Sponsor in preparation of the Application Package to request a Section 811 Capital Advance and throughout the final development of the project should the Sponsor be selected for funding.

7. Currently, the information collection activities occur annually to coincide with the receipt of annual fiscal year appropriations for the program. Each year, Congress appropriates funds with which to select new applications. HUD, in turn, invites applications and makes selections based on the funds available for the year. These funds are normally exhausted at the end of each fiscal year. The section 811 regulations require HUD to publish a Notice of Fund Availability (NOFA) in the **Federal Register** when such funds are made available by Congress. The regulations also require HUD to publish Invitations for Applications which specify, among other things, a deadline date for receipt of applications. In order for HUD to accept an application, the application must have been submitted in response to a specific Invitation requesting such an application and by the closing date stated in the Invitation. As the funding cycle for the program occurs annually, including the Invitations for Applications, it is not possible to require the submission of this information less frequently.

8. Part 5 CFR 1320.6 lists 10 items that OMB will not approve for information collection, unless it can be demonstrated that the collection of information is necessary to satisfy statutory requirements or other substantial need.

This request for information is consistent with the guidelines under 5 CFR 1320.6 with the exception of one item. Subparagraph (c) of the above CFR indicates OMB's disapproval of requiring respondents to submit more than an original and two copies of any document. With respect to the Section 811 program, HUD requires Sponsors to submit an original and six copies of the Application. As the program is administered on an annual basis, processing of the application must be accomplished in an expeditious manner in order that decisions regarding selections of applications and reservations of funds can be made prior to the end of the fiscal year (September 30).

During the course of processing the applications, nine HUD technical disciplines are involved in the review process: Staff from Mortgage Credit, Valuation, Architectural and Engineering, Housing Management, Fair Housing and Equal Opportunity, Economic and Market Analysis, Community Planning and Development, the Multifamily Housing Representative and the Field Office Counsel. These HUD staff members are required to comment on the approvability of each application received.

Because of the (1) various HUD staff involved in the review process, (2) tremendous volume of applications received each fiscal year, and (3) the need to obligate funds by the fiscal year-end, HUD requires concurrent reviews of the applications by the aforementioned HUD staff to assure prompt processing with minimum interruption. For example, additional information or clarification is often needed from Sponsors to permit HUD to make a fair and complete review. The requirement for simultaneous reviews promotes a more efficient, time-saving method to provide applicants a single notification regarding all deficiencies noted as a result of a full review from each HUD technical discipline.

HUD needs more than an original and two copies of the application in order to carry out the above procedures for concurrent reviews.

9. Inasmuch as the application submission requirements are contained in outstanding regulations (24 CFR 890.265), the promulgation procedure for regulations allowed sufficient participation by outside agency contacts to review and comment on the application material.

10. HUD does not assure confidentiality.

11. The application submission requirements do not contain any sensitive questions.

12. Provide estimates of annualized cost to the Federal Government and to the respondents.

(a) *Estimate of Cost to Federal Government:* Inasmuch as the majority of the work involved in reviewing the applications is performed at the HUD Field Office level, the significant costs attributable to the promulgation of the application requirements will be the cost involved in reviewing the information submitted by applicants. Outstanding program procedures require the following reviews performed by the various Field Office staff:

Reviews

Function	Total time per application (hours)
Mutifamily Housing Rep.	2
Mortgage Credit	3
Architectural	1
Valuation	2
Economic and Market Analysis	1
Fair Housing & Equal Opport.	1
Housing Management	1
Community Planning & Devel	1
Field Office Counsel	3
Total	15

Cost	Amount
Clerical (12 hrs. × $10/hr.) at $20/hr	$2,400
Printing	100
Mailing	50
Total Estimated Cost Per Application	$2,550

(b) *Estimate of Cost to Respondents:* In estimating the cost to the Sponsors, it should be noted that in order to comply with the program requirements, the Sponsor usually retains an attorney. In addition, as many nonprofit organizations do not have in-house expertise to develop an application, a housing consultant is usually hired by the Sponsor. In view of this, the following illustrates the estimated cost to the public:

Housing Consultant ($40 per hour)	$800
Sponsor	Probono
Attorney	1,000
Total	$1,800

It should be noted that many professionals work on a retainer basis and if the application does not obtain HUD approval, they do not collect a fee. The figures presented above are based on our own experience, as well as consultation with housing professionals in the field.

13. Although for Fiscal Years 1989 and 1990, HUD received approximately 297 and 296 applications for housing for the nonelderly handicapped, respectively, it is anticipated that because funding under the program has changed from loans to capital advances, the number of applicants will increase. However, the number will not increase as much as it would have without the new requirement that a Sponsor must submit either evidence of site control or an identification of a site. It is anticipated that the level of activity will average 350 applications annually over the next three years. Although the program funding cycle is on an annual basis, each prospective Sponsor could submit more than one application. However, our estimate of time involved is based on one application per applicant. Using the categories presented in the

illustration in Item 12(b) above, the estimated amount of hours involved in developing a complete application submission:

Housing Consultant	28.4
Attorney	2
Sponsor	20.3
Total	50.7

Although the section 811 program is very similar to the section 202 program for the elderly in terms of the application submission requirements; there are some differences. The major exceptions are that under the section 202 program, evidence of site control is a requirement whereas under the section 811 program Sponsors have the option of submitting evidence of site control or an identification of a site which is not as time consuming. Furthermore, since site control is not a requirement under the section 811 program, site and floor plans are not required. However, the section 811 program requires a more extensive supportive services plan than is required for the section 202 program. Thus, due to the variations in time necessary to complete several of the exhibits between the section 811 and the section 202 programs, the total figure for the section 811 program is 50.7 hours compared with 55.2 hours for the section 202 program. The previous figure of 27 hours for the section 202 program for the handicapped (revised by section 162) was underestimated.

These figures are based on HUD's experience with the section 202 program for the elderly where evidence of site control has always been required, as well as consultation with housing professionals in the field.

A tabulation of Annual Reporting Burden is shown in Table 1. It should be noted that Exhibits 1, 6, 14, 17, 20, and 25 already have OMB clearance as shown in the Table. These information collections are common to many of our programs and our request for clearance was calculated to include the burden associated for all programs uses. The burden shown in Table 1 for Exhibits 1, 6, 14, 17, 20 and 25, therefore, reflects our estimate for application to the section 811 program. No adjustment to the previously cleared Exhibits 1, 6, 14, 17, 20 and 25 will be required.

Note: For Fiscal Year 1991, Exhibit 22 will not be required, therefore, the burden hours will be reduced by 140. However, Exhibit 22 will be required beginning in Fiscal Year 1992.

14. Although the total number of annual responses has decreased from 450 to 350 based on HUD's experience during the past two years with the number of applications that were submitted for the Section 202 Program of Housing for Handicapped People (revised by section 162), the total number of hours has increased by 3,575 due to the more accurate estimate of the number of hours per response and the new site requirement described in 13. above.

15. Not applicable.

B. Collections of Information Employing Statistical Methods

Not applicable.

TABLE 1.—TABULATION OF ANNUAL REPORTING BURDEN

Description of information collection (application submission requirements)	Section of CFR affected	No. of respondents	No. of respondents per respondent	Total annual responses	Hours per response	Total hours
Part 1:						
Exhibit 1, Form HUD-92013 (OMB 2502-0029).	890.265(b)	350	1	350	1.0	350
Exhibit 2, Information on consultant		Not subject to OMB approval per OMB 5/1/84				
Exhibit 3, Evidence of Sponsor's nonprofit status.	890.265(c)(2)	350	1	350	2.0	700
Exhibit 4, Evidence of Sponsor's authority to sponsor project.	890.265(c)(3)	350	1	350	1.0	350
Part 2:						
Exhibit 5, Description of community ties	890.265(c)(4)	350	1	350	0.5	175
Exhibit 6, Form HUD-2530 (OMB 2502-0118).	890.265(c)(5)	350	1	350	0.6	210
Exhibit 7, Description of legal actions against Sponsor.	890.265(c)(6)	350	1	350	0.5	175
Exhibit 8, Description of experience providing housing.	890.265(c)(7)	350	1	350	3.0	1,050
Exhibit 9. Description of past involvement	890.265(c)(8)	350	1	350	3.0	1,050
Exhibit 10, Board Resolution to support project.	890.265(c)(9)	350	1	350	0.4	140
Exhibit 11, Description of experience serving minorities.	890.265(c)(10)	350	1	350	1.0	350
Part 3:						
Exhibit 12, Statement on other 811 or 202 applications submitted.	890.265(c)(11)	350	1	350	2.0	700
Exhibit 13, Estimate of start-up expenses	890.265(c)(12)	350	1	350	4.0	1,400
Exhibit 14, Evidence of ability to provide funds for project (HUD-92290 OMB 2502-0160).	890.265(c)(13)	350	1	350	4.0	1,400
Exhibit 17, Statement on relocation (OMB 2502-0433).	890.265(c)(14)(i)(A)(4)	[1] 15	1	15	4.0	60
Part 5:						
Exhibit 18, Description of proposed design of project.	890.265(c)(14)(v)	350	1	350	4.0	1,400
Exhibit 19, Schematic drawings	890.265(c)(14)(v)	350	1	350	2.0	700
Part 6:						
Exhibit 20, Description of residents and supportive services (HUD-92013E OMB 2502-0232).	890.265(c)(15) & (16)	350	1	350	8.0	2,800
Part 7:						
Exhibit 21, Equal Opportunity certifications		Exempt per 5 CFR Part 1320				

TABLE 1.—TABULATION OF ANNUAL REPORTING BURDEN—Continued

Description of information collection (application submission requirements)	Section of CFR affected	No. of respondents	No. of respondents per respondent	Total annual responses	Hours per response	Total hours
Exhibit 22, CHAS certification from local public official.	890.265(c)(19)	[2] 350	1	350	0.4	140
Exhibit 23, Certification on provision of services.	890.265(c)(20)	350	1	350	0.4	140
Exhibit 24, Certification on E.O. 12372	890.265(c)(21)	350	1	350	0.4	140
Exhibit 25–29, Certifications (SF–424 OMB 0348–0043).			Exempt per 5 CFR Part 1320			
Exhibit 30, Information on Intermediate Care Facilities.	890.265(c)(14)(v)	[3] 10	1	10	2.0	20
Totals		350	1	350	50.7	15,725

[1] Based on experience, no more than 5 percent of the applications will involve relocation.
[2] For Fiscal Year 1991, the certification from the local public official will not be required. The respondent will only be required to state, "Not applicable". The certification will be required beginning in Fiscal Year 1992.
[3] Based on experience, no more than 3 percent of the applications will propose ICFs.

BILLING CODE 4210–M

OMB Approval No. 2502-0118 (exp. 5/31/92)

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
HOUSING - FEDERAL HOUSING COMMISSIONER AND
U.S. DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION

PREVIOUS PARTICIPATION CERTIFICATION

PART I - CERTIFICATE *(To be completed by Principals of Multifamily Projects.)*

1. TO: *(Name and City of HUD Area Office or USDA-FmHA District Office where the Application is Filed.)*	2. PROJECT NAME, I.D., OR PROJECT NUMBER AND CITY, STATE CONTAINED IN THE APPLICATION ALSO: SECTION 8 CONTRACT NUMBER

3. LOAN OR CONTRACT AMOUNT	4. NUMBER OF UNITS OR BEDS	5. SECTION OF ACT *(If known)*	6. TYPE OF PROJECT *(Check One)*
$			☐ Existing ☐ Rehabilitation ☐ Proposed *(New)*

LIST OF ALL PROPOSED PRINCIPAL PARTICIPANTS

7. Alphabetical List of the Full Names *(last name first)* and Address of all known principals and affiliates *(people, businesses and organizations)* proposing to participate in the project described above.	8. Role of Each Principal	9. Expected % Interest in Ownership	10. Social Security or IRS Employer Number

CERTIFICATION

I *(meaning the individual who signs as well as the corporations, partnerships or other parties listed above who certify)* hereby apply to HUD or USDA - FmHA, as the case may be, for approval to participate as a principal in the role and project listed above based upon my following previous participation record and this Certificate.

I certify that all the statements made by me are true, complete and correct to the best of my knowledge and belief and are made in good faith, including the data contained in Schedule A and Exhibits signed by me and attached to this form.

A. I further certify that:

1. Schedule A contains a listing of every assisted or insured project of HUD, USDA-FmHA and State and Local Government housing finance agencies in which I have been or am now a principal.
2. For the period beginning 10 years prior to the date of this certification, and except as shown by me on the certificate.
   a. No mortgage on a project listed by me has ever been in default, assigned to the Government or foreclosed, nor has mortgage relief by the mortgagee been given;
   b. I have not experienced defaults or noncompliances under any Conventional Contract or Turnkey Contract of Sale in connection with a public housing project;
   c. To the best of my knowledge, there are no unresolved findings raised as a result of HUD audits, management reviews or other Governmental investigations concerning me or my projects;
   d. There has not been a suspension or termination of payments under any HUD assistance contract in which I have had a legal or beneficial interest attributable to my fault or negligence;
   e. I have not been convicted of a felony and am not presently, to my knowledge, the subject of a complaint or indictment charging a felony. *(A felony is defined as any offense punishable by imprisonment for a term exceeding one year, but does not include any offense classified as a misdemeanor under the laws of a State and punishable by imprisonment of two years or less);*
   f. I have not been suspended, debarred or otherwise restricted by any Department or Agency of the Federal Government or of a State Government from doing business with such Department or Agency.
   g. I have not defaulted on an obligation covered by a surety or performance bond and have not been the subject of a claim under an employee fidelity bond.
3. All the names of the parties, known to me to be principals in this project(s) in which I propose to participate, are listed above.
4. I am not a HUD/FmHA employee or a member of a HUD/FmHA employee's immediate household as defined in HUD's Standard of Conduct in 24 CFR 0.735.205(a)(2)/USDA's Standard of Conduct in 7 CFR Part O Subpart B.
5. I am not a principal participant in an assisted or insured project this date on which construction has stopped for a period in excess of 20 days or which has been substantially completed for more than 90 days and documents for closing, including final cost certification have not been filed with HUD or FmHA.
6. To my knowledge I have not been found by HUD or FmHA to be in noncompliance with any applicable civil rights laws.

B. *(APPLICABLE TO GENERAL PARTNERS OR PROJECT OWNERS ONLY)*
All the parties who are principals or who are proposed as principals here are listed above and no principals or identities of interest are concealed or omitted.

C. I am not a Member of Congress or a Resident Commissioner nor otherwise prohibited or limited by law from contracting with the Government of the United States of America.

D. Statements above *(if any)* to which I cannot certify have been deleted by striking through the words with a pen. I have initialed each deletion *(if any)* and have attached a true and accurate signed statement *(if applicable)* to explain the facts and circumstances which I think helps to qualify me as a responsible principal for participation in this project.

Typed or Printed Name of Principal	Signature of Principal	Title, Role or Capacity	Date	Area Code and Telephone No.

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code, Section 1001 and Section 1010.	THIS FORM WAS PREPARED BY *(Please print name)*	AREA CODE & TELEPHONE NO.

REPORT OF INSPECTOR GENERAL - INTERNAL PROCESSING ONLY

THE INDICES OF THE INSPECTOR GENERAL'S OFFICE HAVE BEEN CHECKED FOR THE NAMES OF THE PRINCIPALS LISTED IN PART I ABOVE

AND: ☐ a. WE HAVE NO INFORMATION; OR ☐ b. WE HAVE INFORMATION AND A REPORT IS ATTACHED

DATE	TITLE	SIGNATURE

SCHEDULE A - LIST OF PREVIOUS PROJECTS AND SECTION 8 CONTRACTS

By my name below is the complete list of my previous projects and my participation history as a principal in Multifamily Housing programs of HUD/USDA-FmHA, State and Local Housing Finance Agencies.

NOTE - Read and follow the attached instructions sheet carefully. Abbreviate where possible. Make full disclosure. Add extra sheets if you need more space. Double check for accuracy. If you have no previous projects write by your name - "No previous participation - First Experience.

1. List each Principal's Name *(List in Alphabetical Order, Last Name First)*	2. List Previous Projects *(Give the I.D. Number, Project Name, City of Location, Government Agency involved and Number of Units in the Project)*	3. List Principal's Participation Role and Interest - Give Month and Year Participation began and ended.	4. Disclose Defaults, Mortgage Relief, Assignments, Foreclosures. If None, write "None."	5. RESERVED FOR HUD PROCESSING

PART II - INTERNAL PROCESSING ONLY

1. Received by the Field Office, checked by me for accuracy and completeness and found ready for processing:

DATE | FTS TELEPHONE NUMBER

SUPERVISOR, PROCESSING CONTROL AND REPORTS UNIT

2. TO: Department of Housing and Urban Development, Multifamily Participation Review Committee, Washington, D.C.
A review of the records and project files of this office relative to the above listed parties and projects reveals:

☐ A. No adverse information, Form HUD-2530 approval is recommended; ☐ B. Problems exist, my memorandum on them is attached.

DIRECTOR OF HOUSING

PROCESSING IS AUTHORIZED

DATE | NAME OF AREA MANAGER

INSTRUCTIONS FOR COMPLETING THE PREVIOUS PARTICIPATION CERTIFICATE, FORM HUD-2530

(Effective January 1, 1981 for HUD Assisted Multifamily Housing Projects.)

PURPOSE -

Form HUD-2530 must be completed and signed by all parties applying to become principal participants in HUD multifamily housing projects. The purpose of this form is to provide HUD with a certified report of all previous participation in HUD multifamily housing projects by those parties making application for additional participation in another HUD MFH project. This form must also be completed by those who have not previously participated in HUD MFH projects.

Before filing this form with the HUD Area or Service office where your project application will be processed, these instructions and the regulations that apply to this form should be read carefully. A copy of those regulations published at 24 CFR 200.210 to 200.245 can be obtained from the Multifamily Housing Representative at any HUD Area or Service office.

The information requested in this form is necessary in order for HUD to determine if you meet the standards established to ensure that all principal participants in HUD projects will honor their legal, financial and contractual obligations and are acceptable risks from the underwriting standpoint of an insurer, lender or governmental agency.

To assist in this determination, HUD requires that you certify your record of previous participation in HUD projects by completing and signing this form, before your project application or participation can be approved. HUD approval of your certification is a necessary precondition for your participation in the project and in the capacity that you propose.

If you do not file this certificate, do not furnish the information requested accurately, or do not meet established standards, you will not be approved and you will not be able to participate in the project as you had planned. Alternatively, approval may be withheld for up to 120 days if HUD feels more information is necessary to make an accurate decision.

Note that approval of your certification does not obligate HUD to approve your project application, and it does not satisfy all other HUD program requirements relative to your qualifications.

WHO MUST SIGN AND FILE FORM HUD-2530 -

Form HUD-2530 must be signed and filed by all principals and their affiliates who propose participating in the HUD project. Principals may all use, sign, and file on the same form or they may elect to file separate forms if that is more convenient. Late comers must file when they decide to join principals who have already filed.

Principals include all individuals, joint ventures, partnerships, corporations, trusts, nonprofit organizations or any other public or private entity that will participate in the proposed project as a sponsor, owner, prime contractor, turnkey developer, or managing agent. In addition, principals include packagers and consultants, defined as individuals or firms providing advisory services in connection with the financing or construction of a project, or with meeting any related HUD requirements. Architects and attorneys who have any interest in the project other than an arms length fee arrangement for professional services are also considered principals by HUD.

In the case of partnerships, all general partners regardless of their percentage interest and limited partners having a 25 percent or more interest in the partnership are considered principals. In the case of public or private corporations or governmental entities, principals include the president, vice president, secretary, treasurer and all other executive officers who are directly responsible to the board of directors, or any equivalent governing body, as well as all directors and each stockholder having a 10 percent or more interest in the corporation.

Affiliates are defined as any person or business concern that directly or indirectly controls the policy of a principal or has the power to do so. A holding or parent corporation would be an example of an affiliate if one of its subsidiaries was a principal.

EXCEPTION FOR CORPORATIONS - ALL PRINCIPALS AND AFFILIATES MUST PERSONALLY SIGN THE CERTIFICATE EXCEPT IN THE FOLLOWING SITUATION. WHEN A CORPORATION OR PUBLIC AGENCY IS A PRINCIPAL, ALL OF ITS OFFICERS, DIRECTORS, COMMISSIONERS, TRUSTEES AND STOCKHOLDERS WITH 10 PERCENT OR MORE OF THE COMMON (VOTING) STOCK NEED NOT SIGN PERSONALLY IF THEY ALL HAVE THE SAME RECORD TO REPORT. THE OFFICER WHO IS AUTHORIZED TO SIGN FOR THE CORPORATION OR AGENCY WILL LIST THE NAMES AND TITLE OF THOSE WHO ELECT NOT TO SIGN. HOWEVER, ANY PERSON WHO HAS A RECORD OF PARTICIPATION IN HUD PROJECTS THAT IS SEPARATE FROM THAT OF HIS OR HER ORGANIZATION MUST REPORT THAT ACTIVITY ON THIS FORM AND SIGN HIS OR HER NAME.

EXEMPTIONS - The names of the following parties do not need to be listed on Form HUD-2530: Public Housing Agencies, tenants, owners of less than five condominium or cooperative units and all others interests acquired by inheritance or court order.

WHERE AND WHEN FORM HUD-2530 MUST BE FILED -

This form must be filed with the HUD Area or Service office where your project application will be processed at the same time you file your project application.

This form must be filed with applications for projects, or when otherwise required in the situations listed below:

- Projects to be financed with mortgages insured under the National Housing Act (FHA).
- Projects to be financed according to Section 202 of the Housing Act of 1959 (Elderly and Handicapped).
- Public Housing projects to be financed according to the United States Housing Act of 1937.
- Projects in which 20 percent or more of the units are to receive a subsidy as described in 24 CFR 200.213.
- Purchase of a project subject to a mortgage insured or held by the Secretary of HUD.
- Purchase of a Secretary-owned project.
- PROPOSED SUBSTITUTION OR ADDITION OF A PRINCIPAL, OR PRINCIPAL PARTICIPATION IN A DIFFERENT CAPACITY FROM THAT PREVIOUSLY APPROVED FOR THE SAME PROJECT
- PROPOSED ACQUISITION BY AN EXISTING LIMITED PARTNER OF ADDITIONAL INTEREST IN A PROJECT RESULTING IN A TOTAL INTEREST OF 25 PERCENT OR MORE, OR PROPOSED ACQUISITION BY A STOCKHOLDER OF ADDITIONAL INTEREST IN A PROJECT RESULTING IN A TOTAL INTEREST OF 10 PERCENT OR MORE.
- Projects with U.S.D.A., Farmers Home Administration, or with state or local government housing finance agencies that include rental assistance under Section 8 of the Housing Act of 1937. For projects of this type, Form HUD-2530 should be filed with the appropriate applications directly to those agencies.

REVIEW OF ADVERSE DETERMINATION

If approval of your participation in a HUD project is denied, withheld or conditionally granted on the basis of your record of previous participation, you will be notified by the field office. You may request reconsideration by the HUD Review Committee. Alternatively, you may request a hearing before a Hearing Officer. Either request must be made in writing within 30 days from your receipt of the notice of determination.

If you do request reconsideration by the Review Committee and the reconsideration results in an adverse determination, you may then request a hearing before a Hearing Officer. The Hearing Officer will issue a report to the Review Committee. You will be notified of the final ruling by certified mail.

INSTRUCTIONS FOR COMPLETING FORM HUD-2530 -

General Instructions - Either type or print neatly in ink when filling out this form. BE SURE TO MARK ANSWERS IN ALL BLOCKS OF THE FORM. IF THE FORM IS NOT FILLED OUT COMPLETELY, IT WILL DELAY APPROVAL OF YOUR APPLICATION.

If you need more space, attach extra sheets to the form. Be sure to type "Continued on Attachments" wherever appropriate on Form HUD-2530. Also, sign each additional page that is attached if it refers to you or your record.

Sign the certificate ONLY after you have read it carefully. File the original with the HUD Area or Service office that has jurisdiction over the project at the same time the initial project or other application forms are filed before your participation begins. You need to submit only one copy of Form HUD-2530 to HUD - additional copies are not necessary.

If you have many projects to list and expect to be applying frequently for participation in HUD projects, you should consider filing a Master List. See Master List instructions below under "Instructions for Completing Schedule A"

Any questions you have regarding the form or how to complete it can be answered by your HUD Area or Service office Multifamily Housing Representative.

Block Instructions:

BLOCK 1 - Fill in the name of the agency to which you are applying, for example: HUD Area or Service office, Farmers Home Administration District office, or the name of a state or local housing finance agency. Below that, fill in the name of the city where the office is located.

BLOCK 2 - Fill in the name of the project, such as "Greenwood Apts." If the name has not yet been selected, write "Name unknown."

Below that, fill in the HUD contract or project identification number, the Farmers Home Administration project number, or the state or local housing finance agency project or contract number. Include ALL project or contract identification numbers that are relevant to the project.

Below that, fill in the name of the city in which the project is located, and the ZIP Code of the site location.

BLOCK 3 - Fill in the dollar amount requested in the proposed mortgage, or the annual amount of rental assistance requested.

BLOCK 4 - Fill in the number of apartment units proposed, such as "40 units." For hospital projects or nursing homes, fill in the number of beds proposed, such as "100 beds."

BLOCK 5 - If known, fill in the section of the Housing Act under which the application is filed. If unknown, write "Unknown."

BLOCK 6 - Check the appropriate box to indicate whether your application involves an EXISTING project, a REHABILITATION, or a PROPOSED new project.

BLOCK 7 - Alphabetically list the full names, last name first, of all principals (including corporations) and affiliates and their addresses. Definitions of all those who are considered principals and affiliates are given above in the section titled "Who Must Sign and File Form HUD-2530."

BLOCK 8 - Beside the name of each principal, fill in the role that each party listed will perform. The following is a list of the possible roles that the principals may perform: Sponsor, Owner, Prime Contractor, Turnkey Developer, Managing Agent, Packager, Consultant, General Partner, Limited Partner (include percentage), Executive Officer, Director, Trustee, or Major Stockholder.

Beside the name of each affiliate, write the name of the person or firm of affiliation, such as "Affiliate of Smith Construction Co."

INSTRUCTIONS FOR COMPLETING THE PREVIOUS PARTICIPATION CERTIFICATE — FORM HUD-2530 *(Continued)*

BLOCK 9 - Fill in the percentage ownership in the proposed project that each principal is expected to have. Beside the name of those parties who will not be owners, write "None."

BLOCK 10 - Fill in the social security or IRS employer number of every party listed, including affiliates.

INSTRUCTIONS FOR COMPLETING SCHEDULE A -

No Previous Record - EVEN IF YOU HAVE NEVER PARTICIPATED IN A HUD PROJECT BEFORE, YOU MUST COMPLETE FORM HUD-2530. If you have no record of previous projects to list, fill in your name in Column 1 of Schedule A, and write across the form by your name - "No previous participation, first experience."

Frequent Filer's Master List System - If you expect to file this form frequently and you have a long list of previous projects to report on Schedule A, you should consider filing a Master List. By doing so, you will avoid having to list all your previous projects each time you file a new application.

To make a Master List, use Form HUD-2530. On page 1, in Block 1, you should fill in (in capital letters) the words "MASTER LIST." In Blocks 2 through 6 fill in "N.A." meaning Not Applicable. Complete Blocks 7 through 10.

In the box below the statement of certification, fill in the names of all parties who wish to file a Master List together (type or print neatly). Beside each name, every party must sign the form. In the box titled "Proposed Role," fill in "N.A." Also, fill in the date you sign the form and provide a telephone number where you can be reached during the day.

SCHEDULE A, ON THE REVERSE SIDE OF THE FORM MUST BE FILLED OUT COMPLETELY ACCORDING TO THE INSTRUCTIONS BELOW UNDER "All Others." CHECK TO BE SURE THAT SCHEDULE A IS COMPLETE, ACCURATE AND THE CERTIFICATE ON THE FRONT OF FORM 2530 IS PROPERLY DATED AND SIGNED, BECAUSE IT WILL SERVE AS A LEGAL RECORD OF YOUR PREVIOUS EXPERIENCE.

File one copy of the Master List with each HUD Area or Service office where you do business and mail one copy to:

HUD-2530 MASTER LISTS
Previous Participation Branch - Housing
Department of Housing and Urban Development
451 Seventh Street, S. W.
Washington, D. C. 20410

Once you have filed a Master List, you do not need to complete Schedule A when you submit Form HUD-2530. Instead, write the name of the participant in Column 1 of Schedule A and beside that write - "See Master List on file." Also give the date that appears on the Master List that you submitted. Below that, report all changes and additions that have occurred since the date of the Master List. Be sure to include any mortgage defaults, assignments or foreclosures not listed previously.

IF YOU HAVE WITHDRAWN FROM A PROJECT SINCE THE DATE THE MASTER LIST WAS FILED, BE SURE TO NAME THE PROJECT. GIVE THE PROJECT IDENTIFICATION NUMBER, THE MONTH AND YEAR YOUR PARTICIPATION BEGAN AND/OR ENDED.

All Others - Complete Schedule A on the reverse side of Form HUD-2530. All Multifamily Housing projects in which you have previously participated as a state or local government housing finance agencies MUST be listed.

In Column 2 of Schedule A, list all of your previous projects. In addition, list the project or contract identification of each previous project. THE PROJECT OR CONTRACT IDENTIFICATION OF ALL PREVIOUS PROJECTS MUST BE INCLUDED OR YOUR CERTIFICATION CANNOT BE PROCESSED. Also give the name of all projects, the cities in which they are located and the government agency (HUD, USDA-FmHA or state or local housing finance agency) that was involved. At the end of your list of projects in Column 2 of Schedule A, draw a straight line across the page to separate your record of projects from that of others signing this form who have a different record to report.

In Column 3 of Schedule A, list your role in all previous projects (a list of all possible roles is given in the instructions to Block 8). Give the month and year your participation began and/or ended because you do not want your record confused with possible problems caused by others for which you are not responsible.

In Column 4 of Schedule A, you must indicate all defaults, mortgage relief, assignments and foreclosures. Write "Default," "Assignment," or "Foreclosure" and give the date it occurred. If a default has been cured by payment, write the word "Cured" after the word default. If there were none of these on a project, write "None."

CERTIFICATION - AFTER YOU HAVE COMPLETED ALL OTHER PARTS OF FORM HUD-2530, INCLUDING SCHEDULE A, READ THE CERTIFICATION CAREFULLY. In the box below the statement of certification, fill in the name of all principals and affiliates (type or print neatly). Beside the name of each principal and affiliate, each party must sign the form, with the exception in some cases of individuals associated with a corporation (see "Exception for Corporations" in the section of the instructions titled "Who Must Sign and File Form HUD-2530"). Beside each signature, fill in the role of each party (the same as shown in Block 8). In addition, each person who signs the form should fill in the date that he or she signs, as well as providing a telephone number where he or she can be reached during business hours. By providing a telephone number where you can be reached, you will help to prevent any possible delay caused by mailing and processing time in the event HUD has any questions.

If you cannot certify and sign the certificate as it is printed because some statements do not correctly describe your record, do not become discouraged. On the face of the certificate use a pen and strike through those parts that differ with your record, then sign and certify to that part you permitted to remain and which does describe you or your record.

Attach a signed letter, note or explanation of the times you have struck out on the certification and report the facts of your correct record. Item A(2)(e) relates to felony convictions within the past 10 years. If you have been convicted of a felony within 10 years, strike out all of A(2)(e) on the certificate and attach your statement giving your explanation. A felony conviction will not cause your participation to be disapproved unless there is a criminal record or other evidence that your previous conduct or method of doing business has been such that your participation in the project would make it an unacceptable risk from the underwriting standpoint of an insurer, lender or governmental agency.

PRIVACY ACT INFORMATION AND AUTHORITY.

Form HUD-2530 is authorized by law (42 USC 3535(d) and 42 USC 1701 et seq.) and 24 CFR 200.217. This information is collected to evaluate your record with respect to established standards of performance, responsibility and eligibility. HUD must have your social security number (SSN) for identification of your records. HUD may use your SSN for automated processing of your records and to make requests for information about you and your previous records with other public agencies and private sector sources.

Disclosure is not mandatory but you cannot be approved for participation unless you disclose the requested information.

Information HUD has about you may be given to other Federal, State and local agencies for checking on your previous participation record for business practices, for law violations and for other lawful purposes.

Public Reporting Burden for this collection of information is estimated to average 0.6 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2502-0118), Washington, D.C. 20503

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
HOUSING—FEDERAL HOUSING COMMISSIONER

STANDARD CONTRACT FOR HOUSING CONSULTANT SERVICES FOR NONPROFIT PROJECTS UNDER HUD PROGRAMS EXCLUSIVE OF SECTION 202 OF THE HOUSING ACT OF 1959, AS AMENDED

This Agreement made this day of , 19 , by and between , being a nonprofit entity, *(hereinafter referred to as the Sponsor)* and , *(hereinafter referred to as the Housing Consultant)*.

WHEREAS, the Sponsor has formed or intends to form a nonprofit mortgagor corporation or association *(the term "Sponsor" shall also include said mortgagor)* to construct, own, operate and maintain a rental housing project, and to make or cause to be made an application to the Secretary of Housing and Urban Development *(hereinafter referred to as Secretary)* for a commitment to insure a loan for the development of a housing project under the provisions of the National Housing Act, as amended, and the regulations issued pursuant thereto, and

WHEREAS, the Sponsor desires to avail itself of the services of a Housing Consultant to assist and counsel the Sponsor in matters affecting the initiation, processing, financing, design, construction, equipping, operation and management of the housing project.

NOW, THEREFORE, the parties mutually agree as follows:

1. The Housing Consultant agrees to provide the following services for or on behalf of the Sponsor in a manner satisfactory to Sponsor and acceptable to the Secretary, which may include guidance in the selection of other persons, firms or organizations with the capability of performing one or more of the services required to:

(a) Assist the Sponsor in making an analysis of available market reports and other pertinent data to determine the type of housing suitable for the neighborhood or area where the project is to be located, the number of units planned and appropriate to the zoning applicable to the site and the approximate rentals to be charged and in collecting all information required to establish the feasibility of the project;

(b) Assist the Sponsor in selecting a suitable site for the development of a rental housing project and obtaining, if necessary, appraisals of the land from a qualified appraiser, and obtaining an option to purchase the land or otherwise arranging suitable terms for the purchase of the real property or, where appropriate obtaining a long-term lease acceptable to the Secretary;

(c) Assist the Sponsor in negotiations with either the Local Public Agency or with the city when the site is within an approved Urban Renewal Project area or a Neighborhood Strategy Area (NSA), respectively;

(d) Assist in the conferences and discussions with the representatives of the Secretary to obtain site approval and feasibility approval of the project;

(e) Assist in the selection of a qualified architect and in the negotiations for a contract to prepare preliminary and final drawings and specifications and provide contract administration during construction;

(f) Assist in the preparation of an application for project mortgage insurance to be executed by the Sponsor and the proposed mortgagee;

(g) Assist in obtaining a construction contract, either through a competitive bidding process or negotiation, which contract will incorporate the drawings and specifications accepted by the Secretary and provide for the construction of the project within a period allowed by the Secretary;

(h) Assist in the selection of and arrangements with an attorney to render to the nonprofit Sponsor such legal services as are necessary to form an eligible nonprofit owner-mortgagor legal entity, to conclude an initial and final closing of the mortgage loan transaction;

(i) Assist in obtaining an acceptable commitment from a qualified lender or lenders to make the construction or interim loan and the permanent loan;

(j) Assist in organizing an eligible nonprofit owner-mortgagor entity to hold title to the real property, in fee or leasehold, and maintain and operate the project over the life of the mortgage in accordance with the requirements of the Secretary, the National Housing Act, as amended, and the Regulations applicable thereto;

(k) Assist the nonprofit owner/mortgagor during the construction phase of the project in matters relating to filing applications for and obtaining monthly construction funds; coordinating and implementing changes in construction; and obtaining the service of a qualified person or firm to prepare the cost certification.

(l) Assist the Sponsor in establishing sound management and operating procedures, including the selection of a qualified management agent; and

(m) Assist and counsel the Sponsor in establishing appropriate methods of keeping records and accounting procedures to meet the requirements of the Secretary.

Delete any of the above duties which are inapplicable and state on an addendum to this contract other duties which the Housing Consultant will perform.

2. (a) The Sponsor agrees to compensate the Housing Consultant by payment of a fee in the amount of $_____.

(b) The fee provided herein shall be due and payable in the following manner:

Up to sixty percent (60%) of the consultant's fee at Initial Endorsement.

During construction, up to seventy-five percent (75%), less any previous payments. This represents an additional fifteen percent (15%) to be paid during the construction period. Payment of this portion of the fee shall be made at the time construction draws are made and amount will be based on percentage of completion.

The balance remaining shall be approved for payment at Final Endorsement.

(c) If a retainer fee in the amount of $_____, as mutually agreed to between the Sponsor and the Housing Consultant, has been paid by the Sponsor to the Housing Consultant, it shall become a part of the total fee due hereunder. In the event the mortgage is insured by the Secretary, the first payment of the fee, as provided in Section 2(b) of this Contract, shall be reduced by the amount of the retainer fee already paid. In the event the application for mortgage insurance is rejected or the mortgage is not endorsed for insurance by the Secretary, the Sponsor agrees to forfeit the retainer and the Housing Consultant agrees to accept the retainer as full compensation under this Contract. This Contract will then become null and void, and the Sponsor shall have no further liability for payments due hereunder.

(d) The fee shall include all those expenses of the Housing Consultant which are reasonably related to providing the services for the Sponsor as set forth herein, including such items as travel and telephone expenses.

3. The services of the Housing Consultant are to commence upon the execution of this Contract and the work required shall be undertaken and completed in an expeditious and business-like manner. Failure to do so, or violation of any of the covenants, agreements or stipulations of this Contract by the Housing Consultant shall give the Sponsor the right to terminate this Contract provided the Housing Consultant is notified in writing five days prior to the effective termination date. If so terminated, the Sponsor shall have no further liability for payments due under this Contract. The Sponsor reserves the right to reduce the total amount of the fee, based on its determination of poor performance or nonperformance of any of the covenants, agreements or stipulations of this Contract by the Housing Consultant; provided, the Housing Consultant is notified in writing of the basis for this determination and the amount of the reduction.

4. The Housing Consultant shall periodically submit written narrative progress reports to the Sponsor.

5. The Sponsor agrees to cooperate with the Housing Consultant in carrying out the purposes of this Contract. Failure to do so, or violations of any of the covenants, agreements or stipulations of this Contract by the Sponsor shall give the Housing Consultant the right to terminate this Contract provided the Sponsor is notified in writing five days prior to the effective termination date. If so terminated, the Housing Consultant shall be entitled to reasonable compensation for all work done under this Contract in accordance with the schedule in paragraph 2.

6. If any time the Sponsor decides not to proceed with the housing project, the Sponsor shall have the right to terminate this contract provided the housing Consultant is notified in writing five days prior to the effective termination date. If so terminated, the Housing Consultant shall be entitled to reasonable compensation for all work done under this Contract in accordance with the schedule in paragraph 2.

7. The Sponsor may from time to time request changes in the scope of the services of the Housing Consultant to be performed hereundea. Such changes, including any increase or decrease in the amount of the Housing Consultant's compensation, which are mutually agreed upon by and between the nonprofit Sponsor and the Housing Consultant, and are approved by the Secretary, shall be incorporated in written amendments to this Contract.

8. To induce the Secretary to insure a mortgage loan financing the development of the project, the Housing Consultant:

(a) Agrees to avers that the statements certified to on Form HUD-92531 under date of_____ are true, correct and complete to the best of his/her knowledge and belief; and

(b) Agrees upon final payment of the fee provided above, to furnish to the Sponsor a certified receipt on Form HUD-92531-B provided by the Secretary reaffirming the statements made in the aforesaid certificate.

9. In no event shall the parties to this Contract have or assert any claim against the Federal Government or the Secretary by reason of this Contract, or any action taken by the Federal Government with respect to the mortgage insurance application, including disapproval of the application.

10. The terms and conditions of this Contract are subject to the review and approval of the Secretary, including HUD-2530 Previous Participation review.

11. Notwithstanding the execution of this Contract by the Nonprofit Sponsor and the Housing Consultant and the fact that work has commenced hereunder, the terms and conditions may be amended upon review and approval by the Secretary.

IN WITNESS WHEREOF, the nonprofit Sponsor and the Housing Consultant have executed this Contract the date first above written.

_____
(Housing Consultant)

_____
(Nonprofit Sponsor)

(NOTE. Appropriate additional provisions may be added as required and agreed upon by the parties to the Contract and approved by the Secretary.)

WARNING

Section 1001 of Title 18 of the United States Code (Criminal Code and Criminal Procedure, 72 Stat. 967) shall apply to such statements. (18 U.S.C. 1001, among other things, provides that whoever knowingly and willfully makes our uses a document or writing containing any false, fictitious, fraudelent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.)

GPO 888-018

Section 106(b) Nonprofit Sponsor Assistance
"Seed Money" Loan Application

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB No. 2502-0160 (Exp. 03/31/91)

Public reporting burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0160), Washington, D.C. 20503.

No loan may be approved unless a completed application form has been received (24 C.F.R. Part 271).

1. Sponsor (Name, Address, Phone and Person to Contact)	2. Borrower (Name, Address, Phone and Person to Contact)

3. Date	4. Section 106(b) Application No.	5. Project Number (Mortgage and Subsidy)	6. Section of Housing Act

7. Project Name and Location

8. Purpose and Amount of Financial Assistance	Amount of Assistance Required	HUD Use Only Amount Approved
Organizational Expenses	$	$
Legal Fees	$	$
Consultant Fee	$	$
Architect Fees (Design)	$	$
Preliminary Site Engineering Fees	$	$
Land	$	$
Market Analysis	$	$
Other (Itemize)	$	$
Total	$	$
Loan Amount (80 percent of Total)	$	$
Borrower's share (20 percent of Total)	$	$

PROOF

9a. Is the Borrower, Sponsor or any entity controlled by or under the control of these entities delinquent on any Federal debt?

☐ Yes ☐ No If yes, attach an explanation.

9b. Does the Borrower, Sponsor or any entity controlled by or under the control of these entities have an outstanding Nonprofit Sponsor Assistance "seed money" loan under Section 106(b) of the Housing and Urban Development Act of 1968 and/or Section 207 of the Appalachian Redevelopment Act of 1965?

☐ Yes ☐ No If yes, attach an explanation to show the loan amount, project name, project number, and indicate why the loan has not been repaid.

10a. The undersigned agrees that pursuant to the requirements of the HUD Regulations, (a) neither it nor anyone authorized to act for it will decline to sell, rent or otherwise make available any of the properties or housing in the proposed project to a prospective purchaser or tenant because of his/her race, creed, color, sex or national origin, handicap, or familial status; (b) it will comply with State and local laws of ordinances prohibiting discrimination; and (c) failure or refusal to comply with the requirements of either (a) or (b) shall be a proper basis for the Secretary to reject requests for future business with which the Borrower or Sponsor is identified or to take any other corrective action he or she may deem necessary to carry out the requirements of the HUD Regulations.

10b. The undersigned certifies that the Borrower has or will have available in cash $_____ to meet its share of the "seed money" expenses that no portion of the Borrower's share was or will be obtained from any party seeking to make a profit or monetary gain from the project as set forth in paragraph 271.15(b) of the HUD Regulations (24 CFR, Part 271); that the Borrower/Sponsor has not obtained nor will it obtain a "seed money" loan or grant for this project from any other direct or indirect Federal source; that the total Borrower's share as determined by HUD has been or will be spent for allowable "seed money" items prior to or simultaneously with each expenditure of loan proceeds; and that the information included herein is true and correct to the best of the Borrower's/Sponsor's knowledge.

By: (Signature and Title of Authorized Borrower/Sponsor Official)	Type Name	Date

11. HUD Field Office Approval (Subject to Availability of Funds)

The application is:

☐ Approved in the amount of $_____.

☐ Disapproved (If disapproved, application will be returned to Borrower/Sponsor with explanation attached.)

By: (Signature of HUD Field Office Manager)	Type Name	Date

Name and Address of HUD Field Office

12. HUD Headquarters Reservation of Funds

Funds in the amount of $ _____ are hereby reserved.

By: (Signature of Director, General Programs Division, Office of Finance and Accounting)	Type Name	Date

Warning: Section 1001 of Title 18, United States Code, "Statements or entries generally," provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, ficticious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, ficticious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

Instructions for Preparing Application for Section 106(b) Nonprofit Sponsor Assistance "Seed Money" Loan

The Borrower shall complete form HUD-92290 and submit an original and three copies to the appropriate HUD Field Office. In support of all items listed in Block 8, the Borrower must submit supporting bills, written estimates, receipts, and/or any contracts for professional services which have been let. The Borrower must attach an itemized statement classifying all expenditures and current obligations for the line items listed in Block 8. Expenditures must be shown by check number, date, payee, amount, and purpose.

Blocks 1 through 7 — Self-explanatory.

Block 8. In the "Amount of Assistance Requested" column, enter the sum of the Borrower's share and the Federal share for each item.

(1) **Organizational Expenses:** Enter 75 percent of the Borrower's estimated expenses for telephone, postage a fidelity bond, and travel to and from the HUD Field Office for the period from inception of the project to initial closing. The amount entered for organizational expenses cannot exceed $750.

(2) **Legal Fees:** Enter 15 percent of the amount agreed to between the Borrower and the attorney for legal services, excluding any amount which may relate to title and recording expenses.

(3) **Consultant Fees:** Enter 25 percent of the amount agreed to by the Borrower and the consultant and specified in the consultant's contract. If a consultant has not yet been hired by the Borrower, but will be [illegible] Firm Com-mitment stage, the Borrower should enter 25 percent of the maximum fees specified in the following schedule:

Mortgage Amount	Basic Fee	Incentive Payment
Up to $1,500,000	$20,000	$5,000
From $1,500,000 to $3,500,000	$20,000 plus 1% of excess over $1,500,000	$5,000 plus 1/4 of 1% (0.25%) of excess over $1,5,00,000
Over $3,500,000	$10,000	$10,000

In no event may the entry for this item exceed $12,500 (including maximum incentive payment).

(4) **Architect Fee:** Enter 25 percent of the amount reflected in the contract between the Borrower and the architect. If an architect has not been selected, the Borrower should estimate an amount typically charged for design services for similar projects and enter 25 percent of the estimated amount.

(5) **Preliminary Site Engineering:** Enter the total estimated cost of boundary survey, topographic survey, and soil testing and investigation as supported by bills, receipts, or estimates from surveyors, engineers, soil scientists, etc.

(6) **Land:** Enter the cost to the Borrower of obtaining control of the site, e.g., cost of land options, purchase price, etc. Outright purchases of land are strongly discouraged and will only be approved under the most extenuating circumstances by HUD Headquarters. With respect to land options, options should have extension provisions covering at least two years from the date of the Section 202 or Section 811 fund reservation. Option fees must always apply to the purchase price so that they may be recovered from the Section 202 or Section 811 loan proceeds. Further, they must be reasonable and generally consistent with real estate practices in the area.

(7) **Market Analysis:** Enter any cost incurred to have an analysis conducted on the market needs for the type of housing proposed.

(8) **Other:** Enter and identify any fees and charges for mortgageable items which are eligible "seed money" expenses, but which are not covered elsewhere in this application.

PROOF

In completing Block 8, the Borrower should be mindful that $62,500 is the maximum allowable seed money. The preceding instructions set forth maximums for individual line items. These items may be further limited by the $62,500 overall maximum.

Blocks 9 and 10. Self-explanatory. To be completed by the Borrower.

Block 11. To be completed by HUD.

Block 12. To be completed by HUD.

Supplemental Application and Processing Form Housing For The Elderly

See Instructions on Reverse

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0232 (exp. 11/30/92)

Public reporting burden for this collection of information is estimated to average .75 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0232), Washington, D.C. 20503.

Project Name

☐ Congregate ☐ Mixed ☐ Non-Congregate

Project Number

A. Non-Rent Congregate Living Space	Area Square Feet
1. Congregate Kitchen and Dining	
2. Lobbies	
3. Community Room	
4. Hobby Shop	
5. Infirmary or Health Facility	
6. Other	
7. Other	
8. Total Square Feet	

B. Project Composition

1. Number of Bedrooms	2. Total No. of Units	3. No. of Units With Kitchens	4. No. of Units with Kitchenettes
0-Bedroom Units			
1-Bedroom Units			
2-Bedroom Units			

C. Food Service	Annual Expense Sponsor	Annual Expense HUD
1. Payroll		
Number of cooks _____		
x salary $ _____	$ _____	$ _____
Number of waitresses		
x salary $ _____	$ _____	$ _____
Number of helpers		
x salary $ _____	$ _____	$ _____
2. Food Cost	$ _____	$ _____
3. Supplies	$ _____	$ _____
4. Dining Room Furniture Exp.		
a. Repl. Res: 10% x Equip. Cost $ _____	$ _____	$ _____
b. Int: on Inv: ____ % Int. Rate x Cost $ _____	$ _____	$ _____
c. Maintenance and Repairs	$ _____	$ _____
5. Other *(Specify)*	$ _____	$ _____
6. Other *(Specify)*	$ _____	$ _____
7 Total Food Service Expense	$ _____	$ _____
8. Average No. of Persons Serviced _____		
9 Proposed Charger per Person/per Month	$ _____	$ _____
10. No. of Meals per Person per Day _____		

D. Maid Service	Annual Expense Sponsor	Annual Expense HUD
1 Payroll		
Number of maids _____		
x salary $ _____	$ _____	$ _____
2. Supplies	$ _____	$ _____
3. Other *(Specify)*	$ _____	$ _____
4. Other *(Specify)*	$ _____	$ _____
5. Total Maid Service	$ _____	$ _____
6. Average Number of Units Using Service	$ _____	$ _____
7 Proposed Charge per Unit/ per Month	$ _____	$ _____

E. Health Service	Annual Expense Sponsor	Annual Expense HUD
1. Nursing Payroll		
Number of Nurses		
x salary $ _____	$ _____	$ _____
2. Equipment Expense:		
a. Repl. Res: 10% x Equipment Cost $ _____	$ _____	$ _____
b. Int. on Inv.: ____ % Int. Rate x Cost $ _____	$ _____	$ _____
c. Maintenance and Repairs	$ _____	$ _____
3. Medical Supplies	$ _____	$ _____
4. Utilities	$ _____	$ _____
5. Laundry Service	$ _____	$ _____
6. Other *(Specify)*	$ _____	$ _____
7. Total Health Service	$ _____	$ _____
8a. No. of Beds In Infirmiry _____		
8b. No. of Persons Serviced _____		
9. Proposed Charge per Mo. per Patient _____ per Person _____	$ _____	$ _____

F. Furniture In Units	Annual Expense Sponsor	Annual Expense HUD
1. Furniture Exp. when Leased	$ _____	$ _____
2. Furniture Exp. if Not Leased:		
a. Repl. Res: 10% x Furniture Cost $ _____	$ _____	$ _____
b. Int. on Inv: ____ % Int. Rate x Cost $ _____	$ _____	$ _____
3. Total Furniture Expense	$ _____	$ _____
4. Number of Units Furnished _____	$ _____	$ _____
5. Proposed charge per unit per month to cover furniture rent	$ _____	$ _____

G. Other Non-Shelter Services	Annual Expense Sponsor	Annual Expense HUD
1. Program & Activities Payroll	$ _____	$ _____
2. Other *(Specify)*	$ _____	$ _____
3. Other *(Specify)*	$ _____	$ _____
4. Chg. per Person *(Unit)* for Item 1	$ _____	$ _____
4. Chg. per Person *(Unit)* for Item 2	$ _____	$ _____
6. Chg. per Person *(Unit)* for Item 3	$ _____	$ _____

PROOF

Official Use Only

H. Remarks & Signatures

The above estimates in "Sponsor" column for Sections C through G represent estimates of income and expense in non-shelter budgets.

Signed	Date	☐ Sponsor, ☐ Mortgagor, ☐ Borrower, ☐ Owner	
Valuation Processor	Date	Reviewer	Date

Instructions

General

Form HUD-92013E must accompany form HUD-92013, Application–Project Mortgage Insurance, for each project intended to provide housing for the elderly.

Preparation of the forms HUD-92013 and HUD-92013E must separate the budget for shelter (and utilities included in the rent) from other budgets concerned with supplying services other than shelter, such as food service, main service, program and recreation service, rented furniture, and any other non-shelter services which may be planned. The non-shelter budgets concerned with supplying food, furniture, maid service, and other personal services are shown on the form HUD-92013E.

All non-shelter services and amenities offered with a charge to the tenant and as a condition of occupancy must be identified on this form. Special circumstances regarding items to be included in an amenity package such as additional charges for additional persons that cannot be readily shown on this form must be explained on an addendum sheet to the form HUD-92013E.

Form HUD-92013E must accompany all requests for feasibility analysis, conditional and firm commitments.

Definitions

An elderly person is defined as one who is age 62 or over. A handicapped person is one whose physical impairment (a) is expected to be of continued and indefinite duration; (b) substantially impedes his ability to live independently; and (c) is such that his ability to live independently could be improved by more suitable housing.

Congregate Housing is designed for persons, normally well and ambulatory, who prefer residential accommodations but need some assistance in day-to-day living. While not a nursing or medical facility, it offers services that protect residents and provide for their needs.

Congregate housing projects have a central dining room generally serving three meals a day, with emergency room service available. There are common areas for lounges, recreation, special activities; limited housekeeping and laundry services may be provided. Some projects have an infirmary with personnel qualified to control and administer medications.

Instructions

Projects having congregate dining facilities with only kitchenettes in the living units, are checked in the box marked "Congregate." Projects having no congregate dining facilities, but having full sized kitchens in the living units are checked in the box marked "Non-Congregate." Projects having congregate dining facilities and having some living units with complete sized kitchens, are checked in the box marked, "Mixed."

Section A. Non-Rent Congregate Living Space Areas

Enter the net area, in square feet, for various kinds of non-rent congregate living space shown, such as, congregate kitchen and dining, lobbies, community rooms, hobby shop, infirmaries, or other non-rented common buildings area. When plans are available, these net areas should be calculated from the plans. Congregate dining facilities should be large enough to serve the probable total number of diners within a single meal period, but not necessarily at a single sitting. The number of diners shall be estimated to include all of the occupants of the units having kitchenettes only, plus a reasonable portion of the occupants of units with full kitchens.

Section B. Project Composition

For each number of bedrooms enter in Column 2 the total number of units. In Column 3, enter the number of units with complete kitchens. In Column 4, enter the number of units with kitchenettes only.

Non-Shelter Income and Expense Budgets.

Sections C through G contain budgets of income and expense for furnishing various non-shelter services. The sponsor enters his estimates of items of income and expense for each budget in the column headed "Sponsor," thus using form HUD-92013E as a supplemental application form. Subsequently, copies of the same form will be used as a processing form, with HUD personnel entering estimates in the Column headed, "HUD."

Section C. Food Service: Annual Expenses.

Line C-1– Estimate the number of cooks times the average annual salary. The number of waitresses, and other employees needed to operate the dining room are also estimated to arrive at payroll, including payroll tax. When the food service operation is large or complex, a detailed explanation of kinds of staff, numbers of employees, rates of pay, payroll tax, and total payroll for food service, should be shown in an attachment. The annual food cost and cost of supplies is also entered.

Line C-4a.–Dining room furniture expense includes an annual reserve for replacement of dining room furniture and equipment. Estimate the replacement reserve by multiplying furniture cost by 10%.

Line C-4b–Return on investment in dining room furniture and equipment is estimated by multiplying the furniture cost by the market interest rate for similar investment.

Line C-4c–Enter the estimated annual allowance for maintenance and repairs to the furniture.

Line C-7–Show the total annual food service expense.

Line C-8–Estimate the probable number of tenants customarily using the congregate dining facility.

Line C-9–Enter the proposed charge per person per month for food service. This charge should be sufficient to provide an annual income at least 3% more than the total food service expense estimated in Line C-7. If a food service concessionaire is contemplated, the proposed terms of the concession shall be completely explained in an attachment.

Line C-10–Enter the number of meals per person per day covered by the proposed food service charge.

Section D. Maid Service: Annual Expense.

Line D-1–Enter the number of mains multiplied by the average annual salary to result in annual payroll.

Line D-2–Enter the annual expense for cleaning supplies.

Line D-3 and 4–If clean sheets are to be provided as part of this service, the word "Laundry" is entered after "other" followed by the annual amount of this expense. Enter other expenses of supplying maid service.

Line D-5–Enter the sum of Lines D-1 through D-4. This represents total maid service expense.

Line D-6–Enter the estimated number of units using this service.

Line D-7–Enter the proposed charge per unit to cover this service.

Section E. Health Service: Annual Expense.

Line E-1–Enter the anticipated number of nurses needed times the average salary including payroll tax. If the health service operation is large or complex, the

sponsor should submit a more detailed estimate of health service payroll in an attachment.

Line E-2–Equipment expenses includes an annual reserve for replacement of beds and other furniture and equipment in the infirmary.

Line E-2– Estimate the replacement reserve by multiplying equipment cost by 10%.

Line E-2b–Return on investment in equipment is estimated by multiplying the furniture cost by the market interest rate for similar investments.

Line E-2c–Enter the estimated annual allowance for maintenance and repairs to the equipment.

Line E-3, 4, 5, and 6–Enter the annual amounts to be expended for medical supplies, utilities, laundry or linen service, and other expenses of the health service facility.

Line E–Enter the sum of lines E-1 through E-6. This represents total health service expense.

Line E-8– Enter the number of beds in the infirmary.

Line E-8–Enter the average number of patients in the infirmary.

Line E-9–Enter the proposed charge per patient or per person. Indicate method of payment.

Section F. Furniture in Living Units.

Line F-1–Indicate the amount of total a nnual payments to the leasing company when furniture for some or all of the living units is obtained by the mortgagor by leasing it

Line F-2a–The renting of furniture by tenant must be optional and not a condition of occupancy. For those units in which the project owns the furniture, furniture expense includes an annual reserve for replacement of living unit furniture. Estimate the replacement reserve by multiplying furniture cost by 10%.

Line F-2b–Return on investment in furniture is estimated by multiplying furniture cost by the market interest rate for similar investments.

Line F-2–Enter the estimated annual allowance for maintenance and repairs to the furniture.

Line F-3–Enter the Total Furniture Expense.

Line F-4–Indicate the number of units furnished by the mortgagor.

Line F-5–Enter the proposed charge per unit per month to cover the furniture expense.

Section G. Other Non-Shelter Services

Line G-1–Enter the salaries of persons employed to furnish guidance and recreation during the leisure time of an elderly person's occupancy in the project.

Lines G-2 and G-3–Enter the amounts covering any other service or facility included in the proposal that would contribute to the health, comfort and recreation of elderly persons, and specify.

Lines G-4, 5 and 6–Enter the charges per person or unit for the respective service of facility.

Section H. Remarks and Signatures

Self Explanatory.

PROOF

Supplement to Application for Multifamily Housing Project

To Be Completed by Each Sponsor, and by the General Contractor

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB No. 2502-0029 (Exp. XX/XX/91)

Project Name	Project Number	Name
Address		Telephone Number

Describe Your Affiliation With Project

Credit References: Include all Bank, Finance, Trade and Supply Creditors. You may omit creditors with balances less than $200.00

Firm Name		Address	
Telephone Number	Account Number	Present Balance	Terms
Firm Name		Address	
Telephone Number	Account Number	Present Balance	Terms
Firm Name		Address	
Telephone Number	Account Number	Present Balance	Terms
Firm Name		Address	
Telephone Number	Account Number	Present Balance	Terms
Firm Name		Address	
Telephone Number	Account Number	Present Balance	Terms
Firm Name		Address	
Telephone Number	Account Number	Present Balance	Terms

PROOF

Other References

Are you or have you been a defendant in any suit or legal action? ☐ Yes ☐ No
Have you ever claimed bankruptcy or made compromised settlements with creditors? ☐ Yes ☐ No
Are there judgments recorded against you? ☐ Yes ☐ No

If the answer to any of the questions above is yes, give details below

Sponsor: I certify that the foregoing, submitted by me, for the purpose of obtaining mortgage insurance under the National Housing Act, is true and correct to the best of my knowledge and belief.	**Contractor:** I certify that the foregoing, submitted by me, is true and correct to the best of my knowledge and belief.
Signed this day of , 19	Signed this day of , 19
Name	Name

Warning: U. S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . influencing in any way the action of such Administration . . . makes, passes, utters, or publishes any statement, knowing the same to be false, . . . shall be fined not more than $5,000 or imprisoned not more than two years, or both."

form HUD-92013.1 (02/01/91)
ref. Handbook 4571 1

Personal Financial and Credit Statement

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB No. 2502-0001 (Exp. 11/30/90)

Public reporting burden for this collection of information is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0001), Washington, D.C. 20503.

Privacy Act Statement: The Department of Housing & Urban Development (HUD) is authorized to collect this information by P. L. 479.48, Stat.1246, 12 USC 1701 et. seq.; and the Housing and Community Development Act of 1987, 42 USC 3543, to collect the Social Security Number (SSN). This report is authorized by law (24 CFR 207.1). It will be used, as a minimum, to make a determination of the financial and credit status of the respondent. HUD may disclose this information to Federal, State and local agencies when relevant to civil, criminal, or regulatory investigations and prosecutions. It will not be otherwise disclosed or released outside of HUD, except as required and permitted by law. Providing the SSN is mandatory. Failure to provide any of the information may result in your disapproval of participation in this HUD program and/or delay action on your proposal.

Project Name	Number	Location

Name and Address of Person making this Statement	Social Security Number
PROOF	Date

Assets	Balance	Total	Liabilities and Net Worth		
Cash on hand in banks Name of depository			Accounts Payable		$
			Notes Payable		$
			Debts payable in less than one year (secured by mortgages on land and buildings)		$
		$	Debts payable in less than one year (secured by chattel mortgages or other liens on assets)		$
Accounts Receivable			Other current liabilities: (describe)		
Less: Doubtful Accounts		$			
Notes Receivable					
Less: Doubtful Notes		$			
Stocks and Bonds - Market Value (Schedule A—reverse side)		$			
Other Current Assets: (Describe)			Total Current Liabilities:		$
			Debts payable in more than one year (secured by mortgages on land and buildings)		$
			Debts payable in more than one year (secured by chattel mortgages or other liens on assets)		$
Total Current Assets		$	Other liabilities (describe)		
Real Property — at net* (Schedule B — reverse side)		$			
Machinery Equipment and Fixtures — at net		$			
Life Insurance (Cash value less loans)		$			
Other Assets (describe)					
			Total Liabilities		$
			Net Worth		$
Total Assets		$	Total Liabilities and Net Worth		$

*Cost, including improvements, less depreciation.
Replaces FHA-2417 which is obsolete.

form HUD-92417 (03/27/91)
ref. Handbook XXXX.X

Accounts and Notes Receivable Partner (P) Employee (E) Relative (R) or other (O)*

Type (p,E,R or O)	Name	Address	Maturity Date	Amount
Type (P,E,R or O)	Name	Address	Maturity Date	Amount
Type (P,E,R or O)	Name	Address	Maturity Date	Amount

Life Insurance	Face Value	Beneficiary

Delinquencies

Type Liability	Amount	Circumstances
Type Liability	Amount	Circumstances
Type Liability	Amount	Circumstances

Accounts and Notes Payable

Type (p,E,R or O)*	Name	Address	Amount	Maturity Date
Type (P,E,R or O)*	Name	Address	Amount	Maturity Date

Pledged Assets

Type Pledged	Amount	Offsetting Liability
Type Pledged	Amount	Offsetting Liability
Type Pledged	Amount	Offsetting Liability

Legal Proceedings (If any legal proceedings have been instituted by creditors, or any unsatisfied judgments remain on record, give full details.)

Schedule A — Stocks and Bonds

Description	Current Market Value (At date of this Statement)	If Listed, Name Exchange

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Note: If more space is required use a separate sheet of paper.

Schedule B — Real Property (Indicate Private Residence, if any)

Location and Description of Land and Buildings Owned	Age	Original Cost	Market Value	Assessed Value	Mortgaged For	Insured For
Totals						

Title (The legal and equitable title to all pieces of the above-described real estate is solely in my name, except as follows.)

Location of Real Property	Name of Title Holders

PROOF

Bank and/or Trade References

Name and Address	Account Numbers

I hereby certify that the foregoing figures and the statesments contained here, submitted to obtain mortgage insurance under the National Housing Act, are true and give a correct showing of my financial condition as of this date.

Name	Date Signed

Warning—HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. §§ 1001, 1010, 1012; 31 U.S.C. §§ 3729, 3802.)

Application for Multifamily Housing Project

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB No. 2502-0029 (Exp. XX/XX/91)

Public reporting burden for this collection of information is estimated to average 68 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0029), Washington, D.C. 20503.

Section A – Project Identification

1. Name of Project

2. HUD Project Number (Mortgage Ins. or Sec. 202)

3. HUD Project Number (Section 8)

Section B – Purpose of Application

To: The Assistant Secretary for Housing-Federal Housing Commissioner: Application is being made pursuant to Item (a): ☐ 1, ☐ 2, ☐ 3 of Section M, Page 3 hereof. The undersigned desire(s) to participate, with respect to the Property and Program(s) described below. Therefore, it is requested that you give consideration to the information presented herein, for the purpose of loaning and/or approving:

☐ Mortgage Insurance: Section; _____
☐ a Feasibility Letter (Rehab.) ☐ Direct Loan Section 202
☐ a SAMA Letter (New Const.) ☐ Housing Asst. Pymnts. Sec. 8
☐ a Conditional Commitment ☐ a Preliminary Proposal
☐ a Firm Commitment ☐ a Final Proposal

Mortgagor: ☐ PM ☐ NP ☐ LD ☐ B-S Other _____
Financing: ☐ Conventional ☐ GNMA ☐ Bond ☐ State Agency
Other _____
Mortgage/Loan Amount: $ _____
Interest Rate: Permanent _____ % Construction _____ %

Section C – Location and Description of Property

1. Street Address	2. Municipality	3. County	4. State and Zip Code	5. Congressional Dist.

6. Type of Project:
☐ Proposed ☐ Rehabilitation
☐ Existing Year Built: 19

7. Number of Units:
Revenue: _____
Non-Revenue: _____
Total: _____

8. No. of Buildings

9. List Accessory Buildings
Area Sq. Ft.

10. List Recreation Facilities
Area Sq. Ft.

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11. Type of Buildings
☐ Elevator ☐ Walkup ☐ Row (T.H.)
☐ Detached ☐ Semi-Detached

12. No. of Stories

13. No. of Elevators

14. Type of Foundation
☐ Slab on Grade ☐ Crawl Space ☐ Partial Bsmt.
☐ Full Basement

15. Structural System	16. Floor System	17. Exterior Finish	18. Heating System	19. Air Conditioning System

Section D – Information Concerning Land or Property

1. Date	2. Price	3. Additional Cost Paid or Accrued	4. Total Cost	5. Outstanding Balance	6. Relationship Between Seller and Buyer, Business, Personal or Other
☐ Acquired ☐ Optioned / /	☐ Purchase ☐ Option $	$	$	$	

7. Site Area	8. Zoning (If recently changed, submit evidence)	9. If leasehold, show annual ground rent	lease term, remaining years
Sq. Ft.		$	

10. Off-Site Facilities:	Public	Comm.	At Site	Feet from Site
Water	☐	☐	☐	_____ ft.
Sewer	☐	☐	☐	_____ ft.
Paving	☐	☐	☐	_____ ft.
Gas	☐	☐	☐	_____ ft.
Electrical	☐	☐	☐	_____ ft.

11. Unusual Site Features
☐ None ☐ Poor Drainage
☐ Cuts ☐ Retaining Walls
☐ Fill ☐ Rock Foundations
☐ Erosion ☐ High Water Table
☐ Other _____

12. Special Assessments
a. ☐ Prepayable ☐ Non-prepayable
b. Principal Balance $ _____
c. Annual Payment $ _____
d. Remaining Terms _____ years.

Section E – Estimate of Income

Unit Type	No. of Living Units	No. of Units Assisted	Living Area (Sq. Ft.)	Composition of Units	PBE Not in Rent ($) *(Sec. F-1)	Unit Rent per Mo. ($)	Total Monthly Unit Rent ($)
Employee(s) Liv. Unit(s)							
Totals				**2. Total Estimated Monthly Rentals for All Living Units $**			

3. Number of Parking Spaces
☐ Attended
☐ Self Park
Total Spaces

4. Parking and Other Income (Not Included in Rent)
Open Spaces _____ @ $ _____ per month = $ _____
Covered Spaces _____ @ $ _____ per month = $ _____
Laundry _____ Sq. Ft. or Living Units @ _____ per month = $ _____
Other _____ per month = $ _____
Total Ancillary Income $

5. Commercial Space (Describe)
Area-Ground Level _____ sq. ft. @ $ _____ per sq. ft./month = $ _____
Other Levels _____ sq. ft. @ $ _____ per sq. ft./month = $ _____
Total Commercial $

6. **Total Estimated Monthly Gross Income at 100 Percent Occupancy** $

7. **Total Annual Rent (Item 6 times 12 months)** $

8. Gross Floor Area Sq. Ft.

9. Net Rentable Residential Area Sq. Ft.

10. Net Rentable Commercial Area Sq. Ft.

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Section F – Equipment and Services (Check Items Included in the Rent, listed below)

Equipment
☐ Range and Oven
☐ Microwave Oven
☐ Refrigerator
☐ Laundry Facilities
☐ In Common Area
☐ In Living Unit
☐ L.U. Hookup Only
☐ Carpet
☐ Drapes
☐ Swimming Pool
☐ Air Conditioning Equip.
☐ Trash Compactor
☐ Disposal
☐ Other

Services	Gas	Elect.	Oil
☐ Heat	☐	☐	☐
☐ Hot Water	☐	☐	☐
☐ Cooking	☐	☐	
☐ Air Conditioning	☐	☐	
☐ Lights, etc., in Units			
☐ Cold Water	☐ Parking		
☐ Other			

Section F-1 – Utilities (Not in Rent)
*Personal Benefit Expenses (PBE)
Check Utilities and Services Not Included in the Rent and Paid Directly by the Tenant.
☐ Electricity ☐ Heating ☐ Gas
☐ Decorating ☐ Repairs ☐ Water
Other

Remarks

Section G – Estimate of Replacement Cost

Land Improvements

1. Unusual Land Improvements $ _____
2. Other Land Improvements $ _____
3. **Total Land Improvements** $ _____

Structures

4. Main Buildings $ _____
5. Accessory Buildings $ _____
6. Garage $ _____
7. All Other Buildings $ _____
8. **Total Structures** $ _____
9. **Subtotal** (Line 3 plus Line 8) $ _____
10. General Requirements (Line 9 x _____%) $ _____
11. **Subtotal** (Line 9 plus Line 10) $ _____

Fees

12. Builder's General Overhead (Line 11 x _____%) $ _____
13. Builder's Profit (Line 11 x _____%) $ _____
14. **Subtotal** (Sum of Lines 11 through 13) $ _____
15. Bond Premium $ _____
16. Other Fees $ _____
17. **Estimated Total Cost of Construction** $ _____
18. Architect's Fee–Design (Line 14 x _____%) $ _____
19. Architect's Fee–Supervisory (Line 14 x _____%) $ _____
20. **Total For All Improvements** (Sum of Lines 17 through 19) $ _____
21. Cost per Gross Square Foot $ _____ (Line 20 divided by Item 8, Section E)
22. Construction Time _____ Months Plus 2 = _____ Months

Charges and Financing During Construction

23. Interest on $ _____ @ _____% for _____ Months $ _____
24. Taxes $ _____
25. Insurance $ _____
26. HUD/FHA Mtg. Ins. Pre. (0.5%) $ _____
27. HUD/FHA Exam. Fee (0.3%) $ _____
28. HUD/FHA Insp. Fee (0.5%) $ _____
29. Financing Fee (___%) $ _____
30. FNMA/GNMA Fee (___%) $ _____
31. AMPO (2.0%) $ _____
32. Contingency (Sec. 202) (3.0%) $ _____
33. Title and Recording $ _____
34. **Total Charges and Financing** $ _____

Legal, Organization and Audit Fee

35. Legal $ _____
36. Organization $ _____
37. Cost Certification Audit Fee $ _____
38. **Total Legal, Organization and Audit Fee** $ _____
39. Builder's and Sponsor's Profit and Risk $ _____
40. Consultant Fee (Nonprofit Only) $ _____
41. Supplemental Management Fund $ _____
42. Contingency Reserve (Rehabilitation Only) $ _____
43. Relocation Expenses $ _____
44. Other $ _____
45. **Total Estimated Development Cost** (Lines 20 + 34 + 38 through 44) $ _____
46. Land (Estimated Market Price of Site) _____ sq. ft. @ $ _____ per sq. ft. $ _____
47. **Total Estimated Replacement Cost of Project** (Line 43 plus Line 44) $ _____
48. Average Cost per Living Unit $ _____ (Line 45 divided by Total in Sec. C, Item 7)

Section H – Annual Income Computations

1. Estimated Project Gross Income (Line 7, Sec. E, Pg. 2) $ _____
2. Occupancy (Entire Project) _____%
3. Effective Gross Income (Line 1 x Line 2) $ _____
4. **Total Project Expenses** (Line 30, Section 1) $ _____
5. Net Income to Project (Line 3 minus Line 4) $ _____
6. Expense Ratio (Line 4 divided by Line 3) _____%

Section I – Estimate of Annual Expense

Administrative

1. Advertising $ _____
2. Management Fee (_____%) $ _____
3. Other $ _____
4. **Total Administrative** $ _____

Operating

5. Elevator Maintenance Exp. $ _____
6. Fuel – Heating $ _____
7. Fuel – Domestic Hotwater $ _____
8. Lighting and Misc. Power $ _____
9. Water $ _____
10. Gas $ _____
11. Garbage and Trash Removal $ _____
12. Payroll $ _____
13. Other $ _____
14. **Total Operating** $ _____

Maintenance

15. Decorating $ _____
16. Repairs $ _____
17. Exterminating $ _____
18. Insurance $ _____
19. Ground Expense $ _____
20. Other $ _____
21. **Total Maintenance** $ _____
22. Replacement Res.: New Const. = (.006 x Line 8, Sec. G Total Struct.) Rehab = (.004 x Mort/Loan Requested in Sec. M) $ _____
23. **Subtotal Expenses** (Sum of Lines 4, 14, 21 and 22) $ _____
24. Real Estate: Est. Assessed Value = $ _____ at $ _____ per $1000 = $ _____
25. Personal Prop. Est. Assessed Value = $ _____ at $ _____ per $1000 = $ _____
26. Employee Payroll Tax $ _____
27. Other $ _____
28. Other $ _____
29. **Total Taxes** $ _____
30. **Total Expenses** (Line 23 plus Line 29) $ _____
31. Avg. exp. per unit per annum (PUPA) (Line 30 divided by Total Item 7 Sec. C) $ _____

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Section J – Total Settlement Requirements

1. Development Costs (Line 45, Section G) $ _____
2. Cash Req. for Land Debt/Acquisition $ _____
3. **Subtotal** (Lines 1 plus 2) $ _____
4. Mortgage Amount $ _____
5. Development/Cash (Lines 3 minus 4) +/- $ _____
6. Initial Operating Deficit $ _____
7. Discount Costs $ _____
8. Interest Yield Costs $ _____
9. Working Capital (2% of Mortgage Amount) $ _____
10. Min. Capital Investment (Sec. 202) $ _____
11. Off-Site Construction Costs $ _____
12. Non-Mortgagable Relocation Expenses $ _____
13. Other $ _____
14. **Total Estimated Cash Required** (Sum of Lines 5 through 13) $ _____

Funds Available for Cash Requirements

15. Source of Cash:
    a. _____ $ _____
    b. _____ $ _____
    c. _____ $ _____
    Subtotal (a + b + c) $ _____
16. Source of Fees and Grants:
    a. _____ $ _____
    b. _____ $ _____
    c. _____ $ _____
    Subtotal (a + b + c) $ _____
17. **Total Cash, Fees and Grants** (Sum of Items 15 plus 16) $ _____

Note: Line 17 must equal or exceed Line 14

Section K – Names, Addresses and Telephone Numbers of the Following

1. ☐ Sponsor, ☐ Mortgagor, ☐ Borrower, ☐ Owner Name	2. Name
Address	Address
Telephone Number / Zip Code	Telephone Number / Zip Code
3. ☐ Consultant, ☐ Agent, ☐ Other Authorized Representative Name	4. General Contractor Name
Address	Address
Telephone Number / Zip Code	Telephone Number / Zip Code
5. Sponsor's Attorney Name	6. Architect Name
Address	Address
Telephone Number / Zip Code	Telephone Number / Zip Code

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Section L – Application (SAMA and Feasibility Letter)

A. The Undersigned certifies that: (1) He/She is legally authorized to represent the entity(ies) identified below with respect to all transactions pertaining to this application and all matters related to it; (2) Any and all action(s) by the undersigned is/are legally binding on the principal(s) and the entity(ies) being represented; (3) He/She is familiar with the provisions of the regulations issued by the Department of Housing and Urban Development (HUD) pursuant to the above-identified Section(s) of the respective Housing Act(s); (4) To the best of his/her knowledge and belief, the entity(ies) identified below has/have complied, or will be able to comply, with all the requirements of the regulations which are a prerequisite with respect to participation in the program(s) selected; (5) The principal(s) of the entity(ies) identified below are familiar with the specific provisions of the Right to Financial Privacy Act of 1978; (6) the principal(s) is/are aware that disclosure of certain financial information will be required by HUD in the course of processing this application; (7) That he/she has made a physical inspection of the property and, in his/her opinion, the site plan submitted conveys a concept which can be reasonably followed in practice; (8) The proposed construction will not violate recorded zoning ordinances or restrictions; (9) To the best of his/her knowledge and belief no information or data contained herein or in the exhibits or attachments submitted herewith, are in any way false or incorrect and that they are truly descriptive of the project or property which is intended as security for the proposed mortgage loan and/or is presented for consideration with respect to the request for approval of a Housing Assistance Payments Contract.

B. The Undersigned assures and agrees that: (1) Pursuant to the regulations and the related requirements of HUD neither the entity(ies) identified below nor anyone authorized to act on its/their behalf, will decline to sell, rent or otherwise make available any of the property or housing in the project, identified herein, to a prospective purchaser or tenant because of race, color, religion, sex, or national origin; (2) The entity(ies) identified below will comply with Federal, State and local laws and ordinances prohibiting discrimination; and (3) Failure or refusal to comply with the requirements of either (1) or (2) shall constitute sufficient basis for the Commissioner to reject requests for future business with the identified entity(ies) or to take any other action that may be appropriate.

C. ☐ Herewith is a check for $_____ in payment of the required fee for a SAMA letter.

Principal Contact	Signed	Date
Telephone Number	On Behalf of: ☐ Sponsor, ☐ Mortgagor, ☐ Borrower, ☐ Owner	

Section M – To The Federal Housing Commissioner

☐ 1. **Request for Mortgage Insurance:**
Request is hereby made for a ☐ **Conditional Commitment** ☐ **Firm Commitment** to provide mortgage insurance on a loan, which will involve: ☐ Insurance of Advances During Construction ☐ Insurance Upon Completion, with respect to a principal loan of $ _____ which will bear interest at the rate of _____% on the Construction Loan and _____% on the Permanent Loan. The undersigned mortgagee requests consideration for mortgage insurance pursuant to the provisions of Section _____ of the National Housing Act, and the HUD regulations applicable thereto. Said insurance is being requested to cover a loan which is to be secured by a first mortgage on the property described herein. After examining the proposed security, the undersigned considers such project to be desirable and is interested in making a loan in the principal amount and at the interest rate stated above. The loan will require repayment of the principal over a period of _____ months (_____ years) in accordance with an amortization plan acceptable to you. It is understood and agreed that the actual financing fee (Item G-29) will not exceed _____% of your commitment amount. Presented herewith is a check for $ _____ which is in payment of the application fee required by HUD regulations.

☐ 2. **Request for Approval of Housing Assistance Payments Contract (Section 8):**
The undersigned owner requests your consideration with respect to approving a Housing Assistance Payments Contract pursuant to Section 8 of the U.S. Housing Act of 1937, as amended, and the related regulations applicable thereto. Submitted herewith is a proposal which defines the scope of the improvements and the type and quality of the housing which will be provided on the property described herein. Said property, upon completion of the improvements, will comply with the applicable standards and related regulations of the Department of Housing and Urban Development. Such proposed housing is being offered for lease, to eligible tenants at the stated contract rents, pursuant to the provisions of the regulations pertaining to the above-referenced U.S. Housing Act.

☐ 3. **Request for a Section 202 Loan:** Principal Amount $ _____ @ Permanent Interest Rate of _____%
Pursuant to Section 202 of the Housing Act of 1959, as amended, and the regulations applicable thereto, the undersigned borrower hereby requests a loan in the principal amount and at the interest rate stated above. The proceeds of the loan are to be used for development of the property desribed herein. The scope of the development of the property will be consistent with that information pertaining to improvements, submitted for your consideration. The loan is to be secured by a first mortgage on the property described herein. The principal amount of the loan will be repaid over a period of _____ months (_____ years) in accordance with an amortization plan acceptable to you.

Name and Address of Mortgagee	Principal Contact
	Telephone Number

Signed (Proposed Mortgagee) (Use with Item 1)	Date	Signed (Owner Item 2) (Borrower Item 3)	Date

Section N – Required Exhibits: Mortgage Insurance and Section 202 Direct Loan Applications

Item Number	Exhibit Title	FNMA or Feasibility*	Conditional Commitment	Firm Commitment
1	Location Map	X		
2	Legal Description of the Property	X		
3	Evidence of Permissive Zoning	X		
4	Sketch Plan of the Site	X		
5	Evidence of Site Control (Option or Purchase)	X		
6	Evidence of Last Arms-Length Transaction and Price, including a Certification by Sponsor that Evidence Submitted in Response to this Item Reflects Last-Arms Length Purchase Price	X		
7	Form 2010 – Equal Employment Opportunity Certification	X		
8	Form 3433 – Eligibility as Nonprofit Corporation	X		
9	Form HUD-2530 – Previous Participation Certificate	X		
10	Form HUD-92013-E – Supplement to HUD-92013	X**		
11	Form FHA-2013R – Application for Project Mortgage Insurance (Rehabilitation)	X****	X	X
12	Affirmative Marketing Plan		X	
13	Management Plan and Questionnaire for the Sponsor and Managing Agent (HUD-9405A and HUD-9405B)		X	
14	Grant and/or Loan Commitment Letter (if applicable)		X	
15	Form HUD-92013-E – Supplement to HUD-92013		X**	
16	Form HUD-92013 – Supplement – For Each Sponsor and General Contractor		X***	X
17	Form HUD-92417 – Personal Financial Statement for Each Sponsor and General Contractor		X***	X
18	Personal and Commercial Credit Report for Each Sponsor and General Contractor		X***	X
19	Owner/Architect Agreement		X	
20	Architectural Exhibits – Preliminary		X	
21	Architectural Exhibits – Final			X
22	Form HUD-92329 – Contractor's and/or Mortgagor's Cost Breakdown			X
23	Form HUD-92457 and Land Survey			X
24	Form HUD-92013-E – Supplement to HUD-92013			X**
25	Management Agreement			X

* Mortgage Insurance Applications Only.
** For Handicapped and Elderly Projects Only.
*** If General Contractor is known – Otherwise submit with Firm Commitment Application
**** Submit for Rehabilitation Projects only. Complete Sections A, B, C, D, E, F, G, H and I.

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Required Exhibits: Section 8 Housing Assistance Contract Applications

The Developer Packet which applies to the specific Notification of Fund Availability (NOFA) identifies the exhibits which are required with the Preliminary and Final Proposal Applications.

The Developer Packet is available at the HUD Field Office which issued the NOFA to which the application is responding.

For HUD Use Only						
Date Received						
Amount						
Code						
Schedule						
Received By						

Instructions for Completing Application – Multifamily Projects, Form HUD-92013

Foreword: This Application is used for rental projects to request: (a) mortgage insurance, (b) a direct loan under Section 202, or (c) a Section 8 Housing Assistance Payments Contract. For mortgage insurance there are a maximum of three stages: (1) a request for a Site Appraisal and Market Analysis letter (SAMA letter) for new construction, or a Feasibility letter for a rehabilitation project. (Application for a SAMA or Feasibility letter may be submitted directly to a HUD Area Office or Multifamily Service Office by letter or in person); (2) an application for a Conditional Commitment; and (3) for a Firm Commitment. Both (2) and (3) must be submitted by an approved mortgagee to a HUD Area Office or Multifamily Service Office. For a direct loan, under Section 202, this Application is submitted to a HUD Area Office or Multifamily Service Office at the Conditional and Firm Commitment stages of processing. If Section 8 is combined with an insured mortgage, the preliminary proposal processing may be combined with SAMA or Feasibility stages of processing. The final proposal is processed with the Firm Commitment Application in mortgage insurance.

Except for Rehabilitation Proposals under Section 202, a sponsor may combine two or three stages provided he/she has plans and exhibits that are sufficiently completed.

If a stage of processing is omitted, the exhibits for that stage are submitted with those required for the subsequent stage or stages. **Information for all stages must be submitted in triplicate.**

HUD Area or Service Office personnel will advise and assist sponsors and potential sponsors at all stages in connection with the submission of applications.

Application Completion Requirements For:

I. Insured: **SAMA**—Complete Page 1, in its entirety. Page 2, Complete only Section G, Item 46, Land (Estimated Market Price of Site). Page 3, Sections K, L and M. **Feasibility**—A request for feasibility analysis (rehabilitation) must be submitted with this form completed in its entirety. **Conditional/Firm**—A request for conditional or firm commitment must be submitted with this form completed in its entirety.

II. Section 202 Direct Loan: This form must be complete in its entirety when a conditional or firm commitment under the Section 202 direct loan program is being requested.

III. Section 8: **Preliminary Proposal**—Complete Page 1 in its entirety, (indicate type of occupancy, i.e., Elderly (E), Handicapped (H) or Family (F) in Section E, Unit Type). Page 2, Section G, Lines 46 and 47; Section I, Line 30. Page 3, Section K (to extent known) and Section M, Item 2. **Final Proposal**—Complete this form in its entirety except for Section L.

Section A – Identification

Item 1—Enter project name.

Items 2 and 3—Enter HUD project number for mortgage insurance and/or Section 8, if known.

Section B – Purpose of Application

Indicate actions requested by checking all applicable blocks and/or making entries where appropriate. For example, if an application is being submitted for the first stage of an uninsured project with housing assistance payments under Section 8, the Housing Assistance Payments Section 8 block will be checked as well as blocks for "A Preliminary Proposal", "Conventional Financing", and "Item 2 of Section M." If mortgage insurance will eventually be used "Conventional Financing" is not checked, but instead the block "Mortgage Insurance" is checked and the Section of Act entered in the blank space. In the Section 8 Preliminary Proposal stage do not check SAMA (Site Appraisal and Market Analysis) or feasibility letter, unless SAMA letter or feasibility letter is requested at that time and the SAMA fee is paid. The appropriate block for type of mortgagor (i.e. Profit Motivated, Nonprofit, Limited Dividend, Builder-Seller, or Other) and type of financing (i.e. Conventional, GNMA, Bond, or State Agency must be checked). Also, enter the amount of the requested Mortgage and the Permanent and Interim Interest Rates in the appropriate spaces.

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Section C – Location and Description of Property

Items 1 through 4—Self-explanatory.

Item 5—Congressional District may be obtained from the Congressional Directory, Maps Of Congressional Districts.

Items 6 through 10—Self-explanatory.

Item 11—(a) Detached – A dwelling structure containing one living unit, surrounded by permanent open spaces; (b) Semi-detached – A dwelling structure containing two contiguous living units separated by a vertical division termed a common, party, or lot wall; (c) Row or Townhouse – A non-elevator structure containing three or more contiguous living units separated by a vertical division termed common, party or lot line walls. Row/townhouse units may not be enclosed on more than two sides by party or lot line walls and must have permanent open space contiguous to no fewer than two sides. Units will usually have private entrance and private interior stairs; (d) Walk-up – A multi-level structure of two or more living units which does not contain an elevator, wth the units separated horizontally by floor and/or ceiling structural elements. (Note: Structures containing 2 or more dwelling units, whether one story or multi-story, which do not comply with the definitions herein of either a semi-detached/row or an elevator structure, shall be classified as "walkup"). (e) Elevator Structure – A dwelling structure, having two or more stories above finish grade and containing one or more elevators.

Items 12 through 19—Self-explanatory.

Section D – Information Concerning Land or Property

Items 1 and 2—Self-explanatory.

In **Item 3** insert any cost paid, or contracted, in addition to the stipulated purchase price. If the proposed site will require demolition expense, or other preparatory expense, this should be indicated and explained on an attached sheet.

Items 4 through 8—Self-explanatory.

Item 9—If the proposed site is leased, indicate the dollar amount of annual ground rental.

Items 10 through 12—Self-explanatory.

Section E – Estimate of Income

Item 1—Unit Type – The various unit types the proposal will have must be listed in this column. Usually the distinction will be on the basis of number of bedrooms and/or number of baths each unit will have. If there are units with the same bedroom and bathroom count but significantly different living area, or other characteristics, that would normally be reflected in rent differential, they must be listed as a separate unit type. If there are both elevator and non-elevator units, a separate identification for unit type must be made for each. Provision has been made for 5 different unit types. This can readily be doubled by dividing each of the existing lines in half. In the rare instance where additional space is needed, an additional page of another Form HUD-92013 or a plain paper listing all of the information shown in Section E for the additional unit types must be attached. (Note: If an attachment is used, a remark asterisked on the original Form HUD-92013 must be made so that all parties using the application would be aware that there is an attachment involved.) **Care must be exercised to assure that excessive unit types are not created on the basis of minor unit market characteristics,** such as a difference of only a few square feet between units that are otherwise the same.

No. of Living Units – Enter here, for each unit type, the number of that unit type the project will have.

No. of Units Assisted – Show number of each unit type to receive Section 8 Housing Assistance Payments, if any.

Living Area (Sq. Ft.) is the area of each living unit measured from the inside faces of corridor and exterior walls and from the inside faces of partitions separating the living unit from other living or commercial areas.

Composition of Units – List here in abbreviated form, the rooms within each unit type, (i.e., L for living room, D for dining room, K for kitchen, BR for bedroom) (precede BR with number of bedrooms—e.g., 0BR, 1BR, or 2BR), B for bath (precede the B with 1 for each full bath, a 1/2 for each halfbath, or any combination appropriate), Bal. for balcony, etc.).

PBE Not In Rent (Sec. F-1) – Personal Benefit Expense (PBE), sometimes referred to as a Utility Allowance in the Section 8 program, is an estimate of the utilities or other expense to be paid by tenants that are not included in the owner's monthly contract rent estimate. This estimate must be compatible with the entries in Item F-1, Utilities (Not in Rent).

Unit Rent Per Mo. ($) – Enter here the proposed rent for each unit type. If several units are involved, the issue of proposed rental difference per floor, if appropriate, for the market, must be addressed. Usually the midpoint rents in a high-rise structure are reflected. The dollar difference per floor, if any, must be communicated by the applicant.

Total Monthly Unit Rent is the Unit Rent Per Month ($) times the No. of Living Units of that type and represents the Gross Income that can be anticipated for those units.

Employee(s) Living Unit(s) – List the number of employee living units for which rental income will not be received, the square foot area of each unit, and its unit composition. Employee living units must be included in the total units for the project, since they affect project operating expense estimates.

Items 2 through 7—Self-explanatory.

Item 8—At SAMA or feasibility stage insert the estimated gross floor area which is the sum of all floor areas of headroom height within the exterior walls. When completing a request for Conditional or Firm Commitment, insert the gross floor area computed from the plans.

Items 9 and 10 – Net Rentable Residential Area/Net Rentable Commercial Area is the sum of all living/commercial areas within the exterior walls, measured from the interior faces of the exterior walls, corridor walls, and partitions separating the area from other living or commercial areas. Existing comparable structures should be used as a guide by the sponsor in making these estimates at SAMA stage. At the Conditional or Firm Commitment stages, these areas should be calculated from the floor plans.

Section F – Equipment and Services—Self-explanatory.

Section G – Estimate of Replacement Cost

Line 1—Unusual Land Improvements – Enter cost for unusual site preparation such as pilings, retaining walls, fill, etc.

Line 2—Other Land Improvements – Enter cost of other land improvements such as on-site utilities, landscape work, drives and walks.

Lines 3 through 9—Self-explanatory.

Line 10—General Requirements – See Uniform System for Construction Specifications, Data Filing and Cost Accounting. Pages 1.3 and 1.4.

Lines 11 through 20—Self-explanatory.

Line 21—Enter the estimated cost per gross square foot of building area (Line 20 divided by Item 8 of Section E, page 1).

Line 22—Enter the estimated period that will be reflected in the construction contract. The construction time plus the two months equals the total estimated "construction period".

Line 23—Interest is the amount estimated to accrue during the anticipated construction period. It is computed on one-half of the loan amount.

Line 24—Taxes which accrue during the construction are estimated and included as the tax amount.

Line 25—Insurance includes fire, windstorm, extended coverage, liability, and other risks customarily insured against in the community. It does not include workmen's compensation, or public liability insurance, which are included in the cost estimate.

(Note: Lines 26 through 31 are not applicable to Section 202 Direct Loan applications.)

Line 26—HUD/FHA mortgage insurance premium is the amount to be earned during the estimated construction period. The amount should be computed on the requested loan amount at 1/2 of 1% per year or fraction of a year. If the estimated construction period exceeds one year, the premium will be based on a two-year period.

Line 27—HUD/FHA examination fee is computed at $3 per $1000 of the requested loan amount.

Line 28—HUD/FHA inspection fee is computed at $5 per $1000 of the requested loan amount when the project involves new construction, and on the estimated cost of rehabilitation when the project involves the rehabilitation of an existing structure.

Line 29—Financing fee is computed at a maximum of 2% on the loan amount. It is an initial service charge. This fee is not to be confused with discounts.

Line 30—Enter FNMA/GNMA fee here. HUD Field Office personnel will advise interested sponsors and mortgagees of the current maximum allowable rate for this fee and the conditions pursuant to which such fee may be included.

Line 31—AMPO is the Allowance to Make Project Operational and is computed [illegible] the maximum Mortgage insurance amount. It is allowable in cases involving nonprofit mortgagors (not including cooperative mortgagors).

Line 32—Self-explanatory.

Line 33—Title and Recording Expenses – This is the cost typically incurred for these items, by mortgagor, in connection with a mortgage transaction. This cost generally includes such items as recording fees, mortgage and stamp taxes, cost of survey, and title insurance including all title work involved between initial and final endorsement.

Line 34—Self-explanatory.

Lines 35, 36 and 37—Legal Organizational and Cost Certification Audit Fee – This estimate is to be based upon the typical cost usually incurred for these services in the area where the project is to be located. These items must be recorded separately.

Line 38—Self-explanatory.

Line 39—Builder's and Sponsor's Profit and Risk Allowance – This is based on total estimated cost of on-site utilities, landscape work, structures, general overhead expenses, architect's fees, carrying charges, financing, legal, organization and audit expenses. It is allowable in 220, 221(d) (3) Limited Distribution or profit-motivated, 236 Limited Distribution, 221(d)(4), and 231 profit-motivated projects. It is in lieu of, and not in addition to, builder's profit.

Line 40—Consultant's Fee, if any, enter amount to be charged the non-profit sponsor by a qualified consultant.

Line 41—Supplemental Management Fund for subsidized living units only – Allowance must not exceed $100 per assisted unit, excluding non-revenue producing units, if any.

Line 42—Contingency Reserve – An amount allowable for rehabilitation projects only, not to exceed 10% of the sum of Line 11 in Section G.

Lines 43, 44 and 45—Self-explanatory.

Line 46—Land (Estimated Market Price of Site) – Enter sponsor's estimate of market price of site including off-site costs. If site was purchased from public body, for a specific re-use, enter purchase price plus holding cost and any other

cost that the purchaser is required to pay, pursuant to specific conditions of the contract of sale. For Rehabilitation interline the "As Is" Value of Property

Lines 47 and 48—Self-explanatory.

Section H – Annual Income Computations—Self-explanatory.

Section I – Estimate of Annual Expense

Lines 1 through 12—Self-explanatory.

Line 13—Other – Reflect expense not specifically listed, such as, project security. Contract Security if provided should include contract guard service, performed either part or full-time, in connection with project operation. If security services are performed by staff employees, their salaries are included under Line 12, Payroll expense.

Lines 14 through 30—Self-explanatory.

In housing for the Elderly, Line 23, will include only the expenses resulting from supplying tenants with shelter and utilities included in the rent. Separate income and expense budgets for supplying tenants with non-shelter services must be shown on Form HUD-92013-E, supplement to this application and used with all Elderly/Handicapped Housing proposals.

Section J – Total Settlement Requirements

Line 1—Self-explanatory.

Line 2—Enter amount required to clear title to site. If land is to be acquired, the unpaid balance of the purchase price shall be entered. If leasehold, or land owned free and clear of encumbrances, enter "none." Indebtedness against land must be supported by options, purchase agreements, pay-off balances, etc.

Line 3—Enter the sum of "Development Cost" and "Land Indebtedness."

Line 4—Enter principal amount of mortgage requested.

Line 5—Self-explanatory.

Line 6—Enter the amount required to meet operating and debt service expense from project completion until such time as income is adequate to provide a self-sustaining operation.

Line 7—Enter discount to be paid for placement of the permanent mortgage as well as any discount required by the construction lender

Line 8—Enter the maximum interest yield cost.

Line 9—Enter 2 percent of the mortgage amount requested. No entry is required for nonprofit mortgagors.

Line 10—Enter one-half of one percent (.5%) of the total loan requested or $10,000, whichever is the lesser.

Line 11—Enter the cost of required improvements beyond property lines, such as streets and utilities, etc., which will not be installed at public or utility company expense.

Line 12—Enter relocation expenses in excess of amount allowed in replacement cost.

Line 13—Other – Enter any and all cost not identified elsewhere.

Line 14—Self-explanatory.

Line 15—Enter principal(s) cash contribution.

Line 16—Identify fees waived or deferred during construction or paid by means other than cash, i.e., BSPRA, builder's profit; identify grants/loans and the respective amounts.

Line 17—Self-explanatory.

Sections K, L, M, and N—Self-explanatory.

PROOF

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Excerpts From Unpublished Notice of Funding Availability, Illustrating Information Collections Draft—Not Being Published for Effect

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. FR-2987]

TITLE: Notice of Fund Availability (NOFA) for Supportive Housing for Persons with Disabilities

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

ACTION: Notice of fund availability for FY91.

* * * * *

FOR FURTHER INFORMATION CONTACT: The HUD Field Office for your jurisdiction.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The Department has submitted this NOFA to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. Pending approval of these collections of information by OMB and the assignment of an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register.**

Public reporting burden for the collection of information requirements contained in this NOFA are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, Findings and Certifications. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: HUD Desk Officer, room 3001, Washington, DC 20530.

I. Purpose and Substantive Description

A. Authority

Section 811 of the National Afffordable Housing Act (the NAH Act) authorizes a new supportive housing program for persons with disabilities and replaces assistance for persons with disabilities previously covered by section 202 of the Housing Act of 1959 (section 202 continues, as amended by section 801 of the NAH Act, to authorize supportive housing for the elderly). The purpose of section 811 is to enable persons with disabilities to live with dignity and independence within their communities by expanding the supply of supportive housing that is designed to accommodate the special needs of such persons and provides supportive services that address the individual health, mental health, and other needs of such persons. The Secretary is authorized to provide assistance to private, nonprofit organizations to expand the supply of supportive housing for persons with disabilities. The assistance will be provided as capital advances and contracts for project rental assistance in accordance with the Interim Rule for part 890 also published on this date (FR).

* * * * *

Of particular interest is the Department's implementation of section 105 of the NAH Act which would require that an application for this program include a certification of consistency of the proposal with an approved Comprehensive Housing Affordability Strategy ("CHAS") for the jurisdiction in which the proposed project is to be located. See the interim rule published on February 4, 1991 (56 FR 4480). The Supportive Housing for Persons with Disabilities interim rule provides that the CHAS certification requirement will not apply for FY 1991 funding of this program. However, beginning with the FY 1992 funding round, all applications for funding under this program must include a certification from the responsible public official that the project is consistent with an approved CHAS.

For FY 1991 applications, the CHAS certification requirement is not being applied to this program, because it is not statutorily required for this year and it is not feasible due to the amount of time required of a State or locality to develop a CHAS, including the hearing necessary to obtain citizen participation, and obtain a certification of consistency for FY 1991 funding. Therefore, to be most fair to entrants in this now significantly revised program, the Department is providing transition by delaying applicability of the CHAS certification until FY 1992.

Also of special interest, is a new statutory requirement for a certification by the appropriate state or local agency that the services identified in the application are well designed to serve the needs of persons with disabilities. In order to fullfill this requirement, Sponsors must submit one copy of their application to the appropriate state or local agency identified by the Field Office in the application package simultaneously with their submission of their application to the appropriate Field Office. Also included with the application package will be a certification form that the Sponsor shall transmit to the state or local agency, along with its application, for the state or local agency to indicate that it has reviewed the supportive services plan and whether or not the services are appropriate to the needs of the proposed disabled population. Once the state or local agency completes its review of the supportive services plan, it must complete the certification form and forward it to Field Office within 30 days of the section 811 application deadline date. Unlike the Section 202 Program of Housing for Handicapped People where the appropriate state agency's review of the service plan description was optional, in the section 811 program, the state or local agency's certification that the services are appropriate is required for approval of the Sponsor's application. Applications which do not contain such a certification will not be funded.

* * * * *

D. Preliminary Evaluation and Selection Criteria

1. Preliminary Evaluation

Applications for section 811 fund reservations for housing for persons with disabilities that meet the following initial threshold requirements at preliminary evaluation will be eligible for technical processing:

(a) Application was received by HUD at the appropriate address by [60 days after publication], and was complete or was missing no more than one complete exhibit (excluding exhibits which are certifications);

(b) Sponsor acceptably corrected deficiencies (including furnishing missing certifications) within 14 calendar days from the date of the notification of deficiency letter;

(c) Sponsor, proposed facilities and proposed occupants are eligible under section 811;

(d) Sponsor has experience in developing and/or operating housing, medical or other facilities and/or providing services to the disabled, families or minority groups;

(e) There is reasonable expectation that the Sponsor can meet the Minimum Capital Investment requirement and start-up expenses;

(f) Application contains evidence of control of a site or the appropriate identification of a site;

(g) The Sponsor is in compliance with civil rights laws and regulations as follows:

(1) There are no pending civil rights suits against the Sponsor instituted by the Department of Justice;

(2) There are no outstanding findings of noncompliance with civil rights statutes, Executive Orders or regulations as a result of formal administrative proceedings, or where the Secretary has issued a charge under the Fair Housing Act, unless the Sponsor is operating under a compliance agreement designed to correct the areas of non-compliance;

(3) There has not been a deferral of the processing of applications from the Sponsor imposed by HUD under title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3), and the HUD title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1).

(h) Even without a site visit, it is reasonable to expect the proposed site meets site and neighborhood standards, including minority disabled concentration considerations, and is not in a floodway or Coastal High Hazard Area;

(i) There is sufficient market demand for the number and type of units proposed based on preliminary review;

(j) Application included a supportive services plan meeting the requirements of § 890.265(c)(15); and

(k) Application was responsive to the Field Office Invitation.

* * * * *

II. Application Process

All applications for section 811 fund reservations submitted by eligible Sponsors must be filed with the appropriate HUD Field Office and must contain all exhibits required by this NOFA.

Immediately upon publication of this NOFA, Field Offices shall notify minority organizations within their jurisdiction involved in housing and community development and groups with special interest in housing for disabled households.

Within three weeks of the date of this Notice, HUD Field Offices will publish a one-time Invitation as required by § 890.205(b) of the Interim Rule, in newspapers of general circulation, and in any minority newspapers serving the Field Office jurisdiction. Field Offices will accept applications after publication of the Invitation. No application will be accepted after the regular closing time of the appropriate Field Office on [60 days after publication], unless that time is extended by a Notice published in the **Federal Register**. Applications received after that date and time will not be accepted, even if postmarked by the deadline date. Applications submitted by facsimile are not acceptable.

Organizations interested in applying for a section 811 fund reservation should provide the appropriate Field Office with their names, addresses and telephone numbers, and advise the Field Office whether they wish to attend the workshop described below. HUD encourages minority organizations to participate in this program as Sponsors. Field Offices, at the date and time specified in the Invitations, will conduct workshops to explain the Section 811 Program and the Seed Money Loan Program under section 106(b) of the Housing and Urban Development Act of 1968. Under this latter program, HUD makes direct, interest-free loans to approved nonprofit section 811 eligible Owners to cover certain start-up expenses. Section 106(b) applications should be submitted simultaneously with the section 811 application. HUD will consider section 106(b) applications with the section 811 applications.

HUD strongly recommends that prospective applicants attend the local Field Office workshop. More detailed information covering the time and place of the particular workshops will be set out in the Field Office Invitation. Interested persons with disabilities should contact the Field Office to assure that any necessary arrangements can be made for them to enable their attendance and participation in the workshop. While strongly urged to do so, if Sponsors cannot attend a workshop, application packages and handbooks can also be obtained from the Field Offices. Contact the appropriate Field Office with any questions regarding the submission of applications.

At the workshops, application packages will be distributed, application procedures and requirements (including the Department's equal opportunity, environmental, design and cost requirements and required exhibits) will be explained. Also, concerns such as local market conditions, building codes, historic preservation, floodplain management, displacement and relocation, zoning, housing costs, and states' positions on funding supportive services to group home residents will be addressed.

III. Application Submission Requirements

A. Application

Each application shall include all of the information, materials, forms, and exhibits listed in paragraph 2 of this section and must be indexed and tabbed. The Field Office will base its determination of the eligibility of the Sponsor for a reservation of section 811 capital advance funds on the information provided in the application.

In preparing applications, applicants will be able to utilize information and exhibits previously prepared for prior section 202 applications or for applications for other funding programs. Examples of exhibits that may be readily adapted or amended to decrease the burden of application preparation include among others those on previous participation in the section 202 program; applicant experience in housing and services; financial capacity; supportive services plan; community ties, and experience serving minorities.

1. Application contents.

(a) Each applicant (Sponsor) shall include on a Form HUD-92013, Application for Multifamily Housing Project:

(1) The name, address, and telephone number of the Sponsor(s);

(2) The name, title, address, and telephone number of the officer or director of the Sponsor's Board of Directors to whom communications should be addressed;

(3) The following specific information regarding the project:

(i) number of units requested by bedroom type and the number of residents (if independent living facility) or the number of bedrooms and number of residents to be housed in each group home;

(ii) dollar amount of the capital advance requested;

(iii) estimated land cost;

(iv) number and type of structures;

(v) number of stories planned and whether an elevator will be included; and

(vi) development method (new construction, rehabilitation, or acquisition (group homes and RTC properties)).

(b) Additional exhibits must include:

(1) A Housing Consultant's Resume, Contract (Form HUD 92531A-EH), and an Identity of Interest and Disclosure

Certification (if the Sponsor has employed a project consultant).

(2) Evidence of each Sponsor's legal status as a private nonprofit organization, including the following:

(i) Articles of incorporation, constitution, or other organizational documents:

(ii) Bylaws;

(iii) A typed incumbency certificate, listing all officers and directors, title, beginning date of each person's term and when that term expires. It must be certified by an officer of the Sponsor that it constitutes all duly qualified and sitting officers and directors as of the date the application is filed with HUD;

(iv) IRS tax exemption ruling (this must be submitted by all Sponsors, including churches). A nonprofit organization organized in the Commonwealth of Puerto Rico and exempt from income taxation under Puerto Rico law, has never been liable for payment of Federal income taxes, and does not pay patronage dividends may be exempt from the requirement set out in the previous sentence if they are not eligible for tax exemption; and

(v) Resolution of the board, duly certified by an officer, that no officer or director of the Sponsor or Owner has or will have any financial interest in any contract with the Owner or in any firm or corporation which has or will have a contract with the Owner.

(3) Satisfactory evidence that the Sponsor:

(i) has the necessary legal authority to sponsor the project and to assist the Owner to finance, acquire, construct, or rehabilitate and maintain the project; and

(ii) will form an Owner (as defined in § 890.105) after the issuance of the fund reservation, will cause the Owner to file a request for determination of eligibility and a request for a capital advance under § 890.300, and will provide sufficient resources to the Owner to ensure the development and long-term operation of the project.

(4) A description of the Sponsor's ties to the community, including the minority community, and any statements of support for the project by members of the community in which the project is to be located and state and local organizations familiar with the needs of disabled individuals proposed to be housed.

(5) Evidence of previous participation in HUD programs, by the Sponsor, its officers or directors, on Form HUD 2530. If none, forms must be submitted indicating "No previous experience."

(6) A description of any financial default, modification of terms and conditions of financing, or legal action taken or pending against the Sponsor or its officers, directors, or trustees in their corporate capacity.

(7) A description of the following:

(i) any other rental housing projects, medical and/or other facilities sponsored, owned or operated by the Sponsor, including a description of experience in providing housing, medical and/or other facilities to persons with disabilities and/or to families; and

(ii) the Sponsor's experience in providing housing, medical or other facilities and/or services to minority persons or families and in contracting with minority and women-owned business enterprises.

(8) A description of the Sponsor's past or current involvement in any programs other than housing (including its provision of services) that demonstrates the Sponsor's management capabilities and experience, including a description of the Sponsor's experience in serving disabled persons and/or families.

(9) A certified Board Resolution, acknowledging responsibilities of sponsorship, long-term support of the project(s), willingness of Sponsor to assist the Owner to develop, own, manage and ensure the provision of appropriate services in connection with the proposed project, and that it reflects the will of its membership.

(10) A list of the applications, if any, the Sponsor has submitted or is planning to submit to any other Field Office in response to the current Invitations under this NOFA, the NOFA for Supportive Housing for Persons Disabled as a result of Infection with HIV (FR , May , 1991), and the NOFA for Supportive Housing for the Elderly (FR , May , 1991). Indicate by Field Office, the proposed location by city and state, the number of units requested, and the financial commitments related to each application.

(11) An estimate of start-up expenses for the project and the source of funds to meet these expenses. If the Sponsor plans to use a section 106(b) seed money loan, an application (Form HUD-92290) for such loan must be submitted with required attachments.

(12) Evidence, in the form of a certified Board Resolution, of the Sponsor's willingness to fund the Minimum Capital Investment, estimated start-up expenses, and any associated development or operating costs related to items not covered by the capital advance under § 890.240 and to ensure the development and long-term operation of the project. Also, as evidence of the Sponsor's financial ability to cover these costs, include:

(i) A brief narrative description of financial history;

(ii) copies of balance sheets and statements of income and expenses for each of the past three years that the Sponsor has operated. The financial statements, at a minimum, must include the information contained in Form HUD-92417, and a certification pursuant to the criminal warning provided in U.S. Criminal Code, Section 1001, Title 18 U.S.C.;

(iii) Form HUD-2013 Supplement, Application for Project Mortgage Insurance, listing current bank and trade references; and

(iv) a list of all FY 1990 and prior year projects to which the Sponsor(s) is a party, identified by project number, Field Office, funding year and month and year of initial closing, current status, (if finally closed, indicate month and year), and financial requirements for closing.

(13) A narrative description of the proposed housing including:

(i) Evidence of control of an approvable site, or identification of a site for which the Sponsor provides reasonable assurances that it will obtain control within 6 months from the date of fund reservation (if Sponsor is approved for funding);

(A) If the Sponsor has control of the site, it must submit the following information:

(1) Evidence that the Sponsor has entered into a legally binding option agreement to purchase or lease the proposed site; or has a copy of the contract of sale for the site, a deed, long-term leasehold or other evidence of legal ownership of the site (including properties to be acquired from the RTC). The option agreement period should extend through the end of the current fiscal year and contain a renewal provision to guarantee site availability through the subsequent stage of processing. The Sponsor must also identify any restrictive covenants. In the case of a site to be acquired from a public body, evidence that the public body possesses clear title to the site, and has entered into a legally binding agreement to lease or convey the site to the Sponsor after it receives and accepts a notification of section 811 fund reservation and identification of any restrictive covenants. However, in localities where HUD determines the time constraints of the funding round will not permit all of the required official actions (*e.g.*, approval of Community Planning Boards) which are necessary to convey publicly-owned sites, a letter in the application from the Mayor or Director of the appropriate local agency

indicating their approval of conveyance of the site contingent upon the necessary approval action is acceptable and may be approved by the Field Office if it has satisfactory experience with timely conveyance of sites from that public body. In such cases, documentation shall also include a copy of the public body's evidence of ownership and whether there are any restrictive covenants. [NOTE: A proposed project site may not be acquired or optioned from a general contractor (or its affiliate) which will construct the section 811 project or from any other development team member.]

(2) A map showing the location of the site and the racial composition of the neighborhood, with any area of racial concentration delineated;

(3) Evidence that the project as proposed is permissible under applicable zoning ordinances or regulations, or a statement of the proposed action required to make the proposed project permissible and the basis for the belief that the proposed action will be completed successfully before the receipt of the conditional commitment application (*e.g.*, a summary of the results of any recent requests for rezoning on land in similar zoning classifications and the time required for such rezoning, preliminary indications of acceptability from zoning bodies, *etc.*);

(4) A statement that (a) identifies all persons (families, individuals, businesses and nonprofit organizations (identified by race/minority group, and status as owners or tenants) occupying the property on the date of submission of the application for fund reservation (or date of initial site control, if later); (b) indicates the estimated cost of relocation payments and other services, and (c) identifies the staff organization that will carry out the relocation activities.

NOTE: If any of the relocation costs will be funded from sources other than the section 811 captial advance, the sponsor must provide evidence of a firm commitment of these funds. Due to potentially high relocation costs, sponsors are encouraged to utilize sites which involve minimal or no relocation costs.

(5) An indication as to whether the Sponsor is willing to seek a different site if the preferred site is unapprovable, and if so, a reasonable assurance that site control will be obtained within 6 months of fund reservation.

(B) If the Sponsor has identified a site, but does not have it under control, it must submit the following information:

(1) A description of the location of the site, neighborhood/community characteristics (to include racial and ethnic data) and amenities, and adjacent housing and/or facilities;

(2) A description of the activities undertaken to identify the site as well as what actions must be taken to obtain control of the site, if approved for funding;

(3) An indication as to whether the site is properly zoned. If it is not, an indication of the actions/time necessary for proper zoning; and

(4) A status of the sale of the site.

(5) An indication as to whether the site would involve relocation.

(ii) If and how the project will promote energy efficiency and if applicable, innovative construction or rehabilitation methods or technologies to be used that will promote efficient construction.

(iii) An identification of all community spaces, amenities or features planned for the housing. A description of how the spaces will be utilized also must be included. If these community spaces, amenities, or features would not comply with the design and cost standards of § 890.220, the Sponsor must demonstrate its ability and willingness to contribute both the incremental development cost and continuing operating cost associated with the community spaces, amenities or features.

(iv) A written description of the design of the proposed housing including any special design features and community space necessary to accommodate the physical needs of the proposed residents and the provision of supportive services. Included with the written description must also be a schematic drawing of each floor of the project noting the location of any special design features as well as a typical bedroom in a group home or a typical unit in an independent living facility with approximate dimensions, and community space for the provision of supportive services.

(v) For group homes to be licensed as intermediate care facilities (in which funding for the intermediate care is provided under Title XIX of the Social Security Act) that serve persons with developmental disabilities, the following must be submitted:

(a) Evidence demonstrating that the proposed project will primarily provide housing rather than medical facilities, is or will be licensed by appropriate State agencies;

(b) written evidence that the State Medicaid Office recognizes the need for a tenant contribution to rent and has agreed to pay the cost of the tenant contribution in the Medicaid payment to the Sponsor;

(c) description of the medical training of the staff of the proposed facility and any nursing services that will be required by the residents on-site;

(d) description of the services that will be funded by Medicaid for residents of the proposed project, including their nature, frequency and where the services are to be provided;

(e) description of any special design features in the application that are not common to other section 811 group homes for the proposed population and the Sponsor's rationale for including them; and,

(f) statement certifying that the Individual Program Plan for each resident will include participation in an out-of-the-home activity program for at least six hours each weekday.

(14) A narrative description of the anticipated occupancy. The Sponsor must limit occupancy of the proposed project to one or more of the following categories: Persons with chronic mental illness, developmental disabilities, or physical disabilities. In accordance with the Congressional directive that 500 of the 2,000 units shall be used for projects for persons disabled as a result of infection with the human acquired immunodeficiency virus (HIV), a Sponsor may propose a project to serve this disabled population. NOTE: Persons disabled as a result of infection with the HIV are also eligible for occupancy in a project for the physically disabled, developmentally disabled or chronically mentally ill, depending upon the nature of the person's disability. The Sponsor may, with the approval of the Secretary, restrict occupancy of a project to persons with disabilities who have similar disabilities and who require a similar set of supportive services. The Sponsor must demonstrate a capacity to serve the proposed occupancy group(s).

(15) A supportive services plan that includes:

(i) A detailed description of whether the housing is intended to serve the physically disabled, developmentally disabled, or chronically mentally ill. Include how and from where persons will be referred and admitted to the project.

(ii) A detailed description of the needs of persons with disabilities that the housing is expected to serve.

(iii) A *detailed description of the supportive services* proposed to be provided to the anticipated occupancy, including:

(A) The name(s) of the agency(s) which will be responsible for providing supportive services and evidence of the service provider's capability and experience in providing such supportive services;

(B) The manner in which such services will be provided; i.e., how, when and how often, where (on/off-site), including assurances that the proposed residents will receive supportive services based on their individual needs.

(C) The staffing plan, including a description of the qualifications of residential staff, if any, and other staff necessary to provide the proposed services.

(iv) Identification of the extent of state and local funds available to assist in the provision of supportive services.

(v) A letter of intent from each agency that will provide the supportive services (if other than the Sponsor), indicating the source and extent of commitment to provide funding for the supportive services.

(vi) If any state or local government funds will be provided, a description of the state/local agency's philosophy/policy concerning residential facilities for the population to be served as well as a demonstration by the Sponsor that the application is consistent with state or local plans and policies governing the development and operation of facilities to serve individuals of the proposed occupancy category.

(16) Evidence demonstrating that there is effective demand for the proposed housing in the area to be served by the project and demonstrating that this demand is likely to continue throughout the life of the project.

(17) Signed certifications of the Sponsor(s)' intent to comply with title VI of the Civil Rights Act of 1964, the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Executive Orders 11063 and 11246, section 3 of the Housing and Urban Development Act of 1968, and the affirmative fair housing marketing requirements at 24 CFR part 200, subpart M.

(18) A certification from the appropriate state or local agency that it has reviewed the supportive services plan in the Sponsor's application and that the provision of services identified in the application is well designed to serve the special needs of persons with disabilities to be served by the proposed project(s).

Note: *The certification will not be included in the Sponsor's application submission to the Field Office. The state or local agency shall complete the certification found in the Sponsor's submission to the agency and forward it to the Field Office within 30 days of the application deadline date.*

(19) A certification of the Sponsor(s) that the appropriate state agency (single point of contact) under Executive Order 12372, Intergovernmental Review, has been contacted to determine if the Section 811 Program is covered under the state review process and, if applicable, the date the application was submitted to the State.

(20) A certification on SF–424, Application for Federal Assistance, that the Sponsor(s) is not delinquent on the repayment of any Federal debt.

(21) A certification by the Sponsor(s) that the section 811 funds will not be used to lobby the Executive or Legislative branches of the Federal government.

(22) A certification that the Sponsor(s) will comply with the requirements of the Drug-Free Workplace Act.

(23) A certification that the project will comply with HUD's design and cost standards, the Uniform Federal Accessibility Standards and HUD's implementing regulations at 24 CFR part 40, section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8, and for new construction multifamily housing projects (independent living facilities), the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100.

(24) A certification by the Sponsor(s) that it will comply (or has complied) with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR part 24, and 24 CFR § 890.260(e).

* * * * *

Authority: Section 811, National Affordable Housing Act, Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

[END]

Office of Housing

[Docket No. N-91-3272]

Submission of Proposed Information Collection to the Office of Management and Budget

AGENCY: Office of Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) as required by the Paperwork Reduction Act.

ADDRESS: Interested persons may submit comments regarding the paperwork request by referring to the proposal by name and sending them to: Wendy Sherwin Swire, OMB Desk Officer, Office of Management and Budget, New Excutive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed application and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). It also is requested that OMB complete its review within twenty one (21) days.

This Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new, an extension, or reinstatement; and (9) the telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 21, 1991.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

Propsal: Collecting Information from Applicants for Section 202 Housing Projects for the Elderly.

Office: Housing.

Description of the need for the information and its proposed use: This information will enable HUD to determine whether applicants are eligible, able and capable of sponsoring housing projects for the elderly.

Form Number: 2502-0267 (including 2502-0433).

Respondents: Nonprofit organizations and nonprofit consumer cooperatives applying for Fund Reservations under the Notice of Fund Availability for Section 202 Housing for the Elderly.

Frequency of Submission: One time.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hrs. per response	=	Burden hours
202 Application	800		1		51.2		40,960
	40		1		4.0		160
					55.2		41,120

Status: Revision.

Contact: Aretha Williams, HUD (202) 708-2866, Wendy Sherwin, OMB (202) 395-6880.

Dated: May 21, 1991.

SECTION 202 APPLICATION SUBMISSION REQUIREMENTS OMB NO. 2502-0267

A. Supporting Statement

1. Need for Information

The section 202 program, amended by the Cranston-Gonzalez National Affordable Housing Act (NAHA) of 1990, provides capital advances to private nonprofit organizations and nonprofit consumer cooperatives to expand the supply of supportive housing for the elderly. In order to insure that only eligible private nonprofit organizations and nonprofit consumer cooperatives are selected, it is important to obtain information from prospective applicants to assist HUD in determining if they have the financial and administrative capacity to develop such a project and whether the project design meets the needs of the residents. These factors are critical in meeting, statutory requirements and in protecting the Department's financial interest in projects funded under this program.

Based on our previous years' experience, the Department receives far more applications than available resources can fund. In Fiscal Year (FY) 1990, the Department received 358 applications requesting some 20,898 units of housing and selected 91 applications for some 5,110 units of housing. Because the program has been changed from a loan to a capital advance program, it is anticipated that the number of applications received will exceed those received in FY 1990. In view of the highly competitive nature of the section 202 program, it is necessary to have the responses comply with prescribed application requirements in order to form a basis for HUD's evaluation in selecting applications.

The application submission requirements, summarized below, were developed to minimize the front-end expenditure of financial resources by the nonprofit applicants. This is important because only a small percentage of the universe of applications received ultimately are funded.

Contents of Application Requirements: The Application for a section 202 Fund Reservation consists of seven parts with a total of 29 Exhibits. Included with the 29 Exhibits are nine prescribed forms. Six of the nine forms are required, the balance of the forms are either instructions or guide formats for assisting applicants in responding to the Exhibits. The seven components of the application submission requirements are:

Part 1—General
Part 2—Evidence of Ability to Develop and Operate the Housing on a Long-term Basis
Part 3—Financial Capacity and Ability to Develop a Project
Part 4—Need for Supportive Housing and Desirability of the Proposed Site
Part 5—Design of the Project
Part 6—Provision of Supportive Services
Part 7—Certifications

All of the required application exhibits are specifically identified in Section 889.270 of the regulations.

2. The section 202 application submission requirements are necessary to assist HUD in determining an applicant's eligibility and capacity to develop housing for the elderly consistent with prescribed statutory and program criteria. A thorough evaluation of an applicant's qualifications and capabilities is critical in protecting the Federal government's financial interest and to mitigate any possibility of fraud, waste or mismanagement of public funds.

The procedures for information collection requires the prospective applicant to submit its section 202 application to the appropriate HUD Field Office by the nationally established deadline date (usually between April and June). HUD Field/ Regional Offices evaluate applications based on established criteria (identified in Section 889.300 of the regulations), rate the applications and make selection recommendations to Headquarters (usually by the first week of September). Applicants are notified of selection or nonselection by September 30.

The purpose and use of the seven components of the application exhibits are briefly described below:

(a) Part 1—General

Exhibit 1: This Exhibit requires applicants to submit Pages 1 and 3 of the Form HUD-92013, Application for Multifamily Housing Project. The OMB control number for this form is 2502-0029. This Form collects basic information with regard to the proposed project's characteristics and is used by HUD staff to obtain basic information regarding the proposed project. The Form HUD-92013 has been modified to collect two items that are necessary for program operation, but not presently required by the Form. The items are: metro/ nonmetro classification and minority classification.

The Form will not be changed, however, the instruction will indicate the following:

(1) Section B—Purpose of Application: Block 3 will be checked as well as the block for Mortgage Insurance. However, the applicant must mark through Mortgage Insurance and write in Section 202 Capital Advance Program. In addition to identifying the Mortgage/ Loan Amount, applicants must identify if funds are to be used in a metro or nonmetro area.

(2) Section K—Names, Addresses and Telephone Numbers: Completed by all Applicants. Information on the Sponsor should be provided in Item 1. Item 2 is reserved for the Owner when it formed.

In addition, identify if Sponsor organization is minority or nonminority. A minority organization is one in which more than 50 percent of the board members are minority (i.e., Black, Hispanic, Native American, Asian Pacific, Asian Indian, or Hasidic Jewish).

If members of the development team (i.e., attorney, architect, contractor) are identified, complete where applicable.

The metro/nonmetro classification is necessary in order to adhere to the statutory requirement of Section 801(l)(3) of the NAHA Act which requires that not less than 20 percent of the funds shall be allocated on a national basis for nonmetro areas. The minority classification is necessary to evaluate program effectiveness in meeting the Department's Minority Business Entreprenuership (MBE) goals and the President's goals expressed in Executive Order 12432.

Exhibit 2: Information requested on Form HUD 92531A—EH, resume of the Housing Consultant and Identity of Interest and Disclosure Certificate are to be submitted if a Consultant is to be involved in the project. The Form provides a suggested format for the Housing Consultant's contract.

Exhibit 3: This Exhibit requests' a narrative description of the Sponsor's legal status as a nonprofit entity or consumer cooperative and includes submission of organizational documents, IRS tax exemption ruling, certified list of all officers and Directors, and a Resolution concerning Conflict of Interest to assure that no officer or director has a financial interest in the project.

Exhibit 4: This Exhibit requests evidence of the Sponsor's legal authority to sponsor the project, to form an Owner after issuance of a fund reservation and to provide sufficient resources to ensure development and long-term operation of the project.

(b) Part 2—Evidence of Ability to Develop and Operate the Housing on a Long-term Basis

Exhibits 5 through 11: These Exhibits request narrative descriptions of the Sponsor's experience in HUD programs by having the Sponsor file a Form-2530, Previous Participation Certificate (OMB number is 2502-0118). As part of this section, the applicant is also required to complete narrative responses in the Exhibits concerning information which will assist HUD in determining the applicant's over-all experience and capacity to carry through over an extended period with the proposed development.

In addition, in order to determine the nonprofit organization's ties to the community, including the elderly minority community, in which the proposed project is to be built, the applicant is required to submit a statement evidencing its local community base.

Information regarding any financial defaults or legal action pending against the Sponsor, as well as a certified Board resolution, acknowledging responsibility and pledging support for the project, also is required.

(c) Part 3—Financial Capacity and Ability to Develop a Project

Exhibits 12-14: Information submitted in response to these Exhibits is necessary for an accurate assessment of the Sponsor's financial condition and ability to meet the financial requirements of the program. Under the section 202 Capital Advance Program, Sponsors are required to provide a Minimum Capital Investment of 0.5 percent of 1.0 percent of the approved capital advance amount, not to exceed $25,000 (required under § 889.250). To this end, a narrative financial history on the Sponsor, as well as copies of financial statements for each of the past three years the Sponsor has been in operation, must be submitted. The Sponsor must also submit a certified Board Resolution indicating their willingness to provide any funds necessary to ensure development of the project.

Finally, if the applicant is applying for funds under HUD's section 106(b) seed money loan program, the Form HUD-92290 (OMB number 2502-0187) must be submitted.

(d) Part 4—Need for Supportive Housing and Desirability of the Proposed Site

Exhibits 15-17: These Exhibits request information pertaining to the proposed site and the need for the housing. This information is necessary in order to assure that the proposed site is acceptable for the intended use and the Sponsor has control of the site as well as can obtain proper zoning. Also, the information is needed to determine if there is a market for the housing in the area identified and whether relocation will be required.

(e) Part 5—Design of the Project

Exhibits 18 and 19: These two Exhibits require the Sponsor to provide a list of all amenities (e.g., air conditioning, carpets, etc.), special spaces (e.g., libraries, game rooms, etc.)

and community spaces proposed for the project. The Sponsor is also requested to submit typical unit floor plans and floor plans for all floors providing community spaces. This information is evaluated to determine if the project is designed to meet the needs of the population to be served.

(f) Part 6—Provision of Supportive Services

Exhibit 20: This Exhibit requires the Sponsor to submit: a narrative description of the persons to be housed, the supportive services to be provided (Form HUD-92013E, Supplemental Application Processing Form, OMB number 2502-0232), and how those services will be provided. This information is evaluated to determine: the extent of need for such housing; whether the Sponsor accurately assessed the needs based on the proposed residents; if the plan for the provision of services (staffing and funding) is sufficient; and, if the services will meet the identified needs.

(g) Part 7—Certifications

Exhibits 21 through 29: These Exhibits require the Sponsor to submit certifications required by Governmental actions, such as Executive Orders, etc.

In the absence of collecting the above information, the Department would not be able to assess the worthiness of the applications or make sound judgements regarding the potential risk to the Government.

3. Each fiscal year (near the beginning of the funding cycle), HUD issues a Notice pertaining to application submission requirements. Because the Program has changed drastically from the prior years, the Application Package had to be revised. In revising the Package, consideration was given to modifying it to require the minimum of information needed by HUD to conduct the program in accordance with the NAHA, statutory and regulatory requirements, and to establish a selection system which is equitable to all participants. The information described under Item 2 above represents the minimum information acceptable to HUD.

4. No duplication exists, as there are no other forms or exhibits used for the purposes specified under Item 2 herein. Also, as mentioned in Item 3 above, HUD reviewed and modified the application submission requirements to assure that only necessary information is being requested of Sponsors.

5. Not applicable. Individual applications are evaluated and rated by HUD on the merits of the responses submitted with the application. Each application is unique. The information contained in each application relates to a particular Sponsor proposing a specific project, design, unit conposition, site, etc., and, as such, the information collected from Sponsors will be significantly different per application.

6. Due to the highly competitive nature of the section 202 program, the application submission requirements were developed in a way to minimize the front-end cost to the nonprofit Sponsor and only, require the minimum amount of information needed in HUD's evaluation. This is important due to the fact that only a small percentage of the universe of applications received ultimately get selected. For example, formation of the Owner corporation is no longer required at the Fund Reservation stage, but only for those projects that are funded. Also, the Form HUD-92013 is not required to be completed in its entirety. This Form is the standard form to make an application for a multifamily housing project. If the Sponsor were required to complete the Form in its entirety, a contractor and other development team participants would have to be obtained. Additionally, HUD recognizes that some Sponsors, who are sincerely interested in providing housing, may lack the staff and other facilities to develop such a project. Therefore, in recognition of the need for these Sponsors to use the services of professional housing consultants, HUD permits a reasonable fee for consultant's services to be included in the section 202 capital advance. The consultant may assist the Sponsor in preparation of the Application Package to request a section 202 Capital Advance and throughout the final development of the project should the Sponsor be selected for funding.

7. Currently, the information collection activities occur annually to coincide with the receipt of annual fiscal year appropriations for the program. Each year, Congress appropriates funds with which to select new applications. HUD, in turn, invites applications and makes selections based on the funds available for the year. These funds are normally exhausted at the end of each fiscal year. The section 202 regulations require HUD to publish a Notice of Fund Availability (NOFA) in the **Federal Register** when such funds are made available by Congress. The regulations also require HUD to publish Invitations for Applications which specify, among other things, a deadline date for receipt of applications. In order for HUD to accept an application, the application must have been submitted in response to a specific Invitation requesting such an application and by the closing date stated in the Invitation. As the funding cycle for the program occurs annually, including the Invitations for Applications, it is not possible to require the submission of this information less frequently.

8. Part 5 CFR 1320.6 lists 10 items that OMB will not approve for information collection, unless it can be demonstrated that the collection of information is necessary to satisfy statutory requirements or other substantial need.

This request for information is consistent with the guidelines under 5 CFR 1320.6 with the exception of one, item. Subparagraph (c) of the above CFR indicates OMB's disapproval of requiring respondents to submit more than an original and two copies of any document. With respect to the section 202 program, HUD requires Sponsors to submit an original and six copies of the Application. As the program is administered on an annual basis, processing of the application must be accomplished in an expeditious manner in order that decisions regarding selections of applications and reservations of funds can be made prior to the end of the fiscal year (September 30).

During the course of processing the applications, nine HUD technical disciplines are involved in the review process: staff from Mortgage Credit, Valuation, Architectural and Engineering, Housing Management, Fair Housing and Equal Opportunity, Economic and Market Analysis, Community Planning and Development, the Multifamily Housing Representative and the Field Office Counsel. These HUD staff members are required to comment on the approvability of each application received.

Because of the (1) various HUD staff involved in the review process, (2) tremendous volume of applications received each fiscal year, and (3) the need to obligate funds by the fiscal year-end, HUD requires concurrent reviews of the applications by the aforementioned HUD staff to assure prompt processing with minimum interruption. For example, additional information or clarification is often needed from Sponsors to permit HUD to make a fair and complete review. The requirement for simultaneous reviews promotes a more efficient, time-saving method to provide applicants a single notification regarding all deficiencies noted as a result of a full review from each HUD technical discipline.

HUD needs more than an original and two copies of the application in order to carry out the above procedures for concurrent reviews.

9. Inasmuch as the application submission requirements are contained in outstanding regulations (24 CFR 889.270), the promulgation procedure for regulations allowed sufficient participation by outside agency contacts to review and comment on the application material.

10. HUD does not assure confidentiality.

11. The application submission requirements do not contain any sensitive questions.

12. *Provide estimates of annualized cost to the Federal Government and to the respondents.*

(a) *Estimate of Cost to Federal Government:* Inasmuch as the majority of the work involved in reviewing the applications is performed at the HUD Field Office level, the significant costs attributable to the promulgation of the application requirements will be the cost involved in reviewing the information submitted by applicants. Outstanding program procedures require the following reviews performed by the various Field Office staff:

Reviews

Function	Total time per application (hours)
Multifamily Housing Rep	2
Mortgage Credit	3
Architectural	2
Valuation	3
Economic and Market Analysis	1
Fair Housing & Equal Opport	1
Housing Management	1
Community Planning & Devel	1
Field Office Counsel	3
Total	17

	Cost
Clerical (12 Hrs. × $10/hr.) at $20/hr.	$2,400
Printing	100
Mailing	50
Total estimated cost per application	$2,550

(b) *Estimate of Cost to Respondents:* In estimating the cost to the Sponsors, it should be noted that in order to comply with the program requirements, the Sponsor usually retains an attorney and architect. In addition, as many nonprofit organizations do not have in-house expertise to develop an application, a housing consultant is usaully hired by the Sponsor. In view of this, the following illustrates the estimated cost to the public:

Housing consultant $40 per hour)	$1,208
Architect (fee for preliminary project drawings)	1,000
Sponsor	Probono
Attorney	1,000
Total	$3,208

It should be noted that many professionals work on a retainer basis and if the application does not obtain HUD approval, they do not collect a fee. The figures presented above are based on our own experience, as well as consultation with housing professionals in the field.

13. Although for Fiscal Years 1989 and 1990, HUD received approximately 392 and 358 housing for the elderly applications, respectively, it is anticipated that because funding under the program has changed from loans to capital advances, the number of applicants will increase substantially. It is anticipated that the level of activity will average 800 applications annually over the next three years. Although the program funding cycle is on an annual basis, each perspective Sponsor could submit more than one application. However, our estimate of time involved is based on one application per applicant. Using the categories presented in the illustration in Item 12(b) above, the estimated amount of hours involved in developing a complete application submission:

	Hours
Housing consultant	30.2
Architect	6.0
Attorney	2.0
Sponsor	17.0
Total	55.2

These figures are based on HUD's experience, as well as consultation with housing professionals in the field. The previous requested hours apparently were over estimated.

A tabulation of Annual Reporting Burden is shown in Table 1. It should be noted that Exhibits 1, 6, 14, 17, 20, and 25 already have OMB clearance as shown in the Table. These information collections are common to many of our programs and our request for clearance was calculated to include the burden associated for all programs uses. The burden shown in Table 1 for Exhibits 1, 6, 14, 17, 20 and 25, therefore, reflects our estimate for application to the section 202 program. No adjustment to the previously cleared Exhibits 1, 6, 14, 17, 20 and 25 will be required.

Note: For Fiscal Year 1991, Exhibit 22 will be required, therefore, the burden hours will be reduced by 320 hours. However, Exhibit 22 will be required beginning in Fiscal Year 1992.

14. The primary reduction in burden hours (57,861) is due to a decrease in the number of proposed applicants (from 1,300 to 800), and a change in information requested in the application, namely: a reduction in the architectural submission by requesting only typical unit designs and a certification that the project will meet HUD's design and cost standards. Additionally, the previous burden hours approved included the hours (about 25,000) required to prepare an application for housing for disabled people. A separate request for paperwork clearance is being submitted to OMB for approval of the burden hours required to prepare an application for housing for disabled people under section 811 of the NAHA of 1990.

Further, the burden of 265 hours reflected under OMB clearance 2502-0433 is being included under OMB 2502-0267. Therefore, approval for request of information under 2502-0433 will no longer be requested.

15. Not applicable.

B. Collections of Information Employing Statistical Methods—Not applicable.

TABLE 1.—TABULATION OF ANNUAL REPORTING BURDEN

Description of information collection (application submission requirements) (2502-0267)	Section of CRF affected	No. of respondents	No. of responses per respondent	Total annual responses	Hours per response	Total hours
Part 1:						
Exhibit 1, Form HUD-92013 (OMB 2502-0029).	889.270(b)(a)	800	1	800	1.0	800
Exhibit 2, Information on Consultant		Not subject to OMB approval per OMB 5/1/84				
Exhibit 3 Evidence of Sponsor's nonprofit status.	889.270(c)(2)	800	1	800	2.0	1,600

TABLE 1.—TABULATION OF ANNUAL REPORTING BURDEN—Continued

Description of information collection (application submission requirements) (2502-0267)	Section of CRF affected	No. of respondents	No. of responses per respondent	Total annual responses	Hours per response	Total hours
Exhibit 4, Evidence of Sponsor's authority to sponsor project.	889.270(c)(3)	800	1	800	1.0	800
Part 2:						
Exhibit 5, Description of community ties	889.270(c)(4)	800	1	800	0.5	400
Exhibit 6, Form HUD-2530 (OMB 2502-0118).	889.270(c)(5)	800	1	800	0.6	480
Exhibit 7, Description of legal actions against Sponsor.	889.270(c)(6)	800	1	800	0.5	400
Exhibit 8, Description of experience providing housing.	889.270(c)(7)	800	1	800	3.0	2,400
Exhibit 9, Description of past involvement	889.270(c)(8)	800	1	800	3.0	2,400
Exhibit 10, Board Resolution to support project.	889.270(c)(9)	800	1	800	0.4	320
Exhibit 11, Description of experience serving minorities.	889.270(c)(10)	800	1	800	1.0	800
Part 3:						
Exhibit 12, Statement on other 202 or 811 applications submitted.	889.270(c)(11)	800	1	800	2.0	1,600
Exhibit 13, Estimate of start-up expenses	889.270(c)(12)	800	1	800	4.0	3,200
Exhibit 14, Evidence of ability to provide funds for project (HUD-92290 OMB 2502-0160).	889.270(c)(13)	800	1	800	4.0	3,200
Part 4:						
Exhibit 15, Need for supportive housing	889.270(c)(13)	800	1	800	3.0	2,400
Exhibit 16, Description of site and evidence of site control.	889.270(c)(14)	800	1	800	7.0	5,600
Exhibit 17, Statement on relocation (OMB 2502-0433).	889.270(c)(15)	[1] 40	1	40	4.0	160
Part 5:						
Exhibit 18, Description of proposed design of project.	889.270(c)(16)	800	1	800	8.0	6,400
Exhibit 19, Floor plans	889.270(c)(17)	800	1	800	5.0	4,000
Part 6:						
Exhibit 20, Description of residents and supportive services (HUD-92013E OMB 2502-0232).	889.270(c)(18)	800	1	800	4.0	3,200
Part 7:						
Exhibit 21, Equal Opportunity certifications			Exempt per 5 CFR Part 1320			
Exhibit 22, CHAS certification from local public official.	889.270(c)(20)	[2] 800	1	800	0.4	320
Exhibit 23, Certification on provision of services.	889.270(c)(21)	800	1	800	0.4	320
Exhibit 24, Certification on E.O. 12372	889.270(c)(22)	800	1	800	0.4	320
Exhibits 25-29, Certifications (SF-424 OMB 0348-0043).			Exempt per 5 CFR Part 1320			
Totals		800	1	800	55.2	41,120

[1] Based on experience, no more than 5 percent of the proposals will involve relocation.
[2] For Fiscal Year 1991, the certification from the local public official will not be required. The respondent will only be required to state, not applicable. The certification will be required beginning in Fiscal Year 1992.

SECTION 202 APPLICATION PACKAGE

Introduction

You have indicated an interest in constructing or rehabilitating housing for the elderly to be financed under the section 202 capital advance program pursuant to the Housing Act of 1959, as amended by section 801 of the National Affordable Housing Act (NAHA) of 1990, and to be assisted by project rental assistance payments. This package and enclosure constitute the section 202 Application Package.

An original and six (6) copies of an Application for a section 202 Fund Reservation must be submitted in response to the Invitation published by this Office, in conformance with Section II—Submission Requirements for a section 202 Fund Reservation of this Application Package. Copies of the completed Application must be submitted to this Office, either by hand, delivery service or by certified mail, by the deadline date and time set forth in the Invitation. Applications received after that date will not be accepted, even if postmarked by the deadline date.

Before preparing your Application, you should carefully review the requirements of the Regulations (24 CFR part 889) and general program instructions set forth in Handbook 4571.3, section 202 Capital Advance Program for Housing the Elderly, Chapter 3, and Housing Notice H 91-9.

Note: Section 1001 of title 18 of the United States Code (Criminal Code and Criminal Procedure, 72 Stat. 967 shall apply to all information supplied in the application submission.

(18 U.S.C. 1001, among other things, provides that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.)

This Application Package consists of three sections and an Application Checklist which are summarized below:

Section I: *Project Development Requirements*

The HUD Field Office will complete this part which sets forth information

pertaining to applicable operating cost standards, Comprehensive Housing Affordability Strategies, Uniform Relocation Act, and other special requirements the Field Office deems necessary.

Section II: *Submission Requirements for a Section 202 Fund Reservation*

The Application for a section 202 Fund Reservation consists of seven parts, and must be accompanied by the materials, forms and exhibits listed herein (see pages 3 thru 9 below, for a description of the exhibits). Acceptable racial and ethnic categories are defined in the instructions for completing Form HUD-92013 (Attachment 1, Page 10). The submission must have a table of contents and be indexed and tabbed accordingly.

Section III: *General Program Requirements and Attachments*

Self-explanatory.

Application Checklist: A checklist to ensure that the application submission is complete.

Format for Section I—Project Development Requirements

1. Allocation Area:
2. Number [1] and size of Units:
3. Operating Cost Standards:
4. The local/State Comprehensive Housing Affordability Strategy (CHAS) requires: [2]
5. The local/State CHAS sets forth the following preference with respect to the location: [2]
6. Inquiries related to the local/State CHAS should be addressed to: [2]
7. Special requirements for location, density and site planning are:
8. Other requirements:

Acceptable Amenities:

SECTION II—Submission Requirements for a Section 202 Fund Reservation for Housing for the Elderly

Part 1—General

Exhibit 1: Form HUD-92013, Application for Multifamily Housing Project (attached). Complete only specific portions of this form as outlined on pages 11 and 12 of these requirements. No item on page 2 of Form HUD-92013 is required.

Exhibit 2: A Housing consultant's Resume, Contract (Form HUD-92531A-EH) and an Identity of Interest and Disclosure Certification.

Exhibit 3: Evidence of each Sponsor's legal status as a nonprofit entity of nonprofit consumer cooperative, including:

a. Articles of Incorporation, constitution or other organizational documents;

b. By-laws;

c. A typed incumbency certificate, lisitng all officers and directors, title, beginning date of each person's term and when that term expires. It must be certified by an officer of the sponsor that it constitutes all duly qualified and sitting officers and directors as of the date the application is filed with HUD;

d. IRS tax exemption ruling (required for all sponsors including CHURCHES);

e. Resolution of the board, duly certified by an officer, that no officer or director has or will have any contract with the Owner or in any firm or corporation which has or will have a contract with the Owner.

Exhibit 4: Satisfactory evidence that the Sponsor:

a. Has the necessary legal authority to sponsor the project and to assist the Owner to finance, acquire, construct, reconstruct or rehabilitate and maintain the project, and

b. Will form a Owner after the issuance of the fund reservation, cause the Owner to file a request for a capital advance, and provide sufficient resources to the Owner to ensure the development and long-term operation of the project.

Part 2—Evidence of Ability to Develop and Operate the Housing on a Long-Term Basis

Exhibit 5: Description of the Sponsor's ties to the community and support from local community groups.

Exhibit 6: Evidence of any previous participation in HUD programs by the Sponsor, its officers or directors, on Form HUD-2530. If none, form mustr be submitted indicating "No previous experience".

Exhibit 7: A description of any financial default, modification of terms and conditions of financing, or legal action taken or pending against the Sponsor or its officers, directors or trustees in their corporate capacity.

Exhibit 8: A description of any rental housing projects and/or medical facilities sponsored, owned and operated by the Sponsor including a description of experience in providing housing and/medical facilities to the elderly and/or families.

Exhibit 9: A description of the Sponsor's past or current involvement in any programs other than housing (including its provision of service) that demonstrates the Sponsor's management capabilities and experience.

Exhibit 10: A certified Board resolution, acknowledging responsibilities of sponsorship, long-term support of the project(s), willingness to sponsor, to assist the Owner to develop, own, manage and provide appropriate services in connection with the proposed project, and that it reflects the will of its membership.

Exhibit 11: A description of the Sponsor's experience in providing housing and/or services to minority persons or families and in contracting with minority- and women-owned business enterprises.

Part 3—Financial Capacity and Ability To Develop a Project

Exhibit 12: A list of the applications, if any, the Sponsor has submitted or is planning to submit to any other field office in response to the current Invitations. Indicate by field officer, the proposed location by city and State, the number of units requested and financial commitments related to each application.

Exhibit 13: An estimate of start-up expenses and the source of funds to meet these expenses. If the Sponsor plans to use a section 106(b) seed money loan, an application (Form HUD-92290) for such loan must be submitted with required attachments.

Exhibit 14: Evidence, in the form of a certified Board Resolution, of the Sponsor's willingness to fund the Minimum Capital Investment, estimated start-up expenses, and any associated development or operating costs related to items not covered by the capital advances and to ensure the development and long-term operation of the project. Also, as evidence of the Sponsor's financial ability to cover these costs, include: (1) a brief narrative description of financial history; (2) copies of balance sheets and statements of income and expenses for each of the past three years that the Sponsor has operated. (The financial statements at a minimum must include the information contained in Form HUD-92417 and a certification pursuant the criminal warning provided in U.S. Criminal Code, Section 1001, Title 18 U.S.C.); (3) a Form HUD-2013 Supplement, Application for Project Mortgage Insurance, listing

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[1] **Note:** Any nonrevenue-producing units proposed for a project must be included within the total units advertised. Applications will be rejected which excee-l the limits set forth in the invitation. For example, if a project is 100 units, and if a nonrevenue unit (i.e., resident manager's unit) is planned, the configuration is 99 units, plus one nonrevenue unit. Adding nonrevenue units at later processing stages will not be accepted.

[2] **Note:** The CHAS certification is not required for applications submitted for Fiscal Year 1991 funding.

current bank and trade references; and, (4) a list of all Fiscal Year 1990 and prior year projects to which the Spsonsor(s) is a party, identified by project number, Field Office, funding year, month and year of initial closing, current status (if finally closed, indicate month and year) and financial requirements for closing.

Part 4–Need for Supportive Housing and Desirability of the Proposed Site

Exhibit 15: Evidence of need for supportive housing for the elderly in the area to be served such as:

a. State or local needs assessments indicating the extent of need in the locality for the proposed project.

b. Letters from local agencies (i.e., housing, services) indicating the extent of need for supportive housing for the elderly in the area to be served.

Exhibit 16: The following additional information with respect to the proposed project site:

a. Evidence that the Sponsor has entered into a legally binding option agreement to buy or lease the proposed site; or has a copy of the contract of sale for the site, a deed, long-term leasehold or other evidence of ownership for the site (including properties to be acquired from the Resolution Trust Corporation). The option agreement period should extend through the end of the current fical year and contain a renewal provision to guarantee site availability through the subsequent stage of processing. The Sponsor must also identify any restrictive covenants. In the case of a site to be acquired from a public body, evidence that the public body possesses clear title to the site, has entered into a legally binding agreement to lease or convey the site to the Sponsor after it receives and accepts a notice of section 202 fund reservation and identified any restrictive covenants. However, in localities where HUD determines the time constraints of the funding round will not permit all of the required official actions (e.g., approval of Community Planning Boards as required by New York City) necessary to convey publicly-owned sites, a letter in the application from the Mayor or Director of the appropriate local agency indicating approval of conveyance of the site, contingent upon the necessary approval action, is acceptable and may be approved by the Field Office if it has had satisfactory experience with timely conveyance sites from that public body. In such cases, documentation shall also include a copy of the public body's evidence of ownership and identification of any restrictive covenants.

b. A map showing the location of the sites and the racial composition of the neighborhood, with the area of racial concentration delineated.

c. A sketch of the site plan showing the general development of the site including the proposed location of the building(s), streets, parking areas and drives, service areas, and unusual site features.

d. Evidence that the project as proposed is permissible under applicable zoning ordinances or regulations, or a statement of the proposed action to make the proposed project permissible and the basis for belief that the proposed action will be completed successfully before the receipt of the conditional application (e.g., a summary of the results of any recent requests for rezoning on land in similar zoning classifications and the time required for such rezoning, preliminary indications of acceptability from zoning bodies, etc.).

Exhibit 17: A statement that:

a. Identifies all persons (families, individuals, businesses and nonprofit organizations (identified by race/minority group and status as owners or tenants) occupying the property on the date of submission of the application for a section 202 fund reservation (or date of initial site control, if later);

b. Indicates the estimated cost of relocation payments and other services; and

c. Identifies the staff organization that will carry out the relocation activities.

Note: If any of the relocation costs will be funded from sources other than the section 202 capital advance, the Sponsor must provide evidence of a firm commitment of these funds. Due to potentially high relocation costs, sponsors are encouraged to utilize sites which involve minimal or no relocation costs.

Part 5—Design of the Project

Exhibit 18: A narrative description of the proposed housing consistent with section 889.270(b)(4), including:

a. If the project will be developed using innovative construction or rehabilitation methods or technologies, identify them and describe how they will promote efficient construction or energy efficiency.

b. Identification and description of all community spaces, special amenities or features planned for the housing. A description of how the space will be utilized also must be included. If these amenities, features or community spaces would not comply with the design and cost standards, the Sponsor must demonstrate its ability and willingness to contribute both the incremental development cost and continuing operating cost associated with the community spaces, features or amenities.

Exhibit 19: Typical unit plans and floor plans of all floors providing community space, indicating dimensions to be used for the provision of supportive services.

Part 6—Provision of Supportive Services

Exhibit 20: A description of:

a. The category or categories of elderly persons the housing is intended to serve;

b. On a Form HUD 92013E, Supplemental Application Processing Form—Housing for the Elderly, identify all supportive services; if any, to be provided to the persons occupying such housing;

c. The manner in which such services will be provided to such persons (i.e., on or off-site) including, whether a service coordinator will facilitate the adequate provision of such services; and

d. The public or private sources of assistance that may reasonably be expected to fund or provide such services.

Part 7—Certifications

Exhibit 21: Signed certifications of the Sponsor(s)' intent to comply with Title VI of the Civil Rights Act of 1964, the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Executive Orders 11063 and 11246, section 3 of the Housing and Urban Development Act of 1968 and affirmative fair housing marketing requirements at 24 CFR part 200, subpart M.

Exhibit 22: In accordance with section 105 of the NAHA, a certification from the public officials responsible for submitting a housing strategy, for the jurisdiction to be served; that, the proposed activities are consistent with the approved Comprehensive Affordable Housing Strategy (CHAS) of the State or unit of general local government within which the site is located.

Note: The requirement for the CHAS certification will not be effective until Fiscal Year 1992. For Fiscal Year 1991, the response to the Exhibit should be: Not Applicable.

Exhibit 23: A certification from the appropriate State or local agency that the provision of services identified in the application is well designed to serve the special needs of the category or categories of elderly persons the housing is intended to serve.

Exhibit 24: A certification of the Sponsor(s) that the appropriate State agency (point of contact) has been contacted to determine if the section 202 program is covered under that State s

review process, under Executive Order 12372, and, if applicable, the date the application was submitted to the State.

Exhibit 25: A certification on SF-424, Application for Federal Assistance, that the Sponsor(s) is not delinquent on the repayment of any Federal debt.

Exhibit 26: A certification by the Sponsor(s) that the section 202 and Project Rental Assistance funds will not be used to lobby the Executive or Legislative branches of the Federal Government.

Exhibit 27: A certification that the Sponsor(s) will comply with the requirements of the Drug-Free Workplace Act.

Exhibit 28: A certification that the project will comply with HUD's design and cost standards, the Uniform Federal Accessibility Standards and HUD's implementing regulations at 24 CFR part 40, section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8, and for new construction projects, the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100.

Exhibit 29: A certification by the Sponsor(s) that it will comply (or has complied) with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as amended, and implementing regulations at 49 CFR part 24 and 24 CFR section 889.264.

Section III—General Program Requirements and Forms

1. All projects/sites are subject to HUD environmental regulations 24 CFR Part 50, Protection and Enhancement of Environmental Quality, implementing Section 102(2) of the National Environmental Policy Act. These regulations also include, in 24 CFR 50.4, other applicable environmental statutes, Executive Orders and HUD regulations (e.g., National Historic Preservation Act, Executive Order 11988 on Floodplain Management, etc.).

Note: The Environmental Clearance Officer in the HUD Field Office will provide guidance with these requirements.

2. Title VI of the Civil Rights Act of 1964, Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Executive Orders 11063 and 11246, Section 3 of the Housing and Urban Development Act of 1968 and Affirmative Fair Housing Marketing Requirements at 24 CFR Part 200, Subpart M and all implementing rules, regulations and requirements pertaining to these laws and Executive Orders.

Residency preferences will be permitted only to the extent the preference is not inconsistent with the objectives of the Affirmative Fair Housing Marketing (AFHM) Regulations and the provisions of the AFHM Plan.

Note: The Equal Opportunity staff in the HUD Field Office will assist in resolving any questions concerning the rules, regulations and requirements pertaining to the laws and Executive Orders described above.

3. The Davis-Bacon Requirements and the Contract Work Hours and Safety Standards Act.

Note: The Labor Relations staff in HUD Field Office will provide guidance in this area.

4. Comprehensive Housing Affordability Strategies and Relocation Requirements.

Note: Community Planning and Development staff in the HUD Field Office will provide guidance in these areas.

5. HUD Minimum Property Standards, local building codes, Uniform Federal Accessibility Standards (UFAS) (A117.1) and HUD's implementing regulations at 24 CFR part 40, section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8, and for new construction projects, the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100.

6. *Forms.* Certifications for lobbying, drug-free workplace, supportive services, Executive Order 12372, relocation, HUD's design and cost standards and Standard Form-LLL are Attachments of Notice 91-9. The following forms as required by Part II of this Package are attached for your convenience in preparing the application.

—Form HUD-92013 (Instructions for completing this form are discussed below.)
—Form HUD-92531A-EH
—Form HUD-2530
—Form HUD-92290
—Form HUD-92417
—Form HUD-2013 Supplement
—Form HUD-92013E
—Form SF-424 (revision dated 4/88 must be used)

Instructions for Completing form HUD-92013

For purposes of submitting an application for a Section 202 Fund Reservation, pages 1 and 3 as noted below shall be completed by all applicants. It should be noted that two items (i.e., metropolitan/nonmetropolitan classification and minority classification) are not contained on the form. The instructions indicate the applicable places to identify this information on the Form HUD-92013.

Section A—Project Identification: Complete Item 1. Items 2 and 3 will be completed by the HUD Field Office.

Section B—Purpose of Application: Check Block 3, as well as the Block for Mortgage Insurance. However, mark through "Mortgage Insurance" and write in Section 202 Capital Advance Program. In addition to identifying the Capital Advance amount, applicants must identify if funds are to be used in a metro or nonmetro area.

Section C—Location and Description of Property: Complete in entirety.

Section D—Information Concerning Land or Property: Complete, except for Item 8 which is satisfied by the response to Exhibit 15.

Section E—Estimate of Income: All items, except 2, 6 and 7.

Section F—Equipment and Services and Section F-1: Complete, as applicable.

Section K—Names, Addresses and Telephone Numbers: Complete in entirety. In addition, identify if SPONSOR is minority or nonminority. A minority organization is one in which more than 50 percent of the board members are minority (i.e., Black, Hispanic, Native American, Asian Pacific, Asian Indian, or Hasidic Jewish). The "other" category is not acceptable.

If development team members (i.e., architect, attorney, contractor) are identified, complete where applicable.

Section L—Application (SAMA and Feasibility Letter): Not applicable.

Section M: All applicants check Block 3 and an authorized officer of the SPONSOR must sign and date. The following certification must be submitted with the application and signed by an authorized officer of the applicant:

The SPONSOR certifies that the Form HUD-92013 and Exhibits in this Application Request are true and correct:

_____
(Legal Name of Sponsor)

By: _____
(Authorized Officer of Sponsor)

_____
(Title)

Date: _____

Sponsor's Fund Reservation Application Checklist

The following checklist is a summary of the steps and exhibits involved in the

application process for a section 202 Capital Advance for housing for the elderly. The checklist is a guide for determining whether your application is completed and properly submitted. All exhibits must be completed according to instructions in the application package.

Application Process

Steps in the application process	*Completed*
1. Obtained copy of application package.	____
2. Attempted Field Office Workshop.	____
3. Completed all exhibits of application.	____
4. Submitted application to Field Office by _____.	____

Application Requirements

Exhibit number	*Description*	*Included in application*
1	Form HUD-92013	____
2	Form HUD-92531A	____
	Consultant's Resume	____
	Identity of Interest & Disclosure Certification	____
3	Articles of Incorporation, Constitution, etc	____
	By-Laws	____
	Incumbency Certificate	____
	IRS Tax Exemption Ruling	____
	Conflict of Interest Resolution	____
4	Narrative—Legal authority to sponsor project & assist Owner	____
	Narrative—Will form Owner	____
5	Narrative—Community ties	____
6	Form HUD-2530	____
7	Narrative—Financial & legal actions taken or pending	____
8	Narrative—Description of previous housing experience	____
9	Narrative—Description of management experience	____
10	Board Resolution of support	____
11	Narrative—Experience serving minorities & with minority business	____
12	List of other applications submitted	____
13	Estimate of start-up expenses	____
	Form HUD-92290 (If 106(b) applicable)	____
14	Certified Board Resolution committing funds	____
	Narrative—Financial history	____
	Financial statements for past three years	____
	Form HUD-2013 Supplement	____
	List of prior year projects	____
15	Narrative—Need for supportive housing	____
16	Evidence of site control	____
	Map showing site location	____
	Sketch of site plan	____
	Evidence of permissive zoning	____
17	Narrative—Persons to be relocated	____
	Estimated cost of relocation	____
	Narrative—Relocation staff	____
18	Narrative—Description of proposed housing	____
19	Unit & floor plans	____
20	Narrative—Description of elderly persons to be served	____
	Form HUD-92013E	____
	Narrative—Description of how services will be provided	____
	Narrative—Description of funding for services	____
21	Civil Rights, Equal Opportunity, etc. certifications	____
22	CHAS certification (Not Applicable for FY 1991)	____
23	Agency on Aging certification	____
24	Certification of conformance with EO 12372	____
25	SF-424	____
26	Lobbying Certification	____
27	Drug-free Workplace Certification	____
28	Design & Cost Standards Certification	____
29	Uniform Relocation Certification	____

BILLING CODE 4210-27-M

OMB Approval No. 2502-0118 (exp. 5/31/92)

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
HOUSING - FEDERAL HOUSING COMMISSIONER AND
U.S. DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION

PREVIOUS PARTICIPATION CERTIFICATION

PART I - CERTIFICATE *(To be completed by Principals of Multifamily Projects.)*

1. TO: *(Name and City of HUD Area Office or USDA-FmHA District Office where the Application is Filed.)*	2. PROJECT NAME, I.D., OR PROJECT NUMBER AND CITY, STATE CONTAINED IN THE APPLICATION ALSO: SECTION 8 CONTRACT NUMBER		
3. LOAN OR CONTRACT AMOUNT $	4. NUMBER OF UNITS OR BEDS	5. SECTION OF ACT *(If known)*	6. TYPE OF PROJECT *(Check One)* ☐ Existing ☐ Rehabilitation ☐ Proposed *(New)*

LIST OF ALL PROPOSED PRINCIPAL PARTICIPANTS

7. Alphabetical List of the Full Names *(last name first)* and Address of all known principals and affiliates *(people, businesses and organizations)* proposing to participate in the project described above.	8. Role of Each Principal	9. Expected % Interest in Ownership	10. Social Security or IRS Employer Number

CERTIFICATION

I *(meaning the individual who signs as well as the corporations, partnerships or other parties listed above who certify)* hereby apply to HUD or USDA - FmHA, as the case may be, for approval to participate as a principal in the role and project listed above based upon my following previous participation record and this Certificate.

I certify that all the statements made by me are true, complete and correct to the best of my knowledge and belief and are made in good faith, including the data contained in Schedule A and Exhibits signed by me and attached to this form.

A. I further certify that:

1. Schedule A contains a listing of every assisted or insured project of HUD, USDA-FmHA and State and Local Government housing finance agencies in which I have been or am now a principal.
2. For the period beginning 10 years prior to the date of this certification, and except as shown by me on the certificate,
   a. No mortgage on a project listed by me has ever been in default, assigned to the Government or foreclosed, nor has mortgage relief by the mortgagee been given;
   b. I have not experienced defaults or noncompliances under any Conventional Contract or Turnkey Contract of Sale in connection with a public housing project;
   c. To the best of my knowledge, there are no unresolved findings raised as a result of HUD audits, management reviews or other Governmental investigations concerning me or my projects;
   d. There has not been a suspension or termination of payments under any HUD assistance contract in which I have had a legal or beneficial interest attributable to my fault or negligence;
   e. I have not been convicted of a felony and am not presently, to my knowledge, the subject of a complaint or indictment charging a felony. *(A felony is defined as any offense punishable by imprisonment for a term exceeding one year, but does not include any offense classified as a misdemeanor under the laws of a State and punishable by imprisonment of two years or less);*
   f. I have not been suspended, debarred or otherwise restricted by any Department or Agency of the Federal Government or of a State Government from doing business with such Department or Agency.
   g. I have not defaulted on an obligation covered by a surety or performance bond and have not been the subject of a claim under an employee fidelity bond.
3. All the names of the parties, known to me to be principals in this project(s) in which I propose to participate, are listed above.
4. I am not a HUD/FmHA employee or a member of a HUD/FmHA employee's immediate household as defined in HUD's Standard of Conduct in 24 CFR 0.735.205(e)(2)/USDA's Standard of Conduct in 7 CFR Part O Subpart B.
5. I am not a principal participant in an assisted or insured project this date on which construction has stopped for a period in excess of 20 days or which has been substantially completed for more than 90 days and documents for closing, including final cost certification have not been filed with HUD or FmHA.
6. To my knowledge I have not been found by HUD or FmHA to be in noncompliance with any applicable civil rights laws.

B. *(APPLICABLE TO GENERAL PARTNERS OR PROJECT OWNERS ONLY)*
All the parties who are principals or who are proposed as principals here are listed above and no principals or identities of interest are concealed or omitted.

C. I am not a Member of Congress or a Resident Commissioner nor otherwise prohibited or limited by law from contracting with the Government of the United States of America.

D. Statements above *(if any)* to which I cannot certify have been deleted by striking through the words with a pen. I have initialed each deletion *(if any)* and have attached a true and accurate signed statement *(if applicable)* to explain the facts and circumstances which I think helps to qualify me as a responsible principal for participation in this project.

Typed or Printed Name of Principal	Signature of Principal	Title, Role or Capacity	Date	Area Code and Telephone No.

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code, Section 1001 and Section 1010.	THIS FORM WAS PREPARED BY *(Please print name)*	AREA CODE & TELEPHONE NO.

REPORT OF INSPECTOR GENERAL - INTERNAL PROCESSING ONLY

THE INDICES OF THE INSPECTOR GENERAL'S OFFICE HAVE BEEN CHECKED FOR THE NAMES OF THE PRINCIPALS LISTED IN PART I ABOVE

AND: ☐ a. WE HAVE NO INFORMATION; OR ☐ b. WE HAVE INFORMATION AND A REPORT IS ATTACHED

DATE	TITLE	SIGNATURE

Previous Editions Obsolete

Page 1 of 2 pages

HUD-2530 (3-87)
HB 4571 1 Rev.

SCHEDULE A - LIST OF PREVIOUS PROJECTS AND SECTION 8 CONTRACTS

By my name below is the complete list of my **previous** projects and my participation history as a principal in Multifamily Housing programs of HUD/USDA-FmHA, State and Local Housing Finance Agencies.

NOTE: Read and follow the attached instructions sheet carefully, Abbreviate where possible. Make full disclosure. Add extra sheets if you need more space. Double check for accuracy. If you have no previous projects write by your name - "No previous participation - First Experience.

1. List each Principal's Name *(List in Alphabetical Order, Last Name First)*	2. List Previous Projects *(Give the I.D. Number, Project Name, City of Location, Government Agency involved and Number of Units in the Project)*	3. List Principal's Participation Role and Interest - Give Month and Year Participation began and ended.	4. Disclose Defaults, Mortgage Relief, Assignments, Foreclosures. If None, write "None."	5. RESERVED FOR HUD PROCESSING

PART II - INTERNAL PROCESSING ONLY

1. Received by the Field Office, checked by me for accuracy and completeness and found ready for processing:

DATE | FTS TELEPHONE NUMBER

SUPERVISOR, PROCESSING CONTROL AND REPORTS UNIT

2. TO: Department of Housing and Urban Development, Multifamily Participation Review Committee, Washington, D.C.
A review of the records and project files of this office relative to the above listed parties and projects reveals:

☐ A. No adverse information, Form HUD-2530 approval is recommended; ☐ B. Problems exist, my memorandum on them is attached.

DIRECTOR OF HOUSING

PROCESSING IS AUTHORIZED

DATE | NAME OF AREA MANAGER

Page 2 of 2 pages

INSTRUCTIONS FOR COMPLETING THE PREVIOUS PARTICIPATION CERTIFICATE, FORM HUD-2530

(Effective January 1, 1981 for HUD Assisted Multifamily Housing Projects.)

PURPOSE -

Form HUD-2530 must be completed and signed by all parties applying to become principal participants in HUD multifamily housing projects. The purpose of this form is to provide HUD with a certified report of all previous participation in HUD multifamily housing projects by those parties making application for additional participation in another HUD MFH project. This form must also be completed by those who have not previously participated in HUD MFH projects.

Before filing this form with the HUD Area or Service office where your project application will be processed, these instructions and the regulations that apply to this form should be read carefully. A copy of those regulations published at 24 CFR 200.210 to 200.245 can be obtained from the Multifamily Housing Representative at any HUD Area or Service office.

The information requested in this form is necessary in order for HUD to determine if you meet the standards established to ensure that all principal participants in HUD projects will honor their legal, financial and contractual obligations and are acceptable risks from the underwriting standpoint of an insurer, lender or governmental agency.

To assist in this determination, HUD requires that you certify your record of previous participation in HUD projects by completing and signing this form, before your project application or participation can be approved. HUD approval of your certification is a necessary precondition for your participation in the project and in the capacity that you propose.

If you do not file this certificate, do not furnish the information requested accurately, or do not meet established standards, you will not be approved and you will not be able to participate in the project as you had planned. Alternatively, approval may be withheld for up to 120 days if HUD feels more information is necessary to make an accurate decision.

Note that approval of your certification does not obligate HUD to approve your project application, and it does not satisfy all other HUD program requirements relative to your qualifications.

WHO MUST SIGN AND FILE FORM HUD-2530 -

Form HUD-2530 must be signed and filed by all principals and their affiliates who propose participating in the HUD project. Principals may all use, sign, and file on the same form or they may elect to file separate forms if that is more convenient. Late comers must file when they decide to join principals who have already filed.

Principals include all individuals, joint ventures, partnerships, corporations, trusts, nonprofit organizations or any other public or private entity that will participate in the proposed project as a sponsor, owner, prime contractor, turnkey developer, or managing agent. In addition, principals include packagers and consultants, defined as individuals or firms providing advisory services in connection with the financing or construction of a project, or with meeting any related HUD requirements. Architects and attorneys who have any interest in the project other than an arms length fee arrangement for professional services are also considered principals by HUD.

In the case of partnerships, all general partners regardless of their percentage interest and limited partners having a 25 percent or more interest in the partnership are considered principals. In the case of public or private corporations or governmental entities, principals include the president, vice president, secretary, treasurer and all other executive officers who are directly responsible to the board of directors, or any equivalent governing body, as well as all directors and each stockholder having a 10 percent or more interest in the corporation.

Affiliates are defined as any person or business concern that directly or indirectly controls the policy of a principal or has the power to do so. A holding or parent corporation would be an example of an affiliate if one of its subsidiaries was a principal.

EXCEPTION FOR CORPORATIONS - ALL PRINCIPALS AND AFFILIATES MUST PERSONALLY SIGN THE CERTIFICATE EXCEPT IN THE FOLLOWING SITUATION. WHEN A CORPORATION OR PUBLIC AGENCY IS A PRINCIPAL, ALL OF ITS OFFICERS, DIRECTORS, COMMISSIONERS, TRUSTEES AND STOCKHOLDERS WITH 10 PERCENT OR MORE OF THE COMMON (VOTING) STOCK NEED NOT SIGN PERSONALLY IF THEY ALL HAVE THE SAME RECORD TO REPORT. THE OFFICER WHO IS AUTHORIZED TO SIGN FOR THE CORPORATION OR AGENCY WILL LIST THE NAMES AND TITLE OF THOSE WHO ELECT NOT TO SIGN. HOWEVER, ANY PERSON WHO HAS A RECORD OF PARTICIPATION IN HUD PROJECTS THAT IS SEPARATE FROM THAT OF HIS OR HER ORGANIZATION MUST REPORT THAT ACTIVITY ON THIS FORM AND SIGN HIS OR HER NAME.

EXEMPTIONS - The names of the following parties do not need to be listed on Form HUD-2530: Public Housing Agencies, tenants, owners of less than five condominium or cooperative units and all others interests acquired by inheritance or court order.

WHERE AND WHEN FORM HUD-2530 MUST BE FILED -

This form must be filed with the HUD Area or Service office where your project application will be processed at the same time you file your project application.

This form must be filed with applications for projects, or when otherwise required in the situations listed below:

- Projects to be financed with mortgages insured under the National Housing Act (FHA).
- Projects to be financed according to Section 202 of the Housing Act of 1959 (Elderly and Handicapped).
- Public Housing projects to be financed according to the United States Housing Act of 1937.
- Projects in which 20 percent or more of the units are to receive a subsidy as described in 24 CFR 200.213.
- Purchase of a project subject to a mortgage insured or held by the Secretary of HUD.
- Purchase of a Secretary-owned project.
- PROPOSED SUBSTITUTION OR ADDITION OF A PRINCIPAL, OR PRINCIPAL PARTICIPATION IN A DIFFERENT CAPACITY FROM THAT PREVIOUSLY APPROVED FOR THE SAME PROJECT.
- PROPOSED ACQUISITION BY AN EXISTING LIMITED PARTNER OF ADDITIONAL INTEREST IN A PROJECT RESULTING IN A TOTAL INTEREST OF 25 PERCENT OR MORE, OR PROPOSED ACQUISITION BY A STOCKHOLDER OF ADDITIONAL INTEREST IN A PROJECT RESULTING IN A TOTAL INTEREST OF 10 PERCENT OR MORE.
- Projects with U.S.D.A., Farmers Home Administration, or with state or local government housing finance agencies that include rental assistance under Section 8 of the Housing Act of 1937. For projects of this type, Form HUD-2530 should be filed with the appropriate applications directly to those agencies.

REVIEW OF ADVERSE DETERMINATION

If approval of your participation in a HUD project is denied, withheld or conditionally granted on the basis of your record of previous participation, you will be notified by the field office. You may request reconsideration by the HUD Review Committee. Alternatively, you may request a hearing before a Hearing Officer. Either request must be made in writing within 30 days from your receipt of the notice of determination.

If you do request reconsideration by the Review Committee and the reconsideration results in an adverse determination, you may then request a hearing before a Hearing Officer. The Hearing Officer will issue a report to the Review Committee. You will be notified of the final ruling by certified mail.

INSTRUCTIONS FOR COMPLETING FORM HUD-2530 -

General Instructions - Either type or print neatly in ink when filling out this form. BE SURE TO MARK ANSWERS IN ALL BLOCKS OF THE FORM. IF THE FORM IS NOT FILLED OUT COMPLETELY, IT WILL DELAY APPROVAL OF YOUR APPLICATION.

If you need more space, attach extra sheets to the form. Be sure to type "Continued on Attachments" wherever appropriate on Form HUD-2530. Also, sign each additional page that is attached if it refers to you or your record.

Sign the certificate ONLY after you have read it carefully. File the original with the HUD Area or Service office that has jurisdiction over the project at the same time the initial project or other application forms are filed before your participation begins. You need to submit only one copy of Form HUD-2530 to HUD - additional copies are not necessary.

If you have many projects to list and expect to be applying frequently for participation in HUD projects, you should consider filing a Master List. See Master List instructions below under "Instructions for Completing Schedule A".

Any questions you have regarding the form or how to complete it can be answered by your HUD Area or Service office Multifamily Housing Representative.

Block Instructions:

BLOCK 1 - Fill in the name of the agency to which you are applying, for example: HUD Area or Service office, Farmers Home Administration District office, or the name of a state or local housing finance agency. Below that, fill in the name of the city where the office is located.

BLOCK 2 - Fill in the name of the project, such as "Greenwood Apts." If the name has not yet been selected, write "Name unknown."

Below that, fill in the HUD contract or project identification number, the Farmers Home Administration project number, or the state or local housing finance agency project or contract number. Include ALL project or contract identification numbers that are relevant to the project.

Below that, fill in the name of the city in which the project is located, and the ZIP Code of the site location.

BLOCK 3 - Fill in the dollar amount requested in the proposed mortgage, or the annual amount of rental assistance requested.

BLOCK 4 - Fill in the number of apartment units proposed, such as "40 units." For hospital projects or nursing homes, fill in the number of beds proposed, such as "100 beds."

BLOCK 5 - If known, fill in the section of the Housing Act under which the application is filed. If unknown, write "Unknown."

BLOCK 6 - Check the appropriate box to indicate whether your application involves an EXISTING project, a REHABILITATION, or a PROPOSED new project.

BLOCK 7 - Alphabetically list the full names, last name first, of all principals (including corporations) and affiliates and their addresses. Definitions of all those who are considered principals and affiliates are given above in the section titled "Who Must Sign and File Form HUD-2530."

BLOCK 8 - Beside the name of each principal, fill in the role that each party listed will perform. The following is a list of the possible roles that the principals may perform: Sponsor, Owner, Prime Contractor, Turnkey Developer, Managing Agent, Packager, Consultant, General Partner, Limited Partner (include percentage), Executive Officer, Director, Trustee, or Major Stockholder.

Beside the name of each affiliate, write the name of the person or firm of affiliation, such as "Affiliate of Smith Construction Co."

INSTRUCTIONS FOR COMPLETING THE PREVIOUS PARTICIPATION CERTIFICATE – FORM HUD-2530 *(Continued)*

BLOCK 9 - Fill in the percentage ownership in the proposed project that each principal is expected to have. Beside the name of those parties who will not be owners, write "None."

BLOCK 10 - Fill in the social security or IRS employer number of every party listed, including affiliates.

INSTRUCTIONS FOR COMPLETING SCHEDULE A -

No Previous Record - EVEN IF YOU HAVE NEVER PARTICIPATED IN A HUD PROJECT BEFORE, YOU MUST COMPLETE FORM HUD-2530. If you have no record of previous projects to list, fill in your name in Column 1 of Schedule A, and write across the form by your name - "No previous participation, first experience."

Frequent Filer's Master List System - If you expect to file this form frequently and you have a long list of previous projects to report on Schedule A, you should consider filing a Master List. By doing so, you will avoid having to list all your previous projects each time you file a new application.

To make a Master List, use Form HUD-2530. On page 1, in Block 1, you should fill in (in capital letters) the words "MASTER LIST." In Blocks 2 through 6 fill in "N.A." meaning Not Applicable. Complete Blocks 7 through 10.

In the box below the statement of certification, fill in the names of all parties who wish to file a Master List together (type or print neatly). Beside each name, every party must sign the form. In the box titled "Proposed Role," fill in "N.A." Also, fill in the date you sign the form and provide a telephone number where you can be reached during the day.

SCHEDULE A, ON THE REVERSE SIDE OF THE FORM MUST BE FILLED OUT COMPLETELY ACCORDING TO THE INSTRUCTIONS BELOW UNDER "All Others." CHECK TO BE SURE THAT SCHEDULE A IS COMPLETE, ACCURATE AND THE CERTIFICATE ON THE FRONT OF FORM 2530 IS PROPERLY DATED AND SIGNED, BECAUSE IT WILL SERVE AS A LEGAL RECORD OF YOUR PREVIOUS EXPERIENCE.

File one copy of the Master List with each HUD Area or Service office where you do business and mail one copy to:

HUD-2530 MASTER LISTS
Previous Participation Branch - Housing
Department of Housing and Urban Development
451 Seventh Street, S. W.
Washington, D. C. 20410

Once you have filed a Master List, you do not need to complete Schedule A when you submit Form HUD-2530. Instead, write the name of the participant in Column 1 of Schedule A and beside that write - "See Master List on file." Also give the date that appears on the Master List that you submitted. Below that, report all changes and additions that have occurred since the date of the Master List. Be sure to include any mortgage defaults, assignments or foreclosures not listed previously.

IF YOU HAVE WITHDRAWN FROM A PROJECT SINCE THE DATE THE MASTER LIST WAS FILED, BE SURE TO NAME THE PROJECT. GIVE THE PROJECT IDENTIFICATION NUMBER, THE MONTH AND YEAR YOUR PARTICIPATION BEGAN AND/OR ENDED.

All Others - Complete Schedule A on the reverse side of Form HUD-2530. All Multifamily Housing projects in which you have previously participated as a state or local government housing finance agencies MUST be listed.

In Column 2 of Schedule A, list all of your previous projects. In addition, list the project or contract identification of each previous project. THE PROJECT OR CONTRACT IDENTIFICATION OF ALL PREVIOUS PROJECTS MUST BE INCLUDED OR YOUR CERTIFICATION CANNOT BE PROCESSED. Also give the name of all projects, the cities in which they are located and the government agency (HUD, USDA-FmHA or state or local housing finance agency) that was involved. At the end of your list of projects in Column 2 of Schedule A, draw a straight line across the page to separate your record of projects from that of others signing this form who have a different record to report.

In Column 3 of Schedule A, list your role in all previous projects (a list of all possible roles is given in the instructions to Block 8). Give the month and year your participation began and/or ended because you do not want your record confused with possible problems caused by others for which you are not responsible.

In Column 4 of Schedule A, you must indicate all defaults, mortgage relief, assignments and foreclosures. Write "Default," "Assignment," or "Foreclosure" and give the date it occurred. If a default has been cured by payment, write the word "Cured" after the word default. If there were none of these on a project, write "None."

CERTIFICATION - AFTER YOU HAVE COMPLETED ALL OTHER PARTS OF FORM HUD-2530, INCLUDING SCHEDULE A, READ THE CERTIFICATION CAREFULLY. In the box below the statement of certification, fill in the name of all principals and affiliates (type or print neatly). Beside the name of each principal and affiliate, each party must sign the form, with the exception in some cases of individuals associated with a corporation (see "Exception for Corporations" in the section of the instructions titled "Who Must Sign and File Form HUD-2530"). Beside each signature, fill in the role of each party (the same as shown in Block 8). In addition, each person who signs the form should fill in the date that he or she signs, as well as providing a telephone number where he or she can be reached during business hours. By providing a telephone number where you can be reached, you will help to prevent any possible delay caused by mailing and processing time in the event HUD has any questions.

If you cannot certify and sign the certificate as it is printed because some statements do not correctly describe your record, do not become discouraged. On the face of the certificate use a pen and strike through those parts that differ with your record, then sign and certify to that part you permitted to remain and which does describe you or your record.

Attach a signed letter, note or explanation of the times you have struck out on the certification and report the facts of your correct record. Item A(2)(e) relates to felony convictions within the past 10 years. If you have been convicted of a felony within 10 years, strike out all of A(2)(e) on the certificate and attach your statement giving your explanation. A felony conviction will not cause your participation to be disapproved unless there is a criminal record or other evidence that your previous conduct or method of doing business has been such that your participation in the project would make it an unacceptable risk from the underwriting standpoint of an insurer, lender or governmental agency.

PRIVACY ACT INFORMATION AND AUTHORITY.
Form HUD-2530 is authorized by law (42 USC 3535(d) and 42 USC 1701 et seq.) and 24 CFR 200.217. This information is collected to evaluate your record with respect to established standards of performance, responsibility and eligibility. HUD must have your social security number (SSN) for identification of your records. HUD may use your SSN for automated processing of your records and to make requests for information about you and your previous records with other public agencies and private sector sources.
Disclosure is not mandatory but you cannot be approved for participation unless you disclose the requested information.
Information HUD has about you may be given to other Federal, State and local agencies for checking on your previous participation record for business practices, for law violations and for other lawful purposes.

Public Reporting Burden for this collection of information is estimated to average 0.6 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2502-0118), Washington, D.C. 20503

U.S. GOVERNMENT PRINTING OFFICE: 1989 O—244-238

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
HOUSING—FEDERAL HOUSING COMMISSIONER

STANDARD CONTRACT FOR HOUSING CONSULTANT SERVICES FOR NONPROFIT PROJECTS UNDER HUD PROGRAMS EXCLUSIVE OF SECTION 202 OF THE HOUSING ACT OF 1959, AS AMENDED

This Agreement made this day of , 19 , by and between , being a nonprofit entity, *(hereinafter referred to as the Sponsor)* and , *(hereinafter referred to as the Housing Consultant).*

WHEREAS, the Sponsor has formed or intends to form a nonprofit mortgagor corporation or association *(the term "Sponsor" shall also include said mortgagor)* to construct, own, operate and maintain a rental housing project, and to make or cause to be made an application to the Secretary of Housing and Urban Development *(hereinafter referred to as Secretary)* for a commitment to insure a loan for the development of a housing project under the provisions of the National Housing Act, as amended, and the regulations issued pursuant thereto, and

WHEREAS, the Sponsor desires to avail itself of the services of a Housing Consultant to assist and counsel the Sponsor in matters affecting the initiation, processing, financing, design, construction, equipping, operation and management of the housing project.

NOW, THEREFORE, the parties mutually agree as follows:

1. The Housing Consultant agrees to provide the following services for or on behalf of the Sponsor in a manner satisfactory to Sponsor and acceptable to the Secretary, which may include guidance in the selection of other persons, firms or organizations with the capability of performing one or more of the services required to:

(a) Assist the Sponsor in making an analysis of available market reports and other pertinent data to determine the type of housing suitable for the neighborhood or area where the project is to be located, the number of units planned and appropriate to the zoning applicable to the site and the approximate rentals to be charged and in collecting all information required to establish the feasibility of the project;

(b) Assist the Sponsor in selecting a suitable site for the development of a rental housing project and obtaining, if necessary, appraisals of the land from a qualified appraiser, and obtaining an option to purchase the land or otherwise arranging suitable terms for the purchase of the real property or, where appropriate obtaining a long-term lease acceptable to the Secretary;

(c) Assist the Sponsor in negotiations with either the Local Public Agency or with the city when the site is within an approved Urban Renewal Project area or a Neighborhood Strategy Area (NSA), respectively;

(d) Assist in the conferences and discussions with the representatives of the Secretary to obtain site approval and feasibility approval of the project;

(e) Assist in the selection of a qualified architect and in the negotiations for a contract to prepare preliminary and final drawings and specifications and provide contract administration during construction;

(f) Assist in the preparation of an application for project mortgage insurance to be executed by the Sponsor and the proposed mortgagee;

(g) Assist in obtaining a construction contract, either through a competitive bidding process or negotiation, which contract will incorporate the drawings and specifications accepted by the Secretary and provide for the construction of the project within a period allowed by the Secretary;

(h) Assist in the selection of and arrangements with an attorney to render to the nonprofit Sponsor such legal services as are necessary to form an eligible nonprofit owner-mortgagor legal entity, to conclude an initial and final closing of the mortgage loan transaction;

(i) Assist in obtaining an acceptable commitment from a qualified lender or lenders to make the construction or interim loan and the permanent loan;

(j) Assist in organizing an eligible nonprofit owner-mortgagor entity to hold title to the real property, in fee or leasehold, and maintain and operate the project over the life of the mortgage in accordance with the requirements of the Secretary, the National Housing Act, as amended, and the Regulations applicable thereto;

(k) Assist the nonprofit owner/mortgagor during the construction phase of the project in matters relating to filing applications for and obtaining monthly construction funds; coordinating and implementing changes in construction; and obtaining the service of a qualified person or firm to prepare the cost certification.

(l) Assist the Sponsor in establishing sound management and operating procedures, including the selection of a qualified management agent; and

(m) Assist and counsel the Sponsor in establishing appropriate methods of keeping records and accounting procedures to meet the requirements of the Secretary.

Delete any of the above duties which are inapplicable and state on an addendum to this contract other duties which the Housing Consultant will perform.

2. (a) The Sponsor agrees to compensate the Housing Consultant by payment of a fee in the amount of $_____.

(b) The fee provided herein shall be due and payable in the following manner:

Up to sixty percent (60%) of the consultant's fee at Initial Endorsement.

During construction, up to seventy-five percent (75%), less any previous payments. This represents an additional fifteen percent (15%) to be paid during the construction period. Payment of this portion of the fee shall be made at the time construction draws are made and amount will be based on percentage of completion.

The balance remaining shall be approved for payment at Final Endorsement.

(c) If a retainer fee in the amount of $_____, as mutually agreed to between the Sponsor and the Housing Consultant, has been paid by the Sponsor to the Housing Consultant, it shall become a part of the total fee due hereunder. In the event the mortgage is insured by the Secretary, the first payment of the fee, as provided in Section 2(b) of this Contract, shall be reduced by the amount of the retainer fee already paid. In the event the application for mortgage insurance is rejected or the mortgage is not endorsed for insurance by the Secretary, the Sponsor agrees to forfeit the retainer and the Housing Consultant agrees to accept the retainer as full compensation under this Contract. This Contract will then become null and void, and the Sponsor shall have no further liability for payments due hereunder.

(d) The fee shall include all those expenses of the Housing Consultant which are reasonably related to providing the services for the Sponsor as set forth herein, including such items as travel and telephone expenses.

3. The services of the Housing Consultant are to commence upon the execution of this Contract and the work required shall be undertaken and completed in an expeditious and business-like manner. Failure to do so, or violation of any of the covenants, agreements or stipulations of this Contract by the Housing Consultant shall give the Sponsor the right to terminate this Contract provided the Housing Consultant is notified in writing five days prior to the effective termination date. If so terminated, the Sponsor shall have no further liability for payments due under this Contract. The Sponsor reserves the right to reduce the total amount of the fee, based on its determination of poor performance or nonperformance of any of the covenants, agreements or stipulations of this Contract by the Housing Consultant; provided, the Housing Consultant is notified in writing of the basis for this determination and the amount of the reduction.

4. The Housing Consultant shall periodically submit written narrative progress reports to the Sponsor.

5. The Sponsor agrees to cooperate with the Housing Consultant in carrying out the purposes of this Contract. Failure to do so, or violations of any of the covenants, agreements or stipulations of this Contract by the Sponsor shall give the Housing Consultant the right to terminate this Contract provided the Sponsor is notified in writing five days prior to the effective termination date. If so terminated, the Housing Consultant shall be entitled to reasonable compensation for all work done under this Contract in accordance with the schedule in paragraph 2.

6. If any time the Sponsor decides not to proceed with the housing project, the Sponsor shall have the right to terminate this contract provided the housing Consultant is notified in writing five days prior to the effective termination date. If so terminated, the Housing Consultant shall be entitled to reasonable compensation for all work done under this Contract in accordance with the schedule in paragraph 2.

7. The Sponsor may from time to time request changes in the scope of the services of the Housing Consultant to be performed hereunder. Such changes, including any increase or decrease in the amount of the Housing Consultant's compensation, which are mutually agreed upon by and between the nonprofit Sponsor and the Housing Consultant, and are approved by the Secretary, shall be incorporated in written amendments to this Contract.

8. To induce the Secretary to insure a mortgage loan financing the development of the project, the Housing Consultant:

(a) Agrees to avers that the statements certified to on Form HUD-92531 under date of_____ are true, correct and complete to the best of his/her knowledge and belief; and

(b) Agrees upon final payment of the fee provided above, to furnish to the Sponsor a certified receipt on Form HUD-92531-B provided by the Secretary reaffirming the statements made in the aforesaid certificate.

9. In no event shall the parties to this Contract have or assert any claim against the Federal Government or the Secretary by reason of this Contract, or any action taken by the Federal Government with respect to the mortgage insurance application, including disapproval of the application.

10. The terms and conditions of this Contract are subject to the review and approval of the Secretary, including HUD-2530 Previous Participation review.

11. Notwithstanding the execution of this Contract by the Nonprofit Sponsor and the Housing Consultant and the fact that work has commenced hereunder, the terms and conditions may be amended upon review and approval by the Secretary.

IN WITNESS WHEREOF, the nonprofit Sponsor and the Housing Consultant have executed this Contract the date first above written.

_____
(Housing Consultant)

_____
(Nonprofit Sponsor)

(NOTE: Appropriate additional provisions may be added as required and agreed upon by the parties to the Contract and approved by the Secretary.)

WARNING

Section 1001 of Title 18 of the United States Code (Criminal Code and Criminal Procedure, 72 Stat. 967) shall apply to such statements. (18 U.S.C. 1001, among other things, provides that whoever knowingly and willfully makes our uses a document or writing containing any false, fictitious, fraudelent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.)

Section 106(b) Nonprofit Sponsor Assistance

"Seed Money" Loan Application

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB No. 2502-0160 (Exp. 03/31/91)

Public reporting burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0160), Washington, D.C. 20503.

No loan may be approved unless a completed application form has been received (24 C.F.R. Part 271).

1. Sponsor (Name, Address, Phone and Person to Contact)		2. Borrower (Name, Address, Phone and Person to Contact)	
3. Date	4. Section 106(b) Application No.	5. Project Number (Mortgage and Subsidy)	6. Section of Housing Act

7. Project Name and Location

8. Purpose and Amount of Financial Assistance	Amount of Assistance Required	HUD Use Only Amount Approved
Organizational Expenses	$	$
Legal Fees	$	$
Consultant Fee	$	$
Architect Fees (Design)	$	$
Preliminary Site Engineering Fees	$	$
Land	$	$
Market Analysis	$	$
Other (Itemize)	$	$
Total	$	$
Loan Amount (80 percent of Total)	$	$
Borrower's share (20 percent of Total)	$	$

PROOF

9a. Is the Borrower, Sponsor or any entity controlled by or under the control of these entities delinquent on any Federal debt?

☐ Yes ☐ No If yes, attach an explanation.

9b. Does the Borrower, Sponsor or any entity controlled by or under the control of these entities have an outstanding Nonprofit Sponsor Assistance "seed money" loan under Section 106(b) of the Housing and Urban Development Act of 1968 and/or Section 207 of the Appalachian Redevelopment Act of 1965?

☐ Yes ☐ No If yes, attach an explanation to show the loan amount, project name, project number, and indicate why the loan has not been repaid.

10a. The undersigned agrees that pursuant to the requirements of the HUD Regulations, (a) neither it nor anyone authorized to act for it will decline to sell, rent or otherwise make available any of the properties or housing in the proposed project to a prospective purchaser or tenant because of his/her race, creed, color, sex or national origin, handicap, or familial status; (b) it will comply with State and local laws of ordinances prohibiting discrimination; and (c) failure or refusal to comply with the requirements of either (a) or (b) shall be a proper basis for the Secretary to reject requests for future business with which the Borrower or Sponsor is identified or to take any other corrective action he or she may deem necessary to carry out the requirements of the HUD Regulations.

10b. The undersigned certifies that the Borrower has or will have available in cash $_____ to meet its share of the "seed money" expenses that no portion of the Borrower's share was or will be obtained from any party seeking to make a profit or monetary gain from the project as set forth in paragraph 271.15(b) of the HUD Regulations (24 CFR, Part 271); that the Borrower/Sponsor has not obtained nor will it obtain a "seed money" loan or grant for this project from any other direct or indirect Federal source; that the total Borrower's share as determined by HUD has been or will be spent for allowable "seed money" items prior to or simultaneously with each expenditure of loan proceeds; and that the information included herein is true and correct to the best of the Borrower's/Sponsor's knowledge.

By: (Signature and Title of Authorized Borrower/Sponsor Official)	Type Name	Date

11. HUD Field Office Approval (Subject to Availability of Funds)

The application is:

☐ Approved in the amount of $_____.

☐ Disapproved (If disapproved, application will be returned to Borrower/Sponsor with explanation attached.)

By: (Signature of HUD Field Office Manager)	Type Name	Date

Name and Address of HUD Field Office

12. HUD Headquarters Reservation of Funds

Funds in the amount of $ _____ are hereby reserved.

By: (Signature of Director, General Programs Division, Office of Finance and Accounting)	Type Name	Date

Warning: Section 1001 of Title 18, United States Code, "Statements or entries generally," provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, ficticious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, ficticious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

Instructions for Preparing Application for Section 106(b) Nonprofit Sponsor Assistance "Seed Money" Loan

The Borrower shall complete form HUD-92290 and submit an original and three copies to the appropriate HUD Field Office. In support of all items listed in Block 8, the Borrower must submit supporting bills, written estimates, receipts, and/or any contracts for professional services which have been let. The Borrower must attach an itemized statement classifying all expenditures and current obligations for the line items listed in Block 8. Expenditures must be shown by check number, date, payee, amount, and purpose.

Blocks 1 through 7 — Self-explanatory.

Block 8. In the "Amount of Assistance Requested" column, enter the sum of the Borrower's share and the Federal share for each item.

(1) **Organizational Expenses:** Enter 75 percent of the Borrower's estimated expenses for telephone, postage a fidelity bond, and travel to and from the HUD Field Office for the period from inception of the project to initial closing. The amount entered for organizational expenses cannot exceed $750.

(2) **Legal Fees:** Enter 15 percent of the amount agreed to between the Borrower and the attorney for legal services, excluding any amount which may relate to title and recording expenses.

(3) **Consultant Fees:** Enter 25 percent of the amount agreed to by the Borrower and the consultant and specified in the consultant's contract. If a consultant has not yet been hired by the Borrower, but will be [illegible] Firm Com-mitment stage, the Borrower should enter 25 percent of the maximum fees specified in the following schedule:

Mortgage Amount	Basic Fee	Incentive Payment
Up to $1,500,000	$20,000	$5,000
From $1,500,000 to $3,500,000	$20,000 plus 1% of excess over $1,500,000	$5,000 plus 1/4 of 1% (0.25%) of excess over $1,5,00,000
Over $3,500,000	$10,000	$10,000

In no event may the entry for this item exceed $12,500 (including maximum incentive payment).

(4) **Architect Fee:** Enter 25 percent of the amount reflected in the contract between the Borrower and the architect. If an architect has not been selected, the Borrower should estimate an amount typically charged for design services for similar projects and enter 25 percent of the estimated amount.

(5) **Preliminary Site Engineering:** Enter the total estimated cost of boundary survey, topographic survey, and soil testing and investigation as supported by bills, receipts, or estimates from surveyors, engineers, soil scientists, etc.

(6) **Land:** Enter the cost to the Borrower of obtaining control of the site, e.g., cost of land options, purchase price, etc. Outright purchases of land are strongly discouraged and will only be approved under the most extenuating circumstances by HUD Headquarters. With respect to land options, options should have extension provisions covering at least two years from the date of the Section 202 or Section 811 fund reservation. Option fees must always apply to the purchase price so that they may be recovered from the Section 202 or Section 811 loan proceeds. Further, they must be reasonable and generally consistent with real estate practices in the area.

(7) **Market Analysis:** Enter any cost incurred to have an analysis conducted on the market needs for the type of housing proposed.

(8) **Other:** Enter and identify any fees and charges for mortgageable items which are eligible "seed money" expenses, but which are not covered elsewhere in this application.

PROOF

In completing Block 8, the Borrower should be mindful that $62,500 is the maximum allowable seed money. The preceding instructions set forth maximums for individual line items. These items may be further limited by the $62,500 overall maximum.

Blocks 9 and 10. Self-explanatory. To be completed by the Borrower.

Block 11. To be completed by HUD.

Block 12. To be completed by HUD.

Supplemental Application and Processing Form Housing For The Elderly

See Instructions on Reverse

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0232 (exp. 11/30/92)

Public reporting burden for this collection of information is estimated to average .75 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0232), Washington, D.C. 20503.

Project Name

☐ Congregate ☐ Mixed
☐ Non-Congregate

Project Number

A. Non-Rent Congregate Living Space	Area Square Feet
1. Congregate Kitchen and Dining	
2. Lobbies	
3. Community Room	
4. Hobby Shop	
5. Infirmary or Health Facility	
6. Other	
7. Other	
8. Total Square Feet	

B. Project Composition

1. Number of Bedrooms	2. Total No. of Units	3. No. of Units With Kitchens	4. No. of Units with Kitchenettes
0-Bedroom Units			
1-Bedroom Units			
2-Bedroom Units			

C. Food Service	Annual Expense Sponsor	Annual Expense HUD
1. Payroll		
Number of cooks _____		
x salary $ _____	$ _____	$ _____
Number of waitresses		
x salary $ _____	$ _____	$ _____
Number of helpers		
x salary $ _____	$ _____	$ _____
2. Food Cost	$ _____	$ _____
3. Supplies	$ _____	$ _____
4. Dining Room Furniture Exp.		
a. Repl. Res: 10% x Equip. Cost $ _____	$ _____	$ _____
b. Int: on Inv: ____ % Int. Rate x Cost $ _____	$ _____	$ _____
c. Maintenance and Repairs	$ _____	$ _____
5. Other *(Specify)*	$ _____	$ _____
6. Other *(Specify)*	$ _____	$ _____
7. Total Food Service Expense	$ _____	$ _____
8. Average No. of Persons Serviced _____		
9. Proposed Charger per Person/per Month	$ _____	$ _____
10. No. of Meals per Person per Day _____		

D. Maid Service	Annual Expense Sponsor	Annual Expense HUD
1. Payroll		
Number of maids _____		
x salary $ _____	$ _____	$ _____
2. Supplies	$ _____	$ _____
3. Other *(Specify)*	$ _____	$ _____
4. Other *(Specify)*	$ _____	$ _____
5. Total Maid Service	$ _____	$ _____
6. Average Number of Units Using Service	$ _____	$ _____
7. Proposed Charge per Unit/ per Month	$ _____	$ _____

E. Health Service	Annual Expense Sponsor	Annual Expense HUD
1. Nursing Payroll		
Number of Nurses		
x salary $ _____	$ _____	$ _____
2. Equipment Expense:		
a. Repl. Res: 10% x Equipment Cost $ _____	$ _____	$ _____
b. Int. on Inv.: _____ % Int. Rate x Cost $ _____	$ _____	$ _____
c. Maintenance and Repairs	$ _____	$ _____
3. Medical Supplies	$ _____	$ _____
4. Utilities	$ _____	$ _____
5. Laundry Service	$ _____	$ _____
6. Other *(Specify)*	$ _____	$ _____
7. Total Health Service	$ _____	$ _____
8a. No. of Beds In Infirmiry _____		
8b. No. of Persons Serviced _____		
9. Proposed Charge per Mo. per Patient _____ per Person _____	$ _____	$ _____

F. Furniture In Units	Annual Expense Sponsor	Annual Expense HUD
1. Furniture Exp. when Leased	$ _____	$ _____
2. Furniture Exp. If Not Leased:		
a. Repl. Res: 10% x Furniture Cost $ _____	$ _____	$ _____
b. Int. on Inv: _____ % Int. Rate x Cost $ _____	$ _____	$ _____
3. Total Furniture Expense	$ _____	$ _____
4. Number of Units Furnished _____	$ _____	$ _____
5. Proposed charge per unit per month to cover furniture rent	$ _____	$ _____

G. Other Non-Shelter Services	Annual Expense Sponsor	Annual Expense HUD
1. Program & Activities Payroll	$ _____	$ _____
2. Other *(Specify)*	$ _____	$ _____
3. Other *(Specify)*	$ _____	$ _____
4. Chg. per Person *(Unit)* for Item 1	$ _____	$ _____
4. Chg. per Person *(Unit)* for Item 2	$ _____	$ _____
6. Chg. per Person *(Unit)* for Item 3	$ _____	$ _____

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H. Remarks & Signatures

The above estimates in "Sponsor" column for Sections C through G represent estimates of income and expense in non-shelter budgets.

Signed	Date	☐ Sponsor, ☐ Mortgagor, ☐ Borrower, ☐ Owner	
Valuation Processor	Date	Reviewer	Date

Instructions

General

Form HUD-92013E must accompany form HUD-92013, Application–Project Mortgage Insurance, for each project intended to provide housing for the elderly.

Preparation of the forms HUD-92013 and HUD-92013E must separate the budget for shelter (and utilities included in the rent) from other budgets concerned with supplying services other than shelter, such as food service, main service, program and recreation service, rented furniture, and any other non-shelter services which may be planned. The non-shelter budgets concerned with supplying food, furniture, maid service, and other personal services are shown on the form HUD-92013E.

All non-shelter services and amenities offered with a charge to the tenant and as a condition of occupancy must be identified on this form. Special circumstances regarding items to be included in an amenity package such as additional charges for additional persons that cannot be readily shown on this form must be explained on an addendum sheet to the form HUD-92013E.

Form HUD-92013E must accompany all requests for feasibility analysis, conditional and firm commitments.

Definitions

An elderly person is defined as one who is age 62 or over. A handicapped person is one whose physical impairment (a) is expected to be of continued and indefinite duration; (b) substantially impedes his ability to live independently; and (c) is such that his ability to live independently could be improved by more suitable housing.

Congregate Housing is designed for persons, normally well and ambulatory, who prefer residential accommodations but need some assistance in day-to-day living. While not a nursing or medical facility, it offers services that protect residents and provide for their needs.

Congregate housing projects have a central dining room generally serving three meals a day, with emergency room service available. There are common areas for lounges, recreation, special activities; limited housekeeping and laundry services may be provided. Some projects have an infirmary with personnel qualified to control and administer medications.

Instructions

Projects having congregate dining facilities with only kitchenettes in the living units, are checked in the box marked "Congregate." Projects having no congregate dining facilities, but having full sized kitchens in the living units are checked in the box marked "Non-Congregate." Projects having congregate dining facilities and having some living units with complete sized kitchens, are checked in the box marked, "Mixed."

Section A. Non-Rent Congregate Living Space Areas

Enter the net area, in square feet, for various kinds of non-rent congregate living space shown, such as, congregate kitchen and dining, lobbies, community rooms, hobby shop, infirmaries, or other non-rented common buildings area. When plans are available, these net areas should be calculated from the plans. Congregate dining facilities should be large enough to serve the probable total number of diners within a single meal period, but not necessarily at a single sitting. The number of diners shall be estimated to include all of the occupants of the units having kitchenettes only, plus a reasonable portion of the occupants of units with full kitchens.

Section B. Project Composition

For each number of bedrooms enter in Column 2 the total number of units. In Column 3, enter the number of units with complete kitchens. In Column 4, enter the number of units with kitchenettes only.

Non-Shelter Income and Expense Budgets.

Sections C through G contain budgets of income and expense for furnishing various non-shelter services. The sponsor enters his estimates of items of income and expense for each budget in the column headed "Sponsor," thus using form HUD-92013E as a supplemental application form. Subsequently, copies of the same form will be used as a processing form, with HUD personnel entering estimates in the Column headed, "HUD."

Section C. Food Service: Annual Expenses.

Line C-1– Estimate the number of cooks times the average annual salary. The number of waitresses, and other employees needed to operate the dining room are also estimated to arrive at payroll, including payroll tax. When the food service operation is large or complex, a detailed explanation of kinds of staff, numbers of employees, rates of pay, payroll tax, and total payroll for food service, should be shown in an attachment. The annual food cost and cost of supplies is also entered.

Line C-4a.–Dining room furniture expense includes an annual reserve for replacement of dining room furniture and equipment. Estimate the replacement reserve by multiplying furniture cost by 10%.

Line C-4b–Return on investment in dining room furniture and equipment is estimated by multiplying the furniture cost by the market interest rate for similar investment.

Line C-4c–Enter the estimated annual allowance for maintenance and repairs to the furniture.

Line C-7–Show the total annual food service expense.

Line C-8–Estimate the probable number of tenants customarily using the congregate dining facility.

Line C-9–Enter the proposed charge per person per month for food service. This charge should be sufficient to provide an annual income at least 3% more than the total food service expense estimated in Line C-7. If a food service concessionaire is contemplated, the proposed terms of the concession shall be completely explained in an attachment.

Line C-10–Enter the number of meals per person per day covered by the proposed food service charge.

Section D. Maid Service: Annual Expense.

Line D-1–Enter the number of mains multiplied by the average annual salary to result in annual payroll.

Line D-2–Enter the annual expense for cleaning supplies.

Line D-3 and 4–If clean sheets are to be provided as part of this service, the word "Laundry" is entered after "other" followed by the annual amount of this expense. Enter other expenses of supplying maid service.

Line D-5–Enter the sum of Lines D-1 through D-4. This represents total maid service expense.

Line D-6–Enter the estimated number of units using this service.

Line D-7–Enter the proposed charge per unit to cover this service.

Section E. Health Service: Annual Expense.

Line E-1–Enter the anticipated number of nurses needed times the average salary including payroll tax. If the health service operation is large or complex, the

sponsor should submit a more detailed estimate of health service payroll in an attachment.

Line E-2–Equipment expenses includes an annual reserve for replacement of beds and other furniture and equipment in the infirmary.

Line E-2– Estimate the replacement reserve by multiplying equipment cost by 10%.

Line E-2b–Return on investment in equipment is estimated by multiplying the furniture cost by the market interest rate for similar investments.

Line E-2c–Enter the estimated annual allowance for maintenance and repairs to the equipment.

Line E-3, 4, 5, and 6–Enter the annual amounts to be expended for medical supplies, utilities, laundry or linen service, and other expenses of the health service facility.

Line E–Enter the sum of lines E-1 through E-6. This represents total health service expense.

Line E-8– Enter the number of beds in the infirmary.

Line E-8–Enter the average number of patients in the infirmary.

Line E-9–Enter the proposed charge per patient or per person. Indicate method of payment.

Section F. Furniture in Living Units.

Line F-1–Indicate the amount of total a nnual payments to the leasing company when furniture for some or all of the living units is obtained by the mortgagor by leasing it

Line F-2a–The renting of furniture by tenant must be optional and not a condition of occupancy. For those units in which the project owns the furniture, furniture expense includes an annual reserve for replacement of living unit furniture. Estimate the replacement reserve by multiplying furniture cost by 10%.

Line F-2b–Return on investment in furniture is estimated by multiplying furniture cost by the market interest rate for similar investments.

Line F-2–Enter the estimated annual allowance for maintenance and repairs to the furniture.

Line F-3–Enter the Total Furniture Expense.

Line F-4–Indicate the number of units furnished by the mortgagor.

Line F-5–Enter the proposed charge per unit per month to cover the furniture expense.

Section G. Other Non-Shelter Services

Line G-1–Enter the salaries of persons employed to furnish guidance and recreation during the leisure time of an elderly person's occupancy in the project.

Lines G-2 and G-3–Enter the amounts covering any other service or facility included in the proposal that would contribute to the health, comfort and recreation of elderly persons, and specify.

Lines G-4, 5 and 6–Enter the charges per person or unit for the respective service of facility.

Section H. Remarks and Signatures

Self Explanatory.

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Supplement to Application for Multifamily Housing Project

To Be Completed by Each Sponsor, and by the General Contractor

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB No. 2502-0029 (Exp. XX/XX/91)

Project Name	Project Number	Name
Address		Telephone Number

Describe Your Affiliation With Project

Credit References: Include all Bank, Finance, Trade and Supply Creditors. You may omit creditors with balances less than $200.00

Firm Name		Address	
Telephone Number	Account Number	Present Balance	Terms
Firm Name		Address	
Telephone Number	Account Number	Present Balance	Terms
Firm Name		Address	
Telephone Number	Account Number	Present Balance	Terms
Firm Name		Address	
Telephone Number	Account Number	Present Balance	Terms
Firm Name		Address	
Telephone Number	Account Number	Present Balance	Terms
Firm Name		Address	
Telephone Number	Account Number	Present Balance	Terms

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Other References

Are you or have you been a defendant in any suit or legal action? ☐ Yes ☐ No
Have you ever claimed bankruptcy or made compromised settlements with creditors? ☐ Yes ☐ No
Are there judgments recorded against you? ☐ Yes ☐ No

If the answer to any of the questions above is yes, give details below

Sponsor: I certify that the foregoing, submitted by me, for the purpose of obtaining mortgage insurance under the National Housing Act, is true and correct to the best of my knowledge and belief.	**Contractor:** I certify that the foregoing, submitted by me, is true and correct to the best of my knowledge and belief.
Signed this day of , 19	Signed this day of , 19
Name	Name

Warning: U. S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part; "Whoever, for the purpose of . . . influencing in any way the action of such Administration . . . makes, passes, utters, or publishes any statement, knowing the same to be false, . . . shall be fined not more than $5,000 or imprisoned not more than two years, or both."

form HUD-92013.1 (02/01/91)
ref. Handbook 4571.1

Personal Financial and Credit Statement

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB No. 2502-0001 (Exp. 11/30/90)

Public reporting burden for this collection of information is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0001), Washington, D.C. 20503.

Privacy Act Statement: The Department of Housing & Urban Development (HUD) is authorized to collect this information by P.L. 479.48, Stat.1246, 12 USC 1701 et. seq.; and the Housing and Community Development Act of 1987, 42 USC 3543, to collect the Social Security Number (SSN). This report is authorized by law (24 CFR 207.1). It will be used, as a minimum, to make a determination of the financial and credit status of the respondent. HUD may disclose this information to Federal, State and local agencies when relevant to civil, criminal, or regulatory investigations and prosecutions. It will not be otherwise disclosed or released outside of HUD, except as required and permitted by law. Providing the SSN is mandatory. Failure to provide any of the information may result in your disapproval of participation in this HUD program and/or delay action on your proposal.

Project Name	Number	Location

Name and Address of Person making this Statement	Social Security Number
PROOF	Date

Assets	Balance	Total	Liabilities and Net Worth		
Cash on hand in banks Name of depository			Accounts Payable		$
			Notes Payable		$
			Debts payable in less than one year (secured by mortgages on land and buildings)		$
		$	Debts payable in less than one year (secured by chattel mortgages or other liens on assets)		$
Accounts Receivable			Other current liabilities: (describe)		
Less: Doubtful Accounts		$			
Notes Receivable					
Less: Doubtful Notes		$			
Stocks and Bonds - Market Value (Schedule A—reverse side)		$			
Other Current Assets: (Describe)			Total Current Liabilities:		$
			Debts payable in more than one year (secured by mortgages on land and buildings)		$
			Debts payable in more than one year (secured by chattel mortgages or other liens on assets)		$
Total Current Assets		$	Other liabilities (describe)		
Real Property — at net* (Schedule B — reverse side)		$			
Machinery Equipment and Fixtures — at net		$			
Life Insurance (Cash value less loans)		$			
Other Assets (describe)					
			Total Liabilities		$
			Net Worth		$
Total Assets		$	Total Liabilities and Net Worth		$

*Cost, including improvements, less depreciation.
Replaces FHA-2417 which is obsolete.

form HUD-92417 (03/27/91)
ref. Handbook XXXX.X

Accounts and Notes Receivable Partner (P) Employee (E) Relative (R) or other (O)*

Type (p,E,R or O)	Name	Address	Maturity Date	Amount
Type (P,E,R or O)	Name	Address	Maturity Date	Amount
Type (P,E,R or O)	Name	Address	Maturity Date	Amount

Life Insurance	Face Value	Beneficiary

Delinquencies

Type Liability	Amount	Circumstances
Type Liability	Amount	Circumstances
Type Liability	Amount	Circumstances

Accounts and Notes Payable

Type (p,E,R or O)*	Name	Address	Amount	Maturity Date
Type (P,E,R or O)*	Name	Address	Amount	Maturity Date

Pledged Assets

Type Pledged	Amount	Offsetting Liability
Type Pledged	Amount	Offsetting Liability
Type Pledged	Amount	Offsetting Liability

Legal Proceedings (If any legal proceedings have been instituted by creditors, or any unsatisfied judgments remain on record, give full details.)

Schedule A — Stocks and Bonds

Description	Current Market Value (At date of this Statement)	If Listed, Name Exchange

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Note: If more space is required use a separate sheet of paper.

Schedule B — Real Property (Indicate Private Residence, if any)

Location and Description of Land and Buildings Owned	Age	Original Cost	Market Value	Assessed Value	Mortgaged For	Insured For
Totals						

Title (The legal and equitable title to all pieces of the above-described real estate is solely in my name, except as follows.)

Location of Real Property	Name of Title Holders

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Bank and/or Trade References

Name and Address	Account Numbers

I hereby certify that the foregoing figures and the statesments contained here, submitted to obtain mortgage insurance under the National Housing Act, are true and give a correct showing of my financial condition as of this date.

Name	Date Signed

Warning—HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. §§ 1001, 1010, 1012; 31 U.S.C. §§ 3729, 3802.)

Application for Multifamily Housing Project

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB No. 2502-0029 (Exp. XX/XX/91)

Public reporting burden for this collection of information is estimated to average 68 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0029), Washington, D.C. 20503.

Section A – Project Identification

1. Name of Project

2. HUD Project Number (Mortgage Ins. or Sec. 202)

3. HUD Project Number (Section 8)

Section B – Purpose of Application

To: The Assistant Secretary for Housing-Federal Housing Commissioner: Application is being made pursuant to Item (a): ☐ 1, ☐ 2, ☐ 3 of Section M, Page 3 hereof. The undersigned desire(s) to participate, with respect to the Property and Program(s) described below. Therefore, it is requested that you give consideration to the information presented herein, for the purpose of loaning and/or approving:

☐ Mortgage Insurance: Section: _____
☐ a Feasibility Letter (Rehab.) ☐ Direct Loan Section 202
☐ a SAMA Letter (New Const.) ☐ Housing Asst. Pymnts. Sec. 8
☐ a Conditional Commitment ☐ a Preliminary Proposal
☐ a Firm Commitment ☐ a Final Proposal

Mortgagor: ☐ PM ☐ NP ☐ LD ☐ B-S Other _____
Financing: ☐ Conventional ☐ GNMA ☐ Bond ☐ State Agency
Other _____
Mortgage/Loan Amount: $_____
Interest Rate: Permanent _____ % Construction _____ %

Section C – Location and Description of Property

1. Street Address	2. Municipality	3. County	4. State and Zip Code	5. Congressional Dist.

6. Type of Project:
☐ Proposed ☐ Rehabilitation
☐ Existing Year Built: 19

7. Number of Units:
Revenue: _____
Non-Revenue: _____
Total: _____

8. No. of Buildings

9. List Accessory Buildings
Area Sq. Ft.

10. List Recreation Facilities
Area Sq. Ft.

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11. Type of Buildings
☐ Elevator ☐ Walkup ☐ Row (T.H.)
☐ Detached ☐ Semi-Detached

12. No. of Stories

13. No. of Elevators

14. Type of Foundation
☐ Slab on Grade ☐ Crawl Space ☐ Partial Bsmt.
☐ Full Basement

15. Structural System	16. Floor System	17. Exterior Finish	18. Heating System	19. Air Conditioning System

Section D – Information Concerning Land or Property

1. Date	2. Price	3. Additional Cost Paid or Accrued	4. Total Cost	5. Outstanding Balance	6. Relationship Between Seller and Buyer, Business, Personal or Other
☐ Acquired ☐ Optioned / /	☐ Purchase ☐ Option $	$	$	$	

7. Site Area Sq. Ft.

8. Zoning (If recently changed, submit evidence)

9. If leasehold, show annual ground rent $ lease term, remaining years

10. Off-Site Facilities:

	Public	Comm.	At Site	Feet from Site
Water	☐	☐	☐	_____ ft.
Sewer	☐	☐	☐	_____ ft.
Paving	☐	☐	☐	_____ ft.
Gas	☐	☐	☐	_____ ft.
Electrical	☐	☐	☐	_____ ft.

11. Unusual Site Features
☐ None ☐ Poor Drainage
☐ Cuts ☐ Retaining Walls
☐ Fill ☐ Rock Foundations
☐ Erosion ☐ High Water Table
☐ Other _____

12. Special Assessments
a. ☐ Prepayable ☐ Non-prepayable
b. Principal Balance $_____
c. Annual Payment $_____
d. Remaining Terms _____ years.

Section E – Estimate of Income

Unit Type	No. of Living Units	No. of Units Assisted	Living Area (Sq. Ft.)	Composition of Units	PBE Not in Rent ($) *(Sec. F-1)	Unit Rent per Mo. ($)	Total Monthly Unit Rent ($)
Employee(s) Liv. Unit(s)							
Totals			**2. Total Estimated Monthly Rentals for All Living Units $**				

3. Number of Parking Spaces
☐ Attended
☐ Self Park
Total Spaces

4. Parking and Other Income (Not Included in Rent)
Open Spaces _____ @ $ _____ per month = $ _____
Covered Spaces _____ @ $ _____ per month = $ _____
Laundry _____ Sq. Ft. or Living Units @ _____ per month = $ _____
Other _____ per month = $ _____
Total Ancillary Income $

5. Commercial Space (Describe)
Area-Ground Level _____ sq. ft. @ $ _____ per sq. ft./month = $ _____
Other Levels _____ sq. ft. @ $ _____ per sq. ft./month = $ _____
Total Commercial $

6. **Total Estimated Monthly Gross Income at 100 Percent Occupancy** $

7. **Total Annual Rent (Item 6 times 12 months)** $

8. Gross Floor Area Sq. Ft.

9. Net Rentable Residential Area Sq. Ft.

10. Net Rentable Commercial Area Sq. Ft.

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Section F – Equipment and Services (Check Items Included in the Rent listed below)

Equipment
☐ Range and Oven
☐ Microwave Oven
☐ Refrigerator
☐ Laundry Facilities
☐ In Common Area
☐ In Living Unit
☐ L.U. Hookup Only
☐ Carpet
☐ Drapes
☐ Swimming Pool
☐ Air Conditioning Equip.
☐ Trash Compactor
☐ Disposal
☐ Other

Services	Gas	Elect.	Oil
☐ Heat	☐	☐	☐
☐ Hot Water	☐	☐	☐
☐ Cooking	☐	☐	
☐ Air Conditioning	☐	☐	
☐ Lights, etc., in Units			
☐ Cold Water	☐ Parking		
☐ Other			

Section F-1 – Utilities (Not in Rent)
*Personal Benefit Expenses (PBE)
Check Utilities and Services Not Included in the Rent and Paid Directly by the Tenant.
☐ Electricity ☐ Heating ☐ Gas
☐ Decorating ☐ Repairs ☐ Water
Other

Remarks

Section G – Estimate of Replacement Cost

Land Improvements

1. Unusual Land Improvements $ _____
2. Other Land Improvements $ _____
3. **Total Land Improvements** $ _____

Structures

4. Main Buildings $ _____
5. Accessory Buildings $ _____
6. Garage $ _____
7. All Other Buildings $ _____
8. **Total Structures** $ _____
9. **Subtotal** (Line 3 plus Line 8) $ _____
10. General Requirements (Line 9 x _____%) $ _____
11. **Subtotal** (Line 9 plus Line 10) $ _____

Fees

12. Builder's General Overhead (Line 11 x _____%) $ _____
13. Builder's Profit (Line 11 x _____%) $ _____
14. **Subtotal** (Sum of Lines 11 through 13) $ _____
15. Bond Premium $ _____
16. Other Fees $ _____
17. **Estimated Total Cost of Construction** $ _____
18. Architect's Fee–Design (Line 14 x _____%) $ _____
19. Architect's Fee–Supervisory (Line 14 x _____%) $ _____
20. **Total For All Improvements** (Sum of Lines 17 through 19) $ _____
21. Cost per Gross Square Foot $ _____ (Line 20 divided by Item 8, Section E)
22. Construction Time _____ Months Plus 2 = _____ Months

Charges and Financing During Construction

23. Interest on $ _____ @ _____% for _____ Months $ _____
24. Taxes $ _____
25. Insurance $ _____
26. HUD/FHA Mtg. Ins. Pre. (0.5%) $ _____
27. HUD/FHA Exam. Fee (0.3%) $ _____
28. HUD/FHA Insp. Fee (0.5%) $ _____
29. Financing Fee (___%) $ _____
30. FNMA/GNMA Fee (___%) $ _____
31. AMPO (2.0%) $ _____
32. Contingency (Sec. 202) (3.0%) $ _____
33. Title and Recording $ _____
34. **Total Charges and Financing** $ _____

Legal, Organization and Audit Fee

35. Legal $ _____
36. Organization $ _____
37. Cost Certification Audit Fee $ _____
38. **Total Legal, Organization and Audit Fee** $ _____
39. Builder's and Sponsor's Profit and Risk $ _____
40. Consultant Fee (Nonprofit Only) $ _____
41. Supplemental Management Fund $ _____
42. Contingency Reserve (Rehabilitation Only) $ _____
43. Relocation Expenses $ _____
44. Other $ _____
45. **Total Estimated Development Cost** (Lines 20 + 34 + 38 through 44) $ _____
46. Land (Estimated Market Price of Site) _____ sq. ft. @ $ _____ per sq. ft. $ _____
47. **Total Estimated Replacement Cost of Project** (Line 43 plus Line 44) $ _____
48. Average Cost per Living Unit $ _____ (Line 45 divided by Total in Sec. C, Item 7)

Section H – Annual Income Computations

1. Estimated Project Gross Income (Line 7, Sec. E, Pg. 2) $ _____
2. Occupancy (Entire Project) _____%
3. Effective Gross Income (Line 1 x Line 2) $ _____
4. **Total Project Expenses** (Line 30, Section 1) $ _____
5. Net Income to Project (Line 3 minus Line 4) $ _____
6. Expense Ratio (Line 4 divided by Line 3) _____%

Section I – Estimate of Annual Expense

Administrative

1. Advertising $ _____
2. Management Fee (_____%) $ _____
3. Other $ _____
4. **Total Administrative** $ _____

Operating

5. Elevator Maintenance Exp. $ _____
6. Fuel – Heating $ _____
7. Fuel – Domestic Hotwater $ _____
8. Lighting and Misc. Power $ _____
9. Water $ _____
10. Gas $ _____
11. Garbage and Trash Removal $ _____
12. Payroll $ _____
13. Other $ _____
14. **Total Operating** $ _____

Maintenance

15. Decorating $ _____
16. Repair $ _____
17. Exterminating $ _____
18. Insurance $ _____
19. Ground Expense $ _____
20. Other $ _____
21. **Total Maintenance** $ _____
22. Replacement Res.: New Const. = (.006 x Line 8, Sec. G Total Struct.) Rehab = (.004 x Mort/Loan Requested in Sec. M) $ _____
23. **Subtotal Expenses** (Sum of Lines 4, 14, 21 and 22) $ _____
24. Real Estate: Est. Assessed Value = $ _____ at $ _____ per $1000 = $ _____
25. Personal Prop. Est. Assessed Value = $ _____ at $ _____ per $1000 = $ _____
26. Employee Payroll Tax $ _____
27. Other $ _____
28. Other $ _____
29. **Total Taxes** $ _____
30. **Total Expenses** (Line 23 plus Line 29) $ _____
31. Avg. exp. per unit per annum (PUPA) (Line 30 divided by **Total** Item 7 Sec. C) $ _____

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Section J – Total Settlement Requirements

1. Development Costs (Line 45, Section G)	$	**Funds Available for Cash Requirements**	
2. Cash Req. for Land Debt/Acquisition	$	15. Source of Cash:	
3. **Subtotal** (Lines 1 plus 2)	$	a.	$
4. Mortgage Amount $		b.	$
5. Development/Cash (Lines 3 minus 4) +/-	$	c.	$
6. Initial Operating Deficit	$	**Subtotal** (a + b + c)	$
7. Discount Costs	$	16. Source of Fees and Grants:	
8. Interest Yield Costs	$	a.	$
9. Working Capital (2% of Mortgage Amount)	$	b.	$
10. Min. Capital Investment (Sec. 202)	$	c.	$
11. Off-Site Construction Costs	$	**Subtotal** (a + b + c)	$
12. Non-Mortgagable Relocation Expenses	$	17. **Total Cash, Fees and Grants**	
13. Other	$	(Sum of Items 15 plus 16)	$
14. **Total Estimated Cash Required** (Sum of Lines 5 through 13)	$	**Note:** Line 17 must equal or exceed Line 14	

Section K – Names, Addresses and Telephone Numbers of the Following

1. ☐ Sponsor, ☐ Mortgagor, ☐ Borrower, ☐ Owner Name		2. Name	
Address		Address	
Telephone Number	Zip Code	Telephone Number	Zip Code
3. ☐ Consultant, ☐ Agent, ☐ Other Authorized Representative Name		4. General Contractor Name	
Address		Address	
Telephone Number	Zip Code	Telephone Number	Zip Code
5. Sponsor's Attorney Name		6. Architect Name	
Address		Address	
Telephone Number	Zip Code	Telephone Number	Zip Code

PROOF

Section L – Application (SAMA and Feasibility Letter)

A. The Undersigned certifies that: (1) He/She is legally authorized to represent the entity(ies) identified below with respect to all transactions pertaining to this application and all matters related to it; (2) Any and all action(s) by the undersigned is/are legally binding on the principal(s) and the entity(ies) being represented; (3) He/She is familiar with the provisions of the regulations issued by the Department of Housing and Urban Development (HUD) pursuant to the above-identified Section (s) of the respective Housing Act(s); (4) To the best of his/her knowledge and belief, the entity(ies) identified below has/have complied, or will be able to comply, with all the requirements of the regulations which are a prerequisite with respect to participation in the program(s) selected; (5) The principal(s) of the entity(ies) identified below are familiar with the specific provisions of the Right to Financial Privacy Act of 1978; (6) the principal(s) is/are aware that disclosure of certain financial information will be required by HUD in the course of processing this application; (7) That he/she has made a physical inspection of the property and, in his/her opinion, the site plan submitted conveys a concept which can be reasonably followed in practice; (8) The proposed construction will not violate recorded zoning ordinances or restrictions; (9) To the best of his/her knowledge and belief no information or data contained herein or in the exhibits or attachments submitted herewith, are in any way false or incorrect and that they are truly descriptive of the project or property which is intended as security for the proposed mortgage loan and/or is presented for consideration with respect to the request for approval of a Housing Assistance Payments Contract.

B. The Undersigned assures and agrees that: (1) Pursuant to the regulations and the related requirements of HUD neither the entity(ies) identified below nor anyone authorized to act on its/their behalf, will decline to sell, rent or otherwise make available any of the property or housing in the project, identified herein, to a prospective purchaser or tenant because of race, color, religion, sex, or national origin; (2) The entity(ies) identified below will comply with Federal, State and local laws and ordinances prohibiting discrimination; and (3) Failure or refusal to comply with the requirements of either (1) or (2) shall constitute sufficient basis for the Commissioner to reject requests for future business with the identified entity(ies) or to take any other action that may be appropriate.

C. ☐ Herewith is a check for $_____ in payment of the required fee for a SAMA letter.

Principal Contact	Signed	Date
Telephone Number	On Behalf of: ☐ Sponsor, ☐ Mortgagor, ☐ Borrower, ☐ Owner	

Section M – To The Federal Housing Commissioner

☐ 1. **Request for Mortgage Insurance:**
Request is hereby made for a ☐ **Conditional Commitment** ☐ **Firm Commitment** to provide mortgage insurance on a loan, which will involve: ☐ Insurance of Advances During Construction ☐ Insurance Upon Completion, with respect to a principal loan of $ _____ which will bear interest at the rate of _____% on the Construction Loan and _____% on the Permanent Loan. The undersigned mortgagee requests consideration for mortgage insurance pursuant to the provisions of Section _____ of the National Housing Act, and the HUD regulations applicable thereto. Said insurance is being requested to cover a loan which is to be secured by a first mortgage on the property described herein. After examining the proposed security, the undersigned considers such project to be desirable and is interested in making a loan in the principal amount and at the interest rate stated above. The loan will require repayment of the principal over a period of _____ months (_____ years) in accordance with an amortization plan acceptable to you. It is understood and agreed that the actual financing fee (Item G-29) will not exceed _____% of your commitment amount. Presented herewith is a check for $ _____ which is in payment of the application fee required by HUD regulations.

☐ 2. **Request for Approval of Housing Assistance Payments Contract (Section 8):**
The undersigned owner requests your consideration with respect to approving a Housing Assistance Payments Contract pursuant to Section 8 of the U.S. Housing Act of 1937, as amended, and the related regulations applicable thereto. Submitted herewith is a proposal which defines the scope of the improvements and the type and quality of the housing which will be provided on the property described herein. Said property, upon completion of the improvements, will comply with the applicable standards and related regulations of the Department of Housing and Urban Development. Such proposed housing is being offered for lease, to eligible tenants at the stated contract rents, pursuant to the provisions of the regulations pertaining to the above-referenced U.S. Housing Act.

☐ 3. **Request for a Section 202 Loan:** Principal Amount $ _____ @ Permanent Interest Rate of _____%
Pursuant to Section 202 of the Housing Act of 1959, as amended, and the regulations applicable thereto, the undersigned borrower hereby requests a loan in the principal amount and at the interest rate stated above. The proceeds of the loan are to be used for development of the property desribed herein. The scope of the development of the property will be consistent with that information pertaining to improvements, submitted for your consideration. The loan is to be secured by a first mortgage on the property described herein. The principal amount of the loan will be repaid over a period of _____ months (_____ years) in accordance with an amortization plan acceptable to you.

Name and Address of Mortgagee	Principal Contact Telephone Number

Signed (Proposed Mortgagee) (Use with Item 1)	Date	Signed (Owner Item 2) (Borrower Item 3)	Date

Section N – Required Exhibits: Mortgage Insurance and Section 202 Direct Loan Applications

Item Number	Exhibit Title	FNMA or Feasibility*	Conditional Commitment	Firm Commitment
1	Location Map	X		
2	Legal Description of the Property	X		
3	Evidence of Permissive Zoning	X		
4	Sketch Plan of the Site	X		
5	Evidence of Site Control (Option or Purchase)	X		
6	Evidence of Last Arms-Length Transaction and Price, including a Certification by Sponsor that Evidence Submitted in Response to this Item Reflects Last-Arms Length Purchase Price	X		
7	Form 2010 – Equal Employment Opportunity Certification	X		
8	Form 3433 – Eligibility as Nonprofit Corporation	X		
9	Form HUD-2530 – Previous Participation Certificate	X		
10	Form HUD-92013-E – Supplement to HUD-92013	X**		
11	Form FHA-2013R – Application for Project Mortgage Insurance (Rehabilitation)	X****	X	X
12	Affirmative Marketing Plan		X	
13	Management Plan and Questionnaire for the Sponsor and Managing Agent (HUD-9405A and HUD-9405B)		X	
14	Grant and/or Loan Commitment Letter (if applicable)		X	
15	Form HUD-92013-E – Supplement to HUD-92013		X**	
16	Form HUD-92013 – Supplement – For Each Sponsor and General Contractor		X***	X
17	Form HUD-92417 – Personal Financial Statement for Each Sponsor and General Contractor		X***	X
18	Personal and Commercial Credit Report for Each Sponsor and General Contractor		X***	X
19	Owner/Architect Agreement		X	
20	Architectural Exhibits – Preliminary		X	
21	Architectural Exhibits – Final			X
22	Form HUD-92329 – Contractor's and/or Mortgagor's Cost Breakdown			X
23	Form HUD-92457 and Land Survey			X
24	Form HUD-92013-E – Supplement to HUD-92013			X**
25	Management Agreement			X

* Mortgage Insurance Applications Only.
** For Handicapped and Elderly Projects Only.
*** If General Contractor is known – Otherwise submit with Firm Commitment Application
**** Submit for Rehabilitation Projects only. Complete Sections A, B, C, D, E, F, G, H and I.

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Required Exhibits: Section 8 Housing Assistance Contract Applications

The Developer Packet which applies to the specific Notification of Fund Availability (NOFA) identifies the exhibits which are required with the Preliminary and Final Proposal Applications.

The Developer Packet is available at the HUD Field Office which issued the NOFA to which the application is responding.

For HUD Use Only						
Date Received						
Amount						
Code						
Schedule						
Received By						

Instructions for Completing Application – Multifamily Projects, Form HUD-92013

Foreword: This Application is used for rental projects to request: (a) mortgage insurance, (b) a direct loan under Section 202, or (c) a Section 8 Housing Assistance Payments Contract. For mortgage insurance there are a maximum of three stages: (1) a request for a Site Appraisal and Market Analysis letter (SAMA letter) for new construction, or a Feasibility letter for a rehabilitation project. (Application for a SAMA or Feasibility letter may be submitted directly to a HUD Area Office or Multifamily Service Office by letter or in person); (2) an application for a Conditional Commitment; and (3) for a Firm Commitment. Both (2) and (3) must be submitted by an approved mortgagee to a HUD Area Office or Multifamily Service Office. For a direct loan, under Section 202, this Application is submitted to a HUD Area Office or Multifamily Service Office at the Conditional and Firm Commitment stages of processing. If Section 8 is combined with an insured mortgage, the preliminary proposal processing may be combined with SAMA or Feasibility stages of processing. The final proposal is [illegible] processed with the Firm Commitment Application in mortgage insurance.

Except for Rehabilitation Proposals under Section 202, a sponsor may combine two or three stages provided he/she has plans and exhibits that are sufficiently completed.

If a stage of processing is omitted, the exhibits for that stage are submitted with those required for the subsequent stage or stages. **Information for all stages must be submitted in triplicate.**

HUD Area or Service Office personnel will advise and assist sponsors and potential sponsors at all stages in connection with the submission of applications.

Application Completion Requirements For:

I. Insured: **SAMA**—Complete Page 1, in its entirety. Page 2, Complete only Section G, Item 46, Land (Estimated Market Price of Site). Page 3, Sections K, L and M. **Feasibility**—A request for feasibility analysis (rehabilitation) must be submitted with this form completed in its entirety. **Conditional/Firm**—A request for conditional or firm commitment must be submitted with this form completed in its entirety.

II. Section 202 Direct Loan: This form must be complete in its entirety when a conditional or firm commitment under the Section 202 direct loan program is being requested.

III. Section 8: **Preliminary Proposal**—Complete Page 1 in its entirety, (indicate type of occupancy, i.e., Elderly (E), Handicapped (H) or Family (F) in Section E, Unit Type). Page 2, Section G, Lines 46 and 47; Section I, Line 30. Page 3, Section K (to extent known) and Section M, Item 2. **Final Proposal**—Complete this form in its entirety except for Section L.

Section A – Identification

Item 1—Enter project name.

Items 2 and 3—Enter HUD project number for mortgage insurance and/or Section 8, if known.

Section B – Purpose of Application

Indicate actions requested by checking all applicable blocks and/or making entries where appropriate. For example, if an application is being submitted for the first stage of an uninsured project with housing assistance payments under Section 8, the Housing Assistance Payments Section 8 block will be checked as well as blocks for "A Preliminary Proposal", "Conventional Financing", and "Item 2 of Section M." If mortgage insurance will eventually be used "Conventional Financing" is not checked, but instead the block "Mortgage Insurance" is checked and the Section of Act entered in the blank space. In the Section 8 Preliminary Proposal stage do not check SAMA (Site Appraisal and Market Analysis) or feasibility letter, unless SAMA letter or feasibility letter is requested at that time and the SAMA fee is paid. The appropriate block for type of mortgagor (i.e. Profit Motivated, Nonprofit, Limited Dividend, Builder-Seller, or Other) and type of financing (i.e. Conventional, GNMA, Bond, or State Agency must be checked). Also, enter the amount of the requested Mortgage and the Permanent and Interim Interest Rates in the appropriate spaces.

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Section C – Location and Description of Property

Items 1 through 4—Self-explanatory.

Item 5—Congressional District may be obtained from the Congressional Directory, Maps Of Congressional Districts.

Items 6 through 10—Self-explanatory.

Item 11—(a) Detached – A dwelling structure containing one living unit, surrounded by permanent open spaces; (b) Semi-detached – A dwelling structure containing two contiguous living units separated by a vertical division termed a common, party, or lot wall; (c) Row or Townhouse – A non-elevator structure containing three or more contiguous living units separated by a vertical division termed common, party or lot line walls. Row/townhouse units may not be enclosed on more than two sides by party or lot line walls and must have permanent open space contiguous to no fewer than two sides. Units will usually have private entrance and private interior stairs; (d) Walk-up – A multi-level structure of two or more living units which does not contain an elevator, wth the units separated horizontally by floor and/or ceiling structural elements. (Note: Structures containing 2 or more dwelling units, whether one story or multi-story, which do not comply with the definitions herein of either a semi-detached/row or an elevator structure, shall be classified as "walkup"). (e) Elevator Structure – A dwelling structure, having two or more stories above finish grade and containing one or more elevators.

Items 12 through 19—Self-explanatory.

Section D – Information Concerning Land or Property

Items 1 and 2—Self-explanatory.

In Item 3 insert any cost paid, or contracted, in addition to the stipulated purchase price. If the proposed site will require demolition expense, or other preparatory expense, this should be indicated and explained on an attached sheet.

Items 4 through 8—Self-explanatory.

Item 9—If the proposed site is leased, indicate the dollar amount of annual ground rental.

Items 10 through 12—Self-explanatory.

Section E – Estimate of Income

Item 1—Unit Type – The various unit types the proposal will have must be listed in this column. Usually the distinction will be on the basis of number of bedrooms and/or number of baths each unit will have. If there are units with the same bedroom and bathroom count but significantly different living area, or other characteristics, that would normally be reflected in rent differential, they must be listed as a separate unit type. If there are both elevator and non-elevator units, a separate identification for unit type must be made for each. Provision has been made for 5 different unit types. This can readily be doubled by dividing each of the existing lines in half. In the rare instance where additional space is needed, an additional page of another Form HUD-92013 or a plain paper listing all of the information shown in Section E for the additional unit types must be attached. (Note: If an attachment is used, a remark asterisked on the original Form HUD-92013 must be made so that all parties using the application would be aware that there is an attachment involved.) **Care must be exercised to assure that excessive unit types are not created on the basis of minor unit market characteristics,** such as a difference of only a few square feet between units that are otherwise the same.

No. of Living Units – Enter here, for each unit type, the number of that unit type the project will have.

No. of Units Assisted – Show number of each unit type to receive Section 8 Housing Assistance Payments, if any.

Living Area (Sq. Ft.) is the area of each living unit measured from the inside faces of corridor and exterior walls and from the inside faces of partitions separating the living unit from other living or commercial areas.

Composition of Units – List here in abbreviated form, the rooms within each unit type, (i.e., L for living room, D for dining room, K for kitchen, BR for bedroom) (precede BR with number of bedrooms—e.g., 0BR, 1BR, or 2BR), B for bath (precede the B with 1 for each full bath, a 1/2 for each halfbath, or any combination appropriate), Bal. for balcony, etc.).

PBE Not In Rent (Sec. F-1) – Personal Benefit Expense (PBE), sometimes referred to as a Utility Allowance in the Section 8 program, is an estimate of the utilities or other expense to be paid by tenants that are not included in the owner's monthly contract rent estimate. This estimate must be compatible with the entries in Item F-1, Utilities (Not in Rent).

Unit Rent Per Mo. ($) – Enter here the proposed rent for each unit type. If several floors of units are involved, the issue of proposed rental difference per floor, appropriate for the market, must be addressed. Usually the midpoint rents in a high-rise structure are reflected. The dollar difference per floor, if any, must be communicated by the applicant.

Total Monthly Unit Rent is the Unit Rent Per Month ($) times the No. of Living Units of that type and represents the Gross Income that can be anticipated for those units.

Employee(s) Living Unit(s) – List the number of employee living units for which rental income will not be received, the square foot area of each unit, and its unit composition. Employee living units must be included in the total units for the project, since they affect project operating expense estimates.

Items 2 through 7—Self-explanatory.

Item 8—At SAMA or feasibility stage insert the estimated gross floor area which is the sum of all floor areas of headroom height within the exterior walls. When completing a request for Conditional or Firm Commitment, insert the gross floor area computed from the plans.

Items 9 and 10 – Net Rentable Residential Area/Net Rentable Commercial Area is the sum of all living/commercial areas within the exterior walls, measured from the interior faces of the exterior walls, corridor walls, and partitions separating the area from other living or commercial areas. Existing comparable structures should be used as a guide by the sponsor in making these estimates at SAMA stage. At the Conditional or Firm Commitment stages, these areas should be calculated from the floor plans.

Section F – Equipment and Services—Self-explanatory.

Section G – Estimate of Replacement Cost

Line 1—Unusual Land Improvements – Enter cost for unusual site preparation such as pilings, retaining walls, fill, etc.

Line 2—Other Land Improvements – Enter cost of other land improvements such as on-site utilities, landscape work, drives and walks.

Lines 3 through 9—Self-explanatory.

Line 10—General Requirements – See Uniform System for Construction Specifications, Data Filing and Cost Accounting. Pages 1.3 and 1.4.

Lines 11 through 20—Self-explanatory.

Line 21—Enter the estimated cost per gross square foot of building area (Line 20 divided by Item 8 of Section E, page 1).

Line 22—Enter the estimated period that will be reflected in the construction contract. The construction time plus the two months equals the total estimated "construction period".

Line 23—Interest is the amount estimated to accrue during the anticipated construction period. It is computed on one-half of the loan amount.

Line 24—Taxes which accrue during the construction are estimated and included as the tax amount.

Line 25—Insurance includes fire, windstorm, extended coverage, liability, and other risks customarily insured against in the community. It does not include workmen's compensation, or public liability insurance, which are included in the cost estimate.

(Note: Lines 26 through 31 are not applicable to Section 202 Direct Loan applications.)

Line 26—HUD/FHA mortgage insurance premium is the amount to be earned during the estimated construction period. The amount should be computed on the requested loan amount at 1/2 of 1% per year or fraction of a year. If the estimated construction period exceeds one year, the premium will be based on a two-year period.

Line 27—HUD/FHA examination fee is computed at $3 per $1000 of the requested loan amount.

Line 28—HUD/FHA inspection fee is computed at $5 per $1000 of the requested loan amount when the project involves new construction, and on the estimated cost of rehabilitation when the project involves the rehabilitation of an existing structure.

Line 29—Financing fee is computed at a maximum of 2% on the loan amount. It is an initial service charge. This fee is not to be confused with discounts.

Line 30—Enter FNMA/GNMA fee here. HUD Field Office personnel will advise interested sponsors and mortgagees of the current maximum allowable rate for this fee and the conditions pursuant to which such fee may be included.

Line 31—AMPO is the Allowance to Make Project Operational and is computed [illegible] the maximum Mortgage insurance amount. It is allowable in cases involving nonprofit mortgagors (not including cooperative mortgagors).

Line 32—Self-explanatory.

Line 33—Title and Recording Expenses – This is the cost typically incurred for these items, by mortgagor, in connection with a mortgage transaction. This cost generally includes such items as recording fees, mortgage and stamp taxes, cost of survey, and title insurance including all title work involved between initial and final endorsement.

Line 34—Self-explanatory.

Lines 35, 36 and 37—Legal Organizational and Cost Certification Audit Fee – This estimate is to be based upon the typical cost usually incurred for these services in the area where the project is to be located. These items must be recorded separately.

Line 38—Self-explanatory.

Line 39—Builder's and Sponsor's Profit and Risk Allowance – This is based on total estimated cost of on-site utilities, landscape work, structures, general overhead expenses, architect's fees, carrying charges, financing, legal, organization and audit expenses. It is allowable in 220, 221(d)(3) Limited Distribution or profit-motivated, 236 Limited Distribution, 221(d)(4), and 231 profit-motivated projects. It is in lieu of, and not in addition to, builder's profit.

Line 40—Consultant's Fee, if any, enter amount to be charged the non-profit sponsor by a qualified consultant.

Line 41—Supplemental Management Fund for subsidized living units only – Allowance must not exceed $100 per assisted unit, excluding non-revenue producing units, if any.

Line 42—Contingency Reserve – An amount allowable for rehabilitation projects only, not to exceed 10% of the sum of Line 11 in Section G.

Lines 43, 44 and 45—Self-explanatory.

Line 46—Land (Estimated Market Price of Site) – Enter sponsor's estimate of market price of site including off-site costs. If site was purchased from public body, for a specific re-use, enter purchase price plus holding cost and any other

cost that the purchaser is required to pay, pursuant to specific conditions of the contract of sale. For Rehabilitation interline the "As Is" Value of Property.

Lines 47 and 48—Self-explanatory.

Section H – Annual Income Computations—Self-explanatory.

Section I – Estimate of Annual Expense

Lines 1 through 12—Self-explanatory.

Line 13—Other – Reflect expense not specifically listed, such as, project security. Contract Security if provided should include contract guard service, performed either part or full-time, in connection with project operation. If security services are performed by staff employees, their salaries are included under Line 12, Payroll expense.

Lines 14 through 30—Self-explanatory.

In housing for the Elderly, Line 23, will include only the expenses resulting from supplying tenants with shelter and utilities included in the rent. Separate income and expense budgets for supplying tenants with non-shelter services must be shown on Form HUD-92013-E, supplement to this application and used with all Elderly/Handicapped Housing proposals.

Section J – Total Settlement Requirements

Line 1—Self-explanatory.

Line 2—Enter amount required to clear title to site. If land is to be acquired, the unpaid balance of the purchase price shall be entered. If leasehold, or land owned free and clear of encumbrances, enter "none." Indebtedness against land must be supported by options, purchase agreements, pay-off balances, etc.

Line 3—Enter the sum of "Development Cost" and "Land Indebtedness."

Line 4—Enter principal amount of mortgage requested.

Line 5—Self-explanatory.

Line 6—Enter the amount required to meet operating and debt service expense from project completion until such time as income is adequate to provide a self-sustaining operation.

Line 7—Enter discount to be paid for placement of the permanent mortgage as well as any discount required by the construction lender.

Line 8—Enter the maximum interest yield cost.

Line 9—Enter 2 percent of the mortgage amount requested. No entry is required for nonprofit mortgagors.

Line 10—Enter one-half of one percent (.5%) of the total loan requested or $10,000, whichever is the lesser.

Line 11—Enter the cost of required improvements beyond property lines, such as streets and utilities, etc., which will not be installed at public or utility company expense.

Line 12—Enter relocation expenses in excess of amount allowed in replacement cost.

Line 13—Other – Enter any and all cost not identified elsewhere.

Line 14—Self-explanatory.

Line 15—Enter principal(s) cash contribution.

Line 16—Identify fees waived or deferred during construction or paid by means other than cash, i.e., BSPRA, builder's profit; identify grants/loans and the respective amounts.

Line 17—Self-explanatory.

Sections K, L, M, and N—Self-explanatory.

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BILLING CODE 4210-27-C

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. FR2986]

Excerpts from Unpublished Notice of Funding Availability, Illustrating Information collections. [Draft—Not Being Published for Effect]

TITLE: Notice of Fund Availability (NOFA) for Supportive Housing for the Elderly;

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

ACTION: Notice of fund availability for FY91.

* * * * *

FOR FURTHER INFORMATION CONTACT: The HUD Field Office for your jurisdiction.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The Department has submitted this NOFA to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. Pending approval of these collections of information by OMB and the assignment of an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register.**

Public reporting burden for the collection of information requirements contained in this NOFA are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Findings and Certifications.* Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, S.W., room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20530.

I. Purpose and Substantive Description

A. Authority

Section 801 of the National Affordable Housing Act (the NAH Act) amended section 202 of the Housing Act of 1959. It authorizes the Secretary to provide assistance to private nonprofit organizations and nonprofit consumer cooperatives to expand the supply of supportive housing for the elderly. The assistance will be provided as capital advances and contracts for project rental assistance in accordance with the Interim Rule for part 889 also published on this date (FR).

* * * * *

Of special interest is the Department's implementation of section 105 of the NAH Act which requires for this program that the application include a certification of consistency of the proposal with an approved housing strategy for the jursidiction in which the proposed project will be located. It was announced in the preamble to the Comprehensive Housing Affordability Strategies ("CHAS") interim rule published on February 4, 1991 (56 FR 4480) that applications for FY 1991 funding under this program would include the certification based on an assumption that a CHAS could be prepared by April, in advance of a June application period. However, the body of the rule (Section 91.1(b)(2)) refers to individual program regulations as the authority for transition provisions. This program rules reverses the prior decision to apply the CHAS certification requirement for FY 1991 funding of this program. As stated in the body of the Interim Rule for Part 889, beginning in FY 1992, all applications for funding under this program must include a certification from the responsible public official that the project is consistent with an approved CHAS.

For FY 1991 applications, the CHAS certification requirement is not to be applied to this program, because it is not strictly required or feasible. The NAH Act did not require implementation of this program until FY 1992. However, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1991, suggested conversion to this new program in FY 1991, not mentioning the applicability of any CHAS certification. In order to permit the funding of this program in FY 1991 and maximize accomplishment of the purposes of both the NAH Act and the appropriations, the Department decided to implement this program in FY 1991. But the authorization statute which contemplated implementation of this program in FY 1992 did not address the issue of applicability of the CHAS requirement before that date.

In reviewing the schedule for FY 1991 implementation, the Department has considered the amount of time required of a State or locality to develop as CHAS, including the hearing necessary to obtain citizen participation. The Department has determined that the April projection for completion of that process is now infeasible. Moreover, HUD's own role of announcing the availability of funding, conducting workshops and training, approving a housing strategy, and preparing, accepting and reviewing applications makes it unlikely that it could approve CHASes in time to permit Sponsors (applicants) to receive timely CHAS certifications. Neither the authorization statute nor the appropriation statute compels the requirement of a CHAS certification in FY 1991. Therefore, to be most fair to entrants in this new significantly revised program, the Department is providing transition by delaying applicability of the CHAS certification until FY 1992.

Also of special interest is a new statutory requirement for a certification by the appropriate State or local agency (typically the Area Agency on Aging) that the services identified in the application are well designed for the category or categories of elderly persons the housing is intended to serve. Therefore, the Sponsor must develop and submit its service plan to the appropriate agency to obtain the required certification. In view of the short timeframe in this fiscal year for submission of applications to HUD, this certification will be accepted even if not signed and submitted to the Field Office by the application deadline date, if it is received by the Field Office within 30 days following the application deadline date.

* * * * *

D. Preliminary Evaluation and Selection Criteria

1. Preliminary Evaluation

Applications for section 202 Fund Reservations for housing for the elderly that meet the following initial threshold requirements at preliminary evaluation will be eligible for technical processing:

(a) Application was received by HUD at the appropriate address by June 17, 1991 and was complete or is missing no more than one complete exhibit (excluding exhibits which are certifications);

(b) Sponsor acceptably corrected deficiencies (including furnishing missing certifications) within 14 calendar days from the date of the notification letter;

(c) Sponsor, proposed facilities and proposed occupants are eligible under section 202;

(d) Sponsor has experience in developing and/or operating housing, medical or other facilities and/or providing services to the elderly, families or minority groups;

(e) There is reasonable expectation that the Sponsor can meet the Minimum Capital Investment requirement and start-up expenses;

(f) Sponsor provided evidence of legally-binding site control;

(g) The Sponsor is in compliance with civil rights laws and regulations as follows:

(i) There are no pending civil rights suits against the Sponsor instituted by the Department of Justice;

(ii) There are no outstanding findings of noncompliance with civil rights statutes, Executive Orders or regulations as a result of formal administrative proceedings, or where the Secretary has issued a charge under the Fair Housing Act, unless the Sponsor is operating under a compliance agreement designed to correct the areas of noncompliance;

(iii) There has not been a deferral of the processing of applications from the Sponsor imposed by HUD under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3), and the HUD Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1).

(h) Even without a site visit, it is reasonable to expect the proposed site meets site and neighborhood standards, including minority elderly concentration considerations, and is not in a floodway;

(i) There is sufficient market demand for the number of units proposed based on preliminary review; and

(j) Application was responsive to the Field Office Invitation (*i.e.*, did not request more units than advertised);

* * * * *

II. Application Process

All applications for Section 202 Fund Reservations submitted by eligible Sponsors must be filed with the appropriate HUD Field Office receiving an allocation and must contain all exhibits required by this Notice.

Immediately upon publication of this NOFA, Field Offices shall notify minority organizations within their jurisdiction involved in housing and community development and groups with special interest in housing for elderly households.

Within three weeks of the date of this Notice, HUD Field Offices will publish a one-time Invitation as required by § 889.205(b) of the Interim Rule, in newspapers of general circulation, and in any minority newspapers serving the Field Office jurisdiction. Field Offices will accept applications after publication of the Invitation. No application will be accepted after the regular closing time of the appropriate Field Office on June 17, 1991, unless that time is extended by a Notice published in the **Federal Register**. Applications received after that date and time will not be accepted, even if postmarked by the deadline date.

Organizations interested in applying for a section 202 Fund Reservation should provide the appropriate Field Office with their names, addresses and telephone numbers, and advise the Field Office whether they wish to attend the workshop described below. HUD encourages minority organizations to participate in this program as Sponsors. Field Offices, at the date and time specified in the Invitations, will conduct workshops to explain the Section 202 Program and the Seed Money Loan Program under section 106(b) of the Housing and Urban Development Act of 1968. Under this latter program, HUD makes direct, interest-free loans to approved nonprofit section 202 eligible Owners to cover certain start-up expenses.

Note: HUD has proposed rescission of the fund allotted for the Section 106(b) program in FY 1991 and is not requesting any funding for FY 1992. Although funds may not be available because of the proposed rescission, applications should still be submitted simultaneously with the section 202 application. In the event the rescission is not approved, HUD will consider section 106(b) applications with the section 202 applications.

HUD strongly recommends that prospective applicants attend the local Field Office workshop. More detailed information covering the time and place of the particular workshops will be set out in the Field Office invitation. Interested persons with disabilities should contact the Field Office to assure that any necessary arrangements can be made for them to enable their attendance and participation in the workshop. While strongly urged to do so, if Sponsors cannot attend a workshop, Application Packages and handbooks can also be obtained from the Field Offices. Contact the appropriate Field Office with any questions regarding the submission of applications.

At the workshops, Application Packages will be distributed, application procedures and requirements (including the Department's equal opportunity, environmental, design and cost standards and required exhibits) will be explained. Also, concerns such as local market conditions, building codes, historic preservation, floodplain management, displacement and relocation, zoning and housing costs will be addressed.

III. Application Submission Requirements

1. Application

Each application shall include all of the information, materials, forms, and exhibits listed in paragraph 2 of this section and must be indexed and tabbed. The Field Office will base its determination of the eligibility of the Sponsor for a reservation of section 202 capital advance funds on the information provided in the application.

2. Application Contents

(a) Each applicant (Sponsor) shall include on a Form HUD-92013, Application for Multifamily Housing Project:

(1) The name, address, and telephone number of the Sponsor(s);

(2) The name, title, address, and telephone number of the officer or director of the Sponsor's Board of Directors to whom communications should be addressed;

(3) The following specific information regarding the project:

(i) number of units requested by size (efficiency, one-bedroom or two-bedroom),

(ii) dollar amount of the capital advance requested;

(iii) estimated land cost;

(iv) number and types of structures;

(v) number of stories planned and whether an elevator will be included; and

(vi) development method (new construction, rehabilitation or acquisition from the RTC).

(b) Additional exhibits must include:

(1) A Housing Consultant's Resume, Contract (Form HUD 92531-EH) and an Identity of Interest and Disclosure Certification (if the Sponsor has employed a project consultant).

(2) Evidence of each Sponsor's legal status as a private, nonprofit organization or nonprofit consumer cooperative, including the following:

(i) Articles of Incorporation, constitution, or other organizational documents;

(ii) By-laws;

(iii) A typed incumbency certificate, listing all officers and directors, title, beginning date of each person's term and when that term expires. It must be certified by an officer of the Sponsor that it constitutes all duly qualified and sitting officers and directors as of the date the application is filed with HUD;

(iv) IRS tax exemption ruling (this must be submitted by all Sponsors,

including churches). A nonprofit organization organized in the Commonwealth of Puerto Rico and exempt from income taxation under Puerto Rico law, or a consumer cooperative that is tax exempt under State law, has never been liable for payment of Federal income taxes, and does not pay patronage dividends may be exempt from the requirement set out in the previous sentence if they are not eligible for tax exemption; and

(v) Resolution of the board, duly certified by an officer, that no officer or director of the Sponsor or Owner has or will have any financial interest in any contract with the Owner or in any firm or corporation which has or will have a contract with the Owner.

(3) Satisfactory evidence that the Sponsor:

(i) Has the necessary legal authority to sponsor the project and to assist the Owner to finance, acquire, construct, or rehabilitate and maintain the project; and

(ii) will form an Owner (as defined in § 889.105) after the issuance of the fund reservation, will cause the Owner to file a request for determination of eligibility and a request for a capital advance under § 889.300, and will provide sufficient resources to the Owner to ensure the development and long-term operation of the project.

(4) A description of the Sponsor's ties to the community, including the minority community, and support from local community groups.

(5) Evidence of any previous participation in HUD programs by the Sponsor, its officers or directors, or Form HUD 2530. If none, forms must be submitted indicating "No previous experience."

(6) A description of any financial default, modification of terms and conditions of financing, or legal action taken or pending against the Sponsor or its officers, directors, or trustees in their corporate capacity.

(7) A description of any other rental housing projects and/or medical facilities, sponsored, owned and operated by the Sponsor including a description of experience in providing housing and/or medical facilities to the elderly and/or families.

(8) A description of the Sponsor's past or current involvement in any programs other than housing (including its provision of services) that demonstrates the Sponsor's management capabilities and experience, including a description of the Sponsor's experience in serving the elderly and/or families.

(9) A certified Board Resolution, acknowledging responsibilities of sponsorship, long-term support of the project(s), willingness of Sponsor to assist the Owner to develop, own, manage and provide appropriate services in connection with the proposed project, and that it reflects the will of its membership.

(10) A description of the Sponsor's experience in providing housing, medical facilities and/or related services to minority persons or families and in contracting with minority and women-owned business enterprises.

(11) A list of the applications, if any, the Sponsor has submitted or is planning to submit to any other Field Office in response to the current Invitations for Supportive Housing for Persons with Disabilities and Supportive Housing for the Elderly. Indicate by Field Office, the proposed location by city and State, and the number of units requested, and the financial commitments related to each application.

(12) An estimate of start-up expenses for the project and the source of funds to meet these expenses. If the Sponsor plans to use a section 106(b) seed money loan, an application (Form HUD-92290) for such loan must be submitted with required attachments.

(13) Evidence, in the form of a certified Board Resolution, of the Sponsor's willingness to fund the Minimum Capital Investment, estimated start-up expenses, and any associated development or operating costs related to items not covered by the capital advances under § 889.240 and to ensure the development and long-term operation of the project. Also, as evidence of the Sponsor's financial ability to cover these costs, include:

(i) A brief narrative description of financial history;

(ii) Copies of balance sheets and statements of income and expenses for each of the past three years that the Sponsor has operated. The financial statements, at a minimum, must include the information contained in Form HUD-92417 and a certification pursuant to the criminal warning provided in U.S. Criminal Code, Section 1001, Title 18 U.S.C.;

(iii) Form HUD-2013 Supplement, Application for Project Mortgage Insurance, listing current bank and trade references; and

(iv) a list of all FY 1990 and prior year projects to which the Sponsor(s) is a party, identified by project number, Field Office, funding year and month and year of initial closing, current status (if finally closed, indicate month and year) and financial requirements for closing.

(14) The following additional information with respect to the proposed project:

(i) A description of the category or categories of elderly persons the housing is intended to serve and the need for supportive housing for that population in the area to be served.

(ii) Evidence that the Sponsor has entered into a legally binding option agreement to buy or lease the proposed site; or has a copy of the contract of sale for the site, a deed, long-term leasehold or other evidence of legal ownership of the site (including properties to be acquired from the Resolution Trust Corporation). The option agreement period should extend through the end of the current fiscal year and contain a renewal provision to guarantee site availability through the subsequent stage of processing. The Sponsor must also identify any restrictive covenants. In the case of a site to be acquired from a public body, evidence that the public body possesses clear title to the site, and has entered into a legally binding agreement to lease or convey the site to the Sponsor after it receives and accepts a notice of section 202 fund reservation and identification of any restrictive convenants. However, in localities where HUD determines the time constraints of the funding round will not permit all of the required official actions (*e.g.*, approval of Community Planning Boards) which are necessary to convey publicly-owned sites, a letter in the application from the Mayor or Director of the appropriate local agency indicating approval of conveyance of the site contingent upon the necessary approval action is acceptable and may be approved by the Field Office if it has had satisfactory experience with timely conveyance of sites from that public body. In such cases, documentation shall also include a copy of the public body's evidence of ownership and identification of any restrictive covenants.

Note: A proposed project site may not be acquired or optioned from a general contractor (or its affiliates) which will construct the Section 202 project or from any other development team member.

(iii) A map showing the location of the site and the racial composition of the neighborhood, with the area of racial concentration delineated.

(iv) A sketch of the site plan showing the general development of the site including the proposed location of the proposed building(s), streets, parking areas and drives, service areas, and unusual site features.

(v) Evidence that the project as proposed is permissible under applicable zoning ordinances or regulations, or a statement of the

proposed action required to make the proposed project permissible and the basis for belief that the proposed action will be completed successfully before the receipt of the conditional commitment application (*e.g.*, a summary of the results of any recent requests for rezoning on land in similar zoning classifications and the time required for such rezoning, preliminary indications of acceptability from zoning bodies, *etc.*).

(15) A statement that (a) identifies all persons (families, individuals, businesses and nonprofit organizations (identified by race/minority group, and status as owners or tenants) occupying the property on the date of submission of the application for fund reservation (or date of initial site control, if later); (b) indicates the estimated cost of relocation payments and other services, and (c) identifies the staff organization that will carry out the relocation activities.

Note: If any of the relocation costs will be funded from sources other than the section 202 capital advance, the sponsor must provide evidence of a firm commitment of these funds. Due to potentially high relocation costs, sponsors are encouraged to utilize sites which involve minimal or no relocation costs.

(16) A narrative description of the proposed housing consistent with § 889.270(c), including:

(i) If the project will be developed using innovative construction or rehabilitation methods or technologies, identify them and describe how they will promote efficient construction or energy efficiency.

(ii) Identification and description of all community spaces, special amenities or features planned for the housing. A description of how the spaces will be utilized also must be included. If these amenities, features, or community spaces would not comply with the design and cost standards, the Sponsor must demonstrate its ability and willingness to contribute both the incremental development cost and continuing operating cost associated with the community spaces, features or amenities.

(17) Typical unit plans and floor plans of all floors providing community space, indicating dimensions of spaces to be used for the provision of supportive services.

(18) Identify on a Form HUD 92013E, Supplemental Application Processing Form—Housing for the Elderly, all supportive services, if any, to be provided to the persons occupying such housing; and describe (a) the manner in which such services will be provided to such persons (*i.e.*, on or off-site), including, whether a service coordinator will facilitate the adequate provision of such services, and (b) the public or private sources of assistance that may reasonably be expected to fund or provide such services.

(19) Signed certifications of the Sponsor(s)' intent to comply with Title VI of the Civil Rights Act of 1964, the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Executive Orders 11063 and 11246, section 3 of the Housing and Urban Development Act of 1968, and the affirmative fair housing marketing requirements at 24 CFR part 200, subpart M.

(20) A certification from the appropriate State or local agency that the provision of services identified in the application is well designed to serve the special needs of the category or categories of elderly persons the housing is intended to serve.

(21) A certification of the Sponsor(s) that the appropriate State agency (single point of contact) under Executive Order 12372, Intergovernmental Review, has been contacted to determine if the Section 202 Program is covered under the State review process and, if applicable, the date the application was submitted to the State.

(22) A certification on SF-424, Application for Federal Assistance, that the Sponsor(s) is not delinquent on the repayment of any Federal debt.

(23) A certification by the Sponsor(s) that the section 202 funds will not be used to lobby the Executive or Legislative branches of the Federal government.

(24) A certification that the Sponsor(s) will comply with the requirements of the Drug-Free Workplace Act.

(25) A certification that the project will comply with HUD's design and cost standards, the Uniform Federal Accessibility Standards and HUD's implementing regulations at 24 CFR Part 40, Section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8, and for new construction multifamily housing projects, the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100.

(26) A certification by the Sponsor(s) that it will comply (or has complied) with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), implemented by regulations at 49 CFR part 24, and 24 CFR § 889.265(e).

* * * * *

Authority: Section 202, Housing Act of 1959, as amended (12 U.S.C. 1701q), Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

[END]

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May 30, 1991

Part V

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 9

Enforcement of Nondiscrimination on Basis of Handicap in Programs or Activities Conducted by Department of Housing and Urban Development; Notice of Proposed Rulemaking

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 9

[Docket No. R-91-1510; FR-2163-P-03]

RIN 2501-AB04

Enforcement of Nondiscrimination on Basis of Handicap in Programs or Activities Conducted by Department of Housing and Urban Development

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 504 of the Rehabilitation Act of 1973, as amended, prohibits discrimination on the basis of handicap. This proposed rule provides for the enforcement of Section 504 as it applies to programs or activities conducted by the Department of Housing and Urban Development (HUD). This proposed rule is distinguished from the rule at 24 CFR part 8, which applies to private, State or local programs or activities receiving Federal financial assistance from HUD. The proposed rule establishes standards for what constitutes discrimination on the basis of mental or physical handicaps; provides a definition of individuals with handicaps and qualified individuals with handicaps, and establishes a complaint procedure for resolving allegations of discrimination. The proposed rule incorporates changes concerning illegal drug use based on the Americans with Disabilities Act.

DATES: Comment Due Date: July 29, 1991.

ADDRESSES: Interested persons are invited to submit written comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title and to the specific sections in the regulation. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address. Copies of this notice will be made available on tape for those with impaired vision who request them. They may be obtained at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708-4337. (This is not a toll-free number.) Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk at (202) 708-2084 or (202) 708-3259 (TDD). These are not toll-free numbers.

FOR FURTHER INFORMATION CONTACT: Mary-Jean Moore, Office of Fair Housing and Equal Opportunity, Room 5230, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-5000, telephone (202) 708-0015 (voice/TDD). This is not a toll free number.

SUPPLEMENTARY INFORMATION:

Background

Section 504 of the Rehabilitation Act of 1973, as amended (Section 504), states in pertinent part that:

> No otherwise qualified individual with handicaps in the United States, * * * shall, solely by reason of her or his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*
>
> (29 U.S.C. 794 (1978 amendment italicized)).

The purpose of this proposed rule is to provide for the enforcement of section 504 as it applies to programs and activities conducted by the Department of Housing and Urban Development (HUD).

The substantive nondiscrimination obligations of the agency, as set forth in this proposed rule, are adapted from, and are very similar to, those established by HUD's regulation for programs or activities receiving Federal financial assistance from HUD. See 24 CFR part 8; see also 28 CFR part 41 (Section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in House floor debate, including its sponsor, U.S. Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) id.; 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); id. at 38,552 (remarks of Rep. Sarasin).

There are, however, some differences between this proposed rule and the Department of Justice's section 504 coordination regulations for federally assisted programs, as well as many other agencies' implementing regulations. Many of these changes are based on the Supreme Court's decision in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979) (Davis), and the subsequent circuit court decisions interpreting *Davis* and Section 504. *See Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982) *(Dopico); American Public Transit Association* v. *Lewis*, 655 F.2d 1272 (D.C. Cir. 1981) *(APTA); see also Rhode Island Handicapped Action Committee* v. *Rhode Island Public Transit Authority*, 718 F.2d 490 (1st Cir. 1983).

These language differences are also supported by the decision of the Supreme Court in *Alexander* v. *Choate*, 469 U.S. 287 (1985), in which the Court held that the regulations for federally assisted programs did not require a recipient to modify its durational limitation on Medicaid coverage of inpatient hospital care for handicapped persons. Clarifying its *Davis* decision, the Court explained that Section 504 requires only "reasonable" modifications, id. at 300, and explicitly noted that "(t)he regulations implementing Section 504 (for federally assisted programs) are consistent with the view that reasonable adjustments in the nature of the benefit offered must at times be made to assure meaningful access." *Id.* at n.21 (emphasis added).

HUD's regulations for federally assisted programs (24 CFR part 8) have incorporated these changes. Incorporation of the changes here as well makes this proposed rule implementing section 504 for federally conducted programs consistent with other Federal agencies' regulations implementing section 504 for federally assisted programs as interpreted by the Supreme Court and by the various circuit courts. Of course, these regulations for federally assisted programs must be interpreted to reflect Federal case law. Hence, there are no significant differences between this proposed rule for federally conducted programs, HUD's section 504 rule for federally assisted programs, and the interpretation of section 504 regulations

for federally assisted programs by the Federal government as a whole.

Section-by-Section Analysis

Section 9.101 Purpose

Section 9.101 states that the purpose of the proposed rule is to implement section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978. Section 119 amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Section 9.102 Application

The proposed regulation would apply to all programs or activities conducted by HUD. Under this section, a federally conducted program or activity is, in simple terms, anything a Federal agency does. Aside from employment, there are two major categories of federally conducted programs or activities covered by this proposed regulation: those involving general public contact as part of ongoing agency operations, and those directly administered by the agencies for program beneficiaries and participants. Activities in the first category include communications with the public (telephone contacts, office walkins, or interviews) and the public's use of the agency's facilities. Activities in the second category include programs that provide Federal services or benefits (*e.g.*, agency-owned or agency-operated housing, training at both HUD and outside facilities, contracting, and policy development). HUD does not construct housing. Generally, HUD helps to provide housing either by providing financial assistance or by endorsing the mortgage on a house or the mortgage note on a housing project (or both) for insurance. Where HUD provides financial assistance to the project, the project is covered by HUD's section 504 regulation covering federally assisted programs (24 CFR part 8). Projects with HUD-insured mortgages are not subject to section 504 unless the project otherwise receives Federal financial assistance as defined in 24 CFR 8.3. Mortgage insurance does not constitute "Federal financial assistance" for purposes of 24 CFR part 8 or part 9. However, in some cases HUD takes possession of and control over or title to a federally assisted or insured project (*e.g.*, after default and foreclosure). When HUD takes title to or assumes possession and control over a project, it becomes a federally conducted program or activity and is subject to this part 9 until HUD disposes of the project in accordance with the regulations governing property disposition, codified at 24 CFR parts 290, 291 (the Property Disposition Programs). When HUD takes possession of a project and operates it, either directly or indirectly, to preserve and protect HUD's security interest in the property, HUD is referred to as the mortgagee in possession. Mortgagee in possession does not refer to the situation in which HUD is assigned a mortgage by a lender and merely accepts payment from the borrower.

This regulation would not apply to programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

Section 9.103 Definitions

Accessible. When used with respect to the design, construction, or alteration of a facility or a portion of a facility, other than an individual dwelling unit, "accessible" would mean that the facility or portion of the facility, when designed, constructed or altered, can be approached, entered, and used by individuals with physical handicaps. The phrase "accessible to and usable by" would be synonymous with accessible. A facility that complies with the standards prescribed by 24 C.F.R. 8.32, the Uniform Federal Accessibility Standards (UFAS), would satisfy this definition of the term accessible. UFAS is not the sole means by which recipients can achieve compliance with the requirement that new construction and alterations be accessible.

Accessible. When used with respect to the design, construction, or alteration of an individual dwelling unit, "accessible" would mean that the unit is located on an accessible route and, when designed, constructed, altered or adapted, can be approached, entered, and used by individuals with physical handicaps. A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in § 9.152 would be "accessible" within the meaning of this definition. When a unit in an existing facility that is being made accessible as a result of alterations is intended for use by a specific qualified individual with handicaps (*e.g.*, a current occupant of such unit or of another unit under the control of the agency, or an applicant on a waiting list), the unit would be deemed accessible if it meets the requirements of applicable standards that address the particular disability or impairment of such person.

Accessible route. Accessible route would mean a continuous unobstructed path connecting accessible elements and spaces in a building or facility that complies with the space and reach requirements of applicable standards prescribed by § 9.152(d). An accessible route that serves only accessible units occupied by persons with hearing or vision impairments would not be required to comply with those requirements intended to effect accessibility for persons with mobility impairments.

Adaptability. "Adaptability" would mean the ability of certain elements of a dwelling unit, such as kitchen counters, sinks, and grab bars, to be added to, raised, lowered, or otherwise altered, to accommodate the needs of persons with or without handicaps, or to accommodate the needs of persons with different types or degrees of disability. For example, in a unit adaptable for a hearing-impaired person, the wiring for visible emergency alarms may be installed but the alarms need not be installed until such time as the unit is made ready for occupancy by a hearing-impaired person.

Agency. "Agency" would mean the Department of Housing and Urban Development.

Agency-owned housing facility. An agency-owned housing facility would mean property in the possession or control of the agency whether or not the agency has acquired title to the property and includes property with respect to which the agency is the mortgagee in possession. A housing project is a facility under this proposed regulation. Thus, if HUD is mortgagee in possession of a housing project, the project would be an "agency-owned" housing facility, as defined in the proposed rule, even though HUD has not acquired title to the project. The proposed definition of "agency-owned" extends to properties in HUD's possession or control because this part covers all programs or activities conducted by HUD. A HUD-operated property is included within the term "agency-owned housing facility" even if the property is being managed by a contractor. Once a property is within HUD's possession or control it is a HUD-conducted program or activity, whether or not HUD has title to the facility.

Alteration. "Alteration" would be defined as any change in a facility or its permanent fixtures or equipment. The term would include, but would not be limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangements in structural parts and extraordinary repairs. It would exclude normal maintenance or repairs, re-roofing, interior decoration, or changes to mechanical systems.

Assistant Attorney General. "Assistant Attorney General" would refer to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Assistant Secretary. "Assistant Secretary" would refer to the Assistant Secretary of HUD for Fair Housing and Equal Opportunity.

Auxiliary aids. "Auxiliary aids" would be defined as services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition includes examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 9.160(a)(1), they may also be necessary to meet other requirements of the proposed regulation.

Complete complaint. "Complete complaint" would be defined to include all the information necessary to enable the agency to investigate the complaint. The definition is necessary because the 180-day period for the agency's investigation (see § 9.170(g)(1)) begins when the agency receives a complete complaint.

Current illegal use of drugs. The phrase "current illegal use of drugs" is used in § 9.131. Its meaning is discussed in the preamble for that section.

Drug. The definition of the term "drug" is taken from Section 512(b) of the Americans with Disabilities Act of 1990 (Pub. L. No. 101–336) (ADA).

Facility. The proposed definition of "facility" is similar to that in the section 504 coordination regulation for Federally assisted programs (28 CFR 41.3(f)), except that the term "rolling stock or other conveyances" would be added and the phrase "or interest in such property" would be deleted because the term "facility," as used in this regulation, refers to structures and not to intangible property rights. The regulation, however, would apply to all programs and activities conducted by HUD regardless of whether the facility in which they are conducted is owned, leased, or in some other way used by HUD. The proposed definition of "facility" is identical to the definition in HUD's regulation for federally assisted programs. See 24 CFR 8.3. The term "facility" is used in §§ 9.149, 9.150 and 9.170(f).

Historic properties. Under the proposed rule, historic properties are those properties either that are listed or are eligible for listing in the National Register of Historic Places or that are designated as historic under a statute of the appropriate State or local government body.

Illegal use of drugs. The definition of "illegal use of drugs" is taken from section 512(b) of the ADA and clarifies that the term includes the illegal use of one or more drugs.

Individual with handicaps. The definition of "individual with handicaps" is identical to the definition of "handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31), except that it reflects the amendment made by the ADA, which provides that the term does not include an individual who is currently illegally using drugs, when the agency acts on the basis of such use. The phrase "current illegal use of drugs" is explained in § 9.131, which effectuates the substantive provisions of the ADA amendment.

The proposed definition of "individual with handicaps" is identical to the definition appearing in the section 504 regulation for HUD-assisted programs (24 CFR 8.3) with one exception. Section 103(d) of the Rehabilitation Act Amendments of 1986 changed the statutory term "handicapped individual" to "individual with handicaps." This statutory change is reflected in this proposed rule and HUD's rule governing federally assisted programs. The legislative history of this amendment indicates that no substantive change was intended. Although the term refers to "handicaps" in the plural, it would not exclude persons who have only one handicap.

Multifamily housing project. A "multifamily housing project" would be defined as a project containing five or more dwelling units. A "project" would include the whole of one or more residential structures and appurtenant structures, equipment, roads, walks and parking lots which are treated as a whole by the agency for processing purposes, whether or not located on a common site. For example, three separate two-family structures (*i.e.*, six dwelling units) which are treated as a whole for processing purposes, whether or not they are located on a common site, would constitute a multifamily housing project. The same definition is also in 24 CFR 8.3.

Qualified individual with handicaps. Paragraph (a) of the proposed definition of "individual with handicaps" is taken from the Department of Justice prototype rule for federally conducted programs. Paragraph (a) would define "qualified individual with handicaps" with regard to any non-employment program under which a person is required to perform services or to achieve a level of accomplishment. It should be noted that HUD does not conduct programs under which a person is required to perform services or achieve a level of accomplishment as a part of his or her participation in a particular program or activity. As explained below, an example of this sort of program would be an educational program of the type usually conducted by a college or university. Nevertheless, paragraph (a) has been included in this proposed rule so that this regulation will cover all programs or activities conducted by the Department now and in the future and so that HUD's regulation will be consistent with the Department of Justice's prototype regulation and the regulations of other Federal agencies.

In a non-employment program or activity under which a person is required to perform services or achieve a level of accomplishment, a "qualified individual with handicaps" would be defined as an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature. This proposed definition reflects the Supreme Court's decision in *Davis* that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" (now a "qualified individual with handicaps") because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." 442. U.S. at 410. The Court also found that "the purpose of (the) program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

HUD has incorporated the Court's language in *Davis* into the proposed definition of "qualified individual with handicaps" in order to make clear that such a person must be able to participate in the program offered by the agency. Although the agency would be required to make modifications in order to enable an applicant with handicaps to participate, it would not be required

to offer a program of a fundamentally different nature. The test would be whether, with appropriate modifications, the applicant can achieve the purpose of the program offered—not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the proposed definition allows exclusion of some individuals with handicaps from some programs, it requires that an individual with handicaps who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

The agency would have the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, the agency would be required to follow the procedures established in §§ 9.150(a), 9.155(b), and 9.160(d) for demonstrating that an action would result in undue financial and administrative burdens. (That is, the decision must be made by the Secretary (or his or her designee) in writing after consideration of all resources available for the program or activity and must be accompanied by an explanation of the reasons for the decision. If the Secretary determines that an action would result in a fundamental alteration, the agency would have to consider options that would enable the individual with handicaps to achieve the purpose of the program but would not result in such an alteration.)

For other agency non-employment programs or activities that do not fall under paragraph (a), paragraph (b) adopts the third definition of "qualified individual with handicaps" found in the Department's rule governing federally assisted programs (24 CFR 8.3). Under this definition, a qualified individual with handicaps would be an individual with handicaps who meets the essential eligibility requirements for participation in the program or activity. This proposed definition clarifies the term "essential eligibility requirements", particularly with respect to multifamily housing projects owned by HUD.

Paragraph (c) would explain that "qualified individual with handicaps" means "qualified handicapped person" as that term is defined for purposes of employment in the Equal Employment Opportunity Commission's regulation at 29 CFR 1613.702(f), which would be made applicable to this part by § 9.140. Nothing in this part changes existing regulations applicable to employment.

Replacement cost of the completed facility. This proposed term, which is used in § 9.152 ("Program accessibility: Alterations of agency-owned multifamily housing facilities"), is identical to the definition in 24 CFR 8.3. The term would be defined as the current cost of construction and equipment for a newly constructed housing facility of the size and type being altered. Construction and equipment costs do not include the cost of land, demolition, site improvements, non-dwelling facilities and administrative costs for project development activities.

Secretary refers to the Secretary of HUD.

Section 504. This definition would clarify that, as used in this part, "section 504" applies only to programs or activities conducted by the agency and not to programs or activities for which it provides Federal financial assistance. HUD's rule implementing section 504 applicable to federally assisted programs is at 24 CFR part 8.

Substantial impairment. This term, which refers to alterations of historic properties, would mean a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration. The term is used in § 9.150(a)(2), which relates to historic facilities.

Section 9.110 Self-evaluation

HUD would conduct a self-evaluation of its compliance with section 504 within one year of the effective date of the regulation. The self-evaluation requirement is present in the Department of Justice's section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)), and in HUD's section 504 regulation for HUD-assisted programs (24 CFR 8.51). The self-evaluation process is a valuable means of establishing a working relationship with individuals with handicaps. It promotes effective and efficient implementation of section 504.

In the self-evaluation, the Department would, within one year of the effective date of this rule, review its policies, practices and program regulations to determine whether they need to be revised or amended to be consistent with the final rule. If, through self-evaluation, it is determined that modification of policies, practices or programs is necessary to meet the requirements of the rule and section 504, the Department would proceed to take the appropriate corrective steps.

Section 9.111 Notice

Section 9.111 would require the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons, including those with impaired vision or hearing, to apprise them of the rights and protections afforded by section 504 and this regulation. Methods of providing this information include the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other public places; the broadcast of information by television or radio; and the use of interpreters, readers and taped or Braille materials. All publications and recruitment materials would contain a statement that the agency does not discriminate on the basis of handicap. This notice would include the name of the person or office responsible for section 504 and to whom questions regarding section 504 should be addressed. Notice would be provided within 120 days of the implementation of the regulation.

Section 9.130 General prohibitions against discrimination

Section 9.130 is an adaptation of the corresponding section of both the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51) and HUD's section 504 regulation for HUD-assisted programs (24 CFR 8.10).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 9.130 would establish the general principles for analyzing whether a particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. Thus, if the agency violates a provision in any of the subsequent sections, it would also violate one of the general prohibitions found in § 9.130. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) would prohibit overt denials of equal treatment of individuals with handicaps. Under the proposed rule, the agency could not refuse to provide an individual with handicaps with an equal opportunity to participate in, or benefit from, its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities

without regard to an individual's actual ability to participate. Use of an irrebuttable presumption would be permissible only when—in all cases—a physical condition, by its very nature, would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question.

Section 504, however, prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Under paragraph (b)(1)(iii), therefore, the opportunity to participate or benefit that is afforded to an individual with handicaps must be as effective as that afforded to others. The later sections on program accessibility (§§ 9.149–9.155) and communications (§ 9.160) are specific applications of this principle.

Paragraph (d) would require the agency to administer its programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps. . However, paragraph (b)(1)(iv), in conjunction with paragraph (d), would permit the agency to develop separate or different housing, aids, benefits, or services when necessary to provide individuals with handicaps with an equal opportunity to participate in or benefit from the agency's programs or activities. Paragraph (b)(1)(iv) would require that different or separate housing, aids, benefits, or services be provided only when necessary to ensure that the housing, aids, benefits, or services are as effective as those provided to others. Even when separate or different housing, aids, benefits, or services would be more effective, proposed paragraph (b)(3) provides that a qualified individual with handicaps still has the right to choose to participate in the program that is not designed to accommodate individuals with handicaps.

Paragraph (b)(1)(v) would prohibit the agency from denying a qualified individual with handicaps the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vi) would prohibit the agency from denying a dwelling to an otherwise qualified buyer or renter because of the handicap of that buyer or renter or of a person residing in or intending to reside in that dwelling after it is sold, rented or made available. This provision clarifies that the agency may not refuse to rent or sell to an otherwise qualified individual because that individual resides, or intends to reside, with a person who is handicapped. In addition, a real estate agent who handles the sale or lease of a dwelling on behalf of HUD is a contractor of the agency and, thus, would be subject to the requirements of part 9. This provision is similar to that in HUD's section 504 regulation for HUD-assisted programs (24 CFR 8.4(b)(1)(vii)).

Paragraph (b)(1)(vii) would prohibit the agency from limiting a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any housing, aid, benefit, or service.

Proposed paragraph (b)(2) explains that, for purposes of this part, housing, aids, benefits and services, to be equally effective, are not required to produce the identical result or level of achievement for individuals with handicaps and nonhandicapped persons, but such housing, aids, benefits and services must afford individuals with handicaps equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement.

Paragraph (b)(4) would prohibit the agency from utilizing criteria or methods of administration that deny individuals with handicaps access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and the actual practices of the agency. This paragraph addresses blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but that deny individuals with handicaps an effective opportunity to participate.

Proposed paragraph (b)(5) specifically applies the prohibition enunciated in § 9.130(b)(4) to the process of selecting sites for construction of new facilities or selecting existing facilities to be used by HUD. Paragraph (b)(5) does not apply to the construction of additional buildings at an existing site.

Paragraph (b)(6) would prohibit the agency, in the selection of procurement contractors, from using criteria that subject qualified individuals with handicaps to discrimination based on those handicaps.

Proposed paragraph (b)(7) prohibits the agency from administering a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap. A person is a "qualified individual with handicaps" with respect to licensing or certification if he or she can meet the essential eligibility requirements for receiving the license or certification (see § 9.103). In addition, the agency would be prohibited from establishing requirements for the programs or activities of certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap.

Paragraph (b)(7) would not extend section 504 directly to the programs or activities of licensees or certified entities themselves. The programs or activities of Federal licensees or certified entities are not themselves federally conducted programs or activities, nor are they programs or activities receiving Federal financial assistance merely by virtue of the Federal license or certificate. However, section 504 may affect the content of the rules established by the agency for the operation of the program or activity of the licensee or certified entity, and thus indirectly affect limited aspects of their operations.

Paragraph (c)(1) would state that programs conducted under a Federal statute or Executive order that are designed to benefit only individuals with handicaps or a given class of individuals with handicaps may be limited to those individuals with handicaps.

Certain agency programs operate under statutory definitions of "handicapped persons" that are more restrictive than the definition of "individual with handicaps" contained in § 9.103. Paragraph (c)(2) would state that these definitions are not superseded or otherwise affected by this regulation.

Paragraph (d), discussed above, would provide that the agency must administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, *i.e.*, in a setting that enables individuals with handicaps to interact with nonhandicapped persons to the fullest extent possible.

Paragraph (e) would state that the obligation to comply with the proposed rule is not obviated or alleviated by any State or local law or other requirement that, based on handicap, imposes inconsistent or contradictory prohibitions or limits upon the eligibility of qualified individuals with handicaps to receive services or to practice any occupation or profession.

Paragraph (f) states that the enumeration of specific forms of prohibited discrimination in paragraphs (b) and (d) of proposed § 9.130 would not limit the general prohibition in paragraph (a) of the section.

Section 9.131 Illegal Use of Drugs

Section 9.131 effectuates section 512 of the Americans with Disabilities Act, which amended Title V of the Rehabilitation Act to clarify its application to people who use drugs

illegally. Paragraph (a) provides that this part does not prohibit discrimination based on an individual's current illegal use of drugs.

As amended, the Act and the regulation distinguish between illegal use of drugs and the legal use of substances, whether or not those substances are "controlled substances," as defined in the Controlled Substances Act (21 U.S.C. 812). Alcohol is not a controlled substance, so use of alcohol is not affected by § 9.131 (although alcoholics are individuals with disabilities subject to the protections of the statute). Section 9.131 also does not affect use of controlled substances pursuant to a valid prescription, or other use that is authorized by the Controlled Substances Act or any other provision of Federal law. It is the use of the substance, rather than the substance itself, that is illegal.

A distinction is also made between the of a substance and the status of being addicted to that substance. Addiction is a disability, and addicts are individuals with disabilities protected by the Act. The protection, however, does not extend to actions based on the illegal use of the substance. In other words, an addict cannot use the fact of his or her addiction as a defense to an action based on illegal use of drugs. This distinction is not artificial. Congress intended to deny protection to people who engage in the illegal use of drugs, whether or not they are addicted, but to provide protection to addicts so long as they are not currently using drugs.

A third distinction is the difficult one between current use and former use. The definition of "current illegal use of drugs" in § 9.103, which is based on the report of the Conference Committee on the ADA, is "illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem."

Paragraph (a)(2)(i) specifies that an individual who has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully and who is not engaging in current illegal use of drugs is protected. Paragraph (a)(2)(ii) clarifies that an individual who is currently participating in a supervised rehabilitation program and is not engaging in current illegal use of drugs is protected. Paragraph (a)(2)(iii) provides that a person who is erroneously regarded as engaging in current illegal use of drugs, but who is not engaging in such use is protected.

Paragraph (b) provides a limited exception to the exclusion of current illegal users of drugs from the protections of the Act. It prohibits denial of health services, or services provided under titles I, II, and III of the Rehabilitation Act on the basis of current illegal use of drugs, if the individual is otherwise entitled to such services.

Paragraph (c) expresses Congress' intention that the Act be neutral with respect to testing for illegal use of drugs. This paragraph implements the provision in section 512 of the ADA that allows entities "to adopt or administer reasonable policies or procedures, including but not limited to drug testing," that ensure an individual who is participating in a supervised rehabilitation program, or who has completed such a program or otherwise been rehabilitated successfully, is no longer engaging in the illegal use of drugs.

Paragraph 9.131(c) clarifies that it is not a violation of this part to adopt or administer reasonable policies or procedures to ensure that an individual who formerly engaged in the illegal use of drugs is not currently engaging in illegal use of drugs. Any such policies or procedures must, of course, be reasonable, and must be designed to identify accurately the illegal use of drugs. This paragraph does not authorize inquiries, tests, or other procedures which would disclose use of substances that are not controlled substances or are taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law, because such uses are not included in the definition of "illegal use of drugs."

Sections 9.132–9.139 [Reserved]

Sections 9.132–9.139 are proposed to be reserved.

Section 9.140 Employment

Section 9.140 addresses discrimination on the basis of handicap in employment by the agency. Courts have held that section 504 covers employment practices of Executive agencies. *Gardner* v. *Morris*, 752 F.2d 1271, 1277 (8th Cir. 1985); *Smith* v. *United States Postal Service*, 742 F.2d 257, 259–260 (6th Cir. 1984); *Prewitt* v. *United States Postal Service*, 662 F.2d 292, 302–04 (5th Cir. 1981). *Contra McGuiness* v. *United States Postal Service*, 744 F.2d 1318, 1320–21 (7th Cir. 1984); *Boyd* v. *United States Postal Service*, 752 F.2d 410, 413–14 (9th Cir. 1985).

Courts uniformly have held that, to give effect to section 501 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504. *Morgan* v. *United States Postal Service*, 798 F.2d 1162, 1164–65 (8th Cir. 1986); *Smith*, 742 F.2d at 262; *Prewitt*, 662 F.2d at 304. Accordingly, § 9.140 (*"Employment"*) would adopt the definitions, standards, requirements, and procedures of section 501 of the Rehabilitation Act, as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR part 1613. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (43 FR 28967, 3 CFR 1978 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap.

The EEOC regulations define "handicapped persons" for purposes of this section. See 29 CFR 1613.702(a). In 1978, the Rehabilitation Act was amended by section 122(a) of the Rehabilitation, Comprehensive Services and Development Disabilities Amendment Act, 29 U.S.C. 706(7)(B). For the purposes of sections 503 and 504 relating to employment, the term "handicapped person" does not include an alcoholic or drug abuser who cannot perform the duties of the job or who poses a threat to the safety of others.

The Rehabilitation Act also was amended by section 9 of the Civil Rights Restoration Act of 1987 (Pub. L. No. 100–259, approved March 22, 1988) to modify the definition of "individual with handicaps" with respect to individuals with contagious diseases and infections. The amendment provided that the term "individual with handicaps" does not include an individual who has a currently contagious disease or infection and whose employment would constitute a direct threat to the health or safety of other individuals or who is unable to perform the duties of the job.

Congress specifically limited both amendments to sections 503 and 504 and did not extend them to section 501 of the Act. Thus, the EEOC's section 501 regulations do not contain similar language. Section 9.140 ("Employment") would adopt the definitions in the EEOC's section 501 regulations. The Department of Justice, which has coordination responsibility for section 504, and the EEOC have agreed that there should be consistent application of the EEOC's section 501 regulations in federally conducted programs and activities to assure a uniform standard for all federal employees. Consistent application of section 501 standards will

avoid having one definition under section 501 and another under section 504 when the same group of employees are involved.

The application of the EEOC's section 501 regulatory definition would lead to a result substantively identical to the application of standards contained in the 1978 and 1987 amendments. Section 1614.702(f) of the EEOC's regulations defines the term "qualified handicapped person" to mean a "handicapped person who, with or without reasonable accommodation, *can perform the essential functions of the position in question without endangering the health and safety of the individual or others.*" (emphasis added). Under this standard, it is unlikely that an alcoholic, drug abuser, or person with a contagious disease, who cannot perform the duties of his or her job or whose employment would constitute a direct threat to the safety of others, would be considered a "qualified individual with handicaps," and thus be entitled to the protection of the Act. Therefore, the application of the EEOC's regulatory definitions should achieve the same result as the standards set forth by the amendments, while maintaining a single uniform standard for Federal employees.

Section 9.149 Program Accessibility: Discrimination Prohibited

Proposed § 9.149 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 9.150, 9.151 and 9.152.

Section 9.150 Program Accessibility: Existing Facilities

This regulation would adopt the program accessibility concept found in the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.57), with certain modifications. Thus, § 9.150 would require that, except as otherwise provided with respect to the Property Disposition Programs in § 9.150(e), each agency program or activity, when viewed in its entirety, must be readily accessible to, and usable by, individuals with handicaps. Under the proposed rule, the agency is not required to make each of its existing facilities accessible (§ 9.150(a)(1)). However, § 9.150, unlike 28 CFR 41.57, places explicit limits on the agency's obligation to ensure program accessibility (§ 9.150(a)(3)).

Paragraph (a)(2) would provide that, in meeting the accessibility requirements of this part, the agency is not required to take any action that would result in a substantial impairment of significant historic features of an historic property.

Paragraph (a)(3) would currently codify recent case law that defines the scope of the agency's obligation to ensure program accessibility. This proposed paragraph provides that, in meeting the program accessibility requirements, the agency is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. Similar limitations are provided in §§ 9.152(b), 9.155(b), and 9.160(d). These provisions are based on the Supreme Court's holding in *Davis* that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts of appeals have applied this limitation on a showing that only one of the two "undue burdens" (*i.e.*, fundamental alterations or financial and administrative burdens) would be created as a result of the modification sought to be imposed under section 504. *See, e.g., Dopico*, 687 F.2d 644; *APTA* 655 F.2d 1272.

Paragraphs (a)(3) and 9.160(d) are also supported by the Supreme Court's decision in *Alexander* v. *Choate*, 469 U.S. 287 (1985). *Alexander* involved a challenge to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from 20 days to 14 days per year. Plaintiffs argued that this reduction violated section 504 because it had an adverse impact on individuals with handicaps. The Court assumed, without deciding, that section 504 reaches at least some conduct that has an unjustifiable disparate impact on individuals with handicaps, but it held that the reduction was not "the sort of disparate impact" discrimination that might be prohibited by section 504 or its implementing regulation. *Id.* at 299.

Relying on *Davis*, the Court said that section 504 guarantees qualified handicapped persons "meaningful access to the benefits that the grantee offers," *id.* at 301, and that "*reasonable adjustments* in the nature of the benefit being offered must at times be made to assure meaningful access." *Id.* at n.21 (emphasis added). However, section 504 does not require " 'changes,' 'adjustments,' or 'modifications' to existing programs that would be 'substantial' * * * or that would constitute 'fundamental alteration(s) in the nature of a program'." *Id.* at n.20 (citations omitted). *Alexander* supports the position, based on *Davis* and earlier, lower court decisions, that in some situations, certain accommodations for an individual with handicaps may so alter an agency's program or activity, or may entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. Thus, failure to include such an "undue burdens" provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

Paragraph (a)(3) of § 9.150, however, would not establish an absolute defense and it would not relieve the agency of all obligations to individuals with handicaps. Although the agency would not be required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless would be required to take any other steps necessary to ensure that individuals with handicaps receive the benefits and services of the federally conducted program or activity.

The Department has concluded that, in most cases, compliance with § 9.150(a) would not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 9.150(a) would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the Secretary or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. See § 9.150. Any person who believes that he or she or any specific class of persons has been injured by the Secretary's decision or failure to make a decision could file a complaint under the compliance procedures established in § 9.170.

Proposed paragraph (b) sets forth a number of means by which program accessibility may be achieved, including redesigning equipment, reassigning services to accessible buildings, and providing aides. In choosing among methods, HUD would give priority to methods that are consistent with the provision of services in the most integrated setting appropriate to the needs of individuals with handicaps. Structural changes in existing facilities would be required only when there is no other feasible way to make the agency's program accessible. ("Structural

changes" would include all physical changes to a facility and would not be limited to structural features, such as removal of or alteration to a load-bearing structural member.) The agency would be permitted to comply with the program accessibility requirement by delivering services at alternate accessible sites or by making home visits as appropriate.

Paragraphs (c) and (d) would establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency would be required to make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan would be developed within six months of the effective date of the regulation. Except for structural changes, all other necessary steps to achieve compliance would be taken within sixty days.

Paragraph (e) provides that paragraphs (a), (b) and (c) of § 9.150 would apply to the Property Disposition Programs. Under the Property Disposition Programs, HUD may either take title to, or assume possession and control of, single and multi-family housing properties purchased with HUD-insured mortgages or direct loans from HUD. When a borrower defaults on a HUD-insured loan, the approved lender may elect to file a claim for insurance benefits with HUD and HUD will process such claim to settlement. This procedure may entail acquisition of the defaulted mortgage and/or title to the property. HUD may also act as a mortgagee in possession of a housing property; in this instance, although the borrower retains title to the facility, HUD controls and manages the property through a contractor. HUD generally retains title to or control of these properties for only short periods of time.

Paragraph (e) would not, however, require HUD to make alterations to housing facilities that are part of the Property Disposition Programs unless two factors are present: (1) The alterations are necessary to meet the needs of a current or prospective tenant during the period that HUD expects to retain legal possession of the facilities, and (2) no alternative means exist to meet the needs of such tenant. HUD would not be required to make alterations to facilities to render them accessible to individuals with handicaps who are not expected to occupy such facilities until after HUD relinquishes legal possession of the property.

The traditional approach to program accessibility with respect to existing facilities is not appropriate for the Property Disposition Programs because HUD holds the properties only temporarily and for an unpredictable amount of time. Since HUD does not know how long it will be in possession of the property, the agency cannot identify a time period within which it can assess the needs of those who might wish to live there in the future. For example, it would be unrealistic for HUD to attempt to assess the predicted needs of persons with handicaps during the next five years, when HUD may only be in possession of the property for six months. Similarly, HUD could not plan to undertake alterations for program accessibility for an anticipated number of tenants with handicaps, when such alterations might take up to three years to complete and HUD may only be in possession of the property for a few months. Thus, the rule does not require HUD to undertake alterations for this purpose or to prepare a transition plan.

HUD recognizes, however, that during the time that the agency retains possession of a housing property under this program, HUD provides a housing service to the residents and also has a section 504 obligation to those who apply for housing in the facility. Thus, § 9.110 would require HUD to complete a self-evaluation with respect to the Property Disposition Programs, and § 9.150(e) would require HUD to make necessary alterations to an individual dwelling unit for an eligible person with handicaps, within the framework of the rule's provision concerning undue financial and administrative burdens.

Section 9.151 Program Accessibility: New Construction and Alterations

Section 504 and the Architectural Barriers Act of 1968, as amended (ABA) (42 U.S.C. 4151–4157), provide overlapping coverage for new construction. Section 9.151 would provide that buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed or altered to be readily accessible to and usable by individuals with handicaps in accordance with 24 CFR 40.1 to 40.6 for residential structures and 41 CFR 101–19.600 to 101–19.607 for non-residential structures. These standards were promulgated under the ABA. It is appropriate to adopt the existing ABA standards for section 504 compliance because new and altered buildings, including publicly owned residential structures, subject to the proposed regulation, are also subject to the ABA, and because adoption of the ABA accessibility standard will avoid duplicative and inconsistent standards.

Existing buildings leased by the agency after the effective date of this regulation would not be required to meet accessibility standards by virtue of the lease. They would, however, be subject to the program accessibility standard for existing facilities in § 9.150. To the extent that the buildings are newly constructed or altered, they would also be required to meet the new construction and alteration requirements of § 9.151.

Federal practice under section 504 has subjected newly leased buildings to the existing facility program accessibility standard. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility. Accordingly, the same program accessibility standard must apply to both owned and leased existing buildings.

In *Rose* v. *United States Postal Service*, 774 F.2d 1355 (9th Cir. 1985), the Ninth Circuit held that the Architectural Barriers Act requires accessibility at the time of lease. The *Rose* court did not address the issue of whether section 504 likewise requires accessibility as a condition of lease, and the case was remanded to the District Court for, among other things, consideration of that issue.

One major development has occurred in Federal policy and practice for leasing activities. The Architectural and Transportation Barriers Compliance Board (ATBCB) amended in 1988 its minimum guidelines and requirements, which preceded the establishment of the UFAS, to establish requirements for standards for buildings leased by the Federal government. See 36 CFR 1190.34 (1990). The minimum guidelines and requirements apply to leased buildings even if they are not altered. Section 1190.34(a) requires that any building or facility that is to be leased by the Federal government, without having been designed or constructed in accordance with its specifications, comply with the standards for new construction (§ 1190.31), incorporate the features listed in the standards for alterations (§ 1190.33(c)), or, if no such space is available, be altered to include certain accessible elements and spaces. HUD will revise the UFAS to include these leasing requirements.

Section 9.152 Program Accessibility: Alterations of Agency-Owned Multifamily Housing

Section 9.152 would impose accessibility requirements on the agency when it alters agency-owned multifamily housing. Specifically, this section would apply to alterations of housing projects in the Property Disposition Programs. Section 9.152 is a close adaptation of 24 CFR 8.23, which imposes accessibility requirements on HUD recipients when existing housing facilities are altered. As previously explained, HUD believes that Congress intended agencies to have the same section 504 obligation as their recipients. Section 9.152 has limited applicability because HUD generally does not alter multifamily housing.

Paragraph (a) of § 9.152 would provide that if the agency undertakes to alter a project that has 15 or more units and the cost of the alterations is 75 percent or more of the replacement cost of the completed facility, then the project must be designed and altered to be readily accessible to and usable by individuals with handicaps. If the 15 unit/75 percent threshold is met, then, subject to paragraph (c) of § 9.152, a minimum of five percent of the dwelling units, or at least one unit, whichever is greater, would be made accessible for persons with mobility impairments. A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards specified in paragraph (d) (*i.e.*, UFAS) would be accessible under this section. If the 15 unit/75 percent threshold is met, then an additional two percent of the units (but not less than one unit) would have to be made accessible for persons with hearing or vision impairments. If state or local requirements for alterations require greater action than this part, those requirements shall prevail.

Paragraph (b) of § 9.152 would state that, subject to paragraph (c), alterations to dwelling units in a HUD-owned multifamily housing project shall, to the maximum extent feasible, be made to be readily accessible to and usable by individuals with handicaps. If alterations of single elements or spaces of a dwelling unit, when considered together, amount to alteration of a dwelling unit, the entire dwelling unit would have to be made accessible. However, once five percent of the dwelling units in a project are readily accessible to and usable by individuals with mobility impairments, then no additional elements of dwelling units, or entire dwelling units would be required to be accessible under § 9.152(b). Alterations to common areas or parts of facilities that affect accessibility of existing housing facilities would, to the maximum extent feasible, have to be made accessible to and usable by individuals with handicaps. Under paragraph (b)(1), the phrase "to the maximum extent feasible" would not require HUD to make a dwelling unit, common area, facility or element accessible, if undue financial and administrative burdens would be imposed on the operation of the multifamily housing project.

Paragraph (c) would provide that the agency may prescribe a higher percentage or number than that prescribed in paragraphs (a) or (b) of § 9.152 if the agency determines that there is a need for a higher percentage or number based upon census data or other available current data. In making this determination, HUD would take into account the expected needs of eligible persons with and without handicaps.

Paragraph (d) provides that the definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), 24 CFR part 40, would apply to agency-owned multifamily housing projects covered by this section.

Section 9.153 Distribution of Accessible Dwelling Units

Under proposed § 9.153, accessible units required by § 9.152 must, to the maximum extent feasible, and subject to reasonable health and safety requirements, be distributed throughout projects and sites, and be available in a sufficient range of sizes and amenities so that a qualified individual with handicaps' choice of living arrangements is, as a whole, comparable to that of other persons eligible for housing assistance under the same agency conducted program. This section would not require—but would certainly allow—the provision of an elevator in any multifamily housing project solely to permit the location of accessible units above or below the accessible grade level (*i.e.*, units that may not be reached without steps or an elevator). Section 9.153 would impose the same requirements on HUD as 24 CFR 8.26 ("Distribution of accessible dwelling units") imposes on HUD recipients.

Section 9.154 Occupancy of Accessible Dwelling Units

Section 9.154 would require HUD to adopt suitable means to assure that information regarding the availability of agency-owned accessible units reaches eligible individuals with handicaps. The agency would also be required to take reasonable nondiscriminatory steps to maximize the utilization of accessible units by eligible individuals whose disability requires the accessibility features of the particular unit. To this end, when an accessible unit becomes vacant, § 9.154 would first require the agency (or its management agent) to offer the unit to an individual who: (1) Occupies another unit of the same project or a comparable agency-owned project; (2) has handicaps requiring the accessibility features of the vacant unit; and (3) occupies a unit not having such features. If no such occupant exists, the accessible unit would be offered to an eligible qualified applicant on the waiting list who has a handicap requiring the accessibility features of the vacant unit. If no such applicant exists, the unit would be offered to a non-handicapped applicant.

Under paragraph (b) of § 9.154, the agency (or its management agent), when offering an accessible unit to an applicant who does not have handicaps requiring the accessibility features of the unit, may require the applicant to agree to move to a non-accessible unit when such a unit becomes available. Such an agreement may be incorporated into the lease.

Section 9.154 is a close adaptation of the comparable provision of HUD's section 504 rule governing HUD-assisted programs. See 24 CFR 8.27.

Section 9.155 Housing Adjustments

Section 9.155 clarifies HUD's section 504 obligations for HUD-owned housing. Section 9.155 would require HUD to make such modifications to its housing policies and practices as are necessary to ensure that they do not discriminate, on the basis of handicap, against otherwise qualified individuals with handicaps in HUD-owned housing. In certain circumstances, it may be necessary for the agency to adjust its policies and practices in a project in order to meet its section 504 obligations. For example, HUD might need to transfer a tenant with a heart condition in a HUD-owned housing project to a ground floor apartment if medical reasons require such a transfer to keep available the benefits of the housing. Similarly, HUD could install light signals so that a tenant with a hearing impairment can be notified of a caller and can answer the door. In all cases, housing adjustments that can be demonstrated by the agency to be essential to its housing program would not have to be made if the adjustments would result in a fundamental alteration in the nature of a program or undue financial and administrative burdens.

Section 9.155 was adapted from 24 CFR 8.33, the comparable provision in

HUD's section 504 rule for federally assisted programs.

Section 9.160 Communications

Section 9.160 would require the agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps would include procedures for determining when auxiliary aids are necessary under § 9.160(a)(1) to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They would also include an opportunity for individuals with handicaps to request the auxiliary aids of their choice. The expressed choice would be given primary consideration by the agency (§ 9.160(a)(1)(i)). The agency would be required to honor the choice unless it can demonstrate that another effective means of communication exists, or that use of the means chosen would not be required under § 9.160(d). That paragraph would limit the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see supra* preamble discussion of § 9.150(a)(2)). Unless not required by § 9.160(d), the agency would be required to provide auxiliary aids at no cost to the individual with handicaps.

The discussion of § 9.150(a) ("Program accessibility: Existing facilities"), regarding the determination of undue financial and administrative burdens, would also apply to this section and should be referred to for a complete understanding of the agency's obligation to comply with § 9.160.

In some circumstances, a note pad and written materials may be sufficient to permit effective communication with a person with hearing impairments. In many circumstances, however, such materials may not be sufficient, particularly when the information to be communicated is complex or is exchanged over a lengthy period of time (*e.g.*, a meeting) or when the applicant or participant with hearing impairments is not skilled in spoken or written language. In these cases, a sign language interpreter may be appropriate. For persons with vision impairments, effective communication might be achieved by several means, including readers and audio recordings. In general, HUD intends to inform the public of (1) the communications services it offers to afford individuals with handicaps an equal opportunity to participate in or benefit from its programs or activities; (2) the opportunity to request a particular mode of communication; and (3) the agency's preferences regarding auxiliary aids, if it can demonstrate that several different modes are effective.

The agency would be required to ensure effective communication with persons with impaired vision or hearing who are involved in hearings conducted by the agency. Auxiliary aids would be required when necessary to ensure effective communication at the proceedings. If a sign language interpreter is necessary, the agency may require that it be given reasonable notice of the need for such an interpreter prior to the proceeding. Moreover, the agency would not be required to provide devices of a personal nature such as individually prescribed devices, readers for personal use or study, or other personalized aids. For example, the agency need not provide eyeglasses or hearing aids to applicants or participants in its programs. Similarly, the regulation would not require the agency to provide wheelchairs to persons with mobility impairments.

Paragraph (b) would require the agency to provide information to individuals with handicaps concerning accessible services, activities, and facilities. Paragraph (c) would require the agency to provide signs at inaccessible facilities that direct users to locations with information about accessible facilities.

Section 9.170 Compliance Procedures

Paragraph (a) specifies that paragraphs (c) through (l) of proposed § 9.170 would establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR part 1613) under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

Paragraph (c) would vest in the Responsible Official the responsibility for the overall management of the section 504 compliance program. "Responsible Official" or "Official," as defined in § 9.103, refers to the Assistant Secretary of HUD for Fair Housing and Equal Opportunity, who is designated as the official responsible for coordinating implementation of compliance procedures set forth in § 9.170.

Paragraph (d) would require the agency to accept and investigate all complete complaints. If the agency determines that it does not have jurisdiction over a complaint, paragraph (e) requires the agency to promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal Government.

Paragraph (f) would require the agency to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act was designed, constructed, or altered in a manner that does not provide ready access to and use by individuals with handicaps.

Paragraph (g) would require that, within 180 days, the Office of Fair Housing and Equal Opportunity or the person designated by the Secretary to investigate a complaint against the Office of Fair Housing and Equal Opportunity shall complete the investigation of the complaint and shall attempt to resolve the complaint informally. If the Assistant Secretary is unable to resolve the complaint informally, he or she would be required to provide to the complainant written findings of fact and conclusions of law, specifying the relief granted, if noncompliance is found, and notice of the right to appeal.

HUD is considering adopting hearing procedures upon appeal of the Assistant Secretary's determination. This hearing would be before an Administrative Law Judge. Public comment is requested regarding this issue and the hearing procedures that may be adopted.

Paragraph (h) would provide complainants an opportunity to appeal the determination on their complaint, and paragraph (i) would provide for agency notification to the complainant of its determination on the appeal.

Paragraph (k) permits the agency to delegate its authority for investigating complaints to other Federal agencies. However, the statutory obligation of the agency to make a final determination of compliance or noncompliance may not be delegated.

Other Information

Coordination. This proposed regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed to Executive agencies. This proposed regulation also has been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206).

Environment. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24

CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the above address.

Major Rule. This proposed rule would not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility. In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this proposed rule does not have a significant economic impact on small entities. The purpose of this rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973 as it applies to programs or activities conducted by the Department. Accordingly, any impact on small businesses would be incidental.

Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule would not, if implemented, have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, the requirements of this proposed rule are directed to HUD programs and activities, and do not impinge upon the relationship between the Federal government and State and local governments. Accordingly, the rule is not subject to review under the Order.

Executive Order 12606, the Family. The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this proposed rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule establishes requirements prohibiting discrimination against the handicapped in HUD programs and activities. Consequently, any effect on the family would likely be indirect and insignificant.

Semiannual agenda of regulations. This rule was listed as Item No. 1215 in the Department's semiannual Agenda of Regulations published on April 22, 1991 (56 FR 17360, 17369) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Lists of Subjects in 24 CFR Part 9

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped.

Accordingly, Title 24 of the Code of Federal Regulations would be amended by adding a new part 9 to read as follows:

PART 9—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Sec.

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9.149 Program accessibility: Discrimination prohibited.
9.150 Program accessibility: Existing facilities.
9.151 Program accessibility: New construction and alterations.
9.152 Program accessibility: Alterations of agency-owned multifamily housing facilities.
9.153 Distribution of accessible dwelling units.
9.154 Occupancy of accessible dwelling units.
9.155 Housing adjustments.
9.160 Communications.
9.170 Compliance procedures.

Authority: Sec. 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 9.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 9.102 Application.

This part applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 9.103 Definitions.

For purposes of this part:

Accessible, when used with respect to the design, construction, or alteration of a facility or a portion of a facility other than an individual dwelling unit, means that the facility or portion of the facility when designed, constructed or altered, can be approached, entered, and used by individuals with physical handicaps. The phrase "accessible to and usable by" is synonymous with accessible.

Accessible, when used with respect to the design, construction, or alteration of an individual dwelling unit, means that the unit is located on an accessible route and, when designed, constructed, altered or adapted can be approached, entered, and used by individuals with physical handicaps. A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in § 9.151 is "accessible" within the meaning of this paragraph. When a unit in an existing facility which is being made accessible as a result of alterations is intended for use by a specific qualified individual with handicaps (e.g., a current occupant of such unit or of another unit under the control of the same agency, or an applicant on a waiting list), the unit will be deemed accessible if it meets the requirements of applicable standards that address the particular disability or impairment of such person.

Accessible route means a continuous unobstructed path connecting accessible elements and spaces in a building or facility that complies with the space and reach requirements of applicable standards prescribed by § 9.152(d). An accessible route that serves only accessible units occupied by persons with hearing or vision impairments need not comply with those requirements intended to effect accessibility for persons with mobility impairments.

Adaptability means the ability of certain elements of a dwelling unit, such as kitchen counters, sinks, and grab bars, to be added to, raised, lowered, or otherwise altered, to accommodate the needs of persons with or without handicaps, or to accommodate the needs of persons with different types or

degrees of disability. For example, in a unit adaptable for a person with impaired hearing, the wiring for visible emergency alarms may be installed but the alarms need not be installed until such time as the unit is made ready for occupancy by a person with impaired hearing.

Agency means the Department of Housing and Urban Development.

Agency-owned housing facility means property in the possession or control of the agency, even though the agency has not acquired title to the property, including instances in which the agency is the mortgagee in possession of a property. HUD operated properties are included within the term "agency-owned housing facilities." A property being managed for the agency by a contractor or management agent is deemed to be in the possession or control of the agency.

Alteration means any change in a facility or its permanent fixtures or equipment. It includes, but is not limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangements in structural parts and extraordinary repairs. It does not include normal maintenance or repairs, re-roofing, interior decoration, or changes to mechanical systems.

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Assistant Secretary means the Assistant Secretary of Housing and Urban Development for Fair Housing and Equal Opportunity.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, note takers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Current illegal use of drugs means illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem.

Drug means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Historic properties means those properties that are listed or are eligible for listing in the National Register of Historic Places, or such properties designated as historic under a statute of the appropriate State or local government body.

Illegal use of drugs means the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). The term "illegal use of drugs" does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(a) *Physical or mental impairment* includes:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(b) *Physical or mental impairment* does not include:

(1) An individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job.

(2) For purposes of employment, the term "individual with handicaps" does not include one who is an alcoholic whose current use of alcohol prevents her or him from performing the duties of the job in question or whose employment would constitute a direct threat to property or the safety of others by reason of her or his current alcohol abuse.

(c) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(d) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(e) *Is regarded as having an impairment* means—

(1) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has none of the impairments defined in paragraph (a) of this definition but is treated by the agency as having such an impairment.

Multifamily housing project means a project containing five or more dwelling units.

Official or *Responsible Official* means the Assistant Secretary of HUD for Fair Housing and Equal Opportunity.

Project means the whole of one or more residential structures and appurtenant structures, equipment, roads, walks, and parking lots which are covered by a single mortgage or contract or otherwise treated as a whole by the agency for processing purposes, whether or not located on a common site.

Qualified individual with handicaps means:

(a) With respect to any agency non-employment program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can

achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or

(b) With respect to any other agency non-employment program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity. "Essential eligibility requirements" include stated eligibility requirements such as income, as well as other explicit or implicit requirements inherent in the nature of the program or activity, such as requirements that an occupant of an agency-owned multifamily housing facility be capable of meeting selection criteria and be capable of complying with all obligations of occupancy with or without supportive services provided by persons other than the agency. For example, a person whose particular condition poses a significant risk of substantial interference with the safety or enjoyment of others or with his or her own health or safety in the absence of necessary supportive services may be "qualified" for occupancy in a project where such supportive services are provided as part of the program. The person may not be "qualified" for a project lacking such services unless the person can provide the services on his own.

(c) *Qualified handicapped person* as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 9.140.

Replacement cost of the completed facility means the current cost of construction and equipment for a newly constructed housing facility of the size and type being altered. Construction and equipment costs do not include the cost of land, demolition, site improvements, non-dwelling facilities and administrative costs for project development activities.

Secretary means the Secretary of Housing and Urban Development.

Section 504 means section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794. As used in this part, section 504 applies only to programs or activities conducted by the agency and not to federally assisted programs.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§ 9.110 Self-evaluation.

(a) The agency shall, within one year of the effective date of this part, evaluate its current policies and practices, and the effects of those policies and practices, including regulations, handbooks, notices and other written guidance, that do not or may not meet the requirements of this part. To the extent modification of any such policies is required, the agency shall take the necessary corrective actions.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following the completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A list of interested persons;

(2) A description of the areas examined and any problems identified, and

(3) A description of any modifications made or to be made.

§ 9.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency. The agency shall make such information available to such persons in such manner as the Secretary finds necessary to apprise them of the protections against discrimination assured them by section 504 and this part. All publications and recruitment materials distributed to participants, beneficiaries, applicants or employees shall include a statement that the agency does not discriminate on the basis of handicap. The notice shall include the name of the person or office responsible for the implementation of section 504.

§ 9.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any housing, aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the housing, aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the housing, aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with any housing, aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate housing, aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with housing, aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards;

(vi) Deny a dwelling to an otherwise qualified buyer or renter because of a handicap of that buyer or renter or a person residing in or intending to reside in that dwelling after it is sold, rented or made available; or

(vii) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the housing, aid, benefit, or service.

(2) For purposes of this part, housing, aid, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for individuals with handicaps and non-handicapped persons, but must afford individuals with handicaps equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement.

(3) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of programs or activities that are permissibly separate or different for handicapped persons.

(4) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would:

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would:

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(6) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(7) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c)(1) Notwithstanding any other provision of this part, non-handicapped persons may be excluded from the benefits of a program if the program is limited by Federal statute or Executive order to individuals with handicaps. A specific class of individuals with handicaps may be excluded from a program if the program is limited by Federal statute or Executive order to a different class of individuals.

(2) Certain agency programs operate under statutory definitions of "handicapped persons" that are more restrictive than the definition of "individual with handicaps" contained in § 9.103. Those definitions are not superseded or otherwise affected by this regulation.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

(e) The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement that, based on handicap, imposes inconsistent or contradictory prohibitions or limits upon the eligibility of qualified individuals with handicaps to receive services or to practice any occupation or profession.

(f) The enumeration of specific forms of prohibited discrimination in paragraphs (b) and (d) of this section does not limit the general prohibition in paragraph (a) of this section.

§ 9.131 Illegal Use of Drugs.

(a) *General.* (1) Except as provided in paragraph (b) of this section, this part does not prohibit discrimination against an individual based on that individual's current illegal use of drugs.

(2) The agency shall not discriminate on the basis of illegal use of drugs against an individual who is not engaging in current illegal use of drugs and who—

(i) Has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully;

(ii) Is participating in a supervised rehabilitation program; or

(iii) Is erroneously regarded as engaging in such use.

(b) *Health and rehabilitation services.* The agency shall not deny health services or services provided under Titles I, II, and III of the Rehabilitation Act to an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.

(c) *Drug testing.* (1) This part does not prohibit the agency from adopting or administering reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual who formerly engaged in the illegal use of drugs is not now engaging in current illegal use of drugs.

(2) Nothing in this paragraph shall be construed to encourage, prohibit, restrict, or authorize the conduct of testing for illegal use of drugs.

§§ 9.132 to 9.139 [Reserved]

§ 9.140 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613 (subpart G), shall apply to employment in federally conducted programs or activities.

§§ 9.141 to 9.148 [Reserved]

§ 9.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 9.150, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 9.150 Program accessibility: Existing facilities.

(a) *General.* Except as otherwise provided in paragraph (e) of this section, the agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) In the case of historic properties, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 9.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Secretary or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals

with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by *sixty days after the effective date of this part,* except that where structural changes in facilities are undertaken, such changes shall be made by *three years after the effective date of this part,* but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by *six months after the effective date of this part,* a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

(e) The requirements of paragraphs (a), (b), and (c) of this section shall apply to the Property Disposition Programs. However, this section does not require HUD to make alterations to existing facilities that are part of the Property Disposition Programs unless such alterations are necessary to meet the needs of a current or prospective tenant during the time when HUD expects to retain legal possession of the facilities, and there is no alternative method to meet the needs of that current or prospective tenant. Nothing in this section shall be construed to require alterations to make facilities accessible to persons with handicaps who are expected to occupy the facilities only after HUD relinquishes legal possession.

§ 9.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 24 CFR 40.1 to 40.6 and 41 CFR 101.19–600 to 101.19–607, apply to buildings covered by this section.

§ 9.152 Program accessibility: Alterations of agency-owned multifamily housing facilities.

(a) If the agency undertakes alterations to an agency-owned multifamily housing project that has 15 or more units and the cost of the alterations is 75 percent or more of the replacement cost of the completed facility, then the project shall be designed and altered to be readily accessible to and usable by individuals with handicaps. Subject to paragraph (c) of this section, a minimum of five percent of the total dwelling units, or at least one unit, whichever is greater, shall be made accessible for persons with mobility impairments. A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in paragraph (d) of this section is accessible for purposes of this section. An additional two percent of the units (but not less that one unit) in such a project shall be accessible for persons with hearing or vision impairments. If state or local requirements for alterations require greater action than this paragraph, those requirements shall prevail.

(b) Subject to paragraph (c) of this section, alterations to dwelling units in an agency-owned multifamily housing project shall, to the maximum extent feasible, be made to be readily accessible to and usable by individuals with handicaps. If alterations of single elements or spaces of a dwelling unit, when considered together, amount to an alteration of a dwelling unit, the entire dwelling unit shall be made accessible. Once five percent of the dwelling units in a project are readily accessible to and usable by individuals with mobility impairments, then no additional elements of dwelling units, or entire dwelling units, are required to be accessible under this paragraph. Alterations to common areas or parts of facilities that affect accessibility of existing housing facilities, shall, to the maximum extent feasible, be made to be accessible to and usable by individuals with handicaps. For purposes of this paragraph, the phrase "to the maximum extent feasible" shall not be interpreted as requiring that the agency make a dwelling unit, common area, facility or element thereof accessible if doing so would impose undue financial and administrative burdens on the operation of the multifamily housing project.

(c) The agency may establish a higher percentage or number than that prescribed in paragraphs (a) or (b) of this section if the agency determines that there is a need for a higher percentage or number, based on census data or other available current data. In making such a determination, HUD shall take into account the expected needs of eligible persons with and without handicaps.

(d) The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 24 CFR part 40 apply to agency-owned multifamily housing projects covered by this section.

§ 9.153 Distribution of accessible dwelling units.

Accessible dwelling units required by § 9.152 shall, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout projects and sites and shall be available in a sufficient range of sizes and amenities so that a qualified individual with handicaps' choice of living arrangements is, as a whole, comparable to that of other persons eligible for housing assistance under the same agency conducted program. This provision shall not be construed to require (but does allow) the provision of an elevator in any multifamily housing project solely for the purpose of permitting location of accessible units above or below the accessible grade level.

§ 9.154 Occupancy of accessible dwelling units.

(a) The agency shall adopt suitable means to assure that information regarding the availability of agency-owned accessible units reaches eligible individuals with handicaps, and shall take reasonable nondiscriminatory steps

to maximize the utilization of such units by eligible individuals whose disability requires the accessibility features of the particular unit. To this end, when an accessible unit becomes vacant, the agency (or its management agent) before offering such units to a non-handicapped applicant shall offer such unit:

(1) First, to a current occupant of another unit of the same project, or comparable projects under common control, having handicaps requiring the accessibility features of the vacant unit and occupying a unit not having such features, or, if no such occupant exists, then

(2) Second, to an eligible qualified applicant on the waiting list having a handicap requiring the accessibility features of the vacant unit.

(b) When offering an accessible unit to an applicant not having handicaps requiring the accessibility features of the unit, the agency may require the applicant to agree (and may incorporate this agreement in the lease) to move to a non-accessible unit when available.

§ 9.155 Housing adjustments.

(a) The agency shall modify its housing policies and practices as they relate to agency-owned housing to ensure that these policies and practices do not discriminate, on the basis of handicap, against a qualified individual with handicaps. The agency may not impose upon individuals with handicaps other policies, such as the prohibition of assisting devices, auxiliary alarms, or guides in housing facilities, that have the effect of limiting the participation of tenants with handicaps in any agency conducted housing program or activity in violation of this part. Housing policies that the agency can demonstrate are essential to the housing progran or activity will not be regarded as discriminatory within the meaning of this section if modifications would result in a fundamental alteration in the nature of the program or activity or undue financial and administrative burdens.

(b) The decision that compliance would result in such alteration or burdens must be made by the Secretary or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§ 9.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries or members of the public by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with this section would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Secretary or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with § 9.160 would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§ 9.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Responsible Official shall coordinate implementation of this section.

(d) Persons may submit complete complaints to the Assistant Secretary for Fair Housing and Equal Opportunity, 451 Seventh St. SW., Washington, DC 20410, or to any HUD Regional Office. The agency shall accept and investigate all complete complaints for which the agency has jurisdiction. All complete complaints shall be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause. For purposes of determining when a complaint is filed, a complaint mailed to the agency shall be deemed filed on the date it is postmarked. Any other complaint shall be deemed filed on the date it is received by the agency. The agency shall acknowledge all complaints, in writing, within ten (10) working days of receipt of the complaint.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps. The agency shall delete the identity of the

complainant from the copy of the complaint.

(g)(1) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the Office of Fair Housing and Equal Opportunity shall complete the investigation of the complaint, attempt informal resolution, and if no informal resolution is achieved, issue a letter of findings. If a complaint is filed against the Office of Fair Housing and Equal Opportunity, the Secretary or a designee of the Secretary shall investigate and resolve the complaint through informal agreement or letter of findings.

(2) If a complaint is resolved informally, the terms of the agreement shall be reduced to writing and made part of the complaint file, with a copy of the agreement provided to the complainant and the agency. The written agreement may include a finding on the issue of discrimination and shall describe any corrective action to which the complainant and the respondent have agreed.

(3) If a complaint is not resolved informally, the Office of Fair Housing and Equal Opportunity or a person designated under this paragraph shall notify the complainant of the results of the investigation in a letter containing—

(i) Findings of fact and conclusions of law;

(ii) A description of a remedy for each violation found;

(iii) A notice of the right to appeal to the Secretary;

(iv) A notice of the right of the complainant to request a hearing.

(h)(1) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 9.170(g). The Assistant Secretary or the person designated by the Secretary to decide an appeal of a complaint filed against the Office of Fair Housing and Equal Opportunity may extend this time for good cause.

(2) Timely appeals shall be accepted and processed by the Assistant Secretary. Decisions on an appeal shall not be issued by the person who made the initial determination.

(i) The Assistant Secretary or the person designated by the Secretary to decide an appeal of a complaint filed against the Office of Fair Housing and Equal Opportunity shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the agency determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(j) The time limits cited in paragraphs (g) and (i) of this section may be extended with the permission of the Assistant Attorney General.

(k) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

Dated: May 3, 1991.

Alfred A. DelliBovi,

Deputy Secretary.

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Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary

24 CFR Parts 203 and 204

Single Family Mortgage Insurance Premiums; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203 and 204

[Docket No. R-91-1515; FR-2936-I-01]

RIN No. 2502-AF17

Single Family FHA Mortgage Insurance Premiums

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

ACTION: Interim rule.

SUMMARY: This rule implements certain provisions in the Omnibus Budget Reconciliation Act of 1990 which establish new premium requirements for FHA single family mortgage insurance. The act establishes a revised premium payment structure for FHA insured single family mortgages which are obligations of the Mutual Mortgage Insurance Fund. The section consists of both permanent and transition provisions.

DATES: Effective date: July 1, 1991. Comment due date: July 29, 1991.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Stephen A. Martin, Director, Office of Insured Single Family Housing, room 9266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000, telephone: Voice (202) 708-3046, TDD (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 2103 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508, approved Nov. 5, 1990) is identical to, but supersedes section 325 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625 approved November 28, 1990). The new law establishes a revised premium payment structure for FHA insured single family mortgages which are obligations of the Mutual Mortgage Insurance Fund. The section consists of both permanent and transition provisions.

Permanent Provisions

For FHA-insured single family mortgages executed on or after October 1, 1994, the law requires HUD to establish and collect (1) an up-front mortgage insurance premium (MIP) payment equal to 2.25% of the amount of the principal obligation of the mortgage, of which the unearned portion shall be refunded upon prepayment; and (2) annual periodic premium payments of 0.5% of the remaining insured principal balance for (i) the first 11 years of the mortgage term where the original principal balance is less than 90% of the appraised value of the property; and (ii) the first 30 years of the mortgage term where the original principal obligation is at least 90% of the appraised value of the property, except that where the original principal obligation is more than 95% of the appraised value, the annual premium shall be .55% of the remaining insured principal balance.

Transition Provisions

For FHA-insured single family mortgages executed during fiscal years 1991 and 1992 (but after the effective date of this rule) HUD is required to establish and collect (1) an up-front MIP payment equal to 3.80% of the amount of the principal obligation of the mortgage; and (2) annual periodic premium payments of 0.50% of the remaining insured principal balance for (i) the first 5 years of the mortgage term where the original principal obligation is less than 90% of the appraised value of the property; (ii) the first 8 years where the original principal obligation is at least 90% of the appraised value of the property but no more than 95%; and (iii) the first 10 years where the original principal obligation is greater than 95%. For FHA-insured single family mortgages executed during fiscal year 1993 and 1994, HUD shall establish and collect (1) at time of insurance, an up-front payment of 3.0% of the amount of the principal obligation of the mortgage; and (2) annual periodic premium payments of 0.50% of the remaining insured principal balance for (i) the first 7 years of the mortgage term where the original principal obligation is less than 90% of the appraised value of the property; (ii) the first 12 years where the original principal obligation is at least 90% of the appraised value of the property but no more than 95%; and (iii) the first 30 years where the original principal obligation is greater than 95%.

With respect to mortgages covered by this new section 325, the Commissioner will refund all of the unearned up-front mortgage insurance premium (UFMIP) upon termination of insurance by voluntary agreement or upon payment in full of the entire principal obligation of the mortgage prior to the maturity date.

These MIP changes are applicable to mortgages insured under the Mutual Mortgage Insurance Fund, i.e., National Housing Act sections 203(b), 203(h), 203(i) and 203(n). This includes mortgages insured under section 203(b) pursuant to sections 244 (coinsurance), 245 (graduated payment mortgages and growing equity mortgages) and 251 (adjustable rate mortgages). Excluded are condominiums GPMs, GEMs and ARMs which are not insured under section 203(b). Also excluded are any section 203(b) mortgages insured pursuant to sections 223(e) (older declining areas), 238(c) (military impacted areas), 247 (Indian reservations) and 248 (Hawaiian home lands), since those mortgages are not obligations of the Mutual Mortgage Insurance Fund. Because mortgages insured under the section 244 coinsurance program do not currently have an UFMIP, HUD's regulations at 24 CFR part 204 are revised in this rule to require the UFMIP. The full amount of any such UFMIP will be credited to the Mutual Mortgage Insurance Fund. No portion of such amount will be credited to the Annual Coinsurance Reserve established by § 204.270.

With respect to charges on open-end advances in connection with previously insured mortgages (24 CFR 203.44) current regulations are revised at § 203.270 to provide for an insurance charge equal to .50 percent per-annum of the outstanding principal obligation of the open-end advance. This charge is the same as that currently applying to mortgages subject to a one-time MIP pursuant to § 203.280 and is consistent with the overall policy of charging an annual .50 percent MIP under the new mortgage insurance premium schedule set forth in this rule.

The following table illustrates the operation of this new premium payment for each fiscal year.

Fiscal year	Up front	Loan-to-value	Annual premium	Period
1991+1992	3.80%	89.99+Under	.50	5 Years.
		90.00–95.00	.50	8 Years.
		95.01+Over	.50	10 Years.
1993+1994	3.00%	89.99+Under	.50	7 Years.
		90.00–95.00	.50	12 Years.
		95.01+Over	.50	30 Years.
1995+	2.25%	89.99+Under	.50	11 Years.
		90.00–95.00	.50	30 Years.
		95.01+Over	.55	30 Years.

For purposes of this rule, the loan to value is calculated by dividing the loan amount (excluding the up-front premium) by the appraised value of the property (excluding closing costs).

The interim rule will affect all mortgages executed after the effective date of the interim rule, regardless of whether a firm commitment to insure has previously been issued by HUD. This is a deviation from the normal approach stated in § 203.499, under which amendments to subpart B of part 203 shall not adversely affect the interests of a mortgagee on any mortgage on which the HUD has issued a commitment. The new MIP requirements could adversely affect the interests of a mortgagee since they will increase the monthly payments for a mortgagor and thereby increase the possibility of payment defaults. However, the statute specifically requires that the new MIP requirements apply based on the date of execution of mortgages rather than the date of firm commitments and HUD has not discretion to proceed otherwise. In Mortgagee Letter 91–1 dated January 10, 1991, the Department advised lenders of these prospective MIP changes. To the extent that § 203.499 would require a different result, it has been superseded by the statute.

Justification for Interim Rule

It is the policy of the Department to publish rules for public comment before developing a rule for effect. However, in a particular case where notice and public comment are not required by statute, the procedure for advance public comment may be omitted if the Department determines it is impracticable, unnecessary or contrary to the public interest. In this case, section 2103 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508, approved Nov. 5, 1990) directs the Secretary of HUD to issue regulations to carry out these new MIP provisions within 90 days beginning on the date of enactment of that Act. It further provides that the new provisions will apply to mortgages executed after the effective date of these regulations.

Another statute restricts the Department's rule making process, however, requiring an opportunity for Congress to review any rule before it is published for comment, and requiring that the effectiveness of any rule be delayed for thirty calendar days after the date of publications (section 7(o) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(o)).

The Department finds that it is impracticable and contrary to the public interest to solicit public comment before issuing this rule. If the Department were to develop a proposed rule, wait for the receipt of public comments, and then formulate a final rule after considering the comments, that process along with the statutorily mandated delays, would preclude the Department from implementing this revision in MIP payments within a period reasonably close to the required 90 days.

Obviously, this statutory 90-day deadline has been missed. This was due to (1) the scope and complexity of the new MIP scheme to be implemented and (2) issues which arose in consideration of the rule involving specific details of its administration.

One issue which surfaced is that, under the new MIP structure, the Department will have to account for the new mortgages on a case level basis. Effective internal and accounting controls under the new structure will exist only if HUD is able tie a premium due and a premium collected, or not collected, to a particular insured mortgage. It should be emphasized that the overriding purpose behind establishment of this new premium structure was to ensure and improve the financial viability of the Mutual Mortgage Insurance Fund and this purpose cannot be attained unless effective accounting controls are put in place at the outset.

When one considers the sheer volume of single family FHA cases the Department anticipates that this new MIP schedule will be covering and adds to this the facts that (1) FHA mortgage notes are bought and sold with great rapidity and frequency, (2) there will be a need to account for these notes on a case level basis, and (3) it takes time for mortgagee portfolio information to be communicated to HUD for HUD to reconcile the various portfolios, the complexity of the implementation task confronting the Department becomes apparent. There must be a basic shift from the use of statistical tolerances as an accounting control tool (essentially the case under the current procedure) to what is essentially a case level accounting procedure.

To make this change it will be necessary for the Department have mortgagees and servicers provide more detailed and specific information concerning the mortgages held in it portfolio. A Mortgagee Letter setting forth these new information requirements is currently in preparation. We have every reason to believe that this Mortgagee Letter will be issued sufficiently in advance of the first date mortgagees will be required to provide the necessary information. This will provide all mortgagees and servicers reasonable notice of these requirements.

Because of the urgent and overriding purpose of these new MIP schedules, i.e., maintaining and improving the financial stability of the Mutual Mortgage Insurance Fund, the Department is publishing this document as an interim rule to take effect on July 1, 1991. The Department does however, invite public comments on the rule and comments received within a sixty-day comment period will be considered during development of a final rule that will supersede this interim rule.

Technical Provisions

The rule contains a number of technical provisions either incorporating by reference or adapting existing regulatory language in part 203 relating to MIP.

It is necessary to state in the rule that annual MIP is based on the original amortization schedule. This is being done by cross referencing the existing § 203.261.

The rule needs a clear statement of when HUD must receive the MIP and when any late charge starts. Paragraphs

203.284 (d) and (e) in the rule cover this and are based upon part of existing §§ 203.264 and 203.265. In addition § 203.264 is incorporated in its entirety.

Section 203.267 and part of § 203.268 dealing respectively with events ending the obligation to pay periodic MIP and prorata payments of periodic MIP are cross referenced in the rule.

Finally §§ 203.280 and 203.282 dealing respectively with the timing of the payment of, and any late changes and interest on, one-time (up-front) MIP are cross referenced in the rule.

Procedural Matters

This rule would constitute a "major rule"as that term is defined in section 1(b) of the Executive order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it would, as defined by that order, have an annual effect on the economy of $100 million or more. Accordingly, a regulatory impact analysis has been prepared and is available for review and inspection in room 10276, Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule implements a specific-congressional mandate that revises the premium structure for single family FHA mortgage insurance. Though the changes made may be significant for some homebuyers, they are the result of thoroughly debated compromise reached by the Congress. The effects of the rule are the result of legislation and there are no means available to the Department to alter their impact.

A Finding of No Significant Impact with a respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2) of the National Environment Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket clerk at the above address.

This rule was listed as item 1295 in the Department's Semiannual Agenda of Regulations published on April 22, 1991 (56 FR 17360, 17387) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the order. The rule is limited to revising certain specific premium payment requirements in connection with FHA mortgage insurance. The revisions are mandated by statute and do not alter the established roles of HUD, the States and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. The rule involves requirements for payment of premiums on FHA insured mortgages. The changes from the existing premium structure are specifically mandated by the Congress and reflect its effort to ensure the financial soundness of the Mutual Mortgage Insurance Fund while, to the maximum extent feasible, continuing FHA program affordability for first time homebuyers.

The Catalog of Federal Domestic Assistance program number(s) are 14.117, 14.112, 14.121, 14.122, 14.132, and 14.133.

List of Subjects

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians: Lands Loan programs: Housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 204

Mortgage insurance.

Accordingly, 24 CFR parts 203 and 204 are amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: Secs. 203, 211, National Housing Act (12 U.S.C. 1709, 1715b); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Subpart C is also issued under sec. 230, National Housing Act (12 U.S.C. 1715u).

2. Section 203.18c is revised to read as follows:

§ 203.18c One-time or up-front mortgage insurance premium excluded from limitations on maximum mortgage amounts.

After determining any maximum insurable mortgage amount under the provisions of this subpart, the maximum insurable amount of any mortgage may be increased by the amount of any one-time or up-front mortgage insurance premium that will be financed as part of the mortgage.

3. Section 203.259a is revised to read as follows:

§ 203.259a Scope.

(a) The Commissioner shall charge a one-time MIP pursuant to § 203.280 for mortgages that:

(1) Are insured pursuant to § 203.43i; or

(2)(i) Are obligations of the Mutual Mortgage Insurance Fund under this part (except insured open-end advances as provided by § 203.270);

(ii) Are insured pursuant to:

(A) An application for a conditional commitment received on or after September 1, 1983; or

(B) An application for mortgage insurance endorsement under the single family Direct Endorsement program as provided in § 203.255, where the property appraisal report is signed by the mortgagee's approved underwriter on or after September 1, 1983; and

(iii) Are executed on or before July 1, 1991.

(b) The Commissioner shall charge an up-front MIP pursuant to § 203.284 for mortgages that are executed after July 1, 1991, that are obligations of the Mutual Mortgage Insurance Fund.

(c) The periodic MIP provisions of §§ 203.260 through 203.268 shall not apply to mortgages referred to in paragraph (a) of this section nor shall they apply to mortgages to which the provisions of § 203.284 apply.

4. Paragraph (c) of § 203.270 is revised to read as follows:

§ 203.270 Open-end insurance charges.

* * * * *

(c) *Payment of charge for mortgages with one-time or up-front MIP.* In the case of a mortgage with a one-time or up-front MIP pursuant to § 203.280 or § 203.284, the insurance charge shall be in an amount equal to ½ percent per annum of the outstanding principal obligation of the open-end advance. Sections 203.260 through 203.268 shall apply to the open-end charge on a

mortgage with a one-time or up-front MIP, except that all references to amortization dates shall refer to amortization dates of the open-end advance, references to MIP shall refer to the open-end insurance charge, and references to outstanding principal obligation of the open-end advance.

* * * * *

5. Subpart B of 24 CFR part 203 is amended by adding a new undesignated center heading preceding a new § 203.284 to read as follows:

Calculation of Mortgage Insurance Premium after July 1, 1991

§ 203.284 Calculation of up-front MIP after July 1, 1991.

(a) *Permanent Provisions.* Any mortgage executed on or after October 1, 1994, that is an obligation of the Mutual Mortgage Insurance Fund shall be subject to the following requirements:

(1) *Up-Front.* The Commissioner shall establish and collect a single premium payment in an amount equal to 2.25 percent of the amount of the original insured principal obligation of the mortgage. Upon payment in full of the principal obligation of a mortgage prior to the maturity date of the mortgage or upon termination of insurance by voluntary agreement, the Commissioner shall refund all the unearned premium charges paid on the mortgage pursuant to this paragraph (a)(1).

(2) *Annual.* In addition to the premium under paragraph (a)(1) of this section, the Commissioner shall establish and collect annual premium payments in an amount equal to 0.50 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under paragraph (a)(1) of this section for the following periods:

(i) For any mortgage involving an original principal obligation (excluding any premium collected under paragraph (a)(1) of this section) that is less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), for the first 11 years of the mortgage term.

(ii) For any mortgage involving an original principal obligation (excluding any premium collected under paragraph (a)(1) of this section) that is greater than or equal to 90 percent of such value, for the lesser of the mortgage term or the first 30 years of the mortgage term; except that for any mortgage involving an original principal obligation (excluding any premium collected under paragraph (a)(1) of this section) that is greater than 95 percent of such value, the annual premium collected during the period determined under this clause shall be in an amount equal to 0.55 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under paragraph (a)(1) of this section).

(b) *Transition Provisions.* Mortgage insurance premiums on mortgages executed during fiscal year 1991 through 1994 that are obligations of the Mutual Mortgage Insurance Fund shall be subject to the following requirements:

(1) *1991 and 1992*—For mortgages executed during fiscal years 1991 and 1992 but after July 1, 1991 the Commissioner shall establish and collect the following premiums:

(i) *Up-Front*—A single premium payment in an amount equal to 3.80 percent of the amount of the original insured principal obligation of mortgage.

(ii) *Annual*—In addition to the premium under paragraph (b)(1)(i) of this section, annual premium payments in an amount equal to 0.50 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under paragraph (b)(1)(i) of this section) for any mortgage involving an original principal obligation (excluding any premium collected under paragraph (b)(1)(i) of this section) that is—

(A) Less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), for the first 5 years of the mortgage term;

(B) Greater than or equal to 90 percent of such value, but equal to or less than 95 percent of such value, for the first 8 years of the mortgage term; and

(C) Greater than 95 percent of such value, for the first 10 years of the mortgage term.

(2) *1993 and 1994*—For mortgages executed during fiscal years 1993 and 1994 the Commissioner shall establish and collect the following premiums:

(i) *Up-Front*—A single premium payment in an amount equal to 3.00 percent of the amount of the original insured principal obligation of mortgage.

(ii) *Annual*—In addition to the premium under paragraph (b)(2)(i) of this section, annual premium payments in an amount equal to 0.50 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under paragraph (b)(2)(i) of this section) for any mortgage involving an original principal obligation (excluding any premium collected under paragraph (b)(2)(i) of this section) that is—

(A) Less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), for the first 7 years of the mortgage term;

(B) Greater than or equal to 90 percent of such value, but equal to or less than 95 percent of such value, for the first 12 years of the mortgage term; and

(C) Greater than 95 percent of such value, for the lesser of the mortgage term or the first 30 years of the mortgage term.

(c) *Refunds.* With respect to any mortgage subject to premiums under this section, the Commissioner shall refund all of the unearned premium charges paid on a mortgage pursuant to paragraphs (b)(1)(i) or (b)(2)(i) of this section upon termination of insurance by voluntary agreement or upon payment in full of the principal obligation of the mortgage prior to the maturity date.

(d) *Payment of annual MIP.* The full annual MIP collectible by the Commissioner under this section shall be due on the anniversary date of the beginning of amortization and payable not later than ten days after such date even if not collected by the mortgagee from the mortgagor.

(e) *Mortgagee's late charge and interest.* Annual MIP which is remitted to the Commissioner after the payment date prescribed by paragraph (d) of this section and § 203.264 shall include a late charge of four percent of the amount paid. In addition to this late charge the mortgagee shall pay interest on any annual MIP which is remitted to the Commissioner more than 20 days after the payment date prescribed in paragraph (d) of this section. Such interest rate shall be paid at a rate set in conformity with the Treasury Fiscal Requirements Manual.

(f) *Applicability of other sections.* The provisions of §§ 203.261, 203.264, 203.266, 203.267, 203.268(a)(1), 203.280 and 203.282 are applicable to mortgages subject to premiums under this section.

(g) *Definition.* As used in this section the term "remaining insured principal balance" means the average outstanding principal obligation of the mortgage for the first year of amortization, or for a 12-month period preceding a subsequent anniversary date of the beginning of amortization.

PART 204—COINSURANCE

6. The authority citation for 24 CFR Part 204 continues to read as follows:

Authority: Secs. 244, 211, National Housing Act (12 U.S.C. 1715z-9, 1715(b)); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

7. Section 204.260 is revised to read as follows:

§ 204.260 Mortgage insurance premiums for coinsured mortgages.

The provisions of §§ 203.260 through 203.268 or the provisions of § 203.284, as appropriate, concerning mortgage insurance premiums with respect to mortgages insured under 203(b) of the National Housing Act, apply to mortgages covering one- to four-family dwellings to be insured under this part.

8. The undesignated heading immediately before § 204.270 and paragraph (a) of § 204.271 are revised to read as follows:

Annual Mortgage Insurance Premiums and Coinsurance Reserve

§ 204.271 Credits to reserve.

(a) There shall be credited to each Annual Coinsurance Reserve on the date of receipt of an annual mortgage insurance premium, as follows: 28 percent of the initial (annual) MIP, 23 percent of the first annual MIP, 19 percent of the second annual MIP, and 15 percent of the third annual MIP.

* * * * *

9. Part 204 is amended by adding a new undesignated heading preceding a new § 204.276 to read as follows:

Up-Front Premiums

§ 204.276 Up-front premiums.

The full amount of all up-front premiums collected pursuant to the provisions of § 203.284 on mortgages insured under this part shall be credited to the Mutual Mortgage Insurance Fund. No portion of such amount shall be credited to the Annual Coinsurance Reserve established by § 204.270.

Dated: April 23, 1991.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

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Part VII

Department of Housing and Urban Development

Office of the Assistant Secretary

24 CFR Part 203, et al.

Minimum Mortgagor Equity Applicable to Most FHA Single Family Mortgages; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR 203, 204, 222, 226, 234 and 240

[Docket No. R-91-1517; FR-2939-I-01]

[RIN 2502-AF18]

Minimum Mortgagor Equity Applicable to Most FHA Single Family Mortgages

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

ACTION: Interim rule with request for comments.

SUMMARY: This rule implements section 2101 of the Omnibus Budget Reconciliation Act of 1990. That section establishes a minimum mortgagor equity requirement applicable to most FHA single family mortgages.

EFFECTIVE DATE: July 1, 1991.

DATES: *Comment Due Date:* July 29, 1991.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708-4337. Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk ((202) 708-2084). These are not toll-free numbers.)

FOR FURTHER INFORMATION CONTACT: Stephen A. Martin, Director, Office of Insured Single Family Housing, room 9266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-3046. A telecommunications device for deaf persons (TDD) is available at (202) 708-4594. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: Section 2101 of the Omnibus Budget Reconciliation Act of 1990 prohibits FHA-insured single family mortgages from involving a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) that exceeds 98.75% of the appraised value of the property (97.75% where the appraised value exceeds $50,000), plus the amount of the mortgage insurance premium paid at time of insurance. The section defines "appraised value" as the amount set forth in the written statement required under section 226 of the National Housing Act, or a similar amount determined by HUD if section 226 does not apply. (Section 226 requires the seller of a single family home approved for mortgage insurance to deliver to the buyer, prior to sale a written statement setting forth the FHA appraised value of the property. A statement of FHA replacement cost may be substituted where applicable). This rule revises 24 CFR 203.18 and 234.27 to reflect this new requirement.

The effect of Section 2101 is to establish a maximum loan-to-value ratio that is generally applicable to FHA single family housing. There are, however, in the law further, specific maximum loan-to-value ratios which also must be met. These old loan-to-value ratios are set forth in 24 CFR 203.18 and 234.27.

HUD, historically, has permitted mortgages to include 100% of certain closing costs as part of appraised value for purposes of the old loan-to-value calculation. While the new loan-to-value test will have the effect of limiting the financing of closing costs, the effect will vary depending on the specifics of the loan and the prevailing closing cost in the jurisdiction. Some loans could continue to include most closing costs while others would only include a small percentage of closing costs. The Department is concerned that permitting the financing of most closing costs in a mortgage would continue the problem which the statutory provision was intended to address: excessive mortgage balance in comparison to actual home value. Further, the assessment of the new statutory provisions that Price-Waterhouse performed for the Department assumed that no more than 57.25% of closing costs would be financed through the insured mortgage. Although this assumption is not explicitly set forth in the statute, it served as the basis of discussions between representatives of Congress and the Department and was part of the Department's justification for accepting the statutory reform package in its final form. The Department has no basis for concluding that the statutory reforms will achieve their intended effect of regaining actuarial soundness for the Mutual Mortgage Insurance Fund, including a capital ratio of at least 1.25% within 24 months, if the Department continues to insure mortgages with a high percentage of financed closing costs.

Therefore, the Department proposes to end its practice of permitting mortgagees to include 100% of allowable closing costs as part of appraised value when applying the old loan-to-value ratio. The regulation would permit HUD to adjust the percentage to be financed when HUD gained further experience regarding the overall effect of the statutory reforms. Until HUD has such experience, HUD proposes to apply a maximum of 57% for closing costs included in appraised value for the old loan-to-value calculation set forth at 24 CFR 203.18 (a) through (f) and 234.27 (a) through (d). (As noted above, 0% would be included for the new calculation to be carried out under this rule.) The two methods of calculations and examples are provided below. In each of the examples it is assumed that the maximum mortgage limit for the area is not exceeded.

1. The first calculation will be the current 97 percent of the first $25,000 of the lesser of (i) sales price (as adjusted for seller paid closing costs) plus 57% of closing costs or (ii) value plus 57% of closing costs. To this may be added 95 percent of the remaining amount (97 percent for modestly priced homes of $50,000 or less).

2. The second calculation will determine if the mortgage amount must be further reduced to meet the 98.75 percent or 97.75 percent loan-to-value limits of the 1990 legislation. To determine this the mortgagee must multiply the appraiser's estimate of value by 98.75 percent if the value is $50,000 or less or by 97.75 percent if the value is in excess of $50,000.

Exhibit I

A. Example for a property with a value and sales price of $90,000 and total allowable closing costs are $2,000:

First Calculation

$90,000	Lesser of sales price or appraised value.
+1,140	Add 57% of total allowable closing costs.
$91,140	
−25,000 ×	97%=$24,250
66,140 ×	95%=$62,833
	$87,083

Second Calculation

$90,000	Appraised value.
×97.25%	Do not add closing costs.
$87,975	

In this example, the maximum mortgage is $87,083 ($87,050 if condominium) because it is the lesser of the two calculations.

B. Example for a property with a value and sales price of $48,000 and total allowable closing costs are $800:

First Calculation

$48,000	Lesser of sales price or appraised value.
+456	Add 57% of total allowable closing costs.
$48,456	
×97%	
47,002	

Second Calculation

$48,000	Appraised value.
×98.75%	Do not add closing costs.
$47,400	

In this example, the maximum mortgage is $47,002 ($47,000 if a condominium) because it is the lesser of the two calculations.

C. Examples for a property with a value and sales price of $100,000 and total allowable closing costs of $3,000. In the first example, the seller is paying $1,500 of the borrower's allowable costs. Also shown is the borrower's required downpayment. In the second example, the borrower pays all of the closing costs. These examples show that seller payment of the borrower's closing costs does not significantly reduce the amount of the borrower's cash investment in the property.

Example No. 1

First Calculation

$100,000	Lesser of sales price or appraised value.
−1,500	Subtract seller paid portion of closing costs.
$98,500	
+1,710	Add allowable closing costs (57% of $3,000).
$100,210	

$100,210		Mortgage basis
−25,000	×	97%+$24,250
$75,210	×	95%=71,449
		$95,699

The first calculation for the mortgage amount is based on the lesser of the acquisition cost or value plus closing costs.

Second Calculation

$100,000	Appraised value.
	Do not subtract seller or third party paid portion of closing costs.
×97.75%	
97,750	

In this example, the maximum mortgage is $95,699 ($95,650 for a condominium) because it is the lesser of the two calculations.

Required investment:

$101,500	Total acquisition.
−95,699	Maximum mortgage amount.
$5,801	Required cash investment.

The same process applies to properties with a sales price or value of $50,000 or less (modestly priced homes) when the seller or any third party pays a portion or all of the closing costs.

Example No. 2

In this example, the buyer if financing 57% of all allowable closing costs, and total allowable borrower closing costs are $3,000.

First Calculation

$100,000		Lesser of sales price or appraised value.
+1,710		Add allowable closing costs (57% of $3,000).
$101,710		Mortgage basis
−25,000	×	97%=24,250
$76,710	×	95%=72,874
		97,124

Second Calculation

$100,000	Appraised value.
	Do not add closing costs
×97.75%	
97,750	

In this example, the maximum mortgage is $97,124 because it is the lesser of the two calculations.

Required investment:

$103,000	Acquisition costs.
97,124	Maximum mortgage amount.
$5,876	Required cash investment.

The new 98.75 percent and 97.75 percent maximum loan-to-value ratios apply to mortgages insured pursuant to firm commitments issued by HUD or borrower approvals issued by Direct Endorsement lender (underwriter signs mortgage credit worksheet-Form HUD 92900 WS) on or after July 1, 1991. The maximum 98.75 percent 97.75 percent loan-to-value ratios must be applied to mortgages insured under the following sections of the National Housing Act: 203(b), 222 (Service members), 223(e) (Miscellaneous Housing Insurance), 234(c) (Condominiums), 238(c) Military Impact Areas), 244 (Coinsurance), 245 (GPM/GEM), 251 (Adjustable Rate) and 809 (Armed Services Housing—Civilian Employees). This rule revises 24 CFR 203.18 and 234.27 to reflect this new loan to value requirement.

Justification of Interim Rule

It is the policy of the Department to publish rules for public comment before developing a rule for effect. However, in a particular case where notice and public comment are not required by statute, the procedure for advance public comment may be omitted if the Department determines that it is impracticable, unnecessary, or contrary to the public interest. In this case, Section 2101 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508, approved Nov. 5, 1990) clearly limits the maximum principal obligation on FHA-insured single family mortgages to 98.75 percent of appraised value (97.75 percent if appraised value exceeds $50,000). The Department cannot change these limits in response to public comments because of the specificity of the statute. Furthermore, section 2105 of the above cited legislation directs the Secretary of HUD to ensure that the Mutual Mortgage Insurance Fund attains a capital ratio of not less than 1.25 percent with 24 months after the date of enactment of the law. In its assessment for the Department of the new statutory provisions, Price Waterhouse determined that the 1.25 percent capital target could be met if the Secretary limited the financing of closing costs to 57 percent of the amount currently allowed.

If the Department were to accept and review public comments before implementation of these two provisions, the achievement of the statutory capital target would be jeopardized. Current

laws and policies on the rulemaking process could delay implementation for months beyond the effective date of this interim rule. The effect of such a delay would be to allow significant numbers of mortgages to be insured with lower equity levels than assumed by Price Waterhouse in its analysis. (Both the statutory limit on loan-to-value ratio and the limit on the financing of closing costs have the effect of raising the minimum equity requirement for FHA mortgages.) The Price Waterhouse report confirms the findings of other researchers that low equity levels increase the incidence of default and insurance claims, thereby reducing the net worth, or capital, of the Fund. Thus, an advance review of public comments would jeopardize the achievement of the capital target; hence, the Department believes an interim rulemaking process is in the public interest.

As further justification for the use of the interim rulemaking processing, the Department notes that the financing of closing costs has historically been permitted by administrative decision of the Secretary. Even under current administrative policy, there are closing costs that are ineligible for inclusion in an FHA mortgage. Private mortgage insurers, by way of comparison, do not permit the inclusion of any closing costs in the mortgage. The Department has chosen to announce the change in policy on closing costs in the Preamble to this interim rule not because it is required to do so, but because it seeks public comment. However, the achievement of the statutory capital target for the Mutual Mortgage Insurance Fund requires that the change be implemented before the time period required for the collection and evaluation of comments.

Technical Provisions

There are a number of cross references either to or within the new paragraph 203.18(g) set forth in the rule which operate to either apply or not apply the new mortgagor equity requirements to various mortgage insurance programs. In order to include National Housing Act programs under section 203(n) (insurance of units in cooperatives), section 222 (serviceman's mortgage insurance), section 240 (loans for fee title purchase), and section 809 (armed services housing-civilian employees) amendments are made in 24 CFR parts 203, 222, 240 and 226 respectively cross referencing the new § 203.18(g). Within § 203.18(g) itself, reference is made to §§ 203.18(e) (disaster housing) and § 203.50(f) (rehabilitation loans) in order to expressly exclude those programs from coverage.

In addition, the rule corrects some existing errors in certain sections relating to calculation of maximum mortgage amounts.

Under current regulations, in §§ 204.1 (coinsurance) and 203.45(g) (graduated payment mortgages), § 203.18(f) is excluded from incorporation by reference. This made sense when the subject matter in § 203.18(f) related to seasonal homes. The old seasonal home language was deleted in 1988 however and new language on definitions was substituted. The new definition language should apply to coinsurance and GPM's therefore §§ 204.1 and 203.45(g) are revised to incorporate § 203.18(f) by reference.

In § 203.18b(a)(1)(B), the words "may be" were supposed to appear at the beginning so that (B) reads: "may be an area for which * * *" The sense is somewhat distorted without these words. During 1988 revisions of this paragraph some last-minute rewording occurred but came out garbled. The rule corrects this error.

Finally, § 203.15 (certification of appraisal amount) is revised to extend its coverage by deleting its reference to 1 and 2 family dwellings. The effect of the deletion is to apply the requirement that a certification of FHA appraisal amount be delivered to the purchaser prior to sale in connection with *all* FHA single family properties—3 and 4 as well as 1 and 2 family. The expansion makes the coverage of § 203.15 consistent with the coverage of the new mortgagor minimum equity requirement established by this rule.

Procedural Matters

This rule would constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it would, as defined by that order, have an annual effect on the economy of $100 million or more. Accordingly, a preliminary regulatory impact analysis has been prepared and is available for review and inspection in room 10276, Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule does have the effect of raising FHA downpayment requirements. This result, however, is mandated by the Congress and does not involve an exercise of administrative discretion.

This rule was listed in the Department's Semiannual Agenda of Regulations published on April 22, 1991 (56 FR 17360, 17387) pursuant to Executive Order 12291 and the Regulatory Flexibility Act at sequence number 1296, Office of Housing (H-3-91).

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule does raise FHA downpayment requirements. This is, however, in compliance with a Congressional mandate and does not involve any exercise of administrative discretion.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have Federalism implications when implemented and, thus, are subject to review under the Order. The rule does not change in any way existing relationships between HUD, the states and local governments.

The Catalog of Federal Domestic Assistance program numbers are 14.117, 14.120, 14.121, 14.123.

List of Subjects

24 CFR Part 203

Home improvement, Loan programs—housing and community development, Mortgage insurance, Solar energy.

24 CFR 204

Mortgage insurance.

24 CFR 222

Condominiums, Mortgage insurance.

24 CFR Part 226

Government employees, mortgage insurance.

24 CFR Part 234

Condominiums, Mortgage insurance, Homeownership, Projects, Units.

24 CFR Part 240

Mortgage insurance.

Accordingly, 24 CFR parts 203, 204, 222, 226, 234, and 240 are amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: Secs. 203, 211, National Housing Act (12 U.S.C. 1709, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Subpart C is also issue under sec. 230, National Housing Act (12 U.S.C. 1715u).

2. Section 203.15 is revised to read as follows:

§ 203.15 Certification of appraisal amount.

An application with respect to insurance of mortgages must be accompanied by an agreement satisfactory to the Commissioner, executed by the seller, builder or such other person as may be required by the Commissioner whereby such person agrees that prior to any sale of the dwelling the said person will deliver to the purchaser of such property a written statement in a form satisfactory to the Commissioner setting forth the amount of the appraised value of the property as determined by the Commissioner.

3. A new paragraph (f)(4) and a new paragraph (g) are added to § 203.18 to read as follows:

§ 203.18 Maximum mortgage amounts.

* * * * *

(f) * * *

(4) *Appraised value* means the sum of:

(i) The lesser of sales price (with any adjustments required by the Secretary) or the amount set forth in the written statement required under § 203.15; and

(ii) Closing costs to the extent allowed by the Secretary, provided that neither sales price nor closing costs shall apply for purposes of paragraph (g) of this section.

(g) *Maximum principal obligation.* Except for mortgages meeting the requirements of § 203.18(e) or § 203.50(f) and notwithstanding any other provision of this section, a mortgage may not involve a principal obligation in excess of 98.75 percent of the appraised value of the property (97.75 percent, in the case of a mortgage with an appraised value in excess of $50,000), plus the amount of the mortgage insurance premium paid at the time the mortgage is insured.

4. Paragraph (g) in § 203.43c is revised to read as follows:

§ 203.43c Eligibility of mortgages involving a dwelling unit in a cooperative housing development.

* * * * *

(g) The mortgage shall not exceed the balance remaining after subtracting from the amount determined under §§ 203.18(a), 203.18(g), 203.18a, and 203.18b of this part an amount equal to the portion of the unpaid balance of the blanket mortgage covering the cooperative development which is attributable to the dwelling unit the mortgagor is entitled to occupy as of the date the mortgage is accepted for insurance.

* * * * *

PART 204—COINSURANCE

5. The authority citation for part 204 continues to read as follows:

Authority: Secs. 244, 211, National Housing Act (12 U.S.C. 1715z-9, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

6. Section 204.1 is revised to read as follows:

§ 204.1 Cross-reference.

All of the provisions of subpart A, part 203 of this chapter concerning eligibility requirements of mortgage under section 203(b) of the National Housing Act apply to mortgages covering one- to four-family dwellings to be insured under section 203(b) pursuant to the coinsurance authority of section 244 of the National Housing Act except the following provisions:

Section

203.18 (c), (d), and (e) Maximum mortgage amounts.

203.43 Eligibility of miscellaneous-type mortgages.

203.43a Eligibility of mortgages covering housing in certain neighborhoods.

203.43b Eligibility of mortgages covering housing intended for seasonal occupancy.

203.43h Eligibility of mortgages on Indian land insured pursuant to section 248 of the National Housing Act.

203.43i Eligibility of mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act.

203.43j Eligibility of mortgages on Allegany Reservation of Seneca Nation of Indians.

203.44 Eligibility of open-end advances.

203.50 Eligibility of rehabilitation loans.

PART 222—SERVICEMEN'S MORTGAGE INSURANCE

7. The authority citation for part 222 continues to read as follows:

Authority: Secs. 211, 222, National Housing Act (12 U.S.C. 1715b, 1715m); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

8. Section 222.4 is amended by adding a new paragraph (c) to read as follows:

§ 222.4 Maximum mortgage amount; ratio of loan-to-value limitation.

* * * * *

(c) Notwithstanding any other provision of this section a mortgage may not involve a principal obligation in excess of 98.75 percent of the appraised value of the property (97.75 percent, in the case of a mortgage with an appraised value in excess of $50,000), plus the amount of the mortgage insurance premium paid at the time the mortgage is insured.

PART 226—ARMED SERVICES HOUSING—CIVILIAN EMPLOYEES (SEC. 809)

9. The authority citation for part 226 continues to read as follows:

Authority: Secs. 211, 807, 809, National Housing Act (12 U.S.C. 1715b, 1748f, 1748h-1); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

10. Section 226.5 is amended by adding a new paragraph (c) to read as follows:

§ 226.5 Maximum mortgage amount; loan-to-value limitation.

* * * * *

(c) Notwithstanding any other provision of this section, a mortgage may not involve a principle obligation in excess of 98.75 percent of the appraised value of the property (97.75 percent, in the case of a mortgage with an appraised value in excess of $50,000), plus the amount of the mortgage insurance premium paid at the time the mortgage is insured.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

11. The authority citation for part 234 continues to read as follows:

Authority: Secs. 211, 234, National Housing Act (12 U.S.C. 1715b, 1715y); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

12. In § 234.27, a new paragraph (e)(4) and a new paragraph (f) are added to read as follows:

§ 234.27 Maximum mortgage amounts.

* * * * *

(e) * * *

(4) *Appraised value* means the sum of:

(i) The lesser of sales price (with any adjustments required by the Secretary) or the amount set forth in the written statement required under § 234.14; and

(ii) Closing costs to the extent allowed by the Secretary, provided that neither sales price nor closing costs shall apply for purposes of paragraph (f) of this section.

(f) Notwithstanding any other provision of this section, a mortgage may not involve a principle obligation in excess of 98.75 percent of the appraised value of the property (97.75 percent, in the case of a mortgage with an appraised value in excess of $50,000), plus the amount of the mortgage insurance premium paid at the time the mortgage is insured.

PART 240—MORTGAGE INSURANCE ON LOANS FOR FEE TITLE PURCHASE

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

Authority: Secs. 211, 240, National Housing Act (12 U.S.C. 1715b, 1715z-5); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

14. Paragraph (b) of § 240.5 is revised to read as follows:

§ 240.5 Maximum loan amounts.

* * * * *

(b) An amount which when added to any outstanding indebtedness related to the property, as determined by the Commissioner, creates a total outstanding indebtedness which does not exceed the limits prescribed in §§ 203.18(a)(1), (b), (c), and (g), 203.18a, and 203.18b of this chapter as applicable.

Dated: April 12, 1991.

Arthur J. Hill,

Acting Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 91-12706 Filed 5-29-91; 8:45 am]

BILLING CODE 4210-27-M

federal register

Thursday
May 30, 1991

Part VIII

Department of Education

Grants and Cooperative Agreements; Availability, Indian Vocational Education Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No: 84.101]

Indian Vocational Education Program; Office of Vocational and Adult Education; Inviting Applications for New Awards Fiscal Year (FY) 1992

Notice to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program including, the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: To provide financial assistance to Indian tribes and certain schools funded by the Department of the Interior to plan, conduct, and administer projects, or portions of projects, that are authorized by and consistent with the Carl D. Perkins Vocational and Applied Technology Education Act.

Eligible Applicants: The following entities are eligible for an award under this program:

(a) A tribal organization of any Indian Tribe which is eligible to contract with the Secretary of the Interior under the Indian Self-Determination and Education Assistance Act or under the Act of April 16, 1934.

(b) A Bureau-funded school offering a secondary program.

(c) Any tribal organization or Bureau-funded school described in paragraphs (a) or (b) above may apply individually or as part of a consortium with another eligible tribal organization or school:

(i) A consortium shall enter into an agreement signed by all members of the consortium and designating one member of the consortium as the applicant and grantee.

(ii) The agreement must detail the activities each member of the consortium plans to perform, and must bind each member to every statement and assurance made in the application.

(iii) The applicant shall submit the agreement with its application.

Deadline for Transmittal of Applications: July 15, 1991.

Available Funds: $3,340,944.

Estimated Range of Awards: $50,000 to $500,000.

Estimated Average Size of Awards: $290,000.

Estimated Number of Awards: 12.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Higher Education, Hospitals and Nonprofit Organizations), part 75 (Direct Grant Programs), part 77 (Definitions that Apply to Department Regulations), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), part 85 (Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)); part 86 (Drug-Free Schools and Campuses); and (b) the regulations for this program 34 CFR part 410.

Definitions

"ACT OF APRIL 16, 1934" means the Federal law commonly known as the "Johnson-O'Malley Act," that authorizes the Secretary of the Interior to make contracts for the education of Indians and other purposes.

"Bureau" means the Bureau of Indian Affairs, Department of the Interior.

"Bureau-Funded School" means—

(1) A Bureau-operated elementary or secondary day or boarding school or a Bureau-operated dormitory for students attending a school;

(2) An elementary or secondary school or a dormitory that receives financial assistance for its operation under a contract or agreement with the Bureau under section 102, 104(1), or 208 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f, 450h(1), and 458(d); or

(3) A school for which assistance is provided under the Tribally Controlled Schools Act of 1988.

"Indian Tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) that is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"Tribal organization" means the recognized governing body of any Indian tribe or any legally established organization of Indians that is controlled, sanctioned, or chartered by the governing body of any Indian tribe or any legally established organization of Indians that is controlled, sanctioned, or chartered by the governing body or that is democratically elected by the adult members of the Indian community to be served by the organization and that includes the maximum participation of Indians in all phases of its activities. Provided, that in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant.

Invitational Priority

The Secretary is particularly interested in applications that meet the following invitational priority. Projects that propose a plan for student support that will compensate in some degree, for the loss of the authorization to provide stipends under the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990. The plan should describe sources, eligibility requirements, and the procedures to be followed for obtaining the above support. Some examples of sources are Pell Grants, Job Training Partnerships Act, Job Opportunities and Basic Skills Training, and Private Scholarships.

(However under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications).

Selection Criteria

The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

The maximum score for all 8 of these criteria is 100 points.

The maximum score for each criterion is indicated in parentheses.

The Secretary assigns the 15 points reserved in 34 CFR 410.30(d) as follows: 5 points to the Selection Criterion (a)—Need—in 34 CFR 410.31(a) for a total of 20 points for that criterion; 5 points to the Selection Criterion (b)—Plan of Operation—in 34 CFR 410.31(b) for a total of 25 points for that criterion; and 5 points to the Selection Criterion (e)—Evaluation Plan—in 34 CFR 410.31(e) for a total of 10 points for that criterion.

(a) *Need.* (20 points)

(1) The Secretary reviews each application for information that shows the need for the proposed project.

(2) The Secretary looks for information that shows—

(i) Specific evidence of the need for the proposed activity;

(ii) Information which shows how the need will be met; and

(iii) Ongoing and planned activities in the community which pertain to the need, where appropriate.

(b) *Plan of Operation.* (25 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program; and

(iv) The way the applicant plans to use its resources and personnel to achieve such objective.

(c) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The time that each person referred to in paragraphs (3)(ii) (A) and (B) will commit to the project.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-Reference. See 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(f) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(g) *Private sector involvement.* (10 points)

(1) The Secretary reviews each application for information that shows the involvement of the private sector.

(2) The Secretary looks for information that shows—

(i) The private sector involvement in the planning of the project; and

(ii) The private sector involvement in the operation of the project.

(h) *Employment opportunities.* (10 points)

(1) The Secretary looks for information and documentation concerning potential employer's commitment to hire participants and the extent to which, the trainees, upon completing this program, will be employed in jobs relating to their training, or will be pursuing additional training related to their training under this program.

(2) The Secretary looks for information which shows the extent of involvement, coordination or encouragement of tribal economic development planning.

(Approved by OMB Control No. 1830-0013)

Special Consideration

In addition to the 100 points to be awarded based on the selection criteria, the Secretary may award:

(a) Up to 5 points to applications proposing projects that involve, coordinate with, or encourage tribal economic development plans; and

(b) Five points to applications from tribally controlled community colleges that—

(1) Are accredited or are candidates for accreditation by a nationally recognized accreditation organization as an institution of postsecondary vocational education; or

(2) Operate vocational education programs that are accredited or are candidates for accreditation by a nationally recognized accreditation organization and issue certificates for completion of vocational education programs.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Services, attention: (CFDA #84.101), Washington, DC 20202-4725; or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, attention: (CFDA #84.101), room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: (1) The U.S. Postal Service does not uniformly provide a date postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 732-2495.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4-88) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification regarding Debarment, Lobbying, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form 80-0013) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80-0014) and instructions.

(Note: ED Form 80-0014 is intended for the use of grantees and should not be transmitted to the Department.)

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

For Further Information Contact: Harvey Thiel, Special Programs Branch, Division of National Programs, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW. (room 4512, Mary E. Switzer Building), Washington, DC 20202-7242. Telephone (202) 732-2380 or 732-2379.

Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 Area Code, telephone 708-9300) between 8 a.m. and 7 p.m. Eastern time.

Program Authority: 20 U.S.C. 5101 through 5106.

Dated: May 22, 1991.

Betsy Brand,

Assistant Secretary, Office of Vocational and Adult Education.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application	Preapplication
☐ Construction	☐ Construction
☒ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address (give city, county, state, and zip code):

Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 1 0 1

TITLE: Indian Vocational Education

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant

b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16-19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:

23. Remarks

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Part II—Budget Information Instruction for the SF-424A

General Instructions

This form is designed so that application can be made for funds from the Indian Vocational Education program. Sections A and B should provide the budget for the first year of the project and section E should present the need for Federal assistance in subsequent years. (Note: Section C and D need not be completed to apply for these programs.) All applications should contain a breakdown by the object class categories shown in section B, lines 6a through 6j.

Section A. Budget Summary

Line 1, columns (a) through (g)—Enter on line 1 the catalog program title in column (a) and the catalog program number in column (b). Leave columns (c), (d) and (f) blank. Enter in columns (e), and (g) the appropriate amounts of Federal funds needed to support the project, as appropriate.

Section B. Budget Categories

Line 6a through 6i—Fill in the total requirements for Federal funds by object class categories for the first year of the project.

Line 6a—Personnel: Show salaries and wages to be paid to personnel employed in the project. Fees and expenses for consultants must be included in line 6f.

Line 6b—Fringe Benefits: Include contributions for Social Security, employee insurance, pension plans, etc. Leave blank if fringe benefits to personnel are treated as part of the indirect cost rate.

Line 6c—Travel: Indicate the amount requested for travel of employee.

Line 6d—Equipment: Indicate the cost of nonexpendable personal property which has a useful life of more than two years and an acquisition cost of $5,000 or more per unit.

Line 6e—Supplies: Include the cost of consumable supplies to be used in this project. These should be items which cost less than $5,000 per unit with a useful life of less than two years.

Line 6f—Contractual: Show the amount to be used for: (a) Procurement contracts (except those which belong on other lines such as supplies and equipment listed above); and (b) payments for consultants and secondary recipient organizations such as affiliates, cooperating institutions, delegate agencies, etc.

Line 6g—Construction: Construction expenses are allowable under the Vocational Education Indian Program (CFDA No. 84.101).

Line 6h—Other: Indicate all direct costs not clearly covered by lines 6a through 6g.

Line 6i—Total Direct Charges: Show total of lines 6a through 6h.

Line 6j—Show the amount of indirect cost to be charged to the project.

(Note: Except for grants to Federally recognized Indian tribes, the indirect cost rate for training projects cannot exceed eight percent of total direct charges).

Line 6k—Enter the total of the amounts on lines 6i and 6j.

Section E—Budget Estimates of Federal Funds Needed for Balance of the Project

Line 16—Enter in Column (a) the catalog program title. In columns (c) and (d), as appropriate, enter the amounts of Federal funds which will be needed to complete the project over the succeeding funding period(s) (usually in years).

Section F. Other Budget Information

Prepare a detailed Budget Narrative that explains, justifies, and/or clarifies the budget figures shown in sections A, B, and E.

Instructions for Part III—Application Narrative

All applicants are urged to submit Application Narratives which are concise and clearly written. Before preparing the Application Narrative, applicants should read and become familiar with the law and the regulations covering the program to which they are applying.

Applicants should use the selection criteria for a program as an outline for preparing their Application Narrative, addressing the selection criteria in the order the criteria are listed. Applicants are encouraged to provide a table of contents and to number the pages of the Application Narrative. The Application Narrative should not exceed 25 double-space typed pages (on one side only). Supporting documentation (e.g., letters of support, footnotes, resumes, etc.) may be submitted as Applicants are advised that:

(1) Under 34 CFR, § 75.112 of the Education Department General Administrative Regulations (EDGAR):

(a) An application must propose a project period for the project.

(b) An application must describe when, in each budget period of the project, the applicant plans to meet each objective of the project.

(2) Under 34 CFR, § 75.117 of the Education Department General Administrative Regulations (EDGAR), an applicant that proposes a multi-year project shall include in its application:

(a) Information that shows why a multi-year project is needed;

(b) A budget for the first budget period of the project; and

(c) An estimate of the Federal funds needed for each budget period of the project after the first budget period.

(3) Under 34 CFR, § 75.217 of the Education Department General Administrative Regulations (EDGAR), the Department considers only information contained in the application in ranking applications for funding consideration. Letters of support sent separately from the formal application package are not considered in the review by the technical review panels.

(4) In reviewing applications, the technical review panel evaluates each application solely on the basis of the established selection criteria. Letters of support contained in the application will strengthen the application only insofar as they contain commitments which pertain to the established selection criteria, such as commitment of resources and placement of successful completers.

Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden for this collection of information. Public reporting burden for this collection of information is estimated to average 90 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202-4651; and to the Paperwork Reduction Project, OMB Control Number: 1830-0013, Office of Management and Budget, Washington, DC 20503. (Information collection approved under OMB Control Number 1830-0013).

BILLING CODE 4000-01-M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE

APPLICANT ORGANIZATION	DATE SUBMITTED

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 —

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

[FR Doc. 91-12720 Filed 5-29-91; 8:45 am]

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federal register

Thursday
May 30, 1991

Part IX

Department of Labor

Employment and Training Administration
Wage and Hour Division

20 CFR Part 655
29 CFR Part 506

Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports; Interim Final Rule and Request for Comments

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205-AA90

Wage and Hour Division

29 CFR Part 506

RIN 1215-AA

Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

AGENCIES: Employment and Training Administration, Labor; and Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Interim final rule; request for comments.

SUMMARY: The Employment and Training Administration (ETA) and the Employment Standards Administration (ESA) of the Department of Labor (DOL or Department) are promulgating regulations governing the filing and enforcement of attestations by employers seeking to use alien crewmembers to perform longshore work at U.S. ports. Under the Immigration and Nationality Act, as amended by the Immigration Act of 1990 (IA), employers are, in certain circumstances, required to submit these attestations to DOL in order to be allowed by the Immigration and Naturalization Service (INS) to use alien crewmembers to perform specified longshore activity(ies) at U.S. ports. The attestation process is to be administered by ETA, while complaints and investigations regarding the attestations are to be handled by ESA.

DATES: *Effective dates:* May 28, 1991, through December 31, 1991. DOL will issue a final rule on or before the last effective date of this interim final rule and after it has had an opportunity to review public and agency comments. *Comments:* Written comments on the interim final rule are invited from interested parties. Comments shall be received by July 29, 1991.

ADDRESSES: Submit comments to: Roberts T. Jones, Assistant Secretary, Employment and Training Administration, Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210, Attention: Immigration Task Force room N-4470.

FOR FURTHER INFORMATION CONTACT: On 20 CFR part 655, subpart F, and 29 CFR part 506, subpart F, contact David O. Williams, Chair, Immigration Task Force, Employment and Training Administration, Department of Labor, room N-4470, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202-535-0174 (this is not a toll-free number).

On 20 CFR part 655, subpart G, and 29 CFR part 506, subpart G, contact Mr. Solomon Sugarman, Chief, Farm Labor Programs, Wage and Hour Division, Employment Standards Administration, Department of Labor, room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202-523-7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The information collection requirements contained in the rule have been submitted to the Office of Management and Budget for clearance under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control No. 1205-

ETA estimates that approximately 5,000 employers per year will be submitting attestations. The public reporting burden for this collection of information is estimated to average 3-4 hours per response, including the time for reviewing instructions, searching existing information/data sources, gathering and maintaining the information/data needed, and completing and reviewing the attestation. It is likely that the burden will be considerably less in the second and subsequent years in which an employer submits an attestation.

Written comments on the collection of information requirements should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment and Training Administration, Washington, DC 20503.

II. Background

A. Introduction

On November 29, 1990, the Immigration Act of 1990 (IA), Pub. L. 101-649, 104 Stat. 4978, was enacted. The Act amends the Immigration and Nationality Act (INA) (8 U.S.C. 1101 *et seq.*) and assigns responsibility to the Department of Labor (Department or DOL) for the implementation of several provisions relating to the entry of certain categories of employment-based immigrants and to the temporary employment of certain categories of nonimmigrants. One of the new provisions of the INA the Department is charged with implementing is Section 258, which places limitations on the performance of longshore work by alien crewmembers in U.S. ports.

The loading and unloading of vessels has been traditionally performed by U.S. longshore workers. However, until now, alien crewmembers had also been allowed (by Immigration and Naturalization Service regulation) to do this kind of work in U.S. ports, because longshore work was considered to be within the scope of permitted employment for alien crewmembers. The Immigration Act of 1990 has limited this practice in order to provide greater protection to U.S. longshore workers.

Section 258 of the INA prohibits alien crewmembers admitted with D-visas from performing longshore work except in four specific instances: (a) Where the vessel's country of registration does not prohibit U.S. crewmembers from performing longshore work in that country's ports and nationals of a country which does not prohibit U.S. crewmembers from performing longshore work in that country's ports hold a majority of the ownership interest in the vessel; (b) where there is in effect in a local port one or more collective bargaining agreement(s), each covering at least 30 percent of the longshore workers at a particular port and each permitting the activity to be performed by alien crewmembers; (c) where there is no collective bargaining agreement covering at least 30 percent of the longshore workers and an attestation has been filed with the Department which states that the use of alien crewmembers to perform longshore work is permitted under the prevailing practice of the port, that the use of alien crewmembers is not during a strike or lockout, that such use is not intended or designed to influence the election of a collective bargaining representative, and that notice has been provided to longshore workers at the port; and (d) where the activity is performed with the use of automated self-unloading conveyor belts or vacuum-actuated systems; *provided that,* the Secretary of Labor has not found that an attestation is required because it was not prevailing practice to utilize alien crewmembers to perform the activity or because the activity was performed during a strike or lockout or in order to influence the election of a collective bargaining representative. The term "longshore work" does not include the loading or unloading of hazardous cargo, as determined by the Secretary of Transportation, for safety and environmental protection and no attestations are necessary for the loading and unloading of such cargo.

B. Comments on Proposed Rule

On April 19, 1991, a proposed rule was published in the **Federal Register** to implement the Department's responsibilities relating to attestations by employers seeking to employ alien crewmembers, with a comment period ending May 3, 1991.

Comments were received from sixteen entities, twelve of which represent the shipping industry and businesses employing international personnel. These commenters generally assert that the proposed regulations need to be relaxed (*e.g.*, via expanded exceptions and a less stringent definition of "prevailing practice") in order that the attestation process not impose an undue burden on the shipping industry.

Comments were jointly submitted by the two major labor organizations of the International Longshoremen's Association (ILA) and the International Longshoremen's and Warehousemen's Union (ILWU). These comments generally countered those of the shipping industry, seeking to restrict exceptions and require a tougher standard for "prevailing practice."

Two of the remaining comments were received from ETA Regional Offices, and generally addressed procedural and jurisdictional issues regarding their role in the attestation process. In addition, comments from a professional legal organization were received which asserted general support for the proposed rule, and offered an array of recommendations to further protect both employers of alien crewmembers and members of labor organizations.

All of these comments have been reviewed and considered in preparing the interim final rule. A number of changes to the proposed regulations, discussed below, have been made as a result of this review.

While the comments received during the comment period on the proposed rule will be further considered, DOL is publishing these regulations on an interim final basis, with a comment period to end 60 days from the time of publication. A final rule will be published at a later date. The preamble to that final rule will discuss fully the comments received on the proposed rule and the interim final rule, and, where appropriate, the interim final rule will be amended.

C. Changes in Interim Final Rule

1. Definition of "Port"

The proposed rule defined a "port" as "a place * * * where ships * * * stop for the purpose of loading and unloading cargo." Labor organization commenters urged a change to clarify that a "port" refers to a conglomeration of terminals, to preclude the interpretation of individual terminals or docks as "ports." In drafting the proposed rule, the Department did not intend that "port" could be construed as a dock, pier, terminal or other "place," but that it encompass the commonly held view that a port is comprised of many docking places. Several commenters from the shipping industry strongly supported the proposed definition as they interpreted it to mean "dock," "pier," "terminal," or other "place," and even urged a definition that explicitly permitted an individual dock or terminal to be considered a port. DOL believes the conglomeration definition is the most reflective of Congressional intent. Moreover, various government agencies, including the U.S. Coast Guard, U.S. Army Corps of Engineers, and the Maritime Administration's Office of Port and Intermodal Development, utilize a definition that supports the "conglomeration" definition. Finally, the legislation itself uses the phrase "in and about the local port," implying a definition broader than an individual dock or terminal. Accordingly, the interim final rule redefines "port" as "a geographic area, either on a seacoast, lake, river or any other navigable body of water, which contains one or more publicly or privately owned terminals, piers, docks, or maritime facilities, which is commonly thought of as a port by other government maritime-related agencies, such as the Maritime Administration. U.S. ports include, but are not limited to, those listed in Appendix I to this subpart."

2. Automated Vessel Exception

Five commenters addressed the "Automated Vessel Exception," advocating a clarification to the requirements for using the exception, and for determining that a prevailing practice exists for such vessels when a complaint is filed. Commenters presented persuasive information that Congress intended to create a "presumption" that a prevailing practice exists regarding certain automated vessels, and that this practice should be allowed to continue under its own, separate exception. One business commenter suggested adding a statement that shifts the burden of proof to the complainant in the case of an automated vessel consistent with legislative history and language—i.e., "evidence which may be submitted by any interested party that the performance of such particular activity is not * * *" the prevailing practice. After further review, the DOL concurs with the proposition that the burden of proof is not on the employer. The presumption is created in the legislation that using alien crewmembers on automated vessels is the prevailing practice. To give this presumption effect, DOL has determined that in the case of automated vessels, the burden for determining the prevailing practice must not rest with the employer who is using the exception. Rather, in such cases, it must be shown by the preponderance of the evidence submitted by any interested party, that the use of alien crewmembers for a particular longshore activity at a particular port is not the prevailing practice. However, where a complainant has successfully challenged an employer's use of the automated vessel exception, and the employer has filed an attestation under the prevailing practice exception, the burden of proof shifts to the employer to show that a particular practice does, in fact, prevail at the particular port. Clarifying statements have been added to the interim final rule to reflect this shifting of burden.

3. Definition of "Longshore Work"

Labor organizations correctly pointed out a discrepancy between the definition of "Longshore Work" as it appears in § _____.502 and elsewhere in the proposed rule. The correct definition is in § _____.502, where it is defined as "any activity relating to the loading or unloading of cargo * * *" The interim final rule reflects this definition throughout.

4. Criteria for showing "Prevailing Practice"

Several commenters, representing both labor organizations and the shipping industry, recommended the deletion of "tonnage" as a criterion for determining "prevailing practice." Commenters argued persuasively that there is no demonstrable relationship between respective cargo volumes and the establishment of a "prevailing practice." DOL concurs with this position, and this criterion has been deleted from the interim final rule.

5. The 14-Day Filing Requirement

Because of the inherent impossibility of complying with the 14-day filing requirement for the first two weeks that the interim final rule is in effect, DOL will waive this requirement pursuant to the "unanticipated emergency" clause in § _____.510(b)(2). That is, all attestations received for longshore work scheduled to begin on or before [insert date 18 days after publication] will not be subject to this advance filing

requirement, and will be deemed, therefore, "on time."

In addition, the DOL received various comments indicating confusion about the application of the 14-day filing requirement. Commenters were concerned that, under this rule, an attestation has to be filed each time a vessel arrives in a port. To clarify, an attestation is filed only once per year for each port at which alien crewmembers will be used. Therefore, the 14-day filing requirement applies only to the first performance of longshore work after the attestation is filed. Subsequent arrivals to the same U.S. port in the same year do not require that an additional attestation be filed. Changes to the interim final rule seek to clarify this point.

6. Reciprocity Exception

Several commenters pointed out that the "Reciprocity Exception" is incorrectly defined as a case "where the ship's country of registration permits U.S. crewmembers to perform longshore work in that country's ports. * * *" To accurately represent the legislation, this exception should read "where the vessel's country of registration does not prohibit U.S. crewmembers from performing longshore work in that country's ports * * *" In addition, in response to advice from the Department of State, a second requirement has been incorporated: "and nationals of a country (or countries) which does not prohibit U.S. crewmembers from performing longshore work in that country's ports hold a majority of the ownership interest in the vessel, as determined by the Secretary of State." These changes are reflected in the interim final rule.

7. Cease and Desist Order

One commenter suggested that when the Administrator notifies the employer that particular evidence from prior investigation(s) concerning the same or similar matter will be considered by the Administrator in determining whether to enter a requested cease and desist order, such evidence should be made available to the complaining party, as well as to the employer, as the proposed regulation provided. The Department concurs with the commenter's view, and the regulation has been changed to allow the complaining party to examine such evidence at the appropriate Wage and Hour Division office.

8. Administrative Law Judge Hearing

Commenters objected to the short time frames in the ALJ hearing procedure and, in particular, suggested that more preparation time be allowed before the hearing date and that the ALJ be given more flexibility in granting extensions of the hearing date. Despite the extremely compressed time frames specified in the Act, the Department concurs with the commenters to a certain extent, and the regulation has been changed in two particulars: The ALJ is required to give 14 (rather than 5) days notice of the hearing, so that the parties have more time for preparation; the ALJ is permitted to grant extensions of the hearing date within the 60-day statutory period, based on compelling reasons, and the consent of all the parties is required only where an extension beyond the 60-day statutory period is requested.

D. Changes Considered But Not Made

Four issues raised by a number of commenters appeared to merit special consideration for possible changes in the interim final rule, but after careful deliberation the proposed rule was left unchanged with respect to these issues.

1. Percentage Threshold for Establishing "Prevailing Practice"

Two commenters representing the shipping industry commented that the percentage necessary for establishing "prevailing practice" should be lowered from 50 percent to 30 percent. They argued that this lower threshold should be used because it equates to the requirement regarding coverage by a collective bargaining agreement. Two other commenters, including one employer, endorsed the 50 percent standard as prevailing. While DOL shares the shipping industry's concern for consistency, it believes in this case the appropriate basis for comparison should be other DOL programs where the concept is used. Accordingly, this definition is unchanged in the interim final rule.

2. Statutory Precondition to Filing of Attestations

Labor commenters sought to add an element to the attestation, requiring an employer to assert that no collective bargaining agreement exist covering 30 percent or more of the individuals involved in longshore work at the port. DOL reaffirms its position that the non-existence of a collective bargaining agreement is a statutory precondition to filing an attestation and is not specified in the statute as an element to be attested to by an employer. DOL believes that the INS has the enforcement responsibility to ensure that when an employer seeks to use alien crewmembers to perform longshore activity(ies) in a U.S. port (either pursuant to an attestation or under the automated vessel exception), this statutory precondition regarding collective bargaining agreements has been met.

3. Clarification of Hazardous Cargo Exception

Four commenters requested clarification regarding how to determine which vessels carrying hazardous cargo will be excepted from the filing of an attestation. Since this issue does not fall within DOL's jurisdiction, such clarification should be sought from the Department of Transportation.

4. Changes to the 14-day Filing Requirement

Three commenters representing the shipping industry sought to reduce or eliminate the 14-day filing requirement, as it prohibits last-minute changes in shipping schedules. By contrast, an ETA Regional Office recommended increasing the number of days required to allow for complications in processing. DOL has no flexibility in interpreting this requirement. The legislation explicitly requires 14-day advance filing.

III. Attestation Process and Requirements

An employer seeking to employ alien crewmembers for a particular activity of longshore work under the prevailing practice exception shall submit an attestation. An attestation is required for each port at which the employer intends to use alien crewmembers for longshore work and is valid for a period of twelve months from the time of its acceptance by DOL.

A. When and Where to File

The interim final rules requires that any attestation received less than 14 days prior to the first performance of longshore activity by alien crewmembers will be returned to the employer as unacceptable, unless the delay is due to an unanticipated emergency. An attestation is filed only once per year for each port at which alien crewmembers will be used. Therefore, this 14-day filing requirement applies only to the first performance of longshore work after the attestation is filed. Subsequent arrivals to the same U.S. port in the same year do not require that an additional attestation be filed. The Department will require that crewmember attestations be submitted to and accepted by the Chicago and Dallas regional offices since it is anticipated that employers using ports on the Great Lakes and the Gulf of Mexico will utilize alien crewmembers for this activity.

The ETA shall make available for public examination in Washington, DC, a list of employers which have filed attestations, and for each such employer, a copy of the employer's attestation and accompanying documentation in a timely manner after the acceptance of the attestation.

B. Acceptance for Filing

In accepting an attestation for filing, the interim final rule requires: That the application be received by ETA at least 14 days before the first performance of the longshore activity (unless an unanticipated emergency exists as defined herein); that the Department review an attestation only to ensure that it is completed properly, that it is accompanied by the required documentation specified in the regulations, that the documentation is not, on its face, inconsistent with the attestation, and the attestation does not involve a port or an employer for which the Department has previously made a determination which would preclude its acceptance.

Level of Federal Review of Attestations

In determining the Department's general approach to its review of employer attestations, the Department considered various approaches, ranging from the filing of all attestations with no review for completeness or compliance to a thorough review of each attestation and the accompanying documentation to determine whether the facts and evidence submitted are sufficient to prove each attestation element. The Department will review an attestation to ensure that it is received at least 14 days prior to the first performance of the longshore activity, unless due to an unanticipated emergency, that it is completed properly, that it has accompanying documentation for each element attested to, and that the documentation is not, on its face, inconsistent with the attestation. In addition, the Department will review attestations to determine the following: (1) Whether the Administrator, Wage and Hour Division, has found that it is not a prevailing practice to use alien crewmembers for a particular activity of longshore work for a port; (2) whether the Administrator has advise ETA that it has issued a cease and desist order currently in effect that would affect the attesting employer; (3) whether the Administrator has advised ETA of a determination that an employer has misrepresented or failed to comply with an attestation previously submitted and accepted for filing, requiring the Attorney General to bar the employer from entry to any U.S. port for up to one year; and (4) whether the Administrator has advised ETA that the employer has failed to comply with any penalty or remedy assessed.

Statutory Precondition

The Act provides that attestations can only be filed where "there is no collective bargaining agreement in effect in the local port covering at least 30 percent of the number of individuals employed in performing longshore work * * *." Similarly, an employer cannot avail itself of the automated vessel exception if there is a collective bargaining agreement in effect covering 30 percent or more of the individuals employed in longshore work at the port.

It appears to the Department that this statutory precondition to filing an attestation to use the prevailing practice exemption is not specified in the statute as an element to be attested to by an employer. Thus it is the Department's view that in those ports where a collective bargaining agreement covering 30 percent or more of the longshore workers is in effect, the INS alone has the enforcement responsibility pertaining to the use of alien crewmembers for longshore work. Therefore, any complaints that the statutory precondition is not met must be referred to and handled by the INS (not the Department of Labor). Such employers would, consequently, be subject only to remedies/sanctions available to INS (not to those remedies/sanctions provided in the section of the INA regarding attestations administered and enforces by the Department of Labor).

Appeals Process

The interim final rule does not include an administrative appeal process related to attestations. When an attestation is returned because it is untimely, improperly completed, or lacking proper documentation an employer may resubmit another attestation to the Department. Attestations which are accepted by ETA may be objected to by an aggrieved party through the complaint process in subpart G, and procedures for investigation, hearing and appeal are provided therein. Where the Administrator makes a finding regarding a prevailing practice issue, a **Federal Register** notice will be published to afford appeal rights to all potentially affected parties. The Department believes that this is consistent with the statute's intent for a streamlined attestation system for filing and a complaint-driven process for the enforcement of the statute's requirements.

C. Attestation Elements

Prevailing Practice

The interim final rule relies on employer certification and documentation of prevailing practice for the particular activity of longshore work performed. Longshore Work is defined in the statute as any activity (except safety and environmental protection work as described in section 258(b)(2) of the INA) relating to: (1) Loading of cargo; (12) unloading of cargo; (3) operation of cargo-related equipment (whether or not integral to the vessel), or (4) handling of mooring lines on the dock when a vessel is made fast or let go.

Under this interim final rule, the employer must submit facts and evidence with the attestation to show that in the year preceding the filing of the attestation one of the following conditions existed: (1) Over 50 percent of vessels docking at the port used alien crewmembers for the longshore activity; or (2) alien crewmembers made up over 50 percent of the workers who engaged in the activity.

Facts and evidence to support the prevailing practice exception shall include affidavits or summary statements of items like: Prevailing practice surveys of ship masters' experience and written statements from the port authority regarding port practice. Statements from collective bargaining representatives or shipping agents, etc., with knowledge of practices in the port in question may also be pertinent. In the event a complaint is filed with the Department on an attestation, the employer must have sufficient documentation available on file at the place of business of its U.S. agent to meet the burden of proof for the validity of each attestation element. Documentation submitted or retained pursuant to this part shall either be in English or be accompanied by an English translation.

The Department also considered what entity should be responsible for making determinations of prevailing practice, the type of data that should be used, and the type of documentation required to support such a determination. The legislative history suggests, and the Department proposes, a process which would rely on employer certification of prevailing practice. The consequence, however, is that if the Administrator determines that an employer erroneously attests as to port practice, the statute mandates that the employer be barred by the Attorney General from entering U.S. ports for up to one year. DOL will recommend to the Attorney General that a lesser period be imposed

where an employer has attested in good faith, with a reasonable belief that the documentation available is indicative that the attested longshore activity(ies) prevail. In addition, the interim final rule provides that if, under such circumstances, an employer withdraws an attestation prior to performance of the activity(ies) in the port, the Administrator will not find reasonable cause to conduct an investigation unless it is alleged and reasonable cause is indicated that an employer made misrepresentations or did not give the required notice.

Strike, Lockout, Election

The employer must also attest that, at the time of submitting the attestation, there is not a strike or lockout in the course of a labor dispute in the port relating to the employer's longshore activity, and that it will not use alien crewmembers during a strike or lockout during the validity period of the attestation. To substantiate this requirement, an employer may submit a statement which indicates that, prior to submitting its attestation, the employer made a good faith effort to determine whether there is a strike or lockout at the particular port, as for example, by contacting the port authority or the collective bargaining representative(s) for longshore workers at the particular port.

Notice

Lastly, an employer of alien crewmembers must attest that at the time of filing the attestation, notice of the filing has been provided to the bargaining representative(s), or where there is no such bargaining representative(s), notice of the filing has been provided to longshore workers employed at the local port. After considering a variety of approaches for providing notice to longshore workers where there is no bargaining representation, including public advertisements in newspapers and/or radio, the interim final rule requires that employers deliver a copy of the notice to the local port authority for public distribution on request. In addition, employers are required to post the notice in conspicuous locations at the port where U.S. longshore workers can readily see the notice on their way to perform their longshore duties. The notice shall include a copy of the Form ETA 9033, shall state that the attestation with accompanying documentation has been filed and is available at the national office of ETA for review by interested parties, and shall explain where complaints can be filed with respect to employer attestations. DOL believes appropriate places for posting such notices include locations where other announcements and legally required notices, such as mandatory Fair Labor Standards Act wage and hour notices and Occupational Safety and Health Act notices, are posted. In addition, the Department shall periodically publish in the **Federal Register** a list of employers who have submitted attestations.

IV. Complaints, Investigations, and Dispositions

The Act provides that the Secretary shall establish complaint, investigation, and hearing procedures and authorizes the Secretary to issue cease and desist orders against employers. The Secretary's enforcement responsibilities are assigned to the Administrator, Wage and Hour Division, of the Employment Standards Administration.

A. Complaint, Investigation and Hearing

Section 258(c)(4) requires that the Secretary establish a system to conduct investigations where a complaint presents reasonable cause to believe that an attesting employer failed to meet a condition attested to or misrepresented a material fact in its attestation, or that a non-attesting employer claiming the automated vessel exception was not qualified for the exception because the performance of the associated longshore activity does not prevail in the port, or because the activity was performed during a strike or lockout or to influence the election of a collective bargaining representative. The interim final rule provides that the Wage and Hour Administrator may conduct investigations of potential violations of the law only pursuant to a complaint. The Department believes, based on the legislative history, that this carries out Congressional intent that the enforcement of the statute should be exclusively complaint-driven. The investigative process is to be completed and a determination issued in a 180-day period, or a longer period for good cause shown. Any aggrieved person may file a complaint.

The interim final rule provides that, after determining that there is reasonable cause to believe that an investigation is warranted, the Wage and Hour Division will conduct an investigation in which appropriate consideration is given to any previous and relevant Departmental determination as to the prevailing practice for the particular longshore activity(ies) and U.S. port at issue. Further, the interim final rule provides that, in investigating an attesting employer, the Administrator shall consider the employer's statutory burden to present and retain facts and evidence to show the matters attested. The regulations also require that the employer cooperate in the investigation and take no retaliatory action against persons who file complaints, assist in the investigation, or participate in administrative proceedings.

The interim final rule provides that, after the investigation is complete and a determination is made only with respect to an issue of the prevailing practice for using (or not using) alien crewmembers to perform particular longshore activity(ies) at a particular port (whether the investigation involves an attesting employer, or an employer claiming the automated vessel exception), the Department shall publish a **Federal Register** notice to advise any interested party(ies) of the Department's determination about the prevailing practice at issue and to provide any interested party(ies) the opportunity to request a hearing on the determination before an administrative law judge (ALJ). If no timely request for hearing is filed, or after an ALJ decision is issued which reverses the Administrator's determination or which establishes that the use of alien crewmembers is not the prevailing practice for particular longshore activity(ies) at the particular port (whether or not the later ALJ decision is a reversal of the Administrator's determination), the Department will publish a second **Federal Register** notice advising of the disposition of the prevailing practice issue. Should an ALJ's decision be further appealed to the Secretary, and the Secretary reverse the ALJ decision, the Department will publish a third notice in the **Federal Register** announcing the Secretary's decision and its effect for the prevailing practice for the activity(ies) and port in question.

Under the interim final rule, the second **Federal Register** notice will constitute formal advice to the public. Effective upon publication of the second **Federal Register** notice, ETA will no longer accept an attestation from any employer which attests to a prevailing practice that is contrary to the published determination by the Department. Additionally, as provided in subpart F, ETA will review attestations previously accepted for filing from other employers to determine if a heretofore accepted attestation of prevailing practice would clearly be nullified by the Department's published determination. Where it is easily identified that the employer's attestation regards the subject prevailing practice, ETA will either suspend or invalidate the attestation

and so notify the employer. Where it is unclear whether the employer's accepted attestation regards the subject prevailing practice, the employer will need to make a determination, based upon the second **Federal Register** notice, whether to withdraw its valid attestation. Also effective upon publication of the second **Federal Register** notice, INS will not permit the use of alien crewmembers to perform the specified activity(ies) at the port (whether the employer asserts that it has an attestation on file with ETA for such activity(ies) at such port, or claims to be entitled to the automated vessel exception). In addition, in any subsequent investigation of any employer regarding the prevailing practice for the particular activity(ies) at the port specified in the second **Federal Register** notice, the Administrator shall give conclusive effect to the determination that the prevailing practice does not permit the use of alien crewmembers. This regulatory provision was deemed necessary because, in the Department's view, to do otherwise would condone illegal activity, since the illegal use of alien crewmembers would be the only manner in which the prevailing practice could have subsequently changed (unless a collective bargaining agreement covering more than 30 percent of the longshore workers at the port came into effect and permitted such use of alien crewmembers, in which case the attestation and automated vessel exceptions would no longer be applicable).

B. Administrative Law Judge Hearing and Discretionary Review by the Secretary

Section 258(c)(4)(D) requires that the Secretary provide interested parties an opportunity for a hearing within 60 days of the date of the investigative determination.

Because of this compressed time frame, the interim final rule requires that a request for hearing be filed directly with the Chief Administrative Law Judge no later than 15 days from the date of the Administrator's determination. Further, because of the problems of proof to be anticipated in an administrative hearing on factual issues of prevailing practice which may be virtually impossible to address except through hearsay reports of surveys, or for which crucial witnesses and other evidence may be unavailable except through hearsay since, for example, the witnesses are located outside the U.S., the interim final rule specifies that the Department's rules of evidence for ALJ proceedings shall not apply. In addition, the interim final rule incorporates the statutory imposition of the burden of proof on the attesting employer to establish the truth of the attestation elements.

An opportunity for discretionary review by the Secretary is afforded by the interim final rule, with short deadlines in accordance with the statutory intent for expedited dispositions. Any interested party may request such review, and the Secretary shall determine what matters, if any, will be reviewed.

C. Cease and Desist Order

Section 258(c)(4)(C) authorizes the Secretary, at the request of a complainant, to issue a cease and desist order against an attesting employer or against a non-attesting employer claiming the automated vessel exception. The complainant's request may be made when the Secretary has determined there is reasonable cause to conduct an investigation. The Act specifies that, if a complainant requests such an order, the employer will be notified and given 14 days within which to respond. The Secretary is then required to determine whether the preponderance of the evidence submitted supports the complainant's position and, if it does, to order that the employer cease and desist the activity(ies) at issue. The order remains in effect throughout the hearing process for the attesting employer; for the non-attesting employer claiming the automated vessel exception, the order remains in effect throughout the hearing process unless ETA accepts for filing an attestation from that employer for the activity(ies) and port which the cease and desist order affects.

The interim final rule provides that the complainant who desires a cease and desist order must submit two complete copies of the request and the evidence to substantiate the allegations (the second copy of the request and evidence will be provided to the employer). The Administrator's notice to the employer shall include copies of the complaint, the cease and desist order request and supporting evidence, and any other pertinent evidence from an investigation of the same or a closely related matter which the Administrator incorporates into the record. The employer will, thus, be fully informed as to the allegations and evidence. The Administrator's notice also shall specify that, during the 14 day response period specified by the Act, the Administrator will provide, at the employer's request, an opportunity for a meeting with a Wage and Hour Division official to give the employer's views on the evidence and issues. This meeting shall be informal, shall not be subject to any procedural rules, and shall include the complainant if the complainant so desires.

The interim final rule specifies that the cease and desist order will remain in effect unless and until withdrawn by the Administrator because the employer's position is determined to have been correct or a final determination is made which results in resolution of the matter under investigation, or—in the case of the automated vessel exception—an attestation relating to the longshore activity(ies) is accepted for filing by ETA.

D. Penalties

A violation of the Act or these regulations by an attesting employer may result in the imposition of administrative remedy(ies), such as a civil money penalty not to exceed $5,000 per alien crewmember illegally employed. Upon notice of the violation(s), the Attorney General shall thereafter not permit the vessels owned or chartered by the employer to enter any port of the U.S. during a period of up to one year. Additionally, ETA will be notified and shall thereafter not accept any attestation from the employer for any activity(ies) at any U.S. port for one year (or for a shorter period, if such period is specified by INS).

Upon the Department's final determination that an employer improperly claimed the automated vessel exemption, the Attorney General will be notified and shall thereafter require that, before using alien crewmembers, the employer must have on file with ETA an attestation for the activity(ies) and the port at issue.

V. Summary

The Department welcomes comments on these and any other issues addressed in the regulations and on any issues not addressed that commenters believe need to be addressed.

Regulatory Impact and Administrative Procedure

E.O. 12291: The rule does not have the financial or other impact to make it a major rule and, therefore, the preparation of a regulatory impact analysis is not necessary. See Executive Order 12291, 3 CFR, 1981 Comp., Page 127, 5 U.S.C. 601 note.

Regulatory Flexibility Act: The Department of Labor has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that

the rule does not have a significant economic impact on a substantial number of small entities.

Nevertheless, interested parties are requested to submit, as part of their comments on this rule, information on the potential economic impact of the rule.

Effective Date: The interim final rule is effective May 28, 1991, under Public Law 101-649, 104 Stat. 4978 (November 29, 1990), absent a final rule for attestations under this program, employers would be precluded from using alien crewmembers for longshore work after that date. For that reason, the Department of Labor finds that a delay in the effective date would be impracticable and contrary to the public interest.

Catalog of Federal Domestic Assistance Number

This program is not yet listed in the *Catalog of Federal Domestic Assistance.*

List of Subjects

20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Crewmembers, Employment, Enforcement, Forest and forest products, Guam, Health professions, Immigration, Labor, Longshore work, Migrant labor, Nurse, Penalties, Registered nurse, Reporting and recordkeeping requirements, Wages.

29 CFR Part 506

Administrative practice and procedures, Aliens, Crewmembers, Employment, Enforcement, Immigration, Labor, Longshore work, Penalties, Reporting and recordkeeping requirements.

Text of the Interim Final Joint Rule

The text of the interim final joint rule as proposed by ETA and the Wage and Hour Division, ESA, in this document appears below:

Subpart F—Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

Sec.

____.500 Purpose, procedure, and applicability of subparts F and G of this part.
____.501 Overview of responsibilities.
____.502 Definitions.
____.510 Employer attestations.
____.520 Special provisions regarding automated vessels.
____.550 Public access.

Subpart G—Enforcement of the Limitations Imposed on Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

Sec.

____.600 Enforcement authority of Administrator, Wage and Hour Division.
____.605 Complaints and investigative procedures.
____.610 Automated vessel exception to prohibition on utilization of alien crewmembers to perform longshore activity(ies) at a U.S. port.
____.615 Cease and desist order.
____.620 Civil money penalties and other remedies.
____.625 Written notice, service and **Federal Register** publication of Administrator's determination.
____.630 Request for hearing.
____.635 Rules of practice for administrative law judge proceedings.
____.640 Service and computation of time.
____.645 Administrative law judge proceedings.
____.650 Decision and order of administrative law judge.
____.655 Secretary's review of administrative law judge's decision.
____.660 Administrative record.
____.665 Notice to the Attorney General and the Employment and Training Administration.
____.670 **Federal Register** notice of determination of prevailing practice.
____.675 Non-applicability of the Equal Access to Justice Act.

Subpart F—Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

§ ____.500 Purpose, procedure and applicability of subparts F and G of this part.

(a) *Purpose.* Section 258 of the Immigration and Nationality Act prohibits nonimmigrant alien crewmembers admitted to the United States on D-visas from performing longshore work at U.S. ports except in four specific instances:

(1) Where the vessel's country of registration does not prohibit U.S. crewmembers from performing longshore work in that country's ports and nationals of a country (or countries) which does not prohibit U.S. crewmembers from performing longshore work in that country's ports hold a majority of the ownership interest in the vessel, as determined by the Secretary of State;

(2) Where there is in effect in a local port one or more collective bargaining agreement(s), each covering at least thirty percent of the longshore workers, and each permitting the activity to be performed under the terms of such agreement(s);

(3) Where there is no collective bargaining agreement covering at least thirty percent of the longshore workers at the particular port and an attestation with accompanying documentation has been filed with the Department of Labor attesting that, among other things, the use of alien crewmembers to perform a particular activity of longshore work is permitted under the prevailing practice of the particular port (henceforth referred to as the "prevailing practice exception"); or

(4) Where the longshore work involves an automated self-unloading conveyor belt or vacuum-actuated system on a vessel and the Administrator has not previously determined that an attestation must be filed pursuant to this part as a basis for performing those functions (hereforth referred to as the "automated vessel exception").

The term "longshore work" does not include the loading or unloading of hazardous cargo, as determined by the Secretary of Transportation, for safety and environmental protection. The Department of Justice, through the Immigration and Naturalization Service (INS), determines whether an employer may use alien crewmembers for longshore work at U.S. ports. In those cases where an employer must file an attestation in order to perform such work, the Department of Labor shall be responsible for accepting the filing of such attestations. Subpart F of this part sets forth the procedure for filing attestations with the Department of Labor for employers proposing to use alien crewmembers for longshore work at U.S. ports under the prevailing practice exception and where it has been determined that an attestation is required under the automated vessel except listed in paragraph (a)(4) of this section. Subpart G of this part sets forth complaint, investigation, and penalty provisions with respect to such attestations.

(b) *Procedure.* Under the prevailing practice exception in section 258(c) of the Act, and in those cases where it has been determined that an attestation is required under the automated vessel exception, the procedure involves filing an attestation with the Department of Labor attesting that:

(1) The use of alien crewmembers for a particular activity of longshore work is the prevailing practice at the particular port;

(2) The use of alien crewmembers is not during a strike or lockout nor designed to influence the election of a collective bargaining representative; and

(3) Notice of the attestation has been provided to the bargaining representative of longshore workers in

the local port, or, where there is none, notice has been provided to longshore workers employed at the local port.

Under the automated vessel exception in section 258(c) of the Act, no attestation is required in cases where longshore activity consists of the use of an automated self-unloading conveyor belt or vacuum-actuated system on a vessel. The legislation creates a rebuttable presumption that the use of alien crewmembers for the operation of such automated systems is the prevailing practice. In order to overcome such presumption, it must be shown by the preponderance of the evidence submitted by any interested party, that the use of alien crewmembers for such activity is not the prevailing practice at the particular port, that it is during a strike or lockout, or that it is intended or designed to influence an election of a bargaining representative for workers in the local port.

(c) *Applicability.* Subparts F and G of this part apply to all employers who seek to employ alien crewmembers for longshore work at U.S. ports under the prevailing practice exception, to all employers claiming the automated vessel exception, and to those cases where it has been determined that an attestation is required under the automated vessel exception.

§ ___ .501 Overview of responsibilities.

This section provides a context for the attestation process, to facilitate understanding by employers that may seek to employ alien crewmembers for longshore work under the prevailing practice exception and in those cases where an attestation is necessary under the automated vessel exception.

(a) *Department of Labor's responsibilities.* The United States Department of Labor (DOL) administers the attestation process. Within DOL, the Employment and Training Administration (ETA) shall have responsibility for setting up and operating the attestation process; the Employment Standards Administration's Wage and Hour Division shall be responsible for investigating and resolving any complaints filed concerning such attestations.

(b) *Employer attestation responsibilities.* Each employer seeking to use alien crewmembers for longshore work at a local U.S. port pursuant to the prevailing practice exception, or where an attestation is required under the automated vessel exception shall, as the first step, submit an attestation on Form ETA 9033, as described in § ___ .510 of this part, to ETA at the address set forth at § ___ .510(b) of this part. If ETA accepts the attestation for filing, pursuant to § ___ .510 of this part, ETA shall return the cover form of the accepted attestation to the employer, and, at the same time, shall notify the Immigration and Naturalization Service (INS) of the filing.

(c) *Complaints.* Complaints concerning misrepresentation in the attestation, failure of the employer to carry out the terms of the attestation, or complaints that an employer is required to file an attestation under the automated vessel exception, may be filed with the Wage and Hour Division, according to the procedures set forth in subpart G of this part. Complaints of "misrepresentation" may include assertions that an employer has attested to the use of alien crewmembers only for a particular activity of longshore work and has thereafter used such alien crewmembers for another activity of longshore work. If the Division determines that the complaint presents reasonable cause to warrant an investigation, the Division shall then investigate, and, where appropriate, after an opportunity for a hearing, assess sanctions and penalties. Subpart G further provides that interested parties may obtain an administrative law judge hearing on the Division's determination after an investigation and may seek the Secretary's review of the administrative law judge's decision. Subpart G also provides that a complainant may request that the Wage and Hour Administrator issue a cease and desist order in the case of either alleged violation(s) of an attestation or longshore work by alien crewmember(s) employed by an employer allegedly not qualified for the claimed automated vessel exception. Upon the receipt of such a request, the Division shall notify the employer, provide an opportunity for a response and an informal meeting, and then rule on the request, which shall be granted if the preponderance of the evidence submitted supports the complainant's position.

§ ___ .502 Definitions.

For the purposes of subparts F and G of this part:

Accepted for filing means that a properly completed attestation including accompanying documentation for each of the requirements in § ___ .510(d) through (f) of this part submitted by the employer or its designated agent or representative has been received and filed by the Employment and Training Administration of the Department of Labor (DOL). (Unacceptable attestations are described at § ___ .510(g)(2) of this part.)

Act and *INA* mean the Immigration and Nationality Act, as amended, 8 U.S.C. 1101 *et seq.*

Activity means any activity relating to loading cargo; unloading cargo; operation of cargo-related equipment; or handling of mooring lines on the dock when a vessel is made fast or let go.

Administrative law judge means an official appointed pursuant to 5 U.S.C. 3105.

Administrator means the Administrator of the Wage and Hour Division, Employment Standards Administration, Department of Labor, or such authorized representatives as may be designated to perform any of the functions of the Administrator under subparts F and G of this part.

Attestation means documents submitted by an employer attesting to and providing accompanying documentation to show that the use of alien crewmembers for a particular activity of longshore work at a particular U.S. port is the prevailing practice, and is not during a strike or lockout nor intended to influence an election of a bargaining representative for workers; and that notice of the attestation has been provided to the bargaining representative, or, where there is none, to the longshore workers at the local port.

Attesting employer means an employer who has filed an attestation.

Attorney General means the chief official of the U.S. Department of Justice or the Attorney General's designee.

Automated vessel means a vessel equipped with an automated self-unloading conveyor belt or vaccum-actuated system which is utilized for loading or unloading cargo between the vessel and the dock.

Certifying Officer means a Department of Labor official who makes determinations about whether or not to accept attestations:

(1) A regional Certifying Officer designated by a Regional Administrator, Employment and Training Administration (RA) makes such determinations in a regional office of the Department;

(2) A national Certifying Officer makes such determinations in the national office of the USES.

Chief Administrative Law Judge means the chief official of the Office of the Administrative Law Judges of the Department of Labor or the Chief Administrative Law Judge's designee.

Chief, Division of Foreign Labor Certifications, USES means the chief official of the Division of Foreign Labor Certifications within the United States Employment Service, Employment and

Training Administration, Department of Labor, or the designee of the Chief, Division of Foreign Labor Certifications, USES.

Crewmember means any nonimmigrant alien admitted to the United States to perform services under sec. 101(a)(15)(D)(i) of the Act (8 U.S.C. 1101(a)(15)(D)(i)).

Date of filing means the date an attestation is "accepted for filing" by ETA.

Department and *DOL* mean the United States Department of Labor.

Director means the chief official of the United States Employment Service (USES), Employment and Training Administration, Department of Labor, or the Director's designee.

Division means the Wage and Hour Division of the Employment Standards Administration, DOL.

Employer means a person, firm, corporation, or other association or organization, which suffers or permits, or proposes to suffer or permit, alien crewmembers to perform longshore work at a port within the U.S.

Employment and Training Administration (ETA) means the agency within the Department of Labor (DOL) which includes the United States Employment Service (USES).

Employment Standards Administration (ESA) means the agency within the Department of Labor (DOL) which includes the Wage and Hour Division.

Immigration and Naturalization Service (INS) means the component of the Department of Justice which makes the determination under the Act on whether an employer of alien crewmembers may use such crewmembers for longshore work at a U.S. port.

Lockout means a labor dispute involving a work stoppage, wherein an employer withholds work from its employees in order to gain a concession from them.

Longshore work means any activity (except safety and environmental protection work as described in section 258(b)(2) of the Act) relating to the loading or unloading of cargo, the operation of cargo related equipment (whether or not integral to the vessel), or the handling of mooring lines on the dock when the vessel is made fast or let go, in the United States or the coastal waters thereof.

Longshore worker means a U.S. worker who performs longshore work.

Port means a geographic area, either on a seacoast, lake, river or any other navigable body of water, which contains one or more publicly or privately owned terminals, piers, docks, or maritime facilities, which is commonly thought of as a port by other government maritime-related agencies, such as the Maritime Administration. U.S. ports include, but are not limited to, those listed in appendix I to this subpart.

Regional Administrator, Employment and Training Administration (RA) means the chief official of the Employment and Training Administration (ETA) in a Department of Labor (DOL) regional office.

Secretary means the Secretary of Labor or the Secretary's designee.

Strike means a labor dispute wherein employees engage in a concerted stoppage of work (including stoppage by reason of the expiration of a collective-bargaining agreement) or engage in any concerted slowdown or other concerted interruption of operations.

Unanticipated emergency means an unexpected and unavoidable situation, such as one involving severe weather conditions, natural disaster, or mechanical breakdown, where cargo must be immediately loaded on, or unloaded from, a vessel.

United States Employment Service (USES) means the agency of the Department of Labor, established under the Wagner-Peyser Act, which is charged with administering the national system of public employment offices.

United States (U.S.) worker means a worker who is a U.S. citizen, a U.S. national, a permanent resident alien, or any other worker legally permitted to work infinitely in the United States.

United States is defined at 8 U.S.C. 1101(a)(38).

§ ____.510 Employer attestations.

(a) *Who may submit attestations?* An employer (or the employer's designated U.S. agent or representative) seeking to employ alien crewmembers for a particular activity of longshore work under the prevailing practice exception shall submit an attestation, provided there is not in effect in the local port any collective bargaining agreement covering at least 30 percent of the longshore workers. An attestation is required for each port at which the employer intends to use alien crewmembers for longshore work. The attestation shall include: a completed Form ETA 9033, which shall be signed by the employer (or the employer's designated agent or representative); and facts and evidence prescribed in paragraphs (d) through (f) of this section.

(b) *Where and when should attestations be submitted?* (1) Attestations must be submitted, by U.S. mail, private carrier, or facsimile transmission to the U.S. Department of Labor ETA Regional Office(s) which are designated by the Chief, Division of Foreign Labor Certifications, USES. Attestations must be received and date-stamped by DOL at least 14 calendar days prior to the date of the first performance of the intended longshore activity, and shall be accepted for filing or returned by ETA in accordance with paragraph (g) of this section within 14 calendar days of the date received by ETA. An attestation which is accepted by ETA solely because it was not reviewed within 14 days is subject to subsequent invalidation pursuant to paragraph (i) of this section. Every employer filing an attestation shall have an agent or representative with a United States address. Such address shall be clearly indicated on the Form ETA 9033. In order to ensure that an attestation has been accepted for filing prior to the date of the performance of the longshore activity, employers are advised to take mailing time into account to make sure that ETA receives the attestation at least 14 days prior to the first performance of the longshore activity.

(2) *Unanticipated Emergencies.* ETA may accept for filing attestations received after the 14-day deadline when due to an unanticipated emergency, as defined in § ____.502 of this part. When an employer is claiming an unanticipated emergency, it shall submit documentation to support such a claim. ETA shall then make a determination on the validity of the claim, and shall accept the attestation for filing or return it in accordance with paragraph (g) of this section. ETA shall in no case accept an attestation received later than the date of the first performance of the activity.

(c) *What should be submitted?*—(1) *Form ETA 9033 with accompanying documentation.* For each port, a completed and dated original Form ETA 9033, containing the required attestation elements and the original signature of the employer (or the employer's designated agent or representative), shall be submitted, along with two copies of the completed, signed, and dated Form ETA 9033. (Copies of Form ETA 9033 will be available at all Department of Labor ETA Regional Offices and at the National Office). In addition, the employer shall submit facts and evidence to show compliance with each of the attestation elements as prescribed by the regulatory standards in paragraphs (d) through (f) of this section. In the case of an investigation pursuant to subpart G of this part, the employer shall have the burden of proof to establish the validity of each attestation. The employer shall maintain in its records at the office of its U.S.

agent, for a period of at least 3 years from the date of filing, sufficient documentation to meet its burden of proof and shall make the documents available to Department of Labor officials upon request. Whenever any document is submitted to a Federal agency or retained in the employer's records pursuant to this part, the document either shall be in the English language or shall be accompanied by a written translation into the English language certified by the translator as to the accuracy of the translation and his/her competency to translate.

(2) *Attestation elements.* The attestation elements referenced in paragraph (c)(1) of this section are mandated by section 258(c)(1)(B) of the Act (8 U.S.C. 1288(c)(1)(B)). Section 258(c)(1)(B) of the Act requires employers who seek to have alien crewmembers engage in a longshore activity to attest as follows:

(i) The performance of the activity by alien crewmembers is permitted under the prevailing practice of the particular port as of the date of filing of the attestation;

(ii) The use of the alien crewmembers for such activity is not during a strike or lockout in the course of a labor dispute, and is not intended or designed to influence an election of a bargaining representative for workers in the local port; and

(iii) Notice of the attestation has been provided by the owner, agent, consignee, master, or commanding officer to the bargaining representative of longshore workers in the local port, or, where there is no such bargaining representative, notice has been provided to longshore workers employed at the local port.

(d) *The first attestation element: prevailing practice.* For an employer to be in compliance with the first attestation element, it is required to have been the prevailing practice during the 12-month period preceding the filing of the attestation, for a particular activity of longshore work at the particular port to be performed by alien crewmembers. For each port, a prevailing practice can be established for any activity relating to each of four different types of longshore work: Loading of cargo, unloading of cargo, operation of cargo-related equipment, or handling of mooring lines. It is thus possible that at a particular port is the prevailing practice for alien crewmembers to unload vessels but not the prevailing practice to load them. An employer shall indicate on the attestation which of the four activities it is claiming is the prevailing practice to be performed by alien crewmembers.

(1) *Establishing a prevailing practice.* In establishing that a particular activity of longshore work is the prevailing practice at a particular port, an employer shall submit facts and evidence to show that in the 12-month period preceding the filing of the attestation, one of the following conditions existed:

(i) Over fifty percent of vessels docking at the port used alien crewmembers for the activity (for purposes of this subparagraph, a vessel shall be counted each time it docks at the particular port); or

(ii) Alien crewmembers made up over fifty percent of the workers in the port who engaged in the activity. For purposes of this paragraph (d), automated vessels shall not be included in counting the number of vessels which dock at the port. For establishing a prevailing practice under the automated vessel exception see § ____.520 of this subpart.

(2) *Documentation.* In assembling the facts and evidence required by paragraph (d)(1) of this section, the employer may consult with the port authority which has jurisdiction over the local port, the collective bargaining representative(s) of longshore workers at the local port, other employers, or any other entity which is familiar with the practices at the port. Such documentation shall include a written summary of a survey of the experience of shipmasters who entered the local port in the previous year; or a letter, affidavit, or other written statement from an appropriate local port authority regarding the use of alien crewmembers to perform the longshore activity at the port in the previous year; or other documentation of comparable weight. Written statements from collective bargaining representatives and/or shipping agents with direct knowledge of practices regarding the use of alien crewmembers in the local port may also be pertinent. Such documentation shall accompany the Form ETA 9033, and any underlying documentation which supports the employer's burden of proof shall be maintained in the employer's records at the office of the U.S. agent as required by paragraph (c)(1) of this section.

(e) *The second attestation element: no strike or lockout; no intention or design to influence bargaining representative election.* (1) The employer shall attest that, at the time of submitting the attestation, there is not a strike or lockout in the course of a labor dispute covering the employer's activity, and that it will not use alien crewmembers during a strike or lockout after filing the attestation. The employer shall also attest that the employment of such aliens is not intended or designed to influence an election for a bargaining representative for workers in the local port. Labor disputes for purposes of this attestation element relate only to those involving longshore workers at the port of intended employment. This attestation element applies to strikes and lockouts and elections of bargaining representatives at the local port where the use of alien crewmembers for longshore work is intended.

(2) *Documentation.* As documentation to substantiate the requirement in paragraph (e)(1) of this section, an employer may submit a statement of the good faith efforts made to determine whether there is a strike or lockout at the particular port, as, for example, by contacting the port authority or the collective bargaining representative for longshore workers at the particular port.

(f) *The third attestation element: notice of filing.* The employer of alien crewmembers shall attest that at the time of filing the attestation, notice of filing has been provided to the bargaining representative of the longshore workers in the local port, or, where there is no such bargaining representative, notice of the filing has been provided to longshore workers employed at the local port through posting in conspicuous locations and through other appropriate means.

(1) *Notification of bargaining representative.* No later than the date the attestation is received by DOL to be considered for filing, the employer of alien crewmembers shall notify the bargaining representative (if any) of longshore workers at the local port that the attestation is being submitted to DOL. The notice shall include a copy of the Form ETA 9033, shall state the activity(ies) for which the attestation is submitted, and shall state in that notice that the attestation and accompanying documentation are available at the national office of ETA for review by interested parties. The employer may have its owner, agent, consignee, master, or commanding officer provide such notice. Notices under this paragraph (f)(1) shall include the following statement: "Complaints alleging misrepresentation of material facts in the attestation and/or failure to comply with the terms of the attestation may be filed with any office of the Wage and Hour Division of the United States Department of Labor."

(2) *Posting notice where there is no bargaining representative.* If there is no bargaining representative of longshore workers at the local port when the employer submits an attestation to ETA,

the employer shall provide written notice to the port authority for distribution to the public on request. In addition, the employer shall post one or more written notices at the local port, stating that the attestation with accompanying documentation has been submitted, the activity(ies) for which the attestation has been submitted, and that the attestation and accompanying documentation are available at the national office of ETA for review by interested parties. Such posted notice shall be clearly visible and unobstructed, and shall be posted in conspicuous places where the longshore workers readily can read the posted notice on the way to or from their duties. Appropriate locations for posting such notices include locations in the immediate proximity of mandatory Fair Labor Standards Act wage and hour notices and Occupational Safety and Health Act occupational safety and health notices. The notice shall include a copy of the Form ETA 9033 filed with DOL, shall provide information concerning the availability of supporting documents for examination at the national office of ETA, and shall include the following statement: "Complaints" alleging misrepresentation of material facts in the attestation and/or failure to comply with the terms of the attestation may be filed with any office of the Wage and Hour Division of the United States Department of Labor."

(3) *Documentation.* The employer shall provide a statement setting forth the name and address of the person to whom the notice was provided and where and when the notice was posted and shall attach a copy of the notice.

(g) *Actions on attestations submitted for filing.* Once an attestation has been received from an employer, a determination shall be made by the regional Certifying Officer whether to accept the attestation for filing or return it. The regional Certifying Officer may request additional explanation and/or documentation from the employer in making this determination. An attestation which is properly filled out and which includes accompanying documentation for each of the requirements set forth at § ____.510 (d) through (f) shall be accepted for filing by ETA on the date it is signed by the regional Certifying Officer unless it falls within one of the categories set forth in paragraph (g)(2) of this section. Once an attestation is accepted for filing, ETA shall then follow the procedures set forth in paragraph (g)(1) of this section. Upon acceptance of the employer's attestation by ETA, the attestation and accompanying documentation will be forwarded and shall be available in a timely manner for public examination at the ETA national office. ETA shall not consider information contesting an attestation received by ETA prior to the determination to accept or return the attestation for filing. Such information shall not be made part of ETA's administrative record on the attestation, but shall be referred to ESA to be processed as a complaint pursuant to subpart G of this part if the attestation is accepted by ETA for filing.

(1) *Acceptance.* (i) If the attestation is properly filled out and includes accompanying documentation for each of the requirements at §____.510 (d) through (f) of this subpart, and does not fall within one of the categories set forth at paragraph (g)(2) of this section, ETA shall accept the attestation for filing, notify the Attorney General in writing of the filing, and return to the employer, or the employer's agent or representative at a U.S. address, one copy of the attestation form submitted by the employer, with ETA's acceptance indicated thereon. The employer may then use alien crewmembers for the particular activity of longshore work at the U.S. port cited in the attestation in accordance with INS regulations.

(ii) DOL is not the guarantor of the accuracy, truthfulness or adequacy of an attestation accepted for filing.

(2) *Unacceptable Attestations.* ETA shall not accept an attestation for filing and shall return such attestation to the employer, or the employer's agent or representative at a U.S. address, when one of the following conditions exists:

(i) When the Form ETA 9033 is not properly filled out. Examples of improperly filled out Form ETA 9033's include instances where the employer has neglected to check all the necessary boxes, or where the employer has failed to include the name of the port where it intends to use the alien crewmembers for longshore work, or when the employer has failed to sign the attestation or to designate an agent in the United States;

(ii) When the Form ETA 9033 with accompanying documentation is not received by ETA at least 14 days prior to the date of performance of the first activity indicated on the Form ETA 9033; unless the employer is claiming an unanticipated emergency, has included documentation which supports such claim, and ETA has found the claim to be valid;

(iii) When the Form ETA 9033 does not include accompanying documentation for each of the requirements set forth at §____.510 (d) through (f);

(iv) When the accompanying documentation required by paragraph (c) of this section submitted by the employer, on its face, is inconsistent with the requirements set forth at §____.510 (d) through (f). Examples of such a situation include instances where the Form ETA 9033 pertains to one port and the accompanying documentation to another; where the Form ETA 9033 pertains to one activity of longshore work and the accompanying documentation obviously refers to another; or where the documentation clearly indicates that only thirty percent, instead of the required fifty percent, of the activity attested to is performed by alien crewmembers;

(v) When the Administrator, Wage and Hour Division, has notified ETA, in writing, after an investigation pursuant to subpart G of this part, that the particular activity of longshore work which the employer has attested is the prevailing practice at a particular port, is not, in fact, the prevailing practice at the particular port;

(vi) When the Administrator, Wage and Hour Division, has notified ETA, in writing, that a cease and desist order has been issued pursuant to subpart G, with respect to the attesting employer's performance of the particular activity and port, in violation of a previously accepted attestation;

(vii) When the Administrator, Wage and Hour Division, has notified ETA, in writing, after an investigation pursuant to subpart G of this part, that the particular employer has misrepresented or failed to comply with an attestation previously submitted and accepted for filing, but in no case for a period of more than one year after the date of the Administrator's notice and provided that INS has not advised ETA that the prohibition is in effect for a lesser period; or

(viii) When the Administrator, Wage and Hour Division, has notified ETA, in writing, that the employer has failed to comply with any penalty, sanction, or other remedy assessed in a final agency action following an investigation by the Wage and Hour Division pursuant to subpart G of this part.

(3) *Resubmission.* If the attestation is not accepted for filing pursuant to the categories set forth in paragraph (g)(2) of this section, ETA shall return to the employer, or the employer's agent or representative, at a U.S. address, the attestation form and accompanying documentation submitted by the employer. ETA shall notify the employer, in writing of the reason(s) that the attestation is unacceptable. When an attestation is found to be

unacceptable pursuant to paragraphs (g)(2) (i) through (iv) of this section, the employer may resubmit the attestation with the proper documentation. When an attestation is found to be unacceptable pursuant to paragraphs (g)(2) (v) through (viii) of this section and returned, such action shall be the final decision of the Secretary of Labor.

(h) *Effective date and validity of filing attestations.* An attestation is filed and effective as of the date it is accepted and signed by the regional Certifying Officer. Such attestation is valid for the 12-month period beginning on the date of acceptance for filing, unless suspended or invalidated pursuant to subpart G of this part or paragraph (i) of this section. The filed attestation expires at the end of the 12-month period of validity.

(i) *Suspension or invalidation of filed attestations.* Suspension or invalidation of an attestation may result from enforcement action(s) under subpart G of this part (i.e., investigation(s) conducted by the Administrator or cease and desist order(s) issued by the Administrator regarding the employer's misrepresentation in or failure to carry out its attestation); or from a discovery by ETA that it made an error in accepting the attestation because such attestation falls within one of the categories set forth in paragraph (g)(2) of this section.

(1) *Result of Wage and Hour Division action.* Upon the determination of a violation under subpart G of this part, the Administrator shall, pursuant to §____.660(b), notify the Attorney General of the violation and of the Administrator's notice to ETA.

(2) *Result of ETA action.* If, after accepting an attestation for filing, ETA finds that the attestation is unacceptable because it falls within one of the categories set forth at paragraph (g)(2) of this section, and as a result, ETA suspends or invalidates the attestation, ETA shall notify the Attorney General of such suspension or invalidation and shall return a copy of the attestation form to the employer, or the employer's agent or representative, at a U.S. address. ETA shall notify the employer, in writing, of the reason(s) that the attestation is suspended or invalidated. When an attestation is found to be suspended or invalidated pursuant to paragraphs (g)(2) (i) through (iv) of this section, the employer may resubmit the attestation with the proper documentation. When an attestation is suspended or invalidated because it falls within one of the categories in paragraphs (g)(2) (v) through (viii) of this section, such action shall be the final decision of the Secretary of Labor, except as set forth in subpart G of this part.

(j) *Withdrawal of accepted attestations.* (1) An employer who has submitted an attestation which has been accepted for filing may withdraw such attestation at any time before the 12-month period of its validity terminates, unless the Administrator has found reasonable cause under subpart G to commence an investigation of the particular attestation. Such withdrawal may be advisable, for example, when the employer learns that the particular activity(ies) of longshore work which it has attested is the prevailing practice to perform with alien crewmembers may not, in fact, have been the prevailing practice at the particular port at the time of filing. Request for such withdrawals shall be in writing and shall be directed to the regional Certifying Officer.

(2) Withdrawal of an attestation shall not affect an employer's liability with respect to any failure to meet the conditions attested to which took place before the withdrawal, or for misrepresentations in an attestation. However, if an employer has not yet performed the particular longshore activity(ies) at the port in question, the Administrator will not find reasonable cause to investigate unless it is alleged, and there is reasonable cause to believe, that the employer has made misrepresentations in the attestation or documentation thereof, or that the employer has not in fact given the notice attested to.

§ ____.520 Special provisions regarding automated vessels.

In general, an attestation is not required in the case of a particular activity of longshore work consisting of the use of automated self-unloading conveyor belt or vacuum-actuated systems on a vessel. The legislation creates a rebuttable presumption that the use of alien crewmembers for the operation of such automated systems is the prevailing practice. In order to overcome such presumption, it must be shown by the preponderance of the evidence submitted by any interested party, that the use of alien crewmembers for such activity is not the prevailing practice. Longshore work with such equipment shall be exempt from the attestation requirement only if it consists of using that equipment. If the automated equipment is not used in the particular activity of longshore work, an attestation is required as described under § ____.510 of this part.

When the automated equipment is used in the particular activity of longshore work, an attestation is required only if the Administrator finds, based on a preponderance of the evidence which may be submitted by any interested party, that the performance of the particular activity is not the prevailing practice at the port, or was during a strike or lockout or intended to influence an election of a bargaining representative for workers in the local port, or if the Administrator issues a cease and desist order against use of the automated equipment without such attestation.

(a) *Procedure when attestation is required.* If it is determined pursuant to subpart G of this part that an attestation is required for longshore work consisting of the use of automated equipment, the employer shall comply with all the requirements set forth at § ____.510 of this part except paragraph (d) of § ____.510. In lieu of complying with § ____.510(d) of this part, the employer shall comply with paragraph (b) of this section.

(b) *The first attestation element: prevailing practice for automated vessels.* For an employer to be in compliance with the first attestation element, it is required to have been the prevailing practice that over fifty percent (as described in paragraph (b)(1) of this section) of a particular activity of longshore work which was performed through the use of automated self-unloading conveyor belt or vacuum-actuated equipment at the particular port during the 12-month period preceding the filing of the attestation, was performed by alien crewmembers.

(1) *Establishing a prevailing practice.* In establishing that use of alien crewmembers to perform a particular activity of longshore work consisting of the use of self-unloading conveyor belt or vacuum-actuated systems on a vessel is the prevailing practice at a particular port, an employer shall submit facts and evidence to show that in the 12-month period preceding the filing of the attestation, one of the following conditions existed:

(i) Over fifty percent of the automated vessels docking at the port used alien crewmembers for the activity (for purposes of this paragraph (b)(1), a vessel shall be counted each time it docks at the particular port); or

(ii) Alien crewmembers made up over fifty percent of the workers who performed the activity with respect to such automated vessels.

For purposes of this paragraph (b), only automated vessels shall be included in counting the number of vessels which dock at the port.

(2) *Documentation.* In assembling the documentation described in paragraph (b)(1) of this section, the employer may

consult with the port authority which has jurisdiction over the local port, the collective bargaining representative(s) of longshore workers at the local port, other employers, or any other entity which is familiar with the practices at the port. The documentation shall include a written summary of a survey of the experience of shipmasters who entered the local port in the previous year; or a letter, affidavit, or other written statement from an appropriate local port authority regarding the use of alien crewmembers to perform the longshore activity at the port in the previous year; or other documentation of comparable weight. Written statements from collective bargaining representatives and/or shipping agents with direct knowledge of practices regarding the use of alien crewmembers may also be pertinent. Such documentation shall accompany the Form ETA 9033, and any underlying documentation which supports the employer's burden of proof shall be maintained in the employer's records at the office of the U.S. agent as required under § ____.510(c)(1) of this part.

§ ____.550 Public access.

(a) *Public examination at ETA.* ETA shall make available for public examination in Washington, DC, a list of employers which have filed attestations, and for each such employer, a copy of the employer's attestation and accompanying documentation it has received.

(b) *Notice to public.* ETA periodically shall publish a list in the **Federal Register** identifying employers which have submitted attestations; employers which have attestations on file; and employers which have submitted attestations which have been found unacceptable for filing.

Subpart G—Enforcement of the Limitations Imposed on Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

§ ____.600 Enforcement authority of Administrator, Wage and Hour Division.

(a) The Administrator shall perform all the Secretary's investigative and enforcement functions under section 258 of the INA (8 U.S.C. 1288) and subparts F and G of this part.

(b) The Administrator, pursuant to a complaint, shall conduct such investigations as may be appropriate and, in connection therewith, enter and inspect such places and such records (and make transcriptions or copies thereof), question such persons and gather such information as deemed necessary by the Administrator to determine compliance regarding the matters which are the subject of the investigation.

(c) An employer being investigated shall make available to the Administrator such records, information, persons, and places as the Administrator deems appropriate to copy, transcribe, question, or inspect. No employer subject to the provisions of section 258 of the INA (U.S.C. 1288) and subparts F and G of this part shall interfere with any official of the Department of Labor performing an investigation, inspection or law enforcement function pursuant to 8 U.S.C. 1288 or subpart F or G of this part. Any such interference shall be a violation of the attestation and subparts F and G of this part, and the Administrator may take such further actions as the Administrator considers appropriate.

(Note: Federal criminal statutes prohibit certain interference with a Federal officer in the performance of official duties. 18 U.S.C. 111 and 18 U.S.C. 1114.)

(d) An employer subject to subparts F and G of this part shall at all times cooperate in administrative and enforcement proceedings. No employer shall intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any person because such person has:

(1) Filed a complaint or appeal under or related to section 258 of the INA (8 U.S.C. 1288) or subpart F or G of this part;

(2) Testified or is about to testify in any proceeding under or related to section 258 of the INA (8 U.S.C. 1288) or subpart F or G of this part;

(3) Exercised or asserted on behalf of himself or herself or others any right or protection afforded by section 258 of the INA (8 U.S.C. 1288) or subpart F or G of this part.

(4) Consulted with an employee of a legal assistance program or an attorney on matters related to section 258 of the Act or to subpart F or G of this part or any other DOL regulation promulgated pursuant to 8 U.S.C. 1288.

In the event of such intimidation or restraint as are described in this section, the conduct shall be a violation of the attestation and these regulations, and the Administrator may take such further actions as the Administrator considers appropriate.

(e) The Administrator shall, to the extent possible under existing law, protect the confidentiality of any person who provides information to the Department in confidence in the course of an investigation or otherwise under subpart F or G of this part. However, confidentiality will not be afforded to the complainant or to information provided by the complainant.

§ ____.605 Complaints and investigative procedures.

(a) The Administrator, through an investigation, shall determine whether a basis exists to make a finding that:

(1) An attesting employer has—

(i) Failed to meet conditions attested to; or

(ii) Misrepresented a material fact in an attestation.

(Note: Federal criminal statutes provide penalties of up to $10,000 and/or imprisonment of up to 5 years for knowing and willful submission of false statements to the Federal Government. 18 U.S.C. 1001; see also 18 U.S.C. 1546.); or

(2) In the case of an employer operating under the automated vessel exception to the prohibition on utilizing alien crewmembers to perform longshore activity(ies) at a U.S. port, the employer—

(i) Is utilizing alien crewmember(s) to perform longshore activity(ies) at a port where the prevailing practice has not been to use such workers for such activity(ies); or

(ii) Is utilizing alien crewmember(s) to perform longshore activities:

(A) during a strike or lockout in the course of a labor dispute at the U.S. port and/or

(B) with intent or design to influence an election of a bargaining representative for workers at the U.S. port; or

(3) An employer failed to comply in any other manner with the provisions of subpart F or G of this part.

(b) Any aggrieved person or organization may file a complaint of a violation of the provisions of subpart F or G of this part.

(1) No particular form of complaint is required, except that the complaint shall be written or, if oral, shall be reduced to writing by the Wage and Hour Division official who receives the complaint.

(2) The complaint shall set forth sufficient facts for the Administrator to determine—

(i) whether, in the case of an attesting employer, there is reasonable cause to believe that particular part or parts of the attestation or regulations have been violated; or

(ii) whether, in the case of an employer claiming the automated vessel exception, the preponderance of the evidence submitted by any interested party shows that conditions exist that would require the employer to file an attestation.

(3) The complaint may be submitted to any local Wage and Hour Division office; the addresses of such offices are found in local telephone directories. The office or person receiving such a complaint shall refer it to the office of the Wage and Hour Division administering the area in which the reported violation is alleged to have occurred.

(c) The Administrator shall determine whether there is reasonable cause to believe that the complaint warrants investigation. If the Administrator determines that the complaint fails to present reasonable cause for an investigation, the Administrator shall so notify the complainant, who may submit a new complaint, with such additional information as may be necessary. There shall be no hearing pursuant to § ____.625 for the Administrator's determination not to conduct an investigation. If the Administrator determines that an investigation on the complaint is warranted, the investigation shall be conducted and a determination issued within 180 calendar days of the Administrator's receipt of the complaint, or later for good cause shown.

(d) In conducting an investigation, the Administrator may consider and make part of the investigation file any evidence or materials that have been compiled in any previous investigation regarding the same or a closely related matter.

(e) In conducting an investigation under an attestation, the Administrator shall take into consideration the employer's burden to provide facts and evidence to establish the matters asserted. In conducting an investigation regarding an employer's eligibility for the automated vessel exception, the Administrator shall not impose the burden of proof on the employer, but shall consider all evidence from any interested party in determining whether the employer is not eligible for the exception.

(f) In an investigation regarding the use of alien crewmembers to perform longshore activity(ies) in a U.S. port (whether by an attesting employer or by an employer claiming the automated vessel exception), the Administrator shall accept as conclusive proof a previous Departmental determination, published in the **Federal Register** pursuant to § ____.670, establishing that such use of alien crewmembers is not the prevailing practice for the activity(ies) and U.S. port at issue. The Administrator shall give appropriate weight to a previous Departmental determination published in the **Federal Register** pursuant to § ____.670, establishing that at the time of such determination, such use of alien crewmembers was the prevailing practice for the activity(ies) and U.S. port at issue.

(g) When an investigation has been conducted, the Administrator shall, within the time period specified in paragraph (c) of this section, issue a written determination as to whether a basis exists to make a finding stated in paragraph (a) of this section. The determination shall be issued and an opportunity for a hearing shall be afforded in accordance with the procedures specified in § ____.625(d) of this part.

§ ____.610 Automated vessel exception to prohibition on utilization of alien crewmember(s) to perform longshore activity(ies) at a U.S. port.

(a) The Act establishes a rebuttable presumption that the prevailing practice in U.S. ports for automated vessels (i.e., vessels equipped with automated self-unloading conveyor belts or vacuum-actuated systems) to use alien crewmembers to perform longshore activity(ies) through the use of the self-unloading equipment. An employer claiming the automated vessel exception does not have the burden of establishing eligibility for the exception.

(b) In the event of a complaint asserting that an employer claiming the automated vessel exception is not eligible for such exception, the Administrator shall determine whether the preponderance of the evidence submitted by an interested party shows that:

(1) It is not the prevailing practice at the U.S. port to use alien crewmember(s) to perform the longshore activity(ies) through the use of the self-unloading equipment; or

(2) The employer is using alien crewmembers to perform longshore activity(ies)—

(i) During a strike or lockout in the course of a labor dispute at the U.S. port and/or

(ii) With intent or design to influence an election of a bargaining representative for workers at the U.S. port.

(c) In making the prevailing practice determination required by paragraph (b)(1) of this section, the Administrator shall determine whether, in the 12-month period preceding the date of the Administrator's receipt of the complaint, one of the following conditions existed:

(1) Over fifty percent of the automated vessels docking at the port used alien crewmembers for the activity (for purposes of this paragraph (b)(1), a vessel shall be counted each time it docks at the particular port); or

(2) Alien crewmembers made up over fifty percent of the workers who performed the activity with respect to such automated vessels.

(d) An interested party, complaining that the automated vessel exception is not applicable to a particular employer, shall provide to the Administrator evidence such as:

(1) A written summary of a survery of the experience of masters of automated vessels which entered the local port in the previous year, describing the practice in the port as to the use of alien crewmembers;

(2) A letter, affidavit, or other written statement from an appropriate local port authority regarding the use of alien crewmembers to perform the longshore activity at the port in the previous year;

(3) Written statements from collective bargaining representatives and/or shipping agents with direct knowledge of practices regarding the use of alien crewmembers at the port in the previous year.

§ ____.615 Cease and desist order.

(a) If the Administrator determines that reasonable cause exists to conduct an investigation with respect to an attestation, the complainant may request that the Administrator enter a cease and desist order against the employer against whom the complaint is lodged.

(1) The request for a cease and desist order may be filed along with the complaint, or may be filed subsequently. The request, including all accompanying documents, shall be filed in duplicate with the same Wage and Hour Division office that received the complaint.

(2) No particular form is prescribed for a request for a cease and desist order pursuant to this paragraph (a). However, any such request shall:

(i) Be dated;

(ii) Be typewritten or legibly written;

(iii) Specify the attestation provision(s) with respect to which the employer allegedly failed to comply and/or submitted misrepresentation(s) of material fact(s);

(iv) Be accompanied by evidence to substantiate the allegation(s) of noncompliance and/or misrepresentation;

(v) Be signed by the complaining party making the request or by the authorized representative of such party;

(vi) Include the address at which such complaining party or authorized representative desires to receive further communications relating thereto.

(3) Upon receipt of a request for a cease and desist order, the Administrator shall promptly notify the employer of the request. The Administrator's notice shall:

(i) Inform the employer that it may respond to the request and meet with a Wage and Hour Division official within 14 calendar days of the date of the notice;

(ii) Be served upon the employer by facsimile transmission, in person, or by certified or regular mail, at the address of the U.S. agent stated on the employer's attestation;

(iii) Be accompanied by copies of the complaint, the request for a cease and desist order, the evidence submitted by the complainant, and any evidence from other investigation(s) of the same or a closely related matter which the administrator may incorporate into the record. (Any such evidence from other investigation(s) shall also be made available for examination by the complaining party at the Wage and Hour Division office which issued the notice.)

(4) No particular form is prescribed for the employer's response to the complaining party's request for a cease and desist order under this paragraph (a). However, any such response shall:

(i) Be dated:

(ii) Be submitted by facsimile transmission, in person, by certified or regular mail, or by courier service to the Wage and Hour Division office which issued the notice of the request;

(iii) Be received by the appropriate Wage and Hour Division office no later than 14 calendar days from the date of the notice of the request;

(iv) Be typewritten or legibly written;

(v) Explain, in any detail desired by the employer, the employer's grounds or reasons as to why the Administrator should deny the requested cease and desist order;

(vi) Be accompanied by evidence to substantiate the employer's grounds or reasons as to why the Administrator should deny the requested cease and desist order;

(vii) Specify whether the employer desires an informal meeting with a Wage and Hour Division official;

(viii) Be signed by the employer or its authorized representative;

(ix) Include the address at which the employer or its authorized representative desires to receive further communications relating thereto, if such address is different from the address of the U.S. agent stated on the attestation.

(5) In the event the employer requests a meeting with a Wage and Hour Division official, the Administrator shall provide the employer and the complaining party, or their authorized representatives, an opportunity for such a meeting to present their views regarding the evidence and arguments submitted by the parties. This shall be an informal meeting, not subject to any procedural rules. The meeting shall be held within the 14 calendar days permitted for the employer's response to the request for the cease and desist order, and shall be held at a time and place set by the Wage and Hour Division official, who shall notify the parties.

(6) After receipt of the employer's timely response and after any informal meeting which may have been held with the parties, the Administrator shall promptly issue a written determination, either denying the request or issuing a cease and desist order. In making the determination, the Administrator shall consider all the evidence submitted, including any evidence from the same or a closely related matter which the Administrator has incorporated into the record and provided to the employer. If the Administrator determines that the complaining party's position is supported by a preponderance of the evidence submitted, the Administrator shall order that the employer cease the activities specified in the determination, until the completion of the Administrator's investigation and any subsequent proceedings pursuant to § ____.625 of this part, unless the prohibition is lifted by subsequent order of the Administrator because it is later determined that the employer's position was correct. While the cease and desist order is in effect, ETA shall suspend the subject attestation and shall not accept any subsequent attestation from the employer for the activity(ies) and U.S. port at issue.

(7) The Administrator's cease and desist order shall be served on the employer at the address of its designated U.S. based representative or at the address specified in the employer's response, by facsimile transmission, personal service, or certified mail.

(b) If the Administrator determines that reasonable cause exists to conduct an investigation with respect to a complaint that a non-attesting employer is not entitled to the automated vessel exception to the requirement for the filing of an attestation, a complaining party may request that the Administrator enter a cease and desist order against the employer against whom the complaint is lodged.

(1) The request for a cease and desist order may be filed along with the complaint, or may be filed subsequently. The request, including all accompanying documents, shall be filed in duplicate with the same Wage and Hour Division office that received the complaint.

(2) No particular form is prescribed for a request for a cease and desist order pursuant to this paragraph. However, any such request shall:

(i) Be dated;

(ii) Be typewritten or legibly written;

(iii) Specify the circumstances which allegedly require that the employer be denied the use of the automated vessel exception;

(iv) Be accompanied by evidence to substantiate the allegation(s);

(v) Be signed by the complaining party making the request or by the authorized representative of such party;

(vi) Include the address at which such complaining party or authorized representative desires to receive further communications relating thereto.

(3) Upon receipt of a request for cease and desist order, the Administrator shall notify the employer of the request. The Administrator's notice shall:

(i) Inform the employer that it may respond to the request and meet with a Wage and Hour Division official within 14 calendar days of the date of the notice;

(ii) Be served upon the employer by facsimile transmission, in person, or by certified or regular mail, at the employer's last known address.

(iii) Be accompanied by copies of the complaint, the request for a cease and desist order, the evidence submitted by the complainant, and any evidence from other invesigation(s) of the same or a closely related matter which the Adminstrator may incorporate into the record. (Any such evidence from other investigation(s) shall also be made available for examination by the complaining party at the Wage and Hour Division office which issued the notice.)

(4) No particular form is prescribed for the employer's response to the complaining party's request for a cease and desist order under this paragraph (b). However, any such response shall:

(i) Be dated;

(ii) Be submitted by facsimile transmission, in person, by certified or regular mail, or by courier service to the Wage and Hour Division office which issued the notice of the request;

(iii) Be received by the appropriate Wage and Hour Division office no later than 14 calendar days from the date of the notice of the request;

(iv) Be typewritten or legibly written;

(v) Explain, in any detail desired by the employer, the employer's grounds or reasons as to why the Administrator

should deny the requested cease and desist order;

(vi) Be accompanied by evidence to substantiate the employer's grounds or reasons as to why the Administrator should deny the requested cease and desist order;

(vii) Specify whether the employer desires an informal meeting with a Wage and Hour Division official;

(viii) Be signed by the employer or its authorized representative;

(ix) Include the address at which the employer or its authorized representative desires to receive further communications relating thereto.

(5) In the event the employer requests a meeting with a Wage and Hour Division official, the Administrator shall provide the employer and the complaining party, or their authorized representatives, an opportunity for such a meeting to present their views regarding the evidence and arguments submitted by the parties. This shall be an informal meeting, not subject to any procedural rules. The meeting shall be held within the 14 calendar days permitted for the employer's response to the request for the cease and desist order, and shall be held at a time and place set by the Wage and Hour Division official, who shall notify the parties.

(6) After receipt of the employer's timely response and after any informal meeting which may have been held with the parties, the Administrator shall promptly issue a written determination, either denying the request or issuing a cease and desist order. If the Administrator determines that the complaining party's position is supported by a preponderance of the evidence submitted, the Administrator shall order that the employer cease the use of alien crewmembers to perform the longshore activity(ies) specified in the order. In making the determination, the Administrator shall consider all the evidence submitted, including any evidence from the same or a closely related matter which the Administrator has incorporated into the record and provided to the employer. The order shall remain in effect until the completion of the investigation and any subsequent hearing proceedings pursuant to § ____.625 of this part, unless the employer files and maintains on file with ETA an attestation pursuant to § ____.520 of this part or unless the prohibition is lifted by subsequent order of the Administrator because it is later determined that the employer's position was correct.

(7) The Adminstrator's cease and desist order shall be served on the employer or its designated representative by facsimile transmission, personal service, or by certified mail at the address specified in the employer's response or, if no such address was specified, at the employer's last known address.

§ ____.620 Civil money penalties and other remedies.

(a) The Administrator may assess a civil money penalty not to exceed $5,000 for each alien crewmember with respect to whom there has been a violation of the attestation or subpart F or G of this part. The Administrator may also impose appropriate remedy(ies).

(b) In determining the amount of the civil money penalty to be assesssed, the Administrator shall consider the type of violation committed and other relevant factors. The factors which may be considered include, but are not limited to, the following:

(1) Previous history of violation, or violations, by the employer under the Act and subpart F or G of this part;

(2) The number of workers affected by the violation or violations;

(3) The gravity of the violation or violations;

(4) Efforts made by the violator in good faith to comply with the provisions of 8 U.S.C. ____ and subparts F and G of this part;

(5) The violator's explanation of the violation or violations;

(6) The violator's commitment to future compliance; and

(7) The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss, potential injury or adverse effect with respect to other parties.

(c) The civil money penalty, and any other remedy determined by the Administrator to be appropriate, are immediately due for payment or performance upon the assessment by the Administrator, or the decision by an administrative law judge where a hearing is requested, or the decision by the Secretary where review is granted. The employer shall remit the amount of the civil money penalty, by certified check or money order made payable to the order of "Wage and Hour Division, Labor." The remittance shall be delivered or mailed to the Wage and Hour Division office for the area in which the violations occurred. The performance of any other remedy prescribed by the Administrator shall follow procedures established by the Administrator. The employer's failure to pay the civil money penalty, or to perform any other remedy prescribed by the Administrator, shall result in the rejection by ETA of any future attestation submitted by the employer, until such payment or performance is accomplished.

§ ____.625 Written notice, service and Federal Register publication of Administrator's determination.

(a) The Administrator's determination, issued pursuant to § ____.605 of this part, shall be served on the complainant, the employer, and other known interested parties by personal service or by certified mail at the parties' last known addresses. Where service by certified mail is not accepted by the party, the Administrator may exercise discretion to serve the determination by regular mail.

(b) Where the Administrator determines the prevailing practice regarding the use of alien crewmember(s) to perform longshore activity(ies) in a U.S. port (whether the Administrator's investigation involves an employer operating under an attestation, or under the automated vessel exception), the Administrator shall, simultaneously with issuance of the determination, publish in the **Federal Register** a notice of the determination. The notice shall identify the activity(ies), the U.S. port, and the prevailing practice regarding the use of alien crewmembers. The notice shall also inform interested parties that they may request a hearing pursuant to § ____.630 of this part, within 15 days of the date of the determination.

(c) The Administrator shall file with the Chief Administrative Law Judge, U.S. Department of Labor, a copy of the complaint and the Administrator's determination.

(d) The Administrator's written determination required by § ____.605 of this part shall:

(1) Set forth the determination of the Administrator and the reason or reasons therefor, and in the case of a finding of violation(s) by an attesting employer, prescribe any remedies, including the amount of any civil money penalties assessed and the reason therefor, and/or any other remedies required for compliance with the employer's attestation.

(2) Inform the interested parties that they may request a hearing pursuant to § ____.625 of this part.

(3) Inform the interested parties that in the absence of a timely request for a hearing, received by the Chief Administrative Law Judge within 15 calendar days of the date of the determination, the determination of the Administrator shall become final and not appealable.

(4) Set forth the procedure for requesting a hearing, and give the

address of the Chief Administrative Law Judge.

(5) Inform the parties that, pursuant to § ____.665, the Administrator shall notify ETA and the Attorney General of the occurrence of a violation by the attesting employer or of the non-attesting employer's ineligibility for the automated vessel exception.

§ ____.630 Request for hearing.

(a) Any interested party desiring to request an administrative hearing on a determination issued pursuant to §§ ____.605 and ____.625 of this part shall make such request in writing to the Chief Administrative Law Judge at the address stated in the notice of determination.

(b) Interested parties may request a hearing in the following circumstances:

(1) The complainant or any other interested party may request a hearing where the Administrator determines, after investigation, that there is no basis for a finding that an attesting employer has committed violation(s) or that the employer is eligible for the automated vessel exception. In such a proceeding, the requesting party and the employer shall be parties; the Administrator may intervene as a party or appear as *amicus curiae* at any time in the proceeding, at the Administrator's discretion.

(2) The employer or any other interested party may request a hearing where the Administrator determines, after investigation, that there is a basis for a finding that an attesting employer has committed violation(s) or that a non-attesting employer is not eligible for the automated vessel exception. In such a proceeding, the Administrator and the employer shall be parties.

(c) No particular form is prescribed for any request for hearing permitted by this section. However, any such request shall:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) Specify the issue or issues stated in the notice of determination giving rise to such request;

(4) State the specific reason or reasons why the party requesting the hearing believes such determination is in error;

(5) Be signed by the party making the request or by an authorized representative of such party; and

(6) Include the address at which such party or authorized representative desires to receive further communications relating thereto.

(d) The request for such hearing must be received by the Chief Administrative Law Judge, at the address stated in the Administrator's notice of determination, no later than 15 calendar days after the date of the determination.

(e) The request may be filed in person, by facsimile transmission, by certified or regular mail, or by courier service. For the requesting party's protection, if the request is by mail, it should be by certified mail.

(f) Copies of the request for a hearing shall be sent by the requester to the Administrator and all known interested parties.

§ ____.635 Rules of practice for administrative law judge proceedings.

(a) Except as specifically provided in this subpart, and to the extent they do not conflict with the provisions of this subpart, the "Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges" established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings under this subpart.

(b) As provided in the Administrative Procedure Act, 5 U.S.C. 556, any oral or documentary evidence may be received in proceedings under this part. The Federal Rules of Evidence and subpart B of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (29 CFR part 18, subpart B) shall not apply, but principles designed to ensure production of relevant and probative evidence shall guide the admission of evidence. The administrative law judge may exclude evidence which is immaterial, irrelevant, or unduly repetitive.

§ ____.640 Service and computation of time.

(a) Under this subpart, a party may serve any pleading or document by regular mail. Service on a party is complete upon mailing to the last known address or, in the case of the attesting employer, to the employer's designated representative in the United States. No additional time for filing or response is authorized where service is by mail. In the interest of expeditious proceedings, the administrative law judge may direct the parties to serve pleadings or documents by a method other than regular mail.

(b) Two (2) copies of all pleadings and other documents in any administrative law judge proceeding shall be served on the attorneys for the Administrator. One copy shall be served on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, and one copy on the attorney representing the Administrator in the proceeding.

(c) Time will be computed beginning with the day following the action and includes the last day of the period unless it is a Saturday, Sunday, or federally-observed holiday, in which case the time period includes the next business day.

§ ____.645 Administrative law judge proceedings.

(a) Upon receipt of a timely request for a hearing filed pursuant to and in accordance with § ____.630 of this part, the Chief Administrative Law Judge shall promptly appoint an administrative law judge to hear the case.

(b) Within seven calendar days following the assignment of the case, the administrative law judge shall notify all interested parties of the date, time and place of the hearing. All parties shall be given at least fourteen calendar days notice of such hearing.

(c) The date of the hearing shall be not more than 60 calendar days from the date of the Administrator's determination. Because of the time constraints imposed by the Act, no requests for postponement shall be granted except for compelling reasons. Even if such reasons are shown, no extension of the hearing date beyond 60 days from the date of the Administrator's determination shall be granted except by consent of all the parties to the proceeding.

(d) The administrative law judge may prescribe a schedule by which the parties are permitted to file a prehearing brief or other written statement of fact or law. Any such brief or statement shall be served upon each other party in accordance with § ____.640 of this part. Posthearing briefs will not be permitted except at the request of the administrative law judge. When permitted, any such brief shall be limited to the issue or issues specified by the administrative law judge, shall be due within the time prescribed by the administrative law judge, and shall be served on each other party in accordance with § ____.640 of this part.

(e) In reaching a decision, the administrative law judge shall, in accordance with the Act, impose the following burden of proof—

(1) The attesting employer shall have the burden of producing facts and evidence to establish the matters required by the attestation-at issue;

(2) The burden of proof as to the applicability of the automated vessel exception shall be on the party to the hearing who is asserting that the

employer is not eligible for the exception.

(f) The administrative law judge proceeding shall not be an appeal or review of the Administrator's ruling on a request for a cease and desist order pursuant to § ____.615.

§ ____.650 Decision and order of administrative law judge.

(a) Within 90 calendar days after receipt of the transcript of the hearing, the administrative law judge shall issue a decision.

(b) The decision of the administrative law judge shall include a statement of findings and conclusions, with reasons and basis therefor, upon each material issue presented on the record. The decision shall also include an appropriate order which may affirm, deny, reverse, or modify, in whole or in part, the determination of the Administrator; the reason or reasons for such order shall be stated in the decision. The administrative law judge shall not render determinations as to the legality of a regulatory provision or the constitutionality of a statutory provision.

(c) The decision shall be served on all parties in person or by certified or regular mail.

§ ____.655 Secretary's review of administrative law judge's decision.

(a) The Administrator or any interested party desiring review of the decision and order of an administrative law judge shall petition the Secretary to review the decision and order. To be effective, such petition shall be received by the Secretary within 30 calendar days of the date of the decision and order. Copies of the petition shall be served on all parties and on the administrative law judge.

(b) No particular form is prescribed for any petition for Secretary's review permitted by this subpart. However, any such petition shall:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) Specify the issue or issues stated in the administrative law judge decision and order giving rise to such petition;

(4) State the specific reason or reasons why the party petitioning for review believes such decision and order are in error;

(5) Be signed by the party filing the petition or by an authorized representative of such party;

(6) Include the address at which such party or authorized representative desires to receive further communications relating thereto; and

(7) Attach copies of the administrative law judge's decision and order, and any other record documents which would assist the Secretary in determining whether review is warranted.

(c) Whenever the Secretary determines to review the decision and order of an administrative law judge, a notice of the Secretary's determination shall be served upon the administrative law judge and upon all parties to the proceeding within 30 calendar days after the Secretary's receipt of the petition for review.

(d) Upon receipt of the Secretary's notice, the Office of Administrative Law Judges shall within fifteen calendar days forward the complete hearing record to the Secretary.

(e) The Secretary's notice may specify;

(1) The issue or issues to be reviewed;

(2) The form in which submissions shall be made by the parties (e.g., briefs);

(3) The time within which such submissions shall be made.

(f) All documents submitted to the Secretary shall be filed with the Secretary of Labor, U.S. Department of Labor, Washington, DC 20210, Attention: Executive Director, Office of Administrative Appeals, room S-4309. An original and two copies of all documents shall be filed. Documents are not deemed filed with the Secretary until actually received by the Secretary. All documents, including documents filed by mail, shall be received by the Secretary either on or before the due date.

(g) Copies of all documents filed with the Secretary shall be served upon all other parties involved in the proceeding. Service upon the Administrator shall be in accordance with § ____.640(b) of this part.

(h) The Secretary's final decision shall be issued within 180 calendar days from the date of the notice of intent to review. The Secretary's decision shall be served upon all parties and the administrative law judge.

(i) Upon issuance of the Secretary's decision, the Secretary shall transmit the entire record to the Chief Administrative Law Judge for custody pursuant to § ____.660 of this part.

§ ____.660 Administrative record.

The official record of every completed administrative hearing procedure provided by subparts F and G of this part shall be maintained and filed under the custody and control of the Chief Administrative Law Judge. Upon receipt of a complaint seeking review of the final agency action in a United States District Court, the Chief Administrative Law Judge shall certify the official record and shall transmit such record to the clerk of the court.

§ ____.665 Notice to the Attorney General and the Employment and Training Administration.

(a) The Administrator shall promptly notify the Attorney General and ETA of the entry of a cease and desist order pursuant to § ____.615 of this part. The order shall remain in effect until the completion of the Administrator's investigation and any subsequent proceedings pursuant to § ____.630 of this part, unless the Administrator notifies the Attorney General and ETA of the entry of a subsequent order lifting the prohibition.

(1) The Attorney General, upon recepit of notification from the Administrator that a cease and desist order has been entered against an employer;

(i) Shall not permit the vessels owned or chartered by the attesting employer to use alien crewmembers to perform the longshore activity(ies) at the port specified in the cease and desist order;

(ii) Shall, in the case of an employer seeking to utilize the automated vessel exception, require that such employer not use alien crewmembers to perform the longshore activity(ies) at the port specified in the cease and desist order, without having on file with ETA an attestation pursuant to § ____.520 of this part.

(2) ETA, upon receipt of the Administrator's notice shall, in the case of an attesting employer, suspend the employer's attestation for the activity(ies) and port specified in the cease and desist order.

(b) The Administrator shall notify the Attorney General and ETA of the final determination of a violation by an attesting employer or of the ineligibility of an employer for the automated vessel exception, upon the earliest of the following events:

(1) Where the Administrator determines that there is a basis for a finding of violation by an attesting employer or a finding of nonapplicability of the automated vessel exception, and no timely request for hearing is made pursuant to § ____.630 of this part;

(2) Where, after a hearing, the administrative law judge issues a decision and order finding a violation by an attesting employer or finding inapplicable the automated vessel exception; or

(3) Where the administrative law judge finds that there was no violation by an attesting employer or that the automated vessel exception does apply,

and the Secretary, upon review, issues a decision pursuant to § ____.655 of this part, holding that a violation was committed by an attesting employer or holding that the automated vessel exception does not apply.

(c) The Attorney General, upon receipt of notification from the Administrator pursuant to paragraph (b) of this section:

(1) Shall not permit the vessels owned or chartered by the attesting employer to enter any port of the U.S. for a period of up to one year;

(2) Shall, in the case of an employer determined to be ineligible for the automated vessel exception, thereafter require that such employer not use alien crewmembers(s) to perform the longshore activity(ies) at the specified port without having on file with ETA an attestation pursuant to § ____.520 of this part.

(3) Shall, in the event that the Administrator's notice constitutes a conclusive determination (pursuant to § ____.670) that the prevailing practice at a particular U.S. port does not permit the use of nonimmigrant alien crewmembers for particular longshore activity(ies), thereafter permit no employer to use alien crewmembers for the particular longshore activity(ies) at that port.

(d) ETA, upon receipt of the Administrator's notice pursuant to paragraph (b) of this section:

(1) Shall, in the case of an attesting employer, suspend the employer's attestation for the port at issue and for any other U.S. port, and shall not accept for filing any attestation submitted by the employer for a period of 12 months or for a shorter period if such is specified for that employer by the Attorney General;

(2) Shall, if the Administrator's notice constitutes a conclusive determination (pursuant to § ____.670) that the prevailing practice at a particular U.S. port does not permit the use of alien crewmembers for the longshore activity(ies), thereafter accept no attestation from any employer for the performance of the activity(ies) at that port, and shall invalidate any current attestation for any employer for the performance of the acitvity(ies) at that port.

§ ____.670 Federal Register notice of determination of prevailing practice.

(a) Pursuant to § ____.625(b), the Administrator shall publish in the **Federal Register** a notice of the Administrator's determination of any investigation regarding the prevailing practice for the use of alien crewmembers for particular longshore activity(ies) in a particular U.S. port (whether under an attestation or under the automated vessel exception). Where the Administrator has determined that the prevailing practice in that U.S. port does not permit such use of alien crewmembers, and no timely request for a hearing is filed pursuant to § ____.630, the Administrator's determination shall be the conclusive determination for purposes of the Act and subparts F and G of this port; the Attorney General and ETA shall, upon notice from the Administrator, take the actions specified in § ____.665. Where the Administrator has determined that the prevailing practice in that U.S. port at the time of the investigation permits such use of alien crewmembers, the Administrator shall, in any subsequent investigation, give that determination appropriate weight, unelss the determination is reversed in proceedings under §§ ____.630 or ____.655.

(b) Where an interested party, pursuant to § ____.630, requests a hearing on the Administrator's determination, the Administrator shall, upon the issuance of the decision of the administrative law judge, publish in the **Federal Register** a notice of the judge's decision as to the prevailing practice for the longshore activity(ies) and U.S. port at issue, if the Administrative Law Judge:

(1) Reversed the determination of the Administrator published in the **Federal Register** pursuant to paragraph (a) of this section; or

(2) Determines that the prevailing practice for the particular activity in the port does not permit the use of alien crewmembers.

(c) If the administrative law judge determines that the prevailing practice in that port does not permit such use of alien crewmembers, the judge's decision shall be the conclusive determination for purposes of the act and these regulations (unless and until reversed by the Secretary on discretionary review pursuant to § ____.655). The Attorney General and the ETA shall upon notice from the Administrator, take the actions specified in § ____.665.

(d) In the event that the Secretary, upon discretionary review pursuant to § ____.655, issues a decision that reverses the administrative law judge on a matter on which the Administrator has published notices in the **Federal Register** pursuant to paragraphs (a) and (b) of this section, the Administrator shall publish in the **Federal Register** a notice of the Secretary's decision and shall notify the Attorney General and ETA.

(1) Where the Secretary reverses the administrative law judge and determines that, contrary to the judge's decision, the prevailing practice for the longshore activity(ies) in the U.S. port at issue does not permit the use of alien crewmembers, the Secretary's decision shall be the conclusive determination for purposes of the Act and these regulations. Upon notice from the Administrator, the Attorney General and ETA shall take the actions specified in § ____.665.

(2) Where the Secretary reverses the administrative law judge and determines that, contrary to the judge's decision, the use of alien crewmembers is permitted by the prevailing practice for the longshore activity(ies) in the U.S. port at issue, the judge's decision shall no longer have the conclusive effect specified in paragraph (b) of this section. Upon notice from the Administrator, the Attorney General and ETA shall cease the actions specified in § ____.665.

§ ____.675 Non-applicability of the Equal Access to Justice Act.

A proceeding under subpart G of this part is not subject to the Equal Access to Justice Act, as amended, 5 U.S.C. 504. In such a proceeding, the administrative law judge shall have no authority to award attorney fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act.

Adoption of the Interim Final Joint Rule

The agency specific adoption of the joint rule, which appears at the end of the common preamble, appears below:

TITLE 20—EMPLOYEES' BENEFITS

CHAPTER V—EMPLOYMENT AND TRAINING ADMINISTRATION, DEPARTMENT OF LABOR

Accordingly, chapter V of title 20, Code of Federal Regulations, is amended as follows:

PART 655—[AMENDED]

1. The Authority citation for part 655 is revised to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(H) and 1184; 29 U.S.C. 49 *et seq.*; §§ 655.0, 655.00, and 655.000 also issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1188, and 8 CFR 214.2(h)(4)(i); Subparts A and C also issued under 8 CFR 214.2(h)(4)(i); Subpart B also issued under 8 U.S.C. 1188; Subparts D and E also issued under 8 U.S.C. 1101(a)(15)(H)(i)(a) and 1182(m) and Pub. L. 101-238, sec. 3(c)(1), 103 Stat. 2099, 2103; Subparts F and G also issued under 8 U.S.C. 1288(c).

Part 655—TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

§ 655.0 [Amended]

2. Section 655.0 is amended by redesignating paragraph (c) as paragraph (a)(3), and by adding a new paragraph (c), to read as follows:

§ 655.0 Scope and purpose of part.

* * * * *

(c) *Subparts F and G.* Subparts F and G of this part set forth the process by which employers can file attestations with the Department of Labor for the purpose of employing alien crewmembers in longshore work under D-visas and enforcement provisions relating thereto.

§ 655.000 [Amended]

3. Section 655.000 is amended in paragraph (a) by removing the period at the end of the first sentence therein and by adding in lieu thereof the words ", and with respect to employment of nonimmigrant (D-visa) crewmembers in longshore work under Subpart F of this part."

4. Part 655 is amended by adding new subparts F and G as set forth in this document.

Subpart F—Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

Sec.
655.500 Purpose, procedure, and applicability of subparts F and G of this part.
655.501 Overview of responsibilities.
655.502 Definitions.
655.510 Employer attestations.
655.520 Special provisions regarding automated vessels.
655.550 Public access.

Subpart G—Enforcement of the Limitations Imposed on Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

Sec.
655.600 Enforcement authority of Administrator, Wage and Hour Division.
655.605 Complaints and investigative procedures.
655.610 Automated vessel exception to prohibition on utilization of alien crewmembers to perform longshore activity(ies) at a U.S. port.
655.615 Cease and desist order.
655.620 Civil money penalties and other remedies.
655.625 Written notice, service and Federal Register publication of Administrator's determination.
655.630 Request for hearing.
655.635 Rules of practice for administrative law judge proceedings.
655.640 Service and computation of time.
655.645 Administrative law judge proceedings.
655.650 Decision and order of administrative law judge.
655.655 Secretary's review of administrative law judge's decision.
655.660 Administrative record.
655.665 Notice to the Attorney General and the Employment and Training Administration.
655.670 Federal Register notice of determination of prevailing practice.
655.675 Non-applicability of the Equal Access to Justice Act.

Authority: 8 U.S.C. 1101(a)(15)(H) and 1184; 29 U.S.C. 49 *et seq.*; §§ 655.0, 655.00, and 655.000 also issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1188, and 8 CFR 214.2(h)(4)(i); Subparts A and C also issued under 8 CFR 214.2(h)(4)(i); Subpart B also issued under 8 U.S.C. 1188; Subparts D and E also issued under 8 U.S.C. 1101(a)(15)(H)(i)(a) and 1182(m) and Pub. L. 101-238, sec. 3(c)(1), 103 Stat. 2099, 2103; Subparts F and G also issued under 8 U.S.C. 1288(c).

Signed at Washington, DC, this 23rd day of May, 1991.

Roberts T. Jones,

Assistant Secretary for Employment and Training.

Samuel D. Walker,

Acting Assistant Secretary for Employment Standards.

Lynn Martin,

Secretary of Labor.

TITLE 29—LABOR

CHAPTER V—WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

Accordingly, title 29, Code of Federal Regulations, is amended by adding a new part 506 to read as follows, and subparts F and G are added to new part 506 as set forth in this document:

PART 506—ATTESTATIONS BY EMPLOYERS USING ALIEN CREWMEMBERS FOR LONGSHORE ACTIVITIES IN U.S. PORTS

Subparts A, B, C, D, and E [Reserved]

Subpart F—Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

Sec.
506.500 Purpose, procedure, and applicability of subparts F and G of this part.
506.501 Overview of responsibilities.
506.502 Definitions.
506.510 Employer attestations.
506.520 Special provisions regarding automated vessels.
506.550 Public access.

Subpart G—Enforcement of the Limitations Imposed on Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

Sec.
506.600 Enforcement authority of Administrator, Wage and Hour Division.
506.605 Complaints and investigative procedures.
506.610 Automated vessel exception to prohibition on utilization of alien crewmembers to perform longshore activity(ies) at a U.S. port.
506.615 Cease and desist order.
506.620 Civil money penalties and other remedies.
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506.665 Notice to the Attorney General and the Employment and Training Administration.
506.670 Federal Register notice of determination of prevailing practice.
506.675 Non-applicability of the Equal Access to Justice Act.

Authority: 8 U.S.C. 1288(c).

Signed at Washington, DC, this 23rd day of May, 1991.

Roberts T. Jones,

Assistant Secretary for Employment and Training.

Samuel D. Walker,

Acting Assistant Secretary for Employment Standards.

Lynn Martin,

Secretary of Labor.

Appendix 1—U.S. Seaports

The list of 206 seaports includes all major and most smaller ports serving ocean and Great Lakes commerce.

North Atlantic Range

Bucksport, ME	Gloucester City, NJ
Eastport, ME	Chester, PA
Portland, ME	Philadelphia, PA
Searsport, ME	Marcus Hook, PA
Portsmouth, NH	Wilmington, DE
Boston, MA	Delaware City, DE
Fall River, MA	Baltimore, MD
New Bedford, MA	Cambridge, MD
Providence, RI	Alexandria, VA
New London, CT	Hopewell, VA
New Haven, CT	Richmond, VA
Bridgeport, CT	Newport News, VA
Albany, NY	Norfolk, VA
New York, NY/NJ	Portsmouth, VA
Camden, NJ	Chesapeake, VA
Paulsboro, NJ	

South Atlantic Range

Morehead City, NC
Wilmington, NC
Georgetown, SC
Charleston, SC
Port Royal, SC
Savannah, GA
Brunswick, GA
Fernandina Beach, FL
Fort Pierce, FL
Jacksonville, FL
Port Canaveral, FL
Palm Beach, FL
Port Everglades, FL
Miami, FL
Agudilla, PR
Humacao, PR
San Juan, PR
Ponce, PR
Mayaguez, PR
Jobos, PR
Guayanilla, PR
Guanica, PR
Yabucoa, PR
Charlotte Amalie, VI
Christiansted, VI
Frederiksted, VI
Alucroix, VI
Limetree Bay, VI

North Pacific Range

Rainier, OR
St. Helens, OR
Coos Bay, OR
Newport, OR
Reedsport, OR
Astoria, OR
Portland, OR
Longview, WA
Kalama, WA
Vancouver, WA
Raymond, WA
Willapa Harbor, WA
Grays Harbor, WA
Everett, WA
Port Angeles, WA
Port Townsend, WA
Winslow, WA
Portage, WA
Olympia, WA
Tacoma, WA
Anacortes, WA
Point Wells, WA
Seattle, WA
Edmonds (Edwards Point), WA
Friday Harbor, WA
Bellingham, WA
Ferndale, WA
Ketchikan, AK
Wrangell, AK
Petersburg, AK
Sitka, AK
Juneau, AK
Haines, AK
Skagway, AK
Cordova, AK
Valdez, AK
Whittier, AK
Seward, AK
Homer, AK
Nikisnka, AK
Kenai, AK
Anchorage, AK
Kodiak, AK
Unalaska, AK
Metlakatla, AK
Dutch Harbor, AK

Great Lakes Range

Silver Bay, MN
Duluth, MN
Superior, WI
Kenosha, WI
Green Bay, WI
Manitowoc, WI
Miwaukee, WI
Sheboygan, WI
Marine City, MI
Muskegon, MI
Essexville, MI
Bay City, MI
Saginaw, MI
Detroit, MI
Presque Isle, MI
Alpena, MI
Ferrysburg, MI
Rogers City, MI
De Tour Village, MI
Sault Ste Marie, MI
Grand Haven, MI
Port Huron, MI
Chicago, IL
Toledo, OH
Sandusky, OH
Huron, OH
Lorain, OH
Cleveland, OH
Fairport, OH
Ashtabula, OH
Conneaut, OH
Erie, PA
Buffalo, NY
Rochester, NY
Oswego, NY
Odgensburg, NY
Burns Harbor, IN
Gary, IN
E. Chicago, IN

Gulf Coast Range

Tampa, FL
Port Manatee, FL
Port St. Joe, FL
Panama City, FL
Pensacola, FL
Mobile, AL
Pascagoula, MS
Gulfport, MS
New Orleans, LA
Louisiana Offshore Oil Port, LA
Baton Rouge, LA
Lake Charles, LA
Beaumont, TX
Port Neches, TX
Port Arthur, TX
Orange, TX
Houston, TX
Texas City, TX
Galveston, TX
Freeport, TX
Corpus Christi, TX
Brownsville, TX
Port Lavaca, TX
Sabine, TX

South Pacific Range

San Diego, CA
Carlsbad, CA
Huntington Beach, CA
Long Beach, CA
Los Angeles, CA
El Segundo, CA
Port Hueneme, CA
Mandalay Beach, CA
Ventura, CA
Carpinteria, CA
Gaviota, CA
Port Sant Louis, CA
Estero Bay, CA
Moss Landing, CA
Redwood City, CA
San Francisco, CA
Alameda, CA
Oakland, CA
Selby, CA
Richmond, CA
Crockett, CA
Port Costa, CA
Vallejo, CA
Benicia, CA
Pittsburg, CA
Antioch, CA
Stockton, CA
Sacramento, CA
Eureka, CA
Martinez, CA
Hilo, HI
Kawaihae, HI
Kahului, HI
Kaunakakai, HI
Honolulu, HI
Barbers Point, HI
Nawiliwili, HI
Port Allen, HI

BILLING CODE 4510-30-M; 4510-27-M

Attestation by Employers Using Alien Crewmembers for Longshore Activities at U.S. Ports

U.S. Department of Labor
Employment and Training Administration
U.S. Employment Service

1. Full Legal Name of Company	5. Name of U.S. Agent	OMB Approval No. 1205-0309 Expiration Date: 12/31/91
2. Headquarters Address (No., St., City, Town, State, Zip Code, Country)	6. U.S. Business Address of Agent (No., St., City, Town, State, Zip Code, Country)	
3. Telephone (Area Code and Number)	7. Telephone (Area Code and Number)	
4. Name of Chief Executive Officer	Fax (Area Code and Number)	

8. EMPLOYER ATTESTATION **(If accompanying documentation supporting each one of the following three attestation elements (8(a), 8(b), and 8(c)) is not attached, attestation will be deemed incomplete and will be returned without action.)**

☐ (a) Alien crewmembers will be used beginning _____ (Month/Day/Year) to perform the following activities of longshore work at the port of _____ (Name of Port, City, and State), and it is the prevailing practice to use alien crewmembers for each of the following activities to be performed at this port, i.e., those marked "Yes" **(a "Yes" or "No" box must be checked for each activity):**

Yes	No		
☐	☐	(i)	Loading cargo
☐	☐	(ii)	Unloading cargo
☐	☐	(iii)	Operation of cargo-related equipment
☐	☐	(iv)	Handling of mooring lines
☐		(v)	Check this box if claiming an unanticipated emergency **(Include documentation to support claim).**

☐ (b) On the date this attestation is signed and submitted, there is not a strike or lockout in the course of a labor dispute at this port and, during the period of this attestation's validity, I will not use alien crewmembers in my employ to perform any longshore activity during a strike or lockout; and the employment of such aliens is not intended or designed to influence an election for a bargaining representative for longshore workers at the port.

☐ (c) As of this date, notice of this attestation has been provided to longshore workers in the port by (check appropriate box):

☐ (i) Notice of this filling has been provided to the bargaining representative of longshore workers in the port (include copy of actual notice); or

☐ (ii) Where there is no such bargaining representative, notice of this filing has been provided to the port authority, and to longshore workers employed at the port through posting in conspicuous locations (include copy of actual notice posted).

9. DECLARATION OF EMPLOYER:

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the information provided on this form and accompanying documentation is true and correct. In addition, I declare that I will comply with the Department of Labor regulations governing this program and, in particular, that I will make this attestation, supporting documentation, and other records, files and documents available to officials of the Department of Labor, upon such official's request, during any investigation under this attestation or the Immigration and Nationality Act.

_____ Signature of Chief Executive Officer (or such Officer's U.S. Agent or Designee)

_____ Date

FOR U.S. GOVERNMENT AGENCY USE ONLY: By virtue of my signature below, I acknowledge that this attestation is accepted for filing on _____ (date) and will be valid for the longshore activities herein attested to through _____ (date twelve months from the date it is accepted for filing).

_____ Signature of Authorized DOL Official

_____ ETA Case No.

Subsequent DOL action: Suspended _____ Invalidated _____ Withdrawn _____

The Department of Labor is not the guarantor of the accuracy, truthfulness or adequacy of an attestation accepted for filing.

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, Department of Labor, Room N1301, 200 Constitution Avenue, N.W., Washington, D.C. 20210; and to the Office of Management and Budget, Paperwork Reduction Project (1205-0309) Washington, D.C. 20503.

ETA 9033 (May 1991)

INSTRUCTIONS FOR COMPLETING FORM ETA 9033
ATTESTATION BY EMPLOYERS USING ALIEN CREWMEMBERS
FOR LONGSHORE ACTIVITIES AT U.S. PORTS

IMPORTANT: READ CAREFULLY BEFORE COMPLETING FORM

An employer may file an attestation only when there is no collective bargaining agreement in effect in the local port covering at least 30 percent of the number of individuals employed in performing longshore work. Submit the completed original Form ETA 9033 along with two copies of the form and all documentation. Attestations must be received by the Department of Labor no later than 14 days prior to the first performance of the longshore activity unless the employer is claiming an unanticipated emergency. Attestations pertaining to ports on the West Coast and the Gulf of Mexico must be submitted to the Department's ETA Dallas regional office at Federal Building, Rm. 317, 525 Griffin Street, Dallas, Texas 75202. Attestations pertaining to ports on the East Coast and the Great Lakes must be submitted to the Department's ETA Chicago regional office at 230 S. Dearborn St., Rm. 605, Chicago, Illinois 60604.

To knowingly furnish any false information in the preparation of this form and any supporting documentation thereto, or to aid, abet or counsel another to do so is a felony, punishable by $10,000 fine or five years in the penitentiary, or both (18 U.S.C. 1001). Other penalties apply as well to fraud and misuse of this immigration document (18 U.S.C. 1546) and to perjury with respect to this form (18 U.S.C. 1546 and 1621).

Print legibly in ink or use a typewriter. Sign and date one form in original signature. Citations below to "regulations" are citations to the identical provisions at 20 CFR Part 655, Subparts F and G, and at 29 CFR Part 506, Subparts F and G.

Item 1. Name of Company. Enter full legal name of business, firm or organization, or, if an individual, enter name used for legal purposes on documents.

Item 2. Address of Company. Self explanatory.

Item 3. Telephone Number. Include area code or International calling code.

Item 4. Name of Chief Executive Officer. Self explanatory.

Item 5. Name of U.S Agent. Self explanatory.

Item 6. Address of Agent. This address must be in the U.S.

Item 7. Telephone Number. Include fax number, if available.

Item 8. Employer Attestation. In order to be eligible to use alien crewmembers for longshore activities at a U.S. port, an employer must attest to the conditions listed in elements (a) through (c). The attestation will only be accepted for filing if the required documentation supporting these elements is attached to the Form ETA 9033. See §____.510(d) through (f) of the regulations for guidance on the documentation that must be attached to the Form ETA 9033 to support each of the elements.

Item 8(a). Prevailing Practice. The employer must attest that it is the prevailing practice to use alien crewmembers for a particular activity of longshore work at the U.S. port where the employer intends to employ alien crewmembers. The employer must include the date of the first performance of the longshore activity. If claiming an unanticipated emergency, the appropriate box must be checked. The employer must also include the name of the port, and the city and state in which it is located. Longshore work is defined as (1) loading of cargo, (2) unloading of cargo, (3) operation of cargo-related equipment, and (4) handling of mooring lines on the dock when a vessel is made fast or let go. For each activity, the employer must check either the "Yes" or "No" box, depending on whether the employer intends to perform such activity. The employer must attach documentation to support each activity it intends to perform under this attestation element. See §____.510(d) for detailed explanation.

Item 3(b). No Strike or Lockout; No Intention or Design to Influence Bargaining Representative Election. The employer must attest that, at the time of submitting the attestation, there is not a strike or lockout in the course of a labor dispute covering the employer's activity, and that it will not use alien crewmembers during a strike or lockout after filing the attestation. The employer must also attest that the employment of such aliens is not intended or designed to influence an election for a bargaining representative for workers in the local port. The employer must attach documentation to support this attestation element. See §____.510(e) for detailed explanation.

Item 8(c). Notice of Filing. The employer must attest that at the time of filing the attestation, notice of filing has been provided to the bargaining representative of the longshore workers in the local port, or, where there is no such bargaining representative, notice of the filing has been provided to longshore workers employed at the local port through posting in conspicuous locations and through other appropriate means. The employer must check the appropriate box under 8(c). The employer must attach documentation to support this attestation element. See §____.510(f) for detailed explanation.

Item 9. Declaration of Employer. One copy of this form must bear the original signature of the chief executive officer (or the chief executive officer's designee). By signing this form, the chief executive officer is attesting to the conditions listed in items 8(a) through (c) and to the accuracy of the information provided elsewhere on the form and in the supporting documentation. False statements are subject to Federal criminal penalties, as stated above.

If the attestation bears the necessary entries of information and documentation, the Department of Labor may accept the attestation for filing and shall document such acceptance on each of the three Form ETA 9033s submitted. A copy of the attestation form indicating the Department's acceptance, or notification of nonacceptance, will be returned to the employer. The employer may then use alien crewmembers for longshore work at the port for which this attestation has been accepted in accordance with Immigration and Naturalization Service regulations, unless the Department subsequently acts to suspend or invalidate the attestation.

A copy of this attestation, along with accompanying documentation, will be available for public inspection at the Division of Foreign Labor Certifications, United States Employment Service, Room N-4456, 200 Constitution Avenue, NW., Washington, D.C. 20210.

[FR Doc. 91-12718 Filed 5-29-91; 8:45 am]
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