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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 AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 422

Certified Seed Potato Option in Idaho

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of exclusion for the 1993 crop year.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith gives notice of its determination to exclude the Certified Seed Potato Option in Idaho for the 1993 crop year only.

EFFECTIVE DATE: January 4, 1993.

FOR FURTHER INFORMATION CONTACT: Mari L. Dunleavy, Acting Director, Regulatory and Procedural Development, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: Consistent with the FCIC's continuing commitment to limiting crop insurance programs that bear unreasonable risks to the taxpayer, the Corporation will exclude the Option in Idaho for the 1993 crop year only. Actuarial experience has dictated that the adverse risk associated with this option was in excess to the program's benefits. FCIC will further assess the option during the 1993 crop year for possible implementation in the 1994 crop year.

Authority: U.S.C. 1506, 1516.

Done in Washington, DC on December 23, 1992.

Jane A. Wittmeyer,

Deputy Manager, Federal Crop Insurance Corporation.

[FR Doc. 92–31724 Filed 12–31–92; 8:45 am]

BILLING CODE 3410–08–M

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Docket No. R–0790; Regulation C]

Home Mortgage Disclosure; Termination of Exemptions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of order terminating state exemptions.

SUMMARY: Certain financial institutions in Connecticut and Massachusetts have been exempted from the Home Mortgage Disclosure Act because the Board determined that they were subject to substantially similar mortgage disclosure requirements under state law, and that these state laws contained adequate provisions for enforcement. After consultation with the banking commissioners of Connecticut and Massachusetts about the allocation of resources required for the processing and editing of the data, and the states' continued ability to enforce compliance with their state mortgage disclosure laws, the Board is terminating the exemptions as of January 1, 1993. The state officials concur with these terminations. The previously exempted institutions will submit their 1992 HMDA data to their federal regulatory agency rather than to the state.

DATES: This order is effective January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell or W. Kurt Schumacher, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667. For the hearing impaired *only*, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

(1) Introduction

The Board's Regulation C (12 CFR Part 203) implements the Home Mortgage Disclosure Act of 1975 (HMDA) (12 U.S.C. 2801 *et seq.*). HMDA requires certain depository institutions and other lenders located in metropolitan statistical areas to annually report information on the geographic distribution of their home mortgage and home improvement loans, and also to provide information on the race or national origin, sex, and income of applicants and borrowers for such loans. Under HMDA and Regulation C, the Board may grant exemptions to state-chartered or state-licensed financial institutions that are subject to state mortgage disclosure laws if those laws are substantially similar to the Federal law and contain adequate provisions for enforcement.

The Board previously determined that the laws of Connecticut and Massachusetts were substantially similar to federal law and that adequate provisions for enforcement existed. Therefore, the Board granted exemptions for state-chartered financial institutions subject to the state mortgage disclosure laws of the two states.

Following discussions and consultation with the banking commissioners' offices in each state, the Board is terminating these exemptions as of January 1, 1993. While the exemptions were in place, the states allocated resources to processing the HMDA data submissions from exempt institutions, and transmitted the data to the Federal Financial Institutions Examination Council (FFIEC) for compilation. Termination of the exemptions will shift the data processing responsibility back to the federal supervisory agencies. It will enable the states to reallocate their resources to analysis of the mortgage data, instead of to processing the raw data. Termination will also facilitate the processing of the HMDA data for the FFIEC by having all processing carried out directly by the federal agencies.

Because both states require the collection of the federally mandated HMDA data in a manner identical to the federal law, this termination will result in institutions sending their HMDA data to their federal supervisory agency and not to their state regulator. (Banking commission staff in the two states are expected to inform institutions shortly that they will not be required to send duplicate copies of their HMDA data to the state agency.) Given the absence of any apparent burden to affected institutions, the Board is issuing a final order terminating the exemption for state-chartered institutions in Connecticut and Massachusetts without providing a public comment period.

(2) Order of Termination

The Board granted exemptions from the federal Home Mortgage Disclosure Act to state-chartered financial institutions in Massachusetts and Connecticut in 1990 and 1991 respectively, based on the existence of substantially similar requirements imposed by state law and on the states' provisions for their enforcement. The Board hereby terminates the exemptions for Connecticut and Massachusetts following consultation with, and the concurrence of, the banking commissioners of the two states. State-chartered financial institutions in Connecticut and Massachusetts that were previously exempt from the federal law shall be subject to the federal Home Mortgage Disclosure Act and Regulation C effective January 1, 1993. Accordingly, state-chartered institutions previously exempt from HMDA and Regulation C by virtue of the disclosure laws of Connecticut and Massachusetts shall submit their loan/application registers to their federal supervisory agency beginning with data collected for calendar year 1992, which are due to the supervisory agencies by March 1, 1993.

By order of the Board of Governors of the Federal Reserve System, December 28, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-31872 Filed 12-31-92; 8:45 am]

BILLING CODE 6210-01-M

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12 CFR Part 229

[Regulation CC; Docket No. R-0783]

RIN 7100-AB01

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; technical corrections.

SUMMARY: The Board is publishing technical corrections to Regulation CC. The corrections will conform the Uniform Commercial Code citations in Regulation CC and its Commentary to the 1990 version of Articles 3 and 4 of the UCC, as approved by the National Conference of Commissioners on Uniform State Laws and the American Law Institute, and to a recent realignment in Federal Reserve check processing regions. The amendments will provide updated cross-references between Regulation CC and the latest version of the UCC and will update the routing numbers in the appendices to the regulation.

EFFECTIVE DATE: January 5, 1993.

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associate General Counsel (202/452-3625), or Stephanie Martin, Senior Attorney (202/452-3198), Legal Division. For the hearing impaired *only*: Telecommunications Device for the Deaf, Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Board's Regulation CC (12 CFR part 229) and its accompanying Commentary (Appendix E to part 229) contains many citations and cross-references to the Uniform Commercial Code (UCC). Section 229.2(ii) of Regulation CC defines "Uniform Commercial Code" as the version of the UCC adopted by the individual states. The Commentary to this definition states that, for purposes of uniform citation, all citations to the UCC in the regulation and Commentary refer to the official text as approved by the National Conference of Commissioners on Uniform State Laws (NCCUSL) and the American Law Institute (ALI).

In 1990, the NCCUSL and the ALI approved new versions of UCC Articles 3 and 4, governing commercial transactions and bank deposits and collections, which have already been adopted in several states. Some sections of the new Articles 3 and 4 have been amended substantially and some only in form. The Board has amended the citations and cross-references in Regulation CC and its Commentary to conform to the new version of the UCC. The Board has also relocated two sentences in the Commentary to § 229.30(a) that were misplaced.

In addition, the Federal Reserve Bank of New York recently discontinued check processing at its head office and incorporated the former head office check processing region into the Jericho office check processing region. The Board has amended the routing number lists in Appendices A and B-2 to reflect this change.

The amendments adopted by the Board are technical changes that do not affect the substance of Regulation CC or its Commentary. The amendments will provide updated cross-references between Regulation CC and the latest version of the UCC and update the routing number lists in Appendices A and B-2. Accordingly, the Board, for good cause, finds that the notice and public comment procedure normally required is not necessary and would be contrary to the public interest under 5 U.S.C. 553(b)(B). The Board further finds that, for the same reasons, there is good cause under 5 U.S.C. 553(d)(3) to make the amendments effective immediately, without regard for the 30-day period provided for in 5 U.S.C. 553(d).

Final Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that adoption of this final rule will not have a significant economic impact on a substantial number of small entities that are subject to the regulation. As noted above, the amendments impose no new requirements, but merely update UCC cross-references and appendices.

List of Subjects in 12 CFR Part 229

Banks, banking, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 12 CFR part 229 is amended as follows:

1. The authority citation for part 229 continues to read as follows:

Authority: 12 U.S.C. 4001 *et seq.*

2. In section 229.2, in the second sentence of paragraph (cc), "U.C.C. 4-202(2)" is revised to read "UCC 4-202(b)".

3. In Appendix A to part 229, under the heading "SECOND FEDERAL RESERVE DISTRICT," the numbers appearing directly under the subheading "*Head Office*" are transferred in numerical order under the subheading "*Jericho Office*" and the subheading "*Head Office*" is removed.

4. In Appendix B-2 to part 229, the headings "*New York*" and "*Jericho*" and their corresponding entries are removed from the table.

5. In Appendix E under the Commentary to section 229.2, in the first sentence of the second paragraph of paragraphs (f) and (g), "U.C.C. § 4-104(1)(c)" is revised to read "UCC 4-104(a)(3)"; in the second sentence of paragraph (j), "U.C.C. §§ 3-410, 3-411" is revised to read "UCC 3-409"; in the first sentence of the third paragraph of paragraph (k), "U.C.C. § 3-120" is revised to read "UCC 4-106(a)"; the first sentence of the last paragraph of paragraph (bb) is revised as set forth below; and in the fourth sentence of paragraph (cc), "U.C.C. 4-202(2)" is revised to read "UCC 4-202(b)".

Appendix E to Part 229—[Amended]

* * * * *

Section 229.2 Definitions

* * * * *

(bb) *Qualified returned check.* * * *

* * * * *

A qualified returned check need not contain the elements of a check drawn on the

depositary bank, such as the name of the depositary bank. * * *

* * * * *

6. In Appendix E under the Commentary to section 229.11, in the fourth sentence of the last paragraph of paragraph (b) under the heading "*Time Period Adjustment for Withdrawal by Cash*", "U.C.C. § 4-107" is revised to read "UCC 4-108".

7. In Appendix E under the Commentary to paragraph (a) of section 229.14, in the fourth sentence of the first paragraph of footnote 3, "U.C.C. sections 4-211 and 4-213" is revised to read "UCC 4-214 and 4-215".

8. In Appendix E under the Commentary to section 229.19, in the last sentence of the last paragraph of paragraph (e), "U.C.C. 4-213(1)(a)" is revised to read "UCC 4-215(a)(1)".

9. In Appendix E under the Commentary to section 229.30:

a. In paragraph (a), the last two sentences of the seventh from the last paragraph are removed; two new sentences are added to the end of the fifth from the last paragraph as set out below; in footnote 4, "U.C.C. section 4-202(3)" is revised to read "UCC 4-202(c)"; in the third sentence of the sixth from the last paragraph, "U.C.C. sections 3-418 and 4-213(1)" is revised to read "UCC 3-418(c) and 4-215(a)"; the third from the last paragraph (numbered 1) is removed; the second from the last and the last paragraphs (numbered 2 and 3) are redesignated as 1 and 2, respectively; in newly-redesignated paragraph 1, "Section 4-301(4)" is revised to read "Section 4-301(d)"; and in newly-redesignated paragraph 2, "Section 4-301(1)" is revised to read "Section 4-301(a)";

b. In paragraph (b), in the last sentence of the last paragraph, "U.C.C. section 4-207" is revised to read "UCC 4-208"; and

c. In paragraph (f), in the first sentence of the second paragraph, "U.C.C. section 4-301(1)" is revised to read "UCC 4-301(a)".

Appendix E to Part 229—[Amended]

* * * * *

Section 229.30 Paying bank's responsibility for return of checks

* * * * *

(a) * * *

* * * Also, a paying bank is not responsible for failure to make expeditious return to a party that has breached a presentment warranty under UCC 4-208, notwithstanding that the paying bank has returned the check. (See Commentary to § 229.33(a).)

* * * * *

10. In Appendix E under the Commentary to section 229.31:

a. In paragraph (a), in the second sentence of the fifth from the last paragraph, "U.C.C. section 4-202(3)" is revised to read "UCC 4-202(c)"; the third from the last paragraph (numbered 1) is removed; the second from the last and the last paragraphs (numbered 2 and 3) are redesignated as 1 and 2, respectively; in newly-redesignated paragraph 1, "Section 4-202(2)" is revised to read "Section 4-202(b)", and in newly-redesignated paragraph 2, "Section 4-212(1)" is revised to read "Section 4-214(a)";

b. In paragraph (b), in the first sentence of the third paragraph, "U.C.C. section 4-202(2)" is revised to read "UCC 4-202(b)"; and

c. In paragraph (c), in the first sentence of the last paragraph, "U.C.C. section 4-212(1)" is revised to read "UCC 4-214(a)".

11. In Appendix E under the Commentary to section 229.32, in the fourth sentence of the first paragraph of paragraph (a), "U.C.C. section 3-504(2)" is revised to read "UCC 3-111", and in the second sentence of the second paragraph of paragraph (b), "U.C.C. section 4-107" is revised to read "UCC 4-108".

12. In Appendix E under the Commentary to paragraph (a) of section 229.33, in the second from the last sentence of the last paragraph, "U.C.C. 4-207(1)" is revised to read "UCC 4-208" and in the last sentence of the last paragraph, "U.C.C. 4-207(1) and 4-302" is revised to read "UCC 4-208 and 4-302".

13. In Appendix E under the Commentary to section 229.35:

a. In paragraph (a), the second sentence of the sixth paragraph is revised to read "(See UCC 4-207(a) and 4-208(a).)";

b. In paragraph (b), in the seventh sentence of the fifth paragraph, "U.C.C. sections 4-213(1) and 4-302" is revised to read "UCC 4-215(a) and 4-302"; in the eighth sentence of the fifth paragraph, "U.C.C. 4-211(2) and (3) and 4-213(3)" is revised to read "UCC 4-213 and 4-215(d)"; in the tenth sentence of the fifth paragraph, "U.C.C. 4-211, 4-212, and 4-213" is revised to read "UCC 4-213, 4-214, and 4-215"; in the first and second sentences of the second from the last paragraph (numbered 1), "Section 4-212(1)" is revised to read "Section 4-214(a)"; and the last paragraph (numbered 2) is revised as set out below; and

c. In paragraph (c), in the second sentence, "U.C.C. section 4-201(2)" is revised to read "UCC 4-201(b)".

Appendix E to Part 229—[Amended]

* * * * *

Section 229.35 Indorsements

* * * * *

(b) * * *

2. Section 3-415 and related provisions (such as section 3-503), in that such provisions would not apply as between banks, or as between the depositary bank and its customer.

* * * * *

14. In Appendix E under the Commentary to section 229.36:

a. In paragraph (b), in the fourth sentence of the third paragraph (numbered 1), "U.C.C. 4-204(3)" is revised to read "UCC 4-204(c)"; in the fourth sentence of the seventh paragraph (numbered 3), "U.C.C. 3-504(2)" is revised to read "UCC 3-111"; and in the last paragraph, "U.C.C. 3-504(2)(c)" is revised to read "UCC 3-111";

b. In paragraph (c), the third sentence is revised as set out below; and

c. In paragraph (d), in the fifth sentence, "U.C.C. § 4-213(b) or (d)" is revised to read "UCC 4-215(a)(2) or (3)".

Appendix E to Part 229—[Amended]

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Section 229.36 Presentment and issuance of checks

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(c) * * * This process has the potential to improve the efficiency of check processing, and express provision for truncation and electronic presentment is made in UCC 4-110 and 4-406(b). * * *

* * * * *

15. In Appendix E under the Commentary to section 229.37, before the parenthetical in the second sentence in the first paragraph, "U.C.C. 4-103(1)" is revised to read "UCC 4-103(a)", and in the first sentence in the second paragraph, "U.C.C. 4-103(2)" is revised to read "UCC 4-103(b)".

16. In Appendix E under the Commentary to section 229.38:

a. In paragraph (a), in the third sentence in the second paragraph, "U.C.C. sections 4-103(5) and 4-202(3)" is revised to read "UCC 4-103(e) and 4-202(c)";

b. In paragraph (b), in the last sentence, "sections 4-213 and 4-302" is revised to read "sections 4-215 and 4-302"; and

c. In paragraph (e), the second sentence is revised to read as follows:

Appendix E to Part 229—[Amended]

* * * * *

Section 229.38 Liability

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(e) * * * It adopts the standard of UCC 4-109(b).

* * * * *

17. In Appendix E under the Commentary to section 229.39, in the introductory text, "U.C.C. section 4-214" is revised to read "UCC 4-216".

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, December 29, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-31933 Filed 12-31-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-100-AD; Amendment 39-8449; AD 92-27-14]

Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes, Equipped With Garrett Auxiliary Power Unit (APU) GTCP36-300[A]

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Industrie Model A320 series airplanes, that currently requires a revision to the Limitations Section of the Airplane Flight Manual (AFM) and the installation of a placard in the cockpit prohibiting the use of the APU during flight or on the ground until the installation of an external secondary turbine containment shield assembly has been accomplished. This amendment requires replacement of the currently-installed external secondary turbine containment shield assembly with an assembly of an improved design. This amendment is prompted by a recent report of an APU turbine rotor that separated and several fragments were not contained. The actions specified by this AD are intended to prevent potential damage to the fuselage and flight controls, and subsequent reduced controllability of the airplane.

DATES: Effective February 8, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 8, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Garrett Airline Services Division, Technical Publications, Department 65-70, P.O. Box 52170, Phoenix, AZ 85072-2170. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Greg Holt, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2140; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 90-11-51 R1, Amendment 39-6635 (55 FR 24073, June 14, 1990), which is applicable to certain Airbus Industrie Model A320 series airplanes, was published in the **Federal Register** on July 6, 1992 (57 FR 29681). The action proposed to require replacement of the currently-installed external secondary turbine containment shield assembly with an assembly of an improved design.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

One commenter objects to the wording in the Summary and Discussion sections of the proposal because it inaccurately depicts the incidents as they actually occurred. The proposal states that in a second incident of auxiliary power unit (APU) turbine rotor separation, several fragments were not contained. The commenter asserts that, in this incident, only low energy fragments were released, which resulted in minor damage to the APU fire enclosure and that the integrity of the fire enclosure was not breached. Furthermore, the commenter states that the safety of the aircraft was unaffected with respect to fire, the fuselage, and the flight controls. Therefore, the incident was considered contained by the APU manufacturer, the airplane manufacturer, the definition of TSO-C77a, and the FAA's Los Angeles Aircraft Certification Office. The commenter further maintains that the incident clearly demonstrated the capability of the containment system to contain high energy rotor bursts. Additionally, the commenter notes that the extended external shields were designed to provide additional protection against the escape of secondary low energy fragments, not because the original shield posed a potential safety problem. The FAA does not concur that the depiction of the incident needs to be clarified. The FAA has determined that since low energy fragments were released and caused damage to the APU fire enclosure, the possibility exists for high energy particles to be released in a worse case of rotor burst.

One commenter notes that the applicability of the proposal needs to be revised to exclude airplanes equipped with Garrett APU GTCP36-300[A], part number 3800278-2, having serial numbers P-453, P-454, and R-477 and subsequent; and APU's that have been modified in accordance with Garrett Service Bulletin GTCP36-49-6525; because the turbine plenum in these APU's incorporates a thicker wall. The FAA concurs. Paragraphs (a) and (b) and the applicability of the final rule have been revised accordingly.

Additionally, paragraph (c) has been revised to clarify that installation of an extended external secondary turbine containment shields assembly in accordance with Garrett Service Bulletin GTPC36-49-6549 terminates the requirements for paragraphs (a) and (b) of the final rule.

This same commenter states that the subject APU's are also installed on airplanes other than Airbus Model A320 series airplanes; therefore, the applicability of the rule should be revised to include these other airplanes. The FAA does not concur. The FAA has verified that the subject APU's were modified prior to installation on those other airplanes; therefore, they need not be included in this final rule.

One commenter requests that the proposed compliance time of 24 months be extended to compensate for a potential parts availability problem and the time required to perform the retrofit of the APU's. The FAA does not concur. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspect of installing the required modification within a maximum interval of time allowable for all affected airplanes to continue to operate without compromising safety. The APU manufacturer has advised that an ample number of required parts will be available for modification of the U.S. fleet within the proposed compliance period. However, under the provisions of paragraph (d) of the final rule, the FAA may approve requests for adjustments to the compliance time, if data is submitted that substantiate that such an adjustment would provide an acceptable level of safety.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the

adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 32 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts would be supplied by the manufacturer at no charge to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,280, or $165 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6635 (55 FR 24073, June 14, 1990), and by adding a new airworthiness directive (AD), amendment 39–8449, to read as follows:

92–27–14. Airbus Industrie:: Amendment 39–8449. Docket 92–NM–100–AD. Supersedes AD 90–11–51 R1, Amendment 39–6635.

Applicability: Model A320 series airplanes; equipped with Garrett Auxiliary Power Unit (APU) GTCP36–300[A], Part No. 3800278–2, excluding serial numbers P–453, P–454, and R–477 and subsequent; and APU's modified in accordance with Garrett Service Bulletin GTCP36–49–6525, any revision; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent potential damage to the fuselage and flight controls, and subsequent reduced controllability of the airplane, accomplish the following:

(a) Within 72 hours (clock hours, not flight hours) after July 2, 1990 (the effective date of AD 90–11–51 R1, Amendment 39–6635), accomplish the procedures specified in paragraphs (a)(1) and (a)(2) of this AD:

(1) Revise the Limitations Section in the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM Limitations Section.

"Operation of the APU on the ground is prohibited, and operation of the APU during flight is prohibited, except during an emergency."

(2) Install a placard next to the APU start switch in the cockpit to state:

"Operation of the APU on the ground is prohibited, and operation of the APU during flight is prohibited, except during an emergency."

(b) Within 30 days after July 2, 1990 (the effective date of AD 90–11–51 R1, Amendment 39–6635), install an external secondary turbine containment shield assembly, Part Number 3615644–1, in accordance with Garrett Alert Service Bulletin GTCP36–49–A5973, dated May 17, 1990; or Revision 1, dated May 22, 1990. Installation of this containment shield assembly constitutes terminating action for the requirements of paragraph (a) of this AD.

(c) Within 24 months after the effective date of this AD, remove the external secondary turbine containment shield assembly, Part No. 3615644–1, and install a new external secondary turbine containment shield assembly, Part Numbers 3615898–1 and 3615899–1, in accordance with Garrett Service Bulletin GTCP36–49–6549, dated February 28, 1992. Installation of this containment shield assembly constitutes terminating action for the requirements of paragraphs (a) and (b) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Standardization Branch, ANM–113.

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

(f) The installation and replacement shall be done in accordance with the following Garrett service bulletins, which contain the specified effective pages:

Service Bulletin referenced and date	Page number	Revision level shown on page	Date shown on page
GTCP36–49–A5973, Revision 1, May 22, 1990	1, 3, 5, 7–8, 11–12	1	May 22, 1990.
	2, 4, 6, 9–10, 13–14	Original	May 17, 1990.
GTCP36–49–A5973, May 17, 1990	1–6, 9–14	Original	May 17, 1990.
	7–8	(Removed)	
GTCP36–49–6549, February 28, 1992	1–16	Original	February 28, 1992.

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 Garrett Airline Services Division, Technical Publications, Department 65–70, P.O. Box 52170, Phoenix, AZ 85072–2170. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North

Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on February 8, 1993.

Issued in Renton, Washington, on December 17, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-31876 Filed 12-31-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-137-AD; Amendment 39-8450; AD 92-27-15]

Airworthiness Directives; de Havilland, Inc., Model DHC-7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Model DHC-7 series airplanes, that requires installation of a water deflector over the elevator servo drum assembly. This amendment is prompted by a report of uncommanded pitch excursion that occurred during flight while the autopilot was engaged, apparently caused by ice accumulation in the elevator servo drum assembly. The actions specified by this AD are intended to prevent freezing of the elevator servo drum assembly, which could lead to an uncommanded pitch excursion with the autopilot engaged and reduced controllability of the aircraft.

DATES: Effective February 8, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 8, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michele Maurer, Aerospace Engineer, Systems and Equipment Branch, ANE-173, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791-6427; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Model DHC-7 series airplanes was published in the **Federal Register** on August 17, 1992 (57 FR 36926). That action proposed to require installation of a water deflector over the elevator servo drum assembly.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the rule as proposed.

One commenter requests a reduction of the compliance time for accomplishing the installation from the proposed 60 days to 30 days. The commenter feels that the compliance time as proposed will expose the affected airplanes, passengers, and flight crew to an increased risk of uncommanded pitch excursion as a result of ice accumulation in the elevator servo drum assembly. This is especially critical during the winter months. The FAA does not concur with the need for a shorter compliance time. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the normal maintenance schedules for the majority of the affected fleet. In consideration of all of these items, the FAA determined that 60 days was reasonable and appropriate. In addition, the FAA determined that the probability of the occurrence of the unsafe condition is sufficiently low to warrant a compliance time of 60 days.

One commenter requests that the proposal be amended to include a provision to alert flight crews of the potential icing hazard during autopilot operation. The commenter notes that this could be accomplished by either adding a placard on the instrument panel, or incorporating the warning in the FAA-approved Airplane Flight Manual (AFM). The FAA does not concur. The FAA has determined that the probability of the occurrence of the subject unsafe condition is low and, if it occurs, it would be readily detected and corrected by standard flight crew procedures. Additionally, the modification that is required by this AD action is intended to prevent the unsafe condition (caused by water accumulation in the servo drum assembly) from occurring altogether.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 50 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $75 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $17,500, or $350 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

92-27-15. De Havilland, Inc.: Amendment 39-8450. Docket 92-NM-137-AD.

Applicability: All Model DHC-7 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent freezing of the elevator servo drum assembly, which could lead to an uncommanded pitch excursion with the autopilot engaged and reduced controllability of the aircraft, accomplish the following:

(a) Within 60 days after the effective date of this AD, install a water deflector onto the front spar of the vertical stabilizer, directly over the elevator servo assembly, Modification No. 7/2605, in accordance with paragraph III. of de Havilland Service Bulletin S.B. 7-55-10, dated October 25, 1991.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

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

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

(d) The installation shall be done in accordance with de Havilland Service Bulletin S.B. 7-55-10, dated October 25, 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 de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on February 8, 1993.

Issued in Renton, Washington, on December 17, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-31877 Filed 12-31-92; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240, 241 and 276

[Release No. 34-31661; IA-1357]

RIN 3235-AE54

Registration of Successors to Broker-Dealers and Investment Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of rule amendments; interpretive statement.

SUMMARY: The Commission is adopting amendments to the rules under the Securities Exchange Act of 1934 governing the registration of successors to registered broker-dealers. The Commission also is issuing interpretive guidance in this release regarding the registration of successors to broker-dealers and the registration of successors to investment advisers under the Investment Advisers Act of 1940. The amendments and interpretive statement are intended to clarify which entities may file as successors to registered broker-dealers and advisers, whether such filings should be in the form of an amendment to the predecessor's registration statement or in the form of a new application, and when such filings must be made.

EFFECTIVE DATES: The rule amendments will become effective on February 3, 1993. The interpretive positions become effective on December 28, 1992.

FOR FURTHER INFORMATION CONTACT: Robert L.D. Colby, Chief Counsel, or Belinda A. Blaine, Branch Chief, at (202) 504-2418, Office of Chief Counsel, Division of Market Regulation (with respect to broker-dealer successors); Eric C. Freed, Senior Counsel, at (202) 272-2107, Office of Disclosure and Investment Adviser Regulation, Division of Investment Management (with respect to investment adviser successors); Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background

The Securities Exchange Act of 1934 ("Exchange Act") and the Investment Advisers Act of 1940 ("Advisers Act") respectively provide for the registration of "successors" to registered broker-dealers and investment advisers.[1] A successor is an unregistered entity that assumes and continues the business of a registered broker-dealer or adviser, which then ceases its broker-dealer or advisory activities. The purpose of the statutory provisions is to enable the successor to operate without an interruption of business by relying for a limited period of time on the registration of the predecessor broker-dealer or adviser. The Commission has adopted several rules to effectuate the statutory provisions of the Exchange Act and the Advisers Act.[2]

In general, the statutory provisions and rules provide that a successor may rely on the registration of the predecessor until such time as its own registration becomes effective if it files an application for registration within thirty days of the succession.[3] The successor rules also provide that, in certain limited circumstances, the successor may file an amendment to the predecessor's registration statement, instead of an original application for registration, within the prescribed time period.[4]

II. Amendments to Broker-Dealer Successor Rules

The Commission is adopting several technical amendments to the broker-dealer successor rules under the Exchange Act in order to address certain ambiguities in the rules.[5] As originally adopted, paragraph (a) of rule 15b1-3[6] allowed a broker-dealer that succeeded to and continued the business of a registered broker-dealer to operate

[1] Section 15(b)(2) of the Exchange Act (15 U.S.C. 78o(b)(2)); section 203(g) of the Advisers Act (15 U.S.C. 80b-3(g)).

[2] Rules 15b1-3, 15Ba2-4, 15Ba2-6, and 15Ca2-3 under the Exchange Act (17 CFR 240.15b1-3, 15Ba2-4, 15Ba2-6, and 15Ca2-3); rule 203-1 under the Advisers Act (17 CFR 275.203-1).

[3] See, *e.g.*, paragraph (a) of rule 15b1-3 under the Exchange Act; section 203(g) of the Advisers Act.

[4] See, *e.g.*, paragraph (b) of rule 15b1-3 under the Exchange Act; paragraphs (b), (c) and (d) of rule 203-1 under the Advisers Act.

Currently, broker-dealers that are members of the National Association of Securities Dealers, Inc. ("NASD") must make all filings with both the Commission and the NASD. In a companion release published today, the Commission announced that it is joining the Central Registration Depository ("CRD"), a computer system operated by the NASD that maintains registration information regarding NASD member firms and their registered personnel. Thus, effective January 25, 1993, all broker-dealers filing for succession by application (or amendment) will be required to file with the Commission through the CRD. See Securities Exchange Act Release No. 31660 (Dec. 28, 1992). Investment advisers will continue to file directly with the Commission.

[5] These amendments, as well as an interpretive statement regarding the broker-dealer successor rules, were proposed for public comment in Securities Exchange Act Release No. 30959 (July 27, 1992), 57 FR 34048. No comments were submitted in connection with the proposed amendments or the interpretive statement.

[6] Rule 15b1-3 was adopted in 1985 pursuant to section 15(b)(2)(A) of the Exchange Act. See Securities Exchange Act Release No. 22468 (September 26, 1985), 50 FR 41867.

under the registration of the predecessor for seventy-five days if, within thirty days of the succession, it filed its own application for registration on Form BD.[7] Paragraph (b) of the rule permitted a successor broker-dealer to file an amendment to the predecessor's Form BD if the succession was based on a change in the date or state of incorporation, form of organization, or composition of a partnership.

In addition to minor revisions to the language of the rule, the amendments adopted today make two notable changes. First, paragraph (a) has been amended to provide that the predecessor's registration terminates forty-five days after the date on which the successor files its own application for registration on Form BD, rather than seventy-five days after the date of the succession.[8] This amendment is intended to address situations in which a successor broker-dealer submits an application within thirty days of the succession, but because the application is incomplete in certain minor respects, the seventy-five day period expires before the successor broker-dealer's registration becomes effective. Under the modified rule, the forty-five day period will not begin to run until a complete application has been filed with the Commission.[9]

Second, paragraph (b) of rule 15b1–3 has been revised to clarify that successors may register by filing an amendment to the predecessor's Form BD, rather than a complete application on Form BD, only in certain limited circumstances, discussed below in part III. Rule 15Ca2–3, which governs the registration of successors to government securities broker-dealers, and rules 15Ba2–4 and 15Ba2–6,[10] which govern the registration of successors to municipal securities dealers,[11] also have been revised to be consistent with amended rule 15b1–3.

III. Interpretive Position on Broker-Dealer and Investment Adviser Successions

A. General

As discussed above, the purpose of the successor rules under both the Exchange Act and the Advisers Act is to facilitate the legitimate transfer of business between two or more entities.[12] The successor rules therefore are intended to be used only where there is a direct and substantial business nexus between the predecessor and the successor. They are not designed to allow registered broker-dealers or advisers to sell their registrations, eliminate substantial liabilities, spin off personnel, or to facilitate the transfer of the registration of a "shell" organization that does not conduct any business.[13] To ensure that there is a legitimate connection between the predecessor and successor, no entity may rely on the successor rules unless it is acquiring or assuming substantially all of the assets and liabilities of the predecessor's broker-dealer or advisory business.[14] Although under this standard the successor need not acquire every asset and liability of the predecessor, it may not exclude any significant asset or liability.[15] Therefore, an entity that is not assuming substantially all of the assets and liabilities of its predecessor is not entitled to rely on the successor rules, and must wait until its own registration becomes effective before engaging in business as a broker-dealer or investment adviser.

Because the successor rules are intended to allow an unregistered successor to rely on the registration of its predecessor for a limited period of time, they do not apply to reorganizations that involve only registered entities. In those situations, the registered entities need not use the successor rules because they can continue to rely on their existing registrations. For instance, if two registered broker-dealers merge, the surviving broker-dealer would file an amendment to its Form BD, while the acquired broker-dealer would file to withdraw its registration on Form BDW.[16] Furthermore, if a person or entity acquires some or all of the shares of a registered adviser, or if one registered adviser purchases or otherwise assumes part or all of the business assets or personnel of another registered adviser, there would be no need to rely on the successor provisions.[17]

In addition, the successor rules do not apply to situations in which the predecessor intends to continue to engage in broker-dealer or advisory activities.[18] Otherwise, confusion may result as to the identities and registration statuses of the parties. Thus, if a registered broker-dealer or adviser shifts a portion of its business operations to a new unregistered entity,

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[7] 17 CFR 249.501.

[8] This 45-day period is consistent with section 15(b)(1)(B) of the Exchange Act, which provides that the Commission has 45 days in which to grant registration or to institute proceedings to determine if registration should be denied.

In addition, as discussed further below, the predecessor must file for withdrawal from registration.

[9] For further discussion of the timing requirements for successor filings, see discussion at part III.D, *infra*.

[10] Rule 15Ba2–6 also has been redesignated as rule 15Ba2–4(b).

[11] Specifically, these rules permit a municipal securities dealer that succeeds to and continues the business of a registered municipal securities dealer to rely on the registration of the predecessor if it files an application or an amendment for registration on Form MSD (17 CFR 249.1100) (for a municipal securities dealer that is a bank or a separately identifiable department or division of a bank), or Form BD (for all other municipal securities dealers).

[12] The interpretive positions set forth in this release apply to both broker-dealers and investment advisers. Comparable treatment of broker-dealers and advisers eases compliance burdens on registrants that maintain dual registrations, and simplifies the review of registration materials by Commission staff.

[13] See Securities Exchange Act Release No. 22468 (Sept. 26, 1985), 50 FR 41867.

[14] An entity's status under the successor rules, however, is not determinative of whether it will be held liable for the acts of its predecessor. See generally, *Ricciardello* v. *J.W. Gant & Co.*, [1989–1990] Fed. Sec. L. Rep. (CCH) ¶ 94,798 (July 7, 1989); Securities Exchange Act Release No. 25531 (March 30, 1988) (successor broker-dealer held liable for the predecessor's failure, prior to the succession, to maintain the required balance of cash or qualified securities in its reserve account for the exclusive benefit of customers); *Hutson Management Co.*, Investment Advisers Act Rel. No. 1078 (Aug. 17, 1987) (successor investment adviser held liable for predecessor's violations of section 10(f) of the Investment Company Act of 1940).

[15] The predecessor's liabilities, for example, may include: Customer claims, monies or securities due to customers or other broker-dealers or advisers, unsatisfied judgments, and outstanding fees or fines. In a few instances, the staff of the Commission has granted no-action relief to allow successors to rely on rule 15b1–3 without assuming a specific asset or liability of the predecessor. See, *e.g.*, *Alpha Management Inc.* (December 21, 1989) [available on LEXIS] (permitting a successor broker-dealer to file an application under paragraph (a) of Rule 15b1–3 without acquiring the shares of a subsidiary not engaged in broker-dealer activities); and *Franklin Financial Services, Inc.*, [1987–1988] Fed. Sec. L. Rep. (CCH) ¶ 78,529 (July 2, 1987) (allowing a successor to proceed under paragraph (a) without assuming unknown contingent liabilities of the predecessor. The predecessor represented that it would retain adequate funds in escrow to meet any such contingent liabilities).

[16] 17 CFR 249.501a.

[17] In the case of the purchase of the business assets or personnel of one registered adviser by another, the purchasing adviser would file an amendment to Form ADV (17 CFR 279.1) to reflect any changes in its operations, while the other adviser would file either Form ADV–W (17 CFR 279.3) or an amendment to its Form ADV, depending on whether it remained in the advisory business.

Of course, there is generally no difference in substance between the acquisition of an entity's shares and the acquisition of its assets, but in the latter case the presence of a new entity that will act as the broker-dealer or adviser necessitates reliance on the successor rules. The successor rules parallel state corporate laws in this regard, under which it is necessary to incorporate or register a new corporation, while no similar action is required if the ownership of an existing corporation changes.

[18] See generally *F.W. Horne & Co., Inc.* 38 S.E.C. 104 (1957) (finding that a broker-dealer did not succeed to the registration of another broker-dealer, where the first broker-dealer continued to exist as a corporate entity with the ability to resume business, and where the acquiring broker-dealer failed to acquire all of the assets of the first broker-dealer).

but remains in the broker-dealer or advisory business, the new entity must file a complete application for registration and refrain from doing business until its application is approved by the Commission pursuant to section 15(b)(1) of the Exchange Act or section 203(c)(2) of the Advisers Act.[19]

B. Succession by Amendment

In limited circumstances, the successor rules permit the successor to file an amendment to the predecessor's Form BD or Form ADV, rather than its own original application for registration.[20] The only successions that may be completed by filing an amendment are those that are the result of a formal change in the structure or legal status of the broker-dealer or adviser; *i.e.*, successions that involve the creation of a new legal entity, but no practical change in the control or operations of the broker-dealer or adviser.[21] Whether an actual change of control has occurred depends upon the facts and circumstances of the particular transaction. For purposes of the successor rules, however, the presumption of "control" in the instructions to Form BD and Form ADV offers some guidance.[22]

The types of successions that may be effected by filing an amendment are listed below. In all of these situations, the predecessor must cease operating as a broker-dealer or adviser.

1. Change in Form of Organization

An internal corporate reorganization or restructuring in which broker-dealer or advisory activities are transferred from one entity to another within the same organization, but that does not result in a change of control of the broker-dealer or adviser, would be filed by amendment.[23]

2. Change in Legal Status

A succession resulting from a change in the state of incorporation or a change in the form of business, such as from a partnership to a corporation, does not typically involve a change of control. Therefore, such a succession may generally be completed by amending the predecessor's Form BD or Form ADV promptly after the succession.[24]

3. Change in Composition of a Partnership

A change in the composition of a partnership (by death, withdrawal, or inclusion of a partner) that results in the dissolution of the partnership under local law, but does not result in a change in control of the partnership, would be completed by filing an amendment to the predecessor's Form BD or Form ADV in order to reflect the changes in the partnership.

C. Succession by Application

In all other successions, the successor may operate under the registration of the predecessor for a limited period of time only if it files its own complete application for registration on Form BD or Form ADV. The following are examples of the types of reorganizations that must be completed by filing an application.[25]

1. Acquisitions

In a typical succession, an unregistered entity purchases or assumes substantially all of the assets and liabilities of a registered broker-dealer or adviser, and the unregistered entity then operates the business of the broker-dealer or adviser.[26] Under the successor rules, the new entity must file a complete application within thirty days of the succession, while the predecessor must file for withdrawal from registration on Form BDW or Form ADV-W.[27]

2. Consolidations

If two or more registered entities consolidate their firms and conduct their business through a new unregistered entity, which assumes substantially all of the assets and liabilities of the predecessor entities, the new entity would be required to file a complete application on Form BD or Form ADV, while the predecessor firms would each be required to file for withdrawal from registration on the appropriate form.

3. Dual Successions[28]

Succesions in which one registered entity subdivides its business into two or more new unregistered entities are known as "dual successions," and may be effected by application under the successor rules. A dual succession may occur, for instance, when a clearing broker-dealer decides to separate its own retail broker functions from its clearing broker functions by creating two new entities. In that case, the successors in combination must acquire substantially all of the assets and liabilities of the predecessor. Each successor must then file a complete application on Form BD within thirty days of the succession, while the predecessor broker-dealer must file an application for withdrawal on Form BDW.[29]

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[19] 15 U.S.C. 78*o*(b)(1), 80b-3(c)(2). In addition, the registered broker-dealer or adviser would be required to promptly file an amendment on Form BD or Form ADV to reflect any changes in its operations. Like dual successions, discussed below, this type of reorganization is classified as a "partial acquisition" under the CRD system. See n.28, *infra*, and accompanying text.

[20] See, *e.g.*, Rule 15b1-3(b) under the Exchange Act, Rule 203-1(b)-(d) under the Advisers Act.

In the case of a broker-dealer, the amendment to Form BD would include page 1 (the execution page), page 2 (indicating that the applicant is a successor), Schedule D, and any other pages containing information that is no longer accurate as a result of the change in the form of organization of the broker-dealer. See rule 15b3-1(b) (17 CFR 240.15b3-1(b)) under the Exchange Act. In the case of an investment adviser, the amendment to Form ADV would include page 1, page 2, Schedule E and any other pages containing information required to be updated by rule 204-1(b) (17 CFR 275.204-1(b)) under the Advisers Act.

[21] The successor rules provide that a succession that is based solely upon certain events, such as a change in form of organization, may be effected by amendment. See, *e.g.*, rule 15b1-3(b) under the Exchange Act (as amended); Rule 203-1(d) under the Advisers Act. A succession that involves a change in control is not based solely upon an event enumerated in the rules, and therefore cannot be effected by amendment.

[22] Under the Advisers Act, a change of control of an adviser results in the "assignment" of its advisory contracts. Rule 202(a)(1)-1 under the Advisers Act (17 CFR 275.202(a)(1)-1). The adviser must obtain client consent to the assignment under section 205(a)(2) of the Advisers Act (15 U.S.C. 80b-5(a)(2)).

[23] For example, an unregistered entity that acquires substantially all of the assets and liabilities of a registered entity owned by the same parent corporation may file an amendment to its predecessor's registration, provided that it (the surviving entity) continues to be wholly-owned by the parent corporation. In contrast, a corporate reorganization involving a change of control, such as a change in the beneficial owners of the broker-dealer or advisory operation, must be filed by application, as discussed in part III.C, *infra*.

[24] Other changes in legal status that may be completed by filing an amendment include: (i) A change from general corporation to S corporation status under subchapter S of the Internal Revenue Code of 1986, as amended; and (ii) a change in a registered entity's name that results in the dissolution of the entity under local law. If a name change does not alter the entity's legal status, however, the successor rules do not apply. Instead, the registered entity would be required to promptly file an amendment to Form BD or Form ADV to reflect its new name. See rule 15b3-1(b) under the Exchange Act; rule 204-1(b) under the Advisers Act.

[25] Unless otherwise indicated, the titles below correspond to the classification of the succession under the CRD's "mass transfer" program, which determines whether registered representatives of a broker-dealer may have their registrations transferred to another entity.

[26] However, if no change in control occurs in connection with the transaction (*e.g.*, the beneficial owners of the adviser or broker-dealer remain the same), the succession could be effected by filing an amendment. See part III.B, *supra*.

[27] See rule 15b6-1 under the Exchange Act (17 CFR 240.15b6-1); rule 203-2 under the Advisers Act (17 CFR 275.203-2).

[28] Under the CRD's mass transfer program, this type of reorganization is classified as a "partial acquisition."

[29] Both successors in a dual succession must file original applications for registration, regardless of whether there is a change in control of the broker-dealer or advisory operation.

4. Division of Dual Registrants[30]

For business reasons, an entity registered as both an investment adviser and as a broker-dealer may wish to separate its services by transferring either the broker-dealer or advisory activities to a new unregistered entity. If that unregistered entity acquires substantially all of the assets and liabilities of the broker-dealer or advisory operation or division, and there is a change of control of that operation or division, the unregistered entity would be a successor required to file by application.[31]

D. Timing Requirements

In order to temporarily rely on its predecessor's registration, a successor must file the required application or amendment within thirty days of the succession.[32] Occasionally, situations arise in which a successor broker-dealer or adviser submits an application within thirty days of the succession, but because the application is incomplete in certain minor respects, the application is not considered "filed" until after the thirty-day period has expired.[33] Notwithstanding the fact that the filing requirements technically have not been met, the Commission would permit a successor that submits a substantially complete application or amendment within thirty days of the succession to rely on its predecessor's registration under the successor rules. A successor entity, however, will not be permitted to "lock in" the thirty-day window period by submitting an application that is incomplete in major respects, or by otherwise failing to file an application that represents a good faith attempt at compliance with the successor rules.[34]

[30] In the case of a division of dual registrants, the CRD category will be based on the type of broker-dealer reorganization.

[31] The predecessor also would be required to file Form BDW or ADV-W. See, *e.g.*, *Alpha Management Inc.* (December 21, 1989) (available on LEXIS).

[32] Rule 15b1-3 under the Exchange Act; section 203(g) of the Advisers Act.

[33] Rule 0-3 under the Exchange Act (17 CFR 240.0-3) provides that a report or application is not "filed" for purposes of the Act until it fully complies with all of the requirements of the applicable rule or provision of the statute. While there is no comparable rule under the Advisers Act, the Commission likewise does not consider incomplete documents to be "filed" under the Advisers Act.

[34] As discussed above, the Commission is amending paragraph (a) of rule 15b1-3 under the Exchange Act to provide that the registration of a predecessor broker-dealer ceases to be effective as the registration of the successor broker-dealer forty-five days after the application for registration on Form BD is filed by the successor, rather than seventy-five days after the succession. Therefore, because the Commission must act on applications for registration within forty-five days (see note 8, *supra*), the registration of the predecessor will not expire during the period that the successor needs to rely on such registration. Neither the Advisers Act nor the rules thereunder specify when the registration of the predecessor expires. However, Form ADV-W must be filed to withdraw the registration of the predecessor, and Form ADV-W becomes effective on the 60th day after filing. See Rule 203-2(b) under the Advisers Act. Therefore, the predecessor's registration will expire only after the successor has established its own registration, which, as under the Exchange Act, will occur within forty-five days after the filing of the successor application. See section 203(c)(2) of the Advisers Act (15 U.S.C. 80b-3(c)(2)).

IV. Effects on Competition and Regulatory Flexibility Act Considerations

Section 23(a)(2) of the Exchange Act[35] requires the Commission, in adopting rules under the Exchange Act, to consider the anticompetitive effects of such rules, if any, and to balance any anticompetitive impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission believes that the clarifying amendments to the broker-dealer successor rules will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

In addition, the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") pursuant to the requirements of the Regulatory Flexibility Act,[36] regarding the revisions to the rules. A copy of the FRFA may be obtained from Belinda Blaine, Branch Chief, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

List of Subjects

17 CFR Parts 240 and 241

Registration of brokers and dealers, Registration of government securities brokers and government securities dealers, Registration of non-bank municipal securities dealers; Reporting and recordkeeping requirements, Securities, Broker-Dealers.

17 CFR Part 276

Investment advisers, Reporting and recordkeeping requirements, Securities.

Statutory Basis and Text of Proposed Amendments

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

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

[36] 5 U.S.C. 603.

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

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

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

2. By revising § 240.25b1-3 to read as follows:

§ 240.15b1-3 Registration of successor to registered broker or dealer.

(a) In the event that a broker or dealer succeeds to and continues the business of a broker or dealer registered pursuant to section 15(b) of the Act, the registration of the predecessor shall be deemed to remain effective as the registration of the successor if the successor, within 30 days after such succession, files an application for registration on Form BD, and the predecessor files a notice of withdrawal from registration on Form BDW; *Provided, however*, That the registration of the predecessor broker or dealer will cease to be effective as the registration of the successor broker or dealer 45 days after the application for registration on Form BD is filed by such successor.

(b) Notwithstanding paragraph (a) of this section, if a broker or dealer succeeds to and continues the business of a registered predecessor broker or dealer, and the succession is based solely on a change in the predecessor's date or state of incorporation, form of organization, or composition of a partnership, the successor may, within 30 days after the succession, amend the registration of the predecessor broker or dealer on Form BD to reflect these changes. This amendment shall be deemed an application for registration filed by the predecessor and adopted by the successor.

3. By revising § 240.15Ba2-4 to read as follows:

§ 240.15Ba2-4 Registration of successor to registered municipal securities dealer.

(a) In the event that a municipal securities dealer succeeds to and continues the business of a registered municipal securities dealer, the registration of the predecessor shall be deemed to remain effective as the registration of the successor if the successor, within 30 days after such succession, files an application for registration on Form MSD, in the case of a municipal securities dealer that is a bank or a separately identifiable department or division of a bank, or

Form BD, in the case of any other municipal securities dealer, and the predecessor files a notice of withdrawal from registration on Form MSDW or Form BDW, as the case may be; *Provided, however,* That the registration of the predecessor dealer will cease to be effective as the registration of the successor dealer 45 days after the application for registration on Form MSD or Form BD is filed by such successor.

(b) Notwithstanding paragraph (a) of this section, if a municipal securities dealer succeeds to and continues the business of a registered predecessor municipal securities dealer, and the succession is based solely on a change in the predecessor's date or state of incorporation, form of organization, or composition of a partnership, the successor may, within 30 days after the succession, amend the registration of the predecessor dealer on Form MSD, in the case of a predecessor municipal securities dealer that is a bank or a separately identifiable department or division of a bank, or on Form BD, in the case of any other municipal securities dealer, to reflect these changes. This amendment shall be deemed an application for registration filed by the predecessor and adopted by the successor.

§ 240.15Ba2–6 [Removed and reserved]

4. By removing and reserving § 240.15Ba2–6.

5. By revising § 240.15Ca2–3 to read as follows:

§ 240.15Ca2–3 Registration of successor to registered government securities broker or government securities dealer.

(a) In the event that a government securities broker or government securities dealer succeeds to and continues the business of a government securities broker or government securities dealer registered pursuant to section 15C(a)(1)(A) of the Act, the registration of the predecessor shall be deemed to remain effective as the registration of the successor if the successor, within 30 days after such succession, files an application for registration on Form BD, and the predecessor files a notice of withdrawal from registration on Form BDW; *Provided, however,* That the registration of the predecessor government securities broker or government securities dealer will cease to be effective as the registration of the successor government securities broker or government securities dealer 45 days after the application for registration on Form BD is filed by such successor.

(b) Notwithstanding paragraph (a) of this section, if a government securities broker or government securities dealer succeeds to and continues the business of a predecessor government securities broker or government securities dealer that is registered pursuant to section 15C(a)(1)(A) of the Act, and the succession is based solely on a change in the predecessor's date or state of incorporation, form of organization, or composition of a partnership, the successor may, within 30 days after the succession, amend the registration of the predecessor broker or dealer on Form BD to reflect these changes. This amendment shall be deemed an application for registration filed by the predecessor and adopted by the successor.

PART 241—INTERPRETIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

Part 241 is amended by adding this Interpretive Release [Release No. 34–31661] to the lists of Interpretive Releases.

PART 276—INTERPRETIVE RELEASES RELATING TO THE INVESTMENT ADVISERS ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

Part 276 is amended by adding this Interpretive Release [Release No. IA–1357] to the lists of Interpretive Releases.

Dated: December 28, 1992.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–31867 Filed 12–31–92; 8:45 am]

BILLING CODE 8010–01–M

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17 CFR Parts 240 and 249

[Release No. 34–31660]

RIN 3235–AE54

Broker-Dealer Registration and Reporting

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of rule amendments.

SUMMARY: In order to coordinate the broker-dealer registration process with the Central Registration Depository, a computer system operated by the National Association of Securities Dealers, Inc., the Securities and Exchange Commission is adopting several amendments to the broker-dealer registration rules under the Securities Exchange Act of 1934. The amendments provide new instructions for filing Form BD, the uniform application form for broker-dealer registration, and Form BDW, the uniform request form for broker-dealer withdrawal, with the Central Registration Depository. The amendments also eliminate the requirement that applicants for broker-dealer registration file a statement of financial condition and representations regarding capital contributions, facilities, and financing, as part of their applications on Form BD.

EFFECTIVE DATE: January 25, 1993.

FOR FURTHER INFORMATION CONTACT: Robert L.D. Colby, Chief Counsel, or Belinda Blaine, Branch Chief, (202) 504–2418, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

As part of its ongoing effort to reduce the costs associated with broker-dealer registration,[1] the Securities and Exchange Commission ("Commission") is preparing to participate in the Central Registration Depository ("CRD"). The CRD is a computerized filing and data processing system operated by the National Association of Securities Dealers, Inc. ("NASD") that maintains registration information regarding NASD member firms and their registered personnel for access by state regulators, certain self-regulatory organizations ("SROs"), and the Commission. The Commission's primary objective in joining the CRD system is to provide "one-stop filing" for broker-dealers. Currently, applicants for broker-dealer registration that also are applying for membership in the NASD are required to file separate applications on Form BD, the uniform form for broker-dealer registration, with both the Commission and the NASD. Under the new system, broker-dealers will only be required to file one application for registration on Form BD with the NASD, which will enter the information into the CRD system and then electronically forward the data to the Commission for review. Form BD amendments and withdrawals from

[1] The Commission recently adopted amendments to Form BD. See Securities and Exchange Act Release No. 30958 (July 27, 1992), 57 FR 34028; and Securities Exchange Act Release No. 31398 (November 4, 1992), 57 FR 53261. These amendments became effective on November 16, 1992.

registration on Form BDW also will be filed through the CRD system.

The Commission believes that its direct participation in the CRD system will improve the efficiency of the registration process by creating a comprehensive, centralized database of all registrants, and by giving the Commission more immediate access to current data in broker-dealer filings. The new system also will result in cost savings to registrants, who will no longer be required to make multiple filings with the Commission, the NASD, and state agencies.

To prepare for its entry into the CRD system, the Commission recently proposed several amendments to the broker-dealer registration rules under the Securities Exchange Act of 1934 ("Exchange Act"), as well as corresponding amendments to the registration filing instructions.[2] The Commission received one comment letter on the proposed amendments, which expressed support for the concept of "one-stop filing."[3] The Commission therefore is adopting the amendments as proposed, with the exception of one technical change to the filing instructions for non-NASD member broker-dealers, discussed below.

II. Filing Procedures

Rules 15b1–1, 15b3–1, and 15b6–1,[4] the Special Instructions for Completing or Amending Form BD, and the General Instructions to Form BDW, have been revised to implement the new procedures for filing registration materials through the CRD system, as follows.[5]

A. Form BD

1. New Applicants

All broker-dealers, including government securities broker-dealers,[6] applying for registration with the Commission on or after January 25, 1993, will file one executed original Form BD with the CRD in accordance with the instructions to the Form.[7] Foreign broker-dealers that are required to file a consent to service of process pursuant to Rule 15B1–5 or Rule 15Ca2–5 under the Exchange Act will continue to file the consent directly with the Commission, but will send a copy to the CRD with their Form BD application.[8]

2. Registered NASD Member Broker-Dealers

Registered broker-dealers that are members of the NASD will not be required to file a new Form BD when the Commission joins the CRD on January 25, 1993, because the system already contains Form BD information on NASD members. Any NASD member amending its Form BD filing on or after that date, however, will need to file the amended pages, together with the execution page, with the CRD in accordance with the instructions to the Form.[9]

3. Registered Non-NASD Member Broker-Dealers

In order to allow the CRD system to capture registration information on all broker-dealers, registered broker-dealers that are members of an SRO other than the NASD will be required to file a complete Form BD with the CRD over a period of nine months.[10] In the Proposing Release, the Commission suggested processing non-NASD member broker-dealers' filings by their SEC registration numbers. To facilitate the transition, these filings will now be processed according to both the broker-dealers' SEC registration numbers and their Designated Examining Authorities ("DEA").[11] Specifically, non-NASD member broker-dealers will be required to file a complete Form BD[12] during the week of:

(1) January 25, 1993, for all such broker-dealers whose DEA is the Boston Stock Exchange, the Cincinnati Stock Exchange, the Midwest Stock Exchange, or the Philadelphia Stock Exchange;

(2) February 1, 1993, for all such broker-dealers whose DEA is the Pacific Stock Exchange;

(3) May 3, 1993, for all such broker-dealers whose DEA is the New York Stock Exchange;

(4) June 1, 1993, for all such broker-dealers whose DEA is the American Stock Exchange;

(5) July 6, 1993, for all such broker-dealers whose DEA is the Chicago Board Options Exchange and whose SEC registration number is between 8–18117 and 8–34181;

(6) August 2, 1993, for all such broker-dealers whose DEA is the Chicago Board Options Exchange and whose SEC registration number is 8–34182 or above; and

(7) September 7, 1993, for all other non-NASD member broker-dealers.

Any subsequent amendments to these Form BD filings also must be submitted to the CRD. Registered non-NASD member broker-dealers that need to amend their Forms subsequent to January 25, 1993, but prior to their scheduled processing date, will be required to promptly file a complete amended Form BD with the CRD.[13]

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[2] Securities Exchange Act Release No. 30959 (July 27, 1992), 57 FR 34048 ("Proposing Release"). In the Proposing Release, the Commission also proposed structural amendments to the rules under the Exchange Act governing the registration of successors to broker-dealers. Those amendments are being adopted today in a separate release, which provides interpretive guidance with respect to the registration of successors to broker-dealers and the registration of successors to investment advisers under the Investment Advisers Act of 1940. See Securities Exchange Act Release No. 31661; Investment Advisers Act Release No. 1357 (Dec. 28, 1992).

[3] Letter from Jacqueline H. Hallihan, President, National Regulatory Services, Inc. ("NRS"), to Jonathan G. Katz, Secretary, SEC (August 27, 1992). NRS also expressed concern about the continued public availability of Form BD information once the Commission joins the CRD. The Commission wishes to emphasize that public access to Form BD and other registration information will not be affected by the CRD plan; such information will continue to be available directly from the Commission.

[4] 17 CFR 240.15b1–1, 240.15b3–1, and 240.15b6–1. Amendments also have been made to the analogous rules governing non-bank municipal securities dealers (whose business is exclusively intrastate) and government securities broker-dealers. See 17 CFR 240.15Ba2–2, 240.15Bc3–1, 240.15Ca1–1, 240.15Ca2–1, and 240.15Cc1–1.

[5] All applications, amendments, and withdrawals from registration that are filed with the CRD will be deemed to be filed with the Commission. However, the 45-day period under section 15(b)(1) of the Exchange Act (15 U.S.C 78o(b)(1)) (or any other relevant filing period) will not begin to run until the CRD has transmitted the form data to the Commission and the Commission has determined that the filing is complete.

[6] Non-bank municipal securities dealers whose business is exclusively intrastate also will file Form BD with the CRD. Municipal securities dealers that are banks or departments of banks, however, will continue to file Form MSD directly with the Commission pursuant to Rule 15Ba2–1 (17 CFR 240.15Ba2–1).

[7] As noted above, amendments to Form BD became effective on November 16, 1992. Accordingly, all new applicants for broker-dealer registration, as well as all registered non-NASD member broker-dealers filing a complete Form BD with the CRD in accordance with the schedule set forth in Part II.A.3 below, must file on the new revised Form BD.

[8] 17 CFR 240.15b1–5 and 17 CFR 240.15Ca2–5 require foreign broker-dealers to file consents to service of process on Form 7–M, 8–M, 9–M, or 10–M.

In addition, non-resident broker-dealers should continue to file the notice or undertaking required by Rule 17a–7 (17 CFR 240.17a–7) directly with the Commission, but send a copy with their applications to the CRD.

[9] The Commission will not accept filings directly from NASD members after January 25, 1993.

[10] Broker-Dealers that are members of both the NASD and an exchange will follow the procedures for NASD members set forth in Part II.A.2, *supra*.

[11] See generally section 15(b)(2)(C) of the Exchange Act (15 U.S.C. 78o(b)(2)(C)). For most non-NASD member broker-dealers, the DEA will be the national securities exchange of which they are a member.

[12] All broker-dealers should file using the version of Form BD that became effective on November 16, 1992. *See* discussion, *supra*.

[13] In addition, broker-dealers filing pursuant to Rule 15a–4 [17 CFR 240.15a–4] will be required to file with the CRD.

These broker-dealers will not be required to resubmit an application on their scheduled date.

B. Form BDW

NASD member broker-dealers requesting withdrawal from registration on or after January 25, 1993 will file one manually signed original Form BDW, the uniform request form for broker-dealer withdrawal, and a copy of the required sections of part II (or part IIA for non-clearing firms) of their FOCUS reports with the CRD.[14] *Non*-NASD member broker-dealers that have *not* previously filed a Form BD with the CRD will begin filing for withdrawal from registration with the CRD on September 30, 1993.[15] Non-NASD members, however, will continue to send a copy of Form BDW, together with the required attachments,[16] directly to the Commission's Office of Filings, Information, and Consumer Services.

III. Statement of Financial Condition and Representations

To facilitate the registration of broker-dealers through the CRD system, the Commission also is rescinding Rule 15b1–2 and related Rules 15Ba2–2(b) and 15Ca2–2, all under the Exchange Act.[17] Rule 15b1–2 originally required an applicant for broker-dealer registration to submit a statement of financial condition and other information regarding its financial resources as part of its application on Form BD.[18] Rules 15Ba2–2(b) and 15Ca2–2 contained similar reporting requirements for non-bank municipal securities dealers whose business is exclusively intrastate and government securities broker-dealers.

These filing requirements were intended to assist the Commission in determining whether applicants had the requisite amount of capital and the capacity to operate as a broker-dealer. As the Proposing Release noted, however, the rules of the SROs also require broker-dealers to file a statement of financial condition, or to otherwise demonstrate their ability to conduct business as a broker-dealer, with their applications for membership.[19] This information, as well as other registration information obtained by the SROs, is readily available to the Commission.

The Commission therefore is rescinding Rule 15b1–2, paragraph (b) of Rule 15Ba2–2, and rule 15Ca2–2 because the filing requirements under those rules duplicate SRO requirements and are not necessary to ensure that applicants for broker-dealer registration comply with the net capital and other requirements of the Exchange Act. Eliminating these requirements will result in savings to broker-dealers without affecting the Commission's ability to evaluate the financial condition of applicants. Moreover, it will simplify the Commission's entry into the CRD system, thereby facilitating the broker-dealer registration process.

IV. Effects on Competition and Regulatory Flexibility Act Considerations

Section 23(a)(2) of the Exchange Act[20] requires the Commission, in adopting rules under the Exchange Act, to consider the anticompetitive effects of such rules, if any, and to balance any anticompetitive impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission believes that the amendments to the broker-dealer registration rules and filing instructions will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. On the contrary, the amendments should reduce the costs currently associated with broker-dealer registration.

In addition, the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA"), pursuant to the requirements of the Regulatory Flexibility Act,[21] regarding the amendments. A copy of the FRFA may be obtained from Belinda Blaine, Branch Chief, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549; at (202) 504–2418.

V. Effective Date

Pursuant to Section 4(c) of the Administrative Procedure Act,[22] publication of the amendments to the broker-dealer registration rules may not be made less than thirty days before their effective date, absent good cause. As noted above, the Commission is joining the CRD system on January 25, 1993. In order to begin processing filings through the CRD by that date, the amendments to the registration rules shall become effective on January 25, 1993, based on the Commission's finding of good cause.

List of Subjects in 17 CFR Parts 240 and 249

Registration of brokers and dealers, Registration of government securities brokers and government securities dealers, Registration of non-bank municipal securities dealers; Reporting and recordkeeping requirements, Securities, Broker-dealers.

Statutory Basis and Text of Proposed Amendments

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

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

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

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

2. By amending § 240.15b1–1 by revising the section heading, designating the current text as paragraph (a), and adding paragraphs (b) and (c) to read as follows:

Although the NASD is developing modifications to the CRD system that eventually will allow non-NASD members to file for registration with the states through the CRD, until further notice, all non-NASD members will need to file separately with the states in which they are registering.

[14] Form BDW instructs broker-dealers that file FOCUS reports to attach a copy of the "Statement of Financial Condition" and "Computation of Net Capital" sections of their FOCUS report. Broker-dealers that do not file FOCUS reports are required to attach a statement of financial condition giving the type and amount of the firm's net worth and assets and liabilities. Both the FOCUS report and the statement of financial condition must be dated no earlier than 10 days before the Form BDW is filed.

[15] Prior to September 30, 1993, non-NASD members should file Form BDW with the CRD *only* if they have already filed Form BD with the CRD. If they have *not* previously filed form BD with the CRD, they should continue to file Form BDW with the Commission.

[16] *See* n.14, *supra*.

[17] 17 CFR 240.15b1–2, 240.15Ba2–2(b), and 240.15Ca2–2.

[18] Specifically, the rule required the applicant to provide: (i) Information regarding its assets, liabilities, and net worth; (ii) a schedule listing its securities and, if readily marketable, their market value; (iii) a computation of aggregate indebtedness and net capital in compliance with Rule 15c3–1 under the Exchange Act (or the relevant rule of the national securities exchange of which the applicant is or will be a member); (iv) a statement describing the nature and source of capital, and representing that such capital has been and will continue to be contributed to the business; (v) a representation that adequate arrangements have been made for the establishment and maintenance of facilities, financing, and certain other aspects of its business; and (vi) a statement describing the arrangements made for obtaining the funds necessary to operate the business in the ensuing year, setting forth the anticipated expenses for that year, and providing information regarding arrangements made to obtain additional financing should it become necessary.

[19] See, e.g., NASD Schedules to the By-Laws, Schedule C, part I, §§ (1)(a), (C), NASD Manual (CCH) ¶ 1783.

[20] 15 U.S.C. 78w(a)(2).

[21] 5 U.S.C. 603.

[22] 5 U.S.C. 551 *et seq.*

§ 240.15b1–1 Application for registration of brokers or dealers.

* * * * *

(b) Every application for registration of a broker or dealer that is filed on or after January 25, 1993, shall be filed with the Central Registration Depository operated by the National Association of Securities Dealers, Inc.

(c) An application for registration that is filed with the Central Registration Depository pursuant to this section shall be considered filed with the Commission for purposes of Section 15(b) of the Act.

3. By removing and reserving § 240.15b1–2.

4. By revising § 240.15b3–1 to read as follows:

§ 240.15b3–1 Amendments to application.

(a) If the information contained in any application for registration as a broker or dealer, or in any amendment thereto, is or becomes inaccurate for any reason, the broker or dealer shall promptly file with the Central Registration Depository (operated by the National Association of Securities Dealers, Inc.) an amendment on Form BD correcting such information.

(b) *Temporary Filing Instructions.* (1) Every registered broker or dealer who is not a member of the National Association of Securities Dealers, Inc. shall file as an amendment to its application a complete Form BD (as revised November 16, 1992, and as amended), and any subsequent amendments thereto pursuant to paragraph (a) of this section, with the Central Registration Depository during:

(i) The week of January 25, 1993, in the case of a broker-dealer whose Designated Examining Authority (DEA) is the Boston Stock Exchange, the Cincinnati Stock Exchange, the Midwest Stock Exchange, or the Philadelphia Stock Exchange;

(ii) The week of February 1, 1993, in the case of a broker-dealer whose DEA is the Pacific Stock Exchange;

(iii) The week of May 3, 1993, in the case of a broker-dealer whose DEA is the New York Stock Exchange;

(iv) The week of June 1, 1993, in the case of a broker-dealer whose DEA is the American Stock Exchange;

(v) The week of July 6, 1993, in the case of a broker-dealer whose DEA is the Chicago Board Options Exchange and whose SEC registration number is between 8–18117 and 8–34181;

(vi) The week of August 2, 1993, in the case of a broker-dealer whose DEA is the Chicago Board Options Exchange and whose SEC registration number is 8–34182 or above; and

(vii) The week of September 7, 1993, in the case of all other broker-dealers.

(2) Notwithstanding paragraph (b)(1) of this section, if the information contained in any application for registration as a broker or dealer filed by a broker or dealer who is not a member of the National Association of Securities Dealers, Inc. is or becomes inaccurate for any reason prior to the applicable date set forth in paragraph (b)(1) of this section, the broker or dealer shall promptly file as an amendment to its application a complete Form BD (as revised November 16, 1992, and as amended) with the Central Registration Depository.

(c) Every amendment filed pursuant to this section shall constitute a "report" filed with the Commission within the meaning of sections 15(b), 17, 18, 32(a), and other applicable provisions of the Act.

5. By amending § 240.15b6–1 by redesignating paragraphs (b), (c), and (d), as paragraphs (c), (d), and (e), adding paragraph (b), and revising newly redesignated paragraph (e) to read as follows:

§ 240.15b6–1 Withdrawal from registration.

* * * * *

(b) Every notice of withdrawal from registration as a broker or dealer that is filed on or after January 25, 1993, by a broker or dealer who has previously filed an application for registration with the Central Registration Depository (operated by the National Association of Securities Dealers, Inc.) shall be filed with the Central Registration Depository. Every other notice of withdrawal from registration as a broker or dealer shall be filed with the Commission; except that such notice shall be filed with the Central Registration Depository beginning on September 30, 1993.

* * * * *

(e) Every notice of withdrawal filed pursuant to this section shall constitute a "report" filed with the Commission within the meaning of sections 15(b), 17(a), and other applicable provisions of the Act.

6. By revising § 240.15Ba2–2 to read as follows:

§ 240.15Ba2–2 Application for registration of non-bank municipal securities dealers whose business is exclusively intrastate.

(a) An application for registration, pursuant to section 15B(a) of the Act, of a municipal securities dealer who is not subject to the requirements of § 240.15Ba2–1, that is filed on or after January 25, 1993, shall be filed with the Central Registration Depository (operated by the National Association of Securities Dealers, Inc.) on Form BD in accordance with the instructions contained therein.

(b) Every applicant shall file with its application for registration a statement that such applicant is filing for registration as an intrastate dealer in accordance with the requirements of this section. Such statement shall be deemed a part of the application for registration.

(c) If the information contained in any application for registration filed pursuant to paragraph (a) of this section, or in any amendment to such application, is or becomes inaccurate for any reason, the dealer shall promptly file with the Central Registration Depository an amendment on Form BD correcting such information.

(d) Every application or amendment filed pursuant to this section shall constitute a "report" filed with the Commission within the meaning of Sections 15B, 17, 18, 32(a), and other applicable provisions of the Act.

7. By amending § 240.15Bc3–1 by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), adding paragraph (b), and revising newly redesignated paragraph (d) to read as follows:

§ 240.15Bc3–1 Withdrawal from registration of municipal securities dealers.

* * * * *

(b) Every notice of withdrawal from registration as a municipal securities dealer that is filed on Form BDW on or after January 25, 1993, by a dealer who has previously filed an application for registration on Form BD with the Central Registration Depository (operated by the National Association of Securities Dealers, Inc.) shall be filed with the Central Registration Depository. Every other notice of withdrawal from registration as a dealer on Form BDW shall be filed with the Commission; except that such notice shall be filed with the Central Registration Depository beginning on September 30, 1993. Every notice of withdrawal on Form MSDW shall be filed with the Commission.

* * * * *

(d) Every notice of withdrawal filed pursuant to this section shall constitute a "report" filed with the Commission within the meaning of Sections 15B, 17(a), and other applicable provisions of the Act.

8. By amending § 240.15Ca1–1 by adding paragraph (c) to read as follows:

§ 240.15Ca1–1 Notice of government securities broker-dealer activities.

* * * * *

(c) Any notice required pursuant to this section shall be considered filed with the Commission if it is filed with

the Central Registration Depository operated by the National Association of Securities Dealers, Inc.

9. By revising § 240.15Ca2–1 to read as follows:

§ 240.15Ca2–1 Application for registration as a government securities broker or government securities dealer.

(a) An application for registration, pursuant to Section 15C(a)(1)(A) of the Act, of a government securities broker or government securities dealer that is filed on or after January 25, 1993, shall be filed with the Central Registration Depository (operated by the National Association of Securities Dealers, Inc.) on Form BD in accordance with the instructions contained therein.

(b) Temporary filing instructions. Every registered government securities broker or government securities dealer who is not a member of the National Association of Securities Dealers, Inc. shall file a complete Form BD (as revised November 16, 1992, and as amended) with the Central Registration Depository in accordance with the schedule set forth in § 240.15b3–1(b).

(c) Every application or amendment filed pursuant to this section shall constitute a "report" filed with the Commission within the meaning of Sections 15, 15C, 17(a), 18, 32(a), and other applicable provisions of the Act.

§ 240.15Ca2–2 [Removed and reserved]

10. By removing and reserving § 240.15Ca2–2.

§ 240.15Ca2–3 [Amended]

11. By removing the last sentence of paragraph (b) of § 240.15Ca2–3.

12. By amending § 240.15Cc1–1 by revising the section heading, redesignating paragraphs (b) and (c) as paragraphs (c) and (d), adding paragraph (b), and revising newly redesignated paragraph (d) to read as follows:

§ 240.15Cc1–1 Withdrawal from registration of government securities brokers or government securities dealers.

* * * * *

(b) Every notice of withdrawal from registration as a government securities broker or dealer that is filed on or after January 25, 1993, by a government securities broker or dealer who has previously filed an application for registration with the Central Registration Depository (operated by the National Association of Securities Dealers, Inc.) shall be filed with the Central Registration Depository. Every other notice of withdrawal from registration as a government securities broker or dealer shall be filed with the Commission; except that such notice shall be filed with the Central Registration Depository beginning on September 30, 1993.

* * * * *

(d) Every notice of withdrawal filed pursuant to this section shall constitute a "report" filed with the Commission within the meaning of sections 15, 15C, 32(a), and other applicable provisions of the Act.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

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

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

Note: The following forms do not appear in the Code of Federal Regulations.

14. By revising the Special Instructions for Completing or Amending Form BD (§ 249.501), and the General Instructions to Form BDW (§ 249.501a) to read as follows:

Special Instructions for Completing or Amending Form BD, Uniform Application for Registration as a Broker-Dealer, With the U.S. Securities and Exchange Commission

How to File

File one manually signed and notarized Form BD (with the schedules). Keep a copy for your files. A copy may be filed if manually signed and notarized and on standard 8½ x 11 white paper, in the same size as the original.

To file an amendment to Form BD, complete all amended pages or schedules and file with page 1, the execution page.

Where to File

Broker-dealers that are applying for registration should file Form BD and its schedules with the Central Registration Depository (CRD), P.O. Box 9401, Gaithersburg, Maryland 20898–9401. Any subsequent amendments to Form BD also should be filed with the CRD.

All registered broker-dealers that are *not* members of the National Association of Securities Dealers, Inc. (NASD) should file a complete Form BD and its schedules with the CRD during the week of:

(1) January 25, 1993, in the case of all non-NASD member broker-dealers whose Designated Examining Authority (DEA) is the Boston Stock Exchange, the Cincinnati Stock Exchange, the Midwest Stock Exchange, or the Philadelphia Stock Exchange;

(2) February 1, 1993, for all such broker-dealers whose DEA is the Pacific Stock Exchange;

(3) May 3, 1993, for all such broker-dealers whose DEA is the New York Stock Exchange;

(4) June 1, 1993, for all such broker-dealers whose DEA is the American Stock Exchange;

(5) July 6, 1993, for all such broker-dealers whose DEA is the Chicago Board Options Exchange and whose SEC registration number is between 8–18117 and 8–34181;

(6) August 2, 1993, for all such broker-dealers whose DEA is the Chicago Board Options Exchange and whose SEC registration number is 8–34182 or above; and

(7) September 7, 1993, for all other non-NASD member broker-dealers.

Any subsequent amendments to these Form BD filings also should be filed with the CRD. Non-NASD members that need to file an amendment to their Form BD before their scheduled date should promptly file a complete Form BD with the CRD.

All non-NASD members must include their SEC 8-registration number in the appropriate box on page one of Form BD.

Foreign Broker-Dealers

Rules 15b1–5 and 15Ca2–5 require non-resident broker-dealers applying for registration to provide the Commission with a consent and power of attorney. This consent and power of attorney designate the Commission as agent for the service of process of any papers in connection with actions arising from the broker-dealer's business that are subject to the jurisdiction of the United States and that accrue while the broker-dealer is registered with the Commission. This consent and power of attorney, which is in addition to and separate from the consent to service of process provided on Form BD, should be filed directly with the Commission. A copy also should be filed with the CRD as part of the application on Form BD.

Successor Registration

A broker-dealer that assumes substantially all of the assets and liabilities, and that continues the business, of a registered predecessor broker-dealer is a successor broker-dealer. Rules 15b1–3, 15Ba2–4, and 15Ca2–3 require a successor broker-dealer to file a new Form BD (or, in special instances, to amend the predecessor broker-dealer's Form BD) within 30 days. The filing should indicate on page 2 of the form that the applicant is a successor. (*See* Securities Exchange Act Release No. 31661 (Dec. 28, 1992)).

Prohibited Broker-Dealer Names

United States Code Title 18 Section 709 makes it a criminal offense to use the words "National," "Federal," "United States," "Reserve," or "Deposit Insurance" in the name of a person or organization in the brokerage business, unless otherwise allowed by Federal law. If these words are used in the applicant's name, include an opinion of counsel with the Form BD explaining why the words are permitted. Send a copy of the opinion directly to the Commission.

Uniform Request for Broker-Dealer Withdrawal

General Instructions

- Each copy of this form must be *manually signed* by the proper individual.
- Type all information.
- Use only the Form BDW or a reproduction of it.
- *Filing Requirements*

Full Withdrawal

NASD Members: file Form BDW with the CRD beginning on January 25, 1993.

Non-NASD Members: file Form BDW with the CRD beginning on September 30, 1993. Prior to September 30, 1993, file Form BDW

with the CRD if Form BD has already been filed with the CRD; if not, file with the SEC.

Attach a copy of FOCUS Report Part II (or Part IIA for non-carrying or non-clearing firms) "Statement of Financial Condition" and "Computation of Net Capital" sections. Firms that are not required to file FOCUS Reports should attach a Statement of Financial Condition giving the type and amount of the firm's assets, liabilities, and net worth. The FOCUS Report and Statement of Financial Condition must reflect the finances of the firm no earlier than 10 days before Form BDW is filed.

Non-NASD Members only should send a copy of Form BDW and all attachments to the Office of Filings, Information, and Consumer Services, SEC, 450 5th St., NW., Washington, DC 20549.

Check with the States where registered for additional filing requirements.

Partial Withdrawal

File Form BDW with the CRD. Check with the States where registered for additional filing requirements. Amend Form BD and file with the CRD in accordance with the instructions to the form.

By the Commission.

Dated: December 28, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-31868 Filed 12-31-92; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[T.D. 8466]

RIN 1545-AN45

21-Day Holding Period for Bank Accounts Subject to Levy

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulation.

SUMMARY: This document contains final regulations regarding the surrender of property subject to levy in the case of banks. Section 6236(e)(1) of the Technical and Miscellaneous Revenue Act of 1988 amended section 6332(c) of the Internal Revenue Code by adding a new paragraph (c), which provides that banks shall surrender deposits in taxpayers' accounts (including interest thereon) only after 21 days after service of a levy. The regulations set forth the rules for compliance by banks, and also contain conforming amendments reflecting the new provision.

DATES: These regulations are effective on January 4, 1993, and apply with respect to levies made on or after January 4, 1993.

FOR FURTHER INFORMATION CONTACT: Kevin B. Connelly, 202-622-3640 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR part 301) under section 6332 of the Internal Revenue Code (Code). The regulations reflect the amendment of section 6332 by section 6236(e)(1) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100-647, 102 Stat. 3342) (TAMRA).

Explanation of Provisions

The Internal Revenue Service published a notice of proposed rulemaking in the **Federal Register** on May 1, 1991, (56 FR 19963). Numerous commentators submitted written comments concerning the proposed regulations. However, no request for a hearing was received and no hearing was held. Each of the issues raised in the comments was fully considered during the formulation of the final regulations. The principal comments received by the Internal Revenue Service are discussed below.

Section 6236(e)(1) of TAMRA amended section 6332 of the Code by redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f), respectively, and by adding new paragraph (c). Under section 6332(c) banks (as defined in section 408(n) of the Code) shall surrender levied deposits, together with the interest accruing thereon, only after 21 days after a levy is made.

The regulations provide that a levy on a bank account applies to those funds on deposit at the time the levy is made, up to the amount of the levy. No withdrawals may be made against the funds reached by the levy during the 21-day holding period. The bank must surrender the deposits on the first business day following the 21st calendar day after the levy is made, unless the bank receives notification from the district director of a release of levy or unless the district director has requested an extension of the holding period. In addition, the bank must surrender any interest which accrued on the deposits under the terms of its agreement with its customer, but in no event must the bank surrender an amount greater than the amount of the levy. Any interest that accrues and is turned over to the Internal Revenue Service is considered to be paid to the bank's depositor. The depositor may waive the 21-day holding period by notifying the bank of his or her intention to do so. However, where more than one depositor is listed as the owner of an account, all of the listed owners must agree to a waiver of the holding period. The regulations set forth examples illustrating the requirements for compliance with section 6332(c) under various circumstances, and define the term "bank" pursuant to section 408(n) of the Code.

The regulations provide further that the bank's depositor may notify the district director to whom the assessment is charged of any errors with respect to the levied account by telephoning the telephone number listed on the face of the notice of levy. The district director may require any supporting documentation necessary to review an alleged error. Notification by telephone does not constitute or substitute for the filing by a third party of a written request for the return of wrongfully levied property.

With respect to imposing liability under section 6332(d) for refusal or failure to surrender property subject to levy, the 21-day rule effectively changes the date of the making of a levy on bank deposits to the date of the expiration of the 21-day holding period or any extension of the period granted by the Internal Revenue Service.

One commentator suggested that the regulations should discharge banks from liability to any third party that claims an interest in an attached account. This is beyond the narrow scope of section 6332(c) and these regulations. A bank's potential liability to the taxpayer or to third parties for surrendering deposits is governed generally by section 6332(e), which provides that any person who surrenders property or rights to property subject to levy to the Internal Revenue Service is discharged from any obligation or liability to the delinquent taxpayer or any other person. That section applies to banks that surrender deposits in accordance with section 6332(c) just as it applies to any other party that surrenders property pursuant to an Internal Revenue Service levy.

The proposed regulations provide that the district director may extend the holding period beyond the initial 21 days if more time is necessary for the district director to resolve alleged errors with respect to attached deposits before the deposits are surrendered. One commentator suggested that extensions of the 21-day holding period should be limited to two 21-day extensions. Although it will be in the best interest of the Internal Revenue Service to resolve as quickly as possible any issues concerning whether deposits should be turned over, the length of extensions of the holding period will vary depending

on the issues under consideration. Limiting the length or number of extensions could result in deposits being turned over before the district director has the time to resolve an alleged error, thereby defeating the purpose of section 6332(c).

One commentator suggested that the regulations should include the language that banks must use to indicate that depositors have waived the 21-day holding period. There is no specific language that a bank must use to inform the Internal Revenue Service that depositors have waived the holding period. As long as the bank indicates that each depositor to an account has agreed to a waiver, the waiver is sufficient with respect to that account.

Two commentators submitted questions concerning the effect of section 6332(c) on the terms of a bank's interest agreement with its depositor. The regulations provide that interest must be paid in accordance with the terms of a bank's agreement with its depositor. This provision is based on the fact that the Internal Revenue Service is entitled only to the amount to which the taxpayer would be entitled if the taxpayer withdrew the funds. If the taxpayer would not be entitled to interest, the Internal Revenue Service is not entitled to interest. This provision is illustrated by *Examples 5* and *6*, which deal with a certificate of deposit, the terms of which provide that the depositor must forfeit thirty days of interest in the event of early withdrawal.

Numerous commentators noted that the calculation of interest on levied funds poses a burden on banks and suggested that banks either should not have to pay any interest or that the regulations should set a floor—based on either the amount of interest due, the amount of the depositor's account balance, or the amount of the levy—below which the bank would not have to pay interest. A prescribed floor below which no interest would have to be paid would effectively reduce the amount of the depositor's liability that is satisfied by the levy. In light of the detrimental impact on the interests of the depositor and the Service, together with the statute's explicit reference to the payment of interest, the final regulations do not contain the suggested exceptions.

One commentator also suggested that a bank should be allowed to enforce against levied funds a contractual right to charge the depositor a fee for processing a levy or a garnishment. Again, the Internal Revenue Service is entitled to the amount to which the taxpayer is entitled. If the terms of the account do not allow the bank to charge a levy processing fee on a withdrawal by the depositor, the bank may not deduct such a fee from the amount subject to levy.

One commentator suggested that banks should be given an additional 10-day period after the 21-day period expires in which to turn over levied funds. Once a bank receives a levy the bank knows exactly when the 21-day period will expire and the funds will become due. An extra 10-day period in which to turn over levied funds is unnecessary.

Many comments that were submitted for consideration raise additional substantive issues that are unrelated to the 21-day rule or to procedural issues concerning the implementation of the 21-day rule. For example, a number of commentators submitted comments and questions concerning the types of accounts and deposits that are subject to an Internal Revenue Service levy. One commentator suggested that the regulations should describe the type of information that banks should and can legally divulge without violating financial privacy laws when informing the Service that a levy is unpostable, *e.g.*, the levy is on a closed account. These issues are outside the scope of the regulations. Section 6332(c) and these regulations neither address nor affect the priority of competing claims to a taxpayer's deposits, the type of property to which a levy attaches, the type of financial information that a bank may divulge about a depositor's account, or a bank's responsibilities with respect to deposits (other than to provide that the bank must hold deposits for 21 days). To reflect the limited scope of these regulations, the caption has been changed to "The 21-day holding period applicable to property held by banks."

Finally, one commentator suggested that the rule that interest surrendered to the district director is considered to be paid to the bank's customer and must be reported to the Internal Revenue Service, should be clarified to distinguish between the reporting of interest on IRA accounts and the reporting of interest on non-IRA accounts. While most interest paid to a depositor must be reported as interest, there are situations in which interest must be reported as some other type of payment. The purpose of this provision is to inform banks that the submission to the Internal Revenue Service of interest that accrues prior to and during the holding period should be treated as a payment to the bank's customer. Instead of accounting for each different characterization of interest in the Code and setting forth the different reporting requirements, the final regulation has been changed to provide simply that to the extent interest is accrued and surrendered such interest is considered to be paid to the bank's customer.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these proposed regulations is Kevin B. Connelly, Office of the Assistant Chief Counsel (General Litigation), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—[AMENDED]

Paragraph 1. The authority citation for part 301 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6332–1 is amended as follows:

1. In paragraph (a)(1) the language "and in § 301.6332–3, relating to property held by banks," is added immediately following the language "endowment contracts," and immediately before the language "any person."

2. The heading of paragraph (a)(2) is revised to read as set forth below.

3. In paragraph (b)(2), in the first sentence, the language "6332(c)(1)" is

removed and the language "6332(d)(1)" is added in its place.

§ 301.6332–1 Surrender of property subject to levy.

(a) * * *

(2) *Levy on bank deposits held in offices outside the United States.*

* * * * *

Par. 3. Section 301.6332–3 is added to read as follows:

§ 301.6332–3 The 21-day holding period applicable to property held by banks.

(a) *In general.* This section provides special rules relating to the surrender, after 21 days, of deposits subject to levy which are held by banks. The provisions of § 301.6332–1 which relate generally to the surrender of property subject to levy apply, to the extent not inconsistent with the special rules set forth in this section, to a levy on property held by banks.

(b) *Definition of bank.* For purposes of this section, the term "bank" means—

(1) A bank or trust company or domestic building and loan association incorporated and doing business under the laws of the United States (including laws relating to the District of Columbia) or of any State, a substantial part of the business of which consists of receiving deposits and making loans and discounts, or of exercising fiduciary powers similar to those permitted to national banks under authority of the Comptroller of the Currency, and which is subject by law to supervision and examination by State or Federal authority having supervision over banking institutions;

(2) Any credit union the member accounts of which are insured in accordance with the provisions of title II of the Federal Credit Union Act, 12 U.S.C. 1781 et seq.; and

(3) A corporation which, under the laws of the State of its incorporation, is subject to supervision and examination by the Commissioner of Banking or other officer of such State in charge of the administration of the banking laws of such State.

(c) *21-day holding period*—(1) *In general.* When a levy is made on deposits held by a bank, the bank shall surrender such deposits (not otherwise subject to an attachment or execution under judicial process) only after 21 calendar days after the date the levy is made. The district director may request an extension of the 21-day holding period pursuant to paragraph (d)(2) of this section. During the prescribed holding period, or any extension thereof, the levy shall be released only upon notification to the bank by the district director of a decision by the Internal Revenue Service to release the levy. If the bank does not receive such notification from the district director within the prescribed holding period, or any extension thereof, the bank must surrender the deposits, including any interest thereon as determined in accordance with paragraph (c)(2) of this section (up to the amount of the levy), on the first business day after the holding period, or any extension thereof, expires. See § 301.6331–1(c) to determine when a levy served by mail is made.

(2) *Payment of interest on deposits.* When a bank surrenders levied deposits at the end of the 21-day holding period (or at the end of any longer period that has been requested by the district director), the bank must include any interest that has accrued on the deposits prior to and during the holding period, and any extension thereof, under the terms of the bank's agreement with its depositor, but the bank must not surrender an amount greater than the amount of the levy. If the deposits are held in a noninterest bearing account at the time the levy is made, the bank need not include any interest on the deposits at the end of the holding period, or any extension thereof, under this paragraph. Interest that accrues on deposits and is surrendered to the district director at the end of the holding period, or any extension thereof, is treated as a payment to the bank's customer.

(3) *Transactions affecting accounts.* A levy on deposits held by a bank applies to those funds on deposit at the time the levy is made, up to the amount of the levy, and is effective as of the time the levy is made. No withdrawals may be made on levied upon deposits during the 21-day holding period, or any extension thereof.

(4) *Waiver of 21-day holding period.* A depositor may waive the 21-day holding period by notifying the bank of the depositor's intention to do so. Where more than one depositor is listed as the owner of a levied account, all depositors listed as owners of the account must agree to a waiver of the 21-day holding period. If the 21-day holding period is waived, the bank must include with the surrendered deposits a notification to the district director of the waiver.

(5) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples:

Example 1. On April 2, 1992, a notice of levy for an unpaid income tax assessment due from A in the amount of $10,000 is served on X Bank with respect to A's savings account. At the time the notice of levy is served, X Bank holds $5,000 in A's interest-bearing savings account. On April 24, 1992, (the first business day after the 21-day holding period) X Bank must surrender $5,000 plus any interest that accrued on the account under the terms of A's contract with X Bank up through April 23, 1992, (the last day of the holding period).

Example 2. The facts are the same as in *Example 1* except that on April 3, 1992, A deposits an additional $5,000 into the account. On April 24, 1992, X Bank must still surrender only $5,000 plus the interest which accrued thereon until the end of the holding period, because the notice of levy served on April 2, 1992, attached only to those funds on deposit at the time the notice was served and not to any subsequent deposits.

Example 3. The facts are the same as in *Example 1* except that at the time the notice of levy is served on X Bank, A's savings account contains $50,000. On April 24, 1992, X Bank must surrender $10,000, which is the amount of the levy. The levy will not apply to any interest that accrues on the deposit during the 21-day holding period, because the entire amount of the levy is satisfied by the deposits existing at the time the levy is served.

Example 4. The facts are the same as in *Example 1* except that the amount of the levy is $5,002. Under the terms of A's contract with the bank, the account will earn more than $2 of interest during the 21-day holding period. On April 24, 1992, X Bank must surrender $5,002 to the district director. The remaining interest which accrued during the 21-day holding period is not subject to the levy.

Example 5. On September 3, 1992, A opens a $5,000 six-month certificate of deposit account with X Bank. Under the terms of the account, the depositor must forfeit up to 30 days of interest on the account in the event of early withdrawal. On January 4, 1993, a notice of levy for an unpaid income tax assessment due from A in the amount of $10,000 is served with respect to A's certificate of deposit account. On January 26, 1993, the bank must surrender $5,000 plus the interest which accrued on the account through January 25, 1993, minus the penalty of 30 days of interest as provided in the deposit agreement.

Example 6. Same facts as in *Example 5* except that the notice of levy is served on X Bank on February 15, 1993. The certificate matures on March 2, 1993. On March 8, X Bank must surrender $5,000 plus the interest that accrued on the certificate without any reduction for penalties.

(d) *Notification to the district director of errors with respect to levied upon bank accounts*—(1) *In general.* If a depositor believes that there is an error with respect to the levied upon account which the depositor wishes to have corrected, the depositor shall notify the district director to whom the assessment is charged by telephone to the telephone number listed on the face of the notice of levy in order to enable the district director to conduct an expeditious review of the alleged error. The district director may require any supporting documentation necessary to the review

of the alleged error. The notification by telephone provided for in this section does not constitute or substitute for the filing by a third party of a written request under § 301.6343–1(b)(2) for the return of property wrongfully levied upon.

(2) *Disputes regarding the merits of the underlying assessment.* This section does not constitute an additional procedure for an appeal regarding the merits of an underlying assessment. However, if in the judgment of the district director a genuine dispute regarding the merits of an underlying assessment appears to exist, the district director may request an extension of the 21-day holding period.

(3) *Notification of errors from sources other than the depositor.* The district director may take action to release the levy on the bank account based on information obtained from a source other than the depositor, including the bank in which the account is maintained.

(e) *Effective date.* These provisions are effective with respect to levies issued on or after January 4, 1993.

Shirley D. Peterson,

Commissioner of Internal Revenue.

Approved: December 15, 1992.

Alan J. Wilensky,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 92–31713 Filed 12–31–92; 8:45am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 91–016]

RIN 2115–AD77

Drawbridge Operation Regulations, Emergency Situations

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: On August 7, 1991, the Coast Guard published a Notice of Proposed Rulemaking in the **Federal Register** to amend the regulations that govern the nation's drawbridges by requiring that emergency vessels, and vessels in an emergency situation, that have given the proper emergency signal, be passed through an attended draw at any time. This proposal was made because there is provision for the passage of emergency land vehicles, but nothing similar has been done to make allowance for the passage of emergency vessels or vessels in an emergency situation. This action will provide guidance for emergency situations both on land and water and should not seriously interfere with the needs of vehicular traffic, yet still provide for the reasonable needs of navigation in an emergency.

EFFECTIVE DATE: This rule is effective on February 3, 1993.

ADDRESSES: Unless otherwise indicated, documents referenced in this preamble are available for inspection and copying at the office of the Executive Secretary, Marine Safety Council (G–LRA–2/3406) (CGD 91–016), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, room 3406, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477 for information.

FOR FURTHER INFORMATION CONTACT: Mr. Larry R. Tyssens, Alterations, Regulations and Systems Branch (G–NBR–1), at (202) 267–0376.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Larry R. Tyssens, Project Manager, and Lieutenant Ralph L. Hetzel, Project Counsel, Office of Chief Counsel.

Regulatory History

On August 7, 1991, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (56 FR 37504) to revise 33 CFR part 117 to allow for emergency passage of vessels. It was proposed that this amendment be incorporated in the Code of Federal Regulations (CFR) under a new § 117.29 entitled, "Opening of draw for emergency vessels and vessels in an emergency situation." Opportunity for comment on the proposal was provided until September 23, 1991. Since then, the decision has been made to combine the proposed amendment with existing § 117.31 "Closure of draw for emergency vehicles" and to revise the section title to read, "Operation of draw during emergency situations."

Two comments were received from a local government official in Jackson County, Mississippi, and a private individual in Houston, Texas. These comments, along with the views of pertinent Coast Guard officials, have been included in the public docket and are discussed below.

Background Information

An issue was raised by a member of the public concerning the lack of provisions in the regulations to allow for the passage of vessels in an emergency situation through a draw during a scheduled closure period. The Coast Guard agrees that provision should be made for emergency passage of vessels, and vessels in an emergency situation, as it is made for the passage of emergency land vehicles.

Discussion of Comments and Changes

The two comments objected to requiring draws to be opened for vessels seeking shelter from severe weather equivalent to Force 7 or greater on the Beaufort Wind Scale. As was pointed out by the individual from Texas, the "* * * severe weather operation of many bridges has already been discussed, and procedures accepted, by many of the Port Safety Committees which advise local Captains of the Port. These procedures reflect local [emergency management] considerations such as, highway routes for hurricane evacuation, the populace to be evacuated, the capability of the bridges to operate in high winds, and the availability of other areas for sheltering of vessels." Therefore, stipulating that draws should be opened for vessels seeking shelter from severe weather equivalent to Force 7 or greater on the Beaufort Wind Scale could be in conflict with local emergency management procedures. This is essentially the same concern that was expressed by a local government official in Jackson County, Mississippi. In addition, officials from different Coast Guard districts independently concurred with the fact that the same wind velocity can and does have different effects on different bodies of water based on the depth of the water body and its geographic location. Thus, the use of the Beaufort Wind Scale readings for this purpose is less than ideal. As a result of these comments, the Coast Guard has determined that requiring a draw to be opened at a specific wind velocity, irrespective of the geographic situation and local emergency management procedures, may be imprudent. Instead, the decision to open a draw during adverse weather conditions should rest with the drawtender and/or bridge owner in accordance with local emergency management procedures which have been approved by the cognizant Coast Guard Captain of the Port.

In addition, the decision was made to combine the amendment to open draws for vessels in an emergency situation as a part of the existing section 117.31 that allows for the closure of a draw for land vehicles responding to an emergency.

Regulatory Evaluation

This rulemaking is not major under Executive Order 12291 and

nonsignificant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. There will be no cost to the general public other than that associated with the inconvenience to vehicular traffic occasioned by an opening of the draw for an emergency.

This rulemaking establishes emergency operating regulations for the nation's drawbridges across its navigable waters. The authority to regulate concerning drawbridge operation is committed to the Coast Guard by Federal statutes. Furthermore, since the regulated drawbridges are located nationwide, operating regulations concerning emergency situations should be consistent to avoid unreasonably burdensome variances. Therefore, the Coast Guard intends this rule to preempt state action addressing the same subject matter.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rulemaking 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).

Because this final rule imposes no special expense on small business, and because the rule is expected to be infrequently used, the Coast Guard anticipates the economic impact of it to be minimal. No new equipment will be required. The delay to vehicular traffic will result in a minimal loss of time. The Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rulemaking contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under section 2.B.2. of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation because it is a Bridge Administration Program action involving the promulgation of operating requirements or procedures for drawbridges. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "ADDRESSES."

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.31 is revised to read as follows:

§ 117.31 Operation of draw for emergency situations.

(a) When a drawtender is informed by a reliable source that an emergency vehicle is due to cross the draw, the drawtender shall take all reasonable measures to have the draw closed at the time the emergency vehicle arrives at the bridge.

(b) When a drawtender receives notice, or a proper signal as provided in § 117.15 of this part, the drawtender shall take all reasonable measures to have the draw opened, regardless of the operating schedule of the draw, for passage of the following, provided this opening does not conflict with local emergency management procedures which have been approved by the cognizant Coast Guard Captain of the Port:

(1) Federal, State, and local government vessels used for public safety;

(2) vessels in distress where a delay would endanger life or property;

(3) commercial vessels engaged in rescue or emergency salvage operations; and

(4) vessels seeking shelter from severe weather.

Dated: December 28, 1992.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 92–31912 Filed 12–31–92; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[FRL–4550–9]

Standards of Performance for New Stationary Sources; National Emission Standards for Hazardous Air Pollutants Supplemental Delegation of Authority to the State of Georgia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: On April 3, 1991, the Georgia Department of Natural Resources of the State of Georgia requested delegation of authority for the implementation and enforcement of additional categories of the New Source Performance Standards (NSPS) and the National Emission Standards for Hazardous Air Pollutants (NESHAPS). EPA's review of the State of Georgia's laws, rules, and regulations showed them to be adequate for the implementation and enforcement of these Federal standards. EPA granted the delegation as requested.

EFFECTIVE DATES: The effective date of delegation of authority is June 18, 1992 for the Asbestos NESHAPS, and August 23, 1991, for the other subparts in this notice.

ADDRESSES: Copies of the request for delegation of authority and EPA's letter of delegation are available for public inspection during normal business hours at the following locations:

Region IV Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 205 Butler Street, Southeast, room 1162, East Tower, Atlanta, Georgia 30334

Effective immediately, all requests, applications, reports and other correspondence required pursuant to the newly delegated standards should not be submitted to the Region IV office, but should instead be submitted to the following address: Mr. Robert H. Collom, Chief, Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural

Resources, 205 Butler Street, SE., room 1162, East Tower, Atlanta, Georgia 30334.

FOR FURTHER INFORMATION CONTACT: Diane Altsman of the EPA Region IV Air Programs Branch at (404) 347-2864 and at the above EPA address.

SUPPLEMENTARY INFORMATION: Section 301, in conjunction with sections 110, 111(c)(1), and 112(d)(1) of the Clean Air Act as amended November 15, 1990, authorize the Administrator to delegate his authority to implement and enforce the standards set out in 40 CFR part 61, National Emission Standards for Hazardous Air Pollutants (NESHAPS), and to implement and enforce the standards set out in 40 CFR part 60, New Source Performance Standards (NSPS).

After a thorough review of the categories requested for delegation, the Regional Administrator determined that such delegation was appropriate for these source categories with the conditions set forth in the original delegation letter of May 3, 1976, and subsequent delegation letters of August 8, 1977, and June 17, 1985.

EPA, thereby, delegated its authority for 40 CFR part 60 and part 61 as follows:

40 CFR Part 60—New Categories for NSPS

Subpart BBB—Rubber Tire Manufacturing Industry, except § 60.543(c)(2)(ii)(B).
Subpart DDD—VOC Emissions From The Polymer Manufacturing Industry except § 60.562-2(c).
Subpart III—VOC Emissions From SOCMI Air Oxidation Unit Processes, except § 60.613(e).
Subpart KKK—Onshore Natural Gas Processing.
Subpart NNN—VOC Emissions From SOCMI Distillation Operations, except § 60.663(e).
Subpart QQQ—VOC Emissions From Petroleum Refinery Wastewater Systems.
Subpart SSS—Magnetic Tape Coating Facilities, except § 60.711(a)(16), § 60.713(b)(1)(i), § 60.713(b)(1)(ii), § 60.713(b)(5)(i), § 60.713(d), § 60.715(a) and § 60.716.
Subpart TTT—Plastic Parts For Business Machine Coating, except § 60.723(b)(1), § 60.723(b)(2)(i)(C), § 60.723(b)(2)(iv), § 60.724(e), § 60.725(b).
Subpart VVV—Polymeric Coating Of Supporting Substrates Facilities except § 60.743(a)(3)(v)(A) & (B), § 60.743(e), § 60.745(a) and § 60.746.

40 CFR Part 60—Revised Categories for NSPS

Subpart D—Fossil-Fuel Fired Steam Generators.
Subpart Da—Electric Utility Steam Generating Units.
Subpart E—Incinerators.
Subpart F—Portland Cement Plants.
Subpart G—Nitric Acid Plants.
Subpart H—Sulfuric Acid Plants.
Subpart I—Mix Asphalt Facilities.
Subpart L—Secondary Lead Smelters.
Subpart M—Secondary Brass and Bronze Ingot Production Plants.
Subpart N—Iron and Steel Plants.
Subpart Na—Secondary Emissions From Basic Oxygen Process Steel Facilities.
Subpart O—Sewage Treatment Plants, except § 60.153(e).
Subpart P—Primary Copper Smelters.
Subpart Q—Primary Zinc Smelters.
Subpart R—Primary Lead Smelters.
Subpart S—Primary Aluminum Reduction Plants.
Subpart T—Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants.
Subpart U—Phosphate Fertilizer Industry: Superphosphoric Acid Plants.
Subpart V—Phosphate Fertilizer Industry: Diammonium Phosphate Plants.
Subpart W—Phosphate Fertilizer Industry: Triple Superphosphate Plants.
Subpart X—Phosphate Fertilizer Industry: Granular Triple Superphosphate.
Subpart Y—Coal Preparation Plants.
Subpart Z—Ferroalloy Production Facilities.
Subpart AA—Steel Plants: Electric Arc Furnaces.
Subpart AAa—Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels.
Subpart BB—Kraft Pulp Mills.
Subpart CC—Glass Manufacturing Plants.
Subpart DD—Grain Elevators.
Subpart GG—Stationary Gas Turbines, except § 60.334(b)(2) and § 60.335(f)(1).
Subpart HH—Lime Manufacturing Plants.
Subpart KK—Lead-Acid Battery Manufacturing Plants.
Subpart LL—Metallic Mineral Processing Plants.
Subpart NN—Phosphate Rock Plants.
Subpart PP—Ammonium Sulfate Manufacture.
Subpart UU—Asphalt Processing and Asphalt Roofing Manufacture, except § 60.474(g).
Subpart VV—Equipment Leaks of VOC in SOCMI, except § 60.482-1(c)(2) and § 60.484.
Subpart XX—Bulk Gasoline Terminals, except § 60.502(e)(6).
Subpart LLL—Onshore Natural Gas Processing.
Subpart OOO—Nonmetallic Mineral Processing Plants.
Subpart PPP—Wool Fiberglass Insulation.

40 CFR Part 61—New Categories for NESHAP

Subpart L—Benzene Emissions From Coke By-Product Recovery Plants, except § 61.136(d).
Subpart Y—Benzene Emissions From Benzene Storage Vessels, except § 61.273.
Subpart BB—Benzene Emissions From Benzene Transfer Operations.

40 CFR Part 61—Revised Categories for NESHAP

Subpart FF—Benzene Waste Operations, except § 61.353.

The Administrator retains the exclusive right to approve equivalent and alternative test methods, continuous monitoring procedures, and reporting requirements. Therefore, the noted sections of the requested NSPS and NESHAPS standards are among the sections which may not be delegated.

The EPA hereby notifies the public that it has delegated the authority over certain NSPS and NESHAP subparts to the State of Georgia.

The Office of Management and Budget exempted this rule from the requirements of Section 3 of Executive Order 12291.

This notice is issued under the authority of sections 101, 110, 111, 112, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7410, 74121, 7412, and 7601).

Patrick M. Tobin,
Acting Regional Administrator.

[FR Doc. 92-31748 Filed 12-31-92; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 15

[CGD 89-061]

RIN 2115-AD38

Waiver of Crewmember Citizenship Requirements

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: In an interim final rule published on January 12, 1990, the Coast Guard amended the regulations concerning the use of non-U.S. citizens as licensed individuals and unlicensed seamen on U.S. documented vessels to provide a general waiver for offshore supply vessels (OSVs) operating out of foreign ports, and mobile offshore drilling units (MODUs) operating beyond the water above the U.S. Outer Continental Shelf. This action was necessary to allow these vessels to operate in areas subject to foreign jurisdiction where local citizenship requirements may apply and where recruitment of U.S. citizens may be impractical. The intent of this action was to allow these operations to be conducted without obligating the operators to request individual waivers for each situation in which a non-U.S.

citizen may be employed or engaged. This rule adopts the interim final rule without change.

EFFECTIVE DATE: This rule is effective on February 3, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Young, Project Manager, Office of Marine Safety, Security and Environmental Protection (G–MVP), telephone (202) 267–0229.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Christopher Young, Project Manager, Office of Marine Safety, Security and Environmental Protection, and Mr. Nicholas Grasselli, Project Counsel, Office of Chief Counsel.

Regulatory History

On January 12, 1990, the Coast Guard published an interim final rule entitled "Waiver of Crewmember Citizenship Requirements" in the **Federal Register** (55 FR 1210). The Coast Guard received 11 letters commenting on the interim final rule. A public hearing was not requested and one was not held.

Background and Purpose

The Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 (Public Law 100–239, as amended in Public Law 100–255) authorized the Secretary of Transportation to waive, except with respect to the master, the requirement that the licensed individuals and 75 percent of the total number of unlicensed seamen on board a U.S. documented vessel must be citizens of the United States (46 U.S.C. 8103(b)(3)). This authority has been delegated to the Coast Guard (49 CFR 1.46(b)).

In accordance with 46 U.S.C. 8103(b)(3), a waiver may be granted with respect to the following:

(a) An offshore supply vessel or other similarly engaged vessel of less than 1600 gross tons that operates from a foreign port;

(b) A mobile offshore drilling unit or other vessel engaged in support of exploration, exploitation, or production of offshore mineral energy resources operating beyond the water above the Outer Continental Shelf; and

(c) Any other vessel if the Secretary of Transportation (Coast Guard) determines, after an investigation, that qualified seamen who are citizens of the United States are not available.

This regulatory action establishes a waiver only with respect to offshore supply vessels (OSVs) that operate from a foreign port, and mobile offshore drilling units (MODUs) operating beyond the water above the U.S. Outer Continental Shelf (as defined in 43 U.S.C. 1331(a)).

An OSV is defined in 46 U.S.C. 2101(19) as "a motor vessel of more than 15 gross tons but less than 500 gross tons that regularly carries goods, supplies, or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources and is not a small passenger vessel."

A MODU is defined in 46 U.S.C. 2101(15a) as "a vessel capable of engaging in drilling operations for the exploration or exploitation of subsea resources."

Waivers from citizenship requirements with respect to other vessels, including vessels engaged in operations similar to those of OSVs or MODUs, are not within the scope of this rulemaking. Waivers for these vessels are considered by the Coast Guard only on an individual basis.

Discussion of Comments and Changes

The 11 comments received expressed a division of opinions based on a variety of concerns. In most cases, opposition to the rule was qualified by comments on the appropriate use of a general waiver, and support for the rule was qualified by comments on the limited scope of the waiver. Three comments expressed general opposition to any waiver which allows the employment of non-U.S. citizens on U.S. documented vessels. Four comments were opposed to the use of a general waiver procedure to exempt certain U.S. vessels from citizenship requirements. Three comments expressed support for the rule but wanted it broadened to include additional vessels. One comment expressed concern regarding the availability of radio officers but did not take any position which was relevant to the present rulemaking.

The views expressed in the 11 comments related to the following general issues: (1) The consistency of the rule with congressional intent; (2) the use of a general as opposed to an individual waiver process; (3) the scope of the general waiver; (4) the responsibility of the master to determine whether non-U.S. citizens are qualified for crewmember positions; (5) the effect of foreign law on a U.S. vessel while it is operating in water subject to foreign jurisdiction; and (6) the amendment of 46 CFR 15.720(a) to reflect a statutory revision allowing substitution of U.S. crewmembers by non-U.S. citizens on a U.S. vessel on a foreign voyage until the vessel's return to a port where a U.S. citizen can be obtained expeditiously. Each of these issues is discussed below.

1. Congressional Intent

The interim final rule was described as inconsistent with the intent of Congress by both those who supported and those who opposed the rule. Several comments quoted sections of the House Report relating to the statutory provision which authorizes this regulation. The relevant paragraph states as follows:

> The Committee recognized that the practice of employing a limited number of American citizens on offshore supply vessels and mobile offshore drilling units when operating in foreign territorial waters or on the high seas or beyond the waters above our Outer Continental Shelf would have to be continued. Therefore, the Secretary of the Department in which the Coast Guard is operating (currently Transportation) has been granted authority to waive the citizenship requirement in specific and limited cases. The existing authority of the Secretary to authorize a reduction in citizenship requirements after an investigation shows that this authority cannot be used under normal circumstances and should only be used when a cause and effect shortage is adequately investigated and documented. For example, a sudden mobilization effort in which sufficient citizen seamen are not available, such as occurred in the Korean and Vietnam conflicts, might call for a reduction in citizenship requirements documented after an adequate investigation. (House Report 100–423, pages 10 and 11).

One comment said "these sentences establish beyond doubt that the Congress did not intend this waiver authority to be used in a general or blanket manner or without a case-by-case investigation."

Another comment expressed the same view and said the report language indicated that waiver authority was only to be used "in specific and limited cases" and "clearly shows that Congress never intended to allow citizenship requirements to be waived in a general manner, without a case-by-case investigation."

In contrast to this view, a comment supporting the general waiver cited this report language and the wording of the statute to argue that the limited scope of the waiver was inconsistent with congressional intent. Instead, according to this view, Congress intended for the waiver to be granted not only to OSVs but also to "other similarly engaged vessels." Restricting the waiver to OSVs as defined in 46 U.S.C. 2101(19) excluded other, similarly engaged vessels of less than 1600 gross tons which, in this person's opinion, Congress intended to be covered by the waiver. The comment said the regulations were "too restrictive, do not carry out the intent of Congress, and do

not sufficiently address the needs of our [offshore oil and gas] industry."

Two other comments said the wording of 46 U.S.C. 8103(b)(3) itself expressed the "intent" to include "other similarly engaged vessels of less than 1600 gross tons" and "other vessels engaged in support of exploration, exploitation, or production of offshore mineral energy resources operating beyond the water above the Outer Continental Shelf" in the general waiver. One of the comments said "clearly, Congress intended for [these other vessels] to be treated the same as OSVs and MODUs."

The Coast Guard interprets the paragraph from the House Report quoted above as describing two separate and distinct situations. First, the Committee on Merchant Marine and Fisheries recognized that the practice of employing non-U.S. citizens on OSVs and MODUs when operating in foreign territorial waters or on the high seas or beyond the waters above the U.S. Outer Continental Shelf, needed to be continued. "Therefore" authority was granted to waive the citizenship requirement "in specific and limited cases." The Coast Guard understands 46 U.S.C. 8103(b)(3) (A) and (B) codify the specific and limited cases in which waivers are intended to be granted. The operational criteria in those subsections are very specific and limited. The fact that the waiver in the present rule applies to a class of vessel rather than a specific ship does not render the rule incompatible with the report language: the report does not state that each vessel must be considered for a waiver individually; it states that the cases must be specific and limited, as they indeed are when the statutory criteria are applied.

The Coast Guard understands the second situation described in the Committee's report to include all other cases, where it can be determined that qualified U.S. citizens are not available. Authority to issue a wavier in this situation existed in 46 U.S.C. 8103(b) prior to the enactment of the 1987 Anti-Reflagging Act and is "retained" according to the report language. This authority, according to the report, "cannot be used under normal circumstances and should only be used when a cause and effect shortage is adequately investigated and documented." An example—sudden mobilization during a military conflict—is provided in the report. There is no indication that the Committee intended for this condition to be met before a waiver could be issued with respect to OSVs and MODUs in the specific and limited cases described in the first portion of the paragraph.

The wording and structure of 46 U.S.C. 8103(b)(3) is entirely consistent with the Coast Guard's understanding of the language in the House Report. Waivers may be issued in two specific and limited cases: OSVs or other similarly engaged vessels of less than 1600 gross tons when operating from a foreign port (subsection (A)); and MODUs or other vessels engaged in support of exploration, exploitation, or production of offshore mineral energy resources when operating beyond the water above the U.S. Outer Continental Shelf (Subsection (B)). Waivers may also be issued in a third category: "any other vessel" if the Coast Guard determines, after an investigation, that qualified seamen who are citizens of the United States are not available.

Therefore, it is the Coast Guard's view that Congress intended for waivers to be considered under three separate criteria, and the provisions of 46 U.S.C. 8103(b)(3) do not preclude the use of a general waiver when it is applied to the specific and limited cases described in 46 U.S.C. 8103(b)(3) (A) and (B).

2. Use of General Waiver Process

Three comments expressed opposition to granting any waiver of citizenship requirements to U.S. documented vessels, on the basis that this discouraged the employment of U.S. citizens or denied U.S. citizens certain career opportunities.

The Coast Guard must respect the statutory provisions which authorize waivers of citizenship requirements. As House Report 100–423 states: "the Committee recognized that the practice of employing a limited number of American citizens" on certain OSVs and MODUs "would have to be continued." The statutory provisions are very clear as to the criteria to be applied in granting waivers to these vessels. An individual request to waive a citizenship requirement for an OSV or MODU that met the operational conditions stated in 46 U.S.C. 8103(b)(3)(A) or (B) would automatically be granted a waiver request as long as there was no reason to doubt the vessel was actually operating from a foreign port or beyond the water above the U.S. Outer Continental Shelf. Therefore, the exercise of waiver authority in these conditions is considered to be strictly in accordance with the statutory provisions.

Three comments expressed opposition to the use of a general waiver procedure and believed a waiver should be issued only on a case-by-case basis. Representative of this view was one letter which said treating waivers "in an unlimited, general sense of whole classes of vessels without specific justification" would set a "bad precedent" and would lead to an expansion of general waivers "to other kinds of vessels, even, eventually, the entire U.S. flag fleet."

As explained above, the Coast Guard is convinced that Congress allowed for a general waiver process in 46 U.S.C. 8103(b)(3). The primary argument in favor of a general waiver for certain OSVs and MODUs was presented in the preamble to the interim final rule, as follows: "The Coast Guard is of the view that the operational conditions established in the Act for OSVs and MODUs are sufficiently clear that there is no need for a case-by-case evaluation of applications for waivers for vessels which meet these conditions." In other words, the criteria stated in 46 U.S.C. 8103(b)(3)(A) and (B) are specific and objective and can be described unambiguously for application of a general waiver to a limited class of vessels. Each vessel operator knows for certain whether or not non-U.S. citizens can be employed on a particular vessel under the general waiver, and approval does not require an exercise of agency discretion on a case-by-case basis.

In the view of one comment, this general waiver will set a precedent which will be broadened to include other classes of vessels in the future. The Coast Guard finds that a general waiver is only appropriate to the extent that specific and limited circumstances exist which justify this process. There are currently no plans to expand the general waiver procedure to any classes of vessel other than those identified in the present rule.

The Coast Guard does not agree with the view of one comment which asserted that a waiver should only be used when a shortage of qualified U.S. citizens is adequately investigated and documented. This is a separate statutory test which applies under 46 U.S.C. 8103(b)(3)(C) to vessels other than the OSV's and MODU's described in 46 U.S.C. 8103(b)(3) (A) and (B).

3. Scope of the General Waiver

Three comments expressed support for the general waiver but argued that it was too narrow and should be broadened to include vessels other than OSV's and MODUs which are engaged in similar activities, as provided in 46 U.S.C. 8103(b)(3) (A) and (B). These comments argued that Congress clearly intended for these vessels to be covered by the waiver. One comment said such a narrow waiver was "unfair" to

operators of the other similarly-engaged vessels which are faced with the same difficulties when operating under foreign jurisdiction.

In drafting the general waiver in this rule, the Coast Guard has selected the elements of 46 U.S.C. 8103(b)(3) which are clear and unambiguous and require no exercise of agency discretion to determine whether a particular vessel is operating under the conditions for which citizenship requirements are waived. This is entirely consistent with the congressional intent to apply the waiver in specific and limited cases. The terminology used in 46 U.S.C. 8103(b)(3) with respect to these "other vessels" is not as precise and unambiguous as the terms used with respect to OSVs and MODU's. In particular, the phrase "other similarly engaged vessel" in 46 U.S.C. 8103(b)(3)(A) is not as objective as the statutorily defined "offshore supply vessel"; and the phrase "other vessel engaged in support of exploration, exploitation, or production of offshore mineral energy resources" is not as precise as the statutorily defined term "Mobile Offshore Drilling Unit."

The use of a general waiver for OSVs and MODUs does not preclude the issuance of an individual waiver to any other vessel which is determined by the Coast Guard to meet the criteria described in 46 U.S.C. 8103(b)(3) (A) and (B). However, the Coast Guard has not had any requests for waivers for these vessels; and, until further information becomes available about the precise operational circumstances of these "other" vessels which could be used in drafting a specific and limited waiver, the Coast Guard will evaluate any such waiver requests only on a case-by-case basis.

4. Responsibility of the Master to Determine Equivalent Qualifications

One comment expressed concern that the Coast Guard was in effect delegating Coast Guard authority to vessel masters by requiring the master, under 46 CFR 15.720(d), to assure that any non-U.S. citizen replacement holds "a license or document which is equivalent in experience, training, and other qualifications to the U.S. license or document required for the position * * *." In the opinion of this comment, the responsibility for determining who is qualified should be performed by the Coast Guard on a case-by-case basis, and it is unreasonable, in the absence of a "world wide guide of equivalencies," to expect a master to determine that a foreign seaman is qualified to be engaged in a position on a U.S. ship.

As a note, 46 CFR 15.720(d) is only a renumbered and editorially revised version of an existing provision. This provision was first promulgated as an interim final rule in 1987 (52 FR 38654, October 16, 1987) after it had been proposed in a supplemental notice of proposed rulemaking (SNPRM) as part of a revision of the manning regulations previously contained in 46 CFR part 157 (50 FR 43363, October 24, 1985). There were no comments submitted on this provision at that time.

Section 15.720(d) should be understood not to delegate authority but to assign a responsibility to the master. The Coast Guard's authority to certify that an individual meets certain qualifications and to issue that individual a license or document has not been delegated. The master is required to ensure that non-U.S. citizen replacements have documentary evidence to indicate they are qualified to act in a certain capacity on the vessel (i.e., that their experience, training and other qualifications are equivalent to those required for a comparable U.S. license or document). The master's judgment is not used as a substitute for Coast Guard determinations of qualification or as the basis for certification of competence for any level of ability except for performing duties in a specific position on a specific vessel.

5. The Effect of Foreign Law on a U.S. Vessel While It Is Operating in Water Subject to Foreign Jurisdiction

Two different concerns were expressed by two comments on the influence of foreign law on a policy of waiving citizenship on U.S. ships which operate on waters subject to foreign jurisdiction. One comment said it was inappropriate for the Coast Guard to promulgate the waiver rule on the basis that U.S. vessels must operate in areas subject to foreign jurisdiction where local citizenship laws may apply, since under international law principles, the flag State of a ship has exclusive jurisdiction over shipboard matters relating to the internal order and economy of the vessel.

The Coast Guard is not convinced that the comment has identified a conflict between the waiver rule and international principles of flag State jurisdiction. The Coast Guard is convinced that these matters were taken into account when the statutory provision allowing for waivers was enacted by Congress. A foreign citizen who is engaged or employed on a U.S. flag ship in accordance with this general waiver should be subject to U.S. jurisdiction to the same extent as a foreign citizen employed, for example, to fill a vacancy in accordance with 46 U.S.C. 8103(e). The fact that a foreign country requires, as the point was expressed by another comment, employment of "indigenous crews as a condition of resource development" in their offshore areas, does not in itself alter the scope of flag State jurisdiction over shipboard matters.

Another comment expressed concern about the aspect of the general waiver, stating there were a number of "legal questions" which should be "thoroughly investigated" by the U.S. Coast Guard, such as "what disciplinary action will be available to the Masters aboard U.S.-flag OSVs and MODUs with foreign crews" and "can the U.S. Coast Guard prosecute non-U.S. citizens engaged in waters subject to foreign jurisdiction aboard U.S.-documented vessels?" While the Coast Guard agrees that there may be complicated legal issues in recruiting foreign citizens to work on a U.S. vessel which is operating in waters subject to the jurisdiction of a foreign country and subject to conditions imposed by that country, these questions are not unique to this rulemaking. Furthermore, in the absence of any specific factual scenario, any attempt to address these complicated questions would be vague and possibly misleading. In the most general terms, the Coast Guard is of the view that the master and crew on a U.S. documented vessel are subject to the full application of U.S. laws and regulations and any agreements which the U.S. has entered with countries which have jurisdiction over waters where that vessel is operating.

6. Revision of 46 CFR 15.720(a) to Reflect Statutory Change

The 1987 Anti-Reflagging Act revised 46 U.S.C. 8103(e) by allowing the recruitment of a non-U.S. citizen to fill the vacancy on a U.S. documented vessel on a foreign voyage only "until the vessel's return to a port at which in the most expeditious manner a replacement who is a citizen of the United States can be obtained." The previous version of 46 U.S.C. 8103(e) allowed the substitution by a non-U.S. crewmember "until the vessel's first return to a United States port at which a replacement who is a citizen of the United States can be obtained." The revision also allows the substitution with respect to every position "except the master and the radio officer" (whereas the prior language excepted only the master). Since the amendments bring the regulation in line with the current statutory language, the revision of 46 CFR 15.720 is considered editorial in nature. Two comments expressed

specific support for these changes in the rules.

Regulatory Evaluation

This rule is not major under the Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that further regulatory evaluation is unnecessary. In effect this rule is permitting vessels to continue to operate according to current industry practice.

Small Entities

Because this rule is essentially procedural and will permit the affected vessels to operate according to current, longstanding industry practice, the economic impact of this action is expected to be minimal. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the action does not have sufficient federalism implications to warrant the preparation of a Federalism assessment. This final rule provides a general waiver for offshore supply vessels (OSVs) operating out of foreign ports, and mobile offshore drilling units (MODUs) operating beyond the water above the U.S. Outer Continental Shelf to use non-U.S. citizens as licensed individuals and unlicensed seamen on U.S. documented vessels. This action was necessary to allow these vessels to operate in areas subject to foreign jurisdiction where local citizenship requirements may apply and where recruitment of U.S. citizens may be impractical. Since this rule affects the manning of these specific vessels outside of State waters, the Coast Guard intends to preempt State action addressing the same subject matter. This rule adopts the interim final rule without change.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. The rule is procedural in nature and permits the affected vessels to continue to operate according to current industry practice. Therefore, this is included in the categorical exclusion in subsection 2.B.2.1, "Administrative actions or procedural regulations and policies which clearly do not have any environmental impact." A Categorical Exclusion Determination has been placed in the docket.

List of Subjects in 46 CFR Part 15

Reporting and recordkeeping requirements, Seamen, Vessels.

In consideration of the foregoing, the interim rule amending 46 CFR part 15 which was published at 55 FR 1210 on January 12, 1990, is adopted as a final rule without change.

By direction of the Commandant.

Dated: October 30, 1992.

R.C. North,

Captain, U.S. Coast Guard, Deputy Chief, Office of Marine Safety, Security and Environmental Protection.

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FEDERAL MARITIME COMMISSION

46 CFR Part 514

[Docket No. 90-23]

Tariffs and Service Contracts; First Interim ATFI Amendments

AGENCY: Federal Maritime Commission.

ACTION: Interim rule.

SUMMARY: In order to implement the Federal Maritime Commission's ("Commission's" or "FMC's") Automated Tariff Filing and Information System, the Commission issued an interim rule on August 12, 1992. Several comments were filed to the interim rule, and these amendments address those comments. Additionally, Part 514's filing requirement for military rates (tenders) is noted as being the subject of a separate rulemaking proceeding.

DATES: Amendments are effective on February 3, 1993. Further written comments in response to this notice may be submitted by April 30, 1993, and again, by September 30, 1993.

ADDRESSES: Written comments (original and 15 copies) should be sent to Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573-0001.

FOR FURTHER INFORMATION CONTACT: John Robert Ewers, Deputy Managing Director, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573-0001, (202) 523-5800.

SUPPLEMENTARY INFORMATION: On August 12, 1992, the Federal Maritime Commission ("Commission" or "FMC") issued an interim rule to implement the Commission's Automated Tariff Filing and Information System ("ATFI" or "the system"). See the **Federal Register** of August 12, 1992, at 57 FR 36248-36311.[1] While the interim regulations were scheduled to go into effect by September 11, 1992, further comments were invited to be filed by September 30, 1992, especially on the format for filing the essential terms of service contracts under § 514.17.

Comments were submitted by:

Conferences: Asia North America Eastbound Rate Agreement (ANERA), jointly with the "8900" Lines, U.S. Atlantic & Gulf/Australia-New Zealand Conference, the South Europe/USA Freight Conference, and Transpacific Westbound Rate Agreement (TWRA),—the "Joint Conferences," and the Trans-Pacific Freight Conference of Japan and the Japan-Atlantic and Gulf Freight Conference ("TPFCJ/JAG");

Carriers: Farrell Lines, Inc. ("Farrell"), Sea-Land Service, Inc. ("Sea-Land"), and Zim-American Israeli Shipping Co., Inc. ("Zim");

Tariff Services: Pacific Coast Tariff Bureau ("PCTB"), and Rijnhaave Information Service, Inc. and World Tariff Services, Inc., a Rijnhaave Group Company ("Rijnhaave");

Others: Military Sealift Command ("MSC") within the Department of the Navy.

Several commenters suggested a "user-group" approach to technical problems (with periodic meetings). The Commission believes that, if the industry is interested in participating in a user group, it should take the

[1] Since the issuance of the interim rule on August 12, 1992, part 514 also has been amended in connection with other regulatory initiatives. See, for example, final rules in the **Federal Register** of September 28, 1992 (57 FR 44504); September 29, 1992 (57 FR 44697); and October 8, 1992 (57 FR 46318), which provide for, respectively, the reduction of notice for certain rate increases in the domestic offshore trades to 7 working days; relaxation of the requirements for filing of financial documents by non-vessel-operating common carriers in the domestic offshore trades; and the amendment of service contracts. The ATFI implementation schedule, as well as proposed amendments to part 514 to implement section 502 of Public Law 102-582, are being addressed separately.

appropriate steps to form such an entity without direct FMC involvement, other than, perhaps, an occasional invitation to address the group.

Section-by-Section Analysis

The following addresses other comments received and the resulting changes in Part 514, if any, in a sequence which tracks the affected sections of Part 514.

514.2—Definitions

As suggested by the Joint Conferences, the definition of "Alternate Port Service" is revised. As requested by Rijnhaave, the definitions of "Combination rate" and "Commodity description" are revised, and a new definition (cross reference) of "Intermodal service" is added. All suggested changes are improvements, leading to more accurate definitions and concepts within ATFI.

514.3—Exemptions and Exclusions

With regard to transportation in foreign commerce of U.S. Department of Defense cargo under terms and conditions negotiated and approved by MSC (see §§ 514.3(b)(4) and 514.9(b)(13)), MSC suggests that the rule delete the term, "American-flag" so that the continuing special permission (and electronic implementation thereof) applies to all common carriers, both U.S.- and foreign-flag. Farrell and Sea-Land propose that the rule be changed to eliminate ATFI filing and require only hard copy filing as at present. (See also discontinued Docket No. 92–25, *Regulation of Military Rates Under the Shipping Act of 1984.*)

Both suggestions are broader than the provisions of part 514, either as proposed or finalized. Accordingly, the filing of military tenders, including the above-described comments, will be addressed in a separate proceeding.

514.7—Tariffs and Service Contracts

Under § 514.7(k), where a service contract (and/or essential terms) has been allowed (directed) to be corrected, a me-too shipper can elect to continue with or without the changed essential term(s). This also would apply to amendments of service contracts and essential terms, now permitted under a rule promulgated in Docket No. 92–21. While ATFI would show the previous version of the essential terms (in history), it would not show that one or more shippers has elected to continue with the previous version unless the filer is required to enter this information (with, perhaps, a special ATFI field in which to put it). Rijnhaave urges the "filing of such data to keep ATFI as viable a system as possible to meet all contingency essential term applications." This information, while it could be helpful in administering me-too provisions, would be more than just the filing of essential terms and is, therefore, outside the scope of the proposed rule.

In paragraphs (f)(4), (l)(1) and (l)(2) of § 514.7, several cross reference citations to paragraphs in § 514.17 are revised to reflect the changes described in the analysis for that section.

Paragraphs (f)(3) and (h)(1)(iii) of § 514.7 are amended to require the insertion in a service contract of the "FMC File Number," which is generated by the system when essential terms are electronically filed and made available to the filer by electronic mail. See new § 514.17(d). This number facilitates FMC linkage of the electronically-filed essential terms and the later, physically-delivered-in-paper-form service contract itself. Paragraph (f)(3) also requires that filers of any service contract indicate in their transmittal that it is a "me-too" contract, if that is the case. Many filers do this at present.

514.8—Electronic Filing

The notice issue, including the interim rule becoming effective on 30-days (rather than 90-days) notice (similar to what originally appeared to be the notice period for implementation after the release of recent software upgrades), was raised by a commenter. The Commission will continue to give the industry as much notice as possible in order that they can be ready for implementation. The 30-day notice for the interim rule, for example, conforms to the guidelines set forth in the Administrative Procedure Act (5 U.S.C. 551, *et seq.*). However, because implementation under the interim rule will now not begin until at least 6 months after it was published, notice should be more than adequate.

Several commenters have raised technical, non-rulemaking issues, which either have been or will be addressed.

In § 514.8, paragraph (n)(1)(iii)(G) is revised to indicate that the system conformity checks will ensure that there is a 30-day availability date for both initial service contracts, as well as amendments thereto.

514.10—Other Items Used Throughout ATFI

As pointed out by the commenters, freight forwarder compensation is not an assessorial, and, therefore, is being deleted, as an example of an assessorial from paragraph (d)(1)(i)(B) of § 514.10.

Paragraph (d)(1)(ii) of § 514.10 provides that, when there may be a conflict between the text description and the algorithm formula of an assessorial, the algorithm shall take precedence. The Joint Conferences and TPFCJ/JAG request that the procedure should be reversed, i.e., the text should take precedence over algorithms.[2] Alternatively, TPFCJ/JAG argues that the provision should be suspended for 12 to 18 months. It is possible that paragraph (d)(1)(ii) has been confused with the "bottom-line calculation" provision, but the bottom-line total is not intended to be "official" because of (*inter alia*) non-predeterminable charges and operator discretion used in its calculation. See §§ 514.10(d) and 514.13(c). Otherwise, the commenters appear to be addressing the extent to which, if any, an assessorial can be expressed in mathematical terms (algorithm), *vis-a-vis* purely textual description. (The latter would seem to be more susceptible to error or ambiguity in the majority of cases.) In any event, the Commission has determined to make no changes to paragraph (d)(1)(ii). Any other approach would unduly dilute the importance of algorithms and the industry's duty to ensure clarity and unambiguity in tariff data.

514.12—Governing and General Reference Tariffs

As discussed below, the essential terms of service contracts will be filed substantially in "full-text" format, without the capability (requirement) of "linking" various tariff objects between types of tariffs, including the essential terms of service contracts. For these reasons, essential terms publications and tariffs of general applicability are deleted as types of "Governing tariffs (filed electronically)" under paragraph (a) of § 514.12, but are included as special types of governing tariffs under new paragraph (c) of that section.

514.15—Tarriff Rules

The requirement in paragaph (b)(1)(iii)(A) of § 514.15 that a carrier state its liability to a shipper for each type of intermodal movement has been deleted as requested by the commenters. Additionally, paragraph (b)(2)(i) is amended to delete the reference to "inland rate tables."

514.17—Essential Terms of Service Contracts

ANERA continues to request that ETs be completely exempted from electronic filing. Alternatively, ANERA suggests

[2] The reverse approach, i.e., making the text version govern in case of conflict, would appear to be outside the scope of the proposed rule in any event.

filing in "full text." TPFCJ also suggested this option. On the other hand, Rijnhaave stated that ETs fit the ATFI model and should be in database format, but it admitted that it would take several more rounds of comments to achieve that result. Zim suggested that because it is complicated to convert ETs to electronic format, the Commission should accept the service contract itself, with the converted ETs to follow four or five days later (the reverse of the current ATFI scheme).

In view of the difficulties in converting ETs to electronic form, the Commission has decided to adopt the full-text approach in these interim amendments, without prejudice to revisiting the database approach in the future.

While the rule change relaxes the electronic formatting of essential terms in order to facilitate filing into ATFI, certain standardization will be retained/required. Certain routine data will continue to be filed in data-element format, e.g., all relevant types of dates and identifying numbers. Location names will continue to be validated against the ATFI Locations Database, although full-text clarification may be given in "subterms." Additionally, the subjects of ten mandatory terms must be addressed for every essential term document by use of standardized numbering and titles. (If a term does not apply, such as the clause for liquidated damages or for later events causing deviation, the filer must use the number and title, but with the notation "NA.") A new mandatory term for "assessorials" is added, wherein the filer, in full text, sets forth all ET assessorials, either fully, or by cross-references to the places where the assessorial may be found. Preferably, a separate subterm will be used for each type of assessorial.

In addition to a new screen illustration, the interim amendments to § 514.17(d) provide for amendment numbers and symbols to accommodate the new regulations allowing amendment of service contracts, and an FMC File Number, generated by the system, which will facilitate FMC linkage of an essential terms to its associated service contract. See the analysis under § 514.7.

The Commission believes that the foregoing reflects a good compromise and should facilitate the first-time formatting and electronic filing of essential terms into the ATFI system.

514.21—User Charges

Section 514.21 is amended by the addition of routine billing and payment information, i.e., how and where payment for ATFI services may be made, and penalties for non-payment, which conform to penalties for non-payment for other services provided by the Commission and/or the U.S. Government.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it nonetheless has reviewed these amendments to 46 CFR part 514 in terms of this Order and has determined that they do not result in a "major rule," as defined in Executive Order 12291, because they will not result in:

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

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

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

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(n), that the interim amendments to 46 CFR part 514 will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions. Instead, most of the amendments result from the comments of the affected industry and, if anything, they will significantly reduce or inhibit any adverse economic impact on small entities.

The collection of information requirements contained in 46 CFR part 514 and Exhibit 1 to part 514 have been approved by the Office of Management and Budget (OMB) in accordance with 44 U.S.C. chapter 35 and have been assigned OMB control number 3072-0055. The amendments to part 514 contained in this rulemaking contain no significant, additional information collection requirements.

List of Subjects in 46 CFR Part 514

Barges, Cargo, Cargo vessels, Exports, Fees and user charges, Freight, Harbors, Imports, Maritime carriers, Motor carriers, Ports, Rates and fares, Reporting and recordkeeping requirements, Surety bonds, Trucks, Water carriers, Waterfront facilities, Water transportation.

Therefore, for the reasons set forth in the preamble, and pursuant to 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1712, 1714–1716, 1718, 1721 and 1722; and section 2(b) of Public Law 101–92; part 514 of title 46, Code of Federal Regulations, is amended as follows:

PART 514—TARIFFS AND SERVICE CONTRACTS

1. The authority citation for part 514 continues to read as follows:

Authority: 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1712, 1714–1716, 1718, 1721 and 1722; and sec. 2(b) of Pub. L. 101–92, 103 Stat. 601.

2. In § 514.2, the alphabetically listed definitions of "Alternate port service," "Combination rate," and "Commodity description" are revised, and, in alphabetical order, the definition of "Intermodal service," is added, to read as follows:

§ 514.2 Definitions.

* * * * *

Alternate port service means substituted service whereby the vessel-operating common carrier for whom the tariff object is filed uses someone else to perform the transportation between the point at which the cargo was tendered by the shipper and the port at which the cargo is actually loaded on the filing carrier's vessel, or between the port at which the cargo is discharged from the filing carrier's vessel and the point at which the cargo is to be tendered to the consignee.

* * * * *

Combination rate means a rate for a shipment moving under intermodal transportation which is computed by the addition of a TLI, and an inland rate(s) applicable from/to inland point(s) not covered by said TLI.

* * * * *

Commodity description means a comprehensive description of a commodity listed in a tariff, including a brief definition of the commodity, any applicable assessorial, related assessorial charges if any, and the commodity index entries by which the commodity is referenced.

* * * * *

Intermodal service. See "intermodal transportation."

* * * * *

3. In § 514.7, in paragraphs (f)(4), (l)(1) and (l)(2), change the cross reference citations "§ 514.17(d)(8)(v)" and "§ 514.17(d)(8)(vi)" to "§ 514.17(d)(7)(vii)" and "§ 514.17(d)(7)(viii)," respectively. Also in § 517.7, paragraphs (f)(3) and (h)(1)(iii) are revised to read as follows:

§ 514.7 Service contracts in foreign commerce.

* * * * *

(f) * * *

(3) *Filing of me-too contracts.* The service contract resulting from a request under this section may be implemented as described in paragraph (j)(3) of this section, and no additional statement of essential terms need be filed. The letter transmitting the service contract itself for filing, however, shall indicate that it is a "me-too" contract and reference the essential terms FMC File Number. See § 514 17(d)(4)(i).

* * * * *

(h) * * *

(1) * * *

(iii) A reference to the statement of essential terms numbers, as follows:

(A) "ET Number _____" as provided in § 514.17(d)(2)(i); and,

(B) "FMC File Number_____" as provided in § 514.17(d)(4)(i).

* * * * *

4. In § 514.8, paragraphs (d)(3) introductory text, and (n)(1)(iii)(G) are revised to read as follows:

§ 514.8 Electronic filing.

* * * * *

(d) * * *

(3) *"Batch Filing Guide."* The ATFI "Batch Filing Guide" is published and updated in Pike and Fischer, "Shipping Regulation," SR 329:501, and a copy of the Guide is available from BTCL. The "Batch Filing Guide" includes the following items:

* * * * *

(n) * * *

(1) * * *

(iii) * * *

(G) *Essential terms* (§ 514.17) must have:

(*1*) All mandatory terms (§ 514.17(d)).

(*2*) Availability date for initial service contracts and each amendment thereto at least 30 days greater than the filing date (§ 514.17(d)(3)).

* * * * *

5. In § 514.9, paragraph (a)(5) is revised to read as follows:

§ 514.9 Filing/Amendment codes and required notice periods.

(a) * * *

(5) *Essential terms and terminal tariffs.* Due to the absence of most of the notice requirements otherwise applicable to carrier or conference tariffs, the use of symbols under this section for terminal tariffs will be appropriate for the tariff objects employed and filing/maintenance. Symbols for essential terms of service contracts under § 514.17 will usually be "I" for initial filings, "S" for corrections, and the appropriate symbols for amendments to essential terms. See § 514.17(d)(5)(i).

* * * * *

6. In § 514.10, paragraph (d)(1)(i)(B) is removed and paragraphs (d)(1)(i) (C), (D), and (E), are redesignated (d)(1)(i) (B), (C), and (D), respectively; also, in § 514.10, paragraph (d)(1)(iii) is revised to read as follows:

§ 514.10 Other items used throughout ATFI.

* * * * *

(d) * * *

(1) * * *

(iii) *Predeterminable charges.* Assessorial charges which can be determined prior to shipment shall be expressed in algorithm form and may be contained in Tariff Rules of tariffs under § 514.15, as well as in commodity descriptions and TLIs of tariffs under § 514.13. Algorithms, including dummy algorithms under paragraph (d)(1)(iv) of this section, are not accommodated in essential terms publications or statements of essential terms under § 514.17.

7. In § 514.12, paragraphs (a)(1)(v) and (a)(1)(vi) are removed; and a new paragraph (c) is added, to read as follows:

§ 514.12 Governing and general reference tariffs.

* * * * *

(c) *Essential terms of service contracts.* To the extent possible under the special full-text format for electronic filing of the essential terms of service contracts under § 514.17, the following types of governing tariffs are permissible:

(1) Essential terms publications under § 514.17(b) (solely for essential terms documents); and

(2) Tariffs of general applicability under § 514.17(b)(2) (solely for essential terms publications).

8. In § 514.15, paragraphs (b)(1)(iii)(A) and (b)(2)(i) are revised to read as follows:

§ 514.15 Tariff Rules.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(A) Tariff Rule 1 shall describe the modes of intermodal service provided (e.g., rail, truck, etc.).

* * * * *

(2) * * *

(i) All services provided to the shipper and covered by the TLIs, including the rate bases set forth in §§ 514.13(b)(17)(ii) and (b)(17)(iv)(A); and

* * * * *

9. In § 514.17, paragraphs (a)(1) and (d) are revised to read as follows:

§ 514.17 Essential terms of service contracts in foreign commerce.

(a) *General.* (1) A concise statement of the essential terms (ETs) of every initial service contract (which is filed in paper form under § 514.7) and appropriate amendments to ETs resulting from any amendment of the filed service contract, shall be filed with the Commission by authorized persons (see § 514.4(d)(5)) and made available to the general public in electronic tariff format. Unlike most other tariff data, ETs shall be filed largely in full text, with a minimum of database formatting (but with certain other standardization), as set forth in this section. Additionally, ETs are not subject to the algorithm or linkage requirements of § 514.10(d). Filing and maintenance of ETs are accomplished through an electronic essential terms publication (ETP) for each carrier or conference filer, which contains ETs for each of the carrier's or conference's service contracts.

* * * * *

(d) *Essential terms; specific requirements*—(1) *ATFI sample screen illustration.* The following ATFI simulated screen illustrates the elements required to be contained in essential terms filings and how they may appear in the ATFI system. The references in brackets in each line are to the subparagraphs of this paragraph which explain the requirements for the fields and the data contained therein. See paragraph (b)(1) of this section for provisions regarding the essential terms publication. On the screen, data above the double line, i.e., down through "Contract Termination," shall be entered in database format in the special fields provided; data beginning with Mandatory Term No. 3 ("Commodities") shall be entered in "full-text" format without the application of algorithms under § 514.10(d). However, the mandatory ETs (Nos. 1 to 10) shall bear the appropriate term number and exact mandatory term title, as set forth in this paragraph (and the screen). If the mandatory term does not apply (e.g., No. 7 or No. 8), the filer shall also enter the symbol "NA."

[§ 514.17(d)(1)] ATFI ESSENTIAL TERMS SEARCH

	JKL Line Essential Terms Publication (XYZ 004)	[1]
ET Num: 681	Personal Computers from Taiwan	[2]
SC Num: 765	Amendment Num: 3—Available until: 31 Jan 1992	[3]
FMC File Num: 123456	Contract Effective: 01 Dec 1992	[4]
Amendment Type: C	Special Case: 123456—Contract Expiration: 15 Jan 1993	[5]
Filing Date: 01 Jan 1992	Contract Termination: 15 Jan 1993	[6]

Term	(Amend)	List of essential terms titles	[7]
1	(0)	Origin	[i]
2	(0)	Destination	[ii]
3	(0)	Commodities	[iii]
4	(1)	Minimum Quantity	[iv]
4	A(0)	Minimum Quantity in 20ft containers	[A]
4	B(3)	Minimum Quantity in 40ft containers	[B]
5	(0)	Service Commitments	[v]
6	(0)	Contract Rates or Rate Schedules(s)	[vi]
7	(2)	Liquidated Damages for Non-Performance (if any)	[vii]
8	(0)	Later Events Causing Deviation From ET (if any)	[viii]
9	(0)	Duration of the Contract (e.g., "46 days from 01 Dec. 1992 to 15 Jan. 1993")	[ix]
10	(0)	Assessorials	[x]
100	(0)	(Title and text—Optional)	[8]
101	(0)	(Title and text—Optional)	[8]
[999 zzz	(999)	Maximum term and amendment values]	

(2)(i) *ET Num (statement of essential terms number).* The "ET Num" is defined by the filer and shall be entered in the appropriate field. See § 514.7(h).

(ii) *ET Heading.* The filer's title of the ET document (e.g., "Personal Computers from Taiwan") is entered here and will appear in the ETP index to the included ETs.

(3)(i) *SC NUM (service contract number).* The "SC Num" is defined by the filer and shall be entered in the appropriate field. See § 514.7(h).

(ii) *Amendment Num.* Where feasible, ETs should be amended by amending only the affected specific term(s) or subterms, mandatory or optional. Each time any part of an ET is amended, the filer shall assign a consecutive ET amendment number (up to three digits), beginning with the number "1." (The amendment number field must be "0" or void for the initial ET filing.) Each time any part of the ET is amended, the ET "Filing Date" will be the date of filing of the amendment and the "Available Until Date" will be 30 days from the filing date, but the filer can enter a later date, making the availability period longer. See correction provisions under § 514.7(k) and paragraph (d)(5)(ii) of this section.

(iii) *Available until.* The period of availability of the essential terms to similarly situated shippers shall be no less than thirty (30) days, i.e., from the "Filing Date" (paragraph (d)(6)(i) of this section and § 514.10(a)(2)) of the initial filing or the latest amendment, to the "Available until" date (automatically defaulted to 30 days from the Filing Date by the interactive ATFI system, but the filer can enter a later date, making the availability period longer).

(4)(i) *FMC File Num.* The FMC File Numbers will be system assigned as initial ET filings are received/processed. The FMC File Numbers will be assigned sequentially and will start at a number designated by FMC at production start. The FMC File Number will be provided to filers in the acknowledge message (EMail) for filings so that they can put the number in the related service contract when it is filed in paper form. See § 514.7(h)(1)(iii)(B). This procedure will facilitate FMC linkage of the ET to its related service contract.

(ii) *Contract effective.* In addition to the period of availability of essential terms to similarly situated shippers, the service contract itself must have an effective date and an expiration date (see paragraph (d)(5)(iii) of this section and §§ 514.10 (a)(3) and (a)(4)), governing the duration of the contract between the original signatory parties. The duration must also be set forth in mandatory essential term No. 9, where the duration of the contract shall be stated as a specific fixed time period, with a beginning date (effective date) and an ending date (expiration date).

(5)(i) *Amendment type.* All ATFI amendment codes under § 514.9, except "G" and "S" (§§ 514.9(b)(7) and 514.9(b)(19)), may be used in any combination, with up to three amendment codes for amendments to ETs. No notice period is required for amendments to ETs, except that amendments to ETs require a new "Available until" date, which must be at least 30 days from the filing date. For the amendment code "S," see paragraph (d)(5)(ii) of this section.

(ii) *Special Case symbol and number.* The "S" amendment code (for special case under § 514.9(b)(19)(iii)) must be used singly, and in conjunction with a validated special case number for corrections to ETs. See correction provisions under § 514.7(k).

(iii) *Contract expiration.* See paragraph (d)(4)(ii) of this section.

(6)(i) *Filing date.* The filing date is automatically set by the system whenever an ET or amendment thereto is filed. See "Available until" in paragraph (d)(3)(iii) of this section.

(ii) *Contract termination date.* A statement of essential terms may not be canceled until after all of its associated service contracts, including any renewal or extension, have expired under the terms of the contract, or have been terminated for reasons not specifically set forth in the contract. See §§ 514.4(e)(2) and 514.7(l)(1)(ii). The contract termination date would, therefore, be the same as the contract expiration date under paragraph (d)(5)(iii) of this section, unless terminated sooner, in which case the filer would enter the earlier date when the termination event occurred.

(7) *Terms and subterms.* Mandatory essential terms Nos. 1 to 10 shall address the subjects and bear the terms' titles for the respective numbers exactly as provided in this section. If a subject is not included, such as No. 7 or No. 8, the number must be listed with the appropriate title and the designation "NA." All essential terms, mandatory and optional, may be subdivided into subterms (as illustrated for mandatory term No. 4) to facilitate retrieval and amendment. The mandatory terms are as follows:

(i) *Origin (No. 1).* "Origin" includes the origin port range(s) in the case of port-to-port movements, and the origin geographic area(s) in the case of through

intermodal movements, except that, in service contracts, the origin and destination of cargo moving under the contract need not be stated in the form of "port ranges" or "geographic areas," but shall reflect the actual locations agreed to by the contract parties. See § 514.10(b). Origin point and port locations will be validated against the ATFI Locations database. The validated names will be "inserted" by the system in Mandatory Term #1. The Mandatory Term may not contain text, but if the filer wishes to use full text to clarify or expand on the point/port entries in Term 1, full text may be used in subterms.

(ii) *Destination (No. 2).* "Destination" includes the destination port range(s) in the case of port-to-port movements, and the destination geographic area(s) in the case of through intermodal movements, except that, in service contracts, the origin and destination of cargo moving under the contract need not be stated in the form of "port ranges" or "geographic areas," but shall reflect the actual locations agreed to by the contract parties. See § 514.10(b). Destination point and port locations will be validated against the ATFI Locations database. The validated names will be "inserted" by the system in Mandatory Term #2. The Mandatory Term may not contain text, but if the filer wishes to use full text to clarify or expand on the point/port entries in Term 2, full text may be used in subterms.

(iii) *Commodities (No. 3).* Mandatory term No. 3 shall include commodities covered by the service contract, but these commodities may not be entered as described in § 514.13(a), i.e., commodities cannot be entered in data-element format, but the full-text format may incorporate the same elements of information, as desired. See § 514.7(c) for exempt commodities. For each commodity filed in this term, a separate formatted commodity index entry is required.

(iv) *Minimum quantity (No. 4).* Mandatory term No. 4 shall address the minimum quantity or volume of cargo and/or amount of freight revenue necessary to obtain the rate or rate schedule(s), except that the minimum quantity of cargo committed by the shipper may not be expressed as a fixed percentage of the shipper's cargo.

(A) *Subterm.* Example: Minimum quantity in 20FT Containers.

(B) *Subterm.* Example: Minimum quantity in 40FT Containers.

(v) *Service commitments (No. 5).* Mandatory term No. 5 shall address the service commitments of the carrier, conference or specific members of a conference, such as assured space, transit time, port rotation or similar service features.

(vi) *Contract rates or rate schedule(s) (No. 6).* Mandatory term No. 6 shall contain the contract rates or rate schedules, including any additional or other charges (i.e., general rate increases, surcharges, terminal handling charges, etc.) that apply, and any and all conditions and terms of service or operation or concessions which in any way affect such rates or charges; except that a contract may not permit the contract rate to be changed to meet a rate offer of another carrier or conference not published in a tariff or set forth in a service contract on file with the Commission.

(vii) *Liquidated damages for non-performance (if any) (No. 7).* Mandatory term No. 7 shall include liquidated damages for non-performance. See § 514.7(1).

(viii) *Later events causing deviation from ET (if any) (No. 8).* Where a contract clause provides that there can be a deviation from an original, essential term of a service contract, based upon any stated event occurring subsequent to the execution of the contract, mandatory term No. 8 shall include a clear and specific description of the event, the existence or occurrence of which shall be readily verifiable and objectively measurable. See § 514.7(1). This requirement applies to, *inter alia*, the following types of situations:

(A) Retroactive rate adjustments based upon experienced costs;

(B) Reductions in the quantity of cargo or amount of revenues required under the contract;

(C) Failure to meet a volume requirement during the contract duration, in which case the contract shall set forth a rate, charge, or rate basis which will be applied.

(D) Options for renewal or extension of the contract duration with or without any change in the contract rate or rate schedule;

(E) Discontinuance of the contract;

(F) Assignment of the contract; and

(G) Any other deviation from any original essential term of the contract.

(ix) *Duration of the Contract (No. 9).* The duration of the contract shall be stated as a specific fixed time period, with a beginning date (effective date) and an ending date (expiration date). See paragraph (d)(4)(ii) and (d)(5)(iii) of this section.

(x) *Assessorials (No. 10).* Mandatory Term 10 shall contain all ET assessorials, preferably using a separate subterm for each type of assessorial. For every assessorial, the filer shall set forth either:

(A) The full assessorial; or

(B) A complete cross-reference to the place(s) where it may be found.

(8) *Optional terms.* Any essential term of a service contract not otherwise specifically provided for in this section shall be entered after the mandatory terms and in numerical order, beginning with No. 100.

10. In § 514.18, change the cross reference citation in paragraph (c)(1) from "§ 514.7(d)" to "§ 514.4(d)."

11. In § 514.21, the introductory text is revised to read as follows:

§ 514.21 User charges.

In accordance with 5 U.S.C. 552 and 31 U.S.C. 9701, the user charges in this section are established for services under this part. Unless otherwise provided in this part, checks, drafts or money orders shall be remitted and made payable to "Federal Maritime Commission (OBFM)," 800 North Capitol Street, NW., Washington, DC 20573. Unless otherwise specified, overdue payments will be charged interest in accordance with the rate established by the Department of the Treasury for each 30-day period or portion thereof that the payment is overdue. In addition to any other remedy and penalty provided by law and regulation, if payment is overdue for 90 days, ATFI services will be denied:

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-31889 Filed 12-31-92; 8:45 am]

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Proposed Rules

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

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Docket No. R-0789; Regulation C]

Home Mortgage Disclosure; Proposed Regulatory Amendments

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment a proposal to amend Regulation C, which implements the Home Mortgage Disclosure Act, to incorporate new statutory provisions. The Housing and Community Development Act of 1992 contains amendments that will require financial institutions to make their loan application register data available to the public beginning March 31, 1993; the register must be modified in accordance with Board regulations before release to the public. The act also requires institutions to make their disclosure statement—as compiled by the Federal Financial Institutions Examination Council—available to the public within three business days of receiving it from the Examination Council; they currently have 30 days to do so. The revised rules will apply to the disclosure of the loan and application data collected for calendar year 1992.

DATES: Comments must be received on or before January 31, 1993.

ADDRESSES: Comments should refer to Docket No. R-0789 and be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. They may also be delivered to the guard station in the Eccles Building Courtyard on 20th Street, NW. (between Constitution Avenue and C Street, NW.) between 8:45 a.m. and 5:15 p.m. weekdays. Except as provided in § 261.8 of the Board's rules regarding the availability of information (12 CFR 261.8), comments received will be available for inspection and copying by any member of the public in the Freedom of Information Office, room B-1122 of the Eccles Building, between 9 a.m. and 5 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell or W. Kurt Schumacher, Staff Attorneys, or John C. Wood, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452-2412 or (202) 452-3667. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452-3544.

SUPPLEMENTARY INFORMATION:

(1) Background

The Home Mortgage Disclosure Act (HMDA) requires certain depository and nondepository mortgage lenders that have offices in metropolitan areas to disclose their housing-related lending activity each year. The Housing and Community Development Act of 1992 (Pub. L. 102-550, 106 Stat. 3672) amends HMDA in several respects. The statutory amendments require institutions to make modified versions of their loan application registers available to the public; the modified registers must be available before April 1 for requests made on or before March 1 following the year for which the data are compiled, and within 30 days for requests made after March 1. The amendments require the Board to specify deletions or modifications from institutions' registers needed to protect the privacy interest of any applicant or borrower, and to protect an institution from liability under federal or state privacy laws.

HMDA and Regulation C currently require financial institutions to make their mortgage loan disclosure statement publicly available no later than 30 calendar days after they receive the statement from their supervisory agency. The statutory revisions amend HMDA to require institutions to make the disclosure statement publicly available, upon request, within three business days after receiving it from the Federal Financial Institutions Examination Council (FFIEC).

The statutory provisions contain additional amendments relating to the time periods within which the federal supervisory agencies must make disclosure statements and aggregate tables available to financial institutions and the public. The statute requires that for data collected in 1993, disclosure statements must be publicly available for September 1, 1994. The aggregate data that are compiled by the FFIEC are to be publicly available (in central data depositories) before December 1, 1994. For data collected in 1994 and subsequent years, federal supervisory agencies must make every effort to ensure that disclosure statements are publicly available before July 1, and aggregate disclosure reports before September 1, following the year for which the data are compiled. In addition, the statutory revisions make various other amendments to HMDA that are discussed below.

The comment period ends on January 31, 1993. Because prompt implementation of the statutory amendments is in the public interest, the Board has set a 30-day comment period in place of the 60 days normally called for in the Board's policy statement on rulemaking (44 FR 3957, January 19, 1979). The Board believes an abbreviated comment period is necessary to ensure that a final rule is in place as quickly as possible to provide guidance to covered lenders.

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. ch. 35; 5 CFR 1320.13), the proposed revisions will be reviewed by the Board under the authority delegated to the Board by the Office of Management and Budget after consideration of the comments received during the public comment period.

(2) Summary of Proposed Regulatory Amendments

The following discussion summarizes the proposed amendments to Regulation C section by section. Heading changes and certain other changes that are self-evident are not discussed.

Section 203.5 Disclosure and Reporting

Section 203.5(a) Reporting to Agency

The Board proposes to revise this section to require institutions to retain copies of their complete loan application register for a minimum period of three years, not two years as presently required. This change is consistent with the provisions in the new law (see proposed § 203.5(d)).

Section 203.5(b) Public Disclosure of Statement

The statutory revisions require institutions to make their disclosure statement publicly available, upon request, no later than three business days after they receive the statement from the FFIEC. The Board proposes to incorporate this requirement into this subsection, in lieu of the current 30 calendar days for public data availability. However, the Board proposes to limit the three-business day requirement for availability to the institution's home office. Because of the need for duplication and distribution, many institutions could find it difficult to make disclosure statements available in a branch office in other MSAs within three business days after receipt. Therefore, the Board proposes that institutions have ten business days in which to make their disclosure statements available in these MSAs. The Board solicits comments on this proposed timing.

Section 203.5(c) Public Disclosure of Loan Application Register

The statutory revisions require institutions to make their loan application registers available to the public upon request, and require the Board to specify deletions or modifications from institutions' registers to protect the privacy interests of applicants and borrowers, and to protect institutions from liability under federal or state privacy laws. The Board proposes to add this new subsection to reflect this requirement. The three items to be deleted (application or loan number, date application received, and date of action taken) are specified in the instructions to the HMDA–LAR found in appendix A; they correspond to the items specified by the statutory amendments.

The proposed language also incorporates the statutorily mandated time periods by which an institution must make its modified register publicly available.

Section 203.5(d) Availability of Data

The proposed revisions to paragraph (d) reflect the amendments to the statute requiring that modified loan application register information be retained by institutions and made publicly available for a period of three years. The Board proposes to use the existing rule concerning the availability of disclosure statements at the branch office level as the rule governing the availability of an institution's modified register data.

The Board also proposes to incorporate language from the statutory amendments regarding the imposition of fees by an institution for providing or reproducing the modified loan application register or the disclosure statement.

Appendix A to Part 203—Form and Instructions for Completion of HMDA Loan/Application Register

III. Submission of HMDA–LAR and Public Release of Data

D. *Availability of disclosure statement.* The proposal would incorporate the new rule discussed above that an institution must make its disclosure statement available at its home office within three business days of receiving it from the FFIEC. The Board proposes to specify that disclosure statements must be made available in at least one branch office in each additional MSA within ten business days after receipt from the FFIEC. As mentioned above, the Board solicits comment on this proposed timing. As an alternative, the Board solicits comment on the feasibility of specifying that copies of disclosure statements must be made available at the applicable branch offices, upon request, within a "reasonable time" of an institution's receipt of the statements from the FFIEC.

E. *Availability of modified loan application register.* Paragraph 1 of this subsection would incorporate the requirement in the new provisions that the Board specify deletions or modifications from an institution's register to protect the privacy interests of applicants and borrowers. (See also the proposed revisions to § 203.5(c).) The deletions that the Board proposes to require are specified by the newly enacted statute. These items are those that the FFIEC presently deletes prior to the public release of the edited raw data that it makes available.

F. *Location and format of disclosed data.* The statutory amendments encourage institutions to make their modified register data available in census tract order, and allow the public release of this information (and of disclosure statements) in any media—including hard copy or in automated form—that is not prohibited by the Board. The statute makes clear, however, that aside from making the specified deletions, institutions are not required to change the format of the data from that used by institutions to internally maintain this information. The Board's proposed paragraph F. in the appendix reflects these statutory provisions.

Additionally, the revisions to HMDA require institutions' disclosure statements to be accompanied by a clear and conspicuous notice that the statement is subject to final review and revision, if necessary. Given that the FFIEC compiles the disclosure statements of financial institutions for public release by the institutions, the Board proposes that the FFIEC add this notice on the disclosure statements, thereby eliminating the need for financial institutions to supply the notice.

As mentioned in the supplementary information to § 203.5(d) above, the Board proposes to use the existing rule concerning the availability of disclosure statements at the branch office level as the rule for availability of an institution's modified register data.

(3) Form of Comment Letters

Comment letters should refer to Docket No. R–0789. The Board requests that, when possible, comments be prepared using a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may also be submitted on 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format, but must be accompanied by an original document in paper form.

(4) Regulatory Flexibility Analysis

HMDA does not cover small depository institutions (those with assets of $10 million or less), or small nondepository mortgage lenders (those with fewer than 100 home purchase loan originations and assets of $10 million or less). HMDA also exempts from coverage institutions that have neither a home nor a branch office in an MSA. Covered institutions currently must provide their loan/application registers to their supervisory agencies by March 1 for the preceding calendar year. Any incremental burden caused by this proposal would result from the requirement that these registers be modified prior to public release in the manner proposed by the Board. Small financial institutions will likely have fewer modifications to make to their registers (based on their fewer numbers of reportable transactions). This proposal is not expected to have a significant impact on the costs of small institutions.

(5) List of Subjects in 12 CFR Part 203

Banks, banking, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements.

(6) Text of Proposed Revisions

For the reasons set forth in this proposed rule and pursuant to the Board's authority under section 305(a) of the Home Mortgage Disclosure Act (12 U.S.C. 2804(a)), the Board proposes to amend Regulation C, Home Mortgage Disclosure (12 CFR part 203), as set forth below.

Certain conventions have been used to highlight the proposed changes to the regulation and the instructions. Language to be added is shown inside bold-faced arrows, while language that would be removed appears within bold-faced brackets. The Board is publishing only those sections of the regulation and instructions that would be affected by the changes.

PART 203—HOME MORTGAGE DISCLOSURE

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 2801–2810.

2. Section 203.5 would be amended by redesignating paragraphs (c) and (d) as (d) and (e), by adding a new paragraph (c), and by revising paragraphs (a) through (e) to read as follows:

§ 203.5 Disclosure and reporting.

(a) *Reporting to agency.* By March 1 following the calendar year for which the loan data are compiled, a financial institution shall send two copies of its complete **⧫loan application⧫** register to the agency office specified in appendix A of this regulation, and shall retain a copy for its records for a period of not less than **⧫three⧫** [two] years.

(b) **⧫Public⧫** disclosure **⧫of statement⧫** [*to the public*]. A financial institution shall make its mortgage loan disclosure statement (to be prepared by the Federal Financial Institutions Examination Council) available to the public **⧫at its home office⧫** no later than **⧫three business⧫** [30 calendar] days after the institution receives it from its supervisory agency **⧫or from the Examination Council. The disclosure statement also shall be made available in at least one branch office in each additional MSA where the institution has offices, within ten business days after the institution receives it.⧫** [The financial institution shall make the statement available to the public for a period of five years.]

⧫(c) Public disclosure of loan application register. A financial institution shall make its loan application register available to the public at its home office after modifying it in accordance with appendix A. An institution shall make its modified register available following the calendar year for which the data are compiled, by March 31 for a request received on or before March 1, and within 30 days for a request received after March 1. The modified register also shall be made available in at least one branch office in each additional MSA where the institution has offices.⧫

⧫(d)⧫ [(c)] *Availability of* **⧫data⧫** [disclosure statement]. A financial institution shall make **⧫its modified register available for a period of three years and its disclosure statement available for a period of five years.⧫** [the disclosure statement available at its home office. If it has a physical branch office in other MSAs, the institution shall also make a statement available in at least one branch office in each of those MSAs; the statement] **⧫The statement and register⧫** at a branch office need only contain data relating to property in the MSA where that branch office is located. An institution shall make the **⧫data⧫** [disclosure statement] available for inspection and copying during the hours the office is normally open to the public for business. It may impose a reasonable **⧫fee for providing or reproducing the data⧫** [charge for photocopying services].

⧫(e)⧫ [(d)] *Notice of availability.* A financial institution shall post a general notice about the availability of its disclosure statement in the lobbies of its home office and any physical branch offices located in an MSA. Upon request, it shall promptly provide the location of the institution's offices where the statement is available. At its option, an institution may include the location in its notice.

3. Appendix A to part 203 would be amended by revising the heading of section III., by revising subsection III.D., and by adding new subsections III.E., F., and G., to read as follows:

Appendix A to Part 203—Form and Instructions for Completion of HMDA Loan/Application Register

* * * * *

III. Submission of HMDA–LAR and **⧫Public⧫** Release of **⧫Data⧫** [Disclosure Statements]

* * * * *

⧫D. Availability of disclosure statement. The Federal Financial Institutions Examination Council (FFIEC) will prepare a disclosure statement from the data you submit. Your disclosure statement will be returned to the name and address indicated on the transmittal sheet. Within three business days of receiving your disclosure statement, you must make a copy available at your home office for inspection by the public. You also must make your disclosure statement available, within ten business days after receipt of the statement from the FFIEC, in at least one branch office in each additional MSA where you have offices.

E. Availability of modified loan application register.

1. To protect the privacy of applicants and borrowers, an institution must modify its loan application register before release to the public by removing the following information: the application or loan number, date application received, and date of action taken.

2. A financial institution must make its modified register available following the calendar year for which the data are compiled, by March 31 for a request received on or before March 1, and within 30 days for a request received after March 1.

F. Location and format of disclosed data. You must make a complete copy of your disclosure statement and your modified register available to the public at your home office. You may make these data available in hard copy or in automated form (such as by floppy disk or computer tape). Although you are encouraged to make your modified loan application register available to the public in census-tract order, you are not required to do so. In addition, if you have physical branch offices in other MSAs, you must make available in at least one branch office in each of those MSAs either a complete copy of the disclosure statement and of the modified register, or the portion of each that relates to properties in that MSA.

G. Posters. Your agency can provide you with HMDA posters that you can use to inform the public of the availability of your disclosure statement, or you may print your own posters.⧫

[D. The Federal Financial Institution Examination Council (FFIEC) will prepare a disclosure statement from the data you submit. Your disclosure statement will be returned to the name and address indicated on the transmittal sheet. When you receive that disclosure statement you must make a copy available for inspection by the public within 30 calendar days of the date the statement is received by your institution. You must make a complete copy available at your home office. If you have physical branch offices in other MSAs, you must make available, in at least one branch office in each of those MSAs, either the complete statement or the portion of the statement relating to that MSA.

Your agency can provide you with HMDA posters that you can use to inform the public of the availability of your disclosure statement, or you may print your own posters.]

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 28, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92–31871 Filed 12–31–92; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92-ANM-21]

Proposed Alteration of Jet Route J-151; WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Jet Route J-151 by extending the route segment between Whitehall, MT, VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) direct to Spokane, WA, VORTAC. Currently, there is no jet route from Whitehall, MT, direct to Spokane, WA. This jet route extension would enhance traffic flow and reduce controller workload.

DATES: Comments must be received on or before February 16, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM-500, Docket No. 92-ANM-21, Federal Aviation Administration, 1601 Line Avenue, Southwest, Renton, WA 98055-4056.

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

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

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9230.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-ANM-21." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter Jet Route J-151 by extending this route from Whitehall, MT, to Spokane, WA. Currently, there is no direct jet route segment between these points. This extension would enhance traffic flow and reduce controller workload. Jet routes are published in Section 71.607 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The jet route listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Jet routes.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.607 Jet routes.

* * * * *

J-151 [Revised]

From Cross City, FL; Vulcan, AL; INT Vulcan 335° and Farmington, MO, 139° radials; Farmington; St. Louis, MO; Des Moines, IA; O'Neill, NE; Rapid City, SD; Billings, MT; INT Billings 266° and Whitehall, MT, 103° radials; to Spokane, WA.

* * * * *

Issued in Washington, DC, on December 21, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-31908 Filed 12-31-92; 8:45 am]

BILLING CODE 4910-13-M

Office of the Secretary

14 CFR Part 241

[Docket No. 46597; Notice No. 92-34]

RIN 2137-AC08

Confidential Treatment of Aircraft Inventory Data

AGENCY: Office of the Secretary of Transportation, and Research and Special Programs Administration, DOT.

ACTION: Withdrawal of proposed rule and denial of petition for rulemaking.

SUMMARY: This document denies a petition for rulemaking, filed in Docket 46597, to amend part 241 of the Department's Economic Regulations to include a period of confidential treatment for aircraft inventory data reported on RSPA Form 41 Schedules B-7 and B-43, withdraws the rulemaking proceeding initiated based on the petition, and denies the motions filed in Docket 46597 for confidential treatment of aircraft inventory data reported on Schedules B-7 and B-43. This document is being issued because the Department has determined that withholding information reported on Schedules B-7 and B-43 is unwarranted under the Freedom of Information Act and the Department's regulations governing information that is exempt from public disclosure.

DATES: This document is effective on January 4, 1993.

FOR FURTHER INFORMATION CONTACT: M. Clay Moritz, Jr. or Jack M. Calloway, Office of Airline Statistics, DAI-10, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001, (202) 366-4385 and 366-4383, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 10, 1991, the Department issued an Advanced Notice of Proposed Rulemaking (ANPRM) seeking public comments on the need for establishing a period of confidential treatment for Form 41 Schedules B-7, Airframe and Aircraft Engine Acquisitions and Retirements and B-43, Inventory of Airframes and Aircraft Engines (56 FR 32992; July 18, 1991). This rulemaking notice responds to the confidentiality issues raised in the ANPRM and the public comments entered into Docket 46597.

The issue of confidential treatment was first raised by the November 8, 1989 motion of United Air Lines (United), which requested the Department to withhold from public disclosure the acquisition costs and sales realization amounts for airframes and aircraft engines reported on its Schedule B-7, Airframe and Aircraft Engine Acquisitions and Retirements, for the quarter ended September 30, 1989 (Docket 46597). Subsequent motions were filed with every Schedule B-7 submitted since then (Dockets 46868, 46933, 47119 and 47254). On March 28, 1990, United also filed a motion for confidential treatment pertaining to the airframe and aircraft engine acquisition cost data reported on annual Schedule B-43, Inventory of Airframes and Aircraft Engines, its report covering calendar year 1989 (Docket 46869). In addition, American Airlines filed a motion dated August 9, 1990, for confidential treatment of its Schedule B-7 for the quarter ended June 30, 1990. All requests for confidential treatment were filed under 14 CFR 302.39, "Objections to Public Disclosure of Information."

The Director of the Research and Special Programs Administration's (RSPA's) Office of Airline Statistics, in a letter dated January 9, 1991, denied each of United's motions for confidential treatment. On February 1, 1991, United filed a response to the letter in the form of a petition for review of the staff action denying its motions. In its petition, United stated that it was not seeking exclusive confidentiality for its data, but rather, believes that aircraft acquisition costs and sales realization amounts should be held confidential for all carriers.

In urging the Department to review its staff action, United expressed its desire to have incorporated in the regulations governing the submission of Schedules B-7 and B-43 (14 CFR 241.23, Schedule B-7 and Schedule B-43) a provision for the confidential treatment of the reported data. United also indicated that it planned to submit a petition for rulemaking proposing to amend part 241 by providing for the confidential treatment of the equipment price data reported on both schedules.

Pending the filing of its rulemaking petition, United requested that the Department grant its motions to withhold from public disclosure along with those of any other carrier requesting such relief. By letter dated March 22, 1991, the Director, Office of Airline Statistics, granted United's request for a rulemaking to explore whether 14 CFR 241.23 of the Department's Economic Regulations should be amended to accord confidential treatment for the information reported on Form 41 Schedules B-7 and B-43. A copy of the March 22 letter is provided as Exhibit A.

In the letter, the Director, Office of Airline Statistics, overturned his earlier decision by granting United's motions, pending the outcome of this rulemaking proceeding. The Director also indicated that in order not to prejudge the outcome of the rulemaking process and to preclude United from enjoying an advantage over other carriers by having its data withheld from the public eye, the Department would look favorably upon individual air carrier motions for confidential treatment of Form 41 Schedule B-7 and/or Form 41 Schedule B-43. This offer applied to the information reported on Schedule B-7 for the fourth quarter of 1990 and Schedule B-43 for the calendar year 1990. At the same time, carriers were also apprised of their right to file, should they so desire, subsequent motions for confidential treatment for each successive filing of B-7 and B-43.

In order to simplify the administrative burden of responding to similar motions for confidential treatment filed in multiple dockets, the March 22 letter announced the Department's action to consolidate in Docket 46597 all previously filed motions for confidential treatment of Schedules B-7 and B-43. The Department's ANPRM (Notice 91-11) on the issue of confidentiality and this NPRM are also included in Docket 46597.

Advance Notice of Proposed Rulemaking

In order to provide the facts necessary to determine whether a grant of confidentiality to airframe and aircraft engine data is warranted, the Department, in the ANPRM, solicited answers to the following questions:

1. Is there a need to keep the information reported on Form 41 Schedule B-7 and/or Form 41 Schedule B-43 confidential? Please explain, in detail, why the information should or should not be held confidential. Identify, by specific data element, the information on Schedules B-7 and B-43 that you believe should or should not be held confidential. Explain how the information does or does not qualify for confidential treatment given the governing body of law and regulation, namely, the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Department's regulations, 49 CFR part 7.

2. For what length of time should the information be held confidential? Please explain the specific reasons, by data element if necessary, for selecting a particular period of time.

Public Comments

Twenty comments were received in response to the ANPRM. Six comments

were filed in support of a period of confidentiality for Form 41 Schedules B–7 and B–43 by American Airlines, Inc. (American); Delta Air Lines, Inc. (Delta); Northwest Airlines, Inc. (Northwest); United Air Lines, Inc. (United); United Parcel Service, Co. (UPS); and The Boeing Company (Boeing). Thirteen comments were filed in opposition to a grant of confidentiality by Federal Express Corporation (FedEx); McDonnell Douglas Corporation (MDC); Air Line Pilots Association International (ALPA); Air Cargo Management Group; Airt Services; BK Associates, Inc.; Avitas, Inc.; The CIT Group/Capital Equipment Financing; DCB Consultants; Jack B. Feir & Associates; Mack Aviation Company, Inc.; Simat, Helliesen & Eichner, Inc.; and York University. One Comment was filed, by Continental Air Lines, Inc. (Continental) suggesting an alternative course of action. In addition to these twenty comments, United States Leasing International, Inc. filed a late comment in opposition to granting confidentiality. A discussion of these comments follows:

Data Elements at Issue

In their comments, American, Delta, Northwest, United, and UPS identify the following data elements that they believe should be accorded confidential treatment.

Form 41 Schedule B–7	Form 41 Schedule B–43
1. Cost.	1. Acquired cost or capitalized value.
2. Amortized/ Depreciated cost.	2 Allowance for depreciation or amortization.
3. Realization.	3 Depreciated cost or amortized value.
	4. Estimated residual value.

UPS, in addition to these data elements, states that confidentiality should also be granted to the "Estimated Depreciable or Amortizable Life (Months)" on Schedule B–43. In its comments, Boeing, while not identifying specific data elements on Schedule B–7 and/or Schedule B–43 that it believes should be granted confidential treatment, does refer to "airframe acquisition costs" and "the negotiated price of aircraft."

FOIA and DOT Regulations

Having identified the data elements at issue, we will now turn to a discussion of the need for granting confidentiality. In order to reach a conclusion on whether or not to withhold the above information from public disclosure, we must examine the arguments made for and against confidentiality within the context of the Freedom of Information Act (FOIA) 5 U.S.C. 552. This section protects from public disclosure "trade secrets and commercial or financial information obtained from a person (which is) privileged or confidential" (5 U.S.C. 552 (b)(4)). This section is cited in each of the comments filed in support of confidentiality with the exception of Boeing, which does not address how the information at issue would fall within FOIA guidelines for exempting data from public disclosure. Boeing states: "This letter is furnished in strong support of the subject ANPRM to provide confidential treatment of the identified information. Confidential treatment is requested pursuant to Rule 39 of DOT's Rules of Practice." The "identified information" in its comments refers to the airframe acquisition cost reported on Schedule B–7 and Schedule B–43.

Since the data elements in question are not a trade secret, we have evaluated the information to see if it meets the requirements of the second category of commercial or financial information obtained from a person, which is privileged or confidential. Rule 39 of the Department's Procedural Regulations (14 CFR 302.39), which concerns the filing of objections to public disclosure of information, specifically states the 49 CFR part 7 governs the availability of the Department's records and documents to the public. Part 7 contains the Department's regulatory implementation of FOIA.

Rule 39 contains the procedures for objecting to the public disclosure of information. Section 302.39(e) states that information covered in reports filed with the Department need not be withheld from public disclosure unless a written motion objecting to such disclosure is filed with the Department. The motion must contain, among other things, a description of the information to be withheld and a statement explaining how and why the information falls within the FOIA exemptions (5 U.S.C. 552(b)(1)–(9)).

In addressing the issue of confidentiality in view of the provisions of FOIA and the Department's regulations, American, Delta, Northwest, United and UPS raise the following points:

- Public disclosure would impair the Department's ability to obtain the information at issue.
- Public disclosure would cause substantial competitive harm.
- Public disclosure is inconsistent with the grant of confidentiality to similar information by the Securities and Exchange Commission.
- Public disclosure would require the air carriers to violate a contract provision of equipment purchase agreements that bars release of the information.
- The information at issue is not customarily disclosed to the public.

In addition to these five points, United cites Civil Aeronautics Board Order 79–10–91, concerning the confidentiality of fuel price data, in its support for a grant of confidentiality. Each of these issues is addressed below under separate captions.

Impair the Ability to Collect the Data

American and UPS state in their comments that information should be treated as confidential if disclosure would impair the government's ability to obtain the information in the future or cause substantial harm to the competitive position of the person from whom the information is obtained. In support, both carriers cite *National Parks & Conservation Assn* v. *Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). American also cites *Guerra* v. *Guajardo*, 466 F.Supp. 1046, 1059 (S.D. Tex. 1978) *aff'd without opinion*, 597 F.2d 769 (5th Cir. 1979); and *United Technologies Corp.* v. *Department of Health and Human Services*, 574 F.Supp. 86, 89 (D.Del. 1983).

All of the data elements at issue are submitted in accordance with the reporting requirements of 14 CFR part 241. Part 241 is applicable to all large certificated air carriers. A large certificated air carrier is defined as an air carrier operating under a certificate of public convenience and necessity issued under section 401 of the Federal Aviation Act of 1958, as amended, using aircraft with over 60 seats or over 18,000 pounds of payload capacity, or operating internationally (14 CFR 241.03). It is a mandatory condition for air carriers operating under a section 401 certificate to abide by the Department's regulations. Since all large certificated air carriers are required by regulation (14 CFR 241.23—Schedule B–7 and Schedule B–43) to provide the Department with the information contained in both Schedules B–7 and B–43, the Department believes that the ability of the government to obtain the information in the future will not be adversely affected by the issue of confidentiality. Since this test of confidentiality has not been met, we next examine the data elements under the test of substantial competitive harm.

Competitive Harm

Each air carrier filing in support of confidentiality cites competitive harm when addressing the need for the confidential treatment of the data at issue. Before discussing the carrier

comments on competitive harm, it should be noted that Boeing's comments support the need for confidentiality by stating that, in its opinion, disclosure of the information at issue would be competitively harmful to carriers filing Schedules B–7 and B–43. While remaining cognizant of Boeing's comment on behalf of the reporting carriers, the Department will weigh its decision as to potential for competitive harm based on the comments of the air carriers that are directly affected.

As to the affected carriers, American states: "It is not necessary to show actual competitive harm; actual competition and the likelihood of substantial injury is all that is necessary." *Professional Review Organization of Florida, Inc.* v. *U.S. Department of Health and Human Services*, 607, F.Supp. 423 (D.C. 1985) at 425–426.

Similarly, Delta states that information is considered confidential if disclosure of the information is likely to cause substantial harm to the competitive position of the person from whom the information was obtained. *National Parks & Conservation Assn* v. *Morton, supra.* Under this test, Delta quotes *National Parks and Conservation Assn* v. *Kleppe*, 547 F.2d. 673, 683 (D.C. Cir. 1976): "* * * No actual adverse effect on competition need be shown * * * The court need only exercise its judgment in view of the nature of the materials sought and the competitive circumstances [in which the person from whom the information was received does business], relying at least in part on relevant and credible opinion testimony."

Northwest also cites *National Parks & Conservation Assn* v. *Morton, supra*, as support that information is confidential if it could cause substantial harm to the competitive position of the person from whom the information was obtained. Northwest goes on to state that information from which competitors could deduce operating costs, profit margins, and competitive vulnerability is generally confidential and cites a number of cases in support: *Westinghouse Electric Corp.* v. *Schlesinger*, 392 F.Supp. 1246 (E.D. Va 1974), aff'd, 542 F.2d 1190 (4th Cir. 1976), *cert. denied*, 431 U.S. 924 (1977) (data describing a company's workforce held exempt from FOIA); *National Parks and Conservation Assn* v. *Kleppe, supra*, (agency records concerning concession operations at National Parks held exempt from FOIA); *Sterling Drug* v. *FTC*, 450 F.2d 698 (D.C. Cir. 1971) (disclosure of certain documents pertaining to corporate acquisition properly withheld by agency); *McCoy* v. *Weinberger*, 386 F.Supp. 504 (W.D. Ky. 1974) (cost report from nursing home held exempt from FOIA disclosure).

In arguing that public disclosure of the data elements at issue would cause substantial competitive harm, UPS states that the District of Columbia Circuit Court of Appeals acknowledged the implication of disclosure of similar information in *Worthington Compressors, Inc.* v. *Costle*, 213 U.S. App. D.C. 200, 662, F.2d 45, 51 (1981). In this case, the court rejected an argument that design and engineering specifications for air compressors were not entitled to confidential treatment because competitors could take the compressors apart and determine how they were made. UPS cites the court as stating:

> Because competition in business turns on the relative costs and opportunities faced by members of the same industry, there is a potential windfall for competitors to whom information is released under FOIA. If those competitors are charged only minimal FOIA retrieval costs for the information, rather than the considerable costs of private reproduction, they may be getting quite a bargain. Such bargains could easily have competitive consequences not contemplated as part of FOIA's principal aim of promoting openness in government.

As to competitive harm, UPS states that, unlike the *Worthington* case, the Department's Form 41 schedules are the sole means for competitors to obtain the information and the test under the case (Worthington at 51) becomes one of considering "how valuable the information will be to the requesting competitors and how much this gain will damage the submitter." UPS goes on to state: "There is little doubt as to how valuable purchase and sale prices of aircraft would be to a competitor who does not have the resources or abilities to negotiate the same type of arrangement. One should be entitled to the fruits of their labor."

We agree that actual harm need not be shown, only the likelihood of substantial competitive harm, in order to prevail on a grant of confidentiality. We now turn to the issue of substantial competitive harm, as addressed in the comments.

American states its belief that public disclosure would undermine its "* * * efforts to negotiate more favorable aircraft and engine purchase prices, as vendors would be far less willing to grant concessions knowing that other carriers would learn of and demand the same terms." Beyond this, American states that public disclosure would chill the willingness of vendors to engage in price negotiations.

Similarly, Delta states: "Aircraft and engine purchases form a continual stream of complex transactions that require a great deal of negotiating skill and experience to obtain the most favorable terms possible under the particular circumstances. Any advantages achieved by Delta through hard, arms-length bargaining with manufacturers would likely evaporate, if Delta's competitors are able to rely on information available in Delta's Schedules B–7 and B–43 to gain leverage in their own aircraft acquisition negotiations."

Northwest states that the need to keep the information at issue confidential relates directly to its ability to acquire aircraft at the lowest possible cost, and maximize resale value.

In a similar vein, United states that it applies considerable management resources in trying to obtain airframes and engines at the lowest possible acquisition cost and dispose of these assets at the highest possible sales price. As with Delta, United states that public release of the aircraft acquisition costs and sales realization amounts denies it the full benefit of its negotiating efforts.

UPS states "* * * the disclosure of aircraft price information will cause substantial harm to the competitive position of the submitter by revealing the fruits of the negotiation process leading to the agreement. There is a multitude of unique factors to be considered in arriving at the negotiated purchase price of an aircraft. Disclosure of this price information would be analogous to creating government-required tariffs on airline prices."

Delta, Northwest and United each comment that disclosure of the airframe and aircraft cost and sales price information leads to an unfair competitive advantage *vis a vis* foreign flag carriers, which are not required to report their equipment prices to the Department. United goes on to state that it is commercially damaging for U.S. carriers to have the fruits of their competitive efforts with manufacturers divulged to foreign flag competitors that will use the information to obtain the best possible purchase price.

By contrast, Northwest states that U.S. carriers have an advantage in that U.S. carriers can sometimes obtain more favorable volume discounts than relatively smaller foreign flag carriers. Northwest further states that disclosure tends to increase pressure on manufacturers to lessen the discount to a U.S. flag carrier to avoid the need to grant similar discounts to all purchasers.

ALPA and Airt Services both question the carriers' contention as to substantial

competitive harm. ALPA, in response to the Department's question as to how airframe and aircraft engine cost information would qualify for an exemption from FOIA, stated that, until United's motion for confidentiality was filed in 1989, the information contained in B–7 and B–43 has been routinely available and carriers, such as United, have nevertheless been fully capable of transacting business. ALPA goes on further to state that United and other carriers can claim only that it might be easier to transact business if this information was not available to its competitors, but such a claim does not meet the standard of substantial harm to its competitive position.

United states in its comments, that, if disclosed, its equipment costs can be used by its competitors to negotiate reductions in prices on ongoing flight equipment purchase contracts. United further states that once a carrier's costs are divulged, competitors can use the information to negotiate contract price adjustments from the same suppliers the carrier is using or from competing suppliers.

In its comments, Airt disputes the contention that disclosure of the financial data on B–7 and B–43 enables competitors to use the data as a starting point in their own negotiations to obtain equal or more favorable prices, allowing the carrier to enjoy lower capital costs and compete more efficiently. Airt states that aircraft acquisition contracts contain a large number of individual items and terms of purchase that affect the final price. Some examples of contract provisions, identified by Airt, that can affect the price of aircraft are the size of the order, delivery dates, inflation clauses, selected manufacturer or carrier supplied equipment, configuration, warranty, and financing. Airt states that in order to be useful in a competitive situation, a competitor would also need to know the full terms and conditions of the contract.

As to the "acquired cost or capitalized value" reported on Schedule B–43 for airframes and engines, AIRT points out that this amount may change from year to year as modifications are made to the aircraft. For used equipment, AIRT states that an important determinant of the cost of used aircraft reported on Schedule B–7 is the time between overhauls. The time between overhauls is not reported on Schedule B–7; therefore, its impact on the acquisition cost/sales price of used aircraft cannot be determined.

After considering the comments, the Department believes that the comments in support of confidentiality do not demonstrate that disclosure of the cost information reported on Form 41 Schedules B–7 and B–43 would likely result in substantial competitive harm to the carriers submitting the schedules. In assessing the potential for competitive harm, the Department has considered the impact that the availability of the information over the last several decades has had on competition. The Department is unaware of any instance where the public release of acquisition cost and/or sales realization data has substantially harmed the competitive position of an individual air carrier. Considering that airframe and aircraft engine acquisition costs and sales realization amounts have been publicly available for several decades, the Department believes that it would be reasonable to expect that historical evidence of substantial competitive harm would exist, given the history of public availability. None of the comments submitted in support of confidentiality has presented any evidence that substantial competitive harm has occurred.

In reaching this conclusion, the Department has also considered the changes that have occurred within the operating environment of the air transportation industry, namely the advent of deregulation and accompanying changes in carrier route structures and competition. This new evolution of the industry began with the passage of the Airline Deregulation Act of 1978, which phased in deregulation of the domestic sector. Domestic routes were deregulated beginning January 1, 1982 and the fares charged for domestic air transportation were deregulated as of January 1, 1983. Thus, deregulation has been evolving for almost fourteen years and the Department is unaware of any occurrence of substantial competitive harm that has resulted from the availability of Schedules B–7 and B–43.

As to Delta's, Northwest's and United's comment that disclosure of the airframe and aircraft cost and sales price information creates an unfair competitive advantage *vis a vis* foreign flag carriers, the Department is unaware of any evidence that U.S. carriers, in the international area, either have been or would be substantially harmed by the disclosure of Schedules B–7 and B–43.

The Department also notes that there is no consensus among the affected parties as to whether the information should be held confidential. Of the eleven largest air carriers (Group III air carriers, defined as having over $1 billion in total annual operating revenues), only five submitted comments in response to the ANPRM. Four filed in support of confidentiality, while one, Federal Express, filed comments in support of continuing the public availability of Form 41 Schedules B–7 and B–43.

In its comments, Federal Express, contends that the cost information reported on Schedules B–7 and B–43 provides the financial community, appraisers, aviation consultants, and buyers and sellers with reference points for evaluating fair market values on aircraft airframes and engines. Federal Express goes on to state that: "The elimination of such credible data on which to project fair market value could very well reduce the willingness of investors to invest in aircraft. This could have a detrimental impact on the ability of the airline industry to raise financing for the large number of aircraft needed to accommodate future traffic growth." In concluding, Federal Express states that "* * * airline disclosure of Form 41 Schedules B–7 and B–43 ensures a reasonable balance of investment information, and thus opportunity, for all air carriers, thereby enhancing competition. Federal Express' experience is that aircraft and engine manufacturers base their pricing on order size, support requirements, and credit worthiness. Those carriers who are in the best position to meet these factors are able to negotiate the best prices."

Of the sixteen air carriers classified as Group II (carriers with total annual operating revenues of between $100 million and $1 billion), only one carrier, UPS, filed a comment. UPS filed in opposition to the public disclosure of airframe and aircraft engine acquisition costs and sales realization amounts. None of the thirty-one Group I air carriers (defined as having total annual operating revenues between $0 and $100 million) filed comments regarding this rulemaking notice. As to each group's reporting obligation, Group III and Group II air carriers file both the quarterly report of airframe and aircraft engine acquisitions and retirements (Schedule B–7), and the annual inventory of airframes and engines (Schedule B–43). Group I air carriers file only the annual inventory of airframes and engines.

Before moving on to the issue of the Securities and Exchange Commission's grant of confidentiality, we want to address Boeing's comments regarding the competitive harm to aircraft manufacturers. In discussing competitive harm, Boeing cites four factors in support of its position that airframe acquisition costs should be kept confidential: (1) Boeing does not routinely make the information available and takes steps to maintain its confidentiality, (2) Boeing has recently

reminded its customers of the sensitive nature of this information, (3) Boeing has requested its customers to take appropriate actions to protect its confidentiality, and (4) the information is of the type and content which has in the past been treated as confidential by the Securities and Exchange Commission.

In claiming a competitive disadvantage, it must be kept in mind that, in order to remain confidential, the information at issue must, among other things, result in the likelihood of Boeing suffering substantial competitive harm.

Boeing is the only aircraft manufacturer to support confidential treatment. Neither of Boeing's main competitors, McDonnell Douglas (MDC) and Airbus Industrie, support confidentiality. MDC, on its own behalf, filed comments supporting the continued public availability of the cost information reported on Schedules B–7 and B–43. MDC's comments are discussed under the caption "Comments in Support of Public Access." While Airbus did not file a comment in support of confidential treatment in response to the ANPRM, it should be noted that the acquisition cost of Airbus aircraft is reported on Schedules B–7 and B–43 by those U.S. air carriers operating such aircraft. As of the quarter ended March 31, 1992, five (American, America West, Continental, Delta and Northwest) of the eleven major U.S. air carriers are operating over one hundred aircraft manufactured by Airbus and Airbus has not objected to the availability of this information.

The Department has concluded that Boeing would not be likely to suffer substantial competitive harm if the aircraft cost data reported on Schedules B–7 and B–43 were publicly available. As stated previously in discussing the comments of the air carriers that filed in support of confidential treatment, the information Boeing seeks to hold confidential has been publicly available for decades and, despite Boeing's comment that it does not routinely make such data available and takes steps to protect its confidentiality, this, to the Department's knowledge, is the first time Boeing has objected to the availability of any data reported on either Schedule B–7 or Schedule B–43; moreover, as stated previously, this is also the first time that the Department is aware of Boeing making an effort to "remind its customers of the sensitive nature of this information and request its customers to take appropriate action to protect its confidentiality."

As in the case of the carriers filing Schedules B–7 and B–43, the Department believes that, given the decades the data have been available, especially over the last decade during which the air transportation industry operated in a deregulated competitive environment, the existence of competitive harm affecting aircraft manufacturers would have surfaced. In reaching its conclusion, the Department notes that no evidence of competitive harm has been presented by any party arguing for confidential treatment. Based on the comments submitted into the docket, the Department concludes that it is unlikely that either the affected air carriers or Boeing would suffer substantial competitive harm through the public availability of Schedules B–7 and B–43.

Boeing's comment that the aircraft acquisition cost data reported on Schedules B–7 and B–43 are of the type and content which have in the past been granted confidential treatment by the Securities and Exchange Commission is discussed below.

SEC Confidentiality

American, Delta, United and Boeing, in support of a grant of confidentiality, state that the Securities and Exchange Commission (SEC) has granted confidential treatment to data that are of the type and content similar to the data at issue here. American and Delta both state that the SEC grants confidential treatment to air carriers' "aircraft acquisition costs and other sensitive financial information." Delta and Boeing go on to state that the SEC's grant of confidentiality occurs on a regular or routine basis. In support, Delta and United have cited, as examples of the SEC's grant of confidentiality, certain exhibits to their SEC Form 10K filings. Delta cites Exhibit 10.8 to its Form 10K for fiscal year ended June 30, 1990. United cites Exhibits (10)K and (10)L to UAL Corporation's Form 10K filing for the year ended December 31, 1989. United is a wholly-owned subsidiary of UAL Corporation. The request for confidential treatment filed with the SEC was submitted jointly by UAL and United.

In order to better understand this apparent anomaly in the application of FOIA regarding aircraft acquisition costs and sales realization amounts, we examined UAL's Exhibits (10)K and (10)L to its 1989 Form 10K report. The review has disclosed that both exhibits contain, in great detail, the specific contract terms and conditions regarding the purchase of Boeing 757–222 and 737–222 aircraft (Exhibit (10)K), and 767–322ER aircraft (Exhibit (10)L).

Similarly, we also examined Delta's Exhibit 10.8 to its SEC Form 10K for fiscal year ended June 30, 1990. Exhibit 10.8 is Purchase Agreement No. 1646, which was executed with the Boeing Company for the acquisition of Boeing Model 737–332 aircraft. As with United's purchase agreement, Delta's agreement also contains, in specific detail, the contract terms and conditions regarding the aircraft purchase.

In general, our review revealed that purchase agreements include the number of aircraft that are part of the basic order as well as the number of option aircraft. The schedule of aircraft deliveries, by month and year, is also included. As to acquisition cost, only base year prices are included along with a myriad of provisions that must be factored in to arrive at a "final price." Among these provisions are agreements as to buyer furnished equipment, excusable delays, customs duties, warranties, adjustment factors for economic fluctuations, post delivery support, accelerated delivery of options, cancellation of options, training of cockpit crews, and various credit memoranda. Any one of these provisions could have an impact on the price of each delivered aircraft. The final price can also be affected by changes required by law or government regulation that may be required to secure a standard airworthiness certificate. Beyond the basic contract, many side letter agreements are executed between the contracting parties, affecting the terms and possibly the cost of the contract. Another significant determinant of price is the quantity of aircraft covered by a specific purchase agreement, the volume of business transacted between buyer and seller and whether the aircraft order is a launch order for a new aircraft type.

Without the knowledge of the particular circumstances surrounding an agreement and the many detailed provisions of the contract, an individual could not deduce exactly how the price of a specific aircraft was computed and how the various factors were weighted in arriving at the final price. Further masking the connection of the acquisition cost reported on Schedule B–7 are any modifications that a carrier may make to an aircraft between the time it is delivered and placed in service. Any such modifications would be included in the reported cost.

As to the inventory of aircraft reported on Schedule B–43, the connection between buyer and seller is even more tenuous. Any modification or betterment that is made to the aircraft is included in the reported acquisition cost/capitalized value. For example any changes in avionics, noise abatement technology, cabin configuration, or

governmental regulation such as passenger exit requirements, are all included in the revised cost/capitalized value of the affected aircraft. As time passes, keeping in mind that Schedule B–43 is submitted annually, the probability increases that the "cost" initially reported on Schedule B–7 will not be the same as the cost reported on the latest filing of Schedule B–43.

As to used aircraft, an important factor in determining price is the amount of time between overhauls, which is not reported on either Schedule B–7 or Schedule B–43. Another factor in determining the reported cost of used aircraft is whether the aircraft is "equipped" as needed or requires modification before being placed in transport service.

In reviewing the comments, no evidence has been presented that would lead the Department to conclude that carriers are not able to engage in arm's-length negotiations to acquire and sell aircraft or would likely suffer substantial competitive harm due to the availability of Schedules B–7 and B–43. There also is no indication that any carrier has suffered substantial competitive harm in disposing of or purchasing used aircraft.

Absent the knowledge of the full terms and conditions contained in the purchase/sale agreement, the Department fails to see how the information reported on Schedules B–7 and B–43 can subject air carriers to the likelihood of suffering substantial competitive harm.

Contract Provisions

As a manufacturer/seller of aircraft, Boeing states that selling commercial aircraft is highly competitive and that premature disclosure of the financial data applicable to Boeing aircraft to purchasers of aircraft or to competing manufacturers would seriously impair Boeing's future sales of aircraft, and would put Boeing at a continuing disadvantage with respect to its domestic and foreign competitors. Boeing goes on to state that it does not routinely make such information public and takes steps to maintain its confidentiality. Boeing also states it has recently reminded its customers of the sensitive nature of the information and has requested its customers to take appropriate actions to protect its confidentiality. Boeing equates the airframe acquisition costs reported on Schedules B–7 and B–43 to the information that has in the past been treated as confidential by the SEC.

American, Delta, and UPS each commented that airframe and aircraft engine acquisition contracts contain confidentiality provisions that are overridden by the Department's public release of Schedules B–7 and B–43. As stated by UPS, "Normal business practice treats sales and purchasing negotiations as a confidential matter unless the parties involved choose to make the details of their negotiations public. As a result, confidentiality clauses are standard in these types of agreements and the parties are thus prohibited from disclosing price information, except where required by law." Boeing states that the contractual provisions provide for full compliance with all government filing requirements and that it has always relied on the agency to which the data are provided for reasonable protection from broad public disclosure.

It should be noted that, both before and after deregulation, the former Civil Aeronautics Board collected on recurrent Form 41 schedules, aircraft acquisition cost and sales realization data that were available for inspection in a public reports reference facility. Subsequent to the sunset of the CAB, the Department has continued this policy of public availability. As to the information filed on Schedules B–7 and B–43, this, to the best of the Department's knowledge, is the first time that Boeing has filed an objection to the disclosure of any data collected on these two schedules.

In sum, neither the former CAB nor the Department has changed the policy regarding the public availability of the airframe and aircraft engine cost data at issue and Boeing has never objected, until now, to the policy of public release. That inaction leads us to believe that Boeing was previously satisfied with the public information policies of the agency collecting the aircraft acquisition, retirement and inventory data. Because of these facts, the Department fails to see the relevance of Boeing's comment that it does not routinely make such information public and takes steps to maintain its confidentiality.

The Department assumes that the steps Boeing refers to relate to the filing of data with the SEC. The Department recognizes that there is a historical trail where the SEC has granted the confidential treatment requests of Boeing and its customers that address the disclosure of information contained in aircraft purchase agreements. However, Boeing's statement that the information at issue is of the type and content as that which is filed with the SEC has already been discussed and rejected under the preceding caption, "SEC Confidentiality."

As with the affected air carriers, the Department notes that there is no consensus among aircraft manufacturers as to the need for confidentiality. Boeing and McDonnell Douglas are the only two aircraft manufacturers that filed comments. McDonnell Douglas, on its behalf, filed comments supporting the continued public availability of the cost information reported on Schedules B–7 and B–43. Its comments are discussed under the caption "Comments in Support of Public Access."

Based on the preceding discussion, the Department concludes that it is unlikely that Boeing would suffer substantial competitive harm in its future sales of aircraft due to the public availability of Schedules B–7 and B–43.

Customary Disclosure

American states that it would not publicly disclose the cost and depreciation figures contained in Schedules B–7 and B–43 absent government compulsion to do so. Similarly, UPS states that normal business practice treats sales and purchasing negotiations as a confidential matter unless the parties involved choose to make the details of their negotiations public. Delta's position is that disclosure of aircraft acquisition costs and sales realization amounts reported on Schedules B–7 and B–43 is not required by the public interest.

Whether or not a carrier would have released the aircraft cost data on their own is not the issue here. The guiding principal of FOIA is that the Government's information belongs to the people, unless there is a justifiable reason to withhold. The justifiable reason would be FOIA exemption 4; however, the comments filed in support of confidentiality have failed to make a case that substantial competitive harm would likely result from disclosure.

Once again, the Department notes that the information at issue has been publicly available for several decades and is unaware of any objection to public disclosure until United's initial filing in 1989. Furthermore, no evidence has been presented that substantial competitive harm has occurred.

Confidentiality of Fuel Price Data

In its comments, United states that the aircraft inventory data at issue here are comparable in sensitivity to the price paid by air carriers for fuel. In support, United cites Civil Aeronautics Board Order 79–10–91, granting confidential treatment to submitted fuel price data. United quotes the order at 2: "Release of current detailed [fuel price] data and invoices could enable competing

purchasers of scarce fuel as well as fuel suppliers to anticipate [the reporting carrier's] attempts to secure fuel at the lowest possible price." United goes on to state that releasing equipment prices gives an unfair competitive advantage to competing purchasers and suppliers.

The Department believes the question of competitive harm has been adequately addressed under the caption "Competitive Harm." The Department also believes, however, that United's citation of Order 79–10–91 warrants comment.

The circumstances surrounding the grant of confidentiality in Order 79–10–91 are not the same. Order 79–10–91 dealt with the collection of, on a weekly basis, the average price of aviation fuel purchased plus fuel invoices for one day of each week. The situation in effect, at that time, was highly unusual and of limited duration. The collection of the fuel price data was conducted under delegated authority, not by regulation, and for a limited period of time. The request for special air carrier reports was in response to a crisis period of fuel scarcity and volatile fuel price changes brought about by conditions in the Middle East. The information collected was used by the Civil Aeronautics Board to update the Standard Industry Fare Level on the basis of the most current fuel information possible. Finally, the information collection was applicable to only a limited number (nine) of air carriers.

None of these circumstances are present in the Department's collection of aircraft inventory data, which has been a recurrent reporting requirement under 14 CFR part 241 for decades and is applicable to all large certificated air carriers.

In a similar vein, United had filed a motion with the Department to permanently withhold from public disclosure: (1) the fuel cost and consumption data it reports pursuant to 14 CFR part 241 on monthly RSPA Form 41 Schedule P–12(a), Fuel Consumption by Type of Service and Entity, and (2) the number of gallons of aircraft fuels issued and oils issued that are reported on quarterly RSPA Form 41 Schedule T–2, Traffic, Capacity, Aircraft Operations, and Miscellaneous Statistics by Type of Aircraft. United's original motion was filed in Docket 42882.

By letter dated July 26, 1990, the Department rejected United's motion for confidentiality stating it was not convinced that there was a likelihood of substantial competitive harm through the release of the fuel data. In reaching its conclusion, the Department noted that, while the average cost of fuel, by entity, was disclosed, the information collected lacked sufficient detail so as to cause the likelihood of substantial competitive harm. For example, the collected fuel data are not detailed to the extent they would permit a competing fuel supplier or airline to determine another airline's fuel cost or consumption at a particular location.

The situation surrounding the availability of airframe and aircraft engine transaction costs is similar to the above situation involving United's request for confidential treatment of the fuel data reported in its Form 41 reports. The Department believes, absent the availability of the purchase (sales) agreements' terms and conditions, substantial competitive harm would not likely occur.

Alternative Course of Action

Continental, in its comments, proposes an alternative course of action in lieu of amending part 241 to include a grant of confidentiality. Specifically, Continental proposes that the Department eliminate the following data elements: (1) Schedule B–7: Cost, Amortized/Depreciated Cost, and Realization; and (2) Schedule B–43: Acquired Cost, Allowance for Depreciation, Depreciated Cost, and Estimated Residual Value. The reason given for eliminating this information is that there is no direct link from any summarization of these elements to either the Balance Sheet (Schedule B–1), Statement of Operations (Schedule P–1.2), or Aircraft Operating Expenses (Schedule P–5.2). Continental questions the Department's need for the information.

The question of the Department's need for the data elements cited above is not at issue here. The need for the information has been addressed in other docketed forums, most recently as part of the President's Federal Regulatory Review, which concluded that the information cited by Continental is still required by the Department for the administration of its aviation responsibilities.

Comments in Support of Public Access

As noted above, fourteen of the comments filed, including the late comment, were in opposition to the grant of confidential treatment for the aircraft inventory data reported on Form 41 Schedules B–7 and B–43. FedEx, as previously pointed out, has stated that it believes the public availability of Schedules B–7 and B–43 enhances competition. Basically, the carrier contends that disclosure ensures a reasonable balance of investment information, and thus opportunity for all carriers to evaluate investment decisions. The B–7 and B–43 data provide the financial community, appraisers, aviation consultants and buyers and sellers with reference points for evaluating fair market values for airframes and aircraft engines. Eliminating the availability of such information could reduce the willingness of investors to invest in aircraft.

As a manufacturer of aircraft, the McDonnell Douglas Corporation (MDC) filed comments in support of the public availability of airframe and engine acquisition costs. MDC states that continued disclosure of the information would best serve the public interest and the U.S. aerospace industry.

In its comments, MDC states that it makes extensive use of Schedules B–7 and B–43 to support the design decisions of new and derivative aircraft. To quote MDC: "The results of these design efforts have provided the aerospace industry with efficient and modern aircraft. The improved efficiencies have led to new models with improved operating costs. As a result, the travelling public pays less for air travel, adjusted for inflation, than they did ten years ago."

The remaining ten comments (Air Cargo Management Group; BK Associates; Avitas; The CIT Group/Capital Equipment Financing; DCB Consultants; Jack B. Feir & Associates; Mack Aviation; Simat, Helliesen & Eichner, Inc.; United States Leasing International and York University) come from air transportation industry analysts, researchers, consultants, and aircraft appraisers. (Two of the comments in opposition to confidentiality, ALPA's and Airt Services', have been discussed previously in this notice under the caption "Competitive Harm.")

The themes expressed in these ten comments are woven with several common threads. Among these are the shifting patterns of aircraft ownership within the air transportation industry to a trend towards sale and leaseback transactions, which require accurate valuations by banks and other financial institutions that provide debt and equity for the transaction. The comments generally also note the participation of income funds, limited partnerships, and equipment trusts in assisting air carriers in shifting to asset-based financing. As a consequence of this move away from a position of equity-financing to asset-based financing, buyers, sellers, and investors depend more on "appraisals." Without historical prices of new and used aircraft, it would be difficult, if not impossible, to develop a fair market

value of a leased aircraft in the "nth" year.

BK Associates comments that, without the data available on Schedules B–7 and B–43, lenders will be more restrictive in financing airframe and engine purchases. BK goes on to state that financially weaker airlines will have trouble in selling and leasing back aircraft to finance operations. Furthermore, airline requests for an appraiser to value aircraft for collateral purposes in establishing a line of credit would also be jeopardized by not having B–7 and B–43 data. In a similar vein, Mack Aviation notes that appraisers need the knowledge of used aircraft transactions to assist the trustee in airline bankruptcy cases.

York University states that data availability makes the markets for aircraft more efficient by facilitating the movement of aircraft and engines to their highest-valued users.

York goes on to state that before granting confidentiality, a convincing case must be made that the carriers seeking confidentiality have been, and will continue to be, harmed significantly by such information being made public. The data at issue have been available for over 50 years and at no time has it been determined that individual carriers have been seriously harmed by the government's data access policies.

Federal Aviation Act of 1958, As Amended

The issue of confidential treatment has been discussed within the context of the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. section 552, and § 7.69, Trade Secrets and Commercial or Financial Information Obtained from a Person and Privileged or Confidential, of the Department's regulations (49 CFR part 7). Before concluding, we need to consider the sensitivity of the airframe and aircraft engine cost information reported on Schedules B–7 and B–43 within the context of section 1104, Withholding of Information, of the Federal Aviation Act of 1958, as amended. Section 1104 is referenced in paragraph (a)(13) of § 7.67, Records Exempted from Disclosure by Statute, of the Department's regulations (49 CFR 7.67).

Section 7.67 states that, under section 1104, information is exempted from public disclosure if it would prejudice the formulation and presentation of positions of the United States in international aviation negotiations or adversely affect the competitive position of any United States air carrier in foreign air transportation. Based on the decades of experience that the Department and the former Civil Aeronautics Board have in conducting bi-lateral and multi-lateral aviation negotiations, the Department concludes that the availability of Form 41 Schedules B–7 and B–43 would not adversely impact the development and presentation of U.S. positions in international negotiations. The information reported on both schedules has been publicly available for decades and the availability of the information has not adversely impacted U.S. international aviation policy or international aviation negotiations.

As to the potential for the information to adversely affect U.S. air carriers in foreign air transportation, the Department addressed this issue under the preceding caption: Competitive Harm.

Conclusion

After considering the comments submitted in response to the ANPRM, the Department has decided to withdraw the rulemaking proceeding started in Docket 46597. Furthermore, based on the preceding discussion of the comments, the Department has concluded that no further action is required and that the withholding of the Form 41 Schedules B–7 and B–43 from public disclosure is unwarranted.

This action also denies air carrier motions for confidential treatment of Form 41 Schedules B–7 and B–43 that have been filed in Dockets 46597, 46868, 46869, 46933, 47119 and 47254. This action also replies to United Air Lines' February 1, 1991, petition for review of staff action by reaffirming the January 9, 1991 denial of United's previous motions for confidentiality that were filed in the above listed dockets. Finally, this action further denies United's petition for rulemaking to modify 14 CFR part 241 to include a period of confidential treatment for Form 41 Schedule B–7 Airframe and Aircraft Engine Acquisitions and Retirements and Schedule B–43, Inventory of Airframes and Aircraft Engines.

Issued in Washington, DC on December 23, 1992.

James W. Mitchell,

Acting Associate Administrator for Research, Technology and Analysis, Research and Special Programs Administration.

Exhibit A

This Letter Was Sent to All Large Certificated Air Carriers

March 22, 1991.

Dear :

This letter concerns the confidentiality of information reported on quarterly Form 41 Schedule B–7, Airframe and Aircraft Engine Acquisitions and Retirements, and annual Form 41 Schedule B–43, Inventory of Airframes and Aircraft Engines.

The issue of confidential treatment was first raised by United Air Lines' motion of November 8, 1989, requesting the Department to withhold from public disclosure the acquisition costs and sales realization amounts for airframes and aircraft engines reported on its Schedule B–7 for the quarter ended September 30, 1989 (Docket 46597). Subsequent motions were filed with every Schedule B–7 submitted since then (Dockets 46868, 46933, 47119 and 47254). United also filed a motion on March 28, 1990, for confidential treatment pertaining to the airframe and aircraft engine acquisition cost data reported on Schedule B–43, the annual report covering calendar year 1989 (Docket 46869). In addition, American Airlines filed a motion dated August 9, 1990, for confidential treatment of its Schedule B–7 for the quarter ended June 30, 1990 (Docket 47273).

In my letter dated January 9, 1991, I denied each of United's motions for confidential treatment. United filed a petition for review of the staff action denying its motions on February 1, 1991. In its petition, United states that it is not seeking exclusive confidentiality for its data, but rather, believes that aircraft acquisition costs and sales realization amounts should be held confidential for all carriers.

In urging the Research and Special Programs Administration to review its staff action, United expresses its desire to have incorporated in the regulations governing the submission of B–7 and B–43 (14 CFR part 241, Schedule B–7 and Schedule B–43) a provision for the confidential treatment of the reported data. As stated in its petition, "To that end, United proposes in the near future to submit a petition for rulemaking requesting an amendment to part 241 to accord confidential treatment to the equipment price data on Schedules B–7 and B–43. Pending action on that rulemaking petition, United requests that its motions to withhold from public disclosure along with those of any other carrier requesting such relief be granted * * *"

Delta Air Lines filed an answer on February 8, 1991, in support of United's petition. In noting United's intention to file a rulemaking petition, Delta states its belief that the Department should conduct a thorough review of the important policies and interests which are at issue. Furthermore, Delta states: "Should the Department review and reverse the staff's denial of United's request, the equipment acquisition and sales data of all carriers must be accorded the same treatment as United's similar data."

To expedite the administrative process, I have decided to treat United's petition for review of staff action as a request for rulemaking to explore whether section 23 of part 241 of the Department's Economic Regulations (14 CFR part 241) should be amended to accord confidential treatment for the information reported on Form 41 Schedules B–7 and B–43. Pending the determination on the request for rulemaking, I am reversing my earlier decision and

granting confidential treatment to United's Schedule B–7 and Schedule B–43, as previously requested.

To preclude United from enjoying an advantage over other carriers by having its data withheld from the public eye, I will look favorably upon individual air carrier motions for confidential treatment of Form 41 Schedule B–7 and/or Form 41 Schedule B–43, which are submitted under the provisions of section 302.39 of the Department's Procedural Regulations (14 CFR part 302.39). Section 302.39 requires that a separate motion be filed along with each submission of data for which confidential treatment is requested. If Form 41 Schedules B–7 and B–43 are submitted at the same time, confidential treatment requests for both schedules may be combined into a single motion.

This opportunity to request confidential treatment under section 302.39 applies, initially, to the submission of the quarterly Schedule B–7 for the fourth quarter of 1990 and the annual filing of Schedule B–43 for calendar year 1990. The opportunity, of course, also applies to subsequent filings of both schedules pending the determination on the request for rulemaking.

For those air carriers that may have already filed their fourth quarter Schedule B–7 for 1990 and/or annual Schedule B–43 for calendar year 1990, we will maintain their schedules confidential until April 15, 1991 in order to afford sufficient time for any affected carrier to file a motion for confidentiality. If a motion is not filed by April 15, the affected schedules will then be placed in the Department's Reports Reference Room and be made available for public inspection.

For administrative convenience, we are consolidating all docketed motions of United (Dockets 46597, 46868, 46869, 46923, 47119, and 47254) and American (Docket 47273) into a single docket: Docket 46597. All motions for confidential treatment of Schedules B–7 and B–43 should be designated for Docket 46597. We further plan that any rulemaking action taken regarding United's request for confidentiality would also be placed in Docket 46597.

This action is taken under authority granted by 14 CFR 385.27 (a) and (i).

Sincerely,

Robin A. Caldwell,

Director, Office of Airline Statistics.

[FR Doc. 92–31794 Filed 12–31–92; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE–42–92]

RIN 1545–AQ77

Certain Cash or Deferred Arrangements Under Employee Plans

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend final regulations under section 401(k). The proposed amendments will affect sponsors of certain cash or deferred arrangements benefiting employees who are members of collective bargaining units.

DATES: Written comments and requests for a public hearing must be received by March 5, 1993.

ADDRESSES: Send written comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (EE–42–92), Washington, DC 20044. In the alternative, comments may be hand delivered to: Internal Revenue Building, room 5228, 1111 Constitution Ave., NW., attention: CC:CORP:T:R (EE–42–92), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cheryl Press at 202–622–4688 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Final regulations under section 401(k) of the Internal Revenue Code (Code) were published in the **Federal Register** on August 15, 1991 (56 FR 40507). Amendments to the final regulations were published in the **Federal Register** on December 4, 1991 (56 FR 63420). Corrections to the final regulations were published in the **Federal Register** on March 25, 1992 (57 FR 10289).

Explanation of Provisions

This document proposes amendments to the final regulations under section 401(k) of the Code. The proposed amendments simplify the application of the regulations to certain plans benefiting employees who are members of collective bargaining units. The amendments modify the definition of the term "plan" to make optional, instead of mandatory, the disaggregation of a plan covering members of more than one collective bargaining unit.

Section 1.401(k)–1(g)(11)(iii)(A) of the final regulations provides that a plan that benefits employees who are included in a unit of employees covered by a collective bargaining agreement and employees who are not included in a collective bargaining unit is treated as comprising separate plans. Furthermore, employees of each collective bargaining unit benefiting under the plan must be treated as covered under a separate plan. Thus, for example, if a plan benefits employees in three categories, employees included in collective bargaining unit A, employees included in unit B, and those not included in any collective bargaining unit, the plan is treated as comprising three separate plans, each of which benefits only one category of employees. Many commentators have suggested that an employer be required instead to treat the portion of the plan that benefits employees included in collective bargaining units as a separate plan from the portion of the plan that benefits other employees.

The proposed amendments adopt the approach suggested by commentators. The portion of a plan that benefits employees who are included in collective bargaining units and the portion that benefits employees who are not included in collective bargaining units must be treated as comprising separate plans. However, further disaggregation of the plan by collective bargaining units is permissive, provided that the combinations of units are determined on a basis that is reasonable and reasonably consistent from year to year. An employer or plan administrator, as appropriate, may therefore treat the entire portion of a plan benefiting members of collective bargaining units as a single plan, may treat the portion benefiting members of each collective bargaining unit as separate plans, or may aggregate the portions benefiting members of any two or more collective bargaining units.

Section 1.401(k)–1(g)(11)(iii)(D) is similarly amended to make permissive the disaggregation of a multiemployer plan by collective bargaining unit. Under the final regulations, only the portion of a multiemployer plan benefiting employees under the same collective bargaining agreement and the same benefit computation formula is treated as a separate plan. Under the proposed amendments, the employer or plan administrator may choose to disaggregate this separate plan further on the basis of collective bargaining units.

Under § § 1.401(k)–1(a)(7)(i) and 1.402(a)–1(d)(3)(iv) of the final regulations, a collectively bargained plan is only required to satisfy the actual deferral percentage test for plan years beginning after December 31, 1992. The proposed amendments are effective for the same plan years.

The proposed amendments to the regulations change the aggregation rules only for collectively bargained plans. Treasury and the Service anticipate further technical amendments to the regulations under section 401(k) and related provisions. No inference should be drawn from these proposed amendments concerning any other issue under the final regulations, including

any other issue involving the treatment of collectively bargained or multiemployer plans.

Comments on the proposed amendments, and on any other issues or problems related to the testing of plans with participants who are members of collective bargaining units, are invited. In particular, comments are invited regarding the aggregation or disaggregation of multiemployer plans by collective bargaining agreement (as opposed to or in addition to collective bargaining unit) or by benefit computation formula.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Written Comments

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety.

Drafting Information

The principal author of these regulations in Cheryl Press, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.401–0 Through 1.419A–2T

Bonds, Employee benefit plans, Income taxes, Pensions, Reporting and recordkeeping requirements, Securities, Trusts and trustees.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *.

Par. 2. Section 1.401(k)–1 is amended by revising paragraphs (g)(11)(iii)(A) and (g)(11)(iii)(D)(*2*) to read as follows:

§ 1.401(k)–1 Certain cash or deferred arrangements.

* * * * *

(g) * * *

(11) * * *

(iii) * * * (a) *Plans benefiting collective bargaining unit employees.* A plan that benefits employees who are included in a unit of employees covered by a collective bargaining agreement and employees who are not included in such a collective bargaining unit is treated as comprising separate plans. This paragraph (g)(11)(iii)(A) is generally applied separately with respect to each collective bargaining unit. At the option of the employer, however, two or more separate collective bargaining units can be treated as a single bargaining unit, provided that the combinations of units are determined on a basis that is reasonable and reasonably consistent from year to year. Thus, for example, if a plan benefits employees in three categories—employees included in collective bargaining unit A, employees included in collective bargaining unit B, and employees who are not included in any collective bargaining unit—the plan can be treated as comprising three separate plans, each of which benefits only one category of employees. However, if collective bargaining units A and B are treated as a single collective bargaining unit, the plan will be treated as comprising only two separate plans, one benefiting all employees who are included in a collective bargaining unit and another benefiting all other employees. Similarly, if a plan benefits only employees who are included in collective bargaining unit A and collective bargaining unit B, the plan can be treated as comprising two separate plans. However, if collective bargaining units A and B are treated as a single collective bargaining unit, the plan will be treated as a single plan.

* * * * *

(D) * * *

(*2*) *Multiemployer plans.* Consistent with section 413(b), the portion of the plan that is maintained pursuant to a collective bargaining agreement (within the meaning of § 1.415–1(a)(2)) is treated as a single plan maintained by a single employer that employs all the employees benefiting under the same benefit computation formula and covered pursuant to that collective bargaining agreement. The rules of paragraph (g)(11)(iii)(A) of this section (including the optional aggregation of collective bargaining units) apply to the resulting deemed single plan in the same manner as they would to a single employer plan, except that the plan administrator is substituted for the employer where appropriate and appropriate fiduciary obligations are taken into account. The non-collectively bargained portion of the plan is treated as maintained by one or more employers, depending on whether the non-collective bargaining unit employees who benefit under the plan are employed by one or more employers.

* * * * *

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 92–31188 Filed 12–31–92; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 1

[PS–50–92]

RIN 1545–AS098

Rules to Carry Out the Purposes of Section 42 and for Correcting Administrative Errors and Omissions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations concerning the Secretary's authority to provide guidance necessary or appropriate to carry out the purposes of section 42. This document also contains proposed regulations allowing State and local housing credit agencies to correct administrative errors and omissions made in connection with allocations of low-income housing credit dollar amounts and recordkeeping within a reasonable period after their discovery. The proposed regulations affect State and local housing credit agencies, owners of buildings or projects for which the low-income housing credit is allocated, and taxpayers claiming the low-income housing credit.

DATES: Written comments must be received by March 5, 1993. Requests to appear at a public hearing scheduled for April 5, 1993, and outlines of oral comments must be received by March 15, 1993. See notice of hearing

published elsewhere in this issue of the Federal Register.

ADDRESSES: Send comments, requests to appear at the public hearing, and outlines to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, (Attn: CC:CORP:T:R (PS-50-92), room 5228), Washington, DC 20044. In the alternative, comments, requests to appear at the public hearing, and outlines may be hand delivered to: CC:CORP:T:R (PS-50-92), Internal Revenue Service, room 5228, 1111 Constitution Avenue, NW., Washington, DC 20224. The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jeffrey A. Erickson, (202) 622-3040 (not a toll-free call). Concerning the hearing, Mike Slaughter, Regulations Unit, (202) 622-7190 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information requirement contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information requirement in this proposed regulation is contained in § 1.42-13(b). This information is required by the Internal Revenue Service in order to ascertain the circumstances resulting in the administrative error or omission. The likely respondents are state and local housing credit agencies, individuals, business or other for-profit institutions, nonprofit institutions, and small businesses or organizations.

These estimates are an approximation of the average time expected to be necessary for the collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances. Estimated total annual reporting burden: 128 hours. Estimated average annual burden per respondent: 1.5 hours. Estimated number of respondents: 85. Estimated frequency of responses: on occasion.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 42 of the Internal Revenue Code of 1986. These amendments are proposed to provide guidance under section 42(n). Under section 42(n), the Secretary of the Treasury may prescribe regulations as may be necessary or appropriate to carry out the purposes of section 42. Under section 42(n)(4), the Secretary may prescribe regulations providing housing credit agencies the opportunity to correct administrative errors and omissions with respect to allocations and recordkeeping within a reasonable period after their discovery.

Explanation of Provisions

Section 42 provides for a low-income housing credit that may be claimed as part of the general business credit under section 38. The credit determined under section 42 is allowable only to the extent the owner of a qualified low-income building receives a housing credit allocation from a State or local housing credit agency (Agency), unless the building is exempt from the allocation requirement by reason of section 42(h)(4)(B).

The proposed regulations incorporate the authority granted to the Secretary under section 42(n) to provide guidance necessary or appropriate to carry out the purposes of section 42. Thus, the proposed regulations establish that the Secretary may implement section 42(n) by issuing guidance in a form other than regulations.

The proposed regulations also permit an Agency to correct administrative errors and omissions with respect to allocations and recordkeeping within a reasonable period after their discovery. Under the regulations, an Agency must obtain the prior approval of the Secretary to correct an administrative error or omission if the correction is not made before the close of the calendar year of the error or omission and the correction: (1) Is a numerical change to the housing credit dollar amount allocated for the building or project; (2) affects the determination of any component of the housing credit ceiling of the State under section 42(h)(3)(C); or (3) affects the State's unused housing credit carryover that is assigned to the Secretary under section 42(h)(3)(D). In all other cases an Agency may correct an administrative error or omission without obtaining prior approval from the Secretary.

The proposed regulations specifically define what constitutes an administrative error or omission. Errors or omissions that are not within this definition, including misinterpretations of the applicable rules and regulations under section 42, are not covered by the proposed regulations and therefore may not be corrected as provided by the proposed regulations. However, relief may be granted by the Service under its general authority. The Service solicits comments as to other errors and omissions that should also be included in this section as administrative errors or omissions.

The guidance discussed in Notice 92-35, 1992-33 I.R.B. 18, relating to an Agency's ability to participate in the pool of unused housing credit carryovers, is not in these proposed regulations. However, that guidance will be provided in other proposed regulations that directly address State housing credit ceiling calculations.

Proposed Effective Date

These proposed regulations are proposed to be effective on March 5, 1993.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact on small business.

Comments and Requests to Appear at Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held on April 5, 1993. See notice of hearing published elsewhere in this issue of the Federal Register.

Drafting Information

The principal author of these regulations is Jeffrey A. Erickson, Office of the Assistant Chief Counsel

(Passthroughs and Special Industries), Internal Revenue Service. However, other personnel from the Internal Revenue Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR 1.37–1 Through 1.44A–4

Credits, Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * § 1.42–13 also issued under 26 U.S.C. 42(n). * * *

Par. 2. New § 1.42–13 is added to read as follows:

§ 1.42–13 Rules necessary and appropriate; housing credit agencies' correction of administrative errors and omissions.

(a) *Publication of guidance.* Under section 42(n), the Secretary has authority to prescribe regulations as may be necessary or appropriate to carry out the purposes of section 42. The Secretary may also provide guidance through various publications in the Internal Revenue Bulletin. (See § 601.601(d)(2)(ii)(*b*) of this chapter.)

(b) *Correcting administrative errors and omissions*—(1) *In general.* An Agency may correct an administrative error or omission with respect to allocations and recordkeeping, as described in paragraph (b)(2) of this section, within a reasonable period after the Agency discovers the administrative error or omission. Whether a correction is made within a reasonable period depends on the facts and circumstances of each situation. Except as provided in paragraph (b)(3)(ii) of this section, an Agency need not obtain the prior approval of the Secretary to correct an administrative error or omission, if the correction is made in accordance with paragraph (b)(3)(i) of this section. The administrative errors and omissions to which this paragraph (b) applies are strictly limited to those described in paragraph (b)(2) of this section, and thus do not include, for example, any misinterpretation of the applicable rules and regulations under section 42. Accordingly, an Agency's allocation of a particular calendar year's low-income housing dollar credit amounts made after the close of that calendar year, or the use of an incorrect population amount in calculating a State's housing credit ceiling for a calendar year are not administrative errors that can be corrected under this paragraph (b).

(2) *Administrative errors and omissions described.* An administrative error or omission is a mistake that results in a document that inaccurately reflects the intent of the Agency at the time the document is originally completed or, if the mistake affects a taxpayer, a document that inaccurately reflects the intent of the Agency and the affected taxpayer at the time the document is originally completed. Administrative errors and omissions described in this paragraph (b)(2) include the following:

(i) A mathematical error;

(ii) An entry on a document that is inconsistent with another entry on the same or another document regarding the same property, or taxpayer;

(iii) An omission of information that is required on a document; and

(iv) Any other type of error or omission identified by guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter) as an administrative error or omission covered by this paragraph (b).

(3) *Procedures for correcting administrative errors or omissions*—(i) *In general.* An Agency's correction of an administrative error or omission, as described in paragraph (b)(2) of this section, must amend the document so that the corrected document reflects the original intent of the Agency, or the Agency and the affected taxpayer, and complies with applicable rules and regulations under section 42.

(ii) *Secretary's prior approval required.* An Agency must obtain the Secretary's prior approval to correct an administrative error or omission, as described in paragraph (b)(2) of this section, if the correction is not made before the close of the calendar year of the error or omission and the correction—

(A) Is a numerical change to the housing credit dollar amount allocated for the building or project;

(B) Affects the determination of any component of the State's housing credit ceiling under section 42(h)(3)(C); or

(C) Affects the State's unused housing credit carryover that is assigned to the Secretary under section 42(h)(3)(D).

(iii) *Requesting the Secretary's approval.* To obtain the Secretary's approval under paragraph (b)(3)(ii) of this section, an Agency must submit a request for the Secretary's approval within a reasonable period after discovering the administrative error or omission, and must agree to any conditions that may be required by the Secretary under paragraph (b)(3)(iv) of this section. When requesting the Secretary's approval, the Agency, or the Agency and the affected taxpayer, must file an application that complies with the requirements of this paragraph (b)(3)(iii) and Rev. Proc. 92–1, 1992–1 I.R.B. 9 (or any subsequent applicable revenue procedure). (See § 601.601(d)(2)(ii)(*b*) of this chapter). The application requesting the Secretary's approval must contain the following information—

(A) The name, address, and identification number of each affected taxpayer;

(B) The Building Identification Number (B.I.N.) and address of each building or project affected by the administrative error or omission;

(C) A statement explaining the administrative error or omission and the intent of the Agency, or of the Agency and the affected taxpayer, when the document was originally completed;

(D) Copies of any supporting documentation;

(E) A statement explaining the effect, if any, that a correction of the administrative error or omission would have on the housing credit dollar amount allocated for any building or project; and

(F) A statement explaining the effect, if any, that a correction of the administrative error or omission would have on the determination of the components of the State's housing credit ceiling under section 42(h)(3)(C) or on the State's unused housing credit carryover that is assigned to the Secretary under section 42(h)(3)(D).

(iv) *Agreement to conditions.* To obtain the Secretary's approval under paragraph (b)(3)(ii) of this section, an Agency, or the Agency and the affected taxpayer, must agree to the conditions the Secretary considers appropriate.

(c) *Examples.* The following examples illustrate the scope of this section:

Example 1. Individual B applied to Agency X for a reservation of low-income housing credits for a building that is part of a low-income housing project. When applying for the low-income housing credits, B informed Agency X that B intended to form Partnership Y to finance the project. After receiving the reservation letter and prior to receiving an allocation, B formed Partnership Y and sold partnership interests to a number of limited partners. B contributed the low-income housing project to Partnership Y in exchange for a partnership interest. B and Partnership Y informed Agency X of the ownership change. When actually allocating the credits, Agency X sent Partnership Y a document listing B, rather than Partnership

Y, as the building's owner. Partnership Y promptly notified Agency X of the error. After reviewing related documents, Agency X determined that it had incorrectly listed B as the building's owner on the allocation document. Since the parties originally intended that Partnership Y would receive the allocation as the owner of the building, Agency X may correct the error without obtaining the Secretary's approval, and insert Partnership Y as the building's owner on the allocation document.

Example 2. Agency Y allocated fewer low-income housing credits for a low-income housing building than Agency Y originally intended. After the close of the calendar year of the allocation, B, the building's owner, discovered the error and promptly notified Agency Y. Agency Y reviewed relevant documents and agreed that an error had occurred. Agency Y and B must apply, as provided in paragraph (b)(3)(iii) of this section, for the Secretary's approval before Agency Y may correct the error.

(d) *Effective date.* The rules set forth in this notice of proposed rulemaking are proposed to be effective on March 5, 1993.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 92-31189 Filed 12-31-92; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[PS-50-92]

RIN 1545-AQ98

Rules to Carry Out the Purposes of Section 42 and for Correcting Administrative Errors and Omissions; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed Income Tax Regulations concerning the Secretary's authority to provide guidance necessary or appropriate to carry out the purposes of section 42 and allowing State and local housing credit agencies to correct administrative errors and omissions made in connection with allocations of low-income housing credit dollar amounts and recordkeeping within a reasonable period after their discovery.

DATES: The public hearing will be held on Monday, April 5, 1993, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Monday, March 15, 1993.

ADDRESSES: The public hearing will be held in the IRS Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [PS-50-92], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-622-7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 42 of the Internal Revenue Code of 1986.

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 desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, March 15, 1993, an outline of the 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 to 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 admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be 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).

[FR Doc. 92-31470 Filed 12-31-92; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 92-015b]

RIN 2115-AE30

Temporary Deviations for Drawbridge Operation Requirements

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend drawbridge operation regulations to allow for temporary deviations for up to 90 days. Under current regulations, a Coast Guard District Commander may authorize a temporary deviation from a part 117 provision for a maximum of 60 days. The additional 30 days would better accommodate seasonal testing and public response surveys, and would provide additional time for a test regulation to be in effect before comments are due on the proposed change and its effectiveness.

DATES: Comments must be received on or before March 5, 1993.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406)(CGD 92-015b), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, or may be delivered to Room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at Room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Ms. Marcia L. Waples, Chief, Alterations, Drawbridges, and Systems Branch (G-NBR-1), at (202) 267-0375.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 92-015b) and the specific section of this proposal to which each comment applies, and give a reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety

Council at the address under "ADDRESSES." The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Ms. Marcia L. Waples, Project Manager, and Mr. Don Faleris, Project Counsel, Office of Chief Counsel.

Background and Purpose

Title 33, part 117 of the Code of Federal Regulations contains both general and specific requirements for drawbridge operations. In order to evaluate suggested changes to the drawbridge operation requirements, § 117.43 allows a Coast Guard District commander to authorize temporary deviations from the regulations contained in part 117, for up to 60 days. The authorized temporary deviation is meant to allow for regulations testing as a prelude to permanent regulation changes governing drawbridge operations and schedules. An issue has been raised regarding the need to revise § 117.43 because the maximum 60-day period does not consider the need to test a proposed regulation change over various lengths of seasonal periods in order to capture significant circumstances associated with seasonal waterborne traffic patterns. The 60-day limitation also does not allow for adequate public survey responses or commentary on proposed changes or other related problems not specifically addressed under part 117.

Discussion of Proposed Amendments

The proposed amendment would allow temporary deviations from drawbridge operation regulations to be authorized by a District Commander for up to 90 days, instead of the current 60 days. This will make the testing of proposed changes more effective and will increase the likelihood of more useful feedback from the affected public.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation is unnecessary. This proposal merely extends the allowable time for temporary changes in drawbridge operation requirements for regulatory purposes. There will be no cost to the general public. In fact, the ultimate purpose is to balance the needs of navigation and railroad and land transportation in the most effective and efficient manner possible, in order to minimize to the greatest extent practicable inconvenience and transportation and navigation costs which may be associated with delays caused by scheduling or other operating requirements in need of adjustment.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" 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).

This proposal is intended to provide greater flexibility in the regulation which allows for testing proposed changes in drawbridge operations or scheduling. This proposal is largely administrative in nature, and will be infrequently used. It imposes no special expense on small businesses. Because it expects the economic impacts of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no additional collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501*et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Under Federal law, the primary jurisdiction to regulate drawbridges across the navigable waters of the United States is vested in the Secretary of Transportation and delegated to the Coast Guard. Therefore, if this rule becomes final, the Coast Guard intends it to preempt State action addressing this subject matter.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation because it is a Bridge Administration Program action involving the promulgation of operating requirements or procedures for drawbridges. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "ADDRESSES."

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.43 is revised to read as follows:

§ 117.43 Changes in draw operation requirements for regulatory purposes.

In order to evaluate suggested changes to the drawbridge operation requirements, the District Commander may authorize temporary deviations from the regulations in this part for periods not to exceed 90 days. Notice of these deviations is disseminated in the Local Notices to Mariners and published in the **Federal Register**

Dated: Dec 28, 1992.

A. Cattalini,

Acting Chief, Office of Navigation Safety and Watereway Services.

[FR Doc. 92–31913 Filed 12–31–92; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92–266, FCC 92–544]

Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Rate Regulation

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this Notice of Proposed Rulemaking (NPRM), the Commission proposes to amend its rules to

implement sections 623, 612, and 622(c), of the Communications Act of 1934, 47 U.S.C. 543, 532 and 542(c) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, §§ 3, 9, & 14, 106 Stat. 1460 (1992) (Cable Act of 1992). The Cable Act of 1992 directs the Commission to establish rules to govern rate regulation of cable service provided by cable systems not subject to effective competition and leased commercial access offered by cable systems to programmers.

DATES: Comments must be filed on or before January 27, 1993, and reply comments on or before February 11, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patrick Donovan (202) 632-1295 or Nancy Boocker (202) 632-6917, Common Carrier Bureau; Regina Harrison or Alan Aronowitz, Policy and Rules Division, Mass Media, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

I. Introduction

The FCC solicits comment to help it to craft a comprehensive regulatory model that will best fulfill statutory objectives related to rate regulation for the cable industry. The NPRM describes and proposes alternative procedural and substantive regulations through which the requirements of these statutory provisions could be implemented. It also discusses the advantages and disadvantages of each alternative. The NPRM tentatively concludes that the FCC should adopt a benchmark regulatory alternative for regulation of cable service rates under which the FCC would establish a benchmark rate, or a simple formula which could be used to derive such a rate. Rates above the benchmark would be presumed unreasonable. Cost-of-service regulation on an individual system basis would be applied to cable systems seeking to justify a rate above the benchmark. The FCC solicits comment generally on how the different rate regulation proposals presented in the NPRM would affect, and be affected by, other parts of the Cable Act of 1992 addressed in separate Commission proceedings.

II. Proposed Implementation

A. Regulation of Cable Service Rates

1. General Issues

The Cable Act of 1992 directs the Commission to establish rules to govern rate regulation of cable service tiers offered by cable systems not subject to effective competition. The Commission must establish regulations that assure that rates for the basic service tier are reasonable, and standards that permit identification, in individual cases, of rates for cable programming services that are unreasonable.

The Cable Act of 1992 states that since the rate deregulation triggered by the Cable Communications Policy Act of 1984, monthly rates for the lowest priced basic cable service have increased by 40 percent or more for 28 percent of cable subscribers. Acknowledging that since 1984 the average number of basic channels has increased from about 24 to 30, the Act still finds that average monthly rates have risen 29 percent during the same period and that the average monthly cable rate has grown almost three times as fast as the Consumer Price Index (CPI) since deregulation. The Cable Act of 1992 also requires that regulations governing rates for cable service be based on, among other factors, the rates charged by cable systems subject to effective competition. This leads to the basic question of whether the purpose and the terms of the Cable Act embody a congressional intent that our rules produce rates generally lower than those in effect when the Cable Act of 1992 was enacted (and if so, to what degree), or, rather a congressional intent that regulatory standards serve primarily as a check on prospective rate increases. To the extent Congress envisioned reductions in rates, the FCC solicits comment on the extent to which this should be accomplished for the basic service tier and/or for cable programming services. The FCC solicits comment generally on the impact of rate reductions, or of limits on prospective rate increases, on the ability of cable operators to provide service to subscribers on the basic or higher level service tiers.

The Cable Act of 1992 permits, and appears to require in some cases, a restructuring of service offerings. The FCC solicits comment on the impact of the rate regulation alternatives presented in the NPRM on the ability and incentive of cable operators to create packages of programming at different tier levels that will be useful and valuable to subscribers. The FCC also solicits comment on whether any regulatory alternative would, as a practical matter, unduly restrict the ability of cable operators to provide a full range of services on either the basic or higher level service tiers. In addition, the FCC seeks comment generally on the impact upon the cable industry, its investors, subscribers, future growth of services and of programming, and service quality of the different approaches to rate regulation that we present in the NPRM.

2. Standards and Procedures for Identification of Cable Systems Subject to Effective Competition

The Cable Act permits regulation of a cable system's subscriber rates only if this Commission finds that the cable system is "not subject to effective competition." Where effective competition does not exist, the Cable Act states that rates for the provision of "basic cable service" are to be regulated by the franchising authority (or by this Commission in circumstances discussed below), while rates for "cable programming services" shall be subject to regulation only by this Commission. The statute establishes three separate tests, any one of which, if satisfied, would determine that cable system is subject to effective competition. The first is satisfied if the households subscribing to a cable system constitute fewer than 30 percent of the households in the franchise area. The second test is met if: (i) There are at least two unaffiliated multichannel video programming distributors (one of which may be the cable system in question), each of which offers comparable video programming to at least 50 percent of the households in the franchise area, and (ii) the households subscribing to all but the largest multichannel video programming distributor exceed 15 percent of the households in the franchise area. The third way effective competition may arise is if the franchising authority in the subject franchise area is itself a multichannel video programming distributor and offers video programming to at least 50 percent of the households in that franchise area. The Commission seeks comment on the effective competition standards contained in the Cable Act.

The Commission also seeks comment on whether the standard for gauging whether households are "offered" video programming under the second and third tests should be that service is actually available to such households. The Commission plans to count "households" subscribing to or being offered cable or other video programming service on the basis of each separately billed or billable customer. The Commission seeks comment on this tentative view. Comments are also sought on sources for data needed to evaluate such criteria, and their current availability.

The Commission also seeks comment on who is "a multichannel video programming distributor" for purposes

of the second and third tests. The Cable Act defines multichannel video programming distributor as an entity who makes multiple channels of video programming available for purchase by subscribers or customers. As examples of such entities, section 602(12) of the Communications Act lists: A cable operator, a DBS satellite service provider, a television receive-only satellite program distributor, and an MMDS provider. In assessing cable competition, the Commission previously has considered whether to take into account alternative or substitute delivery services readily available to subscribers in the home. In this regard, the Commission seeks comment on whether a telephone company offering of "video dialtone" service or a television broadcast station offering multiplexed multichannel service would qualify as a "multichannel video programming distributor." A related issue on which the Commission sought comment is whether a leased access user offering compressed, multichannel service, or a leased access user or a franchising authority offering multichannel programming on the operator's leased access or PEG channels, on either a perchannel or a multiplexing basis, would be a "multichannel video programming distributor."

The Commission also seeks comment on its tentative view that it should measure penetration for purposes of the second test cumulatively, *i.e.*, by adding the subscribership of all alternative multichannel video programming distributors (other than the largest) together. In addition, the Commission ask parties to address whether any minimum amount of programming or minimum number of separate channels must be provided by an entity for it to quality as a "multichannel video programming distributor." With respect to "comparable video programming," the Commission might presume that such comparability exists under the second statutory test for effective competition if a competitor offers multiple channels of video programming and the numerical tests for the offering of and subscription to competitive service under the second test are met. The Commission seeks comment on this approach.

3. Regulation of the Basic Service Tier Rates

a. *Components of the basic service tier subject to regulation.* Under the Cable Act, each cable operator must offer its subscribers a separately available basic service tier to which subscription is required for access to "any other tier of service." Qualified franchising authorities are to be the primary regulators of rates for this basic tier of service, with the Commission regulating in certain circumstances. The statute provides that the basic service tier must include:

(1) All local commercial and noncommercial educational television and qualified low power station signals carried to meet carriage obligations imposed by sections 614 and 615 of the Cable Act;

(2) Any public, educational, and governmental access programming required by the system franchise to be provided to subscribers; and

(3) Any signal of any television broadcast station that the cable operator offers to any subscriber, unless it is a signal that is secondarily transmitted by a satellite carrier beyond the local service area of such a station.

Section 623(b)(7)(B) permits the operator to include additional video programming signals or services in the basic tier as long as the charges for their services conform to the Commission's rate regulations.

The statute requires that "must-carry" local television signals, as defined by sections 614 and 615 of the Communications Act, must be included in the basic service tier. However, the Cable Act authorizes local television stations to exercise "retransmission consent" rights in lieu of mandatory carriage. Parties are requested to comment on how the retransmission consent provisions will affect or shape the composition of the basic service tier. In particular, section 623(b)(7)(A)(iii) would appear to make any local signal carried pursuant to retransmission consent a basic tier channel. The Commission seeks comment on this tentative conclusion. The Commission also seeks comment on whether channels carried pursuant to retransmission consent would be classified as basic service channels, even if an operator had already satisfied his signal carriage obligations. The Commission also seeks comment on its tentative finding that cable operators may add any and as many video programming services to the basic tier as they wish, provided that such services are subject to basic rate regulation.

The statute defines basic service as a tier "to which subscription is required for access to any other tier of service." The Commission seeks comment on whether this language establishes a "basic buy-through" requirement, *i.e.*, whether it precludes the offering of video services completely "a la carte" and without prior subscription to the basic service tier. In particular, the Commission asks interested parties to comment on whether Congress intended to deprive consumers of the option of purchasing services, such as premium channels, or the services of a leased access programmer, on a stand-alone basis, especially in light of the plain language of the statute which limits any such "basic buy-through" to other tiers of service. In addition, the Commission interprets section 623(b)(8)(A) as precluding an operator's requiring the purchase of services in addition to the basic tier as a precondition for ordering other programming. Assuming *arguendo* that other alternative interpretations are possible, the Commission seeks comment on whether the Act would also preclude subscribers from purchasing a separate offering of a nonvideo or "institutional network" without first purchasing the basic tier.

The definition of what services are subject to rate regulation as part of the basic service tier appears to contemplate only a single tier, and to effectively amend the general "basic tier" definition that remains in the Communications Act from the 1984 Cable Act. Section 602(3) defines "basic cable service" as "*any* service tier which includes the retransmission of local television broadcast signals" (emphasis supplied). As *American Civil Liberties Union* v. *FCC*, 823 F.2d 1554 (D.C. Cir., 1987) held, under the 1984 Act, a tier of service that incorporates, in a marketing sense, the basic tier is itself also a basic tier service, although a tier added to a basic tier for a separate charge would not be considered a basic service. The Commission seeks comment on the effect of the 1992 Cable Act on the *ACLU* interpretation of basic service. In particular, it appears that the 1992 Cable Act contemplates that there be a single "basic tier" of service that is subject to local regulation and that includes the services defined in section 623(b)(7)(A) (i), (ii), (iii). If this were not the case, the anti-buy through provisions of section 623(b)(8) could be frustrated through the marketing of cumulative tiers of "basic" service. The Commission seeks comment on its tentative interpretation.

b. *Regulation of the basic service tier by local franchising authorities and the Commission.* The Cable Act of 1992 permits local franchising authorities or the Commission to regulate the rates for "basic cable service" only if effective competition does not exist. A franchising authority wishing to exert such regulatory jurisdiction must certify in writing to the Commission that: (1) The franchising authority will adopt and administer rules with respect to the

rates subject to regulation that are consistent with the regulations prescribed by the Commission; (2) the franchising authority has the legal authority to adopt, and the personnel to administer, such regulations; and (3) procedural laws and rules governing rate regulation proceedings by such authority provide a reasonable opportunity for consideration of the views of interested parties. Such a certification filed with this Commission by a franchising authority will become effective 30 days after filing unless the Commission finds, after notice and a reasonable opportunity for the authority to comment, that the franchising authority has not met one of the three criteria listed above. If the Commission disapproves the certification, this Commission must notify the franchise authority of any revisions or modifications necessary to obtain approval. Further, if the Commission disapproves or revokes a certification, section 623(a)(6) requires this Commission to exercise the franchise authority's regulatory jurisdiction until that authority becomes qualified by filing a new certification that meets the requirements. Such new certifications become effective upon approval by this Commission, which is required to act on them within 90 days.

aa. *Jurisdictional Division.* The Commission interprets Section 623 of the Communications Act, as amended by the Cable Act, to permit local franchising authorities to regulate the rates for basic cable service in areas that are not subject to effective competition unless the Commission disallows or revokes an authority's certification. The scope of the Commission's authority to regulate basic cable service rates under the statute is less clear. The Commission tentatively concludes that it has the power to regulate basic cable service rates only if the Commission has disallowed or revoked the franchise authority's certification. The Act states that rates for basic cable service "shall be subject to regulation by a franchising authority" *or* "by the Commission if the Commission exercises jurisdiction pursuant to paragraph (6)." Paragraph (6) of section 623(a) only permits this Commission to exercise "the franchising authority's regulatory jurisdiction" when a franchise authority's certification is disapproved or revoked, and then only until a new certification is approved. Thus, under the Commission's tentative interpretation, unless a local franchise authority seeks to assert regulatory jurisdiction over basic cable service and is unsuccessful, the Commission would have no independent authority to initiate regulation of basic service rates. The Commission seeks comment on this tentative interpretation.

Other interpretations may be possible, however. Section 623(b) mandates that the Commission ensure by regulation that the rates for the basic tier are reasonable. This section can be read as giving the Commission authority over basic cable rates in areas not subject to effective competition, including such areas in which local authorities have not sought certification from the Commission to regulate basic service rates. Under this interpretation, the Commission might exercise its jurisdiction over basic service rates through individual petitions or complaints. Alternatively, the Commission might regulate using procedures similar to those it proposes for local franchising authorities. The Commission seeks comment on this or any other alternative interpretation of the jurisdictional division established under the Cable Act. The Commission seeks comment on whether it should permit a local franchising authority to file a statement explaining why the authority cannot submit a certification, (*e.g.*, lack of personnel) and requesting that the Commission assert jurisdiction. Parties advocating this approach should explain how this is consistent with the jurisdictional framework of the Cable Act.

bb. *Finding of effective competition.* The Cable Act authorizes the Commission to "find" whether or not a cable system is subject to effective competition. The Commission proposes to base its independent findings on an initial determination of an absence of effective competition by the franchising authority. The Commission proposes to have the franchise authority submit its finding and the basis for this finding to the Commission as part of the process by which local authorities are certified to regulate basic service rates. Given the large number of franchise areas nationally and their varied competitive characteristics, this approach appears to be reasonable and realistic. First, the statute on its face states that local authorities may exercise regulatory jurisdiction over cable rates only if the authority certifies that it has "the legal authority to adopt * * * such regulations." Since the Cable Act makes the absence of effective competition a prerequisite to regulators' legal authority over basic cable rates, the Commission finds it reasonable to require that local franchising authorities provide evidence of the lack of effective competition as a threshold matter of jurisdiction. In addition, franchising authorities may be in a superior position to gather relevant local facts and to test the accuracy of operators' representations regarding competition. The Commission also expects that they will consider any data operators submit to the Commission as a result of data requests or reporting obligations. The Commission's proposal, it believes, would permit in many cases a more accurate and expeditious initial effective competition analysis than the Commission could undertake without local assistance. The Commission seeks comment on this proposal. Parties may also wish to comment on whether challenges to a determination of lack of effective competition may appropriately be made as part of a revocation proceeding under section 623(a)(5), or as part of the Commission's normal procedures for reconsideration and review. The Commission also seeks comment on whether multichannel video programming distributors who are competitors to cable systems should be required to disclose the number of their subscribers and any other data relevant to finding of effective competition; whether such information (*e.g.*, as to number of subscribers) is likely to be proprietary and subject to special protections, and if so, what that special protection should be.

The Commission also tentatively finds that the language of section 623(l)(1), which expresses the tests for the presence or absence of effective competition in terms of a "franchise area," implies that determinations that effective competition is absent should be made on a franchise-area basis. Thus, if a cable system serves more than one franchise area in a geographic region, separate effective competition determinations would have to be made for each distinct franchise area. Moreover, the Commission tentatively finds that if more than one cable system is authorized to operate in a given franchise area, the requisite effective competition analysis must be applied to each system. The Commission seeks comment on these tentative conclusions. The Commission also seeks comment on whether a determination of effective competition for cable programming services, which this Commission is charged primarily with regulating, could and should be made on a system-wide, as opposed to franchise-area, basis.

cc. *Filing of franchise authority certification.* The Commission proposes that a franchise authority intending to regulate the rates for basic cable service be required to submit a certification meeting the requirements of section 623(a)(3)(A–C), and additionally stating

the basis for its finding that its franchisee is not subject to effective competition. The Commission tentatively concludes that a standardized and simple form can and should be used for certifying to the three criteria of section 623(a)(3), and that this form should include a section for the authority's statement and explanation of its initial finding that effective competition is lacking, with reference to documentable data, including any submissions made to the Commission. The Commission seeks comment on this tentative conclusion, as well as on the specific format for such a form. The Commission also invites comment on any other administratively efficient method for certification. Parties proposing such an alternative should also explain how their proposal is consistent with the goals of the Cable Act.

Section 623(a)(3) of the Communications Act, as amended, requires that a franchising authority be able legally to adopt regulations consistent with those the Commission establishes for basic cable rate regulation. The Communications Act, as amended by the 1984 Cable Act, appears to assume that a franchise authority derives its powers, including those to regulate rates, from state law. The legislative history of the Cable Act of 1992, however, suggests that the Act itself may abrogate franchise agreements in certain circumstances to permit rate regulation consistent with Commission rules. The Commission seeks comment on whether franchising authorities derive their powers to regulate from state and local laws alone, or whether the Cable Act may itself be an independent source of authority to regulate rates. To the extent the authority is not derived from state law, are there issues that need to be addressed as to which specific authorities within state and local government are entitled to exercise this authority? The Commission asks what Congress intended by enacting section 623(a)(3)(B), if the Cable Act in fact grants franchise authorities rate regulation powers irrespective of state law. The Commission also seeks comment on whether exercise by this Commission of basic service rate regulation authority in a state prohibiting rate regulation by local authorities would in fact constitute preemption of state law. If so, the Commission also ask whether such preemption would extend to giving franchising authorities the power to regulate rates where they otherwise would be without such power, or whether it would merely, under an alternative interpretation of section 623, authorize this Commission to do so.

The Commission seeks comment on whether two or more communities served by the same cable system could file a joint certification and exercise joint regulatory jurisdiction. The Commission asks whether there are actions it should take to provide incentives for local regulators to coordinate their activities and whether such coordination should be required as part of the certification process. The Commission seeks comment on the impact of franchising authorities' decisions to proceed independently on the Act's requirement that an operator's rate structure be uniform throughout a geographic area. The Commission also solicits comment on how, under such circumstances, a cable operator might fulfill the uniform rate structure requirement.

dd. *Approval of certification by the Commission.* The Cable Act states that the written certification submitted by a franchising authority to the Commission shall be effective 30 days after it is filed, unless the Commission finds, after notice to the authority and a reasonable opportunity for the authority to comment, that (1) the authority has adopted or is administering basic cable service rate regulations that are inconsistent with those the Commission prescribes, (2) the authority lacks the legal authority to adopt, or the personnel to administer, such regulations, or (3) procedural laws and regulations applicable to the authority's rate regulation proceedings do not provide a reasonable opportunity for consideration of the views of interested parties. The Act thus contemplates that unless the Commission takes explicit action within 30 days, a certification will be effective. The Act also appears to contemplate that any decision denying certification must be made within 30 days.

Given the expedited deadlines the Act imposes, the Commission assumes that Congress did not intend that the Commission establish a full-scale pleading cycle with opportunity for interested parties, including the cable operator, to comment prior to expiration of the initial 30-day period. Thus, although the Commission proposes that each certification application be served on the franchisee, the Commission proposes to base its decision on certification on the submission by the franchising authority alone. If a certification appears defective on its face, the franchise authority will be given notice, and the opportunity to submit additional information prior to the Commission's decision. Other interested parties, including cable operators, could subsequently challenge a certification by filing a petition for revocation once a certification is effective. The Commission seeks comment on this approach, and on whether, in addition to this avenue of relief, cable operators or other interested parties would be allowed to seek reconsideration of its decision regarding the existence of effective competition and certification. The Commission also ask interested parties to comment on what procedures it might adopt for the giving of notice and the submission of additional information by a franchise authority that would enable the Commission to render decisions within the 30-day statutory period. The Commission also seeks comment on whether it would be possible and consistent with legislative intent to establish a highly expedited pleading cycle permitting interested parties, including cable operators, to comment prior to the 30-day deadline.

The Commission proposes to reflect in its rules the Cable Act requirement that, in disapproving a franchising authority's certification, the FCC notify the authority of any revisions or modifications necessary to obtain approval. The Commission tentatively concludes that denial of certification would be subject to normal procedures for reconsideration, review and appeal. If the Commission certifies an authority, it proposes to require the authority to notify each franchisee within 10 days of this decision. The Commission seeks comment on these proposals and tentative conclusions.

ee. *Revocation of certification.* Subsection 623(a)(5) requires that "upon petition by a cable operator or other interested party," the Commission "review the regulation of cable system rates by a franchising authority." If the Commission finds that the franchising authority has acted inconsistently with the requirements of section 623(a)(3), the Commission is directed to "grant appropriate relief." If, after giving the franchising authority a reasonable opportunity to comment, the Commission finds the state and local laws and regulations do not conform to Commission rules governing basic service rate regulation, the Commission must revoke the jurisdiction of such authority. The Commission interprets this subsection to require it to revoke an authority's certification whenever local or state laws are inconsistent with its regulations concerning basic service rates. However, the statute appears to contemplate other lesser remedies where local and state laws may be

facially consistent with its regulations, but the authority has applied them inconsistently, or has otherwise departed from the terms of its certification. The Commission seeks comment on this interpretation. The Commission also asks parties to comment on how their analysis of the Commission's power to act where local or state regulations are inconsistent with its rate regulations harmonizes with their analysis of the FCC's preemptive powers. Does the 1992 Cable Act give the Commission the power to preempt specific state or local laws that may conflict with the rules that the Commission establish? Can actions other than inconsistent local and state laws, which would have caused the Commission to disallow a certification in the first instance, also be the basis for revocation, or should some lesser remedy be applied? The Commission also seeks comment on what types of relief, short of revocation, it could apply. Could the Commission, for example, suspend a certification, or impose a reporting requirement on a local authority? In cases of suspension, could the Commission, consistent with the Cable Act, assume the local authority's rate regulation authority and obligations?

The Commission also proposes that a petitioner for revocation or other relief against a franchising authority serve a copy of its petition on the franchising authority, as required by statute, and that the petition contain a statement that such service was made. The Commission also proposes to permit an authority 15 days in which to file an opposition to such a petition, and a cable operator or other party ten days in which to reply. The Commission seeks comment on these proposals.

The Commission seeks comment on what procedures should apply if an operator in a particular franchise area, once not subject to effective competition, becomes subject to it. The Commission tentatively finds that a cable operator should be required to petition a franchising authority for a change in its regulatory status. This petition should be subject to public comment. A franchising authority shall promptly inform the Commission that a cable operator had petitioned for a change in regulatory status and shall forward its findings to the Commission, including the basis for those findings. If the Commission ratifies the initial determination of the franchising authority, the franchising authority would then cease regulating basic cable service rates, and its regulation of cable programming services for this system in this franchise area would also cease. Cable operators denied a change in status by a franchising authority would be entitled to seek review of that determination with this Commission, with pleadings subject to the standard filing periods. The Commission seeks comment on these tentative conclusions. The Commission also seeks comment on whether a challenge to a denial of change in status regarding effective competition could or should be made as part of a petition for revocation.

ff. *Assumption of jurisdiction by the Commission.* The Act requires that if the Commission disapproves or revokes a franchise certification, the FCC exercise the franchising authority's regulatory jurisdiction until the authority qualifies to exercise that jurisdiction by filing a new certification, and that the Commission must act on such new certification within 90 days after it is filed. The Commission seeks comment on the procedures that it should employ when it assumes a franchising authority's jurisdiction over basic service rates.

c. *Regulations governing rates of the basic service tier.* The Act requires the Commission to ensure, by regulation, that rates for the basic service tier are reasonable. Such regulations are to be designed to protect subscribers of any cable system not subject to effective competition from paying rates higher than those that would be charged if the system were subject to effective competition. In establishing regulations governing rates for the basic service tier, the Commission must seek to reduce the administrative burdens on subscribers, cable operators, franchising authorities, and itself, and it may adopt formulas or other mechanisms and procedures to achieve this objective. the FCC's rate regulations must additionally take into account seven factors:

(1) The rates for cable systems that are subject to effective competition;

(2) The direct costs (and changes in such costs) of obtaining, transmitting, and providing signals carried on the basic tier including additional video programming signals or services beyond the "must carry" local broadcast television signals, and any public, educational, and governmental access programming required by the franchising authority;

(3) Only a reasonable and properly allocable portion, as determined by the Commission, of the joint and common costs of obtaining, transmitting, and providing signals on the basic service tier;

(4) Cable operator revenues from advertising on the basic tier or other consideration obtained in connection with the basic tier;

(5) The reasonably and properly allocable portion of taxes and fees imposed by any state or local authority on transactions between cable operators and subscribers or assessments of general applicability imposed by a governmental entity applied against cable operators or cable subscribers;

(6) The cost of satisfying franchise requirements to support public, educational, or governmental channels or the use of such channels or any other services required under the franchise; and

(7) A reasonable profit, as defined by the Commission consistent with the Commission's obligations to ensure that rates are reasonable and the goal of protecting subscribers of any cable system not subject to effective competition from paying more for basic tier service than subscribers would pay if the system were subject to effective competition.

The NPRM tentatively concludes that Congress intended the FCC to embody in its regulations a standard of reasonableness for basic tier rates that reflects a balancing of the statutory goals and enumerated factors. The NPRM further tentatively concludes that Congress intended to leave the FCC discretion to determine in its rulemaking process the comparative weight to be assigned to each of the seven factors.

The NPRM solicits comment on the extent to which Congress intended a low priced basic service tier, and the extent to which FCC rate regulations should seek to promote the availability of programming on the basic service tier beyond that minimum statutory components. If our regulations produce low rates for the basic service tier, would this in turn require us to permit more flexibility in pricing for higher tiers?

The FCC has identified two generic approaches for regulation of rates for basic tier service: benchmarking and cost-based. Because the Cable Act of 1992 directs the FCC to craft rules that will reduce burdens on cable operators, franchising authorities, the FCC, and consumers, the NPRM tentatively concludes that the FCC should not select a cost-of-service alternative as the primary mode of cable rate regulation unless it is unable to gather the information needed to develop a benchmarking alternative. The NPRM tentatively concludes that each of the benchmarking alternatives could achieve reasonable rates at lower costs and with less administrative burdens than could traditional cost-of-service regulation. The FCC nonetheless concludes that cost-of-service regulatory

principles could have a secondary role for cable operators seeking to justify the reasonableness of rates that do not meet the primary benchmarking standard.

Benchmarking. The NPRM describes a benchmark rate as a price against which a given cable system's basic tier rate would be compared. The system's rate would be presumed reasonable if it did not exceed the benchmark. Under a benchmarking approach to rate regulation, the FCC would establish a benchmark rate, or a simple formula which could be used to derive such a rate. Cable systems with rates above the benchmark price by an amount determined by the FCC would be required to reduce their rates to the benchmark level unless the system could justify a rate higher than the benchmark. The benchmark would permit identification of systems with presumptively unreasonable rates, while establishing a zone of reasonableness for systems with rates below the benchmark. The NPRM solicits comment on whether to include as a component of any benchmark alternative a price cap formula to limit how quickly systems with rates below the benchmark could raise their rates to that benchmark price.

The FCC recognizes the potential tension between the need, on the one hand, to establish an accurate benchmark using sound data collection processes and ratemaking methodologies, and the command of the Act, on the other hand, to simplify regulation. A simple formula, however, would protect consumers from excessive rates and, by eliminating the need for detailed cost-based regulation in many jurisdictions, would keep the costs of administration and compliance low. Allowing higher-cost systems to opt for cost-based regulation if the benchmark rate proved unreasonably low would provide a safety valve to prevent confiscatory rates.

Under a benchmark alternative, the FCC could separate cable systems into distinct classes based upon specified variables and then define a benchmark for each class of systems. The benchmarks might then be set forth in a matrix or table. The variables used to separate cable systems into distinct classes might include such cost-defining characteristics as: homes passed per mile, number of subscribers, number of channels, system age, miles of underground cable, terrain crossed, above average programming costs, or readily identifiable costs. Another variable could be the local price level in comparison to the national price level as measured by appropriate indexes. For each of the benchmarking alternatives discussed in the NPRM, the FCC solicits comment on what variables should be used for defining the classes of systems to which a different benchmark rate should apply. One effect of benchmarks could be to cause the rates of the systems subject to the same benchmark to converge over time to that benchmark. If we were to conclude that such a result would not be desirable, we could also permit some benchmark adjustment based upon individual system characteristics. The FCC solicits comment on whether we should permit individual system adjustment to otherwise widely applicable benchmarks and what measures should and could be established to permit such adjustments. The FCC solicits comment on appropriate indexes for local and national price levels that we could use as a variable in establishing benchmarks.

Another important adjustment factor is a general change in the cost of doing business. Such changes often are represented by the general consumer price index (CPI) or producer price index (PPI) compiled on a national or regional basis by the Bureau of the Census and Bureau of Labor Statistics. The FCC seeks comment on the tentative conclusion that a local service price index (SPI) would be more appropriate than the CPI or PPI for adjusting cable rate benchmarks, if such an index can be easily determined. The FCC also seeks comment on the composition of such a local SPI, how such an index would be created, what services should be included, where data would come from, and what geographical area is appropriate for comparison.

Cost-of-Service. Under a cost-of-service approach, the reasonableness of a cable system's rates would be determined by examination of the particular costs of the individual cable system using ratemaking principles set by the Commission. The primary advantage of a cost-based alternative is that it would permit close supervision of rates. A primary disadvantage is that it would be more burdensome on cable systems and regulatory authorities.

In addition to the benchmarking alternatives, the NPRM solicits comment on another alternative called the "Direct Cost of Signals Plus Nominal Contribution to Joint and Common Costs" for regulating basic service tier rates. The FCC solicits comment generally on which among these specific proposals should be incorporated in our comprehensive framework for regulating basic rates, and how they could be combined to govern rates for the basic service tier. The FCC also seeks comment on how these proposals might be modified to achieve more effectively the goals of section 623(b) of the Cable Act of 1992. The FCC discussed and solicited comment on several benchmark alternatives.

aa. *Benchmark alternatives—Rates charged by systems facing effective competition.* One potential benchmark would be defined using the average of rates currently charged by systems facing effective competition, as the Cable Act of 1992 defines that term. This benchmark would appear to meet the statutory goal of "protecting subscribers of any cable system that is not subject to effective competition from rates for the basic service tier that exceed the rates that would be charged for the basic service tier if such cable system were subject to effective competition." To use a benchmark based on rates charged by systems facing effective competition, however, the FCC would first have to identify those systems. Moreover, basic service tier rates of systems facing effective competition would reflect the different numbers of channels in different systems' basic tiers. To perform the necessary computations the FCC would thus need to know, at a minimum, the basic service tier rates and the number of channels in the basic tier for systems facing effective competition. This information would permit us to compute a single average rate.

To create benchmarks that more accurately reflect conditions facing individual systems, the FCC might seek to determine how rates vary with cost characteristics of the systems facing competition. If sufficient data were available, regression analysis or some other statistical technique could be used to determine how rates varied with such characteristics affecting costs as homes passed per mile, number of channels, number of subscribers, the relative mix of buried and overhead cable, and the factors described in section 623(b). With this information, we could create a benchmark formula based upon systems subject to effective competition that shared at least some of the regulated systems' underlying cost characteristics.

Past regulated rates. A second alternative would be to develop a benchmark for basic service tier rates based on rates charged in 1986 before the Cable Communications Policy Act of 1984 effectively prohibited local rate regulation of most cable systems. It may be acceptable to assume that rates in 1986 were reasonable because they resulted from a competitive bidding process for the franchise and subsequent rate adjustments made under local franchise authority oversight. Using

these data we could develop individual benchmark rates for systems operating in 1986 based upon the 1986 per-channel rate for their lowest tiers. Some adjustment might be made in individual cases for factors generally agreed to affect costs. For systems not operating in 1986 the FCC proposes a benchmark expressed on a per-channel basis to account for differences in the number of channels offered on the basic tier and based on the per channel rates of the systems operating in that year. The FCC requests comment on the advantages and disadvantages of using a benchmark based on past regulated rates.

Average rates of cable systems. A third alternative would use data for all cable systems operating in 1992 to develop a benchmark from the average per-channel rate for their lowest service tier. Per-channel rates would be considered reasonable if they did not exceed that average by more than some fixed amount. Systems whose rates exceeded the average rate for all systems by more than a specified amount, or by more than a specified percent, or systems which ranked among the highest few percent (*e.g.*, top 2–5%) in terms of rates would be assumed not to have rates that were reasonable. Thus, this benchmark would identify those systems whose rates were unusually high or substantially above the average.

This standard would have the advantage that data would be more readily available for calculating the benchmark, and consumers would be protected against rates far exceeding the general industry practice. Unadjusted, however, the benchmark would not reflect competition but merely average performance in the industry; if monopoly profits were reflected in the rates of at least some industry segments, they would be incorporated in the average rate. In addition, over time the average rates would be affected by regulation and would cease to be an independent measure of industry performance. The NPRM requests comment on the validity of a measure based on average industry rates. The FCC also inquires as to the best source of data for calculating the benchmark if such a standard were adopted.

Cost-of-Service Benchmark. Under this approach to developing a benchmark, the FCC would use engineering, operating, programming and other cost data gathered in this rulemaking to construct the costs of an "ideal" or "typical" cable system or systems, possibly on a per channel or per subscriber basis. This approach could produce a benchmark roughly related to cost without requiring detailed examination of actual costs of individual systems. For this reason, this approach might be a useful alternative if implementation of other benchmark alternatives prove infeasible to implement. We seek comment on the feasibility and desirability of developing and applying a benchmark based upon constructing "ideal" or "typical" system costs. Parties supporting this approach should submit specific and detailed cost data to be included in such a benchmark, along with detailed information about how the data were developed, including data sources, validity, and reliability.

Price Caps. A price cap benchmark would be a formula set by the FCC to define reasonable increases in rates for the basic tier. For this reason, we would not intend to use the price cap formula to assess initially whether a system's rates were reasonable. The price cap formula would instead govern changes to rates that have been found reasonable under some other alternative, either based upon cost-of-service or another benchmark alternative.

A price cap formula permits the regulated company to adjust its prices when certain variables contained in the price cap formula change. The price cap formula would apply to an existing rate and would control changes to the cable system's prices over time. The FCC solicits comment on the price cap alternative and whether it should make it a component of a comprehensive regulatory scheme for rates.

If we adopt a price cap alternative to govern rates for the basic tier, we would propose to define and to control rate changes permitted under this alternative. We will additionally need to determine how and when to revise the cap, and select an appropriate price index to include among permitted adjustments. The FCC seeks comment on whether and, if so, how a price cap formula might accommodate rate adjustments to reflect: changes in subscriber penetration, channel capacity, the nationwide level of prices, the relative contribution of regulated revenues to total cable revenues, franchise fees and requirements, and other factors relevant to the Act's regulatory objectives.

bb. *Individual system cost-based alternatives—Direct costs of signals plus nominal contribution to joint and common costs.* Under this alternative, the FCC would prescribe guidelines for basic service tier rate regulation by the local franchise authority that used an individual system's costs to define reasonable rates. Cable systems would be required to keep their accounting records according to generally accepted accounting principles (GAAP) and to provide those records, as requested, to the local franchising authority.

The franchise authority would be required to find reasonable basic service tier rates that allowed recovery of at least the direct costs of the channels in the basic tier. The FCC envisions that the major component of such direct costs would be programming costs, including both payments to cable networks and retransmission fees to broadcast stations. Allowing cable systems to pass the former costs through to subscribers might reduce operators' incentive to remove highly valued programming from the basic tier. Whatever equipment used and operating costs incurred to activate additional individual channels in this tier would also be covered.

In addition, the rates for the basic service tier would include a nominal contribution to the joint and common costs of the system as a whole. Under the statute, basic service tier rates can recover "only such portion of the joint and common costs * * * as is * * * reasonably and properly allocable to the basic service tier." This requirement would set an upper bound on basic service tier rates that could be considered reasonable under Commission guidelines. Within this limit, the FCC has several options for treatment of joint and common costs in basic service tier regulation. The FCC could set guidelines that resulted in rates that recovered far less than the fully distributed cost of providing the service in order to provide assurance of service for lower income viewers. Alternatively, the FCC could set guidelines that would permit higher basic service tier rates in order not to discourage offering of a broader basic service tier with a larger number of channels, including popular cable channels. This alternative would, however, require more elaborate cost allocation rules. Rules that the FCC might apply to the allocation of joint and common costs, and to the determination of allowable costs, are proposed in appendix A of the NPRM. The FCC might also leave to the franchise authority some discretion in setting the level of basic service tier rates. The FCC requests comment on the proposal to adopt FCC guidelines for cost-based basic service tier rate regulation.

Cost-of-Service. Under this alternative, a cable system's rates would be reviewed using the established standards of cost-of-service regulation traditionally applied to public utilities. The broad principles of cost-of-service regulation are well established. While these principles could be implemented

in a rigorous fashion with extensive cost-accounting requirements, the FCC believes such an approach would be inconsistent with legislative intent. For this reason, the FCC proposes to use simplified cost-accounting requirements described in appendix A of the NPRM if cost-of-service regulation becomes a component of our comprehensive model for regulating cable rates.

Under cost-of-service, companies can meet service demand because service revenues may be set to cover operating expenses and capital costs. Because cost-based rates only compensate for the cost of providing service, if the cost-of-service regulation is properly applied, companies cannot extract monopoly rents from consumers. Cost-of-service regulation also imposes high costs on the regulators and regulatees. The FCC is concerned that cost-of-service accounting may require a significant (and potentially expensive) departure from current industry accounting practices. The FCC seeks comment on the relative advantages and disadvantages of applying cost-of-service regulation to the basic tier.

The FCC additionally seeks comment on the impact of cost-of-service regulation on the cable industry. The NPRM asks how such regulation would affect the ability of cable operators to expand their channel capacity and program offerings. The FCC also seeks comment on the implications of cost-of-service ratemaking on the industry's ability to recover its investment, including goodwill, and to service its current capital debt. The FCC also requests comment on whether we would need to include transition mechanisms if we were to adopt a cost-of-service regulatory model.

If cost-of-service ratemaking is used as a "safety net" to allow cable operators to defend rates challenged under a benchmark test, the FCC believes that the efficiency of the appeal process could be greatly improved if we established standards for the showings that should be made in such an appeal process. The NPRM notes that cost-of-service regulation requires the regulatory authority to make determinations relating to four major cost components: Rate base, the cost of capital, depreciation, and operating expenses. It also generally requires rules to govern the design of rates once determinations have been made in these four areas. In order to establish standards for the showings that should be made by cable systems seeking to defend rates higher than the benchmark, the FCC proposes to adopt guidelines in each of these areas. The FCC solicits comment on what requirements it would need to adopt in these areas and on the impact on the cable industry and subscribers of those requirements. The NPRM sets forth in more detail in appendix B the issues in each of these four areas that would require resolution for cost-of-service regulation to be implemented.

d. *Regulation of rates for equipment.* The Cable Act of 1992 directs the FCC to establish standards for setting, on the basic of actual cost, the rate for installation and lease of equipment used by subscribers to receive the basic service tier, including converter boxes and remote control units, and installation and lease of monthly connections for additional television receivers.

Based on the language and legislative history of section 623(b)(3), the FCC tentatively concludes that Congress intended to separate rates for equipment and installations from other basic tier rates. The FCC also tentatively concludes that, to be consistent with the statute's intent, the rates for installation should not be bundled with rates for the lease of equipment. The FCC believes that this unbundling could help to establish an environment in which a competitive market for equipment and installation may develop. The NPRM seeks comment on these tentative conclusions, especially on the feasibility of a competitive market for installation services.

Although the FCC tentatively concludes that equipment covered under this section of the Act includes the converter box, remote control unit, connections for additional television receivers, and wiring other inside cabling, the NPRM seeks comment on the extent of this coverage. The FCC believes that our rules should clarify the relationship between section 623(b)(3), which requires regulating, on the basis of actual cost, "equipment used for the basic tier," and section 623(c), requiring regulations for cable programing services, which includes the installation or rental of equipment use for the receipt of such programming services. For the latter, the FCC must establish standards for determining whether the rates are unreasonable and, as for basic tier service, cost is to be only one of several factors to consider.

On the one hand, it appears that Congress may not have intended to limit regulation, on the basis of actual cost, to that equipment only used for basic tier service. On the other hand, the Act includes equipment and installation in the definition of cable programming services. If the FCC assumes that Congress intended different standards for determining the reasonableness of rates for equipment used to receive cable programming services, it is unclear how to treat equipment that is used for the provision of both basic tier service and cable programming services. Therefore, the FCC requests comment identifying any equipment not used for basic tier service and the extent to which the actual cost standard of section 623(b)(3) controls the rates charged for equipment used for more than just basic tier service. The FCC solicits comment on whether the only equipment that should be subject to section 623(b)(3) should be equipment that is necessary to receive basic service tier programming, and whether equipment, if any, use only to receive cable programming service would not be subject to section 623(b)(3).

The FCC proposes requiring operators to base charges for equipment covered by section 623(b)(3) on direct costs, and indirect cost allocations, including reasonable general administrative loading and a reasonable profit. Cable operators would amortize the cost of equipment over the average life of that equipment to determine the monthly equipment rate. The cost of maintaining and servicing equipment should be factored into leased rates for equipment. If the FCC adopts a cost-of-service showing requirement for basic tier rates, cable companies could allocate a share of the general administrative overhead expenses on the same basis that they allocate to basic tier services, which would simplify the rate setting process for equipment. If the FCC adopts the proposal that basic tier rates include only a nominal contribution to overhead, it is unclear whether the same loading should apply to equipment. It appears that Congress intended low rates for equipment and installation, but Congress might have intended actual costs to include a share of joint and common costs allocated using a fully distributed cost methodology. The NPRM seek comment on which allocation rule would more accurately reflect congressional intent concerning rates for equipment covered by section 623(b)(3).

Alternatively, cable operators may wish to sell equipment to their customers. The sale may occur as a one-time payment or over a period of time. The Act, however, appears to contemplate that cable operators would be limited to recovery of actual costs, however, the FCC defines that term. The FCC recognizes that actual costs may vary depending on the length of payment schedule. The purchaser would probably be independently responsible for repair of the equipment, unless a service contract were also

purchased. In addition, cable operators may have a competitive advantage as an alternative market for cable equipment develops because customers will not have or may not know of other equipment supplies. Therefore, the FCC asks whether customers purchasing on time from the cable operator should be permitted to change their minds and purchase equipment from an alternative source.

We propose determining the actual costs for installation on the same basis as for equipment. Because the FCC believes that this determination will require allocating many joint and common costs, it proposes not to prescribe any allocation rules but rather to require the cable operator to bear the burden of showing its implementation of those general allocation rules to be reasonable. To the extent that installation costs have traditionally been recovered through a one-time charge, and because the length of time a subscriber will continue service is unpredictable, it appears reasonable that companies be permitted to continue recovering these costs as one-time charges.

The FCC recognizes that costs for installation will vary depending on whether the dwelling has inside cabling already. It may thus be more reasonable to require two installation rates, one for previously wired dwellings and one rate for new inside cabling. This could encourage competition, especially for simple installations (or customers could do it themselves). The FCC requests comment on whether costs vary enough to reasonably require cable operators to develop two separate rates for installation or use an average rate and whether that decision should be left to the discretion of the local franchising authority.

Many operators charge less than actual costs for service installation as part of their marketing efforts. The FCC seeks comment on whether section 623(b)(3) reflects a legislative intent to prohibit such promotional offerings.

Section 623(b)(3)(B) also specifically directs the Commission to establish, on the basis of actual cost, rates for installation and monthly use of connections for additional television receivers. The FCC tentatively concludes that cable operators should use the same cost methodology they use for installation of other equipment to calculate the rates for installation of connections for additional receivers. If additional connections are installed at the same time a subscriber's initial service is installed, the FCC proposes that cable operators be limited to recovering the incremental costs of the additional installation.

e. *Costs of franchise requirements.* The statute requires that regulations governing the basic service tier shall include standards to identify costs attributable to satisfying franchise requirements to support public, educational, and governmental channels or the use of such channels or any other service required under the franchise.

The NPRM tentatively concludes that the purpose of this statutory requirement is to assure the establishment of standards that will permit the cable operator to identify on subscriber bills pursuant to section 622(c)(2) the amount of the bill attributable to franchise requirements. The FCC does not interpret this section as mandating that it establish separate cost-based charges apart from those for the basic service tier generally for either the customer or the users of public, educational, and governmental channels for costs attributable to franchise requirements. The NPRM solicits comment on this tentative conclusion. The NPRM further tentatively concludes that the FCC should require that the costs attributable to satisfying franchise requirements should include (1) any direct costs of providing any services required under the franchise, (2) the sum of per channel costs for the number of channels used to meet franchise requirements for public, educational, and governmental channels, and (3) a reasonable allocation of overhead.

f. *Customer changes.* The Cable Act of 1992 requires that regulations for the basic tier also include standards and procedures to prevent unreasonable charges for changing equipment or service tiers. Charges for changing the service tier must be based on cost.

The FCC tentatively concludes that Congress intended to broadly protect subscribers from unreasonable charges for changes in service tiers. The FCC tentatively concludes, therefore, that regulations adopted to implement section 623(b)(5)(C) should apply to any changes at the request of the subscriber in the number of service tiers received by the subscriber after installation of initial service. The NPRM tentatively proposes to require that charges for changing service tiers not exceed a nominal amount "when the system's configuration permits changes in service tier selection to be effected solely by coded entry on a computer terminal or by other similarly simple method." The FCC seeks comment on whether and, if so, at what level we should set the nominal amount when this condition is met.

To otherwise assure that subscribers do not pay unreasonable charges for changes in service tiers not effected by coded entry on a computer terminal or by other simple methods, the FCC solicits comment on two alternatives. First, the FCC could require that charges be based on the actual costs of making service tier changes at the subscriber's request including any direct costs and a reasonable allocation of indirect costs and overhead and a reasonable profit. Under the second alternative, as for changes effected by coded entry on a computer terminal, the FCC could require that charges for changes in services tiers effected by other means recover only nominal costs.

The FCC also solicits comment on applying these alternatives to define reasonable charges for changing equipment. The FCC seeks comment on our tentative conclusions and proposals relating to customer changes and on how best to implement them. In addition, the NPRM requests comment on whether the implementation of this rulemaking could encourage customers to change service tiers.

g. *Implementation and enforcement.* The Cable Act requires that the Commission's regulations regarding basic service rates include procedures for implementation by cable operators, for enforcement by franchising authorities, and for expeditious resolution of disputes between cable operators and franchising authorities. The Commission must also establish regulations to assure that subscribers are informed that basic service is available to them and that a cable operator notify franchising authorities 30 days in advance of any proposed increase in rates for the basic service tier. The Commission seeks comment on an expeditious way to trigger initial review of a cable operator's current basic tier rate once a local franchising authority has been certified to regulate those rates. One alternative would be to require that the operator file its schedule of basic tier rates with the franchising authority within a relatively brief period. The Commission believes that a deadline should apply to review of both an operator's initial filing and any later-filed proposed rate increases and service changes that involve rates increases. After expiration of the deadline, proposed rates would be presumed reasonable absent a negative finding. The Commission seeks comment on whether a deadline for a franchising authority to act on proposed rate increases would be appropriate, and if so, what time period would best balance the need for expiration with the need to

render an informed and judicious rate determination.

Another alternative would be to establish relatively brief notice periods (*e.g.*, 60 or 90 days) after which an increase would become effective unless a franchising authority had rejected it, but also to allow for the tolling of the franchising authority's deadline in particular circumstances. The disadvantage to this second alternative is that it might deprive the public of new services and the operator of a reasonable price increase for long periods of time. The Commission also observes that in some areas, a franchising authority's rate determination may be subject to review by a higher level of local or state authority, further delaying a final determination. A third possibility, might be to permit rate increases to go into effect automatically after the 30-day notice period expires. The Commission seeks comment on these various alternatives, on any other commenters suggest for implementing basic tier rate regulation, and particularly on the time constraints that should govern determinations on proposed rate increases. The Commission also seeks comment, depending on the ratemaking methodology adopted, on whether certain price changes caused by factors outside the operator's control, should not be deemed price "increases" subject to the notice requirement. Such increases might thus be permitted to be passed through without prior regulatory review. Those advocating such an approach should fully discuss its relationship to the ratemaking methodology they recommend.

The Commission seeks comment on how to achieve expedition in ratemaking procedures while at the same time ensuring that all parties received the due process to which they are entitled. To ensure that interested parties have an adequate opportunity to comment, the Commission proposes to require that an operator notify subscribers in writing of a proposed rate increase at approximately the same time it notifies the franchising authority, *i.e.*, at the billing cycle closest to 30 days before any proposed increase is effective. The Commission also proposes to permit any interested parties, including subscribers, to participate in the local authority's ratemaking decisions. The Commission seeks comment on this proposal, on what the appropriate pleading cycle might be, and on how such a cycle could be harmonized with the statutory goal that disputes between cable operators and franchising authorities be resolved expeditiously. The Commission also purposes to require the operator, for its initial filing and any subsequently proposed rate increase, to show that its submission complies with section 623 and the Commission's implementing regulations.

Given the statutory emphasis on expedition, the Commission does not propose to provide for formal hearings on proposed rate increases or rate-related disputes. The Commission also proposes to require the authority to issue a written initial decision explaining its disposition of each rate increase request. The Commission proposes also to adopt rules allowing local authorities to obtain additional information from operators requesting a rate increase and to establish proprietary information procedures analogous to those proposed below for cable programming service complaints. The Commission seeks comment on these tentative conclusions and proposals. The Commission also asks interested parties to comment on what oversight procedures franchising authorities may need to ensure compliance with the Cable Act.

When franchising authorities regulate rates for basic cable service consistent with the Act, they would be in the best position to monitor an operator's compliance with the Commission's regulations. Consequently, the Commission tentatively finds that enforcement of cable regulation should occur at the local level in these circumstances. The Commission seeks comment on whether a franchising authority has the power under the Cable Act, if it denies a rate increase, to set a rate for basic cable service itself, or whether formulation of a new rate should be left to the cable operator. The Commission also seeks comment on whether, in the event an operator should fail to comply with a rate decision, the Cable Act gives an authority the power to order refunds, or whether the authority must obtain an order from a court or other governmental entity with the power to order refunds. In order to obtain a refund, would an authority have to employ special procedures to ensure that the due process rights of an operator were not violated? The Commission also seeks comment on what forms of relief would be available under local law. For those authorities with franchise agreements that do not provide for rate regulation, could franchise agreements be revoked or not renewed for lack of compliance with rate decisions? The Commission seeks comment on whether other remedies, such as fines, would be available under state or local law. The Commission also seeks comment on whether it could impose forfeitures upon cable operators failing to comply with local authorities' determinations that were consistent with its basic service rate regulations.

The Commission invites interested parties to comment on the appropriate forum for appeals of local authorities' rate decisions. One approach would be to rely on the local courts, and not this Commission, to resolve what is essentially a local dispute between an operator or subscriber and a franchising authority. An alternative would be for this Commission to resolve such disputes. This approach might assure a more uniform interpretation of the standards and procedures adopted pursuant to the Cable Act. The Commission seeks comment on these alternatives. In particular, the Commission asks whether the jurisdictional framework of the Cable Act permits it exercise jurisdiction over an authority's decision in the absence of its disallowing or revoking its certification. The Commission has already asked whether the Cable Act gives it jurisdiction over basic cable service rates if franchising authorities do not seek certification. The Commission seeks comment here on whether, if it asserts jurisdiction over basic service rates in cases of disapproval or revocation of certification, the Commission should apply the same procedures to basic service rate petitions as those it would apply to cable programming services complaints, whether it should apply procedures more closely analogous to those proposed for local franchising authority's regulation of basic service rates (see below), or whether some combination of the two would be most appropriate.

The Cable Act also requires that the Commission establish rules to assure that operators inform subscribers that a basic service tier is available. The Commission tentatively concludes that it should require the operator to give initial written notice of basic tier availability to existing subscribers within 90 days or three billing cycles from the effective date of the Commission's rules governing cable rates. Additionally, the Commission proposes to require operators to notify subscribers in any sales information distributed prior to installation and hookup and at the time of installation. The Commission seeks comment on this proposal. The Commission also seeks comment on the appropriate format and content of any such notice. In addition, the Commission seeks comment on any other means by which it can ensure that

subscribers receive meaningful notice of basic tier availability.

4. Regulation of Cable Programming Services

a. *Regulations governing rates.* The Cable Act of 1992 requires that the FCC establish criteria for identifying, in individual cases, rates for the acquisition and distribution of cable programming services that are unreasonable. The statute provides that in establishing such criteria the FCC must consider:

(1) Rates for similarly situated systems taking into account similarities in costs and other relevant factors;

(2) Rates of systems subject to effective competition;

(3) The history of rates for the system including their relationship to changes in general consumer prices;

(4) The systems' rates as a whole for all cable services;

(5) Capital operating costs of the system; and

(6) Advertising revenues.

The statute also permits the FCC to consider other relevant factors.

The FCC tentatively concludes that the statute intends for the FCC to establish criteria to govern the determination in an individual case of whether rates for cable programming service are unreasonable based on a reasoned balancing of the factors enumerated in the statute and other factors that the FCC in its discretion may choose to consider.

With the exception of the "Direct Costs of Signals Nominal/Contribution to Joint and Common Costs" alternative, all previously described regulatory alternatives that could be used for the basic service tier could also be used to determine in individual cases whether rates for cable programming service are unreasonable. The FCC believes that the advantages and disadvantages of regulatory approaches and alternatives previously discussed for basic tier service are equally applicable to cable programming service. As with the basic service tier, the NPRM concludes that traditional cost-of-service regulation would not be the best alternative to select as the primary method of regulating rates for cable programming services. The FCC seeks comment on this tentative conclusion and on which alternatives it should incorporate in the comprehensive plan we will adopt for regulating cable programming service rates.

The FCC is aware that is must balance (a) the need to ensure that cable rates are relatively low and do not include monopoly rents, against (b) the need to ensure that cable systems earn a reasonable return so that they can continue to attract capital necessary to operate and to expand the services they provide to their subscribers. To the extent that local or state regulation of basic rates constrains the revenue and profits obtained from the basic tier, cable operators may seek to earn relatively more revenue and higher profits on their programming services beyond the basic tier. Hence, there may be a tradeoff between the severity of the restrictions that may be placed on basic tier rates and rates for other programming services. The FCC seeks comment on how this tradeoff can best be made in our cable rate regulations.

The Cable Act defines "cable programming service" as any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than (A) video programming carried on the basic service tier, and (B) video programming offered on a per channel or per program basis.

Thus, cable programming service encompasses all video "tiered" programming, other than that included in the basic service tier, and would exclude all pay-per-channel or per-program material. As noted in the legislative history of the Cable Act, some cable systems are "experimenting with 'multiplexing'—the offering of multiple channels of commonly-identified video programming as a separate tier (*e.g.*, HBO1, HBO2 and HBO3)." The FCC thus proposes to exclude from the definition of "cable programming service," pay-per-channel or pay-per-program services offered on a multiplexed or time-shifted basis. The NPRM seeks comment on whether, for a tiered offering of a multiplexed premium service to be exempt from rate regulation, the multiple channels offered would have to consist of essentially the same programming offered on a time-shifted basis.

b. *Complaint procedures; rate reduction and refund procedures for rates found to be unreasonable.* The Cable Act requires that the Commission establish "fair and expeditious procedures" for receiving, considering and resolving complaints from "any subscriber, franchising authority, or other relevant State or local government entity" alleging that rates for cable programming services are unreasonable pursuant to our rules. The statute specifically states that the Commission must specify the minimum showing required for a complaint to obtain Commission consideration and resolution. A complaint is timely only if filed during the 180-day period following the effective date of the Commission's regulations governing unreasonable rates for cable programming services or within a reasonable period of time after the cable operator changes its rates. This time constraint on filing complaints also applies to complaints concerning changes in rates that result from changes in the system's service tiers.

The legislative history indicates that Congress intended the Commission's regulations not to be "so technical or complicated as to require subscribers to retain the services of a lawyer to file a complaint and obtain Commission consideration of the reasonableness of the rate in question." The Commission thus plans to devise procedures that are not only fair to all parties, but are also simple and expeditious. One alternative is to require that complaints concisely state facts showing how an operator has violated the Commission's rate regulations. The Commission recognizes, however, that the ratemaking methodology it adopts, even if very simple, may not be readily accessible to the ordinary subscriber. In addition, the legislative history indicates that Congress deliberately excluded the requirement that a complaint demonstrate a "prima facie case". Thus, if the Commission adopted this requirement, and a subscriber's complaint failed to conform, the Commission might, instead of dismissing it out of hand, send the subscriber an informational letter describing what a complaint should state, and permitting refiling within a set period, for example, 30 days. The filing of the first complaint would act to toll the time limit on complaints. On the other hand, although rigorous technical requirements should not be imposed, this Commission and cable operators need assurance that the Commission's procedures permit only genuine allegations of illegal rates to go forward, and do not permit complaints that are frivolous or lack any serious substantive allegation to proceed.

A second alternative, therefore, is to set an even simpler standard for a subscriber complaint, and to make this a minimum standard which would have to be met in order to avoid dismissal. We observe that if a straightforward benchmark approach is adopted, a statement of facts showing that rates were above the benchmark might be easily done by a layman. The complaint would have to allege that the complainant was a subscriber of a cable system named in the complaint, and also state the name of the franchising authority. The simplicity of this second approach would facilitate the filing of subscriber complaints. However, it

might not give the cable operator sufficient notice of the precise claims made, and might place greater demands on Commission staff seeking to determine the issues and resolve the dispute. It also might not adequately screen frivolous or unsubstantiated complaints. The Commission seeks comment on these two alternative standards for defining the minimum showing required for substantive complaints. The Commission also invites additional suggestions.

Interested parties are also asked to comment on specific forms or language that might be standardized for use by subscribers in filing rate-related complaints. The Commission also asks for comment on how such standardized information might be made widely available. For example, should it be given to local franchising authorities for local distribution? The Commission also seeks comment on whether complaints filed by franchising authorities or parties represented by counsel could or should be held to a different pleading standard, and if so, what that standard should be. The Commission also seeks comment on whether subscribers should be permitted, or required, to obtain a franchising authority's decision or concurrence as a precondition to the filing of a valid complaint. Parties advocating such an approach are asked to reconcile it with the specific provision in the Act permitting subscribers, as well as relevant governmental entities, to file complaints.

The Commission proposes to require that all complaints be served on both the cable operator and the franchising authority by the complaining parties. After a complaint is served, an operator would have a reasonable period of time in which to file a response. Based on the complaint and response, the Commission would make a determination of whether a complainant had made a minimum showing to permit the case to go forward. Once the Commission has determined, based on a review of the two documents, that a minimum showing of a violation of its rules had been established, the Commission would issue an order asking for further information from the operator, and setting a further pleading schedule, if necessary. At this point the operator would have the burden of producing evidence to disprove the allegations. This alternative should prove expeditious and easy for non-lawyers to use. The Commission seeks comment on these tentative conclusions and proposals. In particular, the Commission asks interested parties to comment on what the appropriate pleading cycle should be, taking into account the statute's dual objectives of expedition and fairness. Alternatively, the Commission seeks comment on whether it should require that cable operators answer complaints that the Commission has determined are in good faith and raise a genuine substantive issue. Under this approach, a cable operator would not be required to respond automatically to complaints. Rather, the Commission (or the subscriber) would notify the operator of a complaint after it had been initially reviewed by Commission staff and found to meet this minimum showing.

The Cable Act provides that, with one exception, the Commission's procedures for cable programming service complaints shall be available only to those filing within a "reasonable period" after a change in rates, including a change resulting from a tiering change. The Commission tentatively finds that a time limit of 30 days from the time that a subscriber receive notification of such a rate change would provide adequate opportunity for a subscriber to formulate a complaint under the simplified procedures the Commission contemplates. The Commission seeks comment on whether this would be a reasonable period of time within the meaning of the statute. The Commission also asks for comment on whether it should allow an additional 30 days if the Commission requires the concurrence of a franchising authority for the filing of a complaint. Section 623(c)(3) excepts from the "reasonable period of time" requirement complaints filed within 180 days following the effective date of the Commission's regulations concerning cable programming service rates. During this period, subscribers and other interested parties will have become familiar with the Commission's new regulations. The Commission thus interprets this exception to permit subscribers to complain of any cable programming services rates within that 180-day period, regardless of when those rates were initially effective. After this 180-day period passes, subscribers would be held to the 30-day time limitation. The Commission seeks comment on these tentative conclusions.

The Commission also seeks comment on how to treat information which may be necessary to a decision, but which the cable operator regards as proprietary. The Commission's existing rules authorize the withholding of trade secrets or confidential financial or commercial information from routine disclosure to the public. As a general matter, however, the Commission believes the burden should be firmly on the cable operator involved to demonstrate that significant competitive injury might result from any disclosure of information used in the rate regulation process and that as full a disclosure as is reasonably possible should be mandated. The Commission seeks comment on whether its existing rules would be adequate in a cable rate dispute, and whether they are sufficiently flexible to permit an opposing party to have access to the information necessary for its case. In particular, the Commission also asks whether it should devise procedures permitting the parties to a dispute limited access to proprietary information in specific cases, and in what cases such limited access would be appropriate. Should the Commission permit an operator to redact confidential information in the first instance, with Commission staff retaining the ability to seek further information if necessary? In such cases, should the Commission confine distribution of such information to designated representatives of parties and Commission staff? The Commission also invites comment on the types of information relevant to a cable rate determination which would likely be considered proprietary by any of the parties involved, and in particular, on any special problems that may arise from use of data proprietary to third parties.

Once a decision is made, the Commission seeks comment on what types of relief are available. The Commission assumes that its authority under the Cable Act to prevent unreasonable rates at a minimum authorizes it to order prospective reductions of rates it has found to be unreasonable. The Commission proposes to require operators to make such reduction promptly, such as, for example, within 30 days of a Commission decision finding existing rates unreasonable. The Commission seeks comment on this tentative conclusion and proposal. In addition, the Commission asks interested parties to comment on whether its ability to order prospective rate reductions would extend to prescription of specific rates.

The Commission tentatively finds that its authority under section 623(c)(2)(C) permits it to reduce rates determined to be unreasonable and to refund to subscribers the portion of such rates found to be unreasonable that subscribers paid after the filing of a complaint. The Commission proposes in the first instance to determine the amount of overcharge and to order a refund to the actual subscribers who paid this overage. It may, however, be

administratively infeasible or unreasonably burdensome to determine the actual subscribers who paid the unreasonable rate. In such cases, the Commission proposes to order a prospective percentage reduction in the unreasonable service rate to cover the cumulative overcharge, and to have that reduction made in the bills sent to the class of subscribers that had been unjustly charged. This reduction would be in addition to the rate reduction necessary to eliminate prospective overcharges, and would end when compensation for the overcharge had been made. The Commission interprets its authority under section 623(c) as permitting it to reduce rates for the class of subscribers who paid for a service the rate for which was determined to be unreasonable, even if this finding was based upon a complaint filed by a single subscriber. The Commission believes that this construction is necessary to fulfill the purposes of this statutory provision. The Commission seeks comment on these tentative findings and proposals.

The Commission seeks comment on how best to device procedures that will be simple and informal, while at the same time safeguarding the due process rights of all parties involved. One option would be to treat cable programming service complaints as informal adjudications, and apply the streamlined procedures outlined just above. If this option were adopted, would it also be advisable to adopt relaxed (*e.g.*, permit but disclose) *ex parte* rules to facilitate staff resolution of a dispute in which presumably non-lawyers were participating? Another approach might be to style cable programming services complaints as ratemaking proceedings, using procedures analogous to those followed in our tariff review process. These procedures would be the sole means by which the Cable Act empowers the Commission to regulate cable programming service rates, and would determine liability for overcharges on a prospective basis only (from the time the complaint was filed). They thus reasonably could be analogized to ratemaking proceedings. Under this option, the Commission would also consider cable programming service proceedings to be non-restricted proceedings under its *ex parte* rules, subject to "permit but disclose" *ex parte* obligations. This approach would give Commission staff maximum flexibility to gather relevant information, flexibility particularly helpful in disputes where one or more parties were not represented by counsel. This approach thus also serves the Commission's objective of crafting procedures which do not require parties to have professional representation. The Commission seeks comment on these proposed alternative approaches to complaint procedures and on whether they would adequately accommodate the various policy objectives and legal constraints just articulated. Should it be necessary to establish more formal proceedings in cases involving factual disputes or potential refund liability, the Commission seeks comment on how it might accomplish this and still make these proceedings accessible to non-lawyers and to parties located in areas distant from Commission offices in Washington, DC. The commission also seeks comment on whether alternative dispute resolution would be one possible solution, should the parties agree to employ it.

Once relief is ordered, the Commission must ensure that its decision is properly effectuated. The Commission seeks comment on whether operators should be required to certify that they have implemented the Commission's decision. The Commission tentatively finds that noncomplying operators would be subject to forfeitures. The Commission seeks comment on this tentative conclusion, and on other remedies, such as reporting requirements, that may be appropriate in specific circumstances.

5. Provisions Applicable to Cable Service Generally

a. *Geographically uniform rate structure.* The Cable Act of 1992 requires cable operators to "have a rate structure, for the provision of cable service, that is uniform throughout the geographic area in which cable service is provided over its cable system."

In accordance with the above provision of the Cable Act, the NPRM proposes to incorporate into implementing regulations a provision that cable systems must have a uniform rate structure throughout the geographic area served by the cable system. The NPRM solicits comment generally on the extent to which cable operators' ability to establish service categories with separate rates and terms and conditions of service is limited by the requirement for a geographically uniform rate structure. The NPRM also seeks information on the extent to which cable operators currently enter into special service arrangements with some customers or types of customers, such as long-term service contracts with certain types of customers with discounted rates and other special terms and conditions. In addition, the FCC solicits comment on whether cable operators should be afforded the flexibility to establish *bona fide* service categories with separate rates and service terms and conditions.

The FCC tentatively concludes that the statutory requirement of a geographically uniform rate structure does not prohibit establishment of reasonable categories of service with separate rates and terms and conditions of service. The FCC tentatively concludes that the requirement for a uniform rate structure should be read in conjunction with the amendments to section 623(e), which authorize regulatory authorities to prohibit discrimination, but do not require that they do so.

The NPRM seeks comment on the meaning of the term "geographic area" as used in this section of the Act. One possible interpretation is that Congress intended this phrase to mean a franchise area. The FCC recognizes, however, that many cable systems provide service for more than one franchise area. If Congress intended to limit the meaning of geographic area to a franchise area, it could have used the less ambiguous term.

If the FCC assumes that geographic area refers to an area greater than a franchise, the Act appears to limit the region to the contiguous area served by the cable system. Under this more inclusive interpretation, the FCC would require a uniform rate structure throughout a cable system. The NPRM requests comment on whether Congress intended to require or to permit cross-subsidization to maintain uniform rates within a cable system. The FCC solicits comment on the advantages and disadvantages generally of interpreting geographic area as synonymous with franchise area or as referring to a greater area.

b. *Discrimination.* The Cable Act permits local and federal authorities to prohibit discrimination in provision of cable service, except that (1) cable operators may establish reasonable discounts for senior citizens or other economically disadvantaged groups, and (2) local and federal authorities may regulate installation or rental of equipment for the hearing impaired. Based on this provision, the Commission tentatively concludes that it should explicitly permit the discounts contemplated in the statute. Local authorities would also be free to adopt anti-discrimination provisions consistent with the statute and the Commission's implementing regulations. The Commission seeks comment on these tentative conclusions. The Commission seeks

comment in particular on whether differences in rates among different classes of customers based on differences in costs of providing services should not be prohibited under this provision. The Commission also seeks comment on what economically disadvantaged groups other than senior citizens may be awarded reasonable discounts by cable operators. The Act does not preclude local authorities from adopting regulations concerning equipment and installation which facilitate reception by the hearing impaired that are consistent with the other provisions of the Cable Act. In addition, the Commission asks whether there is any need at this time to adopt specific rules at the federal level as well.

c. *Negative option billing.* The Cable Act provides that an operator may not charge a subscriber for "any service or equipment that the subscriber has not affirmatively requested by name." The Act further provides that a subscriber's failure to refuse a proposal to provide such service or equipment "shall not be deemed to be an affirmative request for such service or equipment." The legislative history indicates that Congress did not intend this section to apply to "changes in the mix of programming services that are included in various tiers of cable service." The Commission interprets this provision to mean that, in order to be billed for any cable service (either tiers or individually priced programs or channels) or equipment, a subscriber previously must have affirmatively requested that particular service or equipment. A cable operator may not take a subscriber's inaction following the operator's proposal to provide such service or equipment as an affirmative request for the same. The Commission tentatively concludes that an affirmative request for service or equipment may occur orally or in writing so that subscribers are given flexibility to order by either method. The Commission also tentatively concludes that an operator should not be permitted to charge for any service or equipment provided in violation of section 623(f) of the Act and the Commission's implementing rules. The Commission seeks comment on this tentative conclusion. The Commission also seeks comment on whether disputes between the operator and subscriber arising under this provision would primarily be subject to resolution in the local courts. This remedy would be in addition to the forfeiture provisions applicable to the operator that fails to comply with section 623(f) and the Commission's implementing rules. The Commission remains concerned, however, that its enforcement procedures be adequate to correct any practices or patterns on the part of operators that violate the Commission's rules, and seeks comment on how the Commission can ensure its ability to do so.

The legislative history states that section 623(f) does not apply to "changes in the mix of programming services that are included in various tiers of cable service." The Commission seeks comment on the types of tier changes that may be made without violating the negative option billing restriction and in particular, whether such tier changes must be revenue neutral. Can they involve additions or deletions of services? The Commission tentatively finds that a change in the composition of a tier that was accompanied by a price increase justified under its rate regulations would not be subject to the negative option billing prohibition. The Commission believes that this interpretation will avoid an undesirable stalemate in system offerings, to the public's detriment. The Commission also does not believe that Congress intended the negative option billing provision to apply to system-wide upgrades in equipment accompanied by a justified price increase. Otherwise the provision might discourage operators from making beneficial system improvements. However, the Commission also seeks comment on whether subscribers should be given 30-days notice of changes in tier composition or in system equipment, that are accompanied by a price increase. The Commission also seeks comment on the interplay between the negative option billing provision and the prohibition on evasions pursuant to section 623(h).

The Commission also seeks comment on how this provision should apply to initial implementation of the basic cable service rate structure. For example, an operator may have been offering a basic service consisting of more channels than are now required under the Cable Act's definition of basic service. It may now effectively be required to split its former basic service into the Act's formulation of basic service and an expanded basic tier. If some subscribers do not affirmatively request both basic and expanded basic, the Commission seeks comment on whether the operator may nevertheless continue to bill them at the old rate. What if the operator has also changed the rates?

d. *Collection of information.* The statute requires cable operators to file annually with the FCC or franchising authorities, as appropriate, beginning one year from the date of enactment, such financial information as is necessary to administer and enforce rate regulation.

The information that regulators will need to assure that they can effectively administer and enforce the requirements of section 623 will be determined by the alternative that we ultimately adopt. In order to assure that the FCC can adopt a collection of information requirement that will permit effective administration and enforcement of section 623, it is proposing to collect on an annual basis the information specified in appendix C of the NPRM and the information collected by the Commission in the Order, MM Docket No. 92-266, FCC 92-545, adopted December 10, 1992. The FCC will also need to collect information concerning rates of systems subject, and not subject, to effective competition to enable us to publish the annual reports on average prices required by section 623(k).

The FCC solicits comment generally on the appropriate scope of information that it should collect pursuant to section 623(k). The FCC solicits comment on the availability of the information specified in appendix C of the NPRM, on whether cable systems will ordinarily have developed this information, and the burdens that the collection of this information would impose. To the extent this information is not already developed by cable systems, the NPRM solicits comment on the extent to which the FCC should require that they develop it, and on time periods that the FCC should permit for its development. The FCC solicits comment on whether it should require the information specified in appendix C of the NPRM to be submitted by every cable system. Alternatively, the NPRM seeks comment on whether the FCC should rely instead on a sampling of systems, and, if so, what sampling methodology it should use. The NRPM also solicits comment on whether, in order to reduce burdens on systems with 1000 or fewer subscribers, the FCC should require less information, or no information, from such systems.

e. *Prevention of evasions.* The Cable Act requires the Commission to promulgate regulations that will prevent evasion of its rate regulation provisions and, specifically, evasions resulting from retiering. The statute requires that the Commission periodically review these regulations. The Commission proposes generally to prohibit evasion of its rate regulations by cable operators. The Commission proposes to allow interested parties to avail themselves of the expedited procedures the Commission establishes for rate relief to

seek redress of evasions of its rate regulations. The Commission plans to periodically review the standards it establishes pursuant to this subsection, with the first review occurring two years from the rules' effective date, and with periodic reviews every three years thereafter. The Commission seeks comment on these proposals.

As the legislative history contemplates, the Commission proposes to prohibit retiering that "shift[s] cable programs out of the basic service tier into other packages" and causes an unjustified increase in rates to subscribers for cable service. At the same time, the Cable Act of 1992 permits, and indeed appears to require in some cases, a restructuring of service offerings. Thus, the Commission proposes to prohibit retiering which actually results in an increase in regulated rates inconsistent with the regulations it establishes. Thus, retiering necessary to comply with basic tier requirements, retiering that did not change the ultimate price for the same mix of channels in issue to the subscriber, or retiering accompanied by a price change that complied with the Commission's rate regulations would not be deemed an evasion. The Commission seeks comment on this proposal. It is also possible that our substantive rate regulations will lessen the potential for evasions through retiering as well. Should the Commission adopt the same rate regulation regime for both the basic tier and cable programming services, this uniformity of approach might eliminate the incentive for operators to move services from basic to cable programming services tiers in order to evade rate regulation. The Commission seeks comment on the interplay between its substantive rate regulation responsibility and its obligation to adopt rules preventing evasions. The Commission also seeks comment on whether it needs to establish specific rules regarding evasions of rate regulation through charges for changes in equipment, particularly in light of the specific rules the Commission is adopting regarding such charges. Finally, the Commission seeks comment on other specific evasive acts and practices that should be prohibited. For example, the Commission seeks comment on whether retiering and repricing of cable services between the effective date of the Act and the implementation of these regulations could, if found to be unreasonable or evasive, raise specific concerns under the Commission's proposed enforcement scheme.

f. *Small business burdens.* The Cable Act requires that the Commission develop and prescribe cable rate regulations that reduce the administrative burdens and cost of compliance for cable systems that have 1000 or fewer subscribers. The Commission seeks comment on how best to effectuate this statutory requirement. The Commission's current rules exempt operators of cable systems of fewer than 1000 subscribers from certain administrative requirements. The Commission similarly could exempt cable systems of fewer than 1000 subscribers from certain administrative burdens associated with the rate regulations it establishes. Depending on the substantive ratemaking standard adopted, the Commission might, for example, exempt small systems from certain accounting requirements or the obligation to submit certain data. With respect to the data collection requirements of the Act, the Commission might rely on external sources of data or, if necessary, special studies instead of requiring individual reports from small systems. The Commission seeks comment on this general proposal, as well as on the specific requirements from which small systems might appropriately be exempted. Parties are also invited to comment on other alternatives, *e.g.*, the filing of abbreviated reports or other streamlining of administrative obligations that also might be appropriate. The Commission also seeks comment on ways it might coordinate any administrative requirements with the actual operations of small cable systems.

The Commission also seeks comment on whether it should exempt small systems from any substantive or procedural rate regulation requirements and, if so, which ones. The Commission's current rules exempt small systems from network non-duplication protection requirements, syndicated exclusivity rules, and from certain technical standards and performance testing requirements. A community unit having fewer than 1000 subscribers currently is exempt from the sports broadcast blackout rule. Are there requirements in the Commission's proposed rate regulation regime from which small systems may also appropriately be exempt? In this regard, the Commission also seeks comment on whether it should establish a presumption that systems with under 1000 subscribers are, because of the underlying costs involved and the small base over which these costs can be spread, unlikely to be earning returns or charging rates that could effectively be altered to the benefit of subscribers through detailed regulatory oversight. A second option might be to permit small companies to certify their compliance with the Commission's rate regulations. A third option might be to tailor the Commission's rate regulations specifically to small companies. The Commission might, for example, devise basic cable rate regulations that assure that high-cost small systems will be able to fully recover their costs. The Commission seeks comment on these substantive approaches to alleviating regulatory burdens on small systems and on whether they harmonize with the general objectives of the Cable Act. In addition, the Commission might exempt small systems from certain procedural requirements, including, for example, the filing of rate schedules. The Commission might also modify requirements such as burden of proof or information production for small systems in contested cases. The Commission seeks comment on these procedural approaches to alleviating regulatory burdens on small systems.

Finally, in making some or all of these small system exceptions, should the Commission distinguish between independently owned stand-alone systems of under 1000 subscribers and systems of under 1000 subscribers which are owned by a large MSO? Although the plain language of the statute makes no such distinction, the Commission questions whether systems in the latter case need such regulatory protection. A small cable system affiliated with an MSO may enjoy advantages such as program discounts or access to corporate resources that stand-alone small systems do not, and thus may not need the protection section 623(i) offers. It might also be appropriate to distinguish between larger and smaller MSOs if the Commission distinguished between MSO and independently-owned systems. For example, the Commission might distinguish a system directly or indirectly owned by a cable operator that directly or indirectly owns other cable systems, which altogether serve some specific number of subscribers. Parties advocating such an option are encouraged to suggest specific subscriber numbers that might serve to distinguish large from small MSOs.

With the exception of the sports blackout rule, the size of a cable system is determined under the Commission's current rules according to the number of subscribers served by a single integrated headend. In contrast, the community unit measurement used in the sports blackout rule defines a system in a

narrower manner, according to what is essentially the cable franchise area. Use of the single integrated headend might help ensure that what is in practice a large system fully capable of meeting the Commission's requirements does not qualify merely because it covers numerous franchise areas, each under 1,000 subscribers. The Commission seeks comment on whether either of these two definitions might be appropriately applied in the context of rate regulation of small cable systems. The Commission also asks interested parties to suggest any alternative definitions they believe would be appropriate under the Cable Act. Finally, the Commission seeks comment on whether a system's qualifying for small system treatment should be based upon the average number of subscribers over a period of years, rather than the number of subscribers as of a specific date. The former standard would avoid abrupt or frequent changes in regulatory status resulting from seasonal or other brief fluctuations in the subscriber base.

g. *Grandfathering of rate agreements.* The Cable Act provides that the statute and its implementing regulations do not supersede franchising agreements made before July 1, 1990 that authorize regulation of basic cable service rates if there was not effective competition as of that date. The provision states that such agreements are to remain in effect "during the term" of such agreements. The Commission tentatively concludes that this provision authorizes a franchising authority with a franchise agreement executed before July 1, 1990, that was regulating basic cable rates at that time to continue regulating basic cable rates for the remaining term of that agreement without certification from this Commission. The Commission tentatively concludes that such franchising authorities (who are not required to apply for certification) should nevertheless be required to notify this Commission that they intend to continue to regulate basic cable rates under the provisions of section 623(j). This notification will give the Commission the information it needs to compile the annual reports on average prices required under the Cable Act. The Commission seeks comment on these tentative conclusions. The Commission also seeks comment on whether an agreement that falls within the terms of section 623(j) would supersede Commission regulations governing the rates for cable programming services that are not part of the basic tier as defined in the agreement and thus not subject to regulation under the agreement. The Commission also seeks comment on how franchising authorities now regulating rates and that are not covered by the grandfathering provision just discussed should make the transition to rate regulation under the Commission's new rules.

h. *Reports on average prices.* The statute requires the Commission to publish annual statistical reports comparing charges for the basic tier, cable programming services, and equipment by cable systems subject to, with those charges by systems not subject to effective competition. In order to comply with these requirements, the Commission will need to collect certain cable system data. These data include rates charged for basic cable service, expanded basic service, and other cable programming; and fees for converter boxes, remote control units, program guides, installation and disconnection charges, and any other charges for equipment or service. Because the Commission may wish to compare systems of similar sizes or other characteristics, the Commission proposes also to collect information on system size (measured by number of subscribers), system channel capacity, and possibly other characteristics such as percent of distribution plant above or below ground, length of distribution plant, and subscriber density per mile. The Commission envisions that the annual statistical report will consist of a compilation of the above data elements.

There are a number of possible ways to collect the specific data. Trade publications such as the Cable Fact Book collect much of the data we require, but such data are collected on a voluntary basis and are not always complete for each individual cable system. It appears to be necessary, therefore, to require cable operators to submit certain information directly to the Commission on a regular basis. Such information obtained directly from cable operators would be reliable, complete and comparable. The Commission requests comment on the specific data to be collected. For example, should the data submitted be on a per system rather than a per franchise basis? Further, the Commission notes that the data it proposes to collect for the annual report on rates may duplicate in part the data needed to carry out the ongoing rate regulations provisions of the Cable Act. In addition, depending on the particular rate standard the Commission ultimately adopts, the Commission may also need data on various costs and other financial information. The Commission tentatively concludes that it should combine all data requirements on a single form and requests comment on that conclusion.

The Commission realizes that annual collection of data will be costly for both the industry and the Commission. One option for minimizing these costs would be to collect data from a sample of cable systems rather than from the industry as a whole. The Commission seeks comment on how to identify systems subject to effective competition. The Commission seeks comment on this issue. Finally, commerters are invited to suggest other ways the Commission may obtain the data needed to fulfill the annual reporting requirements specified in section 623 (k).

i. *Definitions.* The statute includes definitions of effective competition, cable programming service, and multichannel video programming distributor. In order to implement the statutory definitions and rules to incorporate these terms, the NPRM proposes to adopt the definitions without change. The FCC solicits comment on this proposal. The FCC additionally solicit comment on whether it should establish any additional definitions in our rules.

j. *Effective date.* The statute provides that the amendments to section 623 establishing rate regulation of cable systems not subject to effective competition shall be effective 180 days from the date of enactment. The statute gives the FCC authority to prescribe regulations effective on the date of enactment. The statue expressly requires the FCC to establish regulations concerning rates for the basic service tier, rates for cable programming service, and prevention of evasions within 180 days of enactment.

In order to assure that the FCC meet the statutory deadline for implementing regulations, we propose to adopt implementing rules prior to April 3, 1993 and to make them effective as rapidly thereafter as is reasonably feasible. The NPRM seeks comment on this proposal and on what if any interim requirements may be necessary as the rules come into force. The FCC has tentatively concluded that, while its regulations must be in place 180 days from the date of enactment, the statute does not require that all implementing steps that cable systems must take to meet the obligations of the statute or our rules must be completed on that date.

D. Leased Commercial Access

1. Statutory Requirements

Section 612 of the Communication Act states that its purpose is to assure that the widest possible diversity of information sources is made available to

the public from cable systems in a manner consistent with growth and development of cable systems. The amendments to section 612 of the Communications Act contained in the Cable Act of 1992 add an additional purpose to the section: To promote competition in the delivery of diverse sources of video programming. Other amendments to section 612 grant the Commission authority: To determine the maximum allowable rates that a cable operator may establish for leased commercial access, including the rate charged for billing and collection services; to establish reasonable terms and conditions for commercial use of the system, including those to govern billing and collection; and to establish procedures for expedited resolution of disputes concerning rates or carriage. The FCC is required within 180 days of enactment to adopt regulations exercising authority in these areas.

2. Discussion

a. *Maximum reasonable rates.* The language of section 612, as amended by the Cable Act of 1992, that governs leased commercial access does not limit its application to only cable systems not subject to effective competition as the Act defines that term. Accordingly, the FCC tentatively concludes that our regulations governing the maximum reasonable rate for leased commercial access will apply to all cable systems. The NPRM also tentatively concludes that the Cable Act of 1992 does not necessarily require cable operators to provide billing and collection services. Rather, the FCC believes that Congress intended only that we establish regulations governing the maximum rate for such services if an operator chooses to offer them. The FCC also tentatively concludes that it should require that any charges for billing and collection services that a cable operator may elect to provide be unbundled from other charges for leased commercial access.

The FCC has initially identified three alternative standards for determining maximum reasonable rates for leased commercial access and for billing and collection services: Reliance on benchmark rates based on costs of typical cable systems, reliance on the cost-of-service principles, and reliance on the marketplace where effective competition exists. A fourth possibility, not explored in detail in the NPRM but on which comments are solicited, would be for the FCC to establish a mechanism or formula under which subscriber rates for the basic service tier and/or cable programming services could be used to compute a rate for leased commercial access. Additionally, the NPRM seeks comment on whether we should establish additional rate ceilings to govern rates for not-for-profit programmers.

Benchmark Based on Typical System Costs. Under this alternative, rates for leased commercial access would be governed by a benchmark based on costs incurred by a typical or ideal cable system for constructing and operating channel capacity. Such a benchmark would be particularly useful for cable systems whose rates for basic tier service and cable programming service were not subject to individual system cost-based regulation, possibly because they also met a benchmark.

Cost-of-Service. Under this alternative, the maximum reasonable rates for leased commercial access and for billing and collection services would be designed to recover the costs of providing those services. Under this alternative, the FCC would require that the maximum reasonable rate would be based on all direct costs, an allocation of the joint and common costs of access and of providing other cable services, an allocation of general and administrative overheads, and a reasonable profit determined under cost-of-service regulatory principles that were previously discussed. Should the FCC select the cost-of-service alternative, the NPRM solicits comment on whether the FCC should require a fully distributed cost methodology to identify the joint and common costs to be recovered through rates for leased channel access or for billing and collection services.

Marketplace Rates. Under this alternative, the FCC would determine that where a competitive market exists for leased commercial access or for billing and collection services there would be no prescribed price or ratemaking methodology. The FCC solicits comment on this approach generally and, in particular, on whether it is consistent with congressional intent and whether the Cable Act of 1992 authorizes us to rely on market forces to set such maximum rates. The NPRM also solicits comment on the extent to which a competitive market for leased commercial access currently exists. The NPRM solicits comment on whether the billing and collection services that were considered by the Commission in connection with telephone companies are the same as, or relevant to determining proper treatment of, the billing and collection services that cable systems might offer in connection with leased commercial access.

Special Rates for Not-for-Profit Programmers. The NPRM solicits comment generally on the need for special rates for not-for-profit programmers. The NPRM seeks comment on whether the Cable Act of 1992 empowers the FCC to set a lower maximum rate for leased commercial access for not-for-profit programmers, and ask whether this could help assure the diversity of programming sources on cable systems sought by the drafters of Section 612. The FCC asks to what extent it can permit costs of providing leased commercial access to not-for-profit programmers to be recovered from other leased access customers or from cable subscribers on all tiers generally.

In addition to the above proposals, the NPRM solicits comment on whether we need to take any measures to assure that our regulations governing maximum resale rates for leased commercial access are fulfilling the statutory objectives of section 612. The NPRM solicits comment on relying on the complaint process to monitor the effectiveness of our regulations. Alternatively, or in addition to the complaint process, the FCC could establish a reporting requirement that will enable us to track the use of leased commercial access and rates charged for that use.

b. *Reasonable terms and conditions of use.* Section 612(c)(4)(A)(ii) requires the Commission to "establish reasonable terms and conditions" for commercial use of leased access cable channels. In enacting this Section, Congress was particularly concerned that leased access programmers be offered a "genuine outlet" for their product. Thus, the Commission seeks comment on whether it needs to address in its rules tier location, channel position, and time scheduling for leased access use. The Commission also seeks comment on how such an alternative could be fashioned so that it intruded minimally upon programming decisions negotiated by private parties and on the discretion of the cable operator with respect to channel positioning and configuration of its system. However, the general prohibition on the cable operator's exercising editorial control over leased access remains intact, and Congress has expressed concern over providing leased access programmers "genuine outlet." Thus, the Commission seeks comment on the appropriate scope of the operator's discretion regarding tiering and channel location for leased access.

The Commission tentatively concludes that it should establish guidelines for technical standards and conditions for leased access. The Commission proposes to require that operators apply the same technical standards they apply to programs to be carried on public, educational, and governmental access channels to leased

access programs. Thus, an operator could not reject for technical reasons a program for leased access airing if it would not reject the program for the same reasons for airing on public, educational or governmental access channels. The Commission seeks comment on this proposal. The Commission also seeks comment on what, if any, technical and production facilities the cable operator should be expected to offer leased access users. The Commission also asks when the operator should be able to require posting of a bond or deposit, and what the impact of any bond or deposit requirement would be on programmers' ability to secure access to leased channels.

While the Communications Act does not give cable operators editorial control over leased access programming, the Cable Act does permit operators to prohibit or to channel indecent material on leased access channels. The Commission is presently considering how to implement these provisions of the Act. The Commission proposes generally to prohibit a cable operator from setting terms or conditions for leased access use based on content. The Commission proposes to except from this prohibition those terms and conditions relating to indecent material that would be consistent with the Cable Act and the implementing regulations the Commission ultimately adopts. In addition, as provided in existing section 612(c)(3) of the Communications Act, an operator may consider content "to the minimum extent necessary to establish a reasonable price for the commercial use of designated channel separately by an unaffiliated person." The Commission seeks comment on this approach.

Existing section 612(c)(1) provides that an operator shall establish prices, terms and conditions for leased access to an unaffiliated user at least sufficient to ensure that such use "not adversely affect the operation, financial condition, or market development of the cable system." The Commission seeks comment on how to ensure that regulations it establishes for leased access terms and conditions are consistent with this provision and do not undermine the financial condition of the cable system, while at the same time harmonizing with the statutory provisions governing the maximum rate for leased access. The legislative history of the 1984 Act indicates that Congress contemplated different treatment of leased access providers, who by definition are unaffiliated with the operator, and of affiliated entities who may also lease a channel or have an equivalent arrangement. It is unclear whether in passing the 1992 Cable Act, and requiring us to establish reasonable terms and conditions for leased access use, Congress intended to reinforce or reduce such differentiation. The Commission thus seeks comment on whether it has the authority to require and, if so, whether it should require operators to apply the same terms and conditions to the leasing of channel capacity by both affiliated and nonaffiliated users. If so, would this requirement extend to services such as billing and collection? The Commission also seeks comment on how its regulations might permit the beneficial discrimination which Congress considered might be necessary to establish terms and conditions that might be needed, for example, by non-profit program suppliers. The Commission also seeks comment on whether there is any need to reconcile the amendments made by the Cable Act of 1992 with the existing statute and its underlying objective of promoting diversity. For example, one may speculate that if rates for leased access are low enough, unaffiliated programmers may seek to move their program offerings from other channels to those set aside for leased access, thereby diminishing the number of channels available for leased access without adding to the diversity of programming offered on the system. The Commission seeks comment on the probability of such migration occurring, the likely impact of such actions, and whether there is any need to take regulatory action at this time to prevent it.

c. *Procedures for expedited resolution of disputes.* The Cable Act requires that the Commission establish procedures "for the expedited resolution of disputes concerning rates or carriage" of leased access. The legislative history of section 612(c)(4)(A) indicates that Congress believed that existing provisions of the Cable Act of 1984 entitling aggrieved leased access users to bring action in federal district court or file complaints at the Commission were too cumbersome. Congress believed these provisions, together with the imposition of a high burden of proof on access users, may have led to limited demand for leased access. One means of fulfilling Congressional intent to increase use of leased access channels would be to streamline this Commission's dispute resolution procedures for aggrieved leased access users. Thus, the Commission proposes to permit an aggrieved access user to file a petition for relief alleging that an operator's rates or terms and conditions for use of leased access capacity violate the Commission's rules. Should the Commission determine that a *prima facie* case of violation of its rules has been made, the burden of production would then shift to the operator to disprove the allegations. At this stage, the Commission might also issue an order requesting further information from the operator, under procedures analogous to those established for complaints of unreasonable rates. The Commission seeks comment on this approach.

The Commission proposes that if a petitioner has made out a *prima facie* case of a violation of its rules promulgated pursuant to Section 612(c), this case would be sufficient to rebut the presumption established in the 1984 Cable Act that the prices, terms and conditions for leased access are reasonable. If such allegations are proven, they would constitute clear and convincing evidence of unreasonable practices or rates and meet the burden of proof imposed under the Act. The Commission seeks comment on this proposal. The Commission also seeks comment on alternative approaches to reconciling the provisions of the 1984 Act (which presume that the operator's good faith prices, terms and conditions are reasonable) with the provisions of the 1992 Act (which require the Commission to establish reasonable terms and conditions and to determine maximum reasonable rates for leased access).

As a matter of general policy, the Commission also believes that parties should bring complaints to the Commission's attention in a timely manner. This policy will help to guard against determinations based on a stale record, as well as forestall development of any patterns of abuse. The Commission also proposes to give oral rulings in those situations in which time is of the essence, to be followed by a written formal ruling. The Commission seeks comment on what types of cases might be appropriate for such emergency treatment. The Commission tentatively finds that rate disputes, which are generally complex in nature, should not be the subject of emergency action at the Commission. The Commission believes that it would be possible in such cases to devise procedures that will enable a user to have access before a Commission decision is made. The Commission proposes to require that the user provide some form of security, *e.g.*, establish an escrow account, while the rate dispute is being determined, and seeks comment

on the fairness of this procedure to all parties involved.

The Commission seeks comment on the use of Alternative Dispute Resolution ("ADR") for leased access petitions filed at the Commission. The legislative history reflects concern that "cumbersome" administrative procedures may have limited usefulness for leased access. In light of this history, when the circumstances of a given case are fairly straightforward, the Commission tentatively concludes that ADR may be the most appropriate means of resolving conflicts by providing both expedition and cost-effectiveness. The Commission also assumes that it could be made available to parties in the franchise area in which they are located, adding the benefit of geographic convenience in such cases. The election of mediation by the parties would be purely voluntary under the Administrative Dispute Resolution Act, 5 U.S.C. 582(c) (1990). The Commission seeks comment on this approach, and on whether the Commission should encourage its use. The Commission also seeks comment on whether parties should be permitted to elect ADR at the outset of a dispute or whether election should take place only at the time the Commission rules that a *prima facie* case has been established. The Commission also seeks suggestions on what types of disputes would be most suitable for ADR. Specifically, the Commission seeks comment on whether conflicts concerning rates, credit terms, technical quality, or other terms or conditions would reasonably lend themselves to resolution by mediation, or whether certain categories of disputes would be better resolved by other means.

The Commission also seeks comment on whether and how it might enlist the assistance of local franchising authorities in resolving leased access disputes. The Commission thus asks whether parties should be permitted to seek resolution of leased access disputes by franchising authorities. The Commission seeks comment on whether this option should be voluntary, or possibly be required as a prerequisite to review by this Commission. On the latter point, the Commission seeks comment on whether such a requirement would be consistent with the language and intent of the Cable Act. Finally, the Commission seeks comment on what types of leased access disputes may be suitable for franchising authority resolution.

d. *Leased access for quality minority programming and qualified educational programming.* The Cable Act permits a cable operator to place programming from a qualified minority or educational programming source on up to 33 percent of the cable system's designated leased access channels. Programming already carried by a cable system as of July 1, 1990 does not qualify as minority or educational programming for purposes of this section. The Act defines a qualified minority programming source as one that devotes substantially all of its programming to coverage of minority viewpoints, or to programming directed at members of minority groups, and which is over 50 percent minority-owned, as the term minority is defined in section 309(i)(3)(C)(ii) of the Communications Act. The Act defines a qualified educational programming source as one that devotes substantially all of its programming to educational or instructional programming that promotes public understanding of mathematics, the sciences, the humanities, and the arts and has a documented annual expenditure on programming exceeding $15 million. The Commission proposes to adopt this subsection as part of its rules. The Cable Act defines "minority" with reference to section 309(i)(3)(C)(ii) of the Communications Act, which identifies Blacks, Hispanics, American Indians, Alaska Natives, Asians, and Pacific Islanders as minority groups. The Commission thus tentatively finds that, for purposes of the minority programming provision, programming that covers "minority viewpoints" or is "directed at members of minority groups" would have to cover the viewpoints of or be targeted to members of the above-listed groups. The Commission seeks comment on this proposal and tentative conclusion. The Commission also proposes to reflect the statutory definition of educational programming source described above in its rules. The Commission seeks comment on this proposal.

The Act qualifies minority and educational programming sources for leased access under this section if they devote "substantially all" of their programming to the coverage of minority viewpoints or to educational or instructional programming. The Commission seeks comment on the amount or proportion of programming necessary to fulfill this requirement.

C. Subscriber Bill Itemization

Section 622(c) of the Communications Act, as amended by the Cable Act, permits a cable operator to itemize, on separate lines on each regular subscriber bill, (1) the amount of that bill attributable to the franchise fee, together with the identity of the franchising authority to which the fee is paid, (2) the amount attributable to the support or use of public, educational, or governmental channels which is required under a franchise agreement, and (3) the amount of the total bill attributable to any other governmental assessments on transactions between the operator and the subscriber. The Conference Report states that an amendment was made to the legislation to clarify that itemization must be done in a manner consistent with the Commission's regulations implementing section 623. The House Report indicates that only direct and verifiable costs within the above-listed categories may be so itemized. Section 623 provides that rules governing basic service rates shall take into account "the reasonably and properly allocable portion" of amounts assessed as franchise fees, taxes, or governmental charges assessed on operator/subscriber transactions, and any amount required to satisfy franchise requirements to support public, educational, or governmental channels, or the use of such channels under a franchise. The Commission seeks comment on the possible differences and the interrelationships between section 622(c) and section 623. The House Report also indicates that Congress explicitly intended that such costs be itemized as part of the total bill, but not separately billed. The Commission proposes to reflect this Congressional intent in its rules incorporating section 622(c). The Commission seeks comment on this proposal, and on any other regulations that may be necessary to adequately implement this provision.

Initial Regulatory Flexibility Act Analysis

Pursuant to section 603 of the Regulatory Flexibility Act, the Commission has prepared the following initial regulatory flexibility analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of this Notice, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

Reason for action. The Cable Television Consumer Protection and Competition Act of 1992 requires the Commission to prescribe rules and regulations for determining reasonable rates for basic tier cable service, including rates for equipment and installation, and procedures for implementation and enforcement of those rules. The Cable Act of 1992 also requires the Commission to establish criteria for identifying unreasonable rates for cable programming services, and procedures for resolving complaints regarding cable programming services. In addition, the statute requires the Commission to establish rules for determining the reasonable terms and conditions and maximum reasonable rates for leased commercial assess, including billing and collection.

Objectives. To propose rules to implement sections 3 and 14 and those portions of section 9 pertaining to rate regulation, of the Cable Television Consumer Protection and Competition Act of 1992. We also desire to adopt rules that will be easily interpreted and readily applicable and, whenever possible, minimize the regulatory burden on affected parties.

Legal basis. Action as proposed for this rulemaking is contained in sections 4(i), 4(j), 303(r), 612(c), 622(c) and 623 of the Communications Act of 1934, as amended.

Description, potential impact and number of small entities affected. Until we receive more data, we are unable to estimate the number of small cable systems that would be affected by any of the proposals discussed in the Notice of Proposed Rulemaking. We have, however, attempted to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers as required by section 3(i) of the Cable Act of 1992.

Reporting, record keeping and other compliance requirements. The proposals under consideration in this Notice of Proposed Rulemaking include the possibility of new reporting and record keeping requirements for cable systems.

Federal rules which overlap, duplicate or conflict with this rule. None.

Any significant alternatives minimizing impact on small entities and consistent with stated objectives. Wherever possible, the Notice proposes general rules, or alternative rules for small systems, to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers as required by Section 3(i) of the Cable Act of 1992.

Paperwork Reduction Act

The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified information collection requirements on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Procedural Provisions

For purposes of this non-restricted informal rulemaking proceeding, members of the public are advised that *ex parte* contracts are permitted from the time of issuance of a notice of proposed rulemaking until the time a draft Order proposing a substantive disposition of the proceeding is placed on the Commission's Open Meeting Agenda. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments or pleadings and oral arguments) between a person outside this Commission and a Commissioner or a member of this Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on this Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any written comments previously filed in the proceeding must prepare a written summary of that presentation. On the day of the oral presentation, that written summary must be served on this Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation discussed above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally § 1.1231 of the Commission's Rules, 47 CFR 1.1231.

Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 & 1.419, interested parties may file comments on or before January 27, 1993, and reply comments on or before February 11, 1993. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should sent comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, room 239, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

Ordering Clauses

Accordingly, *it is ordered*, That, pursuant to sections 4(i), 4(j), 303(r), 612(c), 622(c) and 623 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 303(r), 532(c), 543, notice is hereby given of adoption of proposed regulatory changes and amendments to the Commission's rules and regulations in accordance with the proposals, discussions, and statements of issues in this Notice of Proposed Rulemaking, and that comment is sought regarding such proposals, discussion, and statements of issues.

It is further ordered, That a rulemaking proceeding is instituted to implement sections 623, 612, and 622(c) of the Communications Act of 1934, as amended by the Cable Television Consumer Protection and Competition Act of 1992.

It is further ordered, That commenters shall address in a separate section of their comments issues concerning leased commercial access raised in paragraphs 144–73 of the NPRM.

List of Subjects for 47 CFR Part 76

Cable Television, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92–31839 Filed 12–31–92; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 58, No. 1
Monday, January 4, 1993

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Summer Food Service Program for Children; Program Reimbursement for 1993

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the annual adjustments to the reimbursement rates for meals served in the Summer Food Service Program for Children (SFSP). These adjustments reflect changes in the Consumer Price Index and are required by the statute governing the Program.

EFFECTIVE DATE: January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302, (703) 305-2620.

SUPPLEMENTARY INFORMATION: This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612) and thus is exempt from the provisions of that Act. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.559 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local official (7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983).

Definitions

The terms used in this Notice shall have the meaning ascribed to them in the regulations governing the Summer Food Service Program for Children (7 CFR part 225).

Background

Pursuant to section 13 of the National School Lunch Act (42 U.S.C. 1761) and the regulations governing the SFSP (7 CFR part 225), notice is hereby given of adjustments in Program payments for meals served to children participating in the SFSP during the 1993 Program. Adjustments are based on changes in the food away from home series of the Consumer Price Index for All Urban Consumers for the period November 1991 through November 1992.

The new 1993 reimbursement rates in dollars are as follows:

Maximum Per Meal Reimbursement Rates	
Breakfast	1.1375
Lunch or Supper	2.0425
Supplement	.5350
Administrative Costs:	
a. For meals served at rural or self-preparation sites:	
Breakfast	.1050
Lunch or Supper	.1950
Supplement	.0525
b. For meals served at other types of sites:	
Breakfast	.0825
Lunch or Supper	.1600
Supplement	.0425

The total amount of payments to State agencies for disbursement to Program sponsors will be based upon these Program reimbursement rates and the number of meals of each type served. The above reimbursement rates, before being rounded-off to the nearest quarter-cent, represent a 1.6 per cent increase during 1992 (from 139.3 in November 1991 to 141.5 in November 1992) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. Because of the relatively small adjustment, the Department points out that several of the new administrative rates are identical to the rates in effect for the 1992 Program.

Authority: Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

Dated: December 24, 1992.

Robert E. Washington,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 92-31861 Filed 12-31-92; 8:45 am]
BILLING CODE 3410-30-M

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 920895-2347]

Decision of the Director of the Bureau of the Census on Whether To Use Information From the 1990 Post-Enumeration Survey (PES) To Adjust the Base for the Intercensal Population Estimates Produced by the Bureau of the Census

December 29, 1992.

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of final decision.

SUMMARY: This is a notice of the final decision of the Director of the Census Bureau on the issue of whether to use information from the Post-Enumeration Survey (PES) to adjust the base for Intercensal Population Estimates produced by the Bureau of the Census.

DATES: The decision is effective on December 30, 1992.

FOR FURTHER INFORMATION CONTACT: Peter Bounpane, Assistant Director, Decennial Census, Bureau of the Census, Telephone (301) 763-5613.

SUPPLEMENTARY INFORMATION: Title 13, U.S. Code, section 181, states that: During the intervals between each census of population required under section 141 of this title, the Secretary, to the extent feasible, shall annually produce and publish for each State, county, and local unit of general purpose government which has a population of 50,000 or more, current data on total population and population characteristics and, to the extent feasible, shall biennially produce and publish for other local units of general purpose government current data on total population. Such data shall be produced and published for each State, country, and other local unit of general purpose government for which data are compiled in the most recent census of population taken under section 141 of this title. Such data may be produced by means of sampling or other methods, which the Secretary determines will produce current, comprehensive, and reliable data.

This authority is delegated by the Secretary of Commerce to the Director of the Bureau of the Census.

On August 10, 1992 and September 17, 1992, notices were published in the

Federal Register (57 FR, Nos. 154 and 181, pp. 35562–35564 and pp. 42939–42940), informing the public about alternatives available to the Director of the Census Bureau for potential improvement in the intercensal estimates of population and to seek comments on the alternative options on this issue. In addition, a public hearing was held on August 31, 1992 at the Bureau of the Census to provide the public the opportunity to present views on this matter and to give the Bureau of the Census the opportunity to hear the comments of interested parties.

The decision process was divided into several distinct phases:

Research Phase

A program of research was undertaken following the July 15, 1991, decision of former Secretary of Commerce Robert A. Mosbacher not to adjust the 1990 census, and continued through November 1992. Following his decision, Secretary Mosbacher urged the Bureau of the Census to continue the research that was started in 1990 to determine whether the census should be adjusted using data from a post-enumeration survey (PES) and a method of population estimation called the dual system estimate (DSE) which used both census and PES results. Although former Secretary Mosbacher determined the research results were not usable for adjustment of the census, he felt that—with continued work—results might be used to adjust the base of intercensal population estimates to improve those estimates. Intercensal estimates are not prepared for census tracts and blocks, or used for redistricting, as are census data. The additional research following former Secretary Mosbacker's decision was done under the direction of a senior level group of Bureau of the Census statisticians and demographers who made up the Committee on Adjustment of Postcensal Estimates (CAPE). The Director of the Bureau of the Census was present at virtually all meetings of the CAPE and examined carefully all research reports of CAPE during the July 1991-November 1992 period of its work.

Public Commentary Phase

The **Federal Register** notices of August 10, 1992, and September 17, 1992, invited comment from the public on the issue of whether to use data from the PES to adjust the base for intercensal population estimates, and on public preferences among five options available to the Director. 1,118 individuals and organizations responded by the end of a three month period of commentary which ended November 13, 1992.

Public Hearing

On August 31, 1992, 17 individuals, some representing organizations and coalitions, testified at a public hearing on the issue.

Evaluation

In making my decision, I relied on the results of research produced under the direction of the Committee on Adjustment of Postcensal Estimates (CAPE), advice from members of CAPE and senior Bureau of the Census officials, and from a panel of outside experts who studied the matter under the aegis of the CAPE and spent a day at the Bureau of the Census. In addition, I considered all public comments received by mail and at the public hearing. These comments, as well as the appendices, CAPE Report and Addendum, referred to in the following explanation of the decision, are available for public inspection in the U.S. Department of Commerce, Central Reference and Records Inspection Facility, room 6020 Herbert C. Hoover Building, 14th and Constitution Avenue, NW., Washington, DC 20230.

Following is a detailed discussion of the decision and the basis for the decision. The discussion is in six sections:

I. Summary Statement of the Decision
II. Uses of Intercensal Population Estimates
III. Research Input into the Decision
IV. Analysis of Options Available to the Director of the Bureau of the Census
V. Adjusted Population Estimates for Survey Controls but Official Unadjusted Estimates for Use in Administering Any Law in Which Population, or Population Characteristics, Are Used to Determine Benefits
VI. Summary of the Public Commentary and Public Hearing

Date: December 29, 1992.

Barbara Everitt Bryant,

Director, Bureau of the Census.

I. Summary Statement of the Decision

Intercensal population estimates using the 1990 census as their base will not be adjusted to correct for an undercount, currently estimated as 1.6 percent nationally, in the 1990 census.

The small overall undercount makes adjustment impossible to do accurately at all levels of places, counties and states at which intercensal estimates are produced. Intercensal population estimates are made by the Bureau of the Census for the United States, the 50 states and the District of Columbia, and for 44,055 substate areas.

This decision was difficult to make because it is the unanimous opinion of senior statisticians and demographers at the Bureau of the Census comprising the Committee on Adjustment of Postcensal Estimates (CAPE) that adjustment would improve the accuracy of the 1990 census base at the national level. There is substantial consensus, but not unanimity of opinion, among CAPE members that adjustment would improve the distribution of population shares among the states, but not necessarily the share of every single state. Below the large area level, the research does not show that adjustment improves the accuracy of population estimates.

Having made the decision not to adjust the official intercensal population estimates, I am making the decision that sponsors of Federal sample surveys conducted by the Bureau of the Census will be offered the option of having their surveys calibrated to adjusted population estimates. This is described in Section V. The national surveys conducted by the Bureau of the Census are calibrated at large, aggregate levels where Census Bureau research shows adjusted estimates are, on average, more accurate.

Although the 1990 undercount is estimated as only 1.6 percent for the United States, it is higher among certain demographic groups. At the national level, at which all CAPE members have confidence that the adjusted population estimate is an improvement on the census count, there are significant differences in the undercount between residents of owner-occupied housing and residents of rental housing. Undercount rates for Blacks, American Indians, and Hispanics, but not for Asians and Pacific Islanders, are statistically significantly different from those for non-Hispanic Whites.

UNDERCOUNT RATES

Subgroup	Undercount rate (357 post-strata PES) %	Standard error (%)
Total Population	1.58	0.20
Residents of:		
Owner occupied housing	0.07	0.21
Rental housing	4.32	0.39
Persons who are:		
Non-Hispanic Whites	1.18	0.20
Males	1.52	0.23
Females	0.85	0.21
Blacks	4.43	0.51
Males	4.90	0.53
Females	4.01	0.56
Asian or Pacific Islanders	2.33	1.35
Males	3.44	1.59
Females	1.25	1.50
American Indians	4.52	1.22
Males	5.18	1.23
Females	3.86	1.24
Hispanics	4.96	0.73

UNDERCOUNT RATES—Continued

Subgroup	Undercount rate (357 post-strata PES) %	Standard error (%)
Males	5.51	0.90
Females	4.39	0.71

*Not statistically significantly different from non-Hispanic Whites (.10 level).

The method of adjustment would correct for the differential undercount measured for these groups, and thus improve the measures of their distribution throughout the population. Thus, the decision not to adjust is made particularly difficult. Unfortunately, accurate correction of the many substate areas for which the Bureau of the Census produces population estimates is not achievable with the present adjustment modeling methodology.

In making the decision not to adjust, I want to acknowledge that the research on undercount and adjustment methodologies conducted at the Bureau of the Census over the past two and one-half years has advanced knowledge substantially on both the potentiality and the difficulty of using statistical techniques to improve the accuracy of enumeration. Results of the 1990 census show that the population of the United States is very diverse in demographic composition and living arrangements, and becoming increasingly so. It is unlikely that direct enumeration can ever approach 100 percent coverage of the population—achieving net coverage of over 98 percent in 1990 was an amazing feat. Looking toward the 2000 census, the Bureau of the Census will need to work closely with the Congress in deliberating over policy alternatives for developing a design for census taking which incorporates into the final count some type of statistical estimation of those who are missed, or choose to be missed, by all types of direct enumeration.

At large aggregate levels, one has more confidence in the use of a large scale survey to adjust the census than at the smaller aggregate levels. CAPE research shows that the national population estimate produced by the post-enumeration survey and dual system estimation of 252,712,821 is closer to the true population of the United States on April 1, 1990 than the census enumerated count of 248,709,873, although neither of these represents precisely true population count. At the national level, the population estimate can be tested by a third, independent method: Demographic Analysis. Demographic Analysis, using vital statistics and administrative records (births, deaths, immigration, Medicare and other current and historical administrative data), provides an estimate of 253,393,786—closer to the PES figure than to the census count. Demographic Analysis provides a higher figure than either of the other two methods because it is less subject to the bias of missed persons, which affects both the census and the post-enumeration survey.

Below the national level, the statistical test used by the Bureau of the Census to measure whether the census or the post-enumeration survey (PES)/dual system estimate produces the more accurate population shares is called loss function analysis. Loss function analysis depends upon first, building an estimate of the true population then comparing the census and the PES/dual system estimate to this estimate. Although the test indicates whether the PES or the census produces the more accurate distribution of population between states, it does not show which state estimates are improved or whether any are made less accurate.

As a check on the loss function analysis result, Census Bureau demographers and a demographer expert from outside the Census Bureau reviewed each state's estimated undercount to see if it made demographic sense, given what they know about the demographic composition of each state. For 44 states and the District of Columbia, the PES/dual system estimates of undercount appear logical. That is, given the proportions and concentrations of different demographic groups in each state, the mix of rental and owner-occupied housing, and measured undercount patterns for these, the undercount in relation to other states was what demographers might expect. For three states, however, the measured undercount was somewhat more than they would anticipate; for three it was somewhat less than they would anticipate.

From analysis of the extensive research CAPE produced, I conclude, with CAPE, that (a) adjustment would improve the accuracy of the national level count of the total population and of demographic groups by sex, race, Hispanic origin and tenure (residents of owner-occupied or rental housing) and that (b) adjustment would improve the overall distribution of population shares among the states.

At substate levels, however, CAPE was unable to conclude with reasonable certainty whether adjustment would improve or do harm to the estimates for counties and places. CAPE made no recommendation of whether or not to adjust for substate levels. While in some states loss function analysis provides statistical evidence that the population share of large places with high concentrations of those in undercounted demographic groups is improved versus the population share of the balance of their states, this is not the case within all states with such large places. Below the large area level, the research does not show that adjustment improves the accuracy of population estimates.

None of the options available to me—not adjusting, partial adjustment or full adjustment—is ideal. There is no perfect answer to, "What was the population of the United States on Census Day, April 1, 1990?" Any statistical and demographic research can only answer that question with some degree of uncertainty. After more than two years of Bureau of the Census research evaluating the 1990 census, the post-enumeration survey which followed it, and statistical models for making an adjustment, I must make a decision now. CAPE's recent work has solved some of the problems and criticisms which caused former Secretary Robert A. Mosbacher to decide not to use the PES/dual system estimate for adjustment of the 1990 census. Unfortunately many issues remain. Some sources of bias cannot be removed. Some of the concerns with the PES/dual system estimate expressed by CAPE and in the public commentary are not resolved and probably could not be with more time and research. While I strongly support continued research on these issues for the year 2000 census, I also feel strongly that the debate over adjustment of the 1990 census and related intercensal estimates should not continue further into the decade.

The CAPE work with the 1990 PES has been intensive for over two years. It has occupied the time and talent of the most senior statisticians and demographers within the Bureau of the Census. Their work suggests that no survey—either the high quality, well controlled and interviewed 1990 PES of 170,000 households or a larger one—can be used to make a post-census fine tuning of an average undercount as small as 1.6 percent in all types of places, counties and states at a level of accuracy beyond that by which surveys are usually judged. The preponderance of evidence suggests that adjustment would be a tradeoff of small errors in some states, counties and places for large overall improvements at the state and national level—but there would be errors. However, as the public commentary gives evidence, adjustment would not be acceptable to those localities harmed by such a decision. The stakes for communities and states

in population figures are high, as the uses of intercensal estimates in the next section demonstrate.

Statisticians among those who made public comments, and members of CAPE express concerns about aspects of the PES/dual system estimate, about the total error model and loss function analysis used to evaluate it and about possible errors in the PES as a measurement tool compared to the level of undercounts and overcounts it seeks to measure. Given that there is little or no evidence adjustment would improve the quality of substate estimates, other than for a limited number of large places, the decision is not to adjust the base for intercensal population estimates.

II. Uses of Intercensal Population Estimates

The Bureau of the Census produces intercensal population estimates for the United States, metropolitan areas, states, counties, county subdivisions, places (cities, towns, townships, etc.), and consolidated cities. They are used by Federal, state, and local governments, and the public and private sectors in a variety of ways. The Bureau of the Census investigated Federal formula program uses and other major Federal uses [1] and identified five major Federal uses:

1. As the basis for Federal formula program funds allocations. Funding formulas are written by the Congress, not by the Bureau of the Census. Existing formulas were written over many years and incorporate population estimates as all, or part, of the variables used in these formulas in different ways. Some formula program funds allocations use population estimates while others use the decennial census throughout the decade. Title 13, U.S. Code, section 183(a) requires use of the current population estimate, which according to this decision will be the unadjusted estimate, for programs which provide Federal benefits, unless in section 183(b) the formula has been specifically tied to the decennial census.

Some formulas use population shares for all persons in states, or for particular age groups, or for those with particular characteristics as some portion of the formula; other formulas use per capita figures, such as per capita income, for which population estimates are the denominator, or a ratio of state to U.S. per capita income with state and national population estimates as the denominators. Some of these programs use the population estimates in several ways in their formulas. The largest of these funding programs is Medicaid, title XIX, which uses 50 percent of the ratio of state to U.S. per capita income as one part of its formula.

2. As the denominator for per capita, and incidence rates, such as per capita income; particular health conditions per 1,000 persons; number of crimes per 1,000 persons, etc.

3. As the determinant of the volume cap for tax-exempt private activity bonds issued within a state. Section 146 of the Internal Revenue Code mandates use of the most recent Bureau of the Census state population estimate issued before the beginning of the calendar year in which the bonds are issued for setting the cap for tax-exempt private activity bonds. Small states are guaranteed a minimum funding level, but states with over three (3) million population receive an additional $50 in bonding authority for each person in the population estimate. Unlike uses of population estimates in many Federal funding formulas, bonding authority for each state is based on the absolute size of the state's population, not on its proportional share.

4. As the basis for calibrating Federal government and other sample surveys. By calibrating sample survey estimates to independent estimates of the population, accuracy of survey estimates is improved. For Federal government surveys conducted by the Bureau of the Census, the current population estimate is used as the control total for the total population and population groups by sex, age, race, Hispanic origin. They are calibrated geographically by the population estimates for the 50 states, District of Columbia, New York City and Los Angeles. Because Federal surveys conducted by the Bureau of the Census are calibrated only to these large aggregated areas, at which CAPE considers adjusted population estimates an improvement over the unadjusted estimates, the Bureau of the Census will offer survey sponsors the option of having their surveys calibrated to adjusted population estimates beginning in 1993.

5. As descriptive statistics to provide the most current profile of the population of the Nation, state and substate areas, and as the numbers for determining population gains and losses compared to prior years.

III. Research Input Into the Decision

When former Secretary of Commerce Mosbacher made the decision not to adjust the 1990 census, he expressed several major concerns with the PES and dual system estimation model that would have been used for adjustment purposes. However, he did recognize that both the PES and Demographic Analysis showed an undercount and a continuation of the historical differential undercount of certain groups. He directed that research continue at the Bureau of the Census to determine the possibility of incorporating adjustment into the intercensal estimates, which are made with less geographic detail than the census.

The Bureau of the Census established the Committee on Adjustment of Postcensal Estimates (CAPE), comprising 13 statisticians and demographers, plus the Director and Deputy Director of the Bureau of the Census as ex-officio members. Eight of the 13 members had also served on the Undercount Steering Committee which directed the research prior to July 1991.

CAPE deliberations were not constrained by pre-specification of procedures and of the dual system estimating model. Such prespecifications were required pursuant to court order in considering whether to adjust the 1990 decennial census. CAPE also had the advantage that many of its members had worked extensively with PES data and gained insight on possible ways to improve the dual system estimate model.

CAPE determined that the necessary research could not be completed in time for potential incorporation into 1991 intercensal estimates. Instead, they scheduled this work in time to provide it for the Director's decision on whether or not to incorporate adjustment into the estimates to be released in late December 1992 for July 1, 1992.

CAPE research focused on five key areas of technical concern with the population estimate model as of July 1991. This research has been able to answer all of these concerns to some degree, but not all completely.[2]

Concern 1

Could the problems in the smoothing model, including lack of robustness, be resolved?

[1] Sources: General Accounting Office, FEDERAL FORMULA PROGRAMS Outdated Population Data Used to Allocate Most Funds. (September 1990).

General Accounting Office, FEDERAL FORMULA PROGRAMS Adjusted Census Data Would Redistribute Small Percentage of Funds to States (November 1991).

General Accounting Office, Catalog of Federal Aid to States and Localities (1987).

Superintendent of Documents, CFDA (1989, 1990, 1991, 1992).

U.S. House of Representatives, United States Code (1988).

Conversations with grant administrators.

[2] This research is described in more detail in "Report of the Committee on Postcensal Estimates," August 7, 1992 and Addendum, November 1992 (Bureau of the Census, Washington, DC 20233)

Background

The pre-July 1991 modeling of the PES was done by dividing survey respondents into 1,392 post-strata, or groupings, based on census division, (geographic), type of place of residence, race, Hispanic origin, sex, age, and some post-strata by whether residents owned or rented their housing units. The rationale for each post-stratum is the assumption that persons within it have similar probability of having been counted in the census or the PES (although not necessarily the same in each). This is called the homogeneity, or synthetic, assumption. An undercount rate was computed for each post-stratum by matching names and characteristics of people enumerated in the PES to the census to determine who had been counted and who not, then producing an adjustment factor for each post-stratum to make the PES dual system estimate of the population. One problem in dividing the sample respondents into 1,392 post-strata was that sample sizes for some strata were very small. A statistical process known as "smoothing" had to be done to reduce variability from sampling error. Results varied by how some of the outliner post-strata (those with unusually high sampling error) were treated. Because of these variations, statisticians felt the model was not "robust" to changes in model specification and procedure.

Results

The PES and dual system estimate have been redesigned to used only 357 post-strata, thereby gaining enough sample size in each stratum to make smoothing unnecessary. Analysis of PES data showed some characteristics more important than others in identifying whether persons had been counted in the census. Besides race and Hispanic origin characteristics, living in owner occupied or rented housing proved to have an effect, as did living in an urbanized areas of 250,000 or more versus living in other urban or non-urban areas. A more effective division made it possible to reduce the number of post-strata. CAPE now considers the 357 post-strata model robust. Sampling error has been reduced as a source of error, with some loss of homogeneity. Both CAPE and I have used some caution in interpreting results of loss function analyses since these are highly dependent upon the homogeneity assumption (See discussion under Concern 4).

Concern 2

Could the estimated nonsampling error biases in the PES estimate of undercount be removed?

Background

In the research prior to July 1991, Bureau of the Census statisticians identified biases (nonsampling errors) that amounted to 0.7 percent of the then reported 2.1 percent undercount.

Results

Matching experts matched PES respondents to the census in the 104 blocks that had the most effect on undercount. This removed some bias and reduced the national estimate of undercount by 0.1 percentage points. During this analysis, the Bureau of the Census also found and corrected a computer error in the matching that had led to an overstated estimate of undercount. This correction reduced the undercount estimate an additional 0.4 percentage points. Matchers also rechecked matching in blocks with a preponderance of Hispanic surnames. These matches proved to have been done with the same apparent accuracy of the rest of the PES matching. Beyond these improvements, CAPE could find no reliable or expedient method to remove the balance of nonsampling error bias from the PES estimates. A significant amount of bias remains. The research estimates that, at the national level, removing all biases from the PES estimates would lower the estimated undercount from 1.6 to 1.3 percent. When the effect of correlation bias is not taken into account, (CAPE believes correlation bias should be considered) the estimated undercount would fall to 0.9 percent. Correlation bias is discussed under Concern 3.

Concern 3

Were all components of bias adequately reflected in the total error model, and was total error being accurately handled in loss function analysis?

Background

The total error model is used for building an estimate of the "true" population without bias, since the exact truth cannot be known. Loss function analysis is a statistical technique used to compare the census count and the PES/dual system estimate to this "true" target population to see which is closest to it (that is, has less "loss"). Loss functions can be run for various geographic levels.

Results

Two new components of error were added to those used in modeling prior to July 1991. With these additions, CAPE felt satisfied that all components of error were represented except for homogeneity bias. (The bias of all persons in a post-stratum not having the same probability of having been counted in the census or PES. This is discussed under Concern 4.) CAPE was concerned about the accuracy and variance of the estimates of bias and, therefore, used caution in evaluating the results of loss function analyses since the "true" target numbers are themselves dependent on levels of estimated bias.

The majority of CAPE members felt that correlation bias should be a component of total error. Correlation bias has two parts: (1) The dual system estimate assumes a person's participation in the PES is not affected by his or her participation in the census. Based on the evidence available to it, CAPE judged this was not a problem. The PES was conducted 4 months after the census and there were other controls. (2) The dual system estimate assumes people in each post-stratum have the same probability of being included in either the census or the survey. Some people may be virtually impossible to count, leading to a component of correlation bias. A national estimate was made of these people by comparing the PES estimate to the Demographic Analysis estimate, which is less subject to correlation bias. The difference was not added to the PES estimate, but included in the total error model and used to determine the target "true" target population to which the census and the PES estimate were compared. As mentioned, most CAPE members felt correlation bias should be a component of total error. However, concerns continue about measuring it and allocating it to the target "true" numbers. Loss functions, therefore, have been analyzed with and without correlation bias.

For use in loss function analysis, the "true" target population estimate was made by modifying the PES estimate by removing error in the PES identified in the total error model. A modeling system was used to allocate the direct estimates of bias from 10 evaluation post-strata (aggregated post-strata) to smaller levels of geography. Such modeling and error measurement obviously have errors themselves. CAPE decided to run loss functions in a variety of ways to judge results. CAPE ran loss functions using different ways of allocating bias to the target "true" numbers; with and without correlation

bias; using absolute and squared error, as well as variations of these to take account of variations in state (or other areas of interest) size. They looked at aggregate loss (difference from truth), then ran statistical hypothesis tests and reported the significance levels. These were run to look at whether the census or the PES estimate showed the greater or lesser difference from the "true" target population shares for a variety of levels of geography for places and counties by size and for states.

Using hypothesis tests with 10 percent significance, loss function analysis excluding correlation bias does not support adjustment. Including correlation bias, all but one of the loss function analyses favors adjustment at the state level when examining aggregate loss. These results show that the state level analysis is sensitive to assumptions about correlation bias. Below the state level, CAPE was generally unable to conclude that adjustment was better.

Concern 4

Could more be learned about whether or not the homogeneity assumption holds sufficiently to support adjustment?

Background

The homogeneity (or synthetic) assumption is that every person in a post-stratum has the same probability of having been counted in the census or PES (though not necessarily the same probability in both). There were 1,392 post-strata in the earlier model. There are 357 in the current model produced by CAPE.

Results

The PES data show clearly that the variables used for dividing the country into poststrata—particularly race, Hispanic origin, tenure (owner/renter), and type of place of residence—account for considerable variation in census coverage. The homogeneity assumption assumes, however, that there is no further variation in coverage within each poststratum separately, that is, that everyone within a poststratum has the same probability of being counted in the census. This assumption is central to the way that PES estimates have been produced for states, counties, towns, and all other units important in postcensal estimation. The PES data by themselves have not offered enough evidence to evaluate the homogeneity assumption adequately, especially to answer the most important question for me—does the assumption hold sufficiently so that our PES estimates based on it represent an actual improvement to the census?

Consequently, I have relied upon the available results on the homogeneity assumption from the analysis of the artificial populations, discussed extensively in the CAPE report and the Addendum to that report.[3] Because the artificial populations are based on known quantities (such as percent mail response, percent of multi-unit housing, percent in poverty, etc.), we can put the adjustment procedure based on 357 post-strata to a test. For every one of the eight surrogate variables that we examined, our results indicate that we can make adjustments that, on average, are closer to the truth than not adjusting. To represent the adjustment to the artificial population, we used the rates for the surrogate variable in each of the 357 post-strata and the homogeneity assumption to construct adjustments in the same way as the PES does for estimating undercount. I feel very confident about this finding for the artificial populations because we do know the actual values of the artificial population surrogate variables.

Any problem cased by departures from the homogeneity assumption, which we have called heterogeneity bias, would be less troublesome if we had been able to represent its effects in the loss function analysis. In fact, the loss function analysis for the PES data could not include heterogeneity bias because the PES data did not furnish adequate evidence on this question. Consequently, I have again relied on evidence from additional research on the artificial populations. I have considered the recent results discussed in the CAPE Addendum that compare 1) the loss function analysis as it is seen in the PES context, i.e., as the comparison of the census and PES values to targets based on the homogeneity assumption; to 2) the actual losses comparing adjusted population estimates and the census to the true values. I have been encouraged that, for 7 of the 8 surrogate variables available for study, the loss function analysis is robust. In other words, in all but one case, the loss function analysis understates or approximately correctly measures the level of improvement from adjustment, although the loss function also understates the true errors from non-adjustment and from adjustment.

The August CAPE report stated that research showed that the artificial population analysis supported the homogeneity assumption but, once 25 percent bias was introduced, the support for the assumption broke down. Furthermore, these results were then compared to estimated levels of bias in the PES, which were near the 25 percent level. Because of the clarification in the CAPE Addendum of the interpretation of these earlier findings for the artificial populations, one should not place so much weight on the results for 25 percent bias, since the comparisons were based on numeric accuracy whereas our primary focus has been on the accuracy of population shares. In August, with the information available to us, the results for 25 percent basis, reported in the manner that they were, represented a strong case against adjustment, but I now believe that the CAPE Addendum should alleviate many of the concerns about this issue.

Concern 5

Could CAPE resolve the inconsistencies between the PES and Demographic Analysis (DA) estimates of undercount?

Background

At the time of the July 1991 decision, there were differences in PES/DSE and Demographic Analysis estimates of population for some major subgroups. Also, at that time, the PES/DSE showed a higher undercount rate than Demographic Analysis, which was unexpected because Demographic Analysis accounts for people missed in both the census and the PES.

Results

The corrections to the PES and subsequent reduction of the PES estimate of undercount to 1.6 percent cleared up the major inconsistencies between the PES and DA estimates. Demographic Analysis which, as pointed out earlier, is less subject to correlation bias, should measure a somewhat higher undercount than the PES since it includes those who are missed or impossible to count. It now does, 1.8 percent undercount for Demographic Analysis compared to 1.6 percent for the PES/DSE. Comparisons of PES and DA for states and large areas (DA cannot go down to small areas) meet face validity expectations for most states. By "face validity" I mean that the patterns of high and low undercounts are logical demographically.

In summary, CAPE developed a new estimation model based on the modeling of the PES to 357 post-strata and a more thorough identification of biases resulting from sampling and nonsampling error.

The Bureau of the Census conducted a number of studies to evaluate and measure errors in the PES. A total error model was then used to combine the

[3] *Ibid.*

results from these studies to produce measures of net error on the estimated undercount rates. The estimated level of bias in the PES that was estimated from the total error model was –0.7%, without correlation bias, or –0.4% when the effects of correlation bias were taken into account. These estimates reflected the measures of bias in national estimates of undercount. Thus the national estimated undercount rate of 1.6% is, without bias, between 1.2% and 0.9%.

Both the unadjusted and adjusted census results are imperfect. The unadjusted census is subject to undercount, and the adjusted census is subject to the error in the PES—sampling error and bias. A key question to answer is which of these two imperfect systems will provide a more accurate base for use in the intercensal estimates program. This question is particularly relevant for population shares and was addressed through loss function analysis.[4] The loss function analysis accounts for both the sampling error and bias in the PES. The CAPE examined the results of the loss function analysis, and concluded that an adjustment would make the distribution of population shares for states more accurate. However, they could not reach consensus on substate areas.

An important issue associated with loss function analysis is the methodology associated with the creation of the target population (the estimates of the true unknown population). The measures of bias in the PES were used to "correct" the PES/dual system estimate to produce the target population. Unfortunately, the PES bias was not directly measured for each state, county or city. Models were used to allocate the directly measured bias at 10 sub-national levels to each state, county, and place to produce the target population. Questions have been raised regarding whether these models reflect an accurate distribution of the bias.

I am also concerned about this issue, as was the CAPE. The CAPE recognized that there were potential deficiencies in the modeling methodology. The CAPE therefore examined a number of different models for creating target populations. They concluded in August that the bias modeling methodology was sufficiently robust to conclude that at the state level, an adjustment would improve the state base for intercensal estimates. However, they could make no conclusion about the effects of adjustment at substate levels other than documenting in the November addendum to their August report that an adjustment would also improve the distribution of population shares for large places (100,000+) in aggregate compared to state balances in aggregate.

I have considered this modeling of bias issue at great length. There are certainly problems with the modeling methodology. In most statistical applications, we never know the true situation, and no model is perfect. Despite the extensive research, too many concerns remain about the level of bias; the estimate of the true population used as the target in loss function analyses; allocation of correlation bias; and whether the homogeneity assumption holds, given the levels of bias, to make a decision to adjust intercensal population estimates defensible across the board to all 44,055 substate areas.

IV. Analysis of Options Available to the Director, Bureau of the Census

A notice that the Bureau of the Census placed in the **Federal Register** August 10, 1992, and repeated on September 17, 1992, described five decision options available to the Director, Bureau of the Census.

Option One: Incorporate the results of the PES into the base for intercensal estimates at all levels of geography.

CAPE research, which provided much of the input to my decision, did not support adjustment below the state level. Although taking this option would have made some improvements at the state and national level, taking this option for all levels of geography is not defensible.

Option Two: Incorporate the PES results in the intercensal base at the national and state levels. At the sub-state level, use a simple synthetic estimate based on the percentage of state-level estimated undercount.

I rejected this option because the simple synthetic estimate would distort within state counts artificially. For example, a small city or county that had been well counted would have its population inflated because of the undercount in a large city in the same state. Conversely, the city with a large undercount would have its population understated because of low undercounts in other parts of the state.

Option Three: Incorporate the results of the PES into the intercensal base for national and state level estimates, but not for substate levels (counties, cities, etc.).

Although this is the level of adjustment which CAPE research very clearly supports, I rejected this option because it would not be additive at state levels; for example, the sum of the population of all counties within a state would not sum up to the state total. Public commentary from data users, user groups, Federal statistical agencies, and analysts within the Bureau of the Census said nonadditive population counts would be very difficult for them to use.

Option Four: The base for intercensal estimates for all levels of geography would be a simple average of the 1990 census count and an estimate incorporating the results of the PES.

I gave serious consideration to this option. CAPE conducted additional research on this option and a modification of it after the initial CAPE report of August 7, 1992. There is precedent in the statistical community for averaging two estimates. This would have had the effect of reducing the effect of biases in the PES. However, neither I as Director nor CAPE were comfortable with a "partial" correction at the national level. This option would have had the effect of raising the population by approximately two million when the undercount is a measured four million. CAPE considered the modification of averaging the census and PES, then ratio adjusting to the PES/dual system estimate total proportionally by eight racial, Hispanic, owner/renter subgroups (what CAPE refers to as a raked composite estimate in the November Addendum to the CAPE report). I decided against this modification because, according to CAPE, the "raking" to national totals introduced more dependence on the homogeneity assumption, possibly offsetting gains from reducing the effects of bias. This treatment of a census and an evaluation survey (the raked composite) is a treatment I hope the Bureau of the Census will continue to study in designing ways to make the 2000 census more accurate.

Option Five: Do not incorporate the PES results into the intercensal estimates for any jurisdiction.

This is the option I have chosen. While adjustment would make improvements at the national and state level, it is not defensible for all levels of geography. Concerns remain about the level of bias in the PES/dual system estimate and in whether the homogeneity assumption holds, i.e., whether all persons in a post-strata in the PES have, in fact, the same probability of having been counted in either the PES or the census. These concerns do not have answers nor are further research avenues available with which to answer them in the near future. This option is not ideal, as noted previously, because it foregoes the

[4] Loss function analysis is described in the August 7, 1992 CAPE report.

opportunity to improve estimates at national and state levels.

V. Adjusted Population Estimates for Survey Controls But Official Unadjusted Estimates for Use in Administering Any Law in Which Population, or Population Characteristics, Are Used To Determine Benefits

Having made the decision not to adjust intercensal population estimates, I am making the decision that sponsors of Federal sample surveys conducted by the Bureau of the Census will be offered the option of having their surveys calibrated to adjusted population estimates. Federal statistical surveys are calibrated at the level of national sex, age, race, Hispanic groups, and population totals for the 50 states, District of Columbia, New York City and Los Angeles. These are the levels at which CAPE judges the adjusted estimates are more accurate than the unadjusted estimates. Reaching the demographic groups undercounted in the census is a greater problem in taking surveys than in taking the census.

In the public commentary, Senator Herb Hohl of Wisconsin and Senator Arlen Specter of Pennsylvania suggested decoupling the official population estimate from the survey controls. This is what this decision does. Unadjusted population estimates are the official estimates, required to be reported by the Secretary to the President under title 13, U.S. Code section 183(a) for use in administering any law of the United States in which population or other population characteristics are used to determine the amount of benefit received by any State, county, or local units of general purpose government. Sponsors of surveys conducted by the Bureau of the Census will have the option of calibration to the adjusted estimates.

VI. Summary of the Public Commentary

As Director, Bureau of the Census, I received letters from 1,118 individuals or groups in response to our **Federal Register** notices of August 10 and September 17, 1992. I have personally read each of these.

Table 1 shows the distribution of the 1,118 responses—58 from Senators, 176 from Members of the U.S. House of Representatives, 37 from Governors, 349 from State Representatives, state and local government officials and agencies, 498 from all other respondents, including organizations, private citizens, and a small number from Federal agencies. Some individuals wrote a letter as well as co-signing a group letter, or wrote a second letter responding to the second **Federal Register** notice. Such persons are counted only once in Table 1.

Most responses stated a position for or against adjustment rather than responding to the five options of the Bureau of the Census' **Federal Register** notices. Preferences for the options, as well as positions for or against adjustment are summarized in Table 2. Overall, 995 favored adjustment; 123 opposed it.

In making my final decision, I considered this overwhelming preference for adjustment. However, I felt I should not use a "popular vote" as a determinant of a decision made on the basis of statistical and demographic criteria. With the exception of a few statisticians and a very few others, virtually everyone took the position which maximized the population estimate for his or her state or city rather than considering the merits of the issue. This is a problem which will persist in trying to make any adjustment after a census.

Fifteen to 20 letters had substantial statistical commentary. Some brought out issues that CAPE was already researching. Others presented new ideas that led to some additional CAPE research. I asked CAPE statisticians to analyze these letters for me, in addition to my reading each of these letters at least twice. A summary of the comments with statistical content is available as Appendix A: Discussion of Technical Issues Raised by Outside Comment. What follows is a more abbreviated summary.

The majority, but not all, of the technical comments came from those who oppose adjustment.

Homogeneity Assumption

Several reviewers were concerned about the critical nature of the dependence upon the homogeneity assumption, questioning whether persons living in post-strata which fell across several states had the same probability of being counted. CAPE agrees that this is one of the more vulnerable aspects of the PES/dual system estimate design and recognizes that each post-strata cannot be precisely homogeneous. The key issue is whether the assumption represents an adequate approximation to the distribution of undercount. While some of the concerns expressed with homogeneity were general comments, one commenter created a U.S. map showing the high degree of association between the adjustment at the state level and the groupings of states into the four census regions. The reviewer showed maps of other characteristics, such as poverty rate, which do not exhibit as marked a regional character as the undercount rates. Census Bureau researchers subsequently reexamined the series of characteristics employed in defining the 8 surrogate artificial populations. In varying degrees, the Census Bureau's investigations confirm that the adjustment methodology tends to emphasize regional aspects of the characteristic being estimated while missing or understating other aspects of state-to-state variation. However, among the variables defining post-strata, region captures some of the geographic variation. Others—race, Hispanic origin, tensure type of place of residence—are highly correlated with undercount.

Another reviewer provided calculations showing that it was possible that departures from the homogeneity assumption, that is heterogeneity, might account for more error in the PES adjustments of states than all the components of error estimated and included in the Bureau of the Census' total error model. Research on artificial populations continued after this commentary was received. These added investigations by the Bureau of the Census showed that the error due to heterogeneity tended to be large for the artificial populations. Applying these results to the PES itself, it is possible that errors due to heterogeneity in fact could be larger than all other sources of error in the adjustment. However, the investigations supported the premise that the PES adjustment could still, on average, make improvements to the overall state population shares. When heterogeneity bias is present, the results for artificial populations showed that the loss function tended to understate the errors of both the adjustment and non-adjustment. If it understated these by equal amounts, the net difference would be correct. In fact, the analyses showed that, for a majority of the 8 artificial populations (surrogate variables), the loss function would approximately correctly indicate or understate the net advantage from adjustment.

Sample Size

Some writers argued that the PES sample size was insufficient to permit an adjustment. These arguments were not reinforced by explicit calculations showing that the sample sizes were too small. The issue of sample size is linked directly to the level of sampling variance. The use of the 357-post-strata design reduced the effect of sampling variability considerably. Sampling error was a component of the total error model and was included in the loss function analysis. The loss function

analysis indicates that at the state level the adjustment results in an improvement.

Post-Stratification

Several comments were received applauding the revised post-stratification (357 post-strata compared to 1,392 in the original design). However, some of these reviewers claimed that the post-stratification was data-driven. The end result of this was that the estimates of sampling error would be too low, therefore, causing the loss function analysis to unduly favor the adjustment.

One reviewer found the new post-stratification acceptable but would have preferred the Bureau of the Census to continue to use "smoothing." Alternatively he proposed to control sampling variability by collapsing the original 1,392 post-strata to a smaller number to retain greater homogeneity within post-strata. However, this reviewer felt that the revised 357 post-stratification scheme for adjusting was superior to not adjusting.

These post-stratification ideas were discussed at various times by CAPE. The clear consensus of the CAPE was not to use "smoothing," and CAPE was pleased with the new post-stratification scheme. Members recognized the danger of post-stratification after data had been examined. This had some bearing on their general concerns regarding the loss function analysis.

Correlation Bias

Correlation bias was widely discussed both internally and externally. Some reviewers noted that an adjustment based on the Bureau of the Census estimate of correlation bias would be conservative; it would not go far enough in correcting the undercount.

Other reviewers noted that at the national level there was clear evidence of correlation bias. However, they claimed that problems resulted because there were no direct measures of correlation bias sub-nationally. It was not clear to these reviewers that the method of modeling correlation bias to produce sub-national estimates was appropriate. These reviewers were not convinced that the adjustment would improve the distribution of population shares subnationally. CAPE had previously expressed many of these same concerns. The general conclusion was that correlation bias should be a component of total error. However, there were concerns about the methods of estimating and allocating it. CAPE requested that loss function analysis be done with and without correlation bias.

Total Error Model

Some reviewers viewed the total error model as being complete, and when combined with the loss function analysis supportive of an adjustment. One reviewer felt that the total error measure of correlation bias was understated and a more accurate measurement would favor adjustment more than the current estimates.

There were others who did not believe that the total error model covered all sources of error. They cited sources of error they felt were omitted. They also felt many of the sources of error included in the total error model were not measured accurately, and cited specific ones. CAPE discussed the total error model at great length. Members felt that all components of error were included except for bias due to failure of the homogeneity assumption. However, CAPE could come to no agreement about the adequacy of the levels of error measured. CAPE concluded to use caution in evaluating the results of the loss function analysis since the target numbers used as truth were so dependent upon the levels of estimated bias. The uncertainty in the levels of estimated bias thus affects the measures of accuracy based on these target numbers.

Loss Function Analysis

Some reviewers viewed the loss function analysis as being very supportive of adjustment, and that the improvement indicated by the loss function analysis was an understatement because correlation bias was underestimated in the total error model.

Other reviewers generally had two major sources of concern regarding the loss function analysis: (1) There are components of error in the adjusted estimates that are not included in the loss function analysis, such as uncertainties from failure of the homogeneity assumption and from the choice of post-stratification. (2) There are concerns with the methods used to model the total error estimates of bias to create the target "truth" populations. One reviewer expressed concerns regarding the levels of significance for the loss function test.

CAPE discussed the loss function analysis in great detail. In particular, the comments regarding uncertainty due to failure of the homogeneity assumption led to some late research. In general, CAPE accepted the loss function results keeping in mind the caveats reflected in this report.

Other comments, which did not address the technical merits of this decision are summarized and available as Appendix B.

Public Hearing

Testimony at the public hearing August 31, 1992, came from individuals and groups, mostly groups, representing both those in favor of adjustment and those against it. All presented reasoned arguments that I listened to at the hearing and have read and weighed since. A summary of this testimony is available as Appendix C: Public Hearing, August 31, 1992, Summary of the Proceedings.

TABLE 1.—SUMMARY OF MAIL RESPONSE

Type of respondent	Pro	Con	Total
U.S. Senate—Total	31	27	58
U.S. House—Total	127	49	176
Governors—Total	20	17	37
State/Local Government—Total	332	17	349
Florida	205	.....	205
Texas	55	.....	55
California	37	.....	37
Other States	35	17	52
Others*—Total	485	13	498
Florida	462	.....	462
Other States	23	13	36
Total	995	123	1118

*Organizations, Individuals, and Federal Agencies.

TABLE 2.—SUMMARY BY OPTION

	Congress	State & local	Federal agencies	Organizations	Individuals	Total
PRO:						
Letters:						
Option 1	.....	43	1	5	2	51
Option 2	.....	.....	.....	.....	1	1
Option 3	.....	.....	.....	.....	.....	.....
Option 4	.....	1	.....	.....	.....	1
General	158	308	4	33	439	942

TABLE 2.—SUMMARY BY OPTION—Continued

	Congress	State & local	Federal agencies	Organizations	Individuals	Total
Total pro	158	352	5	38	442	995
CON:						
Letters:						
Option 5	76	34		1	12	123
Total Opinions	234	386	5	39	454	1118
General/Other	52	21	2	3	7	85

[FR Doc. 92-31890 Filed 12-29-92; 11:37 am]

BILLING CODE 3510-07-M

Foreign-Trade Zones Board

[Order No. 618]

Resolution and Order Approving the Application of the Indiana Port Commission for Special-Purpose Subzone Status

Pursuant to the authority under in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Indiana Port Commission, grantee of FTZ 177, filed with the Foreign-Trade Zones (FTZ) Board (the Board) on October 23, 1991, and amended on July 23, 1992, requesting special-purpose subzone status at the pharmaceutical manufacturing plant of Mead Johnson & Company, in Evansville and Mt. Vernon, Indiana, the Board, finding that the requirements of the Foreign-Trade Zones Act and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application, as amended.

Approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790–50808, 10/8/91), including section 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Whereas, By an Act of Congress approved June 18, 1934, an Act To provide for the establishment of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes, as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, The Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, An application from the Indiana Port Commission, grantee of Foreign-Trade Zone 177, for authority to establish a special-purpose subzone for the pharmaceutical and nutritional products manufacturing plant (four sites) of Mead Johnson & Company, in Evansville and Mt. Vernon, Indiana, was filed by the Board on October 23, 1991, and notice was given in the **Federal Register** on November 1, 1991 (FTZ Docket 64–91, 56 FR 56186);

Whereas, The application was amended on July 23, 1992 (56 FR 33318, 7/28/92) to add two sites; and,

Whereas, The Board has found that the requirements of the Act and the Board's regulations are satisfied and that the proposal, as amended, is in the public interest;

Now, Therefore, The Board hereby authorizes the establishment of a subzone (Subzone 177A) for the manufacture of pharmaceutical and nutritional products at the Mead Johnson & Company facilities in Evansville and Mt. Vernon, Indiana, at the locations described in the application, as amended, subject to the FTZ Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including section 400.28.

Signed at Washington, DC, this 21st day of December 1992, pursuant to Order of the Board.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92-31886 Filed 12-31-92; 8:45 am]

BILLING CODE 3510-05-M

[Order No. 610]

Resolution and Order Approving With Restrictions Extension of Subzone Status; Foreign-Trade Zone Subzones 44B, 44C, and 44D

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order.

The Board, having considered the matter, hereby orders:

After consideration of the application of the Department of Commerce and Economic Development of the State of New Jersey, grantee of Foreign-Trade Zone 44, Mt. Olive, New Jersey, filed with the Foreign-Trade Zones (FTZ) Board (the Board) on October 23, 1992, requesting a time extension for FTZ Subzones 44B, 44C, and 44D (FTZ Board Order 366, 12/1/87), located in the northern New Jersey area, adjacent to the New York Customs port of entry, the Board, finding that the requirements of the FTZ Act and the Board's regulations would be satisfied and that the proposal would be in the public interest if the extension were approved for five years (to 12/1/97), subject to the conditions contained in Board Order 366, hereby approves a time extension for said subzones to December 1, 1997, subject to the conditions below.

The approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790–50808, 10/8/91), including section 400.28, and further subject to the following conditions:

1. Authority for the subzones may be further extended after a review by the Board;

2. Foreign merchandise admitted into the subzones shall be monitored annually to ensure that zone procedures do not cause increased imports; and,

3. IFF shall provide the FTZ Board and the District Director of Customs annually with a list of merchandise admitted to the subzones in nonprivileged foreign status.

Signed at Washington, DC, this 21st day of December, 1992, pursuant to Order of the Board.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92-31887 Filed 12-31-92; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 37-92]

Foreign-Trade Zone 39—Dallas/Fort Worth, TX; Application for Subzone, Sanden International (U.S.A.), Inc., Auto Air Conditioner Manufacturing Plant, Wylie, TX

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the DFW International Airport Board, grantee of FTZ 39, requesting special-purpose subzone status for the automotive air conditioner manufacturing plant of Sanden International (U.S.A.), Inc. (Sanden) (subsidiary of Sanden Corporation,

Japan), located in Wylie, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 21, 1992.

The Sanden plant (437,000 sq.-ft. bldg. on 95 acres) is located at 601 South Sanden Boulevard in Wylie (Collin County), some 24 miles northeast of downtown Dallas. The Facility (345 employees) is used to produce air conditioning compressors, evaporator coils, and related components for use in motor vehicles and heavy equipment. The manufacturing process involves machining and assembly of compressors, clutches, and evaporator coils. Certain subcomponents are sourced from abroad, including clutch assemblies, heat insulators, electrical switches, coil covers, fan/motor assemblies, gaskets, and labels (duty rate range: 3.4%–6.2%). Such subcomponents represent some 54 percent of the finished compressors' value and 20 percent of the evaporator coils' value.

Zone procedures would exempt Sanden from Customs duty payments on the foreign parts used in export production. On its domestic sales, the firm would be able to choose the duty rate that applies to finished compressors (3.4%) and evaporator coils (2.2%) for the foreign material inputs noted above. If the products are shipped to auto assembly plants with subzone status, the compressors would be subject to the finished auto duty rate (2.5%). Foreign status merchandise and finished components made for export would also be exempt from certain state and local *ad valorem* taxes. The application indicates that the savings will help improve the plant's international competitiveness.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 5, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period March 22, 1993.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, World Trade Center, suite 170, 2050 N. Stemmons Freeway, Dallas, Texas 75242–0787.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

Dated: December 22, 1992.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–31888 Filed 12–31–92; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A–834–804, A–821–804, A–823–804]

Affirmative Preliminary Determinations of Critical Circumstances: Ferrosilicon From Kazakhstan, the Russian Federation, and Ukraine

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 4, 1993.

FOR FURTHER INFORMATION CONTACT: Kimberly Hardin, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0371.

PRELIMINARY DETERMINATION: On July 14, 1992, petitioners alleged that critical circumstances exist with respect to imports of ferrosilicon from Kazakhstan, the Russian Federation, and Ukraine. The Department of Commerce (the Department) published its preliminary determinations of sales at less than fair value in these investigations on December 29, 1992, but inadvertently omitted its critical circumstances analysis from those determinations.

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind or merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Regarding criterion (A) above, we normally consider either an outstanding antidumping order in the United States or elsewhere on the subject merchandise, or margins of 25 percent or more in the case of purchase price, and 15 percent or more in the case of exporter sales price, comparisons sufficient to impute knowledge of dumping under section 733(e)(1)(A) of the Act. Since the preliminary dumping margins for all exporters of ferrosilicon from Kazakhstan, the Russian Federation, and Ukraine, are in excess of 25 percent, we can impute knowledge under section 733(e)(1)(A) of the Act.

Pursuant to 19 CFR 353.16(f), we generally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Regarding criterion (B) above, because we did not receive adequate questionnaire responses from any party in Kazakhstan, the Russian Federation, or Ukraine, we based our preliminary determinations on best information available (BIA). Because we did not receive adequate questionnaire responses, we determine that imports were massive over a relatively short period of time based on BIA. Accordingly, we preliminarily find that critical circumstances do exist in these investigations.

We will announce the final determinations of critical circumstances along with the final antidumping determinations in these investigations on March 3, 1992.

Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, we are instructing the Customs Service to suspend liquidation of all entries of ferrosilicon from Kazakhstan, the Russian Federation, and Ukraine, that are entered, or withdrawn on or after August 30, 1992, which is 90 days prior to December 29, 1992, the date of publication of the preliminary determinations.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations.

Public Comment

Comments regarding these preliminary critical circumstances determinations, if any, should be

included in the case briefs, which are currently due on February 5, 1993.

These determinations are published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: December 24, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-31924 Filed 12-31-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-423-602]

Industrial Phosphoric Acid From Belgium; Determination Not To Revoke the Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke the antidumping order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty order on industrial phosphoric acid from Belgium.

EFFECTIVE DATE: January 4, 1993.

FOR FURTHER INFORMATION CONTACT: John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC, 20230; telephone: (202) 482-3601.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order or finding, pursuant to § 353.25(d)(4) of the Department's regulations, if no interested party has requested an administrative review for five consecutive annual anniversary months and no interested party objects to the revocation (19 CFR 353.25(d)(4)(iii) (1992)). We had not received a request to conduct an administrative review of the antidumping duty order on industrial phosphoric acid from Belgium (52 FR 31439, August 20, 1987) for the last four consecutive annual anniversary months. Therefore, pursuant to § 353.25(d)(4)(i) of the Department's regulations, on November 27, 1992, we published in the **Federal Register** a notice of intent to revoke the order and served written notice of the intent to revoke to each interested party on the Department's service list.

On December 7, 1992, FMC Corporation and Monsanto Company, the petitioners in the original antidumping investigation, objected to our intent to revoke this antidumping duty order. Therefore, because interested parties have objected to the revocation, we no longer intend to revoke this antidumping duty order.

Dated: December 24, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-31925 Filed 12-31-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-791-502]

Low-Fuming Brazing Copper Wire and Rod From South Africa; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on low-fuming brazing copper wire and rod from South Africa. Interested parties who object to this revocation must submit their comments in writing no later than January 31, 1993.

EFFECTIVE DATE: January 4, 1993.

FOR FURTHER INFORMATION CONTACT: John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482-3601.

SUPPLEMENTARY INFORMATION:

Background

On January 29, 1986, the Department of Commerce (the Department) published an antidumping duty order on low-fuming brazing copper wire and rod from South Africa (51 FR 3640). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than January 31, 1993, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by January 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: December 23, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-31882 Filed 12-31-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-603]

Stainless Steel Cooking Ware From Taiwan; Intent to Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on stainless steel cooking ware from Taiwan. Interested parties who object to this revocation must submit their comments in writing no later than January 31, 1993.

EFFECTIVE DATE: January 4, 1993.

FOR FURTHER INFORMATION CONTACT: John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482-3601.

SUPPLEMENTARY INFORMATION:

Background

On January 20, 1987, the Department of Commerce (the Department) published an antidumping duty order on stainless steel cooking ware from Taiwan (52 FR 2138). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than January 31, 1993, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by January 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: December 23, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-31883 Filed 12-31-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-823]

Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations of Sales at Less Than Fair Value: Professional Electric Cutting Tools and Professional Electric Sanding/Grinding Tools from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 4, 1993.

FOR FURTHER INFORMATION CONTACT: Brian Smith, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-1766.

PRELIMINARY DETERMINATIONS: The Department of Commerce ("the Department") preliminarily determines that professional electric cutting tools (PECTs) and professional electric sanding/grinding tools (PESGTs) from Japan are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice. Also, the Department preliminarily finds that critical circumstances do not exist.

Case History

Since these investigations were initiated on June 18, 1992, (57 FR 28483 June 25, 1992), the following events have occurred:

On July 2, Ryobi, a Japanese exporter of subject merchandise, submitted a letter of appearance. On July 7, Hitachi did the same.

On July 13, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination.

On July 14, the Department presented Section A of the antidumping duty questionnaire to Makita Corporation, Makita U.S.A., Inc., and Makita Corporation of America (Makita). Makita accounted for at least 60 percent of the exports of PECTs and PESGTs to the United States.

On July 28, Makita submitted its Section A response. On July 31, Makita requested the Department to use third country sales as a basis for foreign market value (FMV). On August 10, the Department determined that the home market was viable and therefore denied Makita's request to use its third country sales as a basis for FMV.

Also on August 10, after considering comments submitted by two interested parties, we issued a decision memorandum regarding the instructions for selecting similar merchandise. These instructions were included with Sections B and C of the antidumping questionnaire which was presented to Makita on August 11, 1992. On August 20, we issued to Makita a Section A deficiency letter. On September 3, Makita submitted its deficiency response.

On September 30, the Department postponed the preliminary determinations until December 28, 1992 (57 FR 46148 October 7, 1992). On October 5, Makita submitted its response to Sections B and C of the antidumping questionnaire.

The Department issued supplemental sales questionnaires to Makita in October and November, 1992. Makita submitted the responses to these supplemental questionnaires in November 1992.

On December 2, petitioner, Black & Decker, alleged that critical circumstances exist with respect to imports of PECTs and PESGTs from Japan. Petitioner requested that the Department collect critical circumstances data from Makita, Ryobi, and Hitachi.

On December 8, the Department, in order to reach a critical circumstances determination, requested that Makita furnish shipment data concerning its exports of PECTs and PESGTs to the United States for the last two years. As only Makita is designated as a mandatory respondent in these investigations, we did not solicit this data from Ryobi and Hitachi. On December 9, the Department issued questions to Makita concerning some of its proposed model matches.

On December 10, Makita requested that, in the event of affirmative preliminary determinations in these investigations, the Department postpone the final determinations to 105 days after the date of the publication of the affirmative preliminary determinations. See the "Postponement of Final Determinations" section of this notice.

On December 14, Makita provided an explanation for those model matches identified in the Department's December 9, letter.

On December 16, Makita submitted replacement home market databases in response to a Department request. These databases were submitted too late to be considered in these preliminary determinations. In addition, petitioner submitted comments after December 4, which were not considered in the preliminary determinations.

On December 18, 1992, Makita alleged that petitioner did not have standing to seek on behalf of the U.S. industry relief from imports of the subject merchandise from Japan. This allegation was submitted too late to be considered in the preliminary determinations. On December 22, Makita submitted its shipment data.

Scope of Investigations

In the notice of initiations of these investigations, the Department invited interested parties to comment on their scope. We received comments from four parties, Makita, Ryobi, Hitachi, and Black & Decker, on September 4. On September 17, we requested additional information from the four parties. On October 13, we received their replies. On November 13, the Department requested product characteristic data from the three Japanese parties and certain clarifying information from Black & Decker. We received replies from the four parties by November 27.

Having considered the comments of all parties, the Department preliminarily defines the scopes of these proceedings as follows (See Memorandum to Richard W. Moreland, Acting Deputy Assistant Secretary, December 28, 1992, for more details). These investigations cover two classes or kinds of merchandise, PECTs and PESGTs. The tools may be

assembled or unassembled and corded or cordless.

• The term "electric" encompasses electromechanical devices, including tools with electronic variable speed features.

• The term "assembled" includes unfinished or incomplete articles, which have the essential characteristics of the finished or complete tool.

• The term "unassembled" means components, which when taken as a whole, can be converted into the finished or unfinished or incomplete tool through simple assembly operations, *e.g.*, kits.

PECTs have blades or other cutting devices used for cutting wood, metal, and other materials. PECTs include chop saws, circular saws, jig saws, reciprocating saws, miter saws, portable band saws, cut-off machines, shears, nibblers, planers, routers, joiners, jointers, metal cutting saws, and similar cutting tools. PESGTs have moving abrasive surfaces used primarily for grinding, scraping, cleaning, deburring, and polishing wood, metal, and other materials. PESGTs include angle grinders, finishing sanders, disc sanders, orbital sanders, belt sanders, polishers, straight grinders, die grinders, and similar sanding/grinding tools.

The products subject to these investigations include all hand-held PECTs and PESGTs and certain bench-top, hand-operated PECTs.

• Hand-operated tools are designed so that only the functional or moving part is held and moved by hand while in use, the whole being designed to rest on a table top, bench, or other surface.

• Bench-top tools are small stationary tools that can be mounted or placed on a table or bench. They are generally distinguishable from other stationary tools by size and ease of movement.

The scope of the PECT investigation includes only the following bench-top, hand-operated tools: cut-off saws; PVC saws; chop saws; cut-off machines, currently classifiable under subheading 8461 of the *Harmonized Tariff Schedule of the United States* (HTSUS); all types of miter saws, including slide compound saws, currently classifiable under subheading 8465 of the HTSUS; and band saws with detachable bases, also currently classifiable under subheading 8465 of the HTSUS. The PECT and PESGT investigations do not include:

• Professional electric drilling/fastening tools;

• Lawn and garden tools;

• Heat guns;

• Paint and wallpaper strippers; and

• Chain saws, currently classifiable under subheading 8508 of the HTSUS.

Parts or components of PECTs and PESGTs when they are imported as kits, or as accessories imported together with covered tools are included within the scope of these investigations.

"Corded" and "cordless' consumer electric cutting tools and consumer electric sanding/grinding tools are not included within the scope of these investigations. "Corded" consumer electric power tools (CEPTs), which are driven by electrical current passed through a power cord, are, for purposes of these investigations, defined as power tools which have at least five of the following seven characteristics:

(1) The predominant use of sleeve or plain bearings (*i.e.*, a majority or greater number of the bearings in the tool are sleeve or plain bearings);

(2) Spur or straight bevel gearing;

(3) A thermo-plastic jacketed power supply cord with a length of less than eight feet;

(4) A power supply cord restrained by a molded-on cord protector;

(5) The absence of user-serviceable motor brushes;

(6) The predominant use of non-heat treated transmission parts (*i.e.*, a majority or greater number of the transmission parts in the tool are not heat treated); and

(7) The presence of only one coil per slot armature. If a "corded" CEPT possesses only six of the seven characteristics, then the tool must have at least four of the six characteristics.

"Cordless" CEPTS are distinguishable from professional electric "cordless" tools by voltage. We preliminarily find that the voltage of "cordless" CEPTs does not exceed 7.2 volts.

We have examined the comments of all parties in reaching these preliminary determinations. Nonetheless, given the complicated nature of these issues, we invite all parties to comment on our preliminary determination of the scope of these proceedings. We are especially interested in comments regarding criteria defining "corded" professional power tools, rather than "corded" CEPTs, and additional criteria that should be considered in distinguishing professional and consumer cordless tools. Such comments should be submitted to the Department not later than February 1, 1993.

PECTs are currently classifiable under the following subheadings of the HTSUS: 8508.20.00.20, 8508.20.00.70, 8508.20.00.90, 8461.50.00.20, 8465.91.00.35, 8508.80.00.55 and 8508.80.00.65. PESGTs are currently classifiable under the following subheadings of the HTSUS: 8508.80.00.10, 8508.80.00.15, 8508.80.00.25, 8508.80.00.35, and 8508.80.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written descriptions of the scopes of these proceedings are dispositive.

Period of Investigations

The period of these investigations (POI) is from December 1, 1991, through May 31, 1992.

Such or Similar Comparisons

We made fair value comparisons using the following such or similar categories for PECTs:

(1) Circular saws and hypoid saws;

(2) Hand-held jig saws and hand-held scroll saws;

(3) Hand-held reciprocating saws;

(4) Hand-operated cut-off saws, PVC saws, and chop saws;

(5) Hand-held band saws;

(6) Hand-held metal cutting saws;

(7) Hand-held cutter saws, angle cutters, and cut-off machines;

(8) Hand-held planers;

(9) Hand-held trimmers and routers;

(10) Hand-held shears and nibblers;

(11) and Hand-held joiners and jointers;

(12) Groove cutters; and

(13) Other miscellaneous groupings.

We made fair value comparisons using the following such or similar categories for PESGTs:

(1) Orbital and random orbit finishing sanders;

(2) Belt sanders;

(3) Wheel sanders;

(4) Disc sanders and disc polishers;

(5) Angle grinders, disc grinders, angle sanders, and angle polishers;

(6) Straight grinders and die grinders; and

(7) Other miscellaneous groupings.

We based all product comparisons in the U.S. and home markets on sales of similar merchandise only because identical merchandise was not sold in both markets. We selected similar merchandise by applying the following criteria in descending order of importance:

(1) Configuration;

(2) Corded vs. cordless;

(3) Capacity;

(4) Power;

(5) Speed;

(6) Housing material; and

(7) Size.

In examining Makita's model matches, we noted that they did not conform to the instructions contained in the questionnaire. On December 8, 1992, we informed Makita of these problems, and on December 14, 1992, Makita replied that it had applied the "Power" criteria using volts and amps, rather than the watts figure contained in their

catalogues. However, we continued to find mismatched products, unaffected by Makita's explanation. These mismatches are not great in number, nor do they follow a consistent pattern. We have matched these products correctly and this issue will be a focus of our verification.

In addition, we excluded sales made of one U.S. PESGT model from our analysis and certain other miscellaneous sales (*e.g.*, sample sales) from our price-to-price comparisons because they accounted for a small percentage of U.S. sales and we had adequate sales coverage. In performing its LTFV analysis, the Department is not required to examine every sales transaction made by a respondent during the POI. 19 CFR 353.42(b).

Fair Value Comparisons

To determine whether sales of PECTs and PESGTs from Japan to the United States were made at less than fair value, we compared the United States price (USP) to the FMV at the same levels of trade, as specified in the "United States Price" and "Foreign Market Value" sections of this notice. Although Makita did not propose any level of trade comparisons, we have determined that comparisons should be made at two levels of trade, wholesale and retail.

United States Price

We based USP on exporter sales price (ESP) in accordance with section 772(c) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States after importation into the United States.

We calculated ESP based on packed, delivered and/or undelivered prices to unrelated customers in the United States. We made deductions, where appropriate, for discounts, rebates, foreign brokerage and handling, foreign inland freight, ocean freight, marine insurance, U.S. duties, U.S. brokerage and handling, and U.S. inland freight in accordance with section 772(d)(2) of the Act. We added to U.S. price payments Makita received for drop-ship fees.

In accordance with section 772(e) of the Act, we made additional deductions, where appropriate, for credit expenses, direct and indirect advertising expenses, warranty expenses, product liability premium expenses, and indirect selling expenses, including inventory carrying costs and bad debt expenses.

We disallowed an addition to U.S. price for handling fees associated with returned merchandise claimed by Makita. Makita did not adequately explain how this fee related to the sales being examined. If at verification, we find evidence that the returned merchandise should not be considered in our analysis, we will not include it in the final determinations.

In accordance with section 772(d)(1)(C) of the Act, we added to net unit price the amount of value-added tax (VAT) that is not collected by reason of exportation of the merchandise to the United States.

Foreign Market Value

In order to determine whether there were sufficient sales of PECTs and PESGTs in the home market to serve as viable bases for calculating FMV, we compared the volume of home market sales of PECTs to the volume of third party country sales of PECTs, and compared the volume of home market sales of PESGTs to the volume of third country sales of PESGTs, in accordance with 19 CFR 353.48(a). Makita had viable home markets with respect to sales of PECTs and PESGTs during the POI.

We excluded from our analysis certain home market sales claimed by Makita to be outside the ordinary course of trade.

We calculated FMV based on delivered prices to unrelated customers in the home market. We made deductions, where appropriate, for discounts, rebates, inland freight, post-sale warehousing expenses, credit expenses, and direct advertising expenses.

We also deducted from FMV the weighted-average home market indirect selling expenses, including, where appropriate, advertising and inventory carrying costs, up to the amount of indirect selling expenses and commissions incurred on U.S. sales, in accordance with 19 CFR 353.56(b).

We made a circumstance of sale adjustment for the difference between VAT on home market sales and that which would have been collected on U.S. sales if the export sales had been taxed.

We deducted home market packing costs and added U.S. packing costs.

Makita provided constructed value (CV) information for two cordless PECT models sold in the United States. In submitting the CV information, Makita did not follow the instructions in the August 11, 1992, questionnaire, which required Makita to request a CV questionnaire by contacting the "Official in Charge" if it was unable to make home market comparisons with a difference of merchandise adjustment within 20 percent. The Department requires that CV information be submitted in response to its own questionnaire so that the information can be efficiently used in its analysis. When informed that a questionnaire request would be required, Makita chose not to submit a request. Therefore, we did not analyze the data and have subsequently returned the CV information to Makita.

In addition, in submitting the CV information, Makita claimed that these two models represented an insignificant portion of its total U.S. sales made during the POI and requested that we exclude them from our analysis. However, after examining the total number of sales transactions of these two U.S. models during the POI, we find that these sales were not insignificant. Normally, we use the highest calculated rate but in this case it was aberrational. Therefore, as best information available (BIA) in accordance with 19 CFR 353.37, we used the average of the positive margins calculated for PECT transactions for these sales. *See, e.g., Preliminary Results and Termination in Part of Antidumping Duty Administrative Review: 3.5" Microdisks and Coated Media Thereof from Japan*, 56 FR 36768 (August 1, 1991).

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the date of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determinations.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of PECTs and PESGTs from Japan. Section 733(e)(1) of the Act provides that there is a reasonable basis to believe or suspect that critical circumstances exist if:

(A) (i) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation, or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to 19 CFR 353.16(f), we generally consider the following factors in determining whether imports have been massive over a short period of time:

(1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of

domestic consumption accounted for by imports. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Internal-Combustion Industrial Forklift Trucks from Japan*, 53 FR 12552 (April 15, 1988). To determine whether imports have been massive, we normally compare the export volume for the base period, which is a period of not less than three months beginning with the month the petition was filed (provided that the petition was filed before the mid-way point in the month), with an immediately previous period of comparable duration. Since the petition was filed on May 29, 1992, we compared available U.S. Customs import data of PECTs and PESGTs from Japan, during the four month, not three month period after the filing of the petition (the comparison period), June through September 1992 (Customs data was not available after September 1992), to U.S. Customs import data during the four month period including the month the petition was filed, February through May 1992. Makita's company-specific shipment data was submitted too late to be considered for purposes of the preliminary determinations. It will, however, be verified and considered for the final determinations.

Under 19 CFR 353.16(f)(2), unless the imports in the comparison period have increased by at least 15 percent over the imports during the base period, we will not consider the imports "massive." Based on this analysis, we find that imports of the subject merchandise during the period subsequent to the receipt of the petition have not been massive.

Since we do not find that there have been massive imports, pursuant to section 733(e)(1)(B) of the Act, we need not consider whether there is a history of dumping or whether there is reason to believe or suspect that importers of this product knew or should have known that it is being sold at less than fair value.

Therefore, we preliminarily determine that there is not a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of PECTs and PESGTs from Japan.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of PECTs and PESGTs from Japan that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Weighted-average margin percentage	
	PECTs	PESGTs
Makita Corporation, Makita USA, Inc., and Makita Corporation of America	41.17	38.96
All Others	41.17	38.96

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. If our final determinations are affirmative, the ITC will determine before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations whether imports of PECTs and PESGTs are materially injuring, or threaten material injury to, the U.S. industry.

Postponement of Final Determinations

As stated above, in accordance with 19 CFR 353.20(b), Makita, which accounts for a significant portion of the merchandise covered by these proceedings, has requested in writing that, in the event of affirmative determinations, the Department postpone the final determinations by 30 days. Accordingly, we are postponing the date of the final determinations until not later than 105 days after the date of publication of this notice.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than March 12, 1993, and rebuttal briefs no later than March 17, 1993. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on March 22, 1993, at 9:30 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

These determinations are published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: December 28, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92–31926 Filed 12–31–92; 8:45 am]

BILLING CODE 3510–DS–M

[C–333–502]

Deformed Steel Concrete Reinforcing Bar From Peru; Determination Not To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on deformed steel concrete reinforcing bar from Peru.

EFFECTIVE DATE: January 4, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–0983 or 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On November 3, 1992, the Department of Commerce ("the Department") published in the **Federal Register** (57 FR 49691) its intent to revoke the countervailing duty order on deformed steel concrete reinforcing bar from Peru (50 FR 48819; November 27, 1985). Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. We had not received a request for an administrative review of the order for more than four consecutive anniversary months.

On November 18, 1992, Chaparral Steel Company, a domestic producer of the subject merchandise and a petitioner in this proceeding, objected to our intent to revoke the order. On November

24, 1992, Florida Steel Corporation, also a domestic producer and a petitioner, submitted an objection to our intent to revoke the order. Because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke the order.

This notice is in accordance with 19 CFR 355.25(d).

Dated: December 23, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-31881 Filed 12-31-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-812]

Rescheduling of Public Hearing: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescheduling of a public hearing.

EFFECTIVE DATE: January 4, 1993.

FOR FURTHER INFORMATION CONTACT: Phil Pia or Laurel Lynn, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW. room 4012, Washington, DC 20230; telephone (202) 482-2786.

NOTICE OF RESCHEDULING: In accordance with 19 CFR 355.38(f)(1992), we will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. The hearing will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., room 1412, Washington, DC, on January 5, 1993 at 1 p.m. Parties should confirm, by telephone, the time, date and place of the hearings 48 hours prior to the scheduled time.

The schedule for submission of briefs is as previously established with the parties.

This notice is published pursuant to 19 CFR 355.20(b).

Dated: December 22, 1992.

Rolf Th. Lundberg,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-31927 Filed 12-31-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-580-602]

Certain Stainless Steel Cooking Ware From the Republic of Korea, Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on certain stainless steel cooking ware from the Republic of Korea. Interested parties who object to this revocation must submit their comments in writing not later than January 31, 1993.

EFFECTIVE DATE: January 4, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup, Dana Mermelstein or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482-0983 or 482-0984.

SUPPLEMENTARY INFORMATION:

Background

On January 20, 1987, the Department of Commerce ("the Department") published a countervailing duty order on certain stainless steel cooking ware from the Republic of Korea (52 FR 2140). The Department has not received a request to conduct an administrative review of this countervailing duty order for four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than January 31, 1993, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties neither request an administrative review (pursuant to the Department's notice of opportunity to request administrative review), nor object to the Department's intent to revoke by January 31, 1993, we shall conclude that the order is not longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: December 24, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-31885 Filed 12-31-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-583-604]

Stainless Steel Cooking Ware From Taiwan; Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on stainless steel cooking ware from Taiwan. Interested parties who object to this revocation must submit their comments in writing not later than January 31, 1993.

EFFECTIVE DATE: January 4, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup, Lorenza Olivas or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482-0983 or 482-2786.

SUPPLEMENTARY INFORMATION:

Background

On January 20, 1987, the Department of Commerce ("the Department") published a countervailing duty order on stainless steel cooking ware from Taiwan (52 FR 2141). The Department has not received a request to conduct an administrative review of this countervailing duty order for four consecutive annual anniversary months.

In accordance with 19 CFR 355.259d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than January 31, 1993, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties neither request an administrative review (pursuant to the Department's notice of opportunity to request administrative review), nor object to the Department's intent to revoke by January 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: December 24, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92–31884 Filed 12–31–92; 8:45 am]

BILLING CODE 3510–05–M

[C–357–048]

Certain Textiles and Textile Products (Men's and Boys' Woolen Garments) From Argentina; Determination Not To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on certain textiles and textile products, specifically, men's and boys' woolen garments, from Argentina.

EFFECTIVE DATE: January 4, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup, Lorenza Olivas or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington DC 20230; telephone: (202) 482–0983 or 482–1775.

SUPPLEMENTARY INFORMATION:

Background

On November 3, 1992, the Department of Commerce published in the **Federal Register** (57 FR 49691) its intent to revoke the countervailing duty order on certain textiles and textile mill products from Argentina (43 FR 53421; November 16, 1978). Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. We had not received a request for an administrative review of the order for more than four consecutive anniversary months.

On November 10, 1992, the Amalgamated Clothing and Textile Workers Union, AFL–CIO, a petitioner and an interested party in this proceeding, objected to our intent to revoke the order. Because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke the order.

This notice is in accordance with 19 CFR 355.25(d).

Dated: December 24, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92–31880 Filed 12–31–92; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Robert E. Harris From an Objection by the New York State Department of State

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of decision.

On December 2, 1992, the Secretary of Commerce (Secretary) issued a decision in the consistency appeal of Robert E. Harris (Appellant). The Appellant had applied to the U.S. Army Corps of Engineers (Corps) for a permit to construct a dock with 18 slips behind his property on the shore of the Hudson River in Rensselaer, New York. In conjunction with the Federal permit application, the Appellant submitted to the Corps for review by the New York State Department of State (State), the State of New York's coastal management agency, under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1456(c)(3)(A), a certification that the proposed activity is consistent with the State's federally-approved Coastal Management Program (CMP).

On September 28, 1990, the State objected to the Appellant's consistency certification for the proposed project on numerous grounds including that the proposed project is not in accordance with the State's CMP policies and objectives of facilitating the siting of water dependent uses and facilitates on or adjacent to coastal waters. Under CZMA section 307(c)(3)(A) and 15 CFR 930.131, the State's consistency objection precludes the Corps from issuing a permit for the activity unless the Secretary finds that the activity is either consistent with the objectives or purposes of the CZMA (Ground I) or necessary in the interest of national security (Ground II). The Appellant based his appeal on Ground I.

Upon consideration of the information submitted by the Appellant, the State, and interested Federal agencies, the Secretary made the following findings pursuant to 15 CFR 930.121(d): The alternative proposed by the State of constructing a small dock with eight slips for the recreational use of the Appellant and his tenants was a reasonable, available alternative that would be consistent with the State's CMP. Accordingly, the proposed project is not consistent with the objectives or purposes of the CZMA. Because the Appellant's proposed project failed to satisfy all of the requirements of Ground I, the Secretary did not override the State's objection to the Appellant's consistency certification. Consequently, the proposed project may not be permitted by Federal agencies. Copies of the decision may be obtained from the contact person listed below.

FOR ADDITIONAL INFORMATION CONTACT: Angelica G. Fleites, Law Clerk, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235, (202) 606–4200.

Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.

Dated: December 23, 1992.

Thomas A. Campbell,

General Counsel.

[FR Doc. 92–31896 Filed 12–31–92; 8:45 am]

BILLING CODE 3510–08–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

December 29, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 29, 1992

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for carryforward and swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 1146, published on January 10, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

J. Hayden Boyd

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 29, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 7, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 1, 1992 and extends through January 31, 1993.

Effective on December 29, 1992 , you are directed to amend further the directive dated January 7, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and People's Republic of Bangladesh:

Category	Adjusted twelve-month limit [1]
334	109,618 dozen.
638/639	1,293,950 dozen.
641	619,533 dozen.

[1] The limits have not been adjusted to account for any imports exported after January 31, 1992.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–31921 Filed 12–31–92; 8:45 am]

BILLING CODE 3510–DR–F

Amendment of Export Visa Requirements for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Hong Kong

December 29, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa requirements.

EFFECTIVE DATE: January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce. (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The existing export visa arrangement between the Governments of the United States and Hong Kong is being amended to require a visa for women's and girls' cotton and man-made fiber trousers, breeches and shorts in part-Categories 348–K (knit), 348–W (woven), 648–K (knit) and 648–W (woven), produced or manufactured in Hong Kong and exported from Hong Kong on and after January 1, 1993.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 48 FR 2400, published on January 19, 1983 and 51 FR 27235, published on July 30, 1986.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 29, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 14, 1983, as amended on July 25, 1986, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directed you to prohibit entry of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced on manufactured in Hong Kong, for which the Government of Hong Kong has not issued an appropriate visa.

Effective on January 1, 1993, you are directed to amend further the January 14, 1983 directive to require an export visa for shipments of cotton and man-made fiber textile products in the following part-categories, produced or manufactured in Hong Kong and exported from Hong Kong on and after January 1, 1993:

Category	HTS numbers
348–K	Knit trousers, breeches and shorts—All HTS numbers in Category 348, except those in Category 348–W.
348–W	Woven trousers, breeches and shorts—Only 6204.12.0030, 6204.19.3030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.3010, 6204.69.9010, 6210.50.2035, 6211.20.1550, 6211.20.6010, 6211.42.0030 and 6217.90.0050.
648–K	Knit trousers, breeches and shorts—All HTS numbers in Category 648, except those in Category 648–W
648–W	Woven trousers, breeches and shorts—Only HTS numbers 6304.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4308, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.60.2560, 6204.69.3030, 6204.69.9030, 6210.50.1035, 6211.20.1555, 6211.20.6030, 6211.43.0040 and 6217.90.0060.

Also effective January 1, 1993 the merged Category 347/348 visa shall no longer be accepted for goods produced or manufactured in Hong Kong and exported from Hong Kong on and after January 1, 1993. All shipments of goods in Category 347 and Category 348 produced or manufactured in Hong Kong and exported from Hong Kong on and after January 1, 1993 must be visaed as Category 347, 348–K or 348–W and not as merged Category 347/348.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-31936 Filed 12-30-92; 10:46 am]

BILLING CODE 3510-DR-M

Announcement of Import Restraint Limits for Certainotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the United Mexican States

December 28, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6711. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 13, 1988, as amended and extended, establishes limits for the period beginning on January 1, 1993 and extending through December 31, 1993.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the 1993 agreement period, including certain categories subject to the Special Regime. Sublimits and separate limits for Normal Regime categories are established for products which are not subject to the terms of the Special Regime.

A copy of the current bilateral textile agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992).

Requirements for participation in the Special Regime Program are available in **Federal Register** notices 53 FR 15724, published on May 3, 1988; 53 FR 32421, published on August 25, 1988; 53 FR 49346, published on December 7, 1988; and FR 50425, published on December 6, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

J. Hayden Boyd

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 28, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 13, 1988, as amended and extended, between the Governments of the United States and the United Mexican States; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Mexico and exported during the twelve-month period beginning on January 1, 1993 and extending through December 31, 1993, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Group I	
218-220, 225-227, 313-326, 611-617 and 625-629, as a group.	53,595,720 square meters.
Sublevels in Group I	
218	1,118,925 square meters.
219	16,674,224 square meters.
313	29,775,400 square meters.
317	14,887,700 square meters.
326	1,116,925 square meters.
611	2,237,854 square meters.
Individual Limits not in a group	
300/301/607-Y [1]	8,337,112 kilograms of which not more than 4,525,861 kilograms shall be in Category 300.
334/634	150,000 dozen.
335 (Special Regime)	135,000 dozen.
336/636 (Special Regime).	476,406 dozen.
338/339/638/639 (Special Regime).	1,400,000 dozen.
340/640 (Special Regime).	481,762 dozen.
341/641 (Special Regime).	800,000 dozen.
342/642 (Special Regime).	300,000 dozen.
347/348/647/648 (Special Regime).	4,500,000 dozen.
351/651 (Special Regime).	350,000 dozen.
352/652 (Special Regime).	2,800,000 dozen.
359-C/659-C [2] (Special Regime).	1,800,000 kilograms.
363	5,500,000 numbers.
410	397,160 square meters.
433	11,000 dozen.
435 (Special Regime)	20,000 dozen.
443	118,485 numbers.
604-A [3]	2,004,887 kilograms.
604-O/607-O [4]	1,257,056 kilograms.
633 (Special Regime)	100,000 dozen.
635 (Special Regime)	300,000 dozen.
643	155,556 numbers.
669-B [5]	744,444 kilograms.
670	3,000,000 kilograms.
Normal Regime Category (Not subject to the Special Regime)	
335 (sublimit)	35,000 dozen.
336/636 (sublimit)	238,203 dozen.
338/339/638/639 (sublimit).	650,000 dozen.
340/640 (sublimit)	120,439 dozen.
341/641	700,000 dozen of which not more than 315,204 dozen shall be in Categories 341-Y/641-Y [6].
342/642	119,102 dozen.
347/348/647/648	650,000 dozen.
351/651	75,000 dozen.
352/652	1,905,626 dozen.
359-C/659-C (sublimit).	250,000 kilograms.
435	12,000 dozen.
633 (sublimit)	10,000 dozen.
635	153,896 dozen.

[1] Categories 300 and 301; Category 607-Y: only HTS numbers 5509.53.0030 and 5509.53.0060.

[2] Category 359-C: only HTS numbers 6103.42.2010, 6103.42.2025, 6103.49.3034, 6104.62.1010, 6104.62.1020, 6104.69.3010, 6114.20.0042, 6114.20.0048, 6114.20.0052, 6203.42.2005, 6203.42.2010, 6203.42.2090, 6204.62.2005, 6204.62.2010, 6211.32.0007, 6211.32.0010, 6211.32.0025, 6211.42.0007 and 6211.42.0010; Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2015, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1010, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2005, 6203.43.2010, 6203.43.2090, 6203.49.1005, 6203.49.1010, 6203.49.1090, 6204.63.1505, 6204.63.1510, 6204.69.1005, 6204.69.1010, 6210.10.4015, 6211.33.0007, 6211.33.0010, 6211.33.0017, 6211.43.0007 and 6211.43.0010.

[3] Category 604-A: only HTS number 5509.32.0000.

[4] Category 604-O: all HTS numbers except 5509.32.0000 (Category 604-A); Category 607-O: all HTS numbers except 5509.53.0030 and 5509.53.0060 (Category 607-Y).

[5] Category 669-B: only HTS numbers 6305.31.0020 and 6305.39.0000.

[6] Category 341-Y: only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030; Category 641-Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

Imports charged to these category limits for the period January 1, 1992 through December 31, 1992 shall be charged against those levels

of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and United Mexican States.

The bilateral agreement establishes separate treatment for products in certain categories. Those products which are made of U.S. formed and cut fabric are subject to the Special Regime and to the category limits listed in this directive. Those products which are exported from Mexico to the United States under provisions of the Special Regime on and after January 1, 1993 must be accompaniued by a properly certified Form ITA-370P.

Any shipment for entry under the Special Regime Program which is not accompanied by a valid and correct certification and Shippers Export Declaration (Form ITA-370P) in accordance with the provisions of the certification requirements established in the directive of August 22, 1988, as amended, shall be denied entry. Invoices visaed for Special Regime shall include only products that are subject to the Special Regime or entry will be denied.

Shipments of products in categories covered by the Special Regime, but that are not subject to the Special Regime, are subject to the applicable limits and sublimits listed in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-31922 Filed 12-31-92; 8:45 am]

BILLING CODE 3510-DR-F

Soliciting Public Comment on Bilateral Negotiations During 1993

December 28, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Announcement.

SUPPLEMENTARY INFORMATION:

The U.S. Government anticipates holding negotiations during 1993 concerning expiring bilateral agreements covering certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and apparel from China (December 31, 1993), Colombia (December 31, 1993), Costa Rica (December 31, 1993), Czech and Slovak Federal Republic (May 31, 1993), Dominican Republic (December 31, 1993), Egypt (December 31, 1993), Guatemala (December 31, 1993—Categories 340/640 only), Hungary (December 31, 1993), India (December 31, 1993), Jamaica (December 31, 1993), Korea (December 31, 1993), Macau (December 31, 1993), Mauritius (September 30, 1993), Nepal (December 31, 1993), Pakistan (December 31, 1993), Poland (December 31, 1993), Philippines (December 31, 1993), Romania (December 31, 1993), Thailand (December 31, 1993), Turkey (December 31, 1993), United Arab Emirates (December 31, 1993) and Uruguay (June 30, 1993). (The dates noted in parenthesis are the expiration dates of the agreements.)

Anyone who wishes to comment or provide data or information regarding these agreements, or to comment on domestic production or availability of textiles and apparel affected by these agreements, is invited to submit such comments or information in 10 copies to J. Hayden Boyd, Acting Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC, 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations held with respect to these agreements.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC. Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreements or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-31923 Filed 12-31-93; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: February 3, 1993.

ADDRESSES: Committee for Purchase from People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603-7740.

SUPPLEMENTARY INFORMATION: On June 12, August 28, November 16 and 20, 1992, the Committee for Purchase from People Who Are Blind or Severely Disabled published notices (57 FR 25023, 39190, 54062 and 54774) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodity and provide the services, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity or services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity or services.

3. The action will result in authorizing small entities to furnish the commodity or services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodity or

services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Cap, Knit, 8405-01-006-1074

Services

Commissary Shelf Stocking and Custodial, Naval Station, Treasure Island, California

Grounds Maintenance, U.S. Army Reserve Center, 6401 Imperial Drive, Waco, Texas

Janitorial/Custodial, Veterans Outreach Center, 500 Walnut Street, McKeesport, Pennsylvania

Janitorial/Custodial, Veterans Outreach Center, 954 Penn Avenue, Pittsburgh, Pennsylvania

Janitorial/Custodial, U.S. Army Reserve Center, 6401 Imperial Drive, Waco, Texas

Janitorial/Custodial, Army National Guard Readiness Center, 111 South George Mason Drive, Arlington, Virginia

Mailroom Operation, IRS Computing Center, Route 9 and Needy Road, Martinsburg, West Virginia

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92-31928 Filed 12-31-92; 8:45 am]

BILLING CODE 6820-33-M

Additions to the Procurement List; Correction

In the document appearing on page 57423 of FR Doc. 92-29469 in the issue of December 4, 1992 under Supplementary Information: In the third paragraph the following sentence should be inserted after the first sentence: The contractor did not receive the previous contract for the pads, so it cannot be considered dependent on continuous Government contracts for them.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92-31931 Filed 12-31-92; 8:45 am]

BILLING CODE 6820-33-M

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 3, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603-7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action does not appear to have a severe adverse impact on the current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities to the Procurement List for production by the nonprofit agency listed:

Commodities

Floorboard, Wood, 2510-01-067-2630; Nonprofit Agency: Hardeman County Developmental Services Center, Bolivar, Tennessee

Rail, Target Framing, 6920-01-E02-1996, (Requirements for the U.S. Marine Corps, Parris Island, SC); Nonprofit Agency: Walterboro Vocational Rehabilitation Center, Walterboro, South Carolina

Cradle, Military Fuel Can, 7240-01-318-5222; Nonprofit Agency: Knox County Association for Retarded Citizens, Knoxville, Tennessee

Yard News, GPO Program C101-S, 7690-00-NSH-0046 (Requirements for the Government Printing Office, Washington, DC only); Nonprofit Agency: Lt. Joseph P. Kennedy Institute, Washington, DC

Beverly L. Milkman,

Executive Director.

[FR Doc. 92-31929 Filed 12-31-92; 8:45 am]

BILLING CODE 6820-33-M

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to procurement list.

SUMMARY: The Committee has received a proposal to add to the Procurement List a commodity to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 3, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603-7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action will result in authorizing small entities to furnish the commodity to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodity to the Procurement List for production by the nonprofit agency listed:

Towel, Paper, Decomposable, 7930–00–NIB–0020; Nonprofit Agency: East Texas Lighthouse for the Blind, Tyler, Texas

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–31930 Filed 12–31–92; 8:45 am]

BILLING CODE 6820–33–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Proposal to Register Certain Non-Member Officials of Member Firms and To Require Membership of Certain Non-Member Parent Firms

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: On October 7, 1992, the Commission published in the **Federal Register** a notice of a proposed new Chicago Board of Trade ("CBT") Regulation 230.03 which would establish procedures requiring registration of certain non-member officials of member firms and application for membership by certain non-member parent firms. 57 FR 46151. The comment period on the proposed new regulation originally was scheduled to expire on November 6, 1992, however, on that date the Commission extended the comment period until December 21, 1992. 57 FR 53887 (November 13, 1992).

The Futures Industry Association ("FIA") and the CBT have both requested that the public comment period for CBT Regulation 230.03 be extended so that the FIA and CBT could fully address the issues raised by the proposal.

In order to ensure that all interested parties have an opportunity to submit meaningful comments, the Commission has determined to grant a 31-day extension of the comment period for the CBT's proposal.

DATES: Comments must be submitted by January 21, 1993.

FOR FURTHER INFORMATION CONTACT: David P. Van Wagner, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

Issued in Washington, DC on December 28, 1992 by the Commission.

Alan L. Seifert,

Deputy Director.

[FR Doc. 92–31897 Filed 12–31–92; 8:45 am]

BILLING CODE 6351–01–M

Chicago Board of Trade Proposal to Assign the Catastrophe Insurance Futures Contracts to the Agricultural and Associated Market Category

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Chicago Board of Trade ("CBT") has submitted proposed rule amendments which would assign the Catastrophe Insurance ("CI") futures contracts to the Agricultural and Associated Market ("AAM") category.[1] Acting pursuant to the authority delegated by Commission Regulations 140.96, the Director of the Division of Trading and Markets has determined to publish the CBT proposal for public comment. The Division believes that publication of the CBT proposal is in the public interest and will assist the Commission in considering the views of interested persons.

DATES: Comments must be received on or before February 3, 1992.

FOR FURTHER INFORMATION CONTACT: Clarence Sanders, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW, Washington, DC 20581, Telephone (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Description of Proposed Rule Amendments

By a letter dated November 24, 1992, the CBT submitted proposed rule amendments pursuant to section 5a(12) of the Commodity Exchange Act ("Act") and Commission Regulation 1.41(c) which would assign the CI futures contracts to the AAM category. Each of the CI contractors is based upon and settled according to an index constructed from insurance loss data.

Under existing CBT Rule 290.00, each futures and options contract must be assigned to one of four market categories: the Index, Debt and Energy Market ("IDEM"), Government Instrument Market ("GIM"), Commodity Options Market ("COM"), and AAM categories. Assignment of a contract to one of these four market categories entitles holders of trading interests in that particular market category to trade the newly assigned contract. Thus, although CI futures contracts may be considered "index" contracts, under the CBT proposal the CI futures contracts would be assigned to the AAM category, and holders of IDEM interests would be ineligible to trade the CI futures contracts.

Upon assignment of the CI futures contracts to the AAM category, trading eligibility would be determined by reference to CBT rules governing trading rights of holders of voting membership interests—full and associate members. Full members are eligible to trade all CBT contracts and associate members are eligible to trade all contracts assigned to the IDEM, GIM, and COM market categories. However, because the CBT has not implemented the AAM market category, and there are no AAM interest holders, assignment of CI futures contracts to the AAM category ultimately would reserve the CI futures contracts exclusively for trading by full members. Assignment to the AAM category would not have any effect immediately because the CBT separately has granted temporary trading privileges in CI futures contracts to Associate Members for a period of five years and to IDEM, GIM and COM members for a period of three years.

II. Request for Comments

The Commission requests comments on any aspect of the CBT's proposed rule amendments that members of the public believe may raise issues under the Act or Commission regulations.

Copies of the proposed rule and related materials are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 254–6314. Some materials may be subject to confidential treatment pursuant to 17 CFR 145.5 or 145.9.

[1] On November 16, 1992, the Commission designated the CBT as a contract market in separate futures and options contracts in National Catastrophe Insurance, Eastern Catastrophe Insurance, Midwestern Catastrophe Insurance, and Western Catastrophe Insurance.

Any person interested in submitting written data, views, or arguments on the proposed amended rule should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street N.W, Washington, DC, 20581, by the specified date.

Issued in Washington, DC, on December 28, 1992.

Alan L. Seifert,

Deputy Director.

[FR Doc. 92-31898 Filed 12-31-92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Development of A DoD Interest Measure

Type of Request: New collection

Average Burden Hours/Minutes Per Response: 1.019 hours

Responses Per Respondent: 1

Number of Respondents: 4650

Annual Burden Hours: 4738

Annual Responses: 4650

Needs and Uses: By February of 1995, the DoD needs to replace a commercially purchased inventory that is now used in the DoD Student Testing Program. This data collection will allow for the development of an interest inventory according to professionally accepted development standards.

Affect Public: Individuals or households; state or local governments

Frequency: One time

Respondent's Obligation: Voluntary

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written request for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: December 29, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-31904 Filed 12-31-92; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, February 2, 1993; Tuesday, February 9, 1993; Tuesday, February 16, 1993; and Tuesday, February 23, 1993, at 2 p.m. in room 800, Hoffman Building #1, Alexandria, Virginia.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for Federal prevailing rate employees pursuant to Public Law 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b. (c) (2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b. (c) (4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy/Equal Opportunity) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b. (c) (2)), and the detailed wage data considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c) (4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, room 3D264, The Pentagon, Washington, DC. 20310.

Dated: December 29, 1992.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-31905 Filed 12-31-92; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 20-22 January 1993.

Time of Meeting: 1200-1700, 20 January; and 0800-1700, 21-22 January.

Place: Ft. Monmouth, NJ.

Agenda: The Army Science Board Ad Hoc Panel on "Space Systems and Future Army Operations" will meet for discussions focussed on current operational concepts, the Army Long-range Plan for Space and associated technologies. This meeting will be closed to the public in accordance with section 552b.(c) of title 5, U.S.C., specifically subparagraph (1) thereof and title 5, U.S.C. Appendix 2, subsection 10(d). The classified and non-classified information to be discussed will be so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703)695-0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92-31878 Filed 12-31-92; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, 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 February 3, 1993.

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 Cary Green, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202-4651.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: December 28, 1992.

Wallace McPherson,

Acting Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: New
Title: Student Assistance General Provisions, Interlocutory Appeals
Frequency: On Occasion
Affected Public: Businesses or other for-profit; non-profit institutions; small businesses or organizations
Reporting Burden:
Responses: 30
Burden Hours: 240
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: The Department must provide an administrative appeal procedure for disputes regarding audit claims and enforcement actions against institutions of higher education in the student financial aid programs. The information will be used to consider appeals to the Secretary in these proceedings.

Office of Educational Research and Improvement

Type of Review: New
Title: Second Followup: Beginning Postsecondary Students Longitudinal Study Field Test and Full-Scale Survey
Frequency: Biennially
Affected Public: Individuals or households; businesses or others for profit; non-profit institutions; small businesses or organizations
Reporting Burden:
Responses: 1,345
Burden Hours: 859
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This study will collect, analyze, and report data about first-time entering postsecondary students in academic year 1988-89 and 1989-90.

Office of Policy and Planning

Type of Review: Revision
Title: Even Start Evaluation
Frequency: Semi-annually
Affected Public: Individuals or households; state or local governments
Reporting Burden:
Responses: 22,717
Burden Hours: 15,276
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This collection will analyze and report data on all Even Start local grantees that started their projects in 1989 or 1990. The Department will use the information for program analysis and to report to Congress.

[FR Doc. 92-31875 Filed 12-31-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 90-04-NG]

Rochester Gas and Electric Corp.; Final Authorization To Export and Import Natural Gas To and From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued a final order authorizing Rochester Gas and Electric Corporation (RG&E) to export up to 227.5 MMcf of natural gas per day to Canada near St. Clair, Michigan, and to import from Canada near Grand Island, New York, up to 227.5 MMcf per day. The term of the authorization is 15 years beginning on the date of RG&E's first export/import delivery on the proposed Empire State Pipeline system.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F-056, at 1000 Independence Avenue, SW., Washington, DC 20585. 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 on December 24, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-31916 Filed 12-31-92; 8:45 am]

BILLING CODE 6450-01-M

[FE DOCKET NO. 92-13-NG]

Selkirk Cogen Partners, L.P.; Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting authorization to Selkirk Cogen Partners, L.P. to import up to 55,000 Mcf of natural gas per day over a 15-year period beginning on the date of first delivery for use at a new 252 megawatt cogeneration facility it is constructing in Selkirk, New York.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F-056 at the above address. 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 on December 24, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-31918 Filed 12-31-92; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. FE-R-79-43B]

Electric and Gas Utilities Covered in 1993 by Titles I and III of the Public Utility Regulatory Policies Act of 1978 and Requirements for State Regulatory Authorities to Notify the Department of Energy

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice.

SUMMARY: Sections 102(c) and 301(d) of the Public Utility Regulatory Policies Act of 1978 (PURPA) require the Secretary of Energy to publish a list, before the beginning of each calendar year, identifying each electric utility and gas utility to which titles I and III of PURPA apply during such calendar year. The 1993 list is published here as two separate tabulations. Appendix A lists the covered utilities by State and appendix B lists them alphabetically.

Each State regulatory authority is required, pursuant to sections 102(c) and 301(d) of PURPA, to notify the Secretary of Energy of each electric utility and gas utility on the list for which such State regulatory authority has ratemaking authority. In addition, written comments are requested on the accuracy of the list of electric utilities and gas utilities.

DATES: Notifications by State regulatory authorities and written comments must be received by no later than 4:30 p.m. on February 15, 1993.

ADDRESSES: Notifications and written comments should be forwarded to: Department of Energy, Office of Coal and Electricity, FE-52, 1000 Independence Avenue, SW., room 3F-070, Docket No. FE-R-79-43B, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Steven Mintz, Office of Coal and Electricity, Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., room 3F-070, FE-52, Washington, DC 20585, Telephone 202/586-9506.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to sections 102(c) and 301(d) of PURPA, Public Law 95-617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*, hereinafter referred to as the Act) the Department of Energy (DOE) is required to publish a list of utilities to which Titles I and III of PURPA apply in 1993.

State regulatory authorities are required by the Act to notify the Secretary of Energy as to their ratemaking authority over the listed utilities. The inclusion or exclusion of any utility on or from the list does not affect the legal obligations of such utility or the responsible authority under the Act.

The term "State regulatory authority" means any State, including the District of Columbia and Puerto Rico, or a political subdivision thereof, and any agency or instrumentality, which has authority to fix, modify, approve, or disapprove rates with respect to the sale of electric energy or natural gas by any utility (other than such State agency). In the case of a utility for which the Tennessee Valley Authority (TVA) has ratemaking authority, the term "State regulatory authority" means the TVA.

Title I of PURPA sets forth ratemaking and regulatory policy standards with respect to electric utilities. Section 102(c) of Title I requires the Secretary of Energy to publish a list, before the beginning of each calendar year, identifying each electric utility to which title I applies during such calendar year. An electric utility is defined as any person, State agency, or Federal agency that sells electric energy. An electric utility is covered by title I for any calendar year if it had total sales of electric energy for purposes other than resale in excess of 500 million kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year. An electric utility is covered in 1993 if it exceeded the threshold in any year from 1976 through 1991.

Title III of PURPA addresses ratemaking and other regulatory policy standards with respect to natural gas utilities. Section 301(d) of title III requires the Secretary of Energy to publish a list, before the beginning of each calendar year, identifying each gas utility to which title III applies during such calendar year. A gas utility is defined as any person, State agency, or Federal agency, engaged in the local distribution of natural gas and the sale of natural gas to any ultimate consumer of natural gas. A gas utility is covered by title III if it had total sales of natural gas for purposes other than resale in excess of 10 billion cubic feet during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year. A gas utility is covered in 1993 if it exceeded the threshold in any year from 1976 through 1991.

In compiling the list published today, the DOE revised the 1992 list (56 FR 66310, December 20, 1991) upon the assumption that all entities included on the 1992 list are properly included on the 1993 list unless the DOE has information to the contrary. In doing this, the DOE took into account information included in public documents regarding entities which exceed the PURPA thresholds for the first time in 1991. The DOE believes that it will become aware of any errors or omissions in the list published today by means of the comment process called for by this Notice. The DOE will, after consideration of any comment and other information available to the DOE, provide written notice of any further additions or deletions to the list.

II. Notification and Comment Procedures

No later than 4:30 p.m. on February 15, 1993, each State regulatory authority must notify the Department of Energy in writing of each utility on the list over which it has ratemaking authority. Five copies of such notification should be submitted to the address indicated in the "ADDRESSES" section of this Notice and should be identified on the outside of the envelope and on the document with the designation "Docket No. FE-R-79-43B." Such notification should include:

1. A complete list of electric utilities and gas utilities over which the State regulatory authority has ratemaking authority;
2. legal citations pertaining to the ratemaking authority of the State regulatory authority; and
3. for any listed utility known to be subject to other ratemaking authorities within the State for portions of its service area, a precise description of the portion to which such notification applies.

All interested persons, including State regulatory authorities, are invited to comment in writing, no later than 4:30 p.m. on February 15, 1993, on any errors or omission with respect to the list. Two copies of such comments should be sent to the address indicated in the "ADDRESSES" section of this Notice and should be identified on the outside of the envelope and on the document with the designation "Docket No. FE-R-79-43B." Written comments should include the commenter's name, address, and telephone number.

All notifications and comments received by the DOE will be made available, upon request, for public inspection in the Freedom of Information Reading Room, room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

III. List of Electric Utilities and Gas Utilities

Appendices A and B contain two different tabulations of the utilities that meet PURPA coverage requirements. As

stated above, the inclusion or exclusion of any utility on or from the lists does not affect its legal obligations or those of the responsible State regulatory authority under PURPA.

Appendix A contains a list of utilities which are covered by PURPA. These utilities are grouped by State and by the regulatory authority within each State. Also included in this list are utilities which are covered by PURPA but which are not regulated by the State regulatory authority. This tabulation, including explanatory notes, is based on information provided to the DOE by State regulatory authorities in response to the December 20, 1991, **Federal Register** notice (56 FR 66310) requiring each State regulatory authority to notify the DOE of each utility on the list over which it has ratemaking authority, public comments received with respect to that notice, and information subsequently made available to the DOE.

The utilities classified in appendix A as not regulated by the State regulatory authority in fact may be regulated by local municipal authorities. These municipal authorities would be State agencies as defined by PURPA and thus have responsibilities under PURPA identical to those of the State regulatory authority. Therefore, each such municipality is to notify the DOE of each utility on the list over which it has ratemaking authority.

In appendix B, the utilities are listed alphabetically, subdivided into electric utilities and gas utilities, and further subdivided by type of ownership: investor-owned utilities, publicly-owned utilities, and rural cooperatives.

The changes to the 1992 list of electric and gas utilities are as follows:

Additions

Cap Rock Electric Cooperative, Inc. (TX)
Central Hudson Gas & Electric Corporation (NY)
Citizens Utilities Company (AZ)
Citizens Utilities Company (CO)
City of Fort Morgan Gas Department (CO)
ComFurT Gas, Incorporated (CO)
Dyersburg Electric System (TN)
Eastern Colorado Utility Company (CO)
Granite State Electric Company (NH)
Holy Cross Electric Association (CO)
Jonesboro Water & Light (AR)
Rocky Mountain Natural Gas, Division of K N Energy, Inc. (CO)
South Kentucky Rural Electric Cooperative (KY)
Town of Ignacio Municipal Utilities (CO)
Town of Rangley Gas Department (CO)

(Public Utility Regulatory Policies Act of 1978, Pub. L. 95–617, 92 Stat 3117 *et seq.* (16 U.S.C. 2601 *et seq.*)).

Issued in Washington, DC on December 24, 1992.

Charles F. Vacek,

Deputy Assistant Secretary, for Fuels Programs, Office of Fossil Energy.

Appendix A

All gas utilities listed below had natural gas sales, for purposes other than resale, in excess of 10 billion cubic feet in any year from 1976–1991.

All electric utilities listed below had electric energy sales, for purposes other than resale, in excess of 500 million kilowatt-hours in any year from 1976–1991.

State: Alabama

Regulatory Authority: Alabama Public Service Commission.

Gas Utilities

Investor-Owned:
Alabama Gas Corporation
Mobile Gas Service Corporation

Electric Utilities

Investor-Owned:
Alabama Power Company

The following covered utilities within the State of Alabama are not regulated by the Alabama Public Service Commission:

Electric Utilities

Publicly-Owned:
Athens Utilities
Decatur Electric Department
Dothan Electric Department
Florence Electric Department
Huntsvill Utilities
Rural Electric Cooperatives:
Cullman Electric Cooperative
Joe Wheeler Electric Membership Corporation
Rural Electric System

State: Alaska

Regulatory Authority: Alaska Public Utilities Commission.

Gas Utilities

Investor-Owned
Enstar Natural Gas Company

Electric Utilities

Rural Electric Cooperatives:
Chugach Electric Association
Publicly-Owned:
Anchorage Municipal Light & Power Department

State: Arizona

Regulatory Authority: Arizona Corporation Commission.

Gas Utilities

Investor-Owned:
Citizens Utilities Company
Southwest Gas Corporation

Electric Utilities

Investor-Owned:
Arizona Public Service Company
Tuscon Electric Power Company
Publicly-Owned:
Trico Electric Cooperative, Inc.
Rural Electric Cooperative:
Duncan Valley Electric Cooperative, Inc.

The following covered utilities within the State of Arizona are not regulated by the Arizona Corporation Commission:

Electric Utilities

Publicly-Owned:
Salt River Project Agricultural Improvement and Power District

State: Arkansas

Regulatory Authority: Arkansas Public Service Commission.

Gas Utilities

Investor-Owned:
Arkansas-Louisiana Gas Company
Arkansas-Oklahoma Gas Corporation
Arkansas Western Gas Company

Electric Utilities

Investor-Owned:
Arkansas Power and Light Company
Empire District Electric Company
Oklahoma Gas and Electric Company
Southwestern Electric Power Company
Rural Electric Cooperatives:
Arkansas Valley Electric Cooperative Corporation
Carroll Electric Cooperative Corporation
First Electric Cooperative Corporation
Mississippi County Electric Cooperative Corporation

The following covered utilities within the State of Arkansas are not regulated by the Arkansas Public Service Commission:

Electric Utilities

Publicly-Owned:
Jonesboro Water & Light
North Little Rock Electric Department

State: California

Regulatory Authority: California Public Utilities Commission.

Gas Utilities

Investor-Owned:
Pacific Gas and Electric Company
San Diego Gas and Electric Company
Southern California Gas Company
Southwest Gas Corporation

Electric Utilities

Investor-Owned:
Pacific Gas and Electric Company
Pacific Power and Light Company
San Diego Gas and Electric Company

Sierra Pacific Power Company
Southern California Edison Company

The following covered utilities within the State of California are not regulated by the California Public Utilities Commission:

Electric Utilities

Publicly-Owned:
Anaheim Public Utilities Department
Burbank Public Service Department
Glendale Public Service Department
Imperial Irrigation District
Los Angeles Department of Water and Power
Modesto Irrigation District
Palo Alto Electric Utility
Pasadena Water and Power Department
Riverside Public Utilities
Sacramento Municipal Utility District
Santa Clara Electric Department
Turlock Irrigation District
Vernon Municipal Light Department

Gas Utilities

Publicly-Owned:
Long Beach Gas Department

State: Colorado

Regulatory Authority: Colorado Public Utilities Commission.

Gas Utilities

Investor-Owned:
Citizens Utilities Company
ComFurT Gas, Incorporated
Eastern Colorado Utility Company
Greeley Gas Company
K N Energy, Incorporated
Peoples Natural Gas Company
Public Service Company of Colorado
Rocky Mountain Natural Gas Division of K N Energy, Inc.
Publicly-Owned:
City of Colorado Springs Department of Public Utilities
City of Fort Morgan Gas Department
Town of Ignacio Municipal Utilities
Town of Kangley Gas Department

Electric Utilities

Investor-Owned:
Public Service Company of Colorado
West Plains Energy

The following covered utilities within the State of Colorado are not regulated by the Colorado Public Utilities Commission:

Gas Utilities

Publicly-Owned:
Colorado Springs Department of Utilities (except sales to another gas utility)

Electric Utilities

Publicly-Owned:
Colorado Springs Department of Public Utilities
Rural Electric Cooperatives:
Holy Cross Electric Association
Intermountain Rural Association
Moon Lakes Electric Association

State: Connecticut

Regulatory Authority: Connecticut Department of Public Utility Control.

Gas Utilities

Investor-Owned:
Connecticut Natural Gas Corporation
Southern Connecticut Gas Company
Yankee Gas Service Company

Electric Utilities

Investor-Owned:
Connecticut Light and Power Company
United Illuminating Company
Publicly-Owned:
Groton Public Utilities

State: Delaware

Regulatory Authority: Delaware Public Service Commission.

Gas Utilities

Investor-Owned:
Delmarva Power and Light Company

Electric Utilities

Investor-Owned:
Delmarva Power and Light Company

State: District of Columbia

Regulatory Authority: Public Service Commission of the District of Columbia.

Gas Utilities

Investor-Owned:
Washington Gas Light Company

Electric Utilities

Investor-Owned:
Potomac Electric Power Company

State: Florida

Regulatory Authority: Florida Public Service Commission.

Gas Utilities

Investor-Owned:
City Gas Company of Florida
People Gas System

Electric Utilities

Investor-Owned:
Florida Power and Light Company
Florida Power Corporation
Gulf Power Company
Tampa Electric Company

The Florida Public Service Commission has rate structure jurisdiction over the following utilities:

Publicly-Owned:
Gainesville Regional Utilities
Jacksonville Electric Company
Kissimme Utility Authority
Lakeland Department of Electric and Water
Ocala Electric Authority
Orlando Utilities Commission
Tallahassee, City of
Rural Electric Cooperatives:
Clay Electric Cooperative
Lee County Electric Cooperative
Sumter Electric Cooperative, Inc.
Withlacoochee River Electric Cooperative

State: Georgia

Regulatory Authority: Georgia Public Service Commission.

Gas Utilities

Investor-Owned:
Atlanta Gas Light Company
United Cities Gas Company

Electric Utilities

Investor-Owned:
Georgia Power Company
Savannah Electric and Power Company

The following utilities within the State of Georgia are not regulated by the Georgia Public Service Commission:

Electric Utilities

Publicly-Owned:
Albany Water, Gas & Light Commission
Dalton Water, Light & Sink
Rural Electric Cooperatives:
Cobb Electric Membership Corporation
Flint Electric Membership Corporation
GreyStone Power Electric Membership Corporation
Jackson Electric Membership Corporation
North Georgia Electric Membership Corporation
Sawnee Electric Membership Corporation
Walton Electric Membership Corporation

State: Hawaii

Regulatory Authority: Hawaii Public Utilities Commission.

Electric Utilities

Investor-Owned:
Hawaii Electric Light Company, Inc.
Hawaiian Electric Company, Inc.
Maui Electric Company, Ltd.

State: Idaho

Regulatory Authority: Idaho Public Utilities Commission.

Gas Utilities

Investor-Owned:
Intermountain Gas Company

Washington Water Power Company

Electric Utilities

Investor-Owned:
Idaho Power Company
Pacific Power and Light Company
Utah Power and Light Company
Washington Water Power Company

State: Illinois

Regulatory Authority: Illinois Commerce Commission.

Gas Utilities

Investor-Owned:
Central Illinois Light Company
Central Illinois Public Service Company
Illinois Power Company
Iowa-Illinois Gas and Electric Company
North Shore Gas Company
Northern Illinois Gas Company
Panhandle Eastern Pipeline Company
Peoples Gas, Light, and Coke Company

Electric Utilities

Investor-Owned:
Central Illinois Light Company
Central Illinois Public Service Company
Commonwealth Edison Company
Interstate Power Company
Iowa-Illinois Gas and Electric Company
Union Electric Company

The following covered utility within the State of Illinois is not regulated by the Illinois Commerce Commission:

Electric Utilities

Publicly-Owned:
Springfield Water, Light and Power Department

State: Indiana

Regulatory Authority: Indiana Utility Regulatory Commission.

Gas Utilities

Investor-Owned:
Indiana Gas Company
Northern Indiana Public Service Company
Southern Indiana Gas and Electric Company
Publicly-Owned:
Citizens Gas and Coke Utility

Electric Utilities

Investor-Owned:
Indiana and Michigan Power Company
Indianapolis Power and Light Company
Northern Indiana Public Service Company
PSI Energy
Southern Indiana Gas and Electric Company
Publicly-Owned:
Richmond Power and Light

State: Iowa

Regulatory Authority: Iowa Utilities Board.

Gas Utilities

Investor-Owned:
Interstate Power Company
Iowa-Electric Light and Power Company
Iowa-Illinois Gas and Electric Company
Iowa Southern Utilities Company
Midwest Gas, Division of Iowa Public Service Company
Peoples Natural Gas Company, Division of Utilicorp United, Inc.
United Cities Gas Company, Great River Division

Electric Utilities

Investor-Owned:
Interstate Power Company
Iowa Electric Light and Power Company
Iowa-Illinois Gas and Electric Company
Iowa Power Incorporated
Iowa Southern Utilities Company
IPS Electric, Division of Iowa Public Service Company
Union Electric Company
Rural Electric Cooperatives:
Linn County RECA

The Iowa Utilities Board has service and safety regulation over the following utilities:

Publicly-Owned
Muscatine Power and Water
Omaha Public Power District

State: Kansas

Regulatory Authority: Kansas State Corporation Commission.

Gas Utilities

Investor-Owned:
Anadarko Production Company
Arkansas-Louisiana Gas Company
Greeley Gas Company
KN Energy, Incorporated
KPL Gas Service
Panhandle Eastern Pipeline Company
Peoples Natural Gas Company, Division of UtiliCorp United
United Cities Gas Company

Electric Utilities

Investor-Owned:
Empire District Electric Company
Kansas City Power and Light Company
Kansas Gas and Electric Company
KPL Gas Service
Southwestern Public Service Company
West Plains Energy, Division of UtiliCorp United
Rural Electric Cooperatives:
Midwest Energy Incorporated

The following covered utility within the State of Kansas is not regulated by the Kansas State Corporation Commission:

Electric Utilities

Publicly-Owned:
Kansas City Board of Public Utilities

State: Kentucky

Regulatory Authority: Kentucky Public Service Commission.

Gas Utilities

Investor-Owned:
Columbia Gas of Kentucky, Inc.
Louisville Gas and Electric Company
Union Light, Heat and Power Company
Western Kentucky Gas Company

Electric Utilities

Investor-Owned:
Kentucky Power Company
Kentucky Utilities Company
Louisville Gas and Electric Company
Union Light, Heat and Power Company
Rural Electric Cooperatives:
Green River Electric Corporation
Henderson-Union Rural Electric Cooperative Corporation
South Kentucky Rural Electric Cooperative

The following covered utilities within the State of Kentucky are not regulated by the Kentucky Public Service Commission:

Electric Utilities

Bowling Green Municipal Utilities
Owensboro Municipal Utilities
Pennyrile Rural Electric Cooperative Corporation
Warren Rural Electric Cooperative Corporation
West Kentucky Rural Electric Cooperative Corporation

State: Louisiana

Regulatory Authority: Louisiana Public Service Commission.

Gas Utilities

Investor-Owned:
Arkansas-Louisiana Gas Company
Entex, Inc.
Gulf States Utilities Company
Louisiana Gas Service Company
Trans Louisiana Gas Company
Publicly-Owned:
New Orleans Public Service, Inc.

Electric Utilities

Investor-Owned:

Central Louisiana Electric Company
Gulf States Utilities Company
Louisiana Power and Light Company (West Bank)
Southwestern Electric Power Company
Rural Electric Cooperatives:
Cajun Electric Power Cooperative
Dixie Electric Membership Corporation
Southwest Louisiana Electric Membership Corporation

The following covered utilities within the State of Louisiana are not regulated by the Louisiana Public Service Commission:

Electric Utilities

Publicly-Owned:
Lafayette Utilities System
New Orleans Public Service, Inc.

State: Maine

Regulatory Authority: Maine Public Utilities Commission.

Electric Utilities

Investor-Owned:
Bangor Hydro-Electric Company
Central Maine Power Company

State: Maryland

Regulatory Authority: Maryland Public Service Commission.

Gas Utilities

Investor-Owned:
Baltimore Gas and Electric Company
Washington, Gas Light Company

Eectric Utilities

Investor-Owned:
Baltimore Gas and Electric Company
Conowingo Power Company
Delmarva Power and Light—Company of Maryland
Potomac Edison Company
Potomac Electric Power Company
Rural Electric Cooperatives:
Southern Maryland Electric Cooperative, Inc.

State: Massachusetts

Regulatory Authority: Massachusetts Department of Public Utilities.

Gas Utilities

Investor-Owned:
Bay State Gas Company
Boston Gas Company
Colonial Gas Energy System
Commonwealth Gas Company

Electric Utilities

Investor-Owned:
Boston Edison Company
Cambridge Electric Light Company
Commonwealth Electric Company
Eastern Electric Company
Western Massachusetts Electric Company

State: Michigan

Regulatory Authority: Michigan Public Service Commission.

Gas Utilities

Investor-Owned:
Consumers Power Company
Michigan Consolidated Gas Company
Michigan Gas Company
Southeastern Michigan Gas Company
Wisconsin Public Service Corporation

Electric Utilities

Investor-Owned:
Consumers Power Company
Detroit Edison Company
Indiana and Michigan Electric Company
Michigan Power Company
Northern States Power
Upper Peninsula Power Company
Wisconsin Electric Power Company
Wisconsin Public Service Corporation

The following covered utilities within the State of Michigan are not regulated by the Michigan Public Service Commission:

Gas Utilities

Investor-Owned:
Battle Creek Gas Company

Electric Utilities

Publicly-Owned:
Lansing Board of water and Light

State: Minnesota

Regulatory Authority: Minnesota Public Utility Commission.

Gas Utilities

Investor-Owned:
Interstate Power Company
Midwest Gas, Division of Iowa Public Service Company
Minnegasco—Division of Arkla, Inc.
Northern Minnesota Utilities—Division of UtiliCorp United, Inc.
Northern States Power Company
Peoples Natural Gas Company—Division of UtiliCorp United, Inc.

Electric Utilities

Investor-Owned:
Interstate Power Company
Minnesota Power and Light Company
Northern States Power Company
Otter Tail Power Company
Rural Electric Cooperative:
Dakota Electric Association

The following covered utilities within the State of Minnesota are not regulated by the Minnesota Public Utility Commission:

Electric Utilities

Publicly-Owned:
Rochester Department of Public Utilities
Rural Electric Cooperative:
Anoka Electric Cooperative

State: Mississippi

Regulatory Authority: Mississippi Public Service Commission.

Gas Utilities

Investor-Owned:
Entex, Inc.
Mississippi Valley Gas Company

Electric Utilities

Investor-Owned:
Mississippi Power and Light Company
Mississippi Power Company

The following covered utilities within the State of Mississippi are not regulated by the Mississippi Public Service Commission:

Electric Utilities

Publicly-Owned:
Tupelo Water & Light Department
Rural Electric Cooperatives:
Alcorn County Electric Power Association
Coast Electric Power Association
4-County Electric Power Association
Singing River Electric Power Association
Southern Pine Electric Power Association
Tombigbee Electric Power Association

State: Missouri

Regulatory Authority: Missouri Public Service Commission.

Gas Utilities

Investor-Owned:
Associated Natural Gas Company
Kansas Power & Light Company
Laclede Gas Company
Missouri Public Service Company
Union Electric Company

Electric Utilities

Investor-Owned:
Arkansas Power & Light Company
Citizens Electric Corporation
Empire District Electric Company
Kansas City Power and Light Company
Missouri Public Service Company
St. Joseph Light and Power Company
Union Electric Company

The following covered utilities within the State of Missouri are not regulated by the Missouri Public Service Commission:

Gas Utilities

Investor-Owned:
Williams Natural Gas Company
Publicly-Owned:

Springfield City Utilities

Electric Utilities

Publicly-Owned:
Independence Power and Light Department
Springfield City Utilities

State: Montana

Regulatory Authority: Montana Public Service Commission.

Gas Utilities

Investor-Owned:
Montana-Dakota Utilities Company
Montana Power Company

Electric Utilities

Investor-Owned:
Black Hills Power and Light Company
Montana-Dakota Utilities Company
Montana Power Company
Pacific Power and Light Company
Washington Water Power Company

State: Nebraska

Regulatory Authority—Nebraska Public Service Commission.

The Commission does not regulate the rates and service of the gas and electric utilities of the State of Nebraska.

The following covered utilities within the State of Nebraska are not regulated by the Nebraska Public Service Commission:

Gas Utilities

Investor-Owned:
Gas Service Company
Midwest Gas, Division of Iowa Public Service Company
Minnegasco—Division of Arkla, Inc.
Northwestern Public Service Company
Peoples Natural Gas Company, Division of Utilicorp United, Inc.

Electric Utilities

Publicly-Owned:
Lincoln Electric System
Nebraska Public Power District
Omaha Public Power District

The governing body of each Nebraska municipality exercises ratemaking jurisdiction over gas utility rates, operations, and services provided by a gas utility within its city or town limits. These municipal authorities would be State agencies as defined by PURPA, and thus have responsibilities under PURPA identical to those of the State regulatory authority.

Publicly-Owned:
Metropolitan Utilities District of Omaha

State: Nevada

Regulatory Authority: Nevada Public Service Commission.

Gas Utilities

Investor-Owned:
Southwest Gas Corporation

Electric Utilities

Investor-Owned:
Idaho Power Company
Nevada Power Company
Sierra Pacific Power Company

State: New Hampshire

Regulatory Authority: New Hampshire Public Utilities Commission.

Electric Utilities

Investor-Owned:
Granite State Electric Company
Public Service Company of New Hampshire
Rural Electric Cooperatives:
New Hampshire Electric Cooperative, Inc.

State: New Jersey

Regulatory Authority: New Jersey Board of Public Utilities.

Gas Utilities

Investor-Owned:
Elizabethtown Gas Company
New Jersey Natural Gas Company
Public Service Electric and Gas Company
South Jersey Gas Company

Electric Utilities

Investor-Owned:
Atlantic City Electric Company
Jersey Central Power and Light Company
Public Service Electric and Gas Company
Rockland Electric Company

State: New Mexico

Regulatory Authority: New Mexico Public Service Commission.

Gas Utilities

Investor-Owned:
Gas Company of New Mexico

Electric Utilities

Investor-Owned:
El Paso Electric Company
Public Service Company of New Mexico
Southwestern Public Service Company
Texas-New Mexico Power Company
Rural Electric Cooperatives:
Duncan Valley Electric Cooperative, Inc.
Lea County Electric Cooperative, Inc.

State: New York

Regulatory Authority: New York Public Service Commission.

Gas Utilities

Investor-Owned:
Brooklyn Union Gas Company
Central Hudson Gas and Electric Corporation
Consolidated Edison Company of New York
Long Island Lighting Company
National Fuel Gas Distribution Corporation
New York State Electric and Gas Corporation
Niagara Mohawk Power Corporation
Orange and Rockland Utilities
Rochester Gas and Electric Corporation

Electric Utilities

Investor-Owned:
Central Hudson Gas and Electric Corporation
Consolidated Edison Company of New York
Long Island Lighting Company
New York State Electric and Gas Corporation
Niagara Mohawk Power Corporation
Orange and Rockland Utilities
Rochester Gas and Electric Corporation

The following covered utility within the State of New York is not regulated by the New York Public Service Commission:

Electric Utilities

Publicly-Owned:
New York Power Authority

State: North Carolina

Regulatory Authority: North Carolina Utilities Commission.

Gas Utilities

Investor-Owned:
North Carolina Natural Gas Corporation
Piedmont Natural Gas Company
Public Service Company, Inc. of North Carolina

Electric Utilities

Investor-Owned:
Carolina Power and Light Company
Duke Power Company
Nantahala Power & Light Company
Virginia Electric and Power Company

The following covered utilities within the State of North Carolina are not regulated by the North Carolina Utilities Commission:

Electric Utilities

Publicly-Owned:
Fayetteville Public Works Commission
Greenville Utilities Commission
High Point Electric Utility Department
Rocky Mount Public Utilities
Wilson Utilities Department
Rural Electric Cooperatives:

Blue Ridge Electric Membership Corporation
Rutherford Electric Membership Corporation

State: North Dakota

Regulatory Authority: North Dakota Public Service Commission.

Gas Utilities

Investor-Owned:
Montana Dakota Utilities Company
Northern States Power Company

Electric Utilities

Investor-Owned:
Montana Dakota Utilities Company
Northern States Power Company
Otter Tail Power Company

State: Ohio

Regulatory Authority: Ohio Public Utilities Commission.

Gas Utilities

Investor-Owned:
Cincinnati Gas and Electric Company
Columbia Gas of Ohio, Inc.
Dayton Power and Light Company
East Ohio Gas Company
National Gas and Oil Company
West Ohio Gas Company

Electric Utilities

Investor-Owned:
Cincinnati Gas and Electric Company
Cleveland Electric Illuminating Company
Columbus and Southern Ohio Electric Company
Dayton Power and Light Company
Monongahela Power Company
Ohio Edison Company
Ohio Power Company
Toledo Edison Company

The following covered utilities within the State of Ohio are not regulated by the Ohio Public Utilities Commission:

Electric Utilities

Publicly-Owned:
Cleveland Division of Light and Power
Rural Electric Cooperative:
South Central Power Company

State: Oklahoma

Regulatory Authority: Oklahoma Corporation Commission.

Gas Utilities

Investor-Owned:
Arkansas-Louisiana Gas Company
Arkansas-Oklahoma Gas Corporation
KPL Gas Service Company
Oklahoma Natural Gas Company
Southern Union Gas Company

Electric Utilities

Investor-Owned:
Empire District Electric Company
Oklahoma Gas and Electric Company
Public Service Company of Oklahoma
Southwestern Public Service Company
Rural Electric Cooperative:
Cotton Electric Cooperative

State: Oregon

Regulatory Authority: Public Utility Commission of Oregon.

Gas Utilities

Investor-Owned:
Cascade Natural Gas Corporation
Northwest Natural Gas Company
Washington Water Power Company

Electric Utilities

Investor-Owned:
Idaho Power Company
Pacific Power and Light Company
Portland General Electric Company

The following covered utilities within the State of Oregon are not regulated by the Public Utility Commission of Oregon:

Electric Utilities

Publicly-Owned:
Central Lincoln People's Utility District
Clatskanie People's Utility District
Eugene Water and Electric Board
Springfield Utility Board
Rural Electric Cooperatives:
Oregon Trail Electric
Umatilla Electric Cooperative Association

State: Pennsylvania

Regulatory Authority: Pennsylvania Public Utility Commission.

Gas Utilities

Investor-Owned:
Carnegie Natural Gas Company
Columbia Gas of Pennsylvania, Inc.
Equitable Gas Company
National Fuel Gas Distribution Corporation
North Penn Gas Company
Pennsylvania Gas and Water Company
Peoples Natural Gas Company
Philadelphia Electric Company
T.W. Phillips Gas and Oil Company
UGI Corporation

Electric Utilities

Investor-Owned:
Duquesne Light Company
Metropolitan Edison Company
Pennsylvania Electric Company
Pennsylvania Power Company
Pennsylvania Power and Light Company
Philadelphia Electric Company
UGI—Luzerne Electric Company
West Penn Power Company

The following covered utility within the State of Pennsylvania is not regulated by the Pennsylvania Public Utility Commission:

Gas Utilities

Publicly-Owned:
Philadelphia Gas Works

State: Puerto Rico

Regulatory Authority: Puerto Rico Public Service Commission.

The following covered utility within Puerto Rico is not regulated by the Puerto Rico Public Service Commission:

Electric Utilities

Publicly-Owned:
Puerto Rico Electric Power Authority

State: Rhode Island

Regulatory Authority: Rhode Island Public Utilities Commission.

Gas Utilities

Investor-Owned:
Providence Gas Company

Electric Utilities

Investor-Owned:
Blackstone Valley Electric Company
Narragansett Electric Company

State: South Carolina

Regulatory Authority: South Carolina Public Service Commission.

Gas Utilities

Investor-Owned:
Carolina Pipeline Company
Piedmont Natural Gas Company
South Carolina Electric and Gas Company

Electric Utilities

Investor-Owned:
Carolina Power and Light Company
Duke Power Company
South Carolina Electric and Gas Company

The following covered utilities within the State of South Carolina are not regulated by the South Carolina Public Service Commission:

Electric Utilities

Publicly-Owned:
South Carolina Public Service Authority
Rural Electric Cooperatives:
Berkeley Electric Cooperatives, Inc.
Palmetto Electric Cooperatives, Inc.

State: South Dakota

Regulatory Authority: South Dakota Public Utilities Commission.

Gas Utilities

Investor-Owned:

Midwest Gas, Division of Iowa Public Service Company
Minnegasco, Inc.
Montana-Dakota Utilities Company
Northwestern Public Service Company

Electric Utilities

Investor-Owned:
Black Hills Power and Light Company
IPS Electric, Division of Iowa Public Service Company
Montana-Dakota Utilities Company
Northern States Power Company
Northwestern Public Service Company
Otter Tail Power Company

The following covered utility within the State of South Dakota is not regulated by the South Dakota Public Service Commission:

Electric Utilities

Publicly-Owned:
Nebraska Public Power District

State: Tennessee

Regulatory Authority: Tennessee Public Service Commission.

Gas Utilities

Investor-Owned:
Chattanooga Gas Company
Nashville Gas Company

Electric Utilities

Investor-Owned:
Kingsport Power Company

The following covered utilities within the State of Tennessee are not regulated by the Tennessee Public Service Commission.

Gas Utilities

Publicly-Owned:
Memphis Light, Gas and Water Division

Electric Utilities

Publicly-Owned:
Bristol Tennessee Electric System
Chattanooga Electric Power Board
Clarksville Department of Electricity
Cleveland Utilities
Greenville Light and Power System
Jackson Utility Division-Electric Department
Johnson City Power Board
Knoxville Utilities Board
Lenior City Utilities Board
Memphis Light, Gas and Water Division
Murfreesboro Electric Department
Nashville Electric Service
Sevier County Electric System
Rural Electric Cooperatives:
Appalachian Electric Cooperative
Cumberland Electric Membership Corporation
Duck River Electric Membership Cooperative
Gibson County Electric Membership Corporation
Meriwether Lewis Electric Cooperative
Middle Tennessee Electric Membership Corporation
Southwest Tennessee Electric Membership Corporation
Tri-County Electric Membership Corporation
Upper Cumberland Electric Membership Corporation
Volunteer Electric Cooperative
Regulatory Authority: Tennessee Valley Authority.

Electric Utilities

Publicly-Owned:
Athens Utilities
Bowling Green Municipal Utilities
Bristol Tennessee Electric System
Chattanooga Electric Power Board
Clarksville Department of Electricity
Cleveland Utilities
Clinton Utilities Board
Decatur Electric Department
Dyersburg Electric System
Florence Electric Department
Greeneville Light and Power System
Huntsville Utilities
Jackson Utility Division-Electric Department
Johnson City Power Board
Knoxville Utilities Board
Lenoir City Utilities Board
Memphis Light, Gas and Water Division
Morristown Power System
Murfreesboro Electric Department
Nashville Electric Service
Sevier County Electric System
Tupelo Water and Light Department
Rural Electric Cooperatives:
Alcorn County Electric Company Association
Appalachian Electric Cooperative
Cullman Electric Cooperative
Cumberland Electric Membership Corporation
Duck River Electric Membership Corporation
4-County Electric Power Association
Gibson County Electric Membership Corporation
Holston Electric Cooperative
Joe Wheeler Electric Membership Corporation
Meriwether Lewis Electric Cooperative
Middle Tennessee Electric Membership Corporation
North Georgia Electric Membership Corporation
Pennyrile Rural Electric Cooperative Corporation
Sequachee Valley Electric Cooperative
Southwest Tennessee Electric Membership Corporation
Tombigbee Electric Power Association
Tri-County Electric Membership Corporation
Upper Cumberland Electric Membership Corporation
Volunteer Electric Cooperative
Warren Rural Electric Cooperative Corporation
West Kentucky Rural Electric Cooperative Corporation

State: Texas

Regulatory Authority: Texas Public Utility Commission.

Electric Utilities

Investor-Owned:
Central Power and Light Company
El Paso Electric Company
Gulf States Utilities Company
Houston Lighting and Power Company
Southwestern Electric Power Company
Southwestern Electric Service Company
Southwestern Public Service Company
Texas-New Mexico Power Company
TU Electric
West Texas Utilities Company
Publicly-Owned:
Lower Colorado River Authority
Rural Electric Cooperatives:
Bluebonnet Electric Cooperative, Inc.
Cap Rock Electric Cooperative, Inc.
Guadalupe Valley Electric Cooperative, Inc.
Pedernales Electric Cooperative, Inc.
Sam Houston Electric Cooperative, Inc.
Tri-County Electric Cooperative, Inc.

The governing body of each Texas municipality exercises exclusive original jurisdiction over electric utility rates, operations, and services provided by an electric utility (whether privately owned or publicly owned) within its city or town limits, unless the municipality has surrendered this jurisdiction to the Texas Public Utility Commission. The Commission hears *de novo* appeals from the decision of such municipalities. These municipal authorities would be State agencies as defined by PURPA and, thus, have responsibilities under PURPA identical to those of a State regulatory authority.

The municipally owned utilities listed below are not under the commission's original ratemaking jurisdiction:

Electric Utilities

Publicly-Owned:
Austin Electric Department
Brownsville PUB
Bryan, City of

Garland Electric Department
Lubbock Power and Light
San Antonio City Public Service Board

Regulatory Authority: Railroad Commission of Texas.

Gas Utilities

Investor-Owned:
Atmos Energy Corporation
Entex, Inc.
Lone Star Gas Company, a division of ESERCH Corporation
Southern Union Company

The governing body of each Texas municipality exercises exclusive original ratemaking jurisdiction over gas utility rates, operations, and services provided by a gas utility within its city or town limits subject to appellate review by the Railroad Commission of Texas. These municipal authorities would be State agencies as defined by PURPA and, thus, have responsibilities under PURPA identical to those of a State regulatory authority.

The following covered utilities within the State of Texas are not regulated by the Railroad Commission of Texas. (The Railroad Commission's appellate authority does not extend to municipally owned gas utilities.)

Gas Utilities

Publicly-Owned
City Public Service Board (San Antonio)

State: Utah

Regulatory Authority: Utah Public Service Commission.

Gas Utilities

Investor-Owned:
Mountain Fuel Supply Company

Electric Utilities

Investor-Owned:
Utah Power and Light Company
Rural Electric Cooperatives:
Atmos Energy Corporation
Moon Lake Electric Association

State: Vermont

Regulatory Authority: Vermont Public Service Board.

Electric Utilities

Investor-Owned:
Central Vermont Public Service Corporation
Green Mountain Power Corporation
Public Service Company of New Hampshire

State: Virginia

Regulatory Authority: Virginia State Corporation Commission.

Gas Utilities

Investor-Owned:
Columbia Gas of Virginia, Inc.
Commonwealth Gas Services, Inc.
Northern Virginia Natural Gas
Virginia Natural Gas

Electric Utilities

Investor-Owned:
Appalachian Power Company
Delmarva Power and Light Company
Old Dominion Power Company
Potomac Edison Company
Virginia Electric and Power Company
Rural Electric Cooperatives:
Northern Virginia Electric Cooperative
Rappahannock Electric Cooperative

The following covered utilities within the State of Virginia are not regulated by the Virginia State Corporation Commission:

Gas Utilities

Publicly-Owned:
City of Richmond, Virginia, Department of Public Utilities

Electric Utilities

Publicly-Owned:
Danville Water, Gas & Electric

State: Washington

Regulatory Authority: Washington Utilities and Transportation Commission.

Gas Utilities

Investor-Owned:
Cascade Natural Gas Corporation
Northwest Natural Gas Company
Washington Natural Gas Company
Washington Water Power Company

Electric Utilities

Investor-Owned:
Pacific Power & Light Company
Puget Sound Power & Light Company
Washington Water Power Company

The following covered utilities within the State of Washington are not regulated by the Washington Utilities and Transportation Commission:

Electric Utilities

Publicly-Owned:
Port Angeles Light and Water Department
Public Utility District No. 1 of Benton County
Public Utility District No. 1 of Chelan County
Public Utility District No. 1 of Clark County
Public Utility District No. 1 of Cowlitz County
Public Utility District No. 1 of Douglas County
Public Utility District No. 1 of Franklin County
Public Utility District No. 1 of Grays County
Public Utility District No. 1 of Lewis County
Public Utility District No. 1 of Snohomish County
Public Utility District No. 2 of Grant County
Richland Energy Service Department
Seattle City Light Department
Tacoma Public Utilities—Light Division

State: West Virginia

Regulatory Authority: West Virginia Public Service Commission.

Gas Utilities

Investor-Owned:
Equitable Gas Company
Hope Gas Incorporated
Mountaineer Gas Company

Electric Utilities

Investor-Owned:
Appalachian Power Company
Monongahela Power Company
Potomac Edison Company
Wheeling Electric Company

State: Wisconsin

Regulatory Authority: Wisconsin Public Service Commission.

Gas Utilities

Investor-Owned:
Madison Gas and Electric Company
Northern States Power Company
Wisconsin Fuel and Light Company
Wisconsin Gas Company
Wisconsin Natural Gas Company
Wisconsin Power and Light Company
Wisconsin Public Service Corporation

Electric Utilities

Investor-Owned:
Madison Gas and Electric Company
Northern States Power Company
Wisconsin Electric Power Company
Wisconsin Power and Light Company
Wisconsin Public Service Corporation

State: Wyoming

Regulatory Authority: Wyoming Public Service Commission.

Gas Utilities

Investor-Owned:
Cheyenne Light, Fuel and Power Company
Kansas-Nebraska Natural Gas Company
Montana-Dakota Utilities Company
Mountain Fuel Supply Company

Electric Utilities

Investor-Owned:
Black Hills Power and Light Company
Montana-Dakota Utilities Company
Pacific Power and Light Company
Utah Power and Light Company

Rural Electric Cooperative:
Tri-County Electric Association, Inc.

Appendix B

Electric Utilities

All utilities listed below had electric energy sales, for purposes other than resale, in excess of 500 million kilowatt hours in any year from 1976–1991. The utilities listed more than once have sales in more than one State, and those States are indicated by abbreviations in parentheses.

Investor-Owned:
Alabama Power Company
Appalachian Power Company (VA)
Appalachian Power Company (WV)
Arizona Public Service Company
Arkansas Power & Light Company (AR)
Arkansas Power & Light Company (MO)
Atlantic City Electric Company
Baltimore Gas & Electric Company
Bangor Hydro-Electric Company
Black Hills Power & Light Company (MT)
Black Hills Power & Light Company (SD)
Black Hills Power & Light Company (WY)
Blackstone Valley Electric Company
Boston Edison Company
Cambridge Electric Light Company
Carolina Power & Light Company (NC)
Carolina Power & Light Company (SC)
Central Hudson Gas & Electric Corporation
Central Illinois Light Company
Central Illinois Public Service Company
Central Louisiana Electric Company
Central Maine Power Company
Central Power & Light Company
Central Vermont Public Service Corporation
Cincinnati Gas & Electric Company
Citizens Electric Corporation
Cleveland Electric Illuminating Company
Columbus and Southern Ohio Electric Company
Commonwealth Edison Company
Commonwealth Electric Company
Connecticut Light & Power Company
Conowingo Power Company
Consolidated Edison Company of New York
Consumers Power Company
Dayton Power & Light Company
Delmarva Power & Light Company (DE)
Delmarva Power & Light Company (VA)
Delmarva Power & Light Company of Maryland
Detroit Edison Company
Duke Power Company (NC)
Duke Power Company (SC)
Duquesne Light Company
Eastern Electric Company
El Paso Electric Company (NM)
El Paso Electric Company (TX)
Empire District Electric Company (AR)
Empire District Electric Company (KS)
Empire District Electric Company (MO)
Empire District Electric Company (OK)
Florida Power Corporation
Florida Power & Light Company
Georgia Power Company
Granite State Electric Company
Green Mountain Power Corporation
Gulf Power Company
Gulf States Utilities Company (LA)
Gulf States Utilities Company (TX)
Hawaii Electric Light Company, Inc.
Hawaiian Electric Company, Inc.
Houston Lighting and Power Company
Idaho Power Company (ID)
Idaho Power Company (NV)
Idaho Power Company (OR)
Illinois Power Company
Indiana & Michigan Power Company (IN)
Indiana & Michigan Power Company (MI)
Indianapolis Power & Light Company
Interstate Power Company (IA)
Interstate Power Company (IL)
Interstate Power Company (MN)
Iowa Electric Light & Power Company
Iowa-Illinois Gas & Electric Company (IA)
Iowa-Illinois Gas & Electric Company (IL)
Iowa Power Incorporated
Iowa Southern Utilities Company
IPS Electric, Division of Iowa Public Service Co. (IA)
IPS Electric, Division of Iowa Public Service Co. (SD)
Jersey Central Power & Light Company
Kansas City Power & Light Company (KS)
Kansas City Power & Light Company (MO)
Kansas Gas & Electric Company
Kentucky Electric Company
Kentucky Utilities Company
Kingsport Power Company
KPL Gas Service (KS)
Long Island Lighting Company
Louisiana Power & Light Company
Louisville Gas & Electric Company
Madison Gas & Electric Company
Massachusetts Electric Company
Maui Electric Company, Ltd.
Metropolitan Edison Company
Michigan Power Company
Minnesota Power & Light Company
Mississippi Power Company
Mississippi Power & Light Company
Missouri Public Service Company
Monongahela Power Company (OH)
Monongahela Power Company (WV)
Montana-Dakota Utilities Company (MT)
Montana-Dakota Utilities Company (ND)
Montana-Dakota Utilities Company (SD)
Montana-Dakota Utilities Company (WY)
Montana Power Company
Nantahala Power & Light Company
Narragansett Electric Company
Nevada Power Company
New Orleans Public Service, Inc.
New York State Electric & Gas Corporation
Niagara Mohawk Power Company
Northern Indiana Public Service Company
Northern States Power Company (MI)
Northern States Power Company (MN)
Northern States Power Company (ND)
Northern States Power Company (SD)
Northern States Power Company (WI)
Northwestern Public Service Company
Ohio Edison Company
Ohio Power Company
Oklahoma Gas & Electric Company (AR)
Oklahoma Gas & Electric Company (OK)
Old Dominion Power Company
Orange & Rockland Utilities
Otter Tail Power Company (MN)
Otter Tail Power Company (ND)
Otter Tail Power Company (SD)
Pacific Gas & Electric Company
Pacific Power & Light Company (CA)
Pacific Power & Light Company (ID)
Pacific Power & Light Company (MT)
Pacific Power & Light Company (OR)
Pacific Power & Light Company (WA)
Pacific Power & Light Company (WY)
Pennsylvania Electric Company
Pennsylvania Power & Light Company
Pennsylvania Power Company
Philadelphia Electric Company
Portland General Electric Company
Potomac Edison Company (MD)
Potomac Edison Company (VA)
Potomac Edison Company (WV)
Potomac Electric Power Company (DC)
Potomac Electric Power Company (MD)
PSI Energy (IN)
Public Service Company of Colorado
Public Service Company of New Hampshire (NH)
Public Service Company of New Hampshire (VT)
Public Service Company of New Mexico
Public Service Company of Oklahom

Public Service Electric and Gas Company
Puget Sound Power & Light Company
Rochester Gas & Electric Corporation
Rockland Electric Company
St. Joseph Light & Power Company
San Diego Gas & Electric Company
Savannah Electric & Power Company
Sierra Pacific Power Company (CA)
Sierra Pacific Power Company (NV)
South Carolina Electric & Gas Company
Southern California Edison Company
Southern Indiana Gas & Electric Company
Southwestern Electric Power Company (AR)
Southwestern Electric Power Company (LA)
Southwestern Electric Power Company (TX)
Southwestern Electric Service Company
Southwestern Public Service Company (KS)
Southwestern Public Service Company (NM)
Southwestern Public Service Company (OK)
Southwestern Public Service Company (TX)
Tampa Electric Company
Texas-New Mexico Power Company
Toledo Edison Company
TU Electric
Tucson Electric Power Company
UGI-Luzerne Electric Division
Union Electric Company (IA)
Union Electric Company (IL)
Union Electric Company (MO)
Union Light, Heat & Power Company
United Illuminating Company
Upper Peninsula Power Company
Utah Power & Light Company (ID)
Utah Power & Light Company (UT)
Utah Power & Light Company (WY)
Virginia Electric & Power Company (NC)
Virginia Electric & Power Company (VA)
Washington Water Power company (ID)
Washington Water Power Company (MT)
Washington Water Power Company (WA)
West Penn Power Company
West Plains Energy (CO)
West Texas Utilities Company
Western Massachusetts Electric Company
West Plains Energy, Division of UtiliCorp United (KS)
Wheeling Electric Company
Wisconsin Electric Power Company (MI)
Wisconsin Electric Power Company (WI)
Wisconsin Power & Light Company
Wisconsin Public Service Corporation (MI)
Wisconsin Public Service Corporation (WI)
Publicly-Owned:
Albany Water, Gas & Light Commission (GA)
Anaheim Public Utilities Department (CA)
Anchorage Municipal Light & Power Department (AK)
Athens Utilities (AL)
Austin Electric Department (TX)
Bowling Green Municipal Utilities (KY)
Bristol Tennessee Electric System (TN)
Brownsville Public Utility Board (TX)
Bryan, City of (TX)
Burbank Public Service Department (CA)
Central Lincoln People's Utility District (OR)
Chattanooga Electric Power Board (TN)
Clarksville Department of Electricity (TN)
Clatskanie People's Utility District (OR)
Cleveland Division of Light & Power (OH)
Cleveland Utilities (TN)
Clinton Utilities Board (TN)
Colorado Springs Department of Public Utilities (CO)
Dalton Water, Light & Sink (CA)
Danville Water, Gas & Electric (VA)
Decatur Electric Department (AL)
Dothan Electric Department (AL)
Dyersburg Electric System (TN)
Eugene Water & Electric Board (OR)
Fayetteville Public Works Commission (NC)
Florence Electric Department (AL)
Gainesville Regional Utilities (FL)
Garland Electric Department (TX)
Glendale Public Service Department (CA)
Greenville Light & Power System (TN)
Groton Public Utilities (CT)
High Point Electric Utility Dept. (NC)
Huntsville Utilities (AL)
Imperial Irrigation District (CA)
Independence Power & Light Department (MO)
Jackson Utility Division-Electric Department (TN)
Jacksonville Electric Authority (FL)
Johnson City Power Board (TN)
Jonesboro Water & Light (AR)
Kansas City Board of Public Utilities (KS)
Kissimmee Utility Authority (FL)
Knoxville Utilities Board (TN)
Lafayette Utilities System (LA)
Lakeland Department of Electric and Water (FL)
Lansing Board of Water & Light (MI)
Lenoir City Utilities Board (TN)
Lincoln Electric System (NE)
Los Angeles Department of Water and Power (CA)
Lower Colorado River Authority (TX)
Lubbock Power & Light (TX)
Memphis Light, Gas & Water Division (TN)
Modesto Irrigation District (CA)
Morristown Power System (TN)
Murfreesboro Electric Dept. (TN)
Muscatine Power & Water (IA)
Nashville Electric Service (TN)
Nebraska Public Power District (NE)
Nebraska Public Power District (SD)
New York Power Authority (NY)
North Little Rock Electric Department (AR)
Ocala Electric Authority (FL)
Omaha Public Power District (IA)
Omaha Public Power District (NE)
Orlando Utilities Commission (FL)
Owensboro Municipal Utilities (KY)
Palo Alto Electric Utility (CA)
Pasadena Water & Power Department (CA)
Port Angeles Light & Water Department (WA)
Public Utility District No. 1 of Benton County (WA)
Public Utility District No. 1 of Chelan County (WA)
Public Utility District No. 1 of Clark County (WA)
Public Utility District No. 1 of Cowlitz County (WA)
Public Utility District No. 1 of Douglas County (WA)
Public Utility District No. 1 of Franklin County (WA)
Public Utility District No. 1 of Grays Harbor County (WA)
Public Utility District No. 1 of Lewis County (WA)
Public Utility District No. 1 of Snohomish County (WA)
Public Utility District No. 2 of Grant County (WA)
Puerto Rico Electric Power Authority
Richland Energy Services Department (WA)
Richmond Power & Light (IN)
Riverside Public Utilities (CA)
Rochester Department of Public Utilities (MN)
Rocky Mount Public Utilities (NC)
Sacramento Municipal Utility District (CA)
Salt River Project Agricultural Improvement and Power District (AZ)
San Antonio City Public Service Board (TX)
Santa Clara Electric Department (CA)
Seattle City Light Department (WA)
Sevier County Electric System (TN)
South Carolina Public Service Authority
Springfield City Utilities (MO)
Springfield Utility Board (OR)

Springfield Water, Light & Power Department (IL)
Tacoma Public Utilities-Light Division (WA)
Trico Electric Cooperative, Inc. (AZ)
Tallahassee, City of (FL)
Tupelo Water & Light Department (MS)
Turlock Irrigation District (CA)
Vernon Municipal Light Department (CA)
Wilson Utilities Department (NC)

Rural Electric Cooperatives:
Alcorn County Electric Power Association (MS)
Anoka Electric Cooperative (MN)
Appalachian Electric Cooperative (TN)
Arkansas Valley Electric Cooperative Corporation (AR)
Berkeley Electric Cooperative (SC)
Bluebonnet Electric Cooperatives, Inc. (TX)
Blue Ridge Electric Membership Corporation (NC)
Cajun Electric Power Cooperative (LA)
Cap Rock Electric Cooperative, Inc. (TX)
Carroll Electric Cooperative Corporation (AR)
Chugach Electric Cooperative (AK)
Clay Electric Cooperative (FL)
Coast Electric Power Association (MS)
Cobb Electric Membership Corporation (GA)
Cotton Electric Cooperative (OK)
Cullman Electric Cooperative (AL)
Cumberland Electric Membership Corporation (TN)
Dakota Electric Association (MN)
Dixie Electric Membership Corporation (LA)
Duck River Electric Membership Corporation (TN)
Duncan Valley Electric Cooperative, Inc. (AZ, NM)
First Electric Cooperative Corporation (AR)
Flint Electric Membership Corporation (GA)
4-County Electric Power Association (MS)
Gibson County Electric Membership (TN)
Green River Electric Corporation (KY)
GreyStone Power Corporation (GA)
Guadalupe Valley Electric Cooperative, Inc. (TX)
Henderson-Union Rural Electric Cooperative Corporation
Holston Electric Cooperative (TN)
Holy Cross Electric Association (CO)
Intermountain Rural Electric (CO)
Jackson Electric Membership Corporation (GA)
Joe Wheeler Electric Membership Corporation (AL)
Lea County Electric Cooperative, Inc. (NM)
Lee County Electric Cooperative (FL)
Linn County Rural Electric Cooperative Association (IA)
Meriwether Lewis Electric Cooperative (TN)
Middle Tennessee Electric Membership Corporation (TN)
Midwest Energy Incorporated (KS)
Mississippi County ECC (AR)
Moon Lake Electric Association (CO)
New Hampshire Electric Cooperative, Inc. (NH)
Northern Virginia Electric Cooperative (VA)
North Georgia Electric Membership Corporation (GA)
Oregon Trail Electric
Palmetto Electric Cooperative, Inc. (SC)
Pedernales Electric Cooperative Corporation, Inc. (TX)
Pennyrile Rural Electric Cooperative Corporation (KY)
Rappahannock Electric Cooperative (VA)
Rural Electric System (AL)
Rutherford Electric Membership Corporation (NC)
Sam Houston Electric Cooperative, Inc. (TX)
Sawnee Electric Membership Corporation (GA)
Sequachee Valley Electric Cooperative (TN)
Singing River Electric Power Association (MS)
South Central Power Company (OH)
Southern Maryland Electric Cooperative, Inc. (MD)
Southern Pine Electric Power Association (MS)
South Kentucky Rural Electric Cooperative (KY)
Southwest Louisiana Electric Membership Corporation (LA)
Southwest Tennessee Electric Membership Corporation (TN)
Sumter Electric Cooperative (FL)
Tombigbee Electric Power Association (MS)
Tri-County Electric Association, Inc. (WY)
Tri-County Electric Cooperative, Inc. (TX)
Tri-County Electric Membership Corporation (TN)
Umatilla Electric Cooperative Association (OR)
Upper Cumberland Electric Membership Corporation (TN)
Volunteer Electric Cooperative (TN)
Walton Electric Membership Corporation (GA)
Warren Rural Electric Cooperative Corporation (KY)
West Kentucky Rural Electric Cooperative Corporation (KY)
Withlacoochee River Electric Cooperative (FL)

Federal Agencies:
Bonneville Power Administration (OR)
Tennessee Valley Authority (TN)
Western Area Power Administration (CO)

Gas Utilities

All gas utilities listed below had natural gas sales, for purposes other than resale, in excess of 10 billion cubic feet in any year from 1976–1991. The utilities listed more than once have sales in more than one State and those States are indicated by abbreviations in parentheses.

Investor-Owned:
Alabama Gas Corporation
Anadarko Production Company
Arkansas-Louisiana Gas Company (AR)
Arkansas-Louisiana Gas Company (KS)
Arkansas-Louisiana Gas Company (LA)
Arkansas-Oklahoma Gas Corporation (OK)
Arkansas-Oklahoma Gas Corporation (AR)
Arkansas Western Gas Company
Associated Natural Gas Company (MO)
Atlanta Gas Light Company
Atmos Energy Corporation
Baltimore Gas & Electric Company
Battle Creek Gas Company
Bay State Gas Company
Boston Gas Company
Brooklyn Union Gas Company
Carnegie Natural Gas Company
Carolina Pipeline Company
Cascade Natural Gas Corporation (OR)
Cascade Natural Gas Corporation (WA)
Central Hudson Gas and Electric Corporation (NY)
Central Illinois Light Company
Central Illinois Public Service Company
Chattanooga Gas Company (TN)
Cheyenne Light, Fuel and Power Company
Cincinnati Gas and Electric Company
Citizens Utilities Company (AZ)
Citizens Utilities Company (CO)
City Gas Company of Florida
Colonial Gas Energy System
Columbia Gas of Kentucky, Inc.
Columbia Gas of Ohio, Inc.
Columbia Gas of Pennsylvania, Inc.
Columbia Gas of Virginia, Inc.
ComFurt Gas Incorporated (CO)
Commonwealth Gas Company
Commonwealth Gas Service Incorporated
Commonwealth Gas Services, Incorporate
Connecticut Natural Gas Corporation

Consolidated Edison Company of New York, Inc.
Consumers Power Company
Dayton Power & Light Company
Delmarva Power & Light Company (DE)
East Ohio Gas Company
Eastern Colorado Utility Company
Elizabethtown Gas Company
Enstar Natural Gas Company
Entex Inc. (LA)
Entex Inc. (MS)
Entex Inc. (TX)
Equitable Gas Company (PA)
Equitable Gas Company (WV)
Gas Company of New Mexico
Gas Service Company (NE)
Greeley Gas Company (CO)
Greeley Gas Company (KS)
Gulf States Utilities Company
Hope Gas, Incorporated
Illinois Power Company
Indiana Gas Company
Intermountain Gas Company
Interstate Power Company (IA)
Interstate Power Company (MN)
Iowa Electric Light & Power Company
Iowa-Illinois Gas & Electric Company (IA)
Iowa-Illinois Gas & Electric Company (IL)
Iowa Southern Utilities Company
Kansas-Nebraska Natural Gas Company (WY)
Kansas Power & Light Company (MO)
K N Energy, Inc. (CO)
K N Energy, Inc. (KS)
KPL Gas Service Company (KS)
KPL Gas Service Company (OK)
Laclede Gas Company Consolidated
Lone Star Gas Company, a division of ENSERCH Corp. (TX)
Long Island Lighting Company
Louisiana Gas Service Company
Louisville Gas & Electric Company
Madison Gas & Electric Company
Michigan Consolidated Gas Company
Michigan Gas Company
Midwest Gas, Division of Iowa Public Service Company (IA)
Midwest Gas, Division of Iowa Public Service Company (MN)
Midwest Gas, Division of Iowa Public Service Company (NE)
Midwest Gas, Division of Iowa Public Service Company (SD)
Minnegasco—Division of Arkla, Inc. (MN)
Minnegasco—Division of Arkla, Inc. (NE)
Minnegasco—Division of Arkla, Inc. (SD)
Mississippi Valley Gas Company
Missouri Public Service Company
Mobile Gas Service Corporation
Montana-Dakota Utilities Company (MT)
Montana-Dakota Utilities Company (ND)
Montana-Dakota Utilities Company (SD)
Montana-Dakota Utilities Company (WY)
Montana Power Company
Mountaineer Gas Company
Mountain Fuel Supply Company (UT)
Mountain Fuel Supply Company (WY)
Nashville Gas Company
National Fuel Gas Distribution Corporation (NY)
National Fuel Gas Distribution Corporation (PA)
National Gas and Oil Company
New Jersey Natural Gas Company
New Orleans Public Service, Inc.
New York State Electric & Gas Corporation
Niagara Mohawk Power Company
North Carolina Natural Gas Corporation
North Shore Gas Company
Northern Illinois Gas Company
Northern Indiana Public Service Company
Northern Minnesota Utilities-Division of UtiliCorp United, Inc.
Northern Natural Gas Company (KS)
Northern Natural Gas Company (NE)
Northern States Power Company (MN)
Northern States Power Company (ND)
Northern States Power Company (WI)
North Penn Gas Company
Northwest Natural Gas Company (OR)
Northwest Natural Gas Company (WA)
Northwestern Public Service Company (NE)
Northwestern Public Service Company (SD)
Oklahoma Natural Gas Company
Orange & Rockland Utilities
Pacific Gas & Electric Company
Panhandle Eastern Pipeline Company (IL)
Panhandle Eastern Pipeline Company (KS)
Pennsylvania Gas & Water Company
Peoples Gas, Light and Coke Company
Peoples Gas System
Peoples Natural Gas Company
Peoples Natural Gas Company (CO)
Peoples Natural Gas Company, Division of UtiliCorp United, Inc. (IA)
Peoples Natural Gas Company, Division of UtiliCorp United, Inc. (KS)
Peoples Natural Gas Company, Division of UtiliCorp United, Inc. (MN)
Peoples Natural Gas Company, Division of UtiliCorp United, Inc. (NE)
Philadelphia Electric Company
Piedmont Natural Gas Company (NC)
Piedmont Natural Gas Company (SC)
Providence Gas Company
Public Service Company of Colorado
Public Service Company of North Carolina
Public Service Electric and Gas Company
Rochester Gas & Electric Corporation
Rocky Mountain Natural Gas Division of K N Energy, Inc.
San Diego Gas & Electric Company
South Carolina Gas & Electric Company
South Jersey Gas Company
Southwestern Michigan Gas Company
Southern California Gas Company
Southern Connecticut Gas Company
Southern Indiana Gas & Electric Company
Southern Union Company (TX)
Southern Union Gas Company (OK)
Southwest Gas Corporation (AZ)
Southwest Gas Corporation (CA)
Southwest Gas Corporation (NV)
Trans Louisiana Gas Company
T.W. Phillips Gas and Oil Company
UGI Corporation
Union Electric Company
Union Light, Heat & Power Company (KY)
United Cities Gas Company (KS)
United Cities Gas Company (GA)
United Cities Gas Company, Great River Division
Virginia Natural Gas
Washington Gas Light Company (DC)
Washington Gas Light Company (MD)
Washington Gas Light Company (VA)
Washington Natural Gas Company
Washington Water Power Company (ID)
Washington Water Power Company (OR)
Washington Water Power Company (WA)
West Ohio Gas Company
Western Kentucky Gas Company
Williams Natural Gas Company
Wisconsin Fuel & Light Company
Wisconsin Gas Company
Wisconsin Natural Gas Company
Wisconsin Power & Light Company
Wisconsin Public Service Corporation (MI)
Wisconsin Public Service Corporation (WI)
Yankee Gas Services Company (CT)

Publicly-Owned:
Citizens Gas & Coke Utility (IN)
City of Fort Morgan Gas Dept. (CO)
City of Richmond, Department of Public Utilities (VA)
City Public Services Board (San Antonio, TX)
Colorado Springs, Department of Public Utilities (CO)
Long Beach Gas Department (CA)
Memphis Light, Gas & Water Division (TN)
Metropolitan Utilities District of Omaha (NE)

Philadelphia Gas Works (PA)
Springfield City Utilities (MO)
Town of Ignacio Municipal Utilities (CO)
Town of Rangley Gas Department (CO)

[FR Doc. 92-31915 Filed 12-31-92; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4551-3]

Science Advisory Board Environmental Engineering Committee Modeling Project Subcommittee; Open Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Science Advisory Board's (SAB's) Modeling Project Subcommittee (MPS) of the Environmental Engineering Committee (EEC), will meet on Thursday, January 14 through Friday, January 15, 1993. The meeting will be at the Howard Johnson National Airport Hotel, 2650 Jefferson Davis Highway, Arlington, VA 22202 (telephone number is (703) 684-7200). On Thursday, January 14, 1993 the MPS will meet from 9 a.m. to 5 p.m. On Friday, January 15, 1993 the MPS will meet starting at 8:30 a.m. and will adjourn no later than 4 p.m.

At this meeting, the MPS will be briefed on the Office of Solid Waste and Emergency Response (OSWER) Draft Policy on Modeling, with particular attention paid to OSWER's assessment framework for groundwater model applications. Specifically, the SAB is requested to review the draft guidance entitled "Assessment Framework for Ground-Water Model Applications," and to address the following questions: (1) Is the substance of the Framework scientifically correct?; (2) Does the Framework address groundwater model application activities with as much completeness as is acceptable and necessary?; (3) Does the Framework provide help from the project management perspective for managing model applications?; (4) Will the use of the Framework serve to aid the OSWER staff in improving the management of its modeling activities?; and (5) Is there additional information or direction which should be added to Project Management Requirements for Modeling teams, and the Model Code and Public Domain?

The meeting is open to the public and seating will be on a first come basis. Any member of the public wishing further information, such as a proposed agenda on the meeting should contact Dr. K. Jack Kooyoomjian, Designated Federal Official, or Mrs. Diana L. Pozun, Secretary, Science Advisory Board (A101F), U.S. Environmental Protection Agency, Washington, DC 20460, at (202) 260-6552. Anyone wishing copies of the draft report entitled "Assessment Framework for Ground-Water Model Applications," should contact Ms. Mary Lou Melley of OSWER's Information Management Staff at (202) 260-6860. Written comments received by January 4, 1993 will be mailed to the SAB's MPS; comments received after that date will be provided to the MPS at the meeting. Written comments of any length (at least 35 copies) may be provided to the Subcommittee up until the meeting.

Members of the public who wish to make a brief oral presentation should contact Dr. K. Jack Kooyoomjian no later than January 7, 1993. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of five minutes.

Dated: December 14, 1992.

A. Robert Flaak,

Acting, Staff Director, Science Advisory Board.

[FR Doc. 92-31907 Filed 12-31-92; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Office of the Assistant Secretary for Health; Statement of Organization, Functions and Delegations of Authority

Part H, Public Health Service (PHS), Chapter HA (Office of the Assistant Secretary for Health) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (42 FR 61318, December 2, 1977, as amended most recently at 57 FR 47107-08, October 14, 1992), is amended to reflect changes to the functions of the Office on Women's Health (HAW) within the Office of the Assistant Secretary for Health to reflect more accurately current activities associated with women's health issues.

Office of the Assistant Secretary for Health

Under Part H, Chapter HA, Office of the Assistant Secretary for Health, Section HA-20, Functions, following the title and statement for the Division of Payment Management (HAU45), delete the title and statement for the Office on Women's Health (HAW) and add the following title and statement:

Office of Women's Health (HAW). The Director, Office on Women's Health, serves as the principal advisor to the Assistant Secretary for Health on scientific, legal, ethical, and policy issues relating to women's health. The issues cut across all PHS components which provide research, service, prevention, promotion, treatment, training, education, and dissemination of information. The crosscutting categories include the health priorities addressed in the PHS Action Plan on Women's Health, and the objectives outlined in Healthy People 2000 which specifically address women's health. The Office:

(1) Coordinates the programmatic aspects of PHS agencies in regard to issues relating to women's health;

(2) Serves as a locus within PHS to identify changing needs, to recommend new studies, and to assess new challenges to the health of women;

(3) Serves as a focal point within PHS to coordinate the continuing implementation of recommendations of the report of the PHS Task Force on Women's Health Issues in the context of the health objectives for the year 2000;

(4) Monitors the PHS Action Plan for Women's Health;

(5) Assures liaison with relevant PHS agencies and offices; and

(6) Provides staff support to the PHS Coordinating Committee on Women's Health Issues in furthering their charge;

(7) Facilitates the expansion of services and access to health care for all women, particularly women of low socioeconomic status and those who are socially or geographically isolated; and

(8) assesses the opportunities for women in assuming leadership positions in the PHS.

Dated: December 16, 1992.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 92-31894 Filed 12-31-92; 8:45 am]
BILLING CODE 4160-17-M

Social Security Administration

Statement of Organization, Functions and Delegation of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services covers the Social Security Administration (SSA). Chapter S4

covers the Deputy Commissioner, Systems. Notice is hereby given that subchapter S4H, the Office of Systems Requirements, is being amended to reflect the realignment of the Office of Pre-Claims Requirements (S4HB). Notice is further given that subchapter S4J, the Office of Systems Planning and Integration, is being amended to reflect revised functions and division level title changes. Notice is further given that subchapter S4K, the Office of Information Management, is being amended to reflect the abolishment of the Division of Office Systems and to update functions in the remaining divisions. The changes are as follows:

Section S4H.10 *The Office of Systems Requirements*—(Organization)

E. The Office of Pre-Claims Requirements (S4HB).

Delete:

1. The Division of Enumeration and Employer Identification (S4HB1) in its entirety.

Retitle and Renumber:

2. The Division of Earnings Reporting and Maintenance (S4HB2) to: "1. The Division of Earnings Control and Processing (S4HB2)."

Renumber:

"3" to "2"."

Retitle and Renumber:

4. The Division of User Support and Interfaces (S4HB4) to: "3. The Division of Data Support and Enumeration (S4HB4)."

Renumber:

"5" to "4."

Section S4H.20 *The Office of Systems Requirements*—(Functions)

E. The Office of Pre-Claims Requirements (S4HB).

Delete:

1. The Division of Enumeration and Employer Identification (S4HB1) in its entirety.

Retitle and Renumber:

2. The Division of Earnings Reporting and Maintenance (S4HB2) to: "1. The Division of Earnings Control and Processing (S4HB2)."

Delete:

a. In its entirety.

Add:

a. Plans, develops, evaluates and implements organizational information requirements, functional specifications, procedures, instructions and standards, including those relating to security and fraud detection, for reporting private and public sector earnings data; for establishment, correction and maintenance of earnings records; for reconciling disagreements and resolving discrepancies; for the establishment and maintenance of employer identification information; for the classification of employers; for the employer reporting control and SSA/IRS reconciliation process; and for State and local reporting audit and reconciliation.

Delete:

c. thru f. In their entirety.

Add:

c. Develops and maintains a comprehensive, updated and integrated set of systems requirements specifications for the earnings reporting and maintenance process, State and local contribution and liability, and the employer identification and control process.

d. Performs requirements analyses and definition, conveying SSA-approved user needs and requirements in the areas of earnings reporting, State and local contributions and liability, and employer identification and control to the Office of Systems Design and Development (OSDD) for the development of ADP specifications and system design.

e. Evaluates legislative proposals, regulations and policy changes affecting the earnings reporting process, State and local contributions and liability, and the employer identification and control process.

f. Represents users in resolving systems discrepancies and errors relating to the existing earnings reporting and maintenance process, existing State and local contributions and liability, and employer identification and control processes with OSDD and the Office of Systems Operations' (OSO's) representatives.

Renumber:

3. The Division of Earnings Correction and Certification (S4HB3) to "2."

Delete:

c. thru f. In their entirety.

Add:

c. Develops and maintains a comprehensive, updated and integrated set of system requirements specifications for earnings data use and data accessing processes.

d. Performs requirements analyses and definition, conveying SSA-approved user needs and requirements in the area of earnings data use and data accessing processes to OSDD for the development of ADP specifications and systems design.

e. Evaluates legislative proposals, regulations and policy changes affecting use and maintenance of earnings data and data accessing processes.

f. Represents users in resolving system discrepancies and errors relating to earnings data uses and data accessing processes with OSDD and OSO representatives.

Retitle and Renumber:

4. The Division of User Support and Interface (S4HB4) to: "3. The Division of Data Support and Enumeration (S4HB4)."

Delete:

a. In its entirety.

Add:

a. Plans, develops, validates, evaluates and implements organizational information requirements, functional specifications, procedures, instructions and standards, including security and fraud detection for data exchanges between SSA systems and other Federal and State agencies; data bases; data base access for information, and teleprocessing; for the establishment, correction and maintenance of Social Security numbers; for the issuance of new or replacement cards; and for the Death Master, News and Tride files.

Delete:

c. thru f. In their entirety.

Add:

c. Develops and maintains a comprehensive, updated and integrated set of systems requirements specifications for the enumeration process and for interface and data base access processes.

d. Performs requirements analyses and definition, conveying SSA-approved user needs and requirements in the areas of enumeration, data base accesses and interfaces to OSDD for the development of ADP specifications and systems design.

e. Evaluates legislative proposals, regulations and policy changes affecting enumeration process and system interfaces.

f. Represents users in resolving system discrepancies and errors relating to the existing interface and enumeration process with OSDD and OSO representatives.

Renumber:

"5" to "4."

Section S4J.10 *The Office of Systems Planning and Integration*—(Organization)

C. The Immediate Office of the Director, Office of Systems Planning and Integration (S4J).

Delete:

1. The Data Administration Staff (S4J–1) in its entirety.

Retitle:

E. The Division of Systems Planning (S4JB) to: "The Division of Technology Assessment and Training (S4JB)."

Retitle:

F. The Division of Financial, Procurement and Information Management (S4JC) to: "The Division of Systems Planning and Budget (S4JC)."

Section S4J.20 *The Office of Systems Planning and Integration*—(Function)

C. The Immediate Office of the Director, Office of Systems Planning and Integration (S4J).

Delete:

1. The Data Administration Staff (S4J–1) in its entirety.

Delete:

D. The Division of Systems Engineering (S4JA) in its entirety.

Add:

D. The Division of Systems Engineering (S4JA) is responsible for SSA-wide data administration including responsibility for the overall operation of the SSA Data Resource Management Program. It is responsible for the development of Systems-wide policies, procedures and standards for all phases of the systems life cycle development process; development of methods to assure the quality of systems products; and development and maintenance of the Software Engineering Technology, which includes the policies, standards, guidelines, procedures, tools and training elements pertaining to the following software life cycle stages: Requirements definition and analysis, design, programming, validation, operation and review. The Division develops proposals and recommendations for new software engineering methods for use at SSA, based on extensive research into various methodologies utilized by other data processing installations. Develops and maintains quality assurance procedures and mechanisms to assure that software products satisfy user requirements and conform to the defined standards, guidelines and procedures of SSA systems.

Retitle:

E. The Division of Systems Planning (S4JB) to: "The Division of Technology Assessment and Training (S4JB)."

Revise in its entirety:

E. The Division of Technology Assessment and Training (S4JB) is responsible for assessment of new technologies and planning for and acquiring technical training for systems personnel. The Division analyzes the current SSA data processing environment, future systems requirements and technology forecasts to evaluate the applicability of new technologies to SSA processes. It develops pilot projects to evaluate technologies, particularly in the area of artificial intelligence and expert systems, for selected applications. The Division evaluates technical and nontechnical training needs for all Systems offices and coordinates and evaluates vendor provided and in-house training as applicable.

Retitle:

F. The Division of Financial, Procurement and Information Management (S4JC) to: "The Division of Systems Planning and Budget (S4JC)."

Revise in its entirety:

F. The Division of Systems Planning and Budget (S4JC) is responsible for development of SSA's Information Systems Plan (ISP) which sets forth SSA's major systems goals and objectives and the initiatives/projects to achieve them. It develops the Systems 5-year Information Technology Systems (ITS) plan and budget. It directs the fiscal management and tracking of ITS procurements and keeps management abreast of the status of all ITS acquisitions, systems life cycle costs and full-time equivalent utilization. The Division functions as an advisor and consultant to the Director, Office of Systems Planning and Integration, and the Deputy Commissioner for Systems, on all matters related to the development and execution of the ISP and the 5-year plan and budget. The Division is responsible for ongoing, formal change control procedures for the ISP and monitoring and reporting progress toward ISP project goals. It identifies major systems integration issues and develops alternative solutions and recommendations to the Deputy Commissioner for Systems. It also designs and maintains software systems and such as the Resource Accounting System to track and report on personnel and computer resource utilization. The Division operates the Systems Management Center, a fully-automated multimedia briefing center, and designs briefing material for SSA executive staff.

Section S4K.10 *The Office of Information Management*—(Organization)

Delete:

D. The Division of Office Systems (S4KA) in its entirety.

Reletter:

"E" to "D," "F" to "E," "G" to "F" and "H" to "G."

Section S4K.20 *The Office of Information Management*—(Functions)

Delete:

D. The Division of Office Systems (S4KA) in its entirety.

Reletter:

"E" to "D," "F" to "E," "G" to "F" and "H" to "G."

E. The Division of Information Resource Management (S4KB).

Delete:

1. In its entirety:

Add:

1. Coordinates with the staff components under the Deputy Commissioner for Systems on all areas within Division control, (e.g., ITS budget, management information systems design and delivery, ongoing user support.)

Add:

9. Plans, implements, integrates and controls Office Automation (OA) software functions at SSA and is responsible for development and dissemination of OA software acquisition and development policies, standards, guidelines and procedures.

10. Monitors technology trends and maintains current information on OA software products, development tools and techniques.

11. Works with SSA users to provide solutions to their OA requirements that are consistent with Agency OA policies.

12. Assists SSA users in refining OA requirements, configuring and engineering solutions, coordinating implementation and evaluating effectiveness.

13. Assists SSA users in determining OA applications, software and training needs, implementing solutions, planning for expansion.

14. Provides a full range of initial and follow-up OA applications, software and development support for SSA users in requirements analysis, system design, engineering, implementation and training.

15. Directs the preparation, acquisition and management of contracts for OA/end-user computing/MI hardware, software and support services.

F. The Division of Information Systems Policy and Administration (S4KC).

Add:

8. Responsible for formulating and maintaining the Information Systems Architecture supporting SSA's administrative and management information systems.

9. Responsible for developing systems requirements and validation in support of new automated management information systems.

10. Provides fourth and fifth generation computer language support to end-users and developers of Admin/MI systems.

Dated: December 15, 1992.

Ruth A. Pierce,

Deputy Commissioner for Human Resources.

[FR Doc. 92-31895 Filed 12-31-92; 8:45 am]

BILLING CODE 4190-29-M

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS. (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Denise L. Goss, Program Assistant, Division of Workplace Programs, room 9-A-54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443-6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100-71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

AccuTox Analytical Laboratories, 427 Fifth Avenue, NW., P.O. Box 770, Attalla, AL 35954-0770, 205-538-0012/800-247-3893

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Road, Suite 21, Nashville, TN 37211, 615-331-5300

Alabama Reference Laboratories, Inc., 543 South Hull Street, Montgomery, AL 36103, 800-541-4931/205-263-5745

Allied Clinical Laboratories, 201 Plaza Boulevard, Hurst, TX 76053, 817-282-2257

American Medical Laboratories, Inc., 14225 Newbrook Drive, Chantilly, VA 22021, 703-802-6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, Suite 250, Las Vegas, NV 89119-5412, 702-733-7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801-583-2787

Baptist Medical Center—Toxicology Laboratory, 9601 I-630, Exit 7, Little Rock, AR 72205-7299, 501-227-2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414-355-4444/800-877-7016

Bellin Hospital—Toxicology Laboratory, 215 N. Webster Ave., Green Bay, WI 54301, 414-433-7485

Bioran Medical Laboratory, 415 Massachusetts Avenue, Cambridge, MA 02139, 617-547-8900

California Toxicology Services, 1925 East Dakota Avenue, suite 206, Fresno, CA 93726, 209-221-5655/800-448-7600

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305-325-5810

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310-215-6020

Clinical Pathology Facility, Inc., 711 Bingham Street, Pittsburgh, PA 15203, 412-488-7500

Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800-445-6917

CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919-549-8263/800-833-3984

CompuChem Laboratories, Special Division, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919-549-8263

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Avenue, Springfield, MO 65802, 800-876-3652/417-836-3093

CPF MetPath Laboratories, 21007 Southgate Park Boulevard, Cleveland, OH 44137-3054 800-338-0166 (outside OH)/800-362-8913 (inside OH) (name changed: formerly Southgate Medical Laboratory; Southgate Medical Services, Inc.)

Damon Clinical Laboratories, 140 East Ryan Road, Oak Creek, WI 53154, 800-638-1100 (name changed: formerly Chem-Bio Corporation; CBC Clinilab)

Damon Clinical Laboratories, 8300 Esters Blvd., suite 900, Irving, TX 75063 214-929-0535

Doctors & Physicians Laboratory, 801 East Dixie Avenue, Leesburg, FL 32748, 904-787-9006

Drug Labs of Texas, 15201 I-10 East, suite 125, Channelview, TX 77530, 713-457-3784

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215-674-9310

Eagle Forensic Laboratory, Inc., 950 North Federal Highway, Suite 308, Pompano Beach, FL 33062, 305-946-4324

Eastern Laboratories, Ltd., 95 Seaview Boulevard, Port Washington, NY 11050, 516-625-9800

ElSohly Laboratories, Inc., 1215-1/2 Jackson Ave., Oxford, MS 38655, 601-236-2609

Employee Health Assurance Group, 405 Alderson Street, Schofield, WI 54476, 800-627-8200 (name change: formerly Alpha Medical Laboratory, Inc.)

General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608-267-6267

Harrison & Associates Forensic Laboratories, 606 N. Weatherford, P.O. Box 2788, Midland, TX 79702, 800-725-3784/915-687-6877

HealthCare/Preferred Laboratories, 24451 Telegraph Road, Southfield, MI 48034, 800-328-4142 (inside MI)/800-225-9414 (outside MI)

Hermann Hospital Toxicology Laboratory, Hermann Professional Building, 6410

Fannin, suite 354, Houston, TX 77030, 713-793-6080
IHC Laboratory Services Forensic Toxicology, 930 North 500 West, suite E, Provo, UT 84604 800-967-9766
Jewish Hospital of Cincinnati, Inc., 3200 Burnet Avenue, Cincinnati, Ohio 45229, 513-569-2051
Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206-386-2672
Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504-392-7961
Marshfield Laboratories, 1000 North Oak Avenue, Marshfield, WI 54449, 715-389-3734/800-222-5835
Mayo Medical Laboratories, 200 S.W. First Street, Rochester, MN 55905, 507-284-3631
Med-Chek Laboratories, Inc., 4900 Perry Highway, Pittsburgh, PA 15229, 412-931-7200
MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901-795-1515
MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc., 9176 Independence Avenue, Chatsworth, CA 91311, 818-718-0115/800-331-8670 (outside CA)/800-464-7081 (inside CA) (name changed: formerly Laboratory Specialists, Inc.; Abused Drug Laboratories)
MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc., 2356 North Lincoln Avenue, Chicago, IL 60614, 312-880-6900 (name changed: formerly Bio-Analytical Technologies)
MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 800-832-3244/612-636-7466
Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Boulevard, Indianapolis, IN 46202, 317-929-3587
Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 800-752-1835/309-671-5199
MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 708-595-3888
MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201-393-5000
MetWest-BPL Toxicology Laboratory, 18700 Oxnard Street, Tarzana, CA 91356, 800-492-0800/818-343-8191
National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 410-536-1485 (name changed: formerly Maryland Medical Laboratory, Inc.)
National Drug Assessment Corporation, 5419 South Western, Oklahoma City, OK 73109, 800-749-3784 (name changed: formerly Med Arts Lab)
National Health Laboratories Incorporated, 2540 Empire Drive, Winston-Salem, NC 27103-6710, 919-760-4620/800-334-8627 (outside NC)/800-642-0894 (inside NC)
National Health Laboratories Incorporated, 75 Rod Smith Place, Cranford, NJ 07016-2843, 908-272-2511
National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A-15, Nashville, TN 37217, 615-360-3992/800-800-4522
National Health Laboratories Incorporated, 13900 Park Center Road, Herndon, VA 22071, 703-742-3100/800-572-3734 (inside VA)/800-336-0391 (outside VA)
National Psychopharmacology Laboratory, Inc.,9320 Park W. Boulevard, Knoxville, TN 37923, 800-251-9492
National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805-322-4250
Nichols Institute Substance Abuse Testing (NISAT), 7470-A Mission Valley Road, San Diego, CA 92108-4406, 800-446-4728/619-686-3200 (name changed: formerly Nichols Institute)
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800-322-3361
Occupational Toxicology Laboratories, Inc., 2002 20th Street, suite 204A, Kenner, LA 70062, 504-465-0751
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Avenue, Eugene, OR 97440-0972, 503-687-2134
Parke DeWatt Laboratories, Division of Comprehensive Medical Systems, Inc., 1810 Frontage Rd., Northbrook, IL 60062, 708-480-4680
Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509-926-2400
PDLA, Inc. (Precision), 5 Industrial Park Drive, Oxford, MS 38655, 601-236-5600/800-237-7352
PDLA, Inc. (Princeton),100 Corporate Court, So. Plainfield, NJ 07080, 908-769-8500/800-237-7352
PharmChem Laboratories, Inc., 1505-A O'Brien Drive, Menlo Park, CA 94025, 415-328-6200/800-446-5177
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Drive, Fort Worth, TX 76118, 817-595-0294, (Formerly: Harris Medical Laboratory)
Physicians Reference Toxicology Laboratory, 7800 West 110th Street, Overland Park, KS 66210, 913-338-4070
Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619-279-2600/800-882-7272
Precision Analytical Laboratories, Inc., 13300 Blanco Road, suite #150, San Antonio, TX 78216, 512-493-3211
Puckett Laboratory, 4200 Mamie Street, Hattiesburgh, MS 39402, 601-264-3856/800-844-8378
Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206-882-3400
Resource One, Inc., Seven Pointe Circle, Greenville, SC 29615, 803-233-5639
Roche Biomedical Laboratories, 1801 First Avenue South, Birmingham, AL 35233, 205-581-4170
Roche Biomedical Laboratories, 1957 Lakeside Parkway, suite 542, Tucker, GA 30084, 404-939-4811
Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601-342-1286
Roche Biomedical Laboratories, Inc., 69 First Avenue, Raritan, NJ 08869, 800-437-4986
Scott & White Drug Testing Laboratory, 600 S. 25th Street, Temple, TX 76504, 800-749-3788
S.E.D. Medical Laboratories, 500 Walter NE, suite 500, Albuquerque, NM 87102, 505-848-8800
Sierra Nevada Laboratories, Inc., 888 Willow Street, Reno, NV 89502, 800-648-5472
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818-376-2520
SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404-934-9205 (name changed: formerly SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708-885-2010 (name changed: formerly International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 11636 Administration Drive, St. Louis, MO 63146, 314-567-3905
SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800-523-5447 (name changed: formerly SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214-638-1301 (name changed: formerly SmithKline Bio-Science Laboratories)
South Bend Medical Foundation, Inc., 530 N. Lafayette Boulevard, South Bend, IN 46601, 219-234-4176
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee Street, Oklahoma City, OK 73102, 405-272-7052
St. Louis University Forensic Toxicology Laboratory, 1205 Carr Lane, St. Louis, MO 63104, 314-577-8628
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, suite 208, Columbia, MO 65203, 314-882-1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Avenue, Miami, FL 33166, 305-593-2260

No laboratories have voluntarily withdrawn from the National Laboratory Certification Program.

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 92-31899 Filed 12-31-92; 8:45 am]

BILLING CODE 4160-20-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-921-08-4120-03; NDM 81582]

Coal Lease Application—NDM 81582—The Coteau Properties Company; Intent To Hold Scoping Meetings To Solicit Comments for the Preparation of an Environmental Analysis for Federal Coal Resources Within the Fort Union Coal Production Region, North Dakota

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of intent to hold scoping meetings to solicit comments for the

preparation of an environmental analysis for the proposed lease tracts.

SUMMARY: On December 18, 1992, The Coteau Properties Company filed a lease application, NDM 81582, for federal coal resources within the Fort Union Coal Production Region.

The land included in Coal Lease Application NDM 81582 is located in Mercer County, North Dakota, and is described as follows:

T. 145 N., R. 86 W., 5th P.M.
Sec. 6: Lots 3,4,5, SE¼NW¼.
Sec. 8: E½E½, NW¼NW¼, SE¼NW¼, SE¼SW¼, SW¼SE¼.
Sec. 18: E½.
792.90 acres—Mercer County.

The application will be processed in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181, *et seq.*), and the implementing regulations at 43 CFR Part 3400. A decision to allow leasing of the coal resources in said tract will result in a competitive lease sale to be held at a time and place to be announced through publication pursuant to 43 CFR Part 3422.

An environmental analysis will be prepared to analyze the proposed leasing of these federal coal resources and the reasonably foreseeable consequences of this action as well as the impacts of development of the coal.

All interested parties, including federal, state, and local agencies are invited to participate in the environmental analysis scoping process.

The scoping process used to collect issues and concerns on the proposed lease application will involve a public meeting and a written-comment period which will begin immediately and will close on January 15, 1993.

DATES: Written response and comments will be accepted now through January 15, 1993. A public meeting will be held on January 11, 1993, at 7 p.m. Mountain Standard Time at the Civic Center, 250 7th Street NE, Beulah, North Dakota.

SUPPLEMENTARY INFORMATION: The Coteau Properties Company submitted Coal Lease Application NDM 81582 as a result of the United States Department of the Interior's grant of a Category 5 Federal Royalty Rate Reduction for Coteau's federal lease numbers NDM 071813 and NDM 78697, situated within Coteau's Freedom Mine.

The tracts included in Coal Lease Application NDM 81582 are not presently scheduled to be mined. In the event Coteau is successful in obtaining a coal lease covering these tracts, a Category 5 Federal Royalty Rate Reduction Application will be submitted. Upon issuance of the reduction, Coteau will amend its mine plan and permits to provide for the mining of the coal underlying these tracts. In the absence of such a reduction, these tracts will remain bypassed.

Coteau is under contract with Dakota Coal Company which supplies coal to Dakota Gasification Company's synfuels plant, Basin Electric Power Cooperative's Antelope Valley Station and Leland Olds Station, and United Power Association's Stanton Station. The current annual coal production from the Freedom Mine is projected to range from 13.5 million tons in 1992 to 15.5 million tons in 1994, depending on the coal requirements of Dakota Coal Company.

The application is available for review between the hours of 9 a.m. to 4 p.m. at the Bureau of Land Management, Montana State Office, 222 North 32nd Street, Billings, Montana 59101, and at the Bureau of Land Management Dickinson District Office, whose address is 2933 Third Avenue West, Dickinson, North Dakota 58601–2619 between the hours of 7:45 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: For additional information regarding this application, please contact Jackie Samsal at (406) 255–2830, or Coal Coordinator Ed Hughes at (406) 255–2813, at the Bureau of Land Management, Montana State Office, 222 North 32nd Street, Billings, Montana 59107–6800.

All comments and requests for additional information concerning the scoping process should be addressed to Douglas J. Burger, District Manger, Bureau of Land Management, Dickinson District, 2933 Third Avenue West, Dickinson, North Dakota 58601–2619.

Douglas J. Burger,
District Manager.

[FR Doc. 92–31789 Filed 12–31–92; 8:45 am]
BILLING CODE 4310–DN–M

[CA–060–4350–06]

Intent To Prepare Chuckwalla Desert Tortoise Habitat Management Plan, To Amend the California Desert Conservation Area Plan and To Analyze Impacts in an Environmental Impact Statement; Invitation To Participate in the Identification of Issues

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM), in cooperation with the California Department of Fish and Game under Sikes Act authority, intends to prepare a Chuckwalla Desert Tortoise Habitat Management Plan (HMP) and to analyze impacts in an associated Environmental Impact Statement (EIS). The HMP will constitute a proposed amendment to the California Desert Conservation Area (CDCA) Plan of 1980. This notice also constitutes the scoping notice required by the National Environmental Policy Act (40 CFR 1501.7). The HMP will provide guidelines for managing desert tortoise within the Colorado Desert by identifying zones within which the species will be managed for long-term viable, wild populations. The desert tortoise is on both the State and Federal lists of threatened species.

The planning effort will focus on the desert tortoise in the Colorado Desert of southern California. The 2.8 million acre planning area will include only public lands and will extend around Joshua Tree National Monument on the north to the Chocolate Mountains and the Coachella Valley on the south and from the San Gorgonio Pass below 4500 feet elevation on the west almost to the Colorado River on the east. This area includes the known range of wild desert tortoise on public land in the Colorado Desert region.

Agencies having land management responsibilities and/or regulatory jurisdiction affecting desert tortoise will be invited to participate in the planning effort. By addressing the issues of species protection in relation to resource development on a habitat-wide basis, the range of options for protection and development are increased.

DATES: Public scoping is initiated with publication of this notice and will continue until February 3, 1993. Public scoping workshops will be held to identify issues and concerns involving protection of desert tortoise and encourage and facilitate public participation in the planning process.

The workshops are scheduled as follows:

January 25, 1993, 7 p.m. at Blythe City Hall, 220 N. Spring, Blythe, CA.
January 26, 1993, 7 p.m. at the BLM office, 63–500 Garnet Ave., North Palm Springs, CA.
January 27, 1993, 7 p.m. at the Imperial Irrigation District's Auditorium, 1285 Broadway, El Centro, CA.
January 28, 1993, 7 p.m. at the BLM office, 3150 Winsor Avenue, Yuma, AZ.

ADDRESSES: Send your comments to the Bureau of Land Management, Palm Springs-South Coast Resource Area, Attn: Theodora Glenn, 63–500 Garnet Ave., P.O. Box 2000, North Palm Springs, CA 92258–2000.

FOR FURTHER INFORMATION CONTACT: Theodora Glenn at (619) 251–0812.

Dated: December 21, 1992.

David H. Eslinger,

Acting Area Manager.

[FR Doc. 92–31792 Filed 12–31–92; 8:45 am]

BILLING CODE 4310–40–M

[AZ–040–4320–01]

Safford District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bureau of Land Management (BLM), Safford District announces a forthcoming meeting of the Safford District Grazing Advisory Board.

DATES: Friday, January 22, 1993; 9 a.m.

ADDRESSES: BLM Office, 711 14th Ave., Safford, Arizona 85546.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Public Law 92–463. The agenda for the meeting will include:

1. Election of Treasurer.
2. Report on Permittee Water Rights.
3. Business from the floor:
   a. Oral statement from Mr. Wallace Klump.
   b. Requests for Advisory Board Funds.
4. Report on Reservation Fence.
5. Gila Box Riparian National Resource Conservation Area update.
6. BLM management update.

The meeting will be open to the public. Interested persons may make oral statements to the Board between 10 a.m. and 11 a.m. A written copy of the oral statement may be required to be provided at the conclusion of the presentation. Written statements may also be filed for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 711 14th Ave., Safford, AZ 85546, by 4:14 p.m., Thursday, January 21, 1993.

Summary minutes of the Board meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within thirty (30) days following the meeting.

Dated: December 21, 1992.

Frank Rowley,

Acting District Manager.

[FR Doc. 92–31793 Filed 12–31–92; 8:45 am]

BILLING CODE 4310–32–M

[CA–020–4210–05; CACA–30745]

Sale of Public Land and Termination of Classification; Lassen County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management, Susanville District proposes to sell forty (40) acres of public land by means of direct sale to the Lassen Community College District, in order to resolve a hazardous materials trespass action. This notice of realty action terminates the existing Recreation and Public Purposes Act classification of the land and simultaneously closes the land to appropriation under the public land laws, including the mining laws, for up to 270 days from the date of publication of this document in the **Federal Register.**

DATES: Comments must be submitted by February 18, 1993.

ADDRESSES: Comments should be sent to the District Manager, Bureau of Land Management, 705 Hall St., Susanville, California 96130.

FOR FURTHER INFORMATION CONTACT: Peter Humm, Bureau of Land Management (BLM) Susanville District, 916–257–5381.

SUPPLEMENTARY INFORMATION: The following described public land has been examined and found suitable for sale under section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA), and the regulations under title 43 Code of Federal Regulations (43 CFR), Part 2710.0–3(a)(3):

T 30 N., R. 12 E., Mt. Diablo Meridian, California
Section 28, SW¼SE¼.

The proposed sale to Lassen College is in conformance with the BLM's land use plan for the area, the Honey Lake Management Framework Plan (MFP), dated June 30, 1976. The Honey Lake Unit Land Use Guides for this area (Area #3) cover a total of 850 acres of public land adjacent to the College. The approved multiple-use recommendation from the MFP states: "National resource lands in this area will be used for college expansion and related use."

On February 1, 1982, the Bureau of Land Management (BLM) issued a twenty-five year lease with option to purchase this public land under the Recreation and Public Purposes (R&PP) Act of June 14, 1926 (as amended), to the Lassen Community College District. This lease, number CA–9273, authorized Lassen College to develop and eventually purchase this 40 acres of public land for use under the College's agricultural studies program. The land was classified for lease or sale under the R&PP Act, to be used by Lassen College for agricultural studies classes, livestock raising facilities, a rodeo arena and an environmental study area. During the first half of 1985, Lassen College generated fly ash and bottom ash from its nearby cogeneration plant, located on College property to the west of this parcel of public land. The College stored and disposed of the fly ash and bottom ash within the northeastern 10 to 15 acres of this 40 acre parcel of public land. Testing of the fly ash and bottom ash showed that the ash contained certain hazardous materials, primarily lead and other metals. This action by Lassen College constituted a violation of the College's Recreation and Public Purposes Lease on the parcel (CA–9273), a violation of federal and state solid waste disposal laws and regulations, and a trespass on the public land. During 1989, Lassen College removed the deposits of fly ash and bottom ash from the public land. Final testing of the site by an outside engineering firm indicated that total threshold limit concentrations for remaining contaminants (lead) were below the standards set forth in California Code of Regulations, title 22, Division 4, Article 11. The California Department of Health Services (DHS) determined that lead was the indicator parameter for site cleanup, and that the cleanup goal established in the site closure plan had been met. In a letter to the Bureau of Land Management dated October 10, 1990, the DHS determined that "the site poses no potential for environmental or public health threat".

Lassen College and the BLM have signed an Agreement, dated April 8, 1992, to resolve this situation on the parcel described above. A copy of the Agreement is available in the Susanville District Office. In accordance with the terms of the Agreement, the land will be sold by direct sale under 43 CFR 2711.3–3 to the Lassen Community College District, at the appraised fair market value. The sale will be conducted in accordance with section 120(h) of the Comprehensive Environmental Response Compensation and Liability Act as amended by the Superfund Amendments and Reauthorization Act of 1986, (CERCLA) (42 U.S.C. 9620(h)). In accordance with CERCLA, the patent for this land will contain a Notice Clause under section 120(h) of CERCLA, concerning the hazardous substances known to have been stored, released, or disposed of on

the property described in the patent, and describing the remediation measures taken on the land. The patent will contain an Indemnification Clause to protect the United States from future liability on the parcel. The patent will also contain a reservation to the United States of a right-of-way thereon for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 43 U.S.C. 945).

The proposed sale of this parcel to Lassen College is necessary to resolve the pending trespass action against the College, to relieve the United States of future liability for the College's disposal of hazardous materials on this public land, and to provide Lassen College with the ability to use this parcel for College programs and development in the future. The BLM will not be able to sell the land to any other entity due to the disposal and temporary storage of hazardous materials on the site. The land may be sold to the Lassen Community College District without continuing liability to the United States, because the Lassen Community College District is the "potentially responsible party" (under CERCLA) for the generation and deposition of the hazardous materials.

The land in question was classified for lease or sale under the R&PP Act, for disposal to Lassen College. This classification is hereby revoked, and R&PP lease CA-9273 is hereby terminated at the request of the Lassen Community College District, to allow sale under section 203 of FLPMA. In accordance with 43 CFR 2711.1-2(d), the publication of this notice in the **Federal Register** shall segregate the public lands described herein to the extent that they will not be subject to appropriation under the public land laws, including the mining laws, for up to 270 days from the date of publication.

All minerals in this parcel will also be sold to the Lassen Community College District under section 209 of FLPMA and the regulations under 43 CFR part 2720. There are no grazing leases or permits on this parcel, and no other third-party rights or interests.

Dated: December 17, 1992.

Herrick E. Hanks,

District Manager.

[FR Doc. 92-31865 Filed 12-31-92; 8:45 am]

BILLING CODE 4310-40-M

[CO-010-03-4210-04; COC-52864]

Realty Action: Exchange of Public and Private Lands in Grand and Jackson Counties, CO

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice of realty action.

SUMMARY: Pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), the Bureau of Land Management, Kremmling Resource Area is considering the following described land in Grand and Jackson Counties as suitable for disposal by exchange. This action is in response to a land exchange submitted by Daniel Ritchie, Grand River Ranch.

Selected Public Land

Sixth Principal Meridian, Colorado

Muddy Pass—4465.98 acres.

T. 4N., R. 81W.,
Sec. 5, Lots 1 & 3, SE¼NE¼, NE¼SE¼,
Sec. 7, Lots 3 & 4, SE¼NE¼, E½SE¼, SW¼SE¼,
Sec. 8, NW¼NW¼, S½NW¼, W½SE¼, SW¼,
Sec. 17, NW¼, NW¼NE¼, N½SW¼, SE¼SW¼
Sec. 18, NE¼NE¼,
T. 4N., R. 82W.,
Sec. 1, Lots 5–8;
T. 5N., R. 81W.,
Sec. 7, Lots 12 & 13,
Sec. 17, Lots 11–13,
Sec. 18, Lots 7–10, 13, 19 & 20,
Sec. 19, Lots 5, 6, 11–14, 19 & 20,
Sec. 20, Lots 2–5, 11 & 12,
Sec. 28, 5–9 & 11–15,
Sec. 29, Lots 5–8,
Sec. 30, Lots 5 & 8–12,
Sec. 31, Lots 5–12, 15–18 & 20,
Sec. 32, Lots 3 & 9,
Sec. 33, Lots 4, 5 & 12;
T. 5N., R. 82W.,
Sec. 24, Lots 3 & 14,
Sec. 25, Lots 1 & 10.

Tyler Mtn.—385.04 acres.

T. 3N. R. 82W.,
Sec. 24, Lots 3 & 4,
Sec. 25, Lots 1, 2, 3 & 6,
Sec. 36, Lots 1, 4, 5 & 11.

Mitchell—345.42 acres.

T. 3N., R. 80W.,
Sec. 30, Lots 8 & 9,
Sec. 31, Lot 6;
T. 3N., R. 81W.,
Sec. 25, W½NE¼, E½NW¼, SW¼SE¼, SE¼SW¼.

The selected lands described above contain 5,196.44 acres, more or less. In exchange for these lands, the United States will acquire the following described lands from Daniel Ritchie, Grand River Ranch.

Offered Private land

Sixth Principal Meridian, Colorado

Williams Fork—2,628.03 acres more or less.

Metes and Bounds description in Sections 28, 29, 31, 32 and 33. T. 1S., R. 78W., and Sections 5, 6, 7, 8, 17, and 18, T. 2S., R. 78W., and Sections 12 and 13, T. 2S., R. 79W.; containing 2,628.03 acres more or less.

Red Dirt Reservior—603.16 acres.

T. 3N., R. 82W.,
Tracts 48, 49 & 49A;
T. 2N., R. 82W.,
Tract 39A.

Diamond Creek—91.11 acres.

T. 5N., R. 81W.,
Sec. 33, Lots 10 & 15.

Grizzly Creek—30 acres.

T. 5N., R. 82W.,
Sec. 13, a portion of the SW¼,
Sec. 14, a portion of the SE¼.

The Offered lands described above contain 3,352.3 acres more or less.

FOR FURTHER INFORMATION AND PUBLIC COMMENT: The environmental assessment and other information concerning this exchange, is available for review in the Kremmling Resource Area Office at 1116 Park Avenue, Kremmling, Colorado 80459. For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Craig District Office, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625. Any adverse comments will be evaluated by the State Director, who may sustain, vacate or modify this realty action.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to facilitate improved resource management and to dispose of scattered, difficult to manage public land parcels while consolidating ownership of and establishing legal access to other public lands.

The exchange will be completed on an equal value basis. Full equalization of values will be achieved through acreage adjustment, or by cash payment in an amount not to exceed 25 percent of the value of the lands being transferred out of federal ownership.

The following reservations will be made in a patent issued for the public lands:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. A reservation to the United States of all mineral deposits of known value.

3. A reservation of all existing and valid land uses, including grazing leases, unless waived.

Publication of this notice in the **Federal Register** segregates the public lands from operation of the public land laws and the mining law, except for mineral leasing and exchange under section 206 of FLPMA. For a period of 2 years from the date of publication of this notice in the **Federal Register**, the

land will be segregated as specified above unless the application is denied, canceled or the exchange is approved prior to that date.

Dated: December 14, 1992.

Robert Schneider,

Associate District Manager.

[FR Doc. 92-31801 Filed 12-31-92; 8:45 am]

BILLING CODE 4310-JB-M

[UT-050-03-4410-03]

Grand Resource Area Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The 1985 Grand Resource Management Plan (RMP) is being revised and an accompanying Environmental Impact Statement (EIS) is being prepared for the Grand Resource Area, Moab District, Bureau of Land Management. The revised RMP will provide overall management direction for the Resource Area. Necessary amendments to the approved plan will keep the document current and viable. This notice is intended to inform the public of the planning effort and to invite public participation in the identification of planning issues. Public comment will be solicited throughout the planning process. A call for nomination of Areas of Critical Environmental Concern (ACECs), and Wild and Scenic River (W&SR) is being made, along with a request for submission of technical mineral resource information.

FOR FURTHER INFORMATION CONTACT: Michael O'Donnell, Team Leader, Bureau of Land Management, Moab District Office, 82 East Dogwood, Moab, Utah 84532. Moab District Office hours are 7:45 a.m. to 4:30 p.m., Monday through Friday and the telephone number is (801) 259-6111.

SUPPLEMENTARY INFORMATION: The revised Grand RMP/EIS will be prepared under 43 CFR part 1610 to meet the requirements of section 202 of the Federal Land Policy and Management Act and section 102 of the National Environmental Policy Act. The revision is necessary to consolidate, modify, update, and expand the decisions in the existing Grand RMP.

Decisions generated during this planning process will supersede land use planning decisions presented in the 1985 Grand RMP. The RMP will bring forward valid existing decisions from the existing Grand RMP and other approved planning documents developed since 1985. The RMP/EIS will also incorporate needed decisions relating to policy and regulatory changes initiated or enacted since 1985.

The Grand Resource Area covers approximately 1.8 million acres in Grand and San Juan Counties, located in eastern Utah. Additionally, the Grand Resource Area manages mineral interests on other public lands, including the USDA Forest Service lands, and lands on the Uintah and Ouray Indian Reservation.

The revised RMP/EIS will provide a comprehensive land use plan that will coordinate management of all public resources in the Grand Resource Area. Coordination will take place with the State of Utah; the Ute Indian Tribe; Federal agencies such as the National Park Service, USDA Forest Service, and the Bureau of Indian Affairs; as well as other county and private entities. It will coordinate management of the Federal sub-surface mineral estate with the private or other surface owner. Coordination will also take place with adjoining BLM Districts in Utah and Colorado.

General planning issues to be addressed are: Access and transportation needs, livestock management, wildlife habitat management, watershed management, mineral activities, recreation management, cultural resource management, and threatened and endangered species recovery implementation plans.

As a part of the RMP/EIS process, requests for nominations for ACEC designations are encouraged. Nominations must include a map as well as a discussion on why an ACEC is necessary and what special management would be proposed. Nominations will be evaluated and final designations will be made through the RMP process. Nominations for Wild and Scenic River (W&SR) designations are also requested and will be evaluated through suitability. Opportunity is also provided at this time for submission of relevant technical information regarding mineral resources in the Grand Resource Area. This data will be used, along with other published information, in the evaluation of mineral resource potential and to assist in making resource allocation decisions.

Public participation is being sought at this initial state in the planning process to ensure the RMP/EIS addresses, all issues, problems, and concerns from those interested in the management of lands with the Grand Resource Area. The development of the RMP/EIS is a public process and the public is invited to assist in the identification of issues, the scope of the EIS, and the nomination of special designation areas. Public workshops will be held in January 1993 to discuss planning issues. The date, time, and location of these Scoping meetings will be announced at a later date in local newspapers. Additional public participation will be encouraged throughout this process; however, initial input on ACEC nominations and Wild and Scenic River nominations to be considered should be submitted to the team leader by September 30, 1993.

Formal public participation will be requested again for review of the draft RMP/EIS in 1995 and the proposed RMP/Final EIS in 1996. Notice of availability of these documents will be published at the appropriate times.

The RMP/EIS will be prepared by an interdisciplinary team which includes specialists in archaeological and paleontoligical resources, minerals, soil/water/air, range vegetation (including threatened and endangered plants), forestry, fire management, realty, recreation, and wildlife (including threatened and endangered animals). Other disciplines may be represented as necessary.

James M. Parker,

State Director.

[FR Doc. 92-31892 Filed 12-31-92; 8:45 am]

BILLING CODE 4310-DQ-M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT-774973

Applicant: Embassy of the State of Qatar, 600 New Hampshire Ave, NW., Washington, DC

The applicant requests a permit to import and re-export one male captive-hatched Eurasian peregrine falcon (*Falco peregrine peregrinus*) from and to Jaber Muhammad Nasir Al Bureedi, Doha-Qatar, for enhancement of propagation and survival of the species through educational display at a Qatari Cultural Exhibition in Washington, DC.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with this application is available for review by any party who

submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: December 28, 1992.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 92–31849 Filed 12–31–92; 8:45 am]

BILLING CODE 4310–55–M

Meeting; Klamath Fishery Management Council

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of meeting.

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 Klamath Fishery Management Council, 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 Fishery Management Council will meet from 10:30 am to 5:30 pm on Thursday, January 28, 1992, and from 8 am to 3:30 pm on Friday, January 29, 1992.

PLACE: The meeting will be held at the Quality Inn, 3535 Janes Road, Arcata, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006, Yreka, California 96097–1006, telephone (916) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Management Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639). The council will meet to hear technical reports on 1992 harvest and spawning escapement, and on projections of 1993 abundance of Klamath chinook salmon. The Council will decide how to proceed on a new harvest allocation agreement, and how to put the long term harvest management plan into action. Discussion will also include: Issues to be elevated for discussion by chairs of the three Klamath basin fishery advisory committees; recommendations on editorial policy for the Klamath Restoration News; and ways to make the Council more successful in reaching consensus on harvest management recommendations.

Dated: December 28, 1992.

William F. Shake,

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

[FR Doc. 92–31874 Filed 12–31–92; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Boundary Revision: Harpers Ferry National Historical Park

AGENCY: National Park Service, Interior.

ACTION: Notice of boundary revision.

SUMMARY: Notice is hereby given that the National Park Service is revising the boundary of Harpers Ferry National Historical Park to include three additional parcels within the Park.

EFFECTIVE DATE: December 31, 1992.

FOR FURTHER INFORMATION CONTACT: John G. Parsons, Associate Regional Director, Land Use Coordination, National Capital Region, National Park Service, 1100 Ohio Drive SW., Washington, DC 20242, (202) 619–7025; Gerald L. Kirwan, Chief, Land Resources Division, Mid-Atlantic Region, National Park Service, 143 South Third Street, Philadelphia, Pennsylvania 19106–2878, (215) 597–9939; and Donald W. Campbell, Superintendent, Harpers Ferry National Historical Park, Harpers Ferry, West Virginia 25425, (304) 535–6224.

SUPPLEMENTARY INFORMATION: The Act of June 30, 1944, c. 328, 58 Stat. 645 (codified as amended and supplemented, 16 U.S.C. 450bb–450bb–6),which established Harpers Ferry National Historical Park, provides the Secretary of the Interior with authority to make minor revisions in the boundary of the Park. Such boundary revisions may be made, when necessary, after advising the appropriate Congressional committees, and following publication of a revised boundary map drawing or other boundary description in the **Federal Register.**

In order to properly interpret and preserve the historic character of Harpers Ferry National Historical Park, it is necessary to revise the existing boundary of the Park to include three additional parcels of land comprising approximately 25.13 acres. The inclusion of the three parcels in the Park will bring Park acreage to just over 2300 acres. The acreage ceiling for the Park is 2505 acres. The parcels are being acquired by donation, exchange, and purchase as an economic remnant.

Notice is hereby given that the exterior boundary of Harpers Ferry National Historical Park is revised to include the following described parcels:

Parcel 1

All that parcel of Land, situated along the eastside of Hoffmaster Road approximately 0.56 miles Northeast from the intersection of the southernmost end of said Road with Harpers Ferry Road, in Election District No. II, Washington County, Maryland, and being more particularly described, according to a description prepared by J. Harold Seibert, Engineer and Surveyor, dated May 3, 1979 as follows:

Beginning at the intersection of the center line of Hoffmaster Road with the center of the culvert under it on an unnamed stream, said point of intersection being at the end of the South 82° 38′ East 51.72 foot line on the deed from Thomas B. Kern and Lillian Kern, his wife, to the said Andres L. Steigman and Meryl F. Steigman, his wife, dated July 26, 1968, and recorded in Liber 474, folio 167, one of the Land Records of Washington County, Maryland, and running thence along Hoffmaster Road with one of the lines of said deed South 1° 40′ West, 93.43 feet to a point on the eastside thereof, thence leaving Hoffmaster Road but continuing with the lines of said deed and along the southern boundary of the 50 foot right of way conveyed by the heirs of Daisy Kern to the State of Maryland by deed dated January 17, 1962, and recorded in Liber 378, folio 195, another of said Land Records, South 72° 55′ East 200.0 feet to a point, thence correcting the next line, South 69° 20′ East 657.8 feet to a concrete monument marked NPS 12, thence South 69° 20′ East 1060.83 feet to a NPS monument 13, thence binding on the property of the United States of America North 20° 55′, East 536.64 feet to a monument marked USDI NPS 14, thence continuing along said property North 69° 20′ West 1692.93 feet to a monument marked USDI NPS 15 with an iron pin alongside it, and North 27° 33′ East 163.0 feet to a monument marked USDI NPS 16, thence leaving the lands of the United States of America and the lines of said deed and running North 62° 27′ West 17.5 feet into Hoffmaster Road, thence along or near the middle thereof South 31° 12′ West 155.82 feet to a point, thence South 64° 49′ West 234.35 feet to a point, and South 18° 36′ West 107.26 feet to a place of Beginning;

Containing 23.17 acres of land, more or less.

This parcel of Land is depicted as Tract 101–08 on Land Status Map Numbered 385/92002, Index and Segment 101, dated 30 June 1975.

Parcel 2

All that certain tract of land lying and being situated in the Town of Harpers Ferry, Jefferson County, West Virginia, and occupying a portion of Parcels 17, 19, and 33, as shown and designated on

the Baltimore and Ohio Railroad Company Right-of-Way and tract Map Number V–36. 1/1 and being more particularly described as follows:

Beginning at a point on the southerly shoreline of the Potomac River, at a corner common to the lands of the subject owner and a tract of land designated as Tract 101–04 in the Harpers Ferry National Historical Park, said corner being marked by a United States Monument numbered 148; thence from said point extending along the said shoreline (Being a stone retaining wall) South 40° 07′ 23″ East, 78.96 feet to a point; thence South 41° 27′ 09″ East, 262.33 feet to a point in the lines of a tract of land now or formerly owned by the Baltimore and Ohio Railroad Company; thence leaving the said shoreline and retaining wall and extending along the lands of the said Railroad Company South 38° 12′ 38″ East, 165.92 feet to a point; thence South 20° 34′ 57″ West, 15.00 feet to a point; thence along the arc of a curve to the right, having a radius of 1494.35 feet, a curve length of 760.00 feet and a chord bearing and distance of North 54° 50′ 52″ West, 751.84 feet to a point (the last mentioned course leaves the lands of the said railroad at an unknown distance and continues along the aforementioned Tract 101–04 to a point); thence continuing along the said Tract 101–04 the following bearings and distances:

North 49° 43′ 19″ East, 37.00 feet to a point;
South 45° 44′ 37″ East 228.15 feet to a point; and
North 44° 15′ 27″ East, 144.98 feet to the point of Beginning.

Containing 1.60 acres, more or less.

This parcel of land is depicted as Tract 106–28 on land Status Map numbered 385/92002, Segment 106, dated 30 June 1975.

Parcel 3

All those certain lots, tracts or parcels of land lying and being situated on Putnam Street in Block "W" in the Town of Harpers Ferry, Jefferson County, West Virginia, and being more particularly described as follows:

Lots 10 and 11 in Block "W" in said Town of Harpers Ferry.

Containing 0.36 of an acre, more or less.

This parcel of land is depicted as Tract 106–49 on Land Status Map Numbered 385/92002, Segment 106, dated 30 June 1975.

All maps referenced are on file and available for inspection in the offices of the National Park Service, Department of the Interior, listed above.

Dated: October 23, 1992.

John G. Parsons,

Acting Regional Director, National Capital Region.

[FR Doc. 92–31857 Filed 12–31–92; 8:45 am]

BILLING CODE 4310–70–M

Indiana Dunes National Lakeshore; Revision of Lakeshore Boundary

The Act of October 18, 1976, 90 Stat. 2532, 2533, 16 U.S.C. 460 u–19, following notice to Congress as provided therein, which has been satisfied, authorizes the United States to accept title to any lands, or interests in lands, located outside the boundaries of the Lakeshore which any private person, organization, or public or private corporation may offer to donate to the United States, if the Secretary finds that such lands would make a significant contribution to the purposes for which the Lakeshore was created; and he shall administer such lands as part of the Lakeshore following this publication. The Shirley Heinze Environmental Fund, a Charitable Trust, has offered to donate 2.37 acres of land for incorporation into the Lakeshore. Three tracts of land are being donated, one in LaPorte County, and two in Lake County, Indiana. The tracts contain a small wetlands, forest and flora species providing habitat for butterfly larva, and will preclude commercial development which would have an adverse impact on Lakeshore property. The tracts also afford recreational opportunities for the visiting public. It is considered that the recreational opportunities offered by this property, along with the biological resources on this 2.37 acres, will make a significant contribution to the Lakeshore. The specific lands proposed for addition are described as follows:

A tract of land situate in Section 31, Township 37 North, Range 7 West, Second Principal Meridian, Lake County, Indiana, described as follows:

Lots 1 through 5, the west half of Lot 6, and Lots 9 through 16 of Block 1; Lots 1 through 7 of Block 2; Lots 1 through 3, and Lot 9 of Block 3; all in Johnson-Kennedy Estates Fifth Subdivision in the City of Gary, as shown on Plat Book 16, Page 6, in the records of Lake County, Indiana.

Containing 2.19 acres of land, more or less.

A tract of land situate in Section 31, Township 38 North, Range 4 West, Second Principal Meridian, LaPorte County, Indiana, described as follows:

The north half of Lot 7 in Block 24 in Fred K. Bartlett's South Shore Acres Subdivision, as shown on Plat filed December 7, 1927 in Plat Book 6, Pages 26 and 27 in the records of LaPorte County, Indiana.

Containing 0.18 of an acre of land, more or less.

Aggregating 2.37 acres of land, more or less.

Therefore, notice is hereby given that in accordance with the Act of October 18, 1976, the boundary of the Indiana Dunes National Lakeshore is revised as described above, and as shown on Indiana Dunes National Lakeshore Segment Maps 14 and 98. These maps are on file and available for inspection in the Office of the National Park Service, Department of the Interior; the Office of the Midwest Region, National Park Service; and the Office of the Superintendent, Indiana Dunes National Lakeshore.

Dated: December 11, 1992.

Don H. Castleberry,

Regional Director, Midwest Region.

[FR Doc. 92–31856 Filed 12–31–92; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32173 (Sub-No. 1)]

Riverside County Transportation Commission—Trackage Rights Exemption—The Atchison, Topeka and Santa Fe Railway Company

Two Los Angeles area transportation agencies, the Orange County Transportation Authority and the Riverside County Transportation Commission (County Agencies), have jointly filed a notice of exemption to acquire incidental trackage rights from The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) over the property described in the footnote below, which totals about 57 miles.[1] The exemption became effective on December 17, 1992.[2] The parties intend to consummate the transaction as part of the transactions exempted in Finance Docket No. 32173, Orange County Transportation Authority, et al.—Acquisition Exemption—The Atchison, Topeka And Santa Fe Railway Company

[1] Between: (a) San Bernardino Subdivision mileposts 143.9 at Redondo Junction and 160.3 at the Orange County line in Los Angeles County, mileposts 160.3 and 30.6 at the Riverside County line in Orange County, mileposts 30.6 and 5.7 in Riverside County, and mileposts 5.7 and 0.34 in San Bernardino County; (b) Pasadena Subdivision mileposts 81.56 and 81.32 in San Bernardino County; and (c) Cajon Subdivision mileposts 81.32 and 81.19 in San Bernardino County.

Note: At Fullerton, the junction of two separate lines causes the milepost designations for the continued trackage rights to San Bernardino to change. Milepost 165.7 on the line from Mission Tower in Los Angeles to Fullerton is equivalent to milepost 45.3 on the line that continues from Fullerton east through Orange County towards Riverside and San Bernardino. Thus, the line segments involved on the San Bernardino Subdivision in Orange County are mileposts 160.3 to 165.7, a total of 5.4 miles and milepost 45.3 to 30.6, a total of 14.7 miles.

[2] Under 49 CFR 1150.32(b), the exemption is effective seven days after the notice is filed. The notice was stamped-in on December 8, 1992, but the filing fee was inadvertently omitted and was not paid until December 10, 1992.

(not printed), served November 20, 1992.

The County Agencies are acquiring these trackage rights to provide mass transit service. Santa Fe will continue to provide freight common carrier service on the line. As we noted in Finance Docket No. 32173, *supra*, we may lack jurisdiction over this acquisition of trackage rights because the provision of passenger service by the County Agencies may be exempt from our regulation.[3] If we subsequently find that jurisdiction is lacking, we will vacate this exemption.

This notice is filed under 49 CFR 1150.31(a)(4). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Pleadings must be filed with the Commission and served on: Charles A. Spitulnik, Hopkins & Sutter, Suite 700, 888 16th Street, NW., Washington, DC 20006.

Decided: December 28, 1992.

By the Commission, Julia M. Farr, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-31902 Filed 12-31-92; 8:45 am]

BILLING CODE 7035-01-M

[3] This issue is pending before the Commission in a petition to reconsider Southern Pacific Transp. Co.—Abandonment, 8 I.C.C.2d 495 (1992).

DEPARTMENT OF JUSTICE

Lodging of Stipulated Judgment Pursuant to Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 18, 1992, a proposed Stipulated Judgment in *United States* v. *City of Chicago*, Civil Action No. 90-C-7544, was lodged with the United States District Court for the Northern District of Illinois. The proposed Stipulated Judgment requires the City of Chicago to continue to comply with the Federal Clean Air Act provisions concerning asbestos abatement operations and to pay a Clean Air Act civil penalty of $10,000.00 to the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Stipulated Judgment. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Chicago*, D.J. Ref. No. 90-5-2-1-1529.

The proposed Stipulated Judgment may be examined at the office of the United States Attorney, Northern District of Illinois, 219 South Dearborn Street, Chicago, Illinois 60604; at the Region 5 Office of the United States Environmental Protection Agency, Records Center, Seventh Floor, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, Washington, DC 20044.

Copies of the proposed Stipulated Judgment may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, (202) 347-2072. In requesting a copy, please refer to the case by name and D.J. Ref. No. 90-5-2-1-1529 and enclose a check in the amount of $1.50 (25 cents per page for reproduction cost), payable to the Consent Decree Library.

John C. Cruden,

Environment and Natural Resources Division.

[FR Doc. 92-31879 Filed 12-31-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determination in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wage payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classed engaged on contract work of the character and in the localities described therein. Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut:
CT91-1 (Feb. 22, 1991). p. all.
CT91-3 (Feb. 22, 1991). p. all.
CT91-4 (Feb. 22, 1991). p. all.

District of Columbia:
DC91-1 (Feb. 22, 1991). p. all.

Virginia:
VA91-5 (Feb. 22, 1991). p. all.
VA91-23 (Feb. 22, 1991). p. all.
VA91-33 (Feb. 22, 1991). p. all.
VA91-36 (Feb. 22, 1991). p. all.
VA91-65 (Feb. 22, 1991). p. all.

West Virginia:
WV91-3 (Feb. 22, 1991). p. 1445, pp. 1447-1458d.

Volume II

Texas:
TX91-60 (Feb. 22, 1991). p. all.

Volume III

Hawaii:
HI91-1 (Feb. 22, 1991). p. all.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 28th day of December, 1992.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 92-31823 Filed 12-31-92; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL SCIENCE FOUNDATION

Permit Application Received Under the Antarctic Conservation Act of 1978

December 28, 1992.

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 2978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit application received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by January 29, 1992. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: John B. Talmadge at the above address or (202) 357-7817.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all Untied States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. The application received is as follows:

Applicant: Sean Turner, Department of Biological Sciences, University of Cincinnati, 878 La Fayette Avenue, #3, Cincinnati, OH 45221-0006

Activity for Which Permit Requested: Import Into USA-Port of Entry. Enter Site of Special Scientific Interest. Permit requested to visit Tramway Ridge on Mt. Erebus site of special scientific interest in order to collect samples for his project on cyanobacterial/algal communities peculiar to Antarctica. The objective on Mt. Erebus is to collect samples of these organisms, particulary in the vicinity of Tramway Ridge where the highest population densities occur. Samples will be returned to the Crary Science and Engineering Center at McMurdo Station for subsequent culturing and isolation of photosynthetic microorganisms using standard techniques. Equipment will be limited to sterile sampling spatulas, whirlpack bags, and sample containers.

Location: Tramway Ridge SSSI, Mt. Erebus; Ross Island access by helicopter to outside area, then travel by foot.

Dates: 01/01/93-01/15/93.

John B. Talmadge,

Permit Office, Division of Polar Programs.

[FR Doc. 92-31870 Filed 12-31-92; 8:45 am]

BILLING CODE 7555-01-M

Committee Management; Establishment

The Assistant Director for Computer and Information Science and Engineering has determined that the establishment of the Blue Ribbon Panel on High Performance Computing is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF) by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Blue Ribbon Panel on High Performance Computing.

Purpose: To assess the contributions of high performance computing to scientific research and education; project future hardware, software and communication resource needs and means for providing them; and analyze possible cooperative relations between governmental agencies, the private sector and international entities.

Balanced Membership Plan: The Panel will be composed of 10-15 leading scientists and engineers representing relevant disciplines and knowledge of the field. Members will be drawn from academia, industry, and

government to insure representation across all appropriate dimensions, technical as well as policy.

Responsible NSF Official: Dr. A. Nico Habermann, Assistant Director, Computer and Information Science and Engineering, National Science Foundation, room 306, Washington, DC 20550, (202) 357-7936.

Dated: December 29, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-31919 Filed 12-31-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40-6659]

Petrotomics Co.; Finding of No Significant Impact Regarding Issuance of an Amendment to Source Material License SUA-551 for the Petrotomics Co., Shirley Basin Mill, To Incorporate Reclamation Schedules, Carbon County, WY

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of a finding of no significant impact.

1. Proposed Action

The administrative action is issuance of a license amendment to incorporate an enforceable reclamation schedule for the Shirley Basin Mill in Carbon County, Wyoming.

2. Reasons for Finding of No Significant Impact

The proposed amendment is administrative, incorporating reclamation milestones into the license in accordance with the Memorandum of Understanding (MOU) between the Environmental Protection Agency (EPA) and the NRC which was published in the **Federal Register** on October 25, 1991. The Notice of Intent to Amend Source Material License SUA-551 for the Shirley Basin Mill to incorporate reclamation schedules was published in the **Federal Register** on October 19, 1992. The NRC accepted comments on this proposed licensing action for 45 days. No comments were received. In accordance with 10 CFR 51.22(c)(11)), the Commission has determined that no environmental analysis need be performed since no significant impacts will result from the proposed licensing actions.

3. Action

The Commission action is to amend Source Material License SUA-551 upon publication of this Notice. The action is based on this Finding of No Significant Impact and no comments being received to the Notice of Intent published on October 19, 1992.

This Notice, together with the Notice of Intent to Amend Source material License SUA-551, are available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Colorado, and at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555.

Dated: at Denver, Colorado, this 23nd day of December 1992.

For the Nuclear Regulatory Commission.

Ramon E. Hall,

Director, Uranium Recovery Field Office.

[FR Doc. 92-31893 Filed 12-31-92; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Alteration of the Terminal Control Area at Tampa, FL; Public Meetings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meetings.

SUMMARY: This notice announces two fact-finding informal airspace meetings to solicit information from airspace users and others concerning a proposal to modify the Tampa, FL, Terminal Control Area (TCA), and to provide interested persons an opportunity to discuss the proposal. All comments received during these meetings will be considered prior to the issuance of a Notice of Proposed Rulemaking.

TIMES AND DATES: These meetings will be held from 7 p.m. to 10 p.m., on Tuesday, February 16 and Wednesday, February 17, 1993. Comments must be received on or before April 19, 1993.

Date: Tuesday, February 16, 1993.

Place: University of South Florida—Bayboro Campus, MSL Auditorium, St. Petersburg, FL 33701, (Next to Albert-Whitted Airport).

Date: Wednesday, February 17, 1993.

Place: Armwood High School Auditorium, 1200 U.S. Hwy 92, Seffner, FL 33584.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO-500, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

CONTACT PERSON FOR MORE INFORMATION: Kenneth Patterson; Manager, Airport Traffic Control Tower; Tampa International Airport; Tampa, FL 33607; telephone: (813) 872-1528.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) These meetings will be informal in nature and will be conducted by a representative of the Administrator, FAA Southern Region. Each participant will be given an opportunity to make a presentation, although a time limit may be imposed.

(b) These meetings will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the panel will be asked to sign in and estimate the amount of time needed for such presentation so that timeframes can be established. This will permit the panel to allocate an appropriate amount of time for each presenter. The panel may allocate the time available for each presentation in order to accommodate all speakers. These meetings will not be adjourned until everyone on the list has had an opportunity to address the panel. These meetings may be adjourned at any time if all persons present have had the opportunity to speak.

(d) Position papers or other handout material relating to the substance of the meetings may be accepted. Participants wishing to submit handout material should present three copies to the presiding officer. There should be additional copies of each handout available for other attendees.

(e) These meetings will not be formally recorded. However, a summary of the comments made at these meetings will be filed in the docket.

Agenda for Each Meeting

Opening Remarks and Discussion of Meeting Procedures
Briefing on Background for Proposal
Public Presentations
Closing Comments

Issued in Washington, DC, on December 21, 1992.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 92-31909 Filed 12-31-92; 8:45 am]

BILLING CODE 4910-13-M

Pilot and Aviation Maintenance Technician Shortage Blue Ribbon Panel; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given of a meeting of the Pilot and Aviation Maintenance Technician Shortage Blue Ribbon Panel.

DATES: The meetings will be held February 9, 1993, from 1 p.m. to 4 p.m.

ADDRESSES: The meeting will be held at the FAA Center for Management Development, room C123, 4500 Palm Coast Parkway, Palm Coast, Florida 32137.

FOR FURTHER INFORMATION CONTACT: Daniel C. Beaudette, Executive Director, 800 Independence Ave., SW., Washington, DC, 20591; telephone (202) 267-7804.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463: 5 U.S.C., app. II), notice is hereby given of a meeting of the Pilot and Aviation Maintenance Technician Shortage Blue Ribbon Panel to be held February 9, 1993. The meeting agenda will include:

- Opening comments.
- Public comments.
- Panel deliberations.
- Future operations.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements on or before January 29, 1993, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director. Arrangements may be made by contacting the person listed under the heading "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Washington, DC, on December 23, 1992.

Daniel C. Beaudette,

Executive Director of the Pilot and Aviation Maintenance Technician Shortage Blue Ribbon Panel.

[FR Doc. 92-31911 Filed 12-31-92; 8:45 am]

BILLING CODE 4910-13-M

Notice of Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Spokane International Airport and Use the Revenue at Spokane International Airport and Felts Field, Spokane, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at Spokane International Airport and use the revenue at Spokane International Airport and Felts Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before February 3, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager, Seattle Airports District Office, SEA-ADO, Federal Aviation Administration, 1601 Lind Avenue SW., suit 250, Renton, WA 98055-4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Paul Norman, Airport Director of the Spokane Airport Board, at the following address: Spokane International Airport, P.O. Box 19186, Spokane, Washington 99219-9186.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Spokane Airport Board under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Johnson (206) 227-2655; Seattle Airports District Office, SEA-ADO; Federal Aviation Administration; 1601 Lind Avenue SW., suite 250; Renton, Washington 98055-4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Spokane International Airport and use the revenues at Spokane International Airport and Felts Field Airport, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 23, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by Spokane Airport Board was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 24, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: June 1, 1993

Proposed charge expiration date: October 31, 2000

Total estimated PFC revenue: $17,548,000.00

Brief description of proposed project: Spokane International Airport and Felts Field Airport have both listed projects to use PFC revenues—Spokane International has listed the following: Planning studies, construct airport perimeter road, purchase safety equipment, taxiway and apron improvements; runway safety improvements, public area safety improvements/Americans with Disabilities (ADA) compliance, access control improvements, airport airfield lighting and signage, access road improvements, ARFF training facility, aircraft deicing facility, airside infrastructure development, loading bridges and regional gate expansion.

Felts Field Airport has requested PFC revenue for safety improvements.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Spokane Airport Authority requested that no air carriers be exempted from collection.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM-600, 1601 Lind Avenue SW., suite 540, Renton, WA 98055-4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Spokane Airport Board at Spokane International Airport.

Issued in Renton, Washington on December 23, 1992.

Cecil C. Wagner,

Assistant Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 92-31910 Filed 12-31-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Scenic Byways Advisory Committee; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces a meeting of the Scenic Byways Advisory Committee. The focus of the meeting will be to develop and make recommendations regarding minimum criteria and standards for use by State and Federal agencies in designating highways as scenic byways and all-American roads for the purpose of a national scenic byways program. The national scenic byways program is authorized by section 1047(a)(3) of the

Intermodal Surface Transportation Efficiency Act of 1991.

DATES: January 28, 1993, 8:30 a.m. to 4:30 p.m. and January 29, 1993, 8:30 a.m. to 4:30 p.m. This meeting is open to the public.

ADDRESSES: The Ritz-Carlton Hotel, Pentagon City, 1250 S. Hayes Street, Board Room, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. Eugene Johnson, Federal Highway Administration, Intermodal Planning Division, HEP-50, room 3301, 400 Seventh St., SW., Washington, DC 20590, (202) 366-0150. Office hours are 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except legal holidays.

Authority: 23 U.S.C. 315; 49 CFR 1.48; Sec. 1047, Public Law 102-240, 105 Stat. 1914, 1996.

Issued on: December 24, 1992.

T.D. Larson,

Administrator.

[FR Doc. 92-31900 Filed 12-31-92; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

December 28, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0244
Form Number: IRS Form 6199
Type of Review: Extension
Title: Certification of Youth Participating in a Qualified Cooperative Education Program
Description: Internal Revenue Code (IRC) § 51(d)(8) requires that qualified school cooperative programs must certify their qualified students as youths participating in a qualified cooperative program in order that wages paid to the students by an employer be qualified for the jobs credit. Form 6199 provides for this certification.
Respondents: Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents/Recordkeepers: 64,000
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	7 minutes.
Learning about the law or the form.	7 minutes.
Preparing the form	24 minutes.
Copying, assembling and sending the form to the IRS.	20 minutes.

Frequency of Response: On occasion
Estimated Total Reporting/Recordkeeping Burden: 62,080 hours

OMB Number: 1545-0725
Form Number: IRS Form 928
Type of Review: Extension
Title: Fuel Bond
Description: Certain sellers of gasoline and diesel fuel may be required under § 4101 to post bond before they incur liability for gasoline and diesel fuel excise taxes imposed by § 4081 and 4091. This form is used by taxpayers to give bond and provide other information required by Regulations § 48.4101-2T.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents/Recordkeepers: 500
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	1 hour, 55 minutes.
Learning about the law or the form.	18 minutes.
Preparing copying, assembling, and sending the form to the IRS.	20 minutes.

Frequency of Response: On occasion
Estimated Total Reporting/Recordkeeping Burden: 1,280 hours

Clearance Officer: Garrick Shear (202) 622-3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92-31864 Filed 12-31-92; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

December 28, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: None
Type of Review: New collection
Title: Focus Group Interviews Concerning Taxpayer Input on Forms 1099
Description: Focus group interviews are necessary to determine whether taxpayers experience problems with the 1099 family of forms and the various substitute forms to determine whether the information should be reported in a uniform fashion. Affected public is 50 participants.
Respondents: Individuals or households
Estimated Number of Respondents: 600
Estimated Burden Hours Per Respondent: 3 hours
Frequency of Response: Other (one-time focus groups)
Estimated Total Reporting Burden: 230 hours

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-31891 Filed 12-31-92; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the

Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by February 3, 1993.

Dated: December 23, 1992.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy Assistant Secretary for Information Resources Policies and Oversight.

Extension

1. Nonsupervised Lender Nomination and Recommendation of Credit Underwriter, VA Form 26-8736a.

2. The form is submitted to VA by a nonsupervised lender with the initial application for authority to close loans on the automatic basis or in connection with nominations of additional or new credit underwriters. The information is used to determine whether or not the underwriter nominee is qualified.

3. 1,000 hours.

4. 20 minutes.

5. On occasion.

6. Businesses or other for-profit; Small businesses or organizations.

7. 3,000 respondents.

[FR Doc. 92-31858 Filed 12-31-92; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
No. 1
Monday, January 4, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

December 29, 1992.

TIME AND DATE: 10.00 a.m., Tuesday, January 5, 1993.

PLACE: Room 600 1730, K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Island Creek Coal Company*, Docket No. VA 91-47-R, etc. (Issues include whether the judge erred in vacating two imminent danger orders of withdrawal issued to Island Creek by the Secretary of Labor, pursuant to 30 U.S.C. § 817(a), alleging that the south gob at its mine contained an explosive level of methane and that Island Creek violated 30 C.F.R. § 75.316.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 92-31944 Filed 12-30-92; 3:20 pm]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM, BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, January 6, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1 Publication for comment of proposed amendments to Regulation E (Electronic Fund Transfers) to cover Electronic Benefit Transfer (EBT) programs established by federal, state, or local government agencies.
2. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: December 30, 1992.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 92-31937 Filed 12-30-92; 10:55 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Wednesday, January 6, 1993, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 30, 1992.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 92-31938 Filed 12-30-92; 10:55 am]

BILLING CODE 6210-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 4, 11, 18, and 25, 1993.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of January 4

Tuesday, January 5

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 11—Tentative

Monday, January 11

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 18—Tentative

Thursday, January 21

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 25—Tentative

Friday, January 29

10:00 a.m.
Briefing on Implementing Guidance for the Maintenance Rule and Industry Verification and Validation Effort (Public Meeting) (Contact: William Russell, 301-504-1274)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETING CALL (RECORDING): (301) 504-1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504-1661.

Dated: December 29, 1992.

William M. Hill, Jr.,
SECY Tracking Officer, Office of the Secretary.

[FR Doc. 92-31939 Filed 12-30-92; 10:56 am]

BILLING CODE 7590-01-M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of Directors

TIME AND DATE: 1:00 p.m. (closed portion), 2:30 p.m. (open portion), Thursday, January 14, 1993.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: The first part of the meeting from 1:00 p.m. to 2:30 p.m. will be closed to the public. The open portion

of the meeting will commence at 2:30 p.m. (approximately).

MATTERS TO BE CONSIDERED: (Closed to the public 1:00 p.m. to 2:20 p.m.).

1. President's Report
2. Information Reports
3. Pending Major Projects
4. Finance Project in Argentina
5. Insurance Project in Tunisia
6. Insurance Project in Argentina
7. Approval of 9/22/92 Minutes (Closed Portion)

FURTHER MATTERS TO BE CONSIDERED: (Open to the public 2:30 p.m.).

1. Approval of 9/22/92 Minutes (Open Portion)
2. Information Reports
3. Recommendation for meeting schedule through end of September 1993

CONTACT PERSON FOR INFORMATION: Information with regard to the meeting may be obtained from the Corporation Secretary on (202) 336–8403.

Dated: December 30, 1992.

Dennis K. Dolan,

OPIC Corporate Secretary.

[FR Doc. 92–31942 Filed 12–30–92; 3:19 pm]

BILLING CODE 3210-01-M

Corrections

Federal Register
No. 1
Monday, January 4, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 920372–2072]

Pacific Coast Groundfish Fishery

Correction

In proposed rule document 92-27061 beginning on page 53313 in the issue of Monday, November 9, 1992, make the following correction: On page 53315, in the first column, in the first full paragraph, in the fourth line "16 U.S.C. 1810" should read "16 U.S.C. 1801".

BILLING CODE 1505–01–D

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Correction

In Sunshine Act Meetings notice document 92–31620 appearing on page 61965 in the issue of Tuesday, December 29, 1992, make the following corrections:

1. On page 61965, under the heading "Matters To Be Considered" in open session, item 4, "Waiver of 1992 EEO–3 Reporting Requirements," should be deleted.

2. On the same page, under the same heading, item 5 should be numbered as item 4.

BILLING CODE 1505–01–D

federal register

Monday
January 4, 1993

Part II

Department of Transportation

Federal Highway Administration

Intermodal Surface Transportation Efficiency Act of 1991; Implementation Guidance; Notice

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intermodal Surface Transportation Efficiency Act of 1991; Implementation Guidance

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The FHWA, in order to assure widespread distribution of implementation guidance on the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, 105 Stat. 1914), (which it has issued to its regional and division offices) is publishing implementation materials that have been issued since the act was signed on December 18, 1991. Implementation guidance materials were first published in the **Federal Register** on April 23, 1992, at 57 FR 14880. In that notice of April 23, the FHWA stated it would continue to publish implementation guidance in future issues of the **Federal Register.** This notice is the second publication of ISTEA implementation guidance. Any changes to this implementation guidance will be published in future issues of the **Federal Register.**

The ISTEA implementation guidance published in this **Federal Register** notice is intended to be nonbinding except insofar as it references existing statutory requirements and should not be construed as rules of general applicability and legal effect or notices of proposed rulemaking.

On March 27, 1992, the FHWA issued a notice (57 FR 10691) advising members of the public that they may now dial into the FHWA Electronic Bulletin Board System (FEBBS) information conference using a microcomputer and modem and view informal questions and answers on how the agency intends to implement the provisions of the ISTEA. The FEBBS will also contain the implementation guidance published with this notice as well as future implementation guidance. This read-only facility is especially intended for use by the State and local transportation agencies. The telephone number for FEBBS is Area Code 202–366–3764. While the system supports 300, 1200 and 2400 baud line speeds, and a variety of terminal types and protocols, setting the modem for 2400 baud, 8 data bits, full duplex and no parity will give optimal performance. Once a connection has been established and the <R<egistration item completed, callers should select either <Q<uestions and Answers on ISTEA, or <I<nformation for more detailed help.

Specific questions on any of the material published with this notice should be directed to the contact person named in the particular guidance; if a contact is not included, calls should be directed to Frank Calhoun, Assistant Chief Counsel for Legislation and Regulations, Office of the Chief Counsel, (202) 366–0761, Federal Highway Administration, 400 Seventh Street, SW., room 4223 (HCC–10), Washington, DC 20590, for referral. Questions can also be directed to the FHWA Regional Offices or the FHWA Division Offices in your State; updated addresses and phone numbers for these offices are listed in an attachment to this notice. Some of the materials reference attachments which are copies of sections of the ISTEA. These are not included. Copies can be obtained from the offices referred to herein.

FOR FURTHER INFORMATION CONTACT: Mr. Frank L. Calhoun, Office of the Chief Counsel, (202), 366–0761, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday except legal holidays.

For Technical Assistance Contact: FHWA Computer Help Desk, HMS–40, room 4401, 400 Seventh Street, SW., Washington, DC 20590. (202) 366–1120.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: December 10, 1992.

T.D. Larson,

Administrator.

Attachment—FHWA Regional Offices

Region 1 (HRA–01)—Headquarters, Hours of Duty: 7:30–4:00 EST

Location: Leo W. O'Brien Federal Building, Room 719, Clinton Avenue and North Pearl Street, Albany, New York 12207

Regional Federal Highway Administrator, John G. Bestgen, Jr., 518–472–6476

Region 3 (HRA–03)—Headquarters, Hours of Duty: 7:30–4:15 EST

Location: George H. Fallon Federal Office Building, 31 Hopkins Plaza, Room 1633, Baltimore, Maryland 21201

Regional Federal Highway Administrator, David S. Gendell, 410–962–0093

Region 4 (HRA–04)—Headquarters, Hours of Duty: 7:45–4:15 EST

Location: Suite 200, 1720 Peachtree Road, NW., Atlanta, Georgia 30367

Regional Federal Highway Administrator, Leon N. Larson, 404–347–4078

Region 5 (HRA–05)—Headquarters, Hours of Duty: 7:30–4:15 CST

Location: 18209 Dixie Highway, Homewood, Illinois 60430–2294

Regional Federal Highway Administrator, Herbert R. Teets, 708–206–3186

Region 6 (HRA–06)—Headquarters, Hours of Duty: 8:00–4:30 CST

Location: 819 Taylor Street, Room 8A00, P.O. Box 902003, Fort Worth, Texas 76102

Regional Federal Highway Administrator, Wesley S. Mendenhall, Jr., 817–334–4393

FHWA—Federal-Aid Division Offices

Alabama (HDA–AL)

7:15–4:30 CST

Division Administrator, Joe D. Wilkerson, 500 Eastern Boulevard, Suite 200, Montgomery, Alabama 36117–2018, 205–223–7370

Alaska (HDA–AK)

7:30–5:00 AST

Division Administrator, Robert E. Ruby, 709 W. Ninth Street, Room 851, Juneau, Alaska 99802–1648, 8+907–586–7180

Arizona (HDA–AZ)

7:30–4:15 MST

Division Administrator, Edward A. Wueste, 234 N. Central Avenue, Suite 300, Phoenix, Arizona 85004, 602–379–3646

Arkansas (HDA–AR)

7:30–4:00 CST

Division Administrator, William D. Richardson, Federal Office Building, Room 3128, 700 West Capitol Avenue, Little Rock, Arkansas 72201–3298, 8+501–324–5625

California (HDA–CA)

7:45–4:30 PST

Division Administrator, Roger E. Borg, Federal Building, 2d Floor, 801 I Street, Sacramento, California 95814, 916–551–1280

Colorado (HDA–CO)

7:45–4:15 MST

Division Administrator, George H. Osborne, 555 Zang Street, Room 250, Lakewood, Colorado 80228, 303–969–6730

Connecticut (HDA–CT)

7:30–4:00 EST

Division Administrator, Gary Hamby, Abraham A. Ribicoff Federal Building, 450 Main Street, Room 635, Hartford, Connecticut 06103, 203–240–3705

Region 7 (HRA–07)—Headquarters, Hours of Duty: 7:30–4:00 CST

Location: 6301 Rockhill Road, Kansas City, Missouri 64131

Mailing Address: P.O. Box 419715, Kansas City, Missouri 64141

Regional Federal Highway Administrator, Volmer K. Jensen, 816–926–7490

Region 8 (HRA-08)—Headquarters, Hours of Duty: 7:45–4:15 MST

Location: 555 Zang Street, Room 400, Lakewood, Colorado 80228

Regional Federal Highway Administrator, Louis N. MacDonald, 303–969–6722

Region 9 (HRA-09)—Headquarters, Hours of Duty: 7:45–4:15 PST

Location: 211 Main Street, Room 1100, San Francisco, California 94105

Regional Federal Highway Administrator, Edwin M. Wood, 415–744–2639

Region 10 (HRA-010)—Headquarters, Hours of Duty: 7:45–4:30 PST

Location: KOIN Center, Suite 600, 222 S.W., Columbia Street, Portland, Oregon 97201

Regional Federal Highway Administrator, Jerald P. Clark, 503–326–2053

Delaware (HDA-DE)

7:45–4:15 EST

Division Administrator, John J. Gilbert, 300 South New Street, Room 2101, Dover, Delaware 19901–6726, 302–734–5323

District of Columbia (HDA-DC)

8:00–4:30 EST

Division Administrator, Arthur J. Hill, Union Center Plaza, Suite 750, 820 First Street, NE., Washington, D.C. 20002, 202–523–0163

Florida (HDA-FL)

7:30–4:00 EST

Division Administrator, Jennings R. Skinner, 227 No. Bronough Street, Room 2015, Tallahassee, Florida 32301, 904–681–7223

Georgia (HDA-GA)

7:00–4:00 EST

Division Administrator, Larry Dreihaup, 1720 Peachtree Rd., NW., Suite 300, Atlanta, Georgia 30367, 404–347–4751

Hawaii (HDA-HI)

7:30–4:00 HST

Division Administrator, William R. Lake, Jr., Prince Jonah Kuhio Kalanianaole Federal Building, 300 Ala Moana Boulevard, Room 3202, Honolulu, Hawaii 96850, 808–541–2700

Mailing Address: Box 50206, Honolulu, Hawaii 96850

Idaho (HDA-ID)

7:30–4:00 MST

Division Administrator, Jack T. Coe, 3050 Lakeharbor Lane, Suite 126, Boise, Idaho 83703, 208–334–1690

Illinois (HDA-IL)

7:30–4:15 CST

Division Administrator, Lyle P. Renz, 3250 Executive Park Drive, Springfield, Illinois 62705, 217–492–4640

Indiana (HDA-IN)

7:30–4:00 EST

Division Administrator, Arthur A. Fendrick, 575 N. Pennsylvania Street, Room 254, Indianapolis, Indiana 46204, 317–226–7475

Iowa (HDA-IA)

7:45–4:30 CST

Division Administrator, Hubert A. Willard, 105 Sixth Street, Ames, Iowa 50010, 515–233–1664

Kansas (HDA-KS)

7:45–4:15 CST

Division Administrator, Robert J. Deatrick, 444 SE. Quincy Street, Room 240, Topeka, Kansas 66683, 913–267–7281

Kentucky (HDA-KY)

8:00–4:45 EST

Division Administrator, Paul E. Toussaint, John C. Watts Federal Building and U.S. Courthouse, 330 W. Broadway, Frankfort, Kentucky 40602, 502–582–5468

Mailing Address: P.O. Box 536, Frankfort, Kentucky 40602

Louisiana (HDA-LA)

7:30–4:00 CST

Division Administrator, William A. Sussman, Federal Building, Room 255, 750 Florida Street, Baton Rouge, Louisiana 70801, 504–389–0464

Mailing Address: P.O. Box 3929, Baton Rouge, Louisiana 70821

Maine (HDA-ME)

7:30–4:00 EST

Division Administrator, Vacant, Edmund S. Muskie Federal Building, 40 Western Avenue, Room 614, Augusta, Maine 04330, 207–622–8487

Maryland (HDA-MD)

7:45–4:15 EST

Division Administrator, A. Porter Barrows, The Rotunda, Suite 220, 711 West 40th Street, Baltimore, Maryland 21211, 410–962–4440

Massachusetts (HDA-MA)

7:45–4:15 EST

Division Administrator, Donald E. Hammer, 55 Broadway—10th Floor, Cambridge, Massachusetts 02142, 617–494–2416

Michigan (HDA-MI)

7:45–4:15 EST

Division Administrator, A George Ostensen, Federal Building, Room 211, 315 West Allegan Street, Lansing, Michigan 48933, 517–377–1844

Minnesota (HDA-MN)

7:30–4:00 CST

Division Administrator, Charles E. Foslien, Metro Square Building, Suite 490, Seventh & Robert Streets, St. Paul, Minnesota 55101, 612–290–3230

Mississippi (HDA-MS)

7:30–4:00 CST

Division Administrator, John F. Sullivan, Jr., 666 North Street, Suite 105, Jackson, Mississippi 39202–3199, 601–965–4215

Missouri (HDA-MO)

7:30–4:00 CST

Division Administrator, Gerald J. Reihsen, 209 Adams Street, Jefferson City, Missouri 65101, 314–636–7104

Mailing Address: P.O. Box 1787, Jefferson City, Missouri 65102

Montana (HDA-MT)

7:30–4:00 MST

Division Administrator, Henry D. Honeywell, Federal Office Building, 301 S. Park, Drawer 10056, Helena, Montana 59626–0056, 406–449–5306

Nebraska (HDA-NE)

7:30–4:15 CST

Division Administrator, Charles A. Culp, Federal Building, Room 220, 100 Centennial Mall North, Lincoln, Nebraska 68508–3851, 402–437–5521

Nevada (HDA-NV)

7:45–4:30 PST

Division Administrator, Frederick G. Wright, Jr., 1535 Hot Springs Road, Suite 100, Carson City, Nevada 89701–0602, 702–687–5320

New Hampshire (HDA-NH)

7:30–4:00 EST

Division Administrator, Gerald L. Eller, Federal Building, Room 204, 279 Pleasant Street, Concord, New Hampshire 03301, 603–225–1605

New Jersey (HDA-NJ)

8:00–4:30 EST

Division Administrator, Charles J. Nemmers, Suburban Square Building, 2nd Floor, 25 Scotch Road, Trenton, New Jersey 08628–2595, 609–989–2288

New Mexico (HDA-NM)

7:30–4:00 MST

Division Administrator, Reuben S. Thomas, 117 U.S. Courthouse, S. Federal Place, Santa Fe, New Mexico 87501–1963, 505–988–6569

New York (HDA-NY)

7:30–4:00 EST

Division Administrator, Harold J. Brown, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, 518–472–3616

North Carolina (HDA-NC)

7:45–4:15 EST

Division Administrator, Nicholas L. Graf, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina 27611, 919–856–4346

North Dakota (HDA-ND)

7:45–4:30 CST

Division Administrator, George A. Jensen, Federal Building, P.O. Box 1755, 220 East Rosser Avenue, Bismarck, North Dakota 58502, 701–250–4204

Ohio (HDA-OH)

7:30–4:15 EST

Division Administrator, Fred J. Hempel, 200 North High Street, Room 328, Columbus, Ohio 43215, 614–469–6896

Oklahoma (HDA-OK)

7:30–4:00 CST

Division Administrator, Gary E. Larsen, Federal Office Building, Room 454, 200 NW. Fifth Street, Oklahoma City, Oklahoma 73102, 405–231–4624

Oregon (HDA-OR)

7:30–4:15 PST

Division Administrator, Robert G. Clour, The Equitable Center, Suite 100, 530 Center Street, NE., Salem, Oregon 97301, 503–399–5749

Pennsylvania (HDA-PA)

8:00–4:30 EST

Division Administrator, Manuel A. Marks, 228 Walnut Street, Harrisburg, Pennsylvania 17108, 717–782–2222

Mailing Address: P.O. Box 1086, Harrisburg, Pennsylvania 17108

Puerto Rico (HDA-PR)

7:30–4:00 AST

Division Administrator, Juan O. Cruz, Frederico Degetau Federal Building and U.S. Courthouse, Carlos Chardon Street, Room 329, Hato Rey, Puerto Rico 00918, 809–766–5600

Rhode Island (HDA-RI)

7:45–4:15 EST

Division Administrator, Gordon G. Hoxie, 380 Westminster Mall, Fifth Floor, Providence, Rhode Island 02903, 401–528–4541

South Carolina (HDA-SC)

7:45–4:15 EST

Division Administrator, Robert J. Probst, Strom Thurmond Federal Building, 1835 Assembly Street, Suite 758, Columbia, South Carolina 29201, 803–765–5194

South Dakota (HDA-SD)

8:00–4:30 CST

Division Administrator, Donald F. Kamnikar, Federal Building, Room 337, 225 South Pierre Street, P.O. Box 700, Pierre, South Dakota 57501, 605–224–8033

Tennessee (HDA-TN)

8:00–4:30 CST

Division Administrator, Dennis C. Cook, 249 Cumberland Bend Drive, Nashville, Tennessee 37228, 615–736–5394

Texas (HDA-TX)

7:30–4:15 CST

Division Administrator, Frank M. Mayer, Federal Office Building, 300 East Eighth Street, Room 826, Austin, Texas 78701, 512–482–5511

Utah (HDA-UT)

7:30–4:00 MST

Division Administrator, Donald P. Steinke, 2520 West 4700 South, Suite 9A, Salt Lake City, Utah 84118, 808–524–5141

Vermont (HDA-VT)

7:30–4:00 EST

Division Administrator, Karle L. Snyder, Federal Building, 87 State Street, Montpelier, Vermont 05602, 802–828–4423

Mailing Address: P.O. Box 568, Montpelier, Vermont 05601

Virginia (HDA-VA)

7:30–4:00 EST

Division Administrator, James M. Tumlin, Federal Building, 10th Floor, 400 N. 8th Street, Richmond, Virginia 23240, 804–771–2371

Mailing Address: P.O. Box 10045, Richmond, Virginia 23240

Washington (HDA—WA)

7:30–4:30 PST

Division Administrator, Barry F. Morehead, Suite 501, Evergreen Plaza, 711 South Capitol Way, Olympia, Washington 98501, 206–753–9480

West Virginia (HDA—WV)

8:00–4:30 EST

Division Administrator, Billy R. Higginbotham, 550 Eagan Street, Suite 300, Charleston, West Virginia 25301, 304–347–5928

Wisconsin (HDA-WI)

7:30–4:15 CST

Division Administrator, James E. St. John, 4502 Vernon Boulevard, Madison, Wisconsin 53705–4905, 608–264–5395

Wyoming (HDA-WY)

7:45–4:30 MST

Division Administrator, Frederick A. Behrens, 1916 Evans Avenue, Cheyenne, Wyoming 82001–3764, 307–772–2101

INDEX TO ISTEA OF 1991 IMPLEMENTATION GUIDANCE

Section of ISTEA	Date of guidance	Title
1001, 1021, 1012, 1020, 1100.	04/08/92	1991 ISTEA Implementation Interstate Construction Program.
1002	07/17/92	Revised Procedures for the Quarterly Obligation of Surface Transportation Funds.
1002, 1004, 1013	04/20/92	Fiscal Year 1992 Federal-aid Highway Program Obligations.
1002, 1003(c), 1004, 1007.	07/17/92	Comments on STP Quarterly Obligation Procedures.
1003(b)	10/19/92	Disadvantaged Business Enterprises (DBE) Program.
1006	06/12/92	Instructions for Developing the Proposed National Highway System.
1007	06/05/92 04/24/92	Transportation Enhancement Activities.
1007, 1008	03/05/92	Flexibility in the Intermodal Surface Transportation Efficiency Act (ISTEA).

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1008	10/16/92	Further Guidance on the Congestion Mitigation and Air Quality Improvement Program.
1008	06/15/92	CMAQ and Transportation Enhancement Activities.
1008	07/30/92	Federal Transit Administration.
1008	07/30/92	Policy on Eligibility of PM-10 Projects for CMAQ funding.
1011, 3025	04/14/92	1991 Intermodal Surface Transportation Efficiency Act (ISTEA) Implementation of the Interstate Substitution Program.
1021, 1022	06/30/92	Federal Shares Established by Title 23, USC and the ISTEA of 1991.
1021	03/17/92	FHWA Notice (N 4540.12) Sliding Scale Rates in Public Land States—Rates Effective March 17, 1992.
1023, 4006, 4007	03/24/92	Longer Combination Vehicles and ISTEA.
1024	06/19/92	Fiscal Procedures for Federal Transit Projects Financed by Federal Highway Administration Funds.
1024, 1025	09/03/92	Public Involvement.
1025	06/24/92	Statewide Planning and Development of Transportation.
	06/30/92	Improvement Programs (TIP) for Federal Lands Highways.
1025	05/28/92	Interim Guidance 23 USC 135—Statewide Planning Requirement.
1025	10/09/92	Interim Measures to Meet STIP and TIP Requirements.
1027	05/20/92	Implementation Guidance on Section 1027 of 1991 ISTEA Public Transportation.

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1028	05/15/92	Highway Bridge Replacement and Rehabilitation Program (HBRRP) funds for Approach Roadway Construction.
1044	06/22/92	Section 1044 of the 1991 ISTEA Credit for Non-Federal Share.
1044	09/02/92	Section 1044—Credit for Non-Federal Share Implementation Q & A.
1100	06/26/92	Guidance in the Transfer Provisions contained in the ISTEA.
1301, 1302, 1303, 8003.	04/24/92	National Recreational Trails Program.
4002	09/04/92	MCSAP Final Rule Part 350.
4008	05/29/92	Information on Uniformity Grant Process.
6001	06/25/92	Implementation of ISTEA Minimum Expenditures on Research, Development and Technology Transfer Activities.
	05/22/92	Joint Memo on Implementation of the Intermodal Surface Transportation Efficiency Act.

MEMORANDUM

U.S. Department of Transportation

Federal Highway Administration

Date: April 8, 1992.
Reply to Attn of: HNG–13.
Subject: Information—1991 Intermodal Surface Transportation Efficiency Act (ISTEA) Implementation Interstate Construction Program.
From: Associate Administrator for Program Development.
To: Regional Federal Highway Administrators; Federal Lands Highway Program Administrator.

The purpose of this memorandum is to provide written guidance regarding the provisions in the 1991 ISTEA, which change or impact the Interstate construction program.

Authorizations—Section 1001

Section 1001(a) declares that the Interstate construction (IC) funds authorized by the act are the final authorizations of funding to complete construction of the Interstate System. The authorizations of $1.8 billion per year for fiscal years 1993 through 1996 are specified in section 1000(f). In some States, it may be necessary to supplement IC funds with other funds such as National Highway System (NHS) funds, or low priority work may be dropped from the Interstate program. An extension of the program or additional authorizations are not contemplated.

Apportionments—Section 1001

Section 1001(b) approved the 1991 Interstate Cost Estimate (ICE), and directed use of factors contained in the revised Table 5 of Committee Print 102–24, which were used in making apportionments for the FY 1993 funds. Section 1001(d) extends the administrative adjustment for FY 1994 through 1996. All previous credits, apportionments, lapses, withdrawals, discretionary allocations, and transfers of funds will be reflected as detailed in section 1001(d).

Prior to making apportionments from the $1.8 billion authorized each year, a separate allocation is made to Massachusetts in accordance with section 1001(e). Further, $20 million will be set aside each year to carry out the provisions of section 1006(h) of the act. Apportionments to Wisconsin will be made as specified in section 1045.

Section 1001(h) amends section 102(c) of the 1987 Surface Transportation and Uniform Relocation Assistance Act, and eliminates the provision that no State receive less than one-half percent minimum apportionment. The flexibility provided at the end of section 104(b)(5)(A) of title 23 was not altered by the ISTEA. Thus, if the Secretary and a State highway department agree that a part of the apportionment of IC funds is not needed for that fiscal year, the unneeded portion is not apportioned, but will be distributed under the Interstate discretionary program in accordance with section 118 of title 23. This agreement must be reached prior to the IC apportionment and so if any State is interested in this provision, inquiry should be made to the Program Analysis Division (HFS–30) well in advance of the scheduled IC apportionment.

Period of Availability—Section 1020

Section 1020(a) amends section 118 of title 23 and provides that IC funds, which are made available 1 year in advance, will be available until the last day of the fiscal year in which the funds are apportioned or allocated. This applies to all apportionments except the final apportionment, the FY 1996 funds, which will be apportioned on October 1, 1994, and will remain available until expended.

Federal Highway Administration Notice N4510.263, dated December 18, 1991, transmitted the certificate of apportionment of IC funds authorized for FY 1993. In a change to that notice issued February 27, 1992, paragraph 2b of the notice was revised to indicate that FY 1991 and 1992 IC apportionments are available until expended.

Federal Share—Section 1021

Section 1021 provides for a 90 percent Federal share for all IC funded projects, except for those that provide additional capacity, which will be funded at an 80-percent Federal share. The section provides for funding HOV and auxiliary lanes (truck climbing lanes, for example) at the 90 percent Federal share. It is believed that the Congress intended that all IC funded projects would retain the traditional 90 percent Federal share (with sliding scales up to 95 percent, where applicable). Technical correction language has been submitted to the Congressional committees to restore the 90 percent share. In the meantime, those portions of new IC funded projects that provide additional capacity (exclusive of HOV and auxiliary lanes) on existing Interstate routes shall be funded at an 80-percent Federal share.

Eligibility

The 1991 ISTEA did not change eligibility criteria for IC funds. Only work eligible under the provisions of the 1981 Federal-Aid Highway Act, and included in the 1981 ICE is eligible for IC funding.

Toll Roads, Bridges, and Tunnels—Section 1012

Section 1012(d) provides that existing toll agreements entered into under section 129 of title 23 prior to and in effect on the date of enactment of the 1991 ISTEA, shall continue in effect in accordance with the provisions of the agreement.

Federal participation in the initial construction of toll roads, bridges, tunnels or approaches thereto on the Interstate System is not allowed under section 129(a)(1)(A) where such facility was not covered by a section 129 agreement in effect on the date of enactment of the 1991 ISTEA.

Discretionary Funds—Section 1020

Section 1020 amends section 118(c) of title 23 by reducing the amount of funds set aside for the Interstate Discretionary (ID) Program from $300 million annually to $100 million annually. A separate memorandum will be issued by Headquarters near the end of each fiscal year to seek applications for ID allocations.

Section 1020 has eliminated the priorities (i.e. #1 for gaps, etc.) of section 118(b)(2)(B) of title 23 previously used in allocating ID funds. Any specific criteria to be used in considering future candidates for discretionary allocations will be included in the memorandum seeking applications each year.

All ID funds set aside for the current fiscal year have been allocated. Refer to Mr. Willett's memorandum dated December 23, 1991, for details.

Transferability

Section 119(d) of title 23, providing for the transfer of IC apportionments, is essentially unchanged, except that the transfers will be from IC funds to NHS or Interstate Maintenance funds. Requests to transfer IC funds are limited to the Federal share of the cost to complete open-to-traffic work included in the 1991 ICE, and must be made in writing to the Office of Fiscal Services (HFS–30). Upon approval of the transfer, the work on which the transfer is based will be removed from the 1991 ICE and will lose its IC fund eligibility.

Disposition of Unobligated Funds—Section 1100

Section 1100 (b) and (c) deal with the disposal of unobligated balances of funds apportioned prior to the act. The provision has been interpreted to apply to unobligated balances of FY 1991 and 1992 IC funds which were apportioned prior to September 30, 1991. The period of availability for these FY 1991 and 1992 apportionments will continue as prior to the act; available until expended. As a result, IC funds will lapse on September 30, 1992, (or 1993 or 1994) if the amount of unobligated IC funds is in excess of the total of FY 1991 and 1992 IC apportionments.

This guidance will be supplemented in the future if further clarifications are found necessary. Questions about any of these Interstate issues should be directed to the Interstate and Program Support Branch (HNG–13).

/s/ Kevin E. Heanue for Anthony R. Kane.

MEMORANDUM

Date: July 17, 1992.
Reply to Attn. of: HFS–30.
Subject: *Information*—Revised Procedures for the Quarterly Obligation of Surface Transportation Funds.
From: Director, Office of Fiscal Services, Washington, DC 20590.
To: Associate Administrators; Regional Administrators; Division Administrators.

Procedures for the obligation of funds for States that confirm that they wish to obligate Surface Transportation Program (STP) funds on a quarterly basis were provided in my March 24, 1992 memorandum. These procedures required that States which will obligate STP funds quarterly do so using one Federal-Aid project each quarter.

A number of States expressed concern about the effects that quarterly obligations will have on their internal accounting system and have requested that they be permitted to obligate STP funds on a project-by-project basis. Therefore, we have revised the procedures to provide States with the following options for obligating STP funds for projects not on the Interstate System or National Highway System (NHS), on a quarterly basis:

1. Using an annual project with obligations each quarter;
2. Using a single project for each quarter;
3. Obligating STP funds on a project-by-project basis each quarter.

It should be noted that in accordance with Mr. Carlson's memorandum of January 28, 1992, (Subj: Implementing Guidance—Project Review, Oversight and Administration under the ISTEA of 1991), STP funded projects located on the Interstate or NHS systems must be obligated on a project-by-project basis with all the normally required statistical data being reported on the FHWA–37.

In addition to the three methods of obligating on a quarterly basis, we have provided a method, which will allow those States using the single project or annual project option, to timely close STP projects.

States that wish to obligate STP funds for projects not on the Interstate System or NHS, on a quarterly basis, using any of the above options, must:

1. Request that the FHWA no longer review and approve plans, specifications, and estimates in accordance with 23 U.S.C. 106(b) or 23 U.S.C. 117. If a State makes this request they must utilize the quarterly obligation procedures for STP projects not located on the Interstate or NHS.
2. The Governor, or designee, is required by Statute to certify before the beginning of each quarter that the State will meet all the requirements of 23 U.S.C. 133; and the State must notify the FHWA Division Office of the amount of obligations expected to be incurred during the quarter, for STP projects coming under this provision.

Annual Project

If the State chooses to use the annual project option, Division offices are required to notify the Program Analysis Division (HFS–30) when the State's request for exemption from the FHWA PS&E review is processed so that the Fiscal Management Information System (FMIS) can be adjusted to permit the obligation on quarterly basis for that State.

States wishing to obligate STP funds on an annual project must establish a separate project for each year. The following are the procedures for obligating STP funds on a quarterly basis using the annual project option:

(a) The State must submit the required Certification (signed by the Governor or designee) and notify the Division Administrator of the amount the State will obligate in the next quarter. The amount obligated should be the total federal share for each state project included in the Annual Project. A Project Agreement (PR–2) or Modified Project Agreement (PR–2a) is to accompany the State's submission. The submission should reach the division prior to the beginning of the quarter. A new submission is required for each quarter.

(b) The Division Administrator will notify the State that the quarterly submission has been accepted and process the PR–2 or PR–2a. In the first quarter the Division's acceptance represents project authorization and project agreement. In the following quarters the Division's acceptance represents an amended authorization and modified project agreement.

(c) States must analyze the amounts obligated each quarter and make adjustments, as necessary, to reflect changes as a result of, delayed or additional projects, over-runs or underruns. A PR–2a may be used to make adjustments at any time during the quarter. The State must provide this analysis to the Division Office each quarter.

(d) In addition to the required certification the State's submission must contain, at a minimum, the following items:

1. Project number (A different project number must be used for each year).
2. Total Federal Funds to be obligated and a break-down by appropriation code. Additionally, if funds are to be obligated from appropriation code 33C (urbanized areas of 200,000 or more) the State must provide a break-down showing the amounts for each urbanized area.
3. The total cost of the project as it relates to the Federal Funds in item 2 above. This is also required to be broken-down by appropriation code.

The work authorized in a particular year will remain with that project until completed. However, to facilitate the closing of projects a State may elect to close the annual project at the end of the year and roll the uncompleted State projects into the next year's Annual project. If a State elects this option they must deobligate all the funds from all uncompleted old State projects and obligate them under the new Annual project. For example, if the Annual project was comprised of 4 State projects and only one was completed and ready to close at the end of the year, the total amount obligated for the 3 uncompleted projects would be deobligated and re-obligated under the next years annual project.

This process would also require a debit and credit on the Current Billing to move any expenditures from the old Federal project to the new one. Once the obligations and expenditures have been moved, the original annual project will contain only completed work and may therefore be closed and a final voucher submitted.

Each quarter the Division Office will enter into FMIS the quarterly obligation of the STP program. Only the amount needed for the next quarter may be obligated, when the next quarter's needs are ready to be obligated, it should be treated as a modification to the annual project. A separate FHWA–37, using the same project number, will have to be completed for each appropriation code. When entering the obligation and agreement into the FMIS the division will complete the following items on the FHWA–37:

a. Region and State Code.
b. Appropriation Code.
c. Project Number.
d. Prefix letters—Division Office may use any combination of letters.
e. Transaction Number.
f. Line number—enter as line 30—only one line is required except for appropriation code 33C. In this case a line is required for each urbanized area. See section 1 below.
g. County—enter as 999.
h. Agreement Date—enter the appropriate date.
i. Step, and Step Date—Enter step 6 when the funds are obligated. Move the project to step 8 when the final voucher is received and step 9 when paid. Normally, a division will not receive the necessary documentation to move a project to steps 7 or P.
j. Total Cost—enter the appropriate amount.
k. Federal Funds—enter the amount requested.
l. When entering data for appropriation code 33C, each urbanized area will have to be entered on a separate line with the urbanized area code being entered in the field "Urbanized Area—W08–082". The Urbanized Area field in the header record should be left blank.

Single Quarterly Project Option

If the State chooses to use the single quarterly project option, Division offices are required to notify the Program Analysis

Division (HFS-30) when the State's request for exemption from the FHWA PS&E review is processed so that the Fiscal Management Information System (FMIS) can be adjusted to permit quarterly obligations for that State.

States wishing to obligate STP funds on a single project must establish a separate project for each quarter. The following are the procedures for obligating STP funds on a quarterly basis using the single project option:

(a) The State must submit the required Certification (signed by the Governor or designee) and notify the Division Administrator of the amount the State will obligate in the next quarter. The amount obligated should be the total federal share for each state project included in the single project. A Project Agreement (PR-2) or Modified Project Agreement (PR-2a) is to accompany the State's submission. The submission should reach the division prior to the beginning of the quarter. A new submission is required for each quarter.

(b) The Division Administrator will notify the State that the quarterly submission has been accepted and process the PR-2 or PR-2a. The Division's acceptance represents project authorization and project agreement.

(c) States must analyze the amounts obligated each quarter and make adjustments, as necessary, to reflect changes as a result of, delayed or additional projects, over-runs or underruns. A PR-2a may be used to make adjustments at any time during the quarter. The State must provide this analysis to the Division Office each quarter.

(d) In addition to the required certification, the State's submission must contain, at a minimum, the following items:

1. Project number (a different project number must be used for each quarter).

2. Total Federal Funds to be obligated and a breakdown by appropriation code. Additionally, if funds are to be obligated from appropriation code 33C (urbanized areas of 200,000 or more) the State must provide a breakdown showing the amounts for each urbanized area.

3. The total cost of the project as it relates to the Federal Funds in item 2 above. This is also required to be brokendown by appropriation code.

The work authorized in a particular quarter will remain with that quarterly project until completed. However, to facilitate the closing of projects a State may elect to close a quarterly project at a specific point in time (for instance every December 31st) and roll the uncompleted State projects into a new Federal quarterly project. If a State elects this option they must deobligate the total amount obligated associated with uncompleted old State projects and obligate them under a new quarterly project. For example, if a quarterly project was comprised of 4 State projects and only one was completed and ready to close, the total amount obligated for the 3 uncompleted projects would be deobligated and re-obligated under a new quarterly project.

This process would also require a debit and credit on the Current Billing to move any expenditures from the old Federal project to the new one. Once the obligations and expenditures have been moved, the original quarterly project will contain only completed work and may therefore be closed and a final voucher submitted.

Each quarter the Division Office will enter into FMIS the quarterly obligation of the STP program. A new project number must be set up for each quarter. A separate FHWA-37, using the same project number, will have to be completed for each appropriation code. When entering the obligation and agreement into the FMIS, the division will complete the following items on the FHWA-37:

a. Region and State Code.

b. Appropriation Code.

c. Project Number.

d. Prefix letters—Division Office may use any combination of letters.

e. Transaction Number.

f. Line number—enter as line 30—only one line is required except for appropriation code 33C. In this case a line is required for each urbanized area. See section 1 below.

g. County—enter as 999.

h. Agreement Date—enter the appropriate date.

i. Step, and Step Date—Enter step 6 when the funds are obligated. Move the project to step 8 when the final voucher is received and step 9 when paid. Normally, a division will not receive the necessary documentation to move a project to steps 7 or P.

j. Total Cost—enter the appropriate amount.

k. Federal Funds—enter the amount requested.

l. When entering data for appropriation code 33C, each urbanized area will have to be entered on a separate line with the urbanized area code being entered in the field "Urbanized Area—W08—082". The Urbanized Area field in the header record should be left blank.

Project-by-Project Option

If the State chooses to use this option, Division offices are required to notify the Program Analysis Division (HFS-30) when the State's request for exemption from the FHWA PS&E review is processed so that the Fiscal Management Information System (FMIS) can be adjusted to permit quarterly obligations for that State.

States wishing to obligate STP funds on a project-by-project basis should obligate the funds at the beginning of each quarter for all projects expected to begin during the quarter. Changes to the quarterly package of projects, such as the addition of a project, may be made at any time during the quarter. The amounts obligated on each project must be adjusted as necessary due to over-runs, under-runs. As individual projects are completed, final vouchers should be prepared for each project using the final voucher procedures for non STP projects.

The following procedures should be utilized for obligating STP funds on a quarterly basis using this option:

(a) The State must submit the required certification (signed by the Governor or designee) and notify the Division Administrator of the projects the State will obligate for the quarter. A Project Agreement (PR-2) must be submitted for each project. The submission should reach the division prior to the beginning of the quarter. A new submission is required for each quarter.

(b) The Division Administrator will notify the State that the quarterly submission has been accepted and process the PR-2(s). The Division's acceptance represents project authorization and project agreement. Upon agreement between the Division and the State the PR-2 for construction projects may be delayed until the construction project is awarded.

(c) The State must adjust the amount obligated, as necessary due to overruns, underruns, etc. A PR-2a must be submitted to Division to modify the amounts obligated.

(d) In addition to the required certification the State's submission must contain for each project, at a minimum, the following items:

1. Project number—including the appropriation code.

2. Total Federal funds to be obligated.

3. The total cost of the project as it relates to the Federal funds above.

4. If the project is in an urbanized area over 200,000—the urbanized area name is required.

Each quarter the Division Office is to enter into FMIS the quarterly obligation of the STP program. A separate FHWA-37 is required for each project. When entering the obligation and agreement into the FMIS the division will complete the following items on the FHWA-37:

a. Region and State Code.

b. Appropriation Code.

c. Project Number.

d. Prefix letters—Division Office may use any combination of letters.

e. Transaction Number.

f. Line number—enter as line 30—only one line is required.

g. County—enter as 999.

h. Agreement Date—enter the appropriate date.

i. Step and Step Date—Enter step 6 when the funds are obligated. Move the project to step 8 when the final voucher is received and step 9 when paid. Normally, a division will not receive the necessary documentation to move a project to steps 7 or P.

j. Total Cost—enter the appropriate amount.

k. Federal Funds—enter the amount requested.

l. When entering data for appropriation code 33C, each urbanized area will have to be entered on a separate line with the urbanized area code being entered in the field "Urbanized Area—W08—082".

Division Offices should work with their State to determine which method best suits their local requirements. States may change from one method to another with the approval of the Division Office. Projects currently underway using non-quarterly procedures (ie., individual letters of authorization) should continue to be processed as an individual project.

When obligating STP funds, using quarterly obligation procedures, no additional program statistical data is necessary. However, the States will be required to provide data which will allow FHWA to monitor the program on a nationwide basis and respond to questions and requests for information about the STP program. The requirements for this additional data will be provided in the near future.

Only STP funds may be obligated using these procedures. All other programs, including Minimum Allocation and Donor State Bonus funds, are to be obligated using normal procedures. STP funds used for transit projects in conjunction with the Federal Transit Administration will follow procedures issued on June 19, 1992.

Should you have any questions concerning this matter, please contact Bruce Swinford or Tom Park (HFS-30) on 202-366-0673.

Peter J. Basso

MEMORANDUM

Date: April 20, 1992.
Reply to Attn. of: HFS-31.
Subject: *Action*—Fiscal Year 1992 Federal-aid Highway Program Obligations.
From: Administrator.
To: Regional Administrators; Division Administrators; Federal Lands Highway Program Administrator; Associate Administrators.

The Federal Highway Administration and the Department of Transportation are committed to the President's charge to use all available FY 1992 Federal-aid highway program funds as efficiently as possible as a means to stimulate the national economy and generate employment. The purpose of this memorandum is to provide direction and procedures for working with the state Transportation agencies to ensure that these benefits are realized by redistributing unneeded balances of FY 1992 obligation authority to those states that can use additional obligation authority beyond that presently available.This guidance pertains to obligations controlled by the Federal-aid obligation limitation as well as the obligation of minimum allocation funds that are exempt from the Federal-aid limitation, but are subject to separate obligation controls during fiscal year 1992 to ensure budget compliance.

The amounts released by, or redistributed to, states for both the formula and Minimum Allocation limitations, will have no bearing on the limitation that states receive in fiscal year 1993.

Background

The Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 (Pub. L. 102-240) provides for redistribution, after August 1, 1992, of authority distributed to a state for FY 1992 if the state will not obligate the authority during FY 1992.

Of the total $15,686,364,000 obligation authority subject to the Federal-aid limitation, $378.9 million was reserved for the Federal Lands program, $449.6 million for administration, $5 million for the high-speed ground transportation program, and $508.6 million to support the obligation of FY 1992 allocations of special non-formula funds. The remainder, $14,344,347,430, was distributed by formula to the states.

The ISTEA of 1991 does not provide for additional FY 1992 obligation authority to those states that have obligated all authority distributed by formula. Therefore, any additional amounts to be made available in FY 1992 will be derived solely from the amount returned for redistribution. Thus, it is critical to determine as early as possible in the fiscal year those states that will not fully obligate available formula distribution.

In accordance with section 1004 (Budget Compliance) of the ISTEA of 1991, the obligation of FY 1992 section 157 Minimum Allocation funds may not exceed $1,092 million during FY 1992. The "limitation" on these obligations does not reduce a state's apportionment of these funds. The distribution to states of obligation authority under this "limitation" was based on each state's proportionate share of FY 1992 Minimum Allocation apportionments. Any unobligated balances of minimum allocation funds from previous fiscal years are also available for obligation during FY 1992. We are seeking at this time to determine whether states intend to fully obligate available minimum allocation "limitation" during FY 1992 and for those states that will not use their limitation to redistribute this "limitation."

Redistribution of Unobligated FY 1992 Authority Initially Distributed by Formula

To provide a basis for determining (1) the amount of FY 1992 obligation authority initially distributed by formula that will be available for redistribution among the other states after August 1, 1992, and (2) those states that are able to obligate amounts in addition to those previously distributed, each state shall submit a plan by May 18, 1992, to the Division Administrator showing:

(1) The projected July 31 unobligated balance of obligation authority.

(2) The projects and/or Federal funds that will be obligated, or could be obligated by the states by September 30, 1992, if additional authority is provided.

(3) The obligation authority that is excess to the needs of the state and is being released.

(4) Additional obligation authority required.

The Division Administrator shall review the plan submitted by the state and reach an agreement with the state on those projects which could be approved and authorized by the division office on or before September 30.

By May 26, 1992, Division Administrators shall report to their regional offices: (1) The amount of FY 1992 formula authority that is excess to the state's needs and is being released, or (2) that the state and Division Administrator have reached an agreement that the state's remaining unobligated FY 1992 formula authority will be obligated by September 30, 1992, and/or (3) the additional formula authority that could be obligated by September 30, 1991. The report shall be submitted to Washington Headquarters by June 1, 1992.

Redistribution of Unobligated FY 1992 Minimum Allocation Obligation Authority

To provide a basis for determining (1) the amount of FY 1992 obligation authority initially distributed for minimum allocation that will be available for redistribution among the other states after August 1, 1992, and (2) those states that are able to obligate amounts in addition to those previously distributed, each state shall submit a plan by May 18, 1992, to the Division Administrator showing:

(1) The projected July 31 unobligated balance of Minimum Allocation funds (Appropriation Codes 34A, 34B, 34C, and 34D).

(2) The projects and/or Federal funds that will be obligated, or could be obligated by the states by September 30, 1992, if additional authority is provided up to a maximum of the amount apportioned to the states in FHWA Notice 4510.271. The attached table provides the sub-allocations for the total minimum allocation apportionment for FY 1992.

(3) The Minimum Allocation obligation authority that is excess to the needs of the state and is being released.

(4) Additional obligation authority required.

The Division Administrator shall review the plan submitted by the state and reach an agreement with the state on those projects which could be approved and authorized by the Division Office on or before September 30. Care must be taken to ensure that the planned projects do not exceed the amounts available in the sub-allocations (see attached table).

By May 26, 1992, Division Administrators shall report to their region offices: (1) The amount of FY 1992 minimum allocation authority that is excess to the state's needs and is being released, or (2) that the state and Division Administrator have reached an agreement that the state's remaining unobligated FY 1992 minimum allocation authority will be obligated by September 30, 1992, and/or (3) the additional minimum allocation authority that could be obligated by September 30, 1992. The amounts requested in (1) and (3) above must be provided by appropriation code. The report shall be submitted to Washington Headquarters by June 1, 1992.

Release of Unobligated FY 1992 Authority Distributed To Support Obligations of Non-Formula Allocations (Except Federal Lands)

No state will be provided with special obligation authority in FY 1993 to cover any unobligated FY 1992 allocations carried over on September 30. Obligation in FY 1993 of any such carryover allocation must be charged to the state's share under the formula distribution.

The amount of FY 1992 obligation authority distributed to support obligations of allocations of non-formula funds that will not be obligated by September 30, 1992, should be determined by the Division Administrator in consultation with the state.

By May 18, 1992, Division Administrators shall report to their regional offices the amount of FY 1992 non-formula funds and authority allocated to the states, the amount that will be obligated as of September 30, 1992, and the amount of obligation authority which is being released.

Redistribution of FY 1992 Authority Reserved for Federal Lands and Other Headquarters Controlled Programs. Each respective Associate Administrator should report the balance, if any, of obligation authority reserved for their program(s) which will not be obligated as of September 30, 1992, to the Program Analysis Division (HFS-30) by May 26, 1992.

Reports From Regional Offices. Based on reports from division offices, regional offices shall submit reports in the attached format for each state in their region.

Redistribution of Excess FY 1992 Obligation Authority

A formula for redistribution of released obligation authority will be developed to implement the requirements of Public Law 102–240. Priority will be given to those states having large unobligated balances of funds apportioned under 23 U.S.C. 104 and 144. A final review of the reports submitted will be requested in early July to provide for any necessary revisions to the states' obligation plans.

The redistribution of released authority will be accomplished on August 3, 1992.

Program Monitoring. The Washington Headquarters will monitor the program on a national basis to insure that available authority is fully utilized.

T.D. Larson.

BILLING CODE 4910-22-M

Status of 1992 Obligational Authority Minimum Allocation
(Formula Minimum Allocation and Non-Formula) (RCS HFS-30-1)

State -

	Funds Allocated	Authority Provided	Balance of Available Obligational Authority as of 7/31/92	Projected Obligations August Available Authority Aug./Sept. 1992	Obligation Authority Release	Additional Authority Required
	(1)	(2)	(3)	(4)	(5)	(6)
Formula - Total for all funds subject to the obligation ceiling.	XXX	XXX	$	$	$	$
Minimum Allocation - List by Approp. Code 34A,B,C and D. Column (1) and (2) will be the same.						
"Non-Formula" and Federal Lands						
The projected obligation against the obligation authority (column 4) may not exceed the balance of available authority (column 3).* (a) List funds by title (b) Please account for all 1992 allocations (c) Any amounts reported in column 5 should be footnoted to explain why.	$	$	$	$	$	$
Non-Formula - Subtotal	$	$	$	$	$	$
State Total	$	$	$	$	$	$

* Obligation authority distributed with Section 149 Demonstration Projects is to be considered as formula authority.

BILLING CODE 4910-22-C

SUB-ALLOCATION OF FY 1992 TOTAL MINIMUM ALLOCATION APPORTIONMENT

State	Minimum allocation apportionment N4510.271	Urbanized areas of 200,000 plus population	Areas of less than 200,000 population	Areas of less than 5,000 population	State flexibility	Grand total
	(1)	(2)	(3)	(4)	(5)	(6)
Alabama	24,283,712	2,188,523	5,400,137		16,695,052	24,283,712
Arizona	48,943,184	10,789,005	1,990,864	2,514,876	33,648,439	48,943,184
Arkansas	48,853,490	2,207,814	13,058,901		33,586,775	48,853,490
California	135,126,746	32,368,742	9,858,366		92,899,638	135,126,746
Florida	159,082,913	33,535,821	16,177,589		109,369,503	159,082,913
Georgia	80,121,375	10,085,226	14,952,704		55,083,445	80,121,375
Indiana	81,219,913	9,016,398	16,364,825		55,838,690	81,219,913
Kentucky	10,551,973	994,847	2,302,644		7,254,482	10,551,973
Louisiana	4,030,342	496,232	763,249		2,770,861	4,030,342
Maine	1,209,959		378,112		831,847	1,209,959
Michigan	62,608,271	10,500,212	8,812,775	252,098	43,043,186	62,608,271
Mississippi	22,371,121	865,650	6,125,325		15,380,146	22,371,121
Missouri	56,988,903	8,399,029	9,410,003		39,179,871	56,988,903
North Carolina	65,949,471	3,757,803	16,851,407		45,340,261	65,949,471
Ohio	98,837,335	17,201,510	13,685,157		67,950,668	98,837,335
Oklahoma	36,377,321	4,550,269	6,817,644		25,009,408	36,377,321
Oregon	1,257,963	138,954	254,159		864,850	1,257,963
Tennessee	40,094,300	4,854,819	7,674,649		27,564,832	40,094,300
Texas	125,464,106	20,513,302	18,694,231		86,256,573	125,464,106
Wisconsin	56,615,426	5,318,901	12,373,419		38,923,106	56,615,426
Total	1,159,987,824	177,783,057	181,946,160	2,766,974	797,491,633	1,159,987,824
Appropriation code		34B	34C	34D	34A	

Note: Requests for additional authority may not exceed the above amounts by category.

MEMORANDUM

Date: July 17, 1992.
Reply to Attn. of: HFS–31.
Subject: Comments on STP Quarterly Obligation Procedures.
From: Director, Office of Fiscal Services, Washington, DC.
To: Regional Administrators, Division Administrators.

On June 12, 1992, we issued draft procedures for the quarterly obligation of STP funds. Comments were received from 23 Division Offices. Listed below is a summarization of the comments along with the action taken.

• Does the law require that a waiver of PS&E review under 23 U.S.C. 106(b) be complied with in order to process STP obligations on a quarterly basis?

Yes, the language in 23 U.S.C. 133(e)(2) allows quarterly obligations for STP projects not subject to review by the Secretary under chapter 1 of title 23. Only States operating under 106(b) and 117 meet this criteria.

• Clarify which STP projects are covered by quarterly procedures.

Clarification has been added to specifically exclude STP projects on the Interstate System and the National Highway System as provided in the memorandum providing, Implementing Guidance—Project Review, Oversight and Administration under the ISTEA of 1991, issued by the Executive Director on January 28, 1992. Because the principal Federal interest lies with the National Highway System and Interstate System, it was determined by the FHWA that its traditional process for obligating funds and tracking project accomplishments through FMIS would be retained for all Federal-aid projects on the NHS and Interstate System.

• Quarterly procedures will cause a lot more work for the State in project planning, record keeping and accounting.

The ISTEA established the concept of obligating STP on a quarterly basis. This will require a State to plan for the upcoming quarter. There is no change in record keeping requirements or in accounting for project costs. States which have systems that can take advantage of the annual or single project option can do so. The project-by-project option is very similar to business as usual with the one additional requirement that States must plan for the next quarter.

• New procedures could have significant impact on State systems and therefore, should be implemented formally, using the regulatory process.

The procedures for the annual and single project option can have an impact on State systems, however, they are optional. States that desire to obligate quarterly can do so using the project-by-project option. This would have an insignificant impact. For these reasons we do not feel that the formal regulatory process is necessary.

• States should be allowed to continue project-by-project until they are ready to begin quarterly.

States can obligate STP projects on a quarterly basis using the project-by-project option then switch to the annual or single project option, with the concurrence of the Division Office, when they are ready.

• Clarify how a State may change from one option to another as the States capabilities change.

Clarification has been added to state that the option may be changed with the approval of the Division Office. No headquarters action is necessary.

• Clarification is needed to indicate that a State can submit a PR–2a to adjust the quarterly obligation at any time during the quarter under any of the three options.

Clarification has been added to make this clear.

• Procedures are extremely complicated and we would recommend major simplification to incorporate efficiency into the program.

We have simplified the procedures as much as possible. One should note that procedures for each of the three options has been written such that each can stand on its own. This eliminates the need to refer back to another section of the procedures.

• The Credit and Debit process in closing projects will give the State major timing and paperwork problems. Suggested alternative—Keep the ongoing work under the existing and move the completed work to a new number.

We are attempting to provide a mechanism which will allow the State to close projects and reduce the number of Federal-aid projects that are open, the suggested alternative will not achieve this. Additionally, if a State chooses this option it should result in a review of the obligation to ensure that the amount obligated is still valid.

• Question the need for a final voucher on Annual Project. If final voucher is required the information required should be as simple as possible.

Final vouchers are required by 23 U.S.C. 121(b). The information required is contained in 23 CFR 140.107.

• The ISTEA requires only a notification of expected obligations at the beginning of the quarter and not the obligation of the expected amount at the beginning of the quarter. The State would prefer to obligate funds throughout the quarter and not at the beginning.

The ISTEA also states that acceptance of this notification shall be deemed a contractual obligation of the United States. This makes it very clear that the intent is to

obligate funds based on the notification. States should notify the Division of the funds to be obligated for the quarter at the beginning of the quarter. Adjustments to this amount may be made at any time during the quarter.

• The wording of option 3 implies a strict requirement for immediate adjustment for changes while the State believes the intent is for the use of judgment at the Division as to the timing of the adjustments.

The wording has been modified.

• Rewrite the first paragraph of Multiple Project Option as follows; "States wishing to obligate STP funds on a multiple project basis should obligate the funds at the beginning of each quarter for all projects expected to begin during the quarter. Changes to the quarterly package for projects, such as the addition of a project, may be made at other times during the quarter. The amounts * * *."

This wording has been incorporated in the procedures.

• State wants the mutiple project option without the quarterly requirement.

States which elect to utilize section 106(b) must obligate funds on a quarterly basis.

• State wants to hold the PR-2 until construction projects are awarded as opposed to placing the project in Agreement at the time of Obligation.

This flexibility has been added to the procedures.

• State wants to have STP projects go through step P as they use it for monitoring purposes.

Division Offices and States may agree to continue this practice. However, it should be noted that the criteria used to advance a project into Step P will not normally be available for STP projects.

• Need the requirement for any additional statistical data as soon as possible.

The Program Offices are developing the types of data and the mechanism to be used in collecting the data. Information will be provided as soon as it becomes available.

• State sees no need for a Quarterly Certification. State wants to certify annually.

The requirement contained in 23 U.S.C. 133(e)(2) is for a quarterly certification. Annual certifications would not meet the criteria established in law.

• Want the Details of the quarterly analysis required when obligating under the Annual Project.

• The analysis is simply a review of the amounts obligated during the quarter to ensure that necessary adjustments are made for delayed projects, over-runs, under-runs and projects which advanced quicker than expected.

• How should we handle the obligations at the beginning of the Fiscal Year. The Division is going to require the certification before the beginning of the quarter and obligate the funds after October 1, when funds become available.

This is the correct process.

• Need to clarify in option 3 para (b) that a PR-2 is required for each project. This can be done by putting a "(s)" after the PR-2.

This has been done.

• Need clarification on how the Projects already underway in STP will be handled when a State begins quarterly process. Are they mixed or does the State continue to process project-by-project when modifying existing projects.

Clarification has been added to state that projects authorized under non-quarterly procedures will continue to be processed under those procedures.

• The annual close out procedures will force the State to assume full responsibility for monitoring the 10 yr ROW AND PE requirements. Is this covered by the certification? and what is the Division's responsibility in this area?

For STP projects the State would assume full responsibility for the 10 year requirements.

• The requirement that the Division review the Governor's certification to ensure compliance with 23 USC 133 is very time consuming.

The requirement that the Division review the Governor's certification has been dropped. Divisions should accept the certification as evidence that State will comply with 23 U.S.C. 133.

• The procedures require a breakdown of the STP appropriation codes—What backup and details are intended.

No additional details or backup is required.

• STP funds have different funding ratios who will track these, i.e., 100% safety.

The funds will be obligated by appropriation code, each different funding ratio has a different appropriation code.

• Can the state authorize a large project and obligate only the amount of federal funds needed for the quarter.

Clarification has been added to explain that the amounts obligated must equal the total federal funds required for each state project included in the quarterly package.

• Rolling over uncompleted projects will result in the current quarterly project having multiple authorization dates. Since the State's system only allows for a single eligibility date, how should this be treated.

The rolling over of uncompleted projects is an option that States have to reduce the number of open Federal projects. If this is unworkable in a particular State we are willing to work with that State to develop another method.

As noted above we received a large number of comments and suggestions. A number of the comments were received from more than one Division. We attempted to accommodate as many of the comments as possible. I sincerely appreciate the level of interest and effort put into the responses to the draft. Should you have any other comments or questions please contact the Program Analysis Division at 202-366-2906.

Peter J. Basso.

MEMORANDUM

Date: October 19, 1992.
Reply to Attn. of: HCR-20.
Subject: *Information:* Section 1003(b) of the 1991 ISTEA—Disadvantaged Business Enterprise (DBE) Program.
From: Federal Highway Administrator.
To: Regional Federal Highway Administrators, Associate Administrators, Staff Office Directors, Federal Lands Highway Program Administrator.

Section 1003(b) of the ISTEA continued the DBE program. Section 1003(b) replaces section 106(c) of the 1987 STURRA as the statutory authority for the DBE program. A copy of section 1003(b) is attached for your information

Despite significant changes by the ISTEA to FHWA's program and its stewardship role under title 23, the agency's responsibility to oversee compliance with the DBE program has not changed. This is because the DBE program is a non-title 23 program. The legislation mandating the DBE program applies equally to several modes of the U.S. Department of Transportation other than FHWA, i.e., FTA and FAA. That is why the implementing regulations for the DBE program are published by the Department and contained in 49 CFR part 23, not 23 CFR. Therefore, all projects, regardless of whether they are on or off the National Highway System (NHS), continue to be subject to the legislative and regulatory DBE program requirements. Similarly, FHWA must continue to approve each State's DBE program and its annual goals, and to ensure compliance with all DBE program requirements.

Section 1003(b) retained all the basic DBE requirements of section 106(c) and added several requirements. The provisions retained and added are summarized in the following paragraphs.

Significant provisions retained from the 1987 STURRA include:

• Continuation of the requirement that not less than 10 percent of funds authorized in the act be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals.

• Continuation of the inclusion of women in the presumptively disadvantaged category.

• Application of the DBE program to all categorical programs including demonstration projects.

• Application of the DBE program to all funds authorized by the 1987 STURRA that were unobligated prior to the passage of the act.

• Continuation of the requirement for an annual survey and listing by each State of the firms certified and their locations.

• Continuation of the requirement for minimum uniform certification criteria.

New/revised provisions of section 1003(b) of the ISTEA include:

• The size limitation for qualifying as a small business for purposes of the DBE program was modified by raising the threshold to $15,370,000 average annual gross receipts over 3 years. This is the same size standard established by the U.S. Department of Transportation (DOT) in the June 20, 1990, **Federal Register** notice.

• A requirement that the States annually report to the Secretary a detailed percentage breakdown of the socially and economically disadvantaged businesses participating in the DBE program. The annual report shall show the percentage (and number) of:

(1) White women business enterprises (WWBEs);

(2) Minority women business enterprises (MWBEs); and

(3) Minority business enterprises (MBEs).

See our memorandum dated April 22, that discusses these reporting requirements in more detail.

• Funds expended for contracts under Title V (Intermodal Transportation) and Title VI (Research) are now subject to the DBE requirement that not less than 10 percent of funds be expended with DBE firms. Consistent with current policy (see FHWA Administrator's August 23, 1983, memorandum, Attachment #2), the DBE program requirements are applicable to all funds expended in contracts (e.g., technical, professional, and management services) awarded by FHWA, States, or other federally funded recipients under these programs. We will be coordinating with each of the Associate Administrators to determine how this requirement will be implemented.

• A requirement that General Accounting Office (GAO) conduct a study of 10 areas of FHWA's DBE Program. These areas are described in Section 1003(b)(5).

Should you require additional clarification of the statutory requirements of the ISTEA, please contact Ms. Linda J. Brown (HCR-10) at (202) 366-0471 or Mr. George Duffy (HCR-20) at (202) 366-2925.

T.D. Larson.

MEMORANDUM

Date: June 12, 1992.
Reply to Attn of: HEP-12.
Subject: *Action:* Instructions for Developing the Proposed National Highway System (NHS).
From: Executive Director.
To: Regional Federal Highway Administrators; Federal Lands Highway Program Administrator.

The purpose of this memorandum is to provide instructions for use in developing the proposed NHS authorized by section 1006 of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991. Copies should be made available to the States, metropolitan planning organizations (MPOs) and any other organizations, groups or stakeholders expressing an interest in the process.

The NHS is the centerpiece of the ISTEA, and the system is expected to be the major focus for the Federal-aid highway program into the 21st century. It is critically important, therefore, for the Federal Highway Administration (FHWA) to play a strong leadership role in the development of the proposed NHS to ensure that national objectives are achieved. Attachment 1 describes specific areas that require a strong Federal emphasis during the development of the proposed NHS. We are asking that you, the Division Administrators and appropriate regional and division office staffs work closely with the States and, where appropriate, with the MPOs and others in this effort. The successful completion of this important activity will depend on the combined efforts of the States, MPOs and FHWA.

Section 1006(a) directs the Secretary to submit a proposed NHS to the Congress for approval not later than December 18, 1993. This section establishes a limitation of 155,000 miles for the proposed NHS but permits the Secretary to increase or decrease the maximum mileage by up to 15 percent. Section 1006(a) also states that the illustrative NHS, submitted to the Congress in February 1991, "* * * shall serve as the basis for the States in proposing arterials and highways for designation to such system." Accordingly, the rural and urban mileage totals by State represented by the 150,000-mile illustrative NHS will be used as the starting point for developing the proposed NHS. Rural and urban mileage targets and related instructions for use by the States in proposing routes for the NHS are included in Attachments 1 through 6. Two copies of a map depicting the rural component of the illustrative NHS in each State are also attached.

We do not plan to conduct NHS workshops; however, if a region, or multiple regions, decide to schedule a workshop, Planning and Programming Branch staff members are available to participate. Requests for technical assistance or participation in workshops should be directed to Mr. Robert A. Gorman, (202) 366-5001.

Policy questions related to this memorandum and the attached instructions should be directed to Mr. Richard A. Torbik, Chief, Planning Programs Division (202) 366-0233 or Mr. Thomas R. Weeks, Chief, Planning and Programming Branch on (202) 366-5002. Technical questions should be directed to Mr. Gorman.

E. Dean Carlson

7 Attachments

Attachment 1—General Approach for Developing the Proposed National Highway System and Areas of Federal Emphasis

Section 1006 of the Intermodal Surface Transportation Assistance Act (ISTEA) of 1991 directs the Secretary to develop a proposed National Highway System (NHS) in cooperation with the States and local officials. This section establishes a limitation of 155,000 miles for the proposed NHS, but the Secretary is authorized to increase or decrease the maximum mileage by up to 15 percent. The broad criteria contained in the statement of purpose and the required components identified in Section 1006 provide the principal bases for developing the proposed NHS. Section 1006 also specifies that the routes on the map illustrating the NHS submitted to the Congress in February 1991, will serve as the basis for the States in proposing routes for the system. The proposed NHS must be submitted to the Congress for approval not later than December 18, 1993. No funds may be apportioned for the NHS or the Interstate maintenance program after September 30, 1995, unless the Congress approves a law designating the NHS.

Because of the national significance of the NHS, it is critical that the Federal Highway Administration play a strong role in its developing the proposed NHS in cooperation with the States and local officials. Accordingly, the instructions for developing the proposed NHS emphasize a cooperative Federal/State/local process.

Purpose (Objective) of the NHS (Section 1006 of the ISTEA)

"Provide an interconnected system of principal arterial routes which will serve major population centers, international border crossings, ports, airports, public transportation facilities, and other intermodal transportation facilities and other major travel destinations; meet national defense requirements; and serve interstate and interregional travel."

General Approach

The instructions contained in this and related attachments are intended to yield a 150,000- to 155,000-mile proposed NHS; however, the final mileage may vary. Mileage targets based on the 150,000-mile illustrative NHS, submitted to the Congress in February 1991, will serve as the starting point for developing the proposed NHS. This approach is consistent with the direction provided in Section 1006 that the illustrative NHS "* * * serve as the basis for the States in proposing arterials and highways for designation * * *." Rural and urban mileage targets are contained in Attachment 2. All components of the NHS identified in Attachments 3 and 4 must be satisfied with the mileage targets; however, the instructions provide an opportunity for the States and metropolitan planning organizations (MPOs) to propose routes, within certain constraints, which exceed the mileage targets. This approach will provide needed flexibility to achieve an equitable system that meets the objectives of section 1006.

Consistent with the traditional Federal/State relationship in administering the Federal-aid highway program, the States are expected to take the lead in working with the MPOs and other local officials to (1) identify routes for the proposed NHS, (2) coordinate with adjacent States to achieve an integrated system consistent with the objectives of the NHS, and (3) submit all required products to FHWA.

Because of the December 18, 1993, deadline established by the ISTEA for submitting the proposed NHS to the Congress, it may not be possible to fully integrate this effort with implementation of the statewide transportation planning requirements of 23 U.S.C. 135. Nevertheless, the States are encouraged to work within the framework of the requirements of 23 U.S.C. 135 to develop the proposed NHS. To the extent practicable, the public involvement processes established under 23 U.S.C. 135 should be utilized during the development of the proposed NHS.

The strategic highway network (STRAHNET) and major STRAHNET connectors are required components of the NHS. Specific instructions regarding these routes are included in Attachment 3. These routes must be included as a part of the proposed systems submitted by the States. If a State believes that there is a superior alternative to a STRAHNET corridor, or part of a corridor, or to a major STRAHNET connector, the reason(s) for the recommended change must be provided. Proposed changes to the STRAHNET corridors and major STRAHNET connectors will be coordinated by the Planning and

Programming Branch with the Military Traffic Management Command (MTMC). If the MTMC and FHWA concur with the proposed change, the Planning and Programming Branch will make appropriate adjustments to the proposed NHS and advise the affected State(s). In the event changes occur in the operational status of military installations served by major STRAHNET connectors during the development of the NHS, adjustments will be made to the proposed NHS in cooperation with the States.

Attachment 5 provides specific instructions covering a variety of issues and special cases affecting the development of the proposed NHS. Where appropriate, the States and MPOs are expected to work together and with the FHWA field offices to resolve conflicts and issues such as system connectivity, parallel routes in adjacent States, etc.

Federal Emphasis

It will be necessary for the regions and divisions to work closely with the States and the MPOs during the development of the proposed system. Specific areas of Federal emphasis are identified and discussed below.

• Multi-State corridors—Providing an interconnected system of arterial routes which serve major population centers and interstate and interregional travel is a major objective of the NHS. Each State (except Alaska, Hawaii, Puerto Rico) will need to work closely with adjacent States to achieve this objective. Likewise, the regions and divisions should place a strong emphasis on multi-state corridors in working with the States during the development of the proposed NHS. This area will also receive considerable emphasis in reviews by the Office of Environment and Planning.

• State connectivity—As with multi-state corridors, special attention must be given to achieving an integrated system. Each State will be expected to work closely with adjacent States to resolve any issues affecting connections at State lines. Where necessary, the regions and divisions should work with affected States to achieve an integrated system.

• Relationship to the Interstate System—The NHS will consist of the most important principal arterials and as such will serve as an extension of the Interstate System. In some cases the noninterstate NHS routes will be logical additions to the Interstate System; therefore, States are encouraged to propose NHS corridors that may provide logical future additions to the Interstate System and that provide service between existing Interstate corridors.

• Rural/urban connectivity—The proposed NHS must provide for system connectivity between rural and urban areas of the State; therefore the States must work closely with the MPOs during the development of the system to ensure system continuity across urban boundaries. Where necessary, the divisions should work with the States and MPO to achieve this objective.

• Role of local officials and the MPOs—Section 1006 of the ISTEA provides that "the States, in cooperation with local and regional officials, shall propose to the Secretary arterials and highways for designation to the National Highway System * * *." This section further states that "in urbanized areas, the local officials shall act through the metropolitan planning organizations designated for such areas under section 134 * * *." Clearly, the Congress intends for local officials to be actively involved in identifying proposed routes for the NHS. Accordingly, the States must seek, encourage and provide opportunities for the cooperative involvement of the MPOs and other local officials, including representatives from affected Indian tribal governments and land owning Federal agencies, in this process. The regions and divisions should be particularly aware of this requirement and assist the States, where appropriate, in establishing a process to obtain the cooperation of local officials in developing the proposed system.

• High priority corridors—Section 1105 of the ISTEA identifies 21 "high priority corridors" for inclusion in the NHS. Although section 1005 specifies that the high priority corridors must be included in the proposed NHS, affected States may have concerns about including certain corridors. The States should be asked to take a hard look at the high priority corridors and advise the FHWA if any are not logical or appropriate as NHS routes. If high priority corridors lack State support for inclusion in the proposed NHS and FHWA agrees, a recommendation will be included in the report to the Congress that the corridor(s) not be included in the final NHS. The regions and divisions are asked to work closely with the States in looking at these corridors, particularly those which involve more than one State.

Attachment 2—National Highway System Mileage Targets

Consistent with the direction provided in section 1006 that routes on the illustrative National Highway System (NHS) "* * * serve as the basis for the States in proposing arterials and highways for designation * * *", each State is provided an urban and a rural mileage target based on the 150,000-mile illustrative NHS submitted to the Congress in February 1991. These mileage targets are listed in Table 1. Because of changes in urban area boundaries and the need for flexibility to develop the proposed NHS, States are permitted to transfer up to 15 percent of the rural mileage to the urban category without FHWA approval. Likewise, the States and metropolitan planning organizations acting cooperatively may transfer 15 percent of the urban mileage to the rural category without FHWA approval. If a State desires to transfer more than 15 percent of the mileage from urban to rural or vice versa, the transfer must be approved by FHWA (Headquarters).

Although the States are required to use the urban mileage in urban areas (except as provided above), it is not necessary that each urban or urbanized area receive the same relative share of the mileage. The relative share of mileage in each urban area is expected to vary due to differences in size and configuration.

The mileage targets provide a starting point for developing the proposed NHS. The FHWA anticipates that some States will propose a system that is smaller than the combined mileage target (rural plus urban) while other States will propose a system that is larger than the combined mileage target. The FHWA feels that is important to maintain a national perspective on the overall size of the system; therefore, FHWA (Headquarters) will make the final determination, after consultation with affected States, on proposed routes that exceed the mileage targets. Attachment 4 provides instructions for justifying proposed routes that exceed the mileage targets.

Attachment 3—Required National Highway System Components

The following are required components of the National Highway System (NHS):

• Insterstate routes. All Interstate routes including routes designated under 23 U.S.C. 139(a) and 139(c) shall be included. Future additions as to the Interstate System approved under 23 U.S.C. 139(b) should also be included.

• STRAHNET routes. Section 1006 of the ISTEA lists the strategic highway network (STRAHNET) as one of the components of the NHS. All STRAHNET routes contained in the Military Traffic Management Command (MTMC) report, Strategic Highway Corridor Network, MTMC Report SE 89–4b–27, January 1991 should be included; unless revisions are approved by HEP–12.

• Major STRAHNET Connectors. Section 1006 of the ISTEA also specifies major strategic highway connectors as a component of the NHS. Major STRAHNET connector routes are listed in the MTMC report, STRAHNET Connector Atlas, MTMCTEA Report SE 89–4b–59, September 1991. Major STRAHNET connectors are those providing connections to priority 1 and 2 installations. (Note: Two priority 3 installations—the Savanna Army Depot, Illinois and the Iowa Army Ammunition Plant, Iowa—have recently been upgraded to priority 2 and should also be included.) If more than one connection is identified, route A should be included, other routes *may* be included. Both routes A and B should be included for Fort Stewart, Georgia and Fort Drum, New York. Any deviations or revisions must be approved by the Planning and Programming Branch (HEP–12). (Some priority 1 and 2 installations may be scheduled for closing by the Department of Defense. If these bases are actually closed, some future adjustments to the proposed NHS may be necessary.)

Note: Although there has been considerable effort to establish and adjust the STRAHNET routes and the STRAHNET connectors in cooperation with MTMC, further refinements may be warranted. If a more suitable route exists that serves the same corridor, HEP–12 will work with the MTMC in evaluating such proposals. However, until changes are approved by FHWA and MTMC, the existing routes shall be included.

• Congressional High Priority Routes. These routes are listed in Section 1105 of the ISTEA. The following list is provided to clarify any ambiguities concerning the alignments of these routes:

1. North-South corridor from Kansas City, Missouri to Shreveport, Louisiana. This route

basically follows the US 71 route alignment. Refer to Section 1105(f) 3, 14, 15, 21.

2. Avenue of the Saints, St. Louis, Missouri to St. Paul, Minnesota. The Corridor B alignment is the preferred route.

3. East-West Transamerica Corridor. A feasibility study for this corridor authorized by the FY 1991 Department of Transportation Appropriations Act and Section 1105(f) is underway. No alignment will be specified until that study is complete.

4. Hoosier Heartland Industrial Corridor. This route follows In 25 and US 24 from Lafayette, Indiana to Ft. Wayne, Indiana, then US 24 from Ft. Wayne, Indiana to Toledo, Ohio.

5. I-73/74 North-South Corridor from Charleston, South Carolina through Winston-Salem, North Carolina to Portsmouth, Ohio to Cincinnati, Ohio and Detroit Michigan. This route connects Detroit, Michigan; Toledo, Ohio; Columbus, Ohio; Portsmouth, Ohio (a separate leg connects Cincinnati, Ohio to Portsmouth, Ohio). From Portsmouth Ohio, the route generally follows US 52 to Bluefield, West Virginia. Then the route proceeds in a southeast direction (west of Roanoke, Virginia and west of Fayetteville, North Carolina) to Myrtle Beach, South Carolina and then to Charleston, South Carolina. Also, refer to the three high priority segments of this corridor in West Virginia listed in Section 1105(f), numbers 10–12.

6. US 80 from Meridian, Mississippi to Savannah, Georgia. This route follows US 85 from Meridian, Mississippi to Montgomery, Alabama. East of Montgomery, it follows I-85 and US 80 and GA 96 to Macon, Georgia. East of Macon, it follows I-16 to Savannah, Georgia.

7. East-West Corridor from Memphis, Tennessee through Huntsville, Alabama to Atlanta, Georgia and Chattanooga, Tennessee. Section 1105(f) lists a high priority segment along US 72. This route follows US 72 from Memphis, Tennessee to Leighton, Alabama; US Alt 72 from Leighton, Alabama to Huntsville, Alabama (including I-565). The route forks at Huntsville, Alabama with one leg going to Chattanooga, Tennessee via US 72 and the other to Atlanta, Georgia via AL 35 from Scottsboro, Alabama to Cedar Bluff, Alabama; AL 9 from Cedar Bluff, Alabama to the Alabama–Georgia state line; GA 20 to Rome, Georgia and I-75 to Atlanta, Georgia.

8. Highway 412 East-West Corridor from Tulsa, Oklahoma through Arkansas along US 62/63/65 to Nashville, Tennessee. Refer to Section 1105(f), numbers 4, 5, and 29.

9. US route 220 and the Appalachian Thruway Corridor from Business 220 in Bedford, Pennsylvania to the vicinity of Corning, New York. Refer to Section 1105(f), numbers 1 and 6.

10. Appalachian Regional Corridor X.

11. Appalachian Regional Corridor V.

12. US route 25E corridor from Corbin, Kentucky to Morristown, Tennessee via Cumberland Gap including a portion of route 58 in Virginia which lies within the Cumberland Gap Historical Park.

13. Raleigh-Norfolk Corridor. Refer to Section 1105(f), number 13.

14. Heartland Expressway from Denver, Colorado through Scottsbluff, Nebraska to Rapid City, South Dakota. I-76 from Denver, Colorado to I-90 near Rapid City, South Dakota. Alignment to be determined, although potentially through Fort Morgan, Colorado; the Nebraska panhandle cities of Kimball, Scottsbluff-Gering, Alliance, Chadron; and north into South Dakota, skirting the Black Hills to the east and terminating at I-90. Also, refer to feasibility study authorized by Section 1105(f), number 7.

15. Urban Highway Corridor M-59 in Michigan. Follows M-59 from I-94 to I-96.

16. Economic Lifeline Corridor along I-15 and I-40 in California, Arizona, and Nevada. Refer to Section 1105(f), number 20.

17. Route 29 corridor from Greensboro, North Carolina to the District of Columbia.

18. Corridor from Indianapolis, Indiana to Memphis, Tennessee through Evansville, Indiana. Refer to Section 1105(f), number 26.

19. US 395 from Canadian border to Reno, Nevada.

20. US 59 from Laredo, Texas through Houston, Texas to vicinity of Texarkana, Texas.

21. US 219 from Buffalo, New York to intersection of US 17 in vicinity of Salamanca, New York.

• Other corridors: US 219 from I-68 in Maryland to Buffalo, New York. This corridor is specified in Section 1069 of the Intermodal Surface Transportation Efficiency Act of 1991.

Attachment 4—Other National Highway System Components

Attachment 3 describes the required elements of the National Highway System (NHS), i.e., Interstate, strategic highway network (STRAHNET), major STRAHNET connectors and high priority corridors. Additional routes are required to provide access between the NHS and major ports, airports, public transportation facilities, and other intermodal transportation facilities, and to adequately serve interstate and interregional travel. A process approach will be used to identify the additional routes required to complete the proposed NHS. In other words, specific criteria will not be provided by the FHWA on which ports, airports, etc., must be served and the level of access that must be provided. The FHWA has determined that these criteria can best be addressed by the States in cooperation with the metropolitan planning organizations (MPOs), the port and airport authorities, or other public organizations and agencies involved with public transportation facilities and intermodal transportation facilities.

Access Between the NHS and Major Ports, Airports, Public Transportation Facilities or Intermodal Transportation Facilities

Improved intermodal connectivity is a major objective of the NHS, and this area should be given special attention in identifying the proposed NHS. The States are expected to work closely with the MPOs and other affected agencies to identify which intermodal terminals and facilities should be served by the NHS and the level of access that is needed to meet the objectives of the NHS.

International Border Crossings

As with access to major ports, airports, etc., specific criteria will not be provided. The appropriate States should evaluate the relative importance of all border crossings to international travel and commerce in deciding which should be served by the proposed NHS. As a rule of thumb, only border crossings that are open 24 hours and allow access to commercial travel should be considered. Coordination with adjacent States may be necessary to ensure that spacing between routes serving international border crossings is consistent with the objectives of the NHS.

Other Rural and Urban Principal Arterials

Nationally, the required components of the NHS (i.e., Interstate System, STRAHNET, major STRAHNET connectors, and high priority corridors and routes providing access to major ports, airports, public transportation facilities and intermodal transportation facilities) are expected to account for 75,000 to 80,000 miles of the proposed NHS. The remaining routes—70,000 to 75,000 miles—must be comprised of routes functionally classified as rural and urban principal arterials. The States and MPOs have the flexibility to propose routes for the system within the remaining mileage that are consistent with the objectives of the NHS and that are responsive to the areas of Federal emphasis identified in Attachment 1. Consideration should also be given to principal arterial routes on the National Network for trucks and those that provide service to major travel generators such as National Parks, commercial recreation facilities, resorts, etc.

States may propose routes which exceed the mileage targets contained in Attachment 2; however, sufficient justification must be provided to permit FHWA to evaluate the relative importance of the routes and whether they meet the objectives of the NHS. The mileage for these routes should not exceed 15 percent of the total mileage target for the State. At a minimum, the following information should be provided:

1. Relationship of route(s) to adopted plans such as trunk highway system, arterial highway plan, long-range system plan, etc.

2. Amount of commercial vehicle travel.

3. Importance to State economic development plans and programs.

4. Importance to regional or interstate travel and relationship to routes in adjacent States to form multi-state corridors.

5. Relative priority of routes if more than one route is identified.

The FHWA will evaluate the information submitted by the States and, in consultation with the affected States, determine which routes meet the purpose and objectives of the NHS.

Attachment 5—Special Instructions

The following special instructions are provided to address a variety of issues that may arise during the development of the proposed National Highway System (NHS):

1. Toll Roads—States are strongly encouraged to identify all major toll

roads for the proposed NHS even if they do not intend to use NHS funds for improvements to the routes. If major toll roads are not included, a significant portion of the principal arterial mileage in a State could be excluded from the NHS, and it may be difficult to achieve a continuous interconnected system. The States are reminded that NHS funds may be used for improvements on toll facilities; however, if they do not use the funds in this manner, the funds may be used on other NHS routes or transferred to the STP program.

2. Regional Offices should monitor the development of the proposed NHS to ensure that there is close coordination among States, particularly for routes that cross State boundaries. If adjacent States identify parallel routes in the same corridor, FHWA expects the affected States to make every effort to decide on a single route for the corridor. For urbanized areas that extend across State lines, close coordination among the States and local jurisdictions involved will be required to insure that all proposed NHS routes connect across jurisdictional lines. In the absence of agreement among States or between a State and an MPO over which route should be included, FHWA will make the final determination.

3. Proposed NHS routes in urban and rural areas should connect with each other and provide a continuous interconnected system. However, there may be instances where a route serves a major travel generator and a stub connection cannot be avoided.

4. If parkways are identified for the NHS and trucks are excluded from the parkways, one parallel facility to accommodate trucks may be included without the State having to count that additional mileage against its mileage target. If the parkway is under the jurisdiction of the National Park Service, it should be consulted about the inclusion of parkway on the NHS.

5. If a route is functionally classified as a principal arterial and included in a short-range program (5–6 years) it may be included on the NHS even though the route is not yet constructed or open to traffic.

6. States should be encouraged to take a long-term, system perspective in identifying routes for the NHS. The functional classification should not be distorted so that less important routes could become eligible for inclusion on the NHS. States are encouraged to identify all important routes that meet the objectives of the NHS even if some are currently in good condition and may not need improvements in the foreseeable future.

7. The mileage for a proposed NHS route that passes through Federal lands must be counted against the State's mileage target if the route is under State jurisdiction. If the route is under the jurisdiction of a Federal agency, the mileage will not be counted against the State's mileage target. The Federal agency having jurisdiction over the route, must be consulted about including the route on the proposed NHS.

8. Ferry boat routes may be considered part of the NHS if they provide logical connections with other NHS routes. The ferry route mileage will not count against the State's mileage target.

9. Mileage for one-way pairs should only be counted once. The mileage for both routes should be added and then divided by 2 for reporting the mileage.

10. The Territories are not required to develop an NHS.

11. The illustrative NHS contains numerous stubs that were included in an attempt to provide service to all urban areas greater than 10,000 population (Access America). Since Access America is not a specific criteria for developing the proposed NHS, these stub connections should be reevaluated to determine whether they would make logical extensions of the NHS.

Attachment 6—Schedule and Products

Schedule

The proposed National Highway System should be submitted by the States to the FHWA division offices by April 30, 1993. After appropriate reviews by the divisions and regions, the proposed NHS for each State should be forwarded to the Planning and Programming Branch (HEP–12) by June 30, 1993, or sooner if possible. The proposed NHS must be submitted to the Congress by December 18, 1993.

Products

In order to ensure consistency in interpreting the results among States, uniform conventions have been established. The States are asked to adhere to these conventions in preparing the required products. States should submit 3 copies of a map depicting the proposed NHS in rural and urban areas to the FHWA division office. Inserts or separate maps for all urbanized areas should be included. The scale for the urbanized inserts should not be less than 1": 100,000". The following conventions should be adhered to:

1. Adjusted Census urban boundary or Census designated boundary—Black solid line
2. Interstate highways—Blue solid line
3. STRAHNET routes—Green solid line
4. Major STRAHNET Connectors—Purple solid line
5. Congressional high priority corridors—Orange solid line
6. Other principal arterial routes—Red solid line

(All future routes should be depicted with the appropriate color but should be shown as dashed lines.)

Symbols will be used to represent major airports, seaports, etc. The following convention should be used:

1. Major Airport—A
2. Major Seaport (River & Lake Ports)—P
3. Other Major Intermodal Terminal—T
4. Major International Border Crossings—B
5. Military Installations—M

The States are also requested to provide a list of all proposed NHS routes. This list should include the route number, total length, urban length, and a brief description. The list should basically follow a format similar to the former Federal-aid Primary list contained in 23 CFR part 470, appendix B. See example below.

APPENDIX B.—PRIMARY FEDERAL-AID SYSTEM

[State: Alpha]

Route No.		Route description and termini	County	Mileage[1]			
Fed. aid	State or local			Rural	Urban-ized	Small urban	Total
1	S.R. 1	From the California-Nevada State line southwest of Verdi via Reno, Fernley, Lovelock, Winnemucca, Battle Mountain, Elko, and Wells to the Nevada-Utah State line at Wendover, Utah, with a spur from FAP Route 1 southerly along 17th St. to FAS Route 705 (Glendale Rd.) in Sparks. Approved Jan. 1, 1964, revised Dec. 7, 1964.	Washoe	41.5	5.4		46.9
			Storey	.2			.2
			Lyon	16.3			16.3
			Churchill	27.7			27.7
			Pershing	75.0			75.0
			Humboldt	61.3			61.3
			Lander	26.8			26.8
			Eureka	26.4			26.4
			Elko	131.3		3.2	134.5
			Total	406.5	5.4	3.2	415.1
2	C.R. and State Routes 2, 2a, 3, 19, and 24.	From the California-Nevada State line southwest of Glenbrook via Carson City, Dayton, Leeteville, Fallón, Austin, Eureka, and Ely to a junction with FA Route 1 near Wendover, Utah. Approved Jan. 1, 1964, revised July 27, 1967.	Churchill	104.8			104.8
			Douglas	15.3			15.3
			Elko	53.2			53.2
			Eureka	47.4			47.4
			Lander	59.0			59.0
			Lyon	35.3			35.3
			Ormsby	14.4		2.0	16.4
			White Pine	132.7			132.7
			Total	462.1	.....	2.0	464.1
3	S.R. 3, 1, 70 and local road.	From the California-Nevada State line at Topez Lake via Minden to a point on FA Route 2 south of Carson City via Reno to the Nevada-California State line northwest of Reno, with a spur in Reno from FAM Route 3 via East Plumb Lane to the Reno Municipal Airport. Approved Jan. 1, 1964, revised Aug. 25, 1965.	Douglas	34.1			34.1
			Ormsby	3.4		9.8	4.2
			Washoe	34.2	6.9		41.1
			Total	71.7	6.9	9.8	79.4

[1] For routes extending into or through 2 or more counties, show the mileage separately for each county. Show grand total for the system on last sheet.

Attachment 7 is not available for publication.

MEMORANDUM

Date: June 5, 1992.
Reply to Attn. of: HEP-32.
Subject: *Information:* Transportation Enhancement Activities.
From: Associate Administrator for Program Development.
To: Regional Federal Highway Administrators, Federal Lands Highway Program Administrator.

Our April 24 memorandum on this subject had an error which we would like to correct. The third sentence on page 4 should read:

In addition, 10 percent of half of the funds provided as (1) reimbursements for the segments of the Interstate System constructed without Federal assistance under 23 U.S.C. 160 and (2) apportionment adjustments made pursuant to subsections 1015(a)–(c) of ISTEA are available only for transportation enhancement activities.

As originally written, this sentence did not reflect that only half of the funds in the categories mentioned are subject to the 10 percent requirement.

Anthony R. Kane

MEMORANDUM

Date: April 24, 1992.
Reply to Attn. of: HEP-32.
Subject: Transportation Enhancement Activities.
From: Associate Administrator for Program Development.
To: Regional Federal Highway Administrators Federal Lands Highway Program Administrator.

Section 1007(a) of the ISTEA, adding 23 U.S.C. 133(d)(2), requires that 10 percent of the new Surface Transportation Program funds only be available for transportation enhancement activities. Section 1007(c), amending 23 U.S.C. 101(a), defines transportation enhancement activities. Section 1024, amending 23 U.S.C. 134(f)(5), specifies that the programming of transportation enhancement activities is a factor to be considered in the development of metropolitan transportation plans and programs. Section 1025, adding 23 U.S.C. 135, specifies that the statewide transportation improvement program shall reflect the priorities for programming and expenditure of funds, including transportation enhancements. This memorandum provides interim guidance concerning the interpretation of these provisions.

Qualifying Activities

Several field offices have asked whether the list of activities in section 1007(c) is exclusive or illustrative. It is exclusive. Only those activities listed in section 1007(c) are eligible to be accounted for as transportation enhancement activities. They are:

1. Provision of facilities for pedestrians and bicycles.
2. Acquisition of scenic easements and scenic or historic sites.
3. Scenic or historic highway programs.
4. Landscaping and other scenic beautification.
5. Historic preservation.
6. Rehabilitation and operation of historic transportation buildings, structures, or facilities (including historic railroad facilities and canals).
7. Preservation of abandoned railway corridors (including the conversion and use thereof for pedestrian or bicycle trails).
8. Control and removal of outdoor advertising.
9. Archaeological planning and research.
10. Mitigation of water pollution due to highway runoff.

Many projects are a mix of elements, some on the list and some not. Those project elements which are on the list may be counted as transportation enhancement activities. For example, a rest area might include a historic site purchased and developed as an interpretive site illustrating local history. The historic site purchase and development would qualify as a transportation enhancement activity.

Activities which are not explicitly on the list might qualify if they are an integral part of a larger qualifying activity. For example, if the rehabilitation of a historic railroad station required the construction of new drainage facilities, the entire project could be considered a transportation enhancement activity. Similarly, environmental analysis, project planning, design, land acquisition, and construction activities necessary for implementing qualifying transportation enhancement activities are eligible for funding and may be counted toward the 10 percent requirement.

Transportation Enhancement and Environmental Mitigation

The Congress included the language on transportation enhancements as a means of stimulating additional efforts in the activities listed. Enhancement measures in the activities listed that go beyond what is customarily provided as environmental mitigation can be considered as transportation enhancement. States may not use transportation enhancement funds to finance normal environmental mitigation work. We realize that the process of determining which activities will be considered as normal mitigation and which will be accounted for as transportation enhancement activities will be difficult. Initially, it will require close coordination between the State DOTs and their FHWA Division Offices on a case-by-case basis.

Project Linkage

The definition of transportation enhancement activities includes the phrase, "with respect to any project or the area served by the project." Given its overall context, we interpret this phrase to mean that the proposed transportation enhancement activity must have a direct relationship to the intermodal transportation system, but not necessarily to a currently planned highway project. This relationship may be one of function, proximity, or impact. For example, an independent bike path is a functional component of the intermodal transportation system. Removal of outdoor advertising in the viewshed of a highway is justified in light of its proximity. Retrofitting an existing highway by creating a wetland to filter runoff from the highway would qualify based on the impact of the highway in terms of water pollution.

Once a relationship to the intermodal transportation system is established, transportation enhancement activities can be implemented in a variety of ways. They can be developed as parts of larger transportation projects, as parts of larger joint development projects, or as stand-alone projects.

Planning Process

The metropolitan and Statewide planning processes should occupy a central role in the identification, planning, and funding of transportation enhancement activities. In particular, the planning processes are the appropriate mechanisms for determining funding priorities from among competing transportation enhancement activities, including those which are not part of larger transportation projects. FHWA field offices should strongly encourage the States and metropolitan planning organizations (MPOs) to seek out and fully integrate transportation enhancement activities into both their plan development and programming processes. To be funded, transportation enhancement activities must be included in the appropriate metropolitan and statewide transportation improvement programs.

Given the widespread public interest in transportation enhancement activities, they should be highlighted in public involvement activities implemented under the new metropolitan and statewide planning requirements. Procedures for planning, programming and developing transportation enhancement activities are of special interest to public interest organizations and members of the general public.

Project Development

Building on the work done in the planning process, State DOTs, MPOs, and FHWA field offices have a responsibility to actively pursue transportation enhancement opportunities during the development of individual transportation projects. Accordingly, future environmental approvals should specifically take into consideration the potential for implementing transportation enhancement activities as part of the overall projects. During their involvement on these projects, FHWA field offices should promote transportation enhancement activities as a means of more creatively integrating transportation facilities into their surrounding communities and the natural environment.

Where appropriate, transportation enhancement activities may be developed in cooperation with other State and local agencies and with private entities. However, the State DOT or other eligible transportation agency shall remain responsible to the FHWA for the enhancement project. Furthermore, transportation enhancement activities, including stand-alone transportation enhancement projects, must comply with all applicable environmental and other Federal requirements, even though the express purpose of the project is to enhance an element of the natural or cultural environment.

Financial Accounting

The funds made available only for transportation enhancement activities are derived from several sources. The main source is the STP, of which 10 percent is available only for transportation enhancement activities. In addition, 10 percent of (1) the funds resulting from reimbursements for segments of the Interstate system constructed without Federal assistance under 23 U.S.C. 160 and (2) the apportionment adjustments made pursuant to Subsection 1015(a)–(c) of ISTEA are available only for transportation enhancement activities.

The Office of Fiscal Services has already established an appropriation code for transportation enhancement activities and has notified you of the FY 1992 STP suballocation amounts available only for transportation enhancement activities. While 10 percent of each year's STP apportionment may be obligated only for transportation enhancement activities, there is no requirement that 10 percent of the funds for any given project be devoted to transportation enhancement activities, nor is there a requirement that 10 percent of the STP obligations made during a given fiscal year be devoted to transportation enhancement activities.

Section 1007 specifies that the 10 percent of STP funds for transportation enhancement activities is separate from the STP funds which are suballocated to the larger metropolitan areas and to other areas of the State. Accordingly, while the STP sub-State allocation funds can be used for transportation enhancement activities, any such use would not count toward the 10 percent requirement.

Monitoring Program Accomplishments

Guidance on reporting requirements will be forthcoming. It is very likely that States will need to prepare an annual report on overall STP obligations. To cover this contingency, States should maintain records on (1) the amounts obligated for transportation enhancement activities using the STP transportation enhancement appropriation code (counting toward the 10 percent requirement) and other STP funds (not counting toward the 10 percent requirement), and (2) how obligations for transportation enhancement activity are distributed among the 10 qualifying activities. A brief description of each specific transportation enhancement action for which STP funds have been obligated would also be very useful information.

Further Information

The transportation enhancement provisions offer exciting new opportunities to achieve the goals laid out in the National Transportation Policy, FHWA's Environmental Policy Statement, and FHWA's strategic planning process. This is an area that will undoubtedly evolve rapidly as we begin implementing projects under the new authority. We will be issuing additional guidance and sharing information on successful endeavors as the opportunities arise. In the meantime, please keep us informed about good examples of transportation enhancement efforts in your region. Our contact on transportation enhancement activities is Mr. Fred Skaer. He can be reached at FTS 366–2058.

Anthony R. Kane

MEMORANDUM

Date: March 5, 1992.
Reply to Attn of: HEP–23.
Subject: *Information:* Flexibility in the Intermodal Surface Transportation Efficiency Act (ISTEA).
From: Executive Director.
To: Regional Federal Highway Administrators Federal Lands Highway Program Administrator.

To highlight the flexibility in the use of highway and transit funds within the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, the Federal Transit Administration (FTA) and the Federal Highway Administration sent out the attached letter to transportation professionals representing State Departments of Transportation, Metropolitan Planning Organizations (MPO's), and transit operators. I endorse this flexibility message and challenge you to take an active role in working with the States and MPO's in implementing multimodal transportation plans and programs.

I want this flexibility to work the way it was intended to, that is, for transportation investment decisions to be made on a level playing field, with no built-in biases or upfront advantages given to one mode over

another. This level playing field is supported by the equivalent cost sharing for highway and transit capital projects and the enhanced metropolitan planning provisions and the new requirement for statewide planning in ISTEA. The planning provisions provide the framework for evaluating multimodal transportation options and making cost effective transportation investment decisions.

I am committed to seeing a fair and unbiased evaluation of modal alternatives carried out through the statewide and metropolitan transportation planning and programming processes. To that end, I will continue to work with my colleagues in FTA and ask you to do the same with the States, MPO's and the FTA representatives in your Region.

E. Dean Carlson

Attachment

Federal Highway Administration

March 2, 1992.

Dear Colleague: One of the most important aspects of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) is the increased flexibility of Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) funds. The purpose of this letter is to inform you of the funds available and to encourage you to take advantage of this flexibility as you plan and establish your project priorities.

ISTEA establishes a new FHWA Surface Transportation Program (STP) which provides block grant-type funding which can be used for any type of highway or transit capital project involving either mode. FTA Section 9 funds, capital-only, can be used for highway projects as long as certain specific requirements are met. Flexible funding is also available from the National Highway System (NHS) program and the Congestion Mitigation and Air Quality (CMAQ) program as well as a number of other program sources.

Congestion Mitigation and Air Quality program funds are available in ozone and carbon monoxide non-attainment areas for programs and projects, highway or transit, which contribute to attainment of a National Ambient Air Quality Standard. Projects such as transit capital improvements, high occupancy vehicle treatments and demand management projects are eligible, if they can be shown to help meet air quality standards. Enclosed is more detailed guidance on this program.

Under certain conditions, National Highway System program funds may be used for transit projects in NHS freeway corridors. In addition, NHS funds may be transferred to the STP program and used for all STP-eligible activities.

FTA and FHWA have reached agreement on procedures for handling transit projects funded with FHWA funds and vice versa. In the near future, we will be issuing guidance on these procedures.

We encourage State and local officials to consider use of these funds on the basis of the multi-modal transportation planning/programming process also outlined in the new legislation. The new transportation planning and programming process established by the ISTEA will provide the forum for making transportation investment decisions through a coordinated State and metropolitan area-wide process.

For your information, we have enclosed a table which shows the amount of STP funding which is allocated to each State, and how much of these funds are attributable to each urbanized area over 200,000 population within the States. In addition, the table includes the total amount of section 9 funds allocated to each urbanized area and how much of these funds are capital only, and thus available for highway projects in transportation management areas (urbanized areas over 200,000 population). The table also shows the amount of NHS and CMAQ funds available in each State.

We encourage you to use the flexibility provided through this landmark legislation. We will keep you informed of our progress in developing the details on implementing this important new aspect of our programs. Please do not hesitate to contact our field offices as specific questions arise.

Sincerely,

Brian W. Clymer,

Administrator, Federal Transit Administration.

Thomas D. Larson,

Administrator, Federal Highway Administration.

MEMORANDUM

Date: May 21, 1992.

Reply to Attn. of: HNG–13.

Subject: *Information:* 1991 Intermodal Surface Transportation Efficiency Act (ISTEA) Implementation Interstate Maintenance Program.

From: Associate Administrator for Program Development.

To: Regional Federal Highway Administrators Federal Lands Highway Program Administrators.

The purpose of this memorandum is to provide written guidance regarding the provisions in the 1991 ISTEA which created the Interstate maintenance (IM) program.

Authorizations—Section 1003

Section 1003(a)(1) establishes the first annual authorizations for the IM program for FY 1992 through FY 1997, in amounts ranging from $2.431 billion to $2.914 billion.

Apportionments—Section 1009

Section 1009 modified section 104(b)(5)(B) of title 23, which previously established the apportionment formula for the I–4R program. The formula remains based on the same factors, lane-mile (55 percent) and vehicular miles of travel (45 percent), for apportioning a IM funds, but the formula now includes those Interstate routes designated under sections 103 and 139(c) of Title 23 plus Interstate routes designated under 23 U.S.C., section 139(a) before March 9, 1984 (except toll roads not subject to a secretarial agreement as provided in section 105 of the Federal-Aid Highway Act of 1978). Section 104(b)(5)(B) of title 23 provides that no State shall receive less than one-half percent of the total IM funds apportioned annually.

The certificate of apportionment of FY 1992 funds was transmitted by the FHWA Notice N 4510.264 dated December 18, 1991.

Availability—Section 1020

Section 1020(a) rewrites 23 U.S.C. 118 and provides that IM funds shall remain available for obligation in a State for a period of 3 years after the last day of the fiscal year for which they are authorized. For example, FY 1992 funds were apportioned on December 18, 1991, and will lapse on September 30, 1995, and FY 1993 funds will be apportioned on October 1, 1992, and will lapse on September 30, 1996.

Federal Share—Section 1021

Section 1021(a) provides that the Federal share on all IM projects shall be 90 percent, except as modified in States with sliding scales.

Eligibility—Section 1009

Section 1009(e)(5) amends 23 U.S.C. 119(a) to permit the Secretary to approve IM funded projects for resurfacing, restoring, and rehabilitating routes on the Interstate System designated under sections 103 and 139(c) of title 23, and routes designated prior to March 9, 1984, under section 139(a) and (b) of title 23.

Section 1009(e)(3) amends section 119(c) of title 23 to establish types of work eligible for IM funding. The section has been interpreted to include as eligible, those work items which provide for 3R work on existing features on the Interstate route and its interchanges and grade separations within normal "touchdown limits." For example, the rehabilitation of existing roadside hardware may include IM funding for work such as bringing old guardrail up to current standards, maintenance of impact attenuators, refurbishing existing traffic control signs, pavement markings, and other devices, etc. However, excluded from eligibility for IM funding are all new work elements, such as new interchanges, new ramps, new rest areas, new noise walls, or other work which does not resurface, restore, or rehabilitate an existing element.

Existing bridges (including over crossing structures) may be replaced with IM funds, provided they meet the structurally deficient criteria of the bridge program. Bridges classified as functionally obsolete may also be replaced with IM funding, except that capacity expansion elements should be subject to the limitations discussed in the following paragraphs.

Section 1009(a) prohibits IM funding for the portion of the cost of any project attributable to the expansion of the capacity of any Interstate highway or bridge, except for the addition of high-occupancy vehicle lanes or auxiliary lanes (such as truck climbing lanes).

In determining what portion of a project is eligible for IM funding and what portion is capacity expansion (and, therefore, not eligible for IM funds), the basic purpose of the project should be considered. If the project is a combination of preservation and capacity expansion, the cost should be split with 3R items eligible for IM funding and capacity expansion items eligible for other funds. In determining the split, it may be helpful to visualize the project without the capacity expansion work (added lanes, bridge widening or extension for example) and allow IM funding for all necessary 3R items.

Section 1009(e)(4) amends 23 U.S.C. 119(e) to allow IM funding for preventative maintenance activities, which a State can demonstrate through its pavement management system, are a cost-effective means of extending Interstate pavement life. Preventative maintenance includes activities such as sealing joints and cracks, patching concrete pavement, shoulder repair, and restoration of drainage systems which are found to be cost-effective projects resulting in extending the service life of pavements.

This provision has been extended administratively to allow IM funding for other preventative maintenance activities. Examples may include structure work such as crack sealing, joint repair, seismic retrofit, scour countermeasures, and painting of steel members which are cost-effective in extending the service life of the structure.

Toll Roads, Bridges and Tunnels—Section 1012

Section 1012(d) provides that existing toll agreements entered into under section 119(e) or 129 of title 23 prior to and in effect on the date of enactment of the 1991 ISTEA, shall continue in effect. All new agreements must be executed in accordance with the provisions of the 1991 ISTEA. Guidance on the use of Federal-aid funds on toll roads has been provided by Mr. Kane's memorandum of March 12, 1992.

Discretionary Funds

There is no provision for set aside of funds from the IM program for discretionary purposes. Also there is no provision for reallocation of apportioned IM funds which lapse at the end of the availability period.

Section 1020 does provide for a continuation of the I–4R discretionary fund program that is separate and distinct from the IM program. The source of the I–4R discretionary funds is an annual set aside from National Highway System (NHS) funds. These I–4R discretionary funds may be used for IM-type projects or for other improvements on the Interstate including projects to provide additional Interstate capacity. A memorandum was issued on December 20, 1991, which outlined procedures for applying for FY 1992 I–4R discretionary funds. A similar memorandum will be issued annually.

Transferability—Section 1009

Section 1009(e)(5) (D) and (E) modifies 23 U.S.C. 119(f) to allow a State to unconditionally transfer an amount not to exceed 20 percent of its IM apportionment to its apportionments under 23 U.S.C. 104(b)(1) for the NHS, or 23 U.S.C. 104(b)(3) for the Surface Transportation Program (STP).

Section 1009(b) further amends 23 U.S.C. 119(f) to allow a State to transfer an amount in excess of the 20 percent unconditional IM fund transfer, if the State certifies to the Secretary that (1) the sums to be transferred are in excess of its needs for resurfacing, restoration or rehabilitating its Interstate System routes and (2) the State is adequately maintaining the Interstate System, and if the Secretary accepts the certification.

State requests to transfer IM funds should be submitted to the Division Administrator and may be approved by the Regional Federal Highway Administrator. Funds transferred into the STP will be transferred into the State Flexible Appropriation Code 33D.

Adequate Maintenance of the Interstate System

Requirements for the State to certify that it is adequately maintaining the Interstate System and that the Secretary develop criteria for determining what constitutes "adequate maintenance" were added by section 1009(c)(2).

We anticipate that formal rulemaking may be necessary to allow input from the States in the development of definitive guidance on what constitutes adequate maintenance. Therefore, for the purpose of evaluating State requests to transfer IM funds, in excess of the 20 percent unconditional amount, and until such time as these criteria are established, the guidance contained in the Federal-Aid Policy Guide, CFR 635E and its supplement (old FHPM 6–4–3–1) should be used for determining whether the State is adequately maintaining the Interstate System.

Headquarters Contacts

This guidance will be updated in the future if further clarifications are found necessary. Questions about what constitutes adequate maintenance of the Interstate System should be directed to the Construction and Maintenance Division (HNG–21). Pavement management systems are coordinated by the Pavement Division (HNG–41). Other questions about the IM program should be directed to the Interstate and Program Support Branch (HNG–13).

Anthony R. Kane

MEMORANDUM

Date: October 16, 1992.

Reply to Attn of: TGM–22/HEP–41; M. Savonis, x62080.

Subject: *Information:* Further Guidance on the Congestion Mitigation and Air Quality Improvement Program (CMAQ Program).

From: Federal Transit Associate Administrator for Grants Management; Federal Highway Associate Administrator for Program Development.

To: Regional Federal Transit Administrators; Regional Federal Highway Administrators; Federal Lands Highway Program Administrator.

This memorandum provides further guidance for the obligation of funds under the CMAQ program (CM funds), provided by the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991. Information contained in this memorandum supersedes the interim guidance of February 20, 1992, and incorporates the PM–10 policy memorandum of July 30, 1992. This guidance has been coordinated with the Environmental Protection Agency (EPA).

The first CMAQ apportionment was made in December 1991, and the last will not lapse until the end of fiscal year (FY) 2000. (See Figure 1 attached.) It is useful to view the CMAQ Program in three phases; pre-1995, 1995–1997, and post 1997. The pre-1995 phase is the start-up period. The amount of CMAQ funding will accumulate yearly, and obligation rates are expected to increase as the Program develops. The primary activities during this phase will be to get the program started by funding transportation control measures (TCMs) and other eligible projects, and develop and disseminate information on the effectiveness of various CMAQ activities. Program review may also be necessary during this period toward a possible mid-course correction in 1994.

The second phase, FY 1995 through FY 1997, will be a critical time for the Program. During FY 1995, the first CMAQ apportionment is subject to lapse, and activity in the Program will increase and reach its peak. Also during this period, moderate nonattainment areas for particulate matter (PM–10), carbon monoxide (CO) and ozone are scheduled to reach attainment, and the second triennial report to Congress on the effectiveness of transportation programs to improve air quality will be due, as required by the Clean Air Act Amendments (CAAA) of 1990. The best information on the effectiveness of the CMAQ Program will be crucial for this task. Finally, the last authorization for CMAQ funds under ISTEA is for FY 1997. During the post-1997 period of the Program, the most serious nonattainment areas are scheduled to reach attainment.

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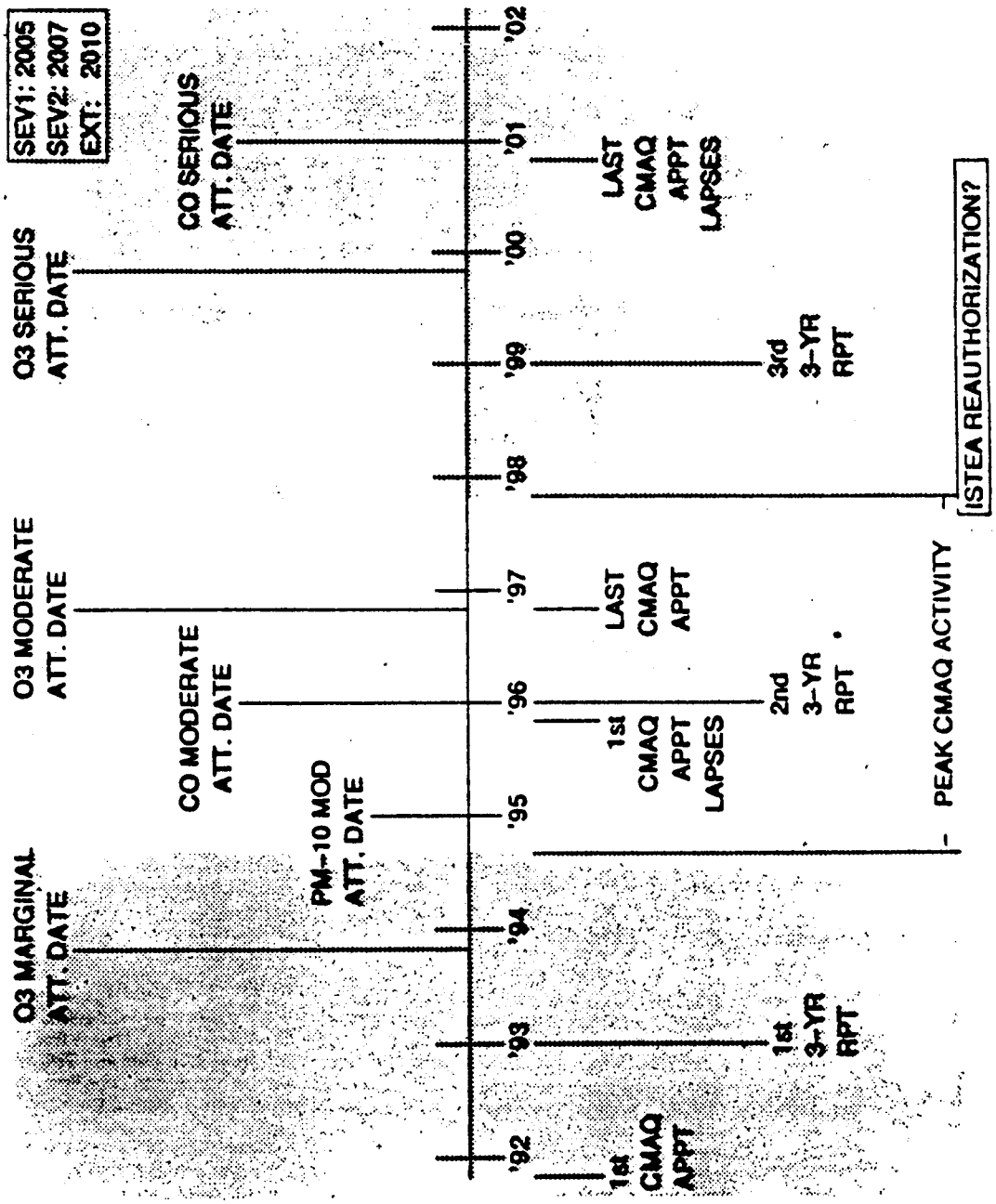
Figure 1



CMAQ PROGRAM, Timeline of Important Events

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I. Program Purpose and General Guidance

As established under the ISTEA, the purpose of the CMAQ program is to fund transportation projects or programs that will contribute to attainment of national ambient air quality standards (NAAQS) with a focus on ozone and CO. Under certain conditions, transportation projects and programs targeting PM-10 are also eligible.

Six billion dollars have been authorized by Congress for the CMAQ program for fiscal years 1992 through 1997. The greatest air quality benefit will accrue not solely from these funds but from a partnership of Federal, State and local efforts. In cases where specific guidance is not provided, either below or in other communications, the following should guide CMAQ eligibility decisions. Federal contributions to air quality improvements through CMAQ will be most effective if they are used for establishment of projects and programs that will result in tangible reductions in CO and ozone precursor emissions (and under certain conditions PM-10 pollution) and can be completed within the legislated timeframe for attainment as provided in the CAAA of 1990. Appropriate CMAQ projects and programs include those that would be approved as a TCM in a State Implementation Plan (SIP) and receive emission reduction credit by EPA.

The program is primarily focused on nonattainment areas for ozone and CO, and the guidance below is specific to States with these nonattainment areas. States with no CO or ozone nonattainment areas also receive a minimum apportionment of CMAQ funds, and guidance for these States is covered in section VIII.

The Federal share for most eligible activities and projects is 80 percent or 90 percent if used on certain activities on the Interstate System. Under certain conditions (including sliding scale rates), the Federal share can even be higher. Certain activities identified in section 120(c) of title 23 (see Attachment 1), including traffic control signalization, and commuter carpooling and vanpooling, may be funded at 100 percent Federal share if they meet the conditions of that section. Pedestrian and bicycle projects and programs, however, are limited to an 80 percent Federal share under ISTEA.

II. Program Focus: Ozone, CO and PM-10

States having ozone and/or CO nonattainment areas, which meet the nonattainment classifications contained in the CAAA of 1990, must use these apportioned funds in such nonattainment areas, except under certain conditions where they may also use them in PM-10 nonattainment areas. Under the CMAQ program, States which have ozone nonattainment areas that are classified as "marginal" or worse are apportioned funds based on the population in these areas and the severity of the ozone problem. Under the statute, if the ozone nonattainment area is also a CO nonattainment area, classified as "moderate" or worse, the State is apportioned additional CMAQ funds. If a State contains a CO nonattainment area that is not a nonattainment area for ozone as well, no additional funds are apportioned to the State.

Once apportioned, States generally must obligate these funds for projects and programs in CO or ozone nonattainment areas of the classifications noted above (marginal or worse for ozone, moderate or worse for CO). In certain cases, CMAQ funds may also be used in PM-10 nonattainment areas. States with ozone or CO nonattainment areas, but wishing to use CMAQ funds in PM-10 nonattainment areas, must meet the following requirements.

- The State must consult with, and consider the views of, the EPA regional office and the metropolitan planning organizations (MPOs) in all nonattainment areas for ozone, CO, and PM-10 within the State before programming CMAQ funds for a PM-10 project.
- Also, if the State contains any ozone or CO nonattainment areas, the EPA regional office must agree that the proposed use of CMAQ funds for PM-10 projects or programs will not detract from or delay efforts to attain the ozone or CO standards.

The CMAQ provisions in ISTEA recognize ozone and CO as the primary transportation pollutants. The requirements listed above will ensure proper consideration of the views of the agencies charged with controlling transportation emissions of ozone precursors, CO, and PM-10, especially their views on the most effective use of transportation funds in achieving the NAAQS. The CMAQ eligibility of PM-10 projects will not affect a State's CMAQ apportionment, but has the potential to spread the limited CMAQ funds over a greater number of nonattainment areas within the State.

The consultation and agreement with EPA will ensure that the proposed projects and programs effectively address PM-10 problems without exacerbating other pollution problems. For example, a project which reduces PM-10 emissions in a PM-10 and CO nonattainment area may cause an increase in CO emissions and be therefore less desirable than a project without this CO problem. Examples of projects and programs in a PM-10 nonattainment area eligible for CMAQ funds, if the above requirements are met, are paving dirt roads, diesel bus replacements, and purchase of more effective street sweeping equipment.

In an area which is nonattainment for both PM-10 and ozone or CO, projects and programs which reduce emissions of CO or ozone precursors in addition to reducing PM-10 emissions (e.g. transportation activities in approved State Implementation Plans and transportation control measures listed in Section 108(f)(1)(A) of the Clean Air Act) are not subject to the additional requirements listed above. The requirements apply only to projects and programs whose sole justification for CMAQ eligibility is the reduction in PM-10 emissions.

Except for cases that meet the above criteria, States cannot obligate funds in any other area of the State until all ozone and CO nonattainment areas have come into attainment.

III. CMAQ Programming Priorities

The Clean Air Act requires that FHWA and FTA give priority to the implementation of transportation portions of applicable SIPs, and TCMs from applicable SIPs are provided the highest priority for funding under the CMAQ Program. Some States have reached their ceiling on obligation authority with little use of CMAQ funds.

In view of the Clean Air Act priority requirement, this is inappropriate unless other sources of funds are being directed toward TCMs and transportation portions of SIPs. The SIPs and the control measures they contain are necessary to assist a State to attain and maintain the NAAQS. If States are failing to implement their stated TCMs, adverse consequences can ensue. A basic criterion for making conformity determinations is the timely implementation of TCMs in the SIP, and conformity determinations are necessary before transportation plans, programs, or projects can be adopted or approved. If States fail to give priority to such TCMs, their conformity determinations and transportation initiatives will be in jeopardy. In addition, failing to implement TCMs is also the basis for applying the Clean Air Act's highway funding sanctions. Under certain circumstances, sanctions may now be expanded even beyond the nonattainment areas to cover an entire State. Obviously, close coordination is needed between the State and MPO to assure that CMAQ funds are used appropriately and to maximize their effectiveness in meeting the Clean Air Act requirements.

States and MPOs must fulfill this responsibility so that nonattainment areas are able to meet their attainment dates established in the Clean Air Act. It is crucial that FHWA and FTA assist State and MPO actions to achieve the NAAQS which includes establishing an effective CMAQ Program. State and MPO actions should include consultation with air quality agencies at the State and local levels to develop an appropriate project list of CMAQ programming priorities which will have the greatest impact on air quality. (See VI.B. for a more complete discussion of this process.) Once CMAQ projects and programs are identified, States need to make sure that sufficient obligation authority is reserved to implement these projects and programs so that nonattainment areas make progress toward attainment of the NAAQS.

IV. Project Eligibility

All projects and programs eligible for CMAQ funds must come from a conforming transportation plan and TIP, and be consistent with the conformity provisions contained in section 176(c) of the Clean Air Act. Projects also need to complete the National Environmental Policy Act (NEPA) requirements and be included in the appropriate statewide program.

Transportation projects and programs are eligible for CMAQ Program funds only if they meet certain criteria spelled out in the ISTEA. The CMAQ provisions in the ISTEA are attached (see Attachment 2). In determining project eligibility under these criteria, priority should be given to implementing those projects and programs that are included in an approved SIP as a TCM and will have air quality benefits. Note that to enable FHWA and FTA to fulfill

statutory obligations, all CMAQ-funded projects and programs, whether explicitly covered in this guidance or not, require an assessment and documentation of air quality benefits by the State.

In all cases below, any reference to improving air quality means reducing ozone precursors in ozone nonattainment areas, CO emissions in CO nonattainment areas or, if applicable, transportation-related PM-10 pollution in PM-10 nonattainment areas.

A. Eligible Projects/Programs and Restrictions

The kinds of activities that are eligible for CMAQ funds are described below, together with any restrictions. All possible requests for funding are not covered; instead this section provides particular cases where guidance can be given and rules of thumb applied to assist decisions regarding CMAQ eligibility.

1. Transportation Activities in an Approved SIP

Transportation activities in approved SIPs are generally considered to be eligible activities and must be given the highest priority for CMAQ funding. Their air quality benefits will generally have already been documented. If not, such documentation is necessary before CMAQ funding can be approved. Further, the transportation activity must contribute to the specific emission reductions necessary to bring the area into attainment.

2. Transportation Control Measures

The TCMs included in section 108(f)(1)(A) of the CAAA of 1990 are the kinds of projects intended by the ISTEA for CMAQ funding, and generally fulfill the eligibility criteria. As above and consistent with the statute, air quality benefits for TCMs must be determined and documented before a project can be considered eligible. Two of the CAAA TCMs, however, are specifically excluded from the CMAQ Program by the ISTEA legislation. They are: xii—reducing emissions from extreme cold-start conditions, and xvi—programs to encourage removal of pre-1980 vehicles. Eligible TCMs are listed below as they appear in section 108.

(i) Programs for improved public transit;

(ii) Restriction of certain roads or lanes to, or construction of such roads or lanes for use by, passenger buses or high-occupancy vehicles (HOV);

(iii) Employer-based transportation management plans, including incentives;

(iv) Trip-reduction ordinances;

(v) Traffic flow improvement programs that achieve emission reductions;

(vi) Fringe and transportation corridor parking facilities serving multiple-occupancy vehicle programs or transit service;

(vii) Programs to limit or restrict vehicle use in downtown areas or other areas of emission concentration particularly during periods of peak use;

(viii) Programs for the provision of all forms of high-occupancy, shared-ride services;

(ix) Programs to limit portions of road surfaces or certain sections of the metropolitan area to the use of non-motorized vehicles or pedestrian use, both as to time and place;

(x) Programs for secure bicycle storage facilities and other facilities, including bicycle lanes, for the convenience and protection of bicyclists, in both public and private areas;

(xi) Programs to control extended idling of vehicles;

(xii) Excluded by ISTEA;

(xiii) Employer-sponsored programs to permit flexible work schedules;

(xiv) Programs and ordinances to facilitate non-automobile travel, provision and utilization of mass transit, and to generally reduce the need for single-occupant vehicle travel, as part of transportation planning and development efforts of a locality, including programs and ordinances applicable to new shopping centers, special events, and other centers of vehicle activity;

(xv) Programs for new construction and major reconstructions of paths, tracks or areas solely for the use by pedestrian or other non-motorized means of transportation when economically feasible and in the public interest. For purposes of this clause, the Administrator shall also consult with the Secretary of the Interior.

(xvi) Excluded by ISTEA.

3. Bicycle and Pedestrian Facilities and Programs

Bicycle and predestrian facilities and programs are included as a TCM in Section 108 of the CAAA (ix, x, xiv and xv above). In addition, the ISTEA makes specific mention of the eligibility of bicycle and pedestrian facilities and programs under CMAQ (see 23 U.S.C. 217 (a)(d)). Included as eligible projects are:

- Construction of bicycle and pedestrian facilities,
- Nonconstruction projects related to safe bicycle use, and
- Establishment and funding of State bicycle/pedestrian coordinator positions, as established in the ISTEA, for promoting and facilitating the increased use of non-motorized modes of transportation. This includes public education, promotional, and safety programs for using such facilities.

4. Management Systems

The ISTEA requires that 6 management systems be established and implemented (see 23 U.S.C. 303 (a)(g)). Projects required to develop and establish 3 of these management systems (traffic congestion, public transportation facilities and equipment, and intermodal transportation facilities and systems), as well as implementation of projects contained in them, are eligible for CMAQ funds where it can be demonstrated that they are likely to contribute to the attainment of a NAAQS.

5. Traffic Monitoring, Management and Control Operations

The ISTEA also requires States to design and effect a traffic monitoring system for highways and public transportation facilities and equipment (see 23 U.S.C. 303(b)(g)). Note that the Interim Guidance of February 20 allowed operating expenses as an eligible CMAQ activity, provided that the operations contribute to achievement of a NAAQS and previous funding is not displaced. Under this guidance operating expenses for traffic monitoring, management or control, where they can be shown to have air quality benefits, are eligible for CMAQ funding, and as previously required, the expenses must be incurred from new or additional services. However, the operating expenses are now eligible only for a period of 2 years from the inception of the additional service. It should be noted that operating expenses for traffic management and control services are eligible under the Surface Transportation Program (STP) and that ISTEA provide flexibility to transfer other funding sources to STP if additional operating expenses are needed for traffic management systems. Capital expenses for air quality-related facilities and programs are still eligible where it can be shown that they will contribute to attainment of a NAAQS.

The reason for this is to use the CMAQ Program to gain the maximum reductions in emissions through new initiatives rather than through funding ongoing expenses that maintain the status quo. Similar guidance on the eligibility of operating expenses for transit and for Inspection and Maintenance (I/M) Programs has also been developed (see below). The same reasoning described above applies to these areas as well, and to establish a consistent policy, operating expenses to manage and control traffic are eligible under CMAQ only for the first 2 years after start-up of a new traffic operations project.

6. Emission I/M Programs

Emission I/M Programs show strong potential for improving air quality and appear to be a good use of CMAQ funds. To this end, construction of facilities and purchase of equipment for I/M stations in test-only networks are eligible. Projects necessary for the development of these I/M programs and one-time start-up activities, such as updating quality assurance software or developing a mechanic training curriculum, are also eligible. Operating expenses are eligible for CMAQ funding, but the same conditions described in "Traffic Monitoring, Management and Control Operations" apply here as well. The I/M services must be new or additional services, existing funding (including inspection fees) should not be displaced and operating expenses are only eligible for 2 years for the reasons described above.

While I/M programs show strong potential to improve air quality, implementation should be accomplished through a partnership of Federal, State and local agencies that shows the most promise for success.

7. Transit Projects

Improved public transit is one of the TCMs listed in section 108 of the CAAA. EPA's TCM Information Document describes a range of transit improvements under three broad types of actions: System/service expansions, operational improvements, and demand/market strategies. The emission reductions achieved with any of these measures can vary widely depending on project specifics as well as the existence of policies and actions that promote transit use, such as transit-supportive land use controls and single-occupant auto disincentives.

In general, the capital costs of system/service expansions are eligible for CMAQ funding because of the potential for attracting new transit riders and reducing trips by single-occupant vehicles. Examples are: new rail systems and extensions, new roadways or reserved lanes on existing roads for exclusive bus/HOV use, and capital costs of initiating commuter rail or ferry service. Capital projects that clearly enhance transit service are also eligible, such as new stations, terminals, transit malls, intermodal transfer facilities, and track and signalization improvements. New vehicles and equipment needed to provide the enhanced service are also eligible. Park-and-ride facilities related to transit systems are eligible for CMAQ funding since they generally contribute to ridesharing and transit use. It should be noted for these projects, in particular, that air quality analysis may subsequently be required during NEPA compliance to assure that no localized CO violations are likely to occur and that air quality conformity requirements are met.

One-for-one vehicle replacements of the existing bus or rail fleet, including locomotives, are eligible since the new vehicles are generally more reliable, less polluting, and make transit a more attractive option. However, the decision to use CMAQ funds for vehicle replacements should be made with consideration of the area's specific pollution problem and the project's capacity to reduce that pollution. For example, new buses are significantly cleaner than old buses with respect to small particulates; thus, the justification is strongest for using CMAQ funds for bus replacements in PM–10 nonattainment areas. One-for-one replacement of buses is also eligible in CO and ozone nonattainment areas but much smaller emission reductions can be expected for these pollutants.

In general, transit operating and maintenance costs are not eligible for CMAQ funds since they only maintain existing service. In limited cases, operating costs for new transit service are eligible for CMAQ funding. The main criterion is that it must be for new service which supports a discrete, new project or program having documented air quality benefits. CMAQ funds cannot be used to replace existing funding sources for transit operations and cannot be used to further subsidize existing operations. The intent is to assist in the start-up of various transit supply and travel demand management measures linked to transit which have been specifically designed to reduce mobile source emissions. As discussed in the preceding sections, transit operating costs meeting the above criteria are eligible for a maximum of two years. Examples of eligible costs are: new transit service to a major employer in support of an employer trip reduction program; new bus service in a community which presently lacks adequate transit service; or new transit service initiated on a HOV facility.

The TCM Information Document discusses a number of transit system operational improvements and marketing strategies which can lead to modest emission reductions, e.g., improving transfer policies and removal of on-street parking. Their mention in the TCM document should not be taken to mean that they are eligible for the CMAQ Program or even that they are improvements which typically receive Federal funding assistance. For the most part, these are policies or actions which evolve from local planning in an effort to make the most efficient use of existing resources. While they are not discrete projects or programs which receive Federal assistance, these types of operational improvements should not be overlooked in local air quality planning, particularly since they have the potential for reducing emissions at very little or no additional cost.

8. Highway and Transit Maintenance and Reconstruction Projects

Routine maintenance projects are ineligible for CMAQ funding. As above, routine maintenance on existing facilities maintains the existing levels of highway and transit service, and therefore maintains existing ambient air quality levels. Accordingly, progress toward the NAAQS is not achieved. Funding most simple reconstruction only serves to bring existing facilities back to acceptable levels of service. Other funding sources, like the STP funds, exist for reconstruction activities. Replacement in kind of track or other equipment, reconstruction of bridges, stations and other facilities, and repaving or repairing roads that do not improve air quality through upgraded levels of service are ineligibile.

9. Planning and Air Quality Monitoring Projects

Project planning or other development activities that lead directly to construction of facilities or new services and programs that will have an air quality benefit, such as preliminary engineering or alternatives analysis for transportation/air quality projects are eligible. Also included are studies for the preparation of environmental or NEPA documents and related transportation/air quality project development activities. Project development studies would include planning directly related to a TCM or feasibility/developmental studies for any other eligible project or program. In the event that air quality monitoring is necessary to determine the air quality impacts of a proposed project, which is eligible for CMAQ funding, the costs of that monitoring are also eligible.

General planning activities, such as economic or demographic studies, that do not directly propose or support a transportation/air quality project are too far removed from project development to assure realization of any emission reductions. Preparation of NEPA or other environmental documents that are not related to a transportation project to improve air quality is also ineligible. Such activities should be funded with other appropriate title 23 or Federal Transit Act funds.

Region- or area-wide air quality monitoring is not eligible because such projects do nor themselves yield air quality improvements nor do they lead directly to projects that would yield air quality benefits. Air quality monitoring is normally a State air quality agency responsibility which is funded under section 105 of the Clean Air Act. If the MPO or State chooses, air quality monitoring could also be funded as a transportation planning activity and appropriate title 23 or Federal Transit Act funds used. However, it should be noted that regional air quality monitoring is subject to EPA guidance on siting and quality assurance.

10. Public/Private Initiatives

The CMAQ program may be used to fund projects or programs that are owned, operated or under the primary control of the public sector, including public/private joint ventures. A State may use CMAQ funds for initiatives that are privately owned and/or operated, including efforts developed and implemented by Transportation Management Associations, as long as the activity is one which: (1) Normally is a public sector responsibility (such as facility development for enhanced I/M programs in test-only networks), (2) private ownership or operation is shown to be cost-effective, and (3) the State is responsible for protecting the public interest and public investment inherent in the use of Federal funds.

Activities which are the mandated responsibility of the private sector under the Clean Air Act, such as vapor recovery systems at gas stations for example, are not eligible. Implementation of employer trip reduction programs, required for severe and extreme ozone nonattainment areas, are also a private responsibility, but general program assistance to employers to help them plan and promote these programs are eligible. Further public assistance to support trip reduction programs in the form of new or redirected public transportation services are also eligible.

11. Limitation on Construction of Single-Occupant Vehicle Capacity

Construction projects which will add new capacity for single-occupant vehicles are not eligible under this program unless the project consists of a HOV facility only available to single-occupant vehicles at off-peak travel times. For purposes of this program, construction of added capacity for single-occupant vehicles means the addition of general purpose through lanes to an existing facility, which are not HOV lanes, or a highway on new location.

12. Other Eligible Transportation Projects and Programs

Other transportation projects and programs, even if they are not included under one of the categories above may also be funded under CMAQ. Innovative activities based on promising technologies and feasible approaches to improve air quality will also be considered for funding. This would include such ventures as new efforts to identify and improve the emissions of gross emitters, vanpooling programs, planning and development of parking management programs, and preferential treatment for high-occupancy vehicles. Like all proposals, the State must provide documentation of air quality benefits, and FTA/FHWA, in consultation with EPA, must be satisfied that the project or program will help attain a NAAQS.

B. Levels of Analysis

Decisions regarding the level and type of air quality analysis, as well as the credibility of its results, are left to FTA and FWHA field staff, in consultation with EPA. Across the country, State and local transportation/air quality agencies have different approaches, analytical capabilities and technical expertise with respect to such analysis. At the national level, it is not feasible to specify a single method of analysis that would be applicable in all cases.

While no method is specified, every effort must be taken to ensure that determinations of air quality benefits are credible and based on a reproducible and logical analytical procedure that will yield quantitative results of emission reductions. In subsection VI.A. of this guidance, States are required to submit annual reports providing estimates of emission reductions for the CMAQ Program. Analysis of air quality benefits for individual project proposals will assist preparation of the annual reports. It also aids in the CMAQ project selection process. Of course, if an air quality analysis has been done for other reasons, it may also be used for this purpose.

Although quantitative analysis of air quality impacts is required whenever possible, some highway and transit improvements may not lend themselves to rigorous quantitative analysis because of the size or scope of the project or because practical experience is lacking to adequately analyze the project. In these cases, a qualitative assessment based on a reasoned and logical examination of how the project or program will decrease emissions and contribute to attainment of a NAAQS is appropriate and acceptable.

In some instances the appropriate focus of the analysis will not be the specific proposal submitted for CMAQ funding. In cases where CMAQ funds are to be used for planning studies, for example, the analysis should focus on the project emanating from the planning. In these cases, related projects should be grouped and the air quality benefits determined together.

In other situations, the appropriate analytical focus will be to examine the impacts of more comprehensive strategies to improve air quality by grouping TCMs. A stategy to reduce reliance on single-occupant vehicles in a travel corridor, for example, could include transit improvements coupled with demand management. The benefits of such a strategy should be evaluated together rather than as separate projects. Transit improvements, ridesharing programs or other TCMs affecting an entire region may be best analyzed in this fashion.

C. Responsibility for Project Management and Final Eligibility Decisions

Either the local FTA or FHWA office will be responsible for project management. In cases where the project is clearly related to transit, FTA will manage the project. Similarly, highway projects that improve air quality through traffic operational improvements would be managed by FHWA. For projects that include both highway and transit elements, such as park and ride lots and intermodal projects, the managing agency will be decided on case-by-case basis.

Following initial review by the managing agency and consultation with EPA, the managing agency makes the final determination on whether the project or program is likely to contribute to attainment of a NAAQS and is eligible for CMAQ funding.

V. Coordination With EPA

As noted in the February 20 interim guidance, the FTA and FHWA Regional Offices should establish a consultation and coordination process with their respective EPA Regional Offices for review of CMAQ funding proposals. EPA review is critical to assist the determination of whether a project will have air quality benefits and to assure that the most effective projects and programs are approved for CMAQ funding.

At the same time, the consultation process should be developed with the urgency of improving air quality and keeping the CAAA attainment schedules in mind. A process should be established for timely review and handling of CMAQ funding proposals. Also, a project category list should be developed for expedited funding under CMAQ without further review. As EPA will evaluate all TCMs in an approved SIP for the conformity determination, they can be included on such a list.

VI. MPO and State Authority/Responsibility

A. Annual Reports

To assist in meeting statutory obligations, States are required to prepare annual reports for FTA, FHWA and the general public that specifies how CMAQ funds have been spent and what the air quality benefits are expected to be. Annual reporting will serve to minimize funding questionable activities under CMAQ, and appropriately makes the States and local agencies accountable to the general public. Also, an annual report would enable FTA and FHWA to be responsive to the Congress on the utilization of the funds.

This report should be provided by the first day of February following the end of the previous Federal fiscal year (September 30) and cover all CMAQ obligations for that fiscal year. The report should include:

1. A list of projects funded under CMAQ, best categorized by one of the following six project types:

- Transit: construction, equipment or operating expenses for new and improved services, and parking for transit services, etc.
- Other shared-ride: vanpool and carpool programs, and parking for shared-ride services, etc.
- Highway/road: traffic management and control services, signalization projects, intersection improvements, and construction or dedication of HOV lanes, etc.
- Demand management: employer trip reduction programs, transportation management plans, flexible work schedule programs, vehicle restriction programs, etc.
- Pedestrian/bike: trails, storage facilities, promotional activities, etc.
- I/M and other TCMs (not covered by the above categories).

Project planning and other developmental activities, eligible under CMAQ, should be categorized the same way as the project or program they support.

2. The amount of CMAQ funds obligated for the year, disaggregated by the type of project listed above; and

3. A tabulation of the estimated air quality benefits for the year summed from project-level analyses and expressed as reductions of ozone precursors (volatile organic compounds and nitrogen oxides), CO, or PM-10. These reductions should be expressed as kilograms per day removed from the atmosphere. This information will be important to monitoring and reporting to Congress on CMAQ Program effectiveness.

B. Fund Allocation and Project Selection

According to the ISTEA legislation, CMAQ funds are apportioned to the States based on the severity of their ozone pollution and the number of people affected by it. Additional funds are apportioned if a nonattainment area for ozone is classified as nonattainment for CO as well. Each State is guaranteed a minimum of 0.5 percent of the total yearly apportionment even if it has no nonattainment areas.

A State's apportionment can change from year-to-year. As some areas come into attainment, or as some areas whose air quality gets worse are classified as nonattainment, the distribution of the total yearly apportionment will change, affecting each State's apportionment to some degree. Further, EPA can adjust the boundaries of a nonattainment area which will in turn affect the number of people in the area and shift the distribution as well.

Despite the statutory formula for determining the apportionment amount, the State can use its CMAQ funds in any ozone, CO or PM-10 (under certain conditions) nonattainment area. It is under no statutory obligation to suballocate CMAQ funds in the same way as they were apportioned. States may retain funds for use in specific nonattainment areas or fund CMAQ projects on a case-by-case basis. We suggest, however, that the State consult with affected MPOs to determine CMAQ priorities and allocate funds accordingly.

The decision over which projects and programs to fund under CMAQ should be made through a cooperative process involving the State departments of transportation, affected MPOs, and State and local air quality agencies. This process serves to develop a pool of potential CMAQ projects to be considered for funding in a State's nonattainment areas. The programming of CMAQ projects should follow the procedures for TIP development and project selection noted below.

Projects to be funded with CMAQ funds must be included in the TIPs that are developed by the MPOs in cooperation with the State and transit operators. Under the metropolitan planning interim guidance of April 6, 1992, TIPs must contain a priority list of projects to be carried out in the 3-year period following adoption. For projects targeting CMAQ funds, priority in the TIP should be based on the projects' estimated air quality benefits.

Since the TIPs must be consistent with available funding, it is important that the State advise the MPOs of its proposed approach to utilize CMAQ funds in a timely

manner. Once CMAQ projects are included in a TIP (approved by the MPO and the Governor, and included in a FHWA/FTA-approved statewide transportation improvement program), they may be selected for implementation in accordance with the specified project selection procedures. In transportation management areas, CMAQ projects would be selected for implementation from the approved TIP by the MPO in consultation with the State. In all other areas CMAQ projects would be selected from the approved TIP by the State in cooperation with the MPO.

VII. States That Are in Attainment

States that do not have any ozone and CO nonattainment areas, which meet the nonattainment classifications contained in the CAAA, may use their funds for any eligible projects under the STP. We would encourage any of these States which also have PM–10 nonattainment areas, and those that achieve attainment of ozone and CO standards in the future, but still have PM–10 nonattainment areas, to give priority to the use of these funds for projects and programs that contribute to attainment of the PM–10 standard. This priority should be given only if mobile sources are considered major contributors of such nonattainment.

For States that are in attainment or achieve attainment of transportation-related NAAQS, we would further encourage them to give priority to the use of CMAQ program funds for the development of congestion management systems, public transportation facilities and equipment, and intermodal facilities and systems, as well as the implementation of projects and programs produced by those systems.

VIII. Further Information

If you have any questions on the CMAQ program or this guidance, please contact James M. Shrouds at (202) 366–2074, Michael J. Savonis at (202) 366–2080 or Abbe Marner at (202) 366–4317.

Anthony R. Kane

Robert H. McManus

2 Attachments

Attachments not available for publication

Attachment #1 is 23 U.S.C. 120. Attachment #2 is Section 1008 of the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. 102–240, 105 Stat. 1914.

MEMORANDUM

Date: June 15, 1992.

Reply to Attn of: HEP–41/HEP–32.

Subject: *Information:* Congestion Mitigation and Air Quality (CMAQ) Improvement Program and Transportation Enhancement Activities.

From: Director, Office of Environment and Planning.

To: Regional Federal Highway Administrators; Federal Lands Highway Program Administrator.

Implementation of two of the new areas under the Intermodal Surface Transportation Efficiency Act (ISTEA) have created some concern at Headquarters. The CMAQ Improvement Program and Transportation Enhancement Activities (under the Surface Transportation Program) have shown rather slow rates of obligation to date. These activities represent completely new areas for FHWA, and some planning to determine how best to use these funds is not only expected, but desirable.

Our concern, however, is that States may also be slow to obligate these funds because of uncertainties over project eligibility and program structure. We need to address these uncertainties and remove the bottlenecks that may be interfering with the successful implementation of these programs.

CMAQ

Interim guidance on the CMAQ program was sent out on February 20. Still eligibility questions have continued to arise, most recently at a May 20 conference call with Regional Planning and Program Directors. These questions seem to be hindering program implementation. We need to insure that State Departments of Transportation (DOT) are fully aware of our positions on project eligibility and what is required under the ISTEA. Headquarters staff have already provided the most up-to-date information we have, and further guidance on project eligibility and procedures for coordination with the Federal Transit Administration (FTA) are being developed. These will be disseminated as soon possible.

In the interim, the divisions and regions should exercise their best judgement in making eligibility calls while keeping in mind the purpose of the CMAQ program—to fund projects and programs that will contribute to attainment of National Ambient Air Quality Standards for ozone and carbon monoxide. The interim guidance of February 20 and previous discussions with Headquarters will further serve to direct your decisions. It would be prudent to avoid making long-term commitments, such as funding operating expenses or capital projects that will extend far into the future, because final guidance may contradict some of these eligibility decisions.

You should be aware that the continuing development of State Implementation Plans may also play a role in the slow obligation rate for CMAQ. Some States seem to be waiting for their plans to more fully develop before expending these funds. In that 1992 CMAQ funds do not lapse for 4 years, this poses no significant threat to their funding and is within their prerogative.

Transportation Enhancement Activities

The April 24 memorandum on transportation enhancement activities provided guidelines for determining which activities qualified as transportation enhancements. Nevertheless, many State DOTs are grappling with enhancement proposals that are not definitively addressed by these guidelines. Some such proposals appear to qualify as transportation enhancements, but some State DOTs are unsure how these initial proposals will rank against transportation enhancement proposals that materialize as a broader group of interested parties seek to become involved in the Surface Transportation Program. State DOTs therefore find themselves in the position of balancing the immediate obligation of funds for transportation enhancement activities against taking the time to build a process which will serve them well over the longer term.

Given the newness of the transportation enhancement concept and the number of interested outside parties, one strategy that States should seriously consider is to develop separate short-term and longer-term approaches. Over the short term (the remainder of FY 92 and the beginning of FY 93), State DOTs could concentrate on incorporating clearly qualifying transportation enhancement measures into transportation projects that are currently in the project development pipeline and on advancing proposals for stand-alone projects which have indisputable merits. At the same time, State DOTs would be well-advised to immediately begin developing a longer term process for identifying candidate transportation enhancement proposals and for selecting which proposals will be funded. In developing the longer term process, State DOTs should consult with interested outside parties. Once developed, State DOTs should widely publicize the process in a way that interested members of the public can easily understand.

A few State DOTs have made substantial progress in developing strategies for implementing transportation enhancement activities. One State is establishing an interagency committee to screen enhancement proposals using published criteria and to advise the DOT Secretary of which proposals merit advancement. Another State DOT has decided to reserve some of the transportation enhancement funds for upgrading its own projects and will conduct a grant competition for the remaining funds. We will provide you with specifics as these processes are finalized and the State DOTs are willing to share the information.

Requested Followup

In order to relieve the uncertainties that may be interfering with the successful implementation of both the CMAQ program and transportation enhancement activities, we ask that Division Administrators meet with State DOTs as soon as possible to clarify any misunderstandings that exist. The FTA regional representatives should be invited to participate in these meetings because of the significant role they play in transportation enhancement activities and the CMAQ program.

If you need further information on these matters, contact the following members of my staff: CMAQ: James Shrouds, HEP–41 (202–366–2074), or Enhancements: Fred Skaer, HEP–32 (202–366–2058).

Kevin E. Heanue

Federal Transit Administration

July 30, 1992.

Dear Colleague: This is a followup letter to one we sent you on March 19 on the general subject of administrative procedures to be followed when Federal highway assistance is used for mass transit projects, or transit funds are used for highway projects. Both of these new options are authorized under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA).

The March 19 letter primarily concerned itself with the Surface Transportation Program (STP) of the highway title, as well as the Section 9 Program of the transit title.

This letter, in an attachment, addresses the procedures that will be used when transferring funds to or from a highway program that is a companion of the STP, namely, the Congestion Mitigation and Air Quality Improvement Program (CMAQ). While generally similar to the procedures outlined in our March 19 letter, there are some difference, especially with respect to project eligibility.

A second attachment to this letter, an internal memorandum to the field staff of both the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA), outlines accounting procedures that will be used by our respective agencies for the fiscal management of transit projects financed by highway funds, either STP or CMAQ in origin.

It is expected that whatever the origin of the Federal funds involved, FTA will manage projects that are clearly transit in nature (e.g., the purchase of transit vehicles, the construction of transit facilities, etc.), while FHWA will manage projects that improve general road traffic and conditions.

Questions have arisen, however, about which agency will manage projects of an intermodal nature. Decisions on these will be made on a case-by-case basis. Sponsors of such intermodal projects should contact their field offices, both FTA and FHWA, as quickly as possible in the project development process. If at all possible, any preference that the project sponsor has will be honored.

At this point in the implementation of the ISTEA, we would like to express our appreciation for both the enthusiasm, and the patience, that we are finding among our grantees. The ISTEA is not just another reauthorization of two Federal assistance programs; it represents a major milestone in the partnership between Federal, State, and local interests on questions of transportation.

Sincerely yours,

Brian W. Clymer,

Administrator, Federal Transit Administration.

Thomas D. Larson,

Administrator, Federal Highway Administration.

2 Enclosures.

Transfer Procedures for Use of Title 23 Congestion Mitigation and Air Quality (CMAQ) Improvement Program Funds for Transit Projects and Programs

Funds from the CMAQ Improvement Program can be used for transportation projects and programs (for simplicity referred to as "projects" in these procedures) that will lead to attainment of National Ambient Air Quality Standards (NAAQS). The interim guidance of February 20 in combination with questions and answers on the Federal Electronic Bulletin Board System serve as the most current guide to what projects are eligible for CMAQ funding. Additional guidance is being developed and will be issued as soon as possible. The CMAQ funds may be used for either highway or transit projects. This paper outlines the steps which are to be taken in order to use these funds for a transit project.

Transportation Improvement Program (TIP) Development, Project Selection and Conformity Determinations

A transit project intended to use CMAQ funds, just as with highway projects, must contribute to the attainment of the NAAQS as defined by the Intermodal Surface Transportation Efficiency Act, the Clean Air Act Amendments of 1990 and the guidance referenced above. As in the case of projects selected to use Surface Transportation Program funds, the project must also be included in a conforming Transportation Plan and TIP developed by the Metropolitan Planning Organization (MPO). The TIP must be approved by the MPO and the Governor (or designate). Additionally, projects inside and outside the metropolitan areas must be included in the State Transportation Improvement Program (STIP). The STIP is to be approved by the Secretary no less frequently than biennially. Projects must then be selected for implementation in accordance with the requirements of section 8 of the Federal Transit Act and sections 134 and 135 of title 23, United States Code.

Once the project is selected for implementation, the recipient of the transit project funds (the "Grantee" as determined by State and local officials) completes all necessary preliminary steps. This includes preparation of necessary National Environmental Policy Act documentation.

Application

The Grantee submits a project application to the cognizant Federal Transit Administration (FTA) Regional Office which should include documentation on how the project will improve air quality. At the time of the application, the Grantee notifies the State that it has submitted an application to FTA which will require a transfer.

The application should specify under which Federal Transit Act section the funds will be utilized, and the application should be prepared in conformance with the requirements and procedures governing that section. Section 9 requirements and procedures will apply to urbanized area projects, Section 18 to non-urbanized area projects, and Section 16 to projects for the purposes of that section. Section 13(c) requirements will apply as may be called for under those programs.

The FTA Regional Office will receive and process the applications under the normal quarterly release process. Projects receive project numbers consistent with the purposes to which the funds will be applied.

Fund Obligation and Application Approval

If the project submitted for CMAQ funding is unambiguously a transit project, the FTA Regional Office will decide if the project is eligible for CMAQ funding and will manage the project. Similarly for a clearly-defined highway project, the Federal Highway Administration will be the responsible agency. In the case of an intermodal project or other projects which have elements of both highway and transit improvements, the FTA and FHWA Regional Offices will jointly decide if the project is eligible for CMAQ funding, if the application should be approved and which agency will manage the project. The remainder of this guidance applies if FTA is the managing agency.

If a State has not yet submitted a transfer request, the FTA Regional Office will notify the State and the Grantee that the project is ready for approval.

Project Execution

Once the project is approved, the Grantee executes the project using normal FTA program procedures appropriate to the project in question. The FTA Regional Office will manage the project in the same manner as typical transit projects. Requests for reimbursement are sent to FTA as for other FTA projects.

Project Amendments

Project Amendments which require the use of additional CMAQ funds will undergo the same processing as an original request for funding.

MEMORANDUM

Date: July 30, 1992.

Reply to Attn. of: HEP-41, M. Savonis, x62080, TGM-1.

Subject: *Action*—Policy on Eligibility of PM-10 Projects for CMAQ Funding.

From: Federal Highway Associate Administrator for Program Development; Federal Transit Associate Administrator for Grants Management.

To: Regional Federal Highway Administrators; Federal Lands Highway Program Administrator; Federal Transit Area Directors and Regional Administrators.

Officials in several small particulate matter (PM-10) nonattainment areas have requested that transportation projects and programs which reduce PM-10 emissions in a PM-10 nonattainment area be considered eligible for funding under the Congestion Mitigation and Air Quality Improvement Program (CMAQ). Such a request from Spokane, Washington is attached. We have concluded that projects and programs which reduce transportation-generated PM-10 emissions in a PM-10 nonattainment area should be considered eligible for CMAQ funding under the following additional conditions:

The State must consult with, and consider the views of, the EPA regional office and the metropolitan planning organizations (MPOs) in all nonattainment areas for ozone, carbon monoxide (CO), and PM-10 within the State before programming CMAQ funds for a PM-10 project.

If the State contains any ozone or CO nonattainment areas, the EPA regional office must agree that the proposed use of CMAQ funds for PM–10 projects or programs will not detract from or delay efforts to attain the ozone or CO standards.

The primary focus of a transportation program intended to improve air quality should be the primary transportation pollutants, ozone and CO. The CMAQ apportionment formula in the Intermodal Surface Transportation Efficiency Act recognizes ozone and CO as the primary transportation pollutants. The requirements listed above will ensure proper consideration of the views of the agencies charged with controlling transportation emissions of ozone precursors, CO, and PM–10, especially their views on the most effective use of transportation funds in achieving the National Ambient Air Quality Standards. The CMAQ eligibility of PM–10 projects will not affect a State's CMAQ apportionment, but has the potential to spread the limited CMAQ funds over a greater number of nonattainment areas within the State.

The consultation and agreement with EPA will ensure that the proposed projects and programs effectively address PM–10 problems without exacerbating other pollution problems. For example, a project which reduces PM–10 emissions in a PM–10 and CO nonattainment area may cause an increase in CO emissions and be therefore less desirable than a project without this CO problem.

Examples of projects and programs in a PM–10 nonattainment area that would be eligible for CMAQ funds if the above requirements are met are paving dirt roads, diesel bus replacements, and more effective street sweeping equipment. In an area which is nonattainment for both PM–10 and ozone or CO, projects and programs which reduce emissions of CO or ozone precursors in addition to reducing PM–10 emissions (e.g. transportation activities in approved State Implementation Plans and transportation control measures listed in section 108(f)(1)(A) of the Clean Air Act) are not subject to the additional requirements listed above. The requirements apply only to projects and programs whose sole justification for CMAQ eligibility is the reduction in PM–10 emissions.

These requirements have been coordinated with EPA and will be incorporated into more extensive guidance on CMAQ which will be issued soon. Please advise the States, MPOs, and transit agencies in your region of this PM–10 policy.

Robert H. McManus

Anthony R. Kane

Attachment

United States Senate
Washington, DC 20510–4701
June 23, 1992

William K. Reilly, Administrator, Environmental Protection Agency, 401 M Street Southwest, #1200–W, Washington, D.C. 20460.

Dear Administrator Reilly: I understand that the Environmental Protection Agency will be working with the Department of Transportation as it reviews its interpretation of the Intermodal Surface Transportation Efficiency Act's Congestion Mitigation and Air Quality Improvement Program to include PM–10 (particulate micron material) reduction. Presently, DOT's interpretation only permits the funding of projects which reduce carbon monoxide and ozone levels.

In the State of Washington, the city of Spokane continually faces the threat of being labeled by the EPA as "serious" for PM–10 nonattainment. If labeled "serious" by the EPA, the city would face a barrage of restrictions on business and other activities vital to local commerce. Simply put, jobs and economic opportunities would be limited—if not lost—for Spokane's many families and communities.

After extensive research, EPA Region 10 and the Washington State Department of Ecology have targeted 4½ miles of unpaved roads which, if paved, will contribute to a substantial decrease in Spokane's PM–10 level. The Washington State Department of Transportation and regional Federal Highway Administration support the use of Congestion Mitigation funds for this project.

I encourage the EPA to consider the problems facing the city of Spokane when consulting with the DOT on its interpretation of the Congestion Mitigation and Air Quality Improvement Program. The threat which PM–10 poses to Spokane's citizens is great, and any measure which will reduce the pending threat of being labeled "serious" would greatly assist both the environmental and economic livability of this city.

Thank you for your consideration of this request. I look forward to your response.

Sincerely,

Slade Gorton,

United States Senator.

United States Senate
Washington, DC 20510–4701
June 23, 1992

The Honorable Andrew Card, Secretary, Department of Transportation, 400 Seventh Street, Southwest, Washington, D.C. 20590.

Dear Secretary Card: I understand that the Department of Transportation is reviewing its interpretation of the Intermodal Surface Transportation Efficiency Act's Congestion Mitigation and Air Quality Improvement Program to include PM–10 (particulate micron material) reduction. Presently, DOT's interpretation only permits the funding of projects which reduce carbon monoxide and ozone levels.

In the State of Washington, the city of Spokane continually faces the threat of being labeled by the Environmental Protection Agency (EPA) as "serious" for PM–10 nonattainment. If labeled "serious" by the EPA, the city would face a barrage of restrictions on business and other activities vital to local commerce. Simply put, jobs and economic opportunities would be limited—if not lost—for Spokane's many families and communities.

After extensive research, EPA Region 10 and the Washington State Department of Ecology have targeted 4½ miles of unpaved roads which, if paved, will contribute to a substantial decrease in Spokane's PM–10 level. The Washington State Department of Transportation and regional Federal Highway Administration support the use of Congestion Mitigation funds for this project.

I urge your prompt review of the Department's interpretation of the Congestion Mitigation and Air Quality Improvement Program to include PM–10. The threat which PM–10 poses to Spokane's citizens is great, and any measure which will reduce the pending threat of being labeled "serious" would greatly assist both the environmental and economic livability of this city.

Thank you for your consideration of this request. I look forward to your response.

Sincerely,

Slade Gorton,

United States Senator.

MEMORANDUM

Date: April 14, 1992.

Reply to Attn of: HNG–13.

Subject: *Action*—1991 Intermodal Surface Transportation Efficiency Act (ISTEA) Implementation of Interstate Substitution Program.

From: Associate Administrator for Program Development.

To: Regional Federal Highway Administrators; Division Administrators; Federal Lands Highway Program Administrator.

This memorandum provides written guidance in the implementation of the provisions of the 1991 ISTEA accounting for changes and/or amendments made to the Interstate Substitution Program.

Authorizations—Sections 1011 and 3025

Section 1011(a)(1) authorizes $240,000,000 per fiscal year for each of fiscal years 1992, 1993, 1994 and 1995 for substitute highway projects. Substitute transit funds are authorized in section 3025 of the Act and the authorizations available when appropriated are $160,000,000 for fiscal year 1992 and $164,843,000 for fiscal year 1993. These substitute program authorizations will complete the withdrawal substitution program based on the remaining needs shown in the 1991 Interstate Substitute Cost Estimate (ISCE).

Distribution of Funds—Section 1011

Section 1011 amends title 23, United States Code 103(e)(4) (H) and (J) to provide that all funds made available for substitute highway and transit projects shall be apportioned in accordance with the estimates of the cost to complete. The substitute cost estimates shall be adjusted every year and used to calculate the apportionments for substitute highway projects for fiscal years 1992 and 1993.

In view of the changes to the substitution program by the 1991 Act, an update to the 1991 ISCE will be prepared in cooperation with the States involved in the program. The purpose of the update is to verify the splits (highway versus transit), in the consideration of the 1991 Act provisions, for use in apportioning substitute funds.

Period of Availability—Section 1011

Section 1011(c) amends 23 U.S.C. 103(e)(4)(E)(i) to provide that funds

authorized to be apportioned for substitute highway projects for fiscal year 1995 and for substitute transit projects for fiscal year 1993 shall remain available for obligation until expended. There is no change in the availability period for funds apportioned prior to those years. Unobligated funds at the end of the availability period in a State are subject to withdrawal and reapportionment to other States except when an amount by itself is not sufficient to pay the Federal share of the cost of a substitute project.

Eligibility

Projects eligible for funding remain as in 23 U.S.C. 103(e)(4)(B). However, Section 1011 now provides that substitute highway funds may be used for substitute transit projects.

If substitute highway funds are to be used for a transit project, a State will follow the uniform procedures established for the use of Surface Transportation Program funds and Interstate Substitute Highway funds for transit projects. These procedures are described in a March 19, 1992, letter signed jointly by Mr. Brian W. Clymer, FTA Administrator, and Mr. Thomas D. Larson, FHWA Administrator. A copy is attached for your ready reference.

Discretionary Funds—Section 1011

The 1991 Act eliminates the discretionary allocation of a portion of the substitute highway and substitute transit fund authorizations. In accordance with the Section 1011(a)(2) and (b)(2) amendments to Title 23, the funds authorized by the 1991 Act will be apportioned.

Federal Participation

The Federal share of each substitute project remains at 85 percent of the cost in accordance with 23 U.S.C. 103(e)(4)(D).

Anthony R. Kane

Attachments

Federal Highway Administration

March 19, 1992.

Dear Colleague: Recently, we wrote to you describing some of the new flexibility available in the use of Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) funds. We remain fully committed to see that this new flexibility is fully realized. Consequently, we have been working together to develop procedures to permit all program funds which have flexible uses to be used as expeditiously as possible.

Enclosed are descriptions of the procedures we have put in place to govern use of FHWA Surface Transportation Program and Interstate Substitution—Highways Program funds used for transit projects and use of FTA Section 9 Program funds for highway projects. We will be issuing similar guidance on use of FHWA Congestion Mitigation and Air Quality program funds for transit projects shortly.

We believe that these procedures should provide States and transit operators the maximum flexibility permitted under the law. Please do not hesitate to contact our field offices as questions arise on these procedures.

Sincerely,

Brian W. Clymer,

Administrator, Federal Transit Administration.

Thomas D. Larson,

Administrator, Federal Highway Administration.

Enclosure.

Procedures for Use of Surface Transportation Program and Interstate Transfer—Highways Funds for Transit Projects

Surface Transportation Program (STP) funds may be used for a wide variety of surface transportation activities, including both highway and transit projects. Interstate Substitution—Highways (Ix) funds may be used for transit projects. Certain other FHWA funds, such as National Highway System Funds, may be transferred to the STP and then used for any STP-eligible activity. This paper outlines the steps which are to be taken in order to use these FHWA funds for a transit project.

TIP Development and Project Selection

A transit project intended to use STP or Ix funds must be included in a Transportation Improvement Program (TIP) developed by the Metropolitan Planning Organization (MPO) and approved by the MPO and the Governor. Projects must also be included in the State Transportation Improvement Program (STIP). Projects outside metropolitan areas must be included in the STIP. The STIP must be approved by the Secretary no less frequently than biennially. Projects must then be selected for implementation in accordance with the requirements of Section 8 of the Federal Transit Act and Section 135 of Title 23, United States Code.

Once the project is selected for implementation, the recipient of the transit project funds (the "Grantee," as determined by State and local officials) completes all necessary preliminary steps. This includes preparation of necessary National Environmental Policy Act documentation.

Application

The FTA Grantee submits an application for the project to the cognizant FTA Regional Office. The completed application must be submitted on or before the start of a quarter for the application to be approved at the end of that quarter. At the same time, the Grantee notifies the State that it has submitted an application to FTA which will require a transfer.

The application should specify under which Federal Transit Act section the funds will be utilized and the application should be prepared in conformance with the requirements and procedures governing that section. Section 9 requirements and procedures will apply to urbanized area projects, section 18 requirements and procedures to non-urbanized area projects and section 16 requirements and procedures to projects for the purposes of that Section. Section 13(c) requirements will apply as may be called for under those programs.

FTA Regional Offices will receive and process the applications under the normal quarterly release process. Projects receive project numbers consistent with the purposes to which the funds will be applied.

Fund Obligation and Application Approval

If the FTA Regional Office determines that the project can be approved and if a State has not yet submitted a transfer request, the FTA Regional Office will notify the State and the grantee that the project is ready for approval. In order for the project to be approved that quarter, the State must request the transfer no later than 10 working days prior to the end of the quarter.

Once all steps have been completed, the FTA Regional Office will award the grant at the end of the quarter.

Project Execution

Once the project is approved, the Grantee executes the project using normal FTA program procedures appropriate to the project in question. The FTA Regional Office will manage the project in the same manner as typical transit projects. Requests for reimbursement are sent to FTA as for other FTA projects.

Project Amendments

Project Amendments which require the use of additional STP or Ix funds will undergo the same processing as an original request for funding.

Procedures for Use of Section 9 Funds for Highway Projects

Section 9 capital-only funds may be used for highway projects in Transportation Management Areas if 1) such use is approved by the Metropolitan Planning Organization (MPO), 2) such funds are not needed for investments required by the Americans with Disabilities Act (ADA), and 3) the funds used for the State or local share of such a project are eligible to be used for either highway or transit projects. This paper outlines the steps which are to be taken in order to use FTA Section 9 funds for a highway project.

TIP Development and Project Selection

A highway project intended to use Section 9 funds must be included in a Transportation Improvement Program (TIP) developed by the MPO and approved by the MPO and the Governor. Projects must also be included in the State Transportation Improvement Program (STIP). The STIP must be approved by the Secretary no less frequently than biennially. The projects must then be selected for implementation in accordance with the requirements of Sections 134 and 135 of Title 23, United States Code.

Once the project is selected for implementation, the State completes all necessary preliminary steps including preparation of necessary National Environmental Policy Act documentation.

Once these steps are completed the State notifies the section 9 Designated Recipient that the project is ready to proceed. The Designated Recipient then sends a request to transfer to the FTA Regional Office. The request should include a certification by the MPO that ADA needs have been met. The FTA Regional Office will process the request and make the required determination that ADA needs have been met.

Request for Authority to Proceed

The State submits a request for PS&E approval or a request to obligate to the FHWA Division Office including a certification that the State or local matching funds are eligible to be used for either transit or highway projects. FHWA Division Offices will receive and process requests as for other highway projects.

Project Execution

Once the project is approved, the State executes the project and the FHWA Division Office will manage the project using FHWA program procedures. Requests for reimbursement are sent to FHWA as for other FHWA projects.

Project Amendments

Project amendments which require the use of additional section 9 funds will undergo the same processing as an original request for funding.

MEMORANDUM

Date: June 30, 1992.
Reply to Attn. of: HFS–21.
Subject: *Information*—Federal Shares Established by title 23 U.S.C. and the ISTEA of 1991.
From: Director, Office of Fiscal Services, Washington, DC 20590.
To: Regional Administrators, Division Administrators.

The following information, concerning Federal share, was furnished by the Executive Director's memorandum to Regional Administrators, dated December 6, 1991:

"For new projects advanced using old funds, the Federal share is governed by the provisions of title 23 in existence prior to enactment of the 1991 ISTEA.

For NHS, STP, or new Bridge funds used to cover overruns on previously authorized Federal-aid projects, the Federal share should be that originally authorized for the project.

For new projects advanced using the new Interstate Maintenance program, NHS, or STP funds, projects on the Interstate System would have a Federal share of 90 percent (including HOV or other auxiliary lanes but excluding any other added lanes). All other projects would be 80 percent."

The above information is still valid. The basic Federal share payable for Federal-aid highway projects, established by 23 U.S.C. 120, is 90 percent for Interstate system projects (including a project to add high occupancy vehicle lanes and a project to add auxiliary lanes but excluding a project to add any other lanes); 80 percent for Interstate—other added lanes, the National Highway System (NHS) and the Surface Transportation Program (STP); and 100 percent for certain safety projects, territorial projects, and emergency relief (for eligible emergency repairs to minimize damage, protect facilities or restore essential traffic accomplished within 180 days). The basic Federal share payable applies to all projects unless otherwise provided by title 23 or other legislation. The basic Federal share payable under sections 120(a) and 120(b) may be increased by the sliding scale rates for public land states, not to exceed 95 percent. A State may contribute an amount in excess of the non-Federal share of any project under title 23.

The attached exhibit provides a brief summary of section 120, other sections of title 23 that contain exceptions to section 120, and Federal share information from the ISTEA. The exceptions to 23 U.S.C. 120 and the Federal share information from the ISTEA are not subject to the sliding scale rates for public land states. Listed sections of 23 U.S.C. and the ISTEA should be referred to for program specifics.

Ten percent of the STP apportionments have been set aside to carry out sections 130, Railway-highway crossings; and 152, Hazard elimination (23 U.S.C. 133 (d)(1)). The Federal share for projects using the set-aside funds may not exceed 90 percent, unless qualified for the increased Federal share for safety work in accordance with section 120(c). The Federal share for other projects for these programs will be the same as source funds.

Categorical funding has been discontinued for several programs such as sections 131, Outdoor Advertising; 136, Junkyards; 147, Priority Primary; and 155, Access highways to certain lakes. The Federal share payable for new projects for these programs, using funds authorized by the ISTEA, will be the same as source funds.

The Appalachian Regional Commission provides funds for Appalachian development highways (ISTEA section 1069(y)). The Federal share payable for Appalachian development highway projects is 80 percent.

Any questions concerning the Federal share may be directed to Mr. Robert Sharples, HFS–21, on 202–366–2855.

Peter J. Basso

Attachment

Title 23 U.S.C.

Section	Not to exceed (percent)
Federal Share Payable—Section 120	
120(a) Interstate projects (including HOV and auxiliary lanes)	90
Subject to sliding scale rates	95
Interstate (other added lanes)	80
Subject to sliding scale rates	95
120(b) Other projects	80
Subject to sliding scale rates	95
120(c) Certain safety projects	100
120(e) Emergency Relief:	
For certain work (first 180 days)	100
Federal lands highways	100
120(h) Territories (all projects)	100
120(i) A State may increase the non-Federal share on any Federal-aid project under title 23.	
Exceptions To Section 120	
103 Interstate substitute	85
129 Toll roads, bridges, and tunnels	50/80
130 Railway-highway crossings (STP 10% set-aside)	90
143 Economic growth centers: engineering and economic surveys	100
144 Bridge replacement	80
152 Hazard elimination (STP 10% set-aside)	90
153 Safety belts and motorcycle helmets:	
First fiscal year	75
Second fiscal year	50
Third fiscal year	25
Funds transferred to section 402	100

Title 23 U.S.C.—Continued

Section	Not to exceed (percent)
217 Bicycle facilities and pedestrian walkways	80
307 Research and planning:	
Research and technology, R&D coop. agree	50
(Secretary may approve a higher share)	
State planning and research	80
Applied research and technology	80
320 Bridges on Federal dams:	
Portion within the limits of the dam	100
Other portions as determined	100
321 National Highway Institute: training for State and local employees	80
326 Education and training centers: for Indian tribal governments	100
402 Highway safety program: Indian tribes with insufficient match	100
403 Highway safety research: collaborative R&D coop. agreements	50
406 School bus driver training	75
406 Alcohol traffic safety programs:	
First fiscal year	75
Second fiscal year	50
Third, fourth, and fifth fiscal years	25
410 Alcohol-impaired driving countermeasures: Indian tribes with insufficient match	100
Intermodal Surface Transportation Efficiency Act—The following sections of the ISTEA contain Federal-share information (not subject to sliding scale rates):	
1012(b) Congestion pricing pilot program	80
1021(d) Projects under sections 1103 through 1108:	
Eligible for Federal lands funds	100
On Federally owned bridges	100
1039(d) Highway timber bridge research and demonstration program	80
1040(f) Highway use tax evasion projects	100
1047(c) Scenic byways program	80
1064(b) Ferry boats and terminal facilities	80
1103(d) High cost bridge projects	80
1104(d) Congestion relief projects	80
1105(g) High priority corridors on the NHS	80
1105(h) NHS high priority corridor feasibility	100
1106(a) Rural access projects	80
1106(b) Urban access and mobility projects	80
1107(d) Innovative projects	80
1108(d) Priority intermodal projects	80

NOTICE

Subject: Sliding Scale Rates in Public Land States—Rates Effective March 17, 1992

Classification Code—N 4540.12

Date: March 17, 1992.

1. *Purpose.* To provide tables which show sliding scale rates of Federal participation in public lands States.

2. *Authority.* a. Rates applicable to projects on the Interstate System were determined pursuant to 23 U.S.C. 120(a).

b. Rates applicable to any project not on the Interstate System were determined pursuant to 23 U.S.C. 120(b)(1) and (2).

3. *General.* a. The sliding scale rates provided herein apply to the costs of Federal-aid projects financed from the respective funds except for traffic control signalization projects, pavement marking projects, commuter carpooling and vanpooling projects, and installation of traffic signs, traffic lights, guardrails, impact attenuators, concrete barrier endtreatments, breakaway utility poles, or priority control systems projects for emergency vehicles at signalized intersection financed at greater than the regular participating ratio. The sliding scale rates initially determined shall be retained throughout the life of the project, except (1) the State may elect to revise active projects by modification of agreements to utilize revised sliding scale rates, and (2) at the final voucher stage the State may elect to utilize the sliding scale rate then in effect. However, this instruction does not permit revision from an initially established Federal/State pro rata (70/30) for a project to a different Federal/State pro rata (75/25), i.e., a sliding scale rate based on a 70/30 pro rata may be changed to the revised sliding scale rate based on the same 70/30 pro rata but not to a sliding scale rate based on a different pro rata (75/25).

b. For traffic control signalization, pavement marking, commuter carpooling and vanpooling, installation of traffic signs, traffic lights, guardrails, impact attenuators, concrete barrier endtreatments, breakaway utility poles, or priority control systems projects, the maximum rate of participation of Federal-aid funds is 100 percent of the cost of construction, except that not more than 50 percent is payable for right-of-way and property damage costs obligated prior to July 1, 1973; 70 percent is payable July 1, 1973 to November 6, 1978; and 75 percent is payable November 6, 1978 to December 18, 1991.

c. Projects financed with HPR funds pursuant to 23 U.S.C. 307 and bridge funds pursuant to 23 U.S.C. 144 are not subject to sliding scale rates.

d. The rate of Federal participation in projects financed with one percent metropolitan planning funds is 80 percent. The sliding scale rates may be applied to this program.

4. *Rates.* a. *Clause (1) Rates Applicable to Projects not subject to paragraph 4c below.* The rates shown in Table 1 are based on the ratio of the areas of nontaxable Indian lands and of public domain lands (reserved and unreserved) exclusive of national forests and national parks and monuments, to the total area of the State. Rates are available for States in which the designated public land area exceeds 5 percent of the total area of the State. The 50 percent Federal, 50 percent State rates apply to obligations incurred on projects from July 1, 1973. The 70 percent Federal, 30 percent State rates apply to obligations incurred on projects from July 1, 1973 to November 6, 1978. The 75 percent Federal, 25 percent State rates apply to obligations incurred on Federal-aid non-

Interstate projects on and after November 6, 1978.

b. *Clause (2) Rates Applicable to Projects not subject to paragraph 4c below.* These rates are shown in Table 2 and are based on the ratio of the area of nontaxable Indian land, public domain lands (reserved and unreserved), national forest, and national parks and monuments to the total area of the State. The 50 percent Federal, 50 percent State rates apply to obligations incurred on projects prior to July 1, 1973. The 70 percent Federal, 30 percent State rates apply to obligations incurred on projects from July 1, 1973 to November 6, 1978. The 75 percent Federal, 25 percent State rates apply to obligations incurred on Federal-aid non-Interstate projects November 6, 1978, and thereafter. The maximum rate of Federal participation is 95 percent. These rates are available for States that have signed agreements pursuant to 23 U.S.C. 120(b)(2).

c. *Rates Applicable to Projects on the Interstate System (including a project to add high occupancy vehicle lanes and a project to add auxiliary lanes but excluding a project to add any other lanes).* These rates are shown in Table 3 and are based on the ratio of the area of unappropriated and unreserved public lands and nontaxable Indian lands to the total area of the State. Rates are available for States in which the designated public land area exceeds 5 percent of the total area of the State. The maximum rate of Federal participation is 95 percent.

Peter J. Basso,

Director, Office of Fiscal Services.

Attachments.

TABLE 1.—U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION

[Sliding scale rates of Federal-aid participation in public lands states—rates for projects not on interstate system—pursuant to 23 U.S.C. 120(b)(1)—effective March 17, 1992]

State	Ratio of designated public lands area [1] to total area of State	Percentage of cost of Federal-aid projects payable by Federal government				
		50% Federal 50% State	70% Federal 30% State	75% Federal 25% State	85% Federal 15% State	80% Federal 20% State
Alaska	0.5484	77.42	86.45	88.71	93.23	90.97
Arizona	0.5243	76.22	85.73	88.11	92.86	90.49
California	0.1786	58.93	75.36	79.47	87.68	83.57
Colorado	0.1397	56.99	74.19	78.49	87.10	82.79
Hawaii	0.0649	53.25	71.95	76.62	85.97	81.30
Idaho	0.2486	62.43	77.46	81.22	88.73	84.97
Montana	0.1376	56.88	74.13	78.44	87.06	82.75
Nevada	0.7444	87.22	92.33	93.61	[2] 95.00	94.89
New Mexico	0.2718	63.59	78.15	81.80	89.08	85.44
Oregon	0.2317	61.59	76.95	80.79	88.48	84.63
South Dakota	0.0976	54.88	72.93	77.44	86.46	81.95
Utah	0.4761	73.81	84.28	86.90	92.14	89.52
Washington	0.0711	53.56	72.13	76.78	86.07	81.42
Wyoming	0.3384	66.92	80.15	83.46	90.08	86.77

[1] Area of non-taxable Indian lands and reserved and unreserved public domain lands exclusive of national forests and national parks and monuments. Based on latest available data furnished by the Department of the Interior.
[2] Maximum amount.

TABLE 2.—U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION

[Sliding scale rates of Federal-aid participation in public lands states—for projects not on the interstate system—pursuant to 23 U.S.C. 120(b)(2)—effective March 17, 1992]

State	Ratio of designated public lands area [1] to total area of State	Percentage of cost payable by Federal government			
		50% Federal 50% State	70% Federal 30% State	75% Federal 25% State	80% Federal 20% State
Alabama	0.0200	51.00	70.60	75.50	80.40
Alaska	0.7476	87.38	92.43	93.69	94.95
Arizona	0.7150	85.75	91.45	92.88	94.30
Arkansas	0.0773	53.87	72.32	76.93	81.55
California	0.4263	71.32	82.79	85.66	88.53
Colorado	0.3654	68.27	80.96	84.14	87.31
Connecticut	0.0020	50.10	70.06	75.05	80.04
Delaware	0.0000	.....	.....	.....	.....
Florida	0.0965	54.83	72.90	77.41	81.93
Georgia	0.0238	51.19	70.71	75.60	80.48
Hawaii	0.1241	56.21	73.72	78.10	82.48
Idaho	0.6329	81.65	88.99	90.82	92.66
Illinois	0.0073	50.37	70.22	75.18	80.15
Indiana	0.0085	50.43	70.26	75.21	80.17
Iowa	0.0002	50.01	70.01	75.01	80.00
Kansas	0.0027	50.14	70.08	75.07	80.05
Kentucky	0.0289	51.45	70.87	75.72	80.58
Louisiana	0.0207	51.04	70.62	75.52	80.41
Maine	0.0142	50.71	70.43	75.36	80.28
Maryland	0.0053	50.27	70.16	75.13	80.11
Massachusetts	0.0060	50.30	70.18	75.15	80.12
Michigan	0.0924	54.62	72.77	77.31	81.85
Minnesota	0.0709	53.55	72.13	76.77	81.42
Mississippi	0.0417	52.09	71.25	76.04	80.83
Missouri	0.0343	51.72	71.03	75.86	80.69
Montana	0.3290	66.45	79.87	83.23	86.58
Nebraska	0.0091	50.46	70.27	75.23	80.18
Nevada	0.8366	91.83	[2] 95.00	[2] 95.00	[2] 95.00
New Hampshire	0.1225	56.35	73.68	78.06	82.45
New Jersey	0.0070	50.13	70.21	75.18	80.14
New Mexico	0.3960	69.80	81.88	84.90	87.92

TABLE 2.—U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION—Continued

[Sliding scale rates of Federal-aid participation in public lands states—for projects not on the interstate system—pursuant to 23 U.S.C. 120(b)(2)—effective March 17, 1992]

State	Ratio of designated public lands area [1] to total area of State	Percentage of cost payable by Federal government			
		50% Federal 50% State	70% Federal 30% State	75% Federal 25% State	80% Federal 20% State
New York	0.0052	50.26	70.16	75.13	80.10
North Carolina	0.0488	52.44	71.46	76.22	80.98
North Dakota	0.0464	52.32	71.39	76.16	80.93
Ohio	0.0078	50.39	70.23	75.20	80.16
Oklahoma	0.0291	51.46	70.87	75.73	80.58
Oregon	0.4865	74.33	84.60	87.16	89.73
Pennsylvania	0.0192	50.96	70.58	75.48	80.38
Rhode Island	0.0023	50.12	70.07	75.06	80.05
South Carolina	0.0315	51.58	70.95	75.79	80.63
South Dakota	0.1410	57.05	74.23	78.53	82.82
Tennessee	0.0332	51.66	71.00	75.83	80.66
Texas	0.0112	50.56	70.34	75.28	80.22
Utah	0.6613	83.07	89.84	91.53	93.23
Vermont	0.0541	52.71	71.62	76.35	81.08
Virginia	0.0748	53.74	72.24	76.87	81.50
Washington	0.3250	66.25	79.75	83.13	86.50
West Virginia	0.0679	53.40	72.04	76.70	81.36
Wisconsin	0.0555	52.78	71.67	76.39	81.11
Wyoming	0.5244	76.22	85.73	88.11	90.49
District of Columbia	0.1574	57.87	74.72	78.94	83.15
Puerto Rico	0.0124	50.62	70.37	75.31	80.25

[1] Area of non-taxable Indian Lands and reserved and unreserved public domain lands inclusive of national forests and national parks and monuments. Based on latest available area data furnished by the Department of Interior.
[2] Maximum amount.

TABLE 3.—U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION

[Sliding scale rates of Federal-aid participation in public lands states—rates for interstate programs—pursuant to 23 U.S.C. 120(c)—effective March 17, 1992]

State	Interstate Construction and Resurfacing Programs [1]	
	Ratio of designated public lands area [2] to total area of State	Percentage of cost of Federal-aid projects payable by Federal government—90% Federal/10% State
Alaska	0.3403	93.40
Arizona	0.4337	94.34
California	0.1574	91.57
Colorado	0.1206	91.21
Idaho	0.2269	92.27
Montana	0.1242	91.24
Nevada	0.6923	[3] 95.00
New Mexico	0.2644	92.64
Oregon	0.2223	92.22
South Dakota	0.0972	90.97
Utah	0.4183	94.18
Washington	0.0660	90.66
Wyoming	0.2758	92.76

[1] a. These rates apply to all projects authorized on or after December 29, 1981, for resurfacing, restoring, rehabilitating and reconstructing routes of the Interstate System and all Interstate construction projects.
b. Pursuant to Section 120(c), Title 23 U.S.C., any project financed with primary funds on the Interstate System for resurfacing, restoring, rehabilitating and reconstructing shall be available for these rates.
[2] Area of unappropriated and unreserved public lands and non-taxable Indian Lands. Based on latest available data furnished by the Department of Interior.
[3] Maximum amount.

MEMORANDUM

Date: March 24, 1992.
Reply to Attn of: HIA-20.
Subject: Intermodal Surface Transportation Efficiency Act of 1991.
From: Director, Office of Motor Carrier Information Management and Analysis.
To: Regional Directors, Office of Motor Carriers *Thru:* Michael F. Trentacoste Director, Office of Motor Carrier Field Operations (HFO-1).

Reference is made to Mr. Landis' December 19, 1991, memorandum asking that you coordinate the collection of State responses regarding the longer combination vehicle (LCV) information required by the Intermodal Surface Transportation Efficiency Act (ISTEA). We appreciate the fine effort made by both the region and division offices in helping all of the States meet the initial 60-day information submission deadline.

The State responses have been processed and an initial Notice of Proposed Rulemaking (NPRM) was published Friday, March 20. Sufficient copies of the NPRM are included with this memorandum to provide one for your office and two for each division. Please have the divisions forward one copy to the State, along with a copy of the attached instructions.

The OMC division personnel are asked to work with the States to see that the "operational conditions" responses are subdivided by the indicated categories. As with any FHWA rulemaking, direct comments by our field offices should be sent to HIA-20 at Headquarters, attention Mr. Tom Klimek, not to the docket.

Again, we appreciate the effort you have made in coordinating the FHWA's efforts to comply with the ISTEA. If you have any questions, please contact Tom Klimek of my staff, at FTS 366-2212.

John F. Grimm

Attachment

Attachment 1—Instructions for State Review of the NPRM on Restrictions for LCV's and Combination Vehicles With Two or More Cargo Carrying Units

1. Have each State carefully review the information contained in the NPRM regarding the operation of LCV's and combination vehicles with two or more cargo carrying units in the State, and make any corrections needed.

2. On **Federal Register** (FR) page 9902, a misrepresentation contained in our original LCV questionnaire is explained. A straight truck-trailer combination can contain two cargo carrying units, but a State strictly following the LCV questionnaire instructions could easily have overlooked this combination. Any State which allows, but did not report, the operation of this combination should do so at this time, in accordance with cargo-carrying length determination guidelines described in the NPRM (page 9900). The operation of this combination *must* be reported by a State if the cargo carrying length exceeds 65 feet. A State should not report the operation of this combination with cargo carrying lengths less than or equal to 65 feet.

3. FR page 9902 also discusses the wide range of topics and level of detail with respect to "operational conditions" provided by the States in responding to the questionnaire. In an attempt to provide uniformity in this area, the NPRM is asking the States that allow LCV's and/or extra-length vehicles to provide initially, or resubmit, the condition information in a uniform manner for appendix C, and at least the first vehicle combination described in appendix D, using the following subject headings in the sequence indicated.

a. *Weight*—List the maximum single axle, tandem axle and gross weight; as well as any

axle spacing requirements for each combination vehicle.

b. *Driver*—Describe any special training or experience required to handle the combination vehicle described that is in addition to a commercial driver's license with appropriate endorsement(s).

c. *Vehicle*—Describe any special requirements that apply; such as horsepower, braking ability, off-tracking limits or order of trailers.

d. *Permit*—Indicate whether a permit is required and, if so, its duration, type, i.e., whether it is for a single or multiple trip and if a fee is charged (for purposes of this rule, the amount of the fee is irrelevant).

e. *Access*—Recognizing that approved operating routes are listed separately, describe any conditions which would restrict vehicle access between terminals and approved highways, i.e., describe what, if any, "reasonable access" conditions exist for the combination described.

For subsequent vehicle combinations described in appendix D, the information provided for the first vehicle may be referenced if it is the same. If different conditions apply to different vehicle combinations they must be listed.

In completing this information, the States are requested to restrict the response for each subject heading to one double-spaced typewritten page, if at all possible.

If the information for these subject headings is part of a booklet or other publication, or longer than the suggested one-page length, we ask that the States succinctly summarize the information for each heading and provide a copy of the source document. If the FHWA was provided a copy of the source document as part of the original LCV information response, the States do not have to submit another copy, they may simply reference the first. If no requirements exist for a subject heading please so indicate. The operational conditions described in appendices C and/or D are intended to be an informational summary of the major conditions for the public at large. They are not to be used as the basis for actual operations. Accordingly, the FHWA feels that summaries of regulatory documents and cross references to information provided elsewhere are appropriate to convey this information.

Information that is provided by any State in response to the foregoing instructions, or any other aspect of the NPRM including the general questions on cargo-carrying length determination (page 9900), and presentation format (page 9903), must be submitted to the docket by the date (May 4, 1992) contained in the NPRM.

MEMORANDUM

Date: June 19, 1992.
Reply to Attn. of: HFS–30, TBP–20.
Subject: *Information*: Fiscal Procedures for Federal Transit Projects Financed by Federal Highway Administration Funds.
From: Director, Office of Fiscal Services. Director, Office of Budget and Financial Management.
To: Federal Highway Administration Associate Administrators, Federal Highway Administration Regional Administrators, Federal Highway Administration Division Administrators, Federal Transit Administration Executive Staff, Federal Transit Administration Regional Administrators.

23 U.S.C. 134(k) provides, in part, that funds made available for a transit project by the Intermodal Surface Transportation and Efficiency Act of 1991 (ISTEA) shall be administered in accordance with the requirements of the Federal Transit Act. Therefore, the following are the procedures to be employed when using funds apportioned or allocated by the Federal Highway Administration for transit projects administered by the Federal Transit Administration (FTA):

Obligation of Funds

State Highway Agency—Notifies the FHWA Division Administrator to obligate funds to cover an initial project application submitted to the FTA Regional Office. The notification from the SHA must identify both the FTA and FHWA project numbers and amount to be obligated. A copy should be provided to the Local Transit Agency. Project overruns will be handled in the same manner. The submission of this letter is an indication that the SHA approves the use of its apportioned funds and forms the basis for the later transfer of cash by FHWA Headquarters, when requested by FTA.

FHWA Division Office—Division Administrator determines funds are available and obligates the funds in the FMIS. The Division notifies the SHA, FHWA Finance Division (HFS–20) and FTA Headquarters, Financial Management Division (TBP–23), of the date the funds were obligated, the amount, both FTA and FHWA project number, and the FHWA appropriation code.

The Division Office enters an FHWA–37, Step 6, "underway" and reports the project "under agreement".

The following are the Surface Transportation Program (STP), and Congestion Mitigation and Air Qualify (CMAQ), appropriation codes and the corresponding subsidiary code to be used by FHWA when obligating funds for transit projects to be administered by FTA. The FTA Transit Code will be used by FTA in tracking the projects.

FHWA STP code	FHWA transit code	FTA transit code
3AA	3AY	AY
33A	3AL	AL
33B	3AM	AM
33C	3AK	AK
33D	3AN	AN
33E	3AP	AP
33M	3AR	AR
33N	3AT	AT
33P	3AW	AW

FHWA CMAQ code	FHWA transit code	FTA transit code
320	3AZ	AZ

Additional codes will be established as necessary.

FTA Headquarters—The FTA Office of Budget and Financial Management advises the FTA Regional Office of the availability of funds and to proceed with grant award.

FTA Regional Office—Awards the grant, records it in the FTA GMIS and notifies the grantee of the grant award.

Project Expenditures

Grantee—As work proceeds on the project, the grantee will request Federal funds through the FTA ECHO Payment System.

FTA Headquarters—FTA sends memorandum requesting current cash needs (monthly basis) to FHWA Finance Division (HFS–20).

FHWA Finance Division—Transfers cash to FTA (By SF–1151).

FTA Headquarters—Submits monthly reports to FHWA Finance Division as agreed to by FHWA and FTA.

FHWA Finance Division—Prepares FHWA–371, Code card (TT–98) reflecting the FTA expenditure by FHWA project number. Prepares a monthly reconciliation comparing project obligation and cost data with the "open" and "closed" project data submitted by FTA.

Project Closing

FTA Regional Office—Advises the State Highway Agency of project completion and of final project costs (total cost and Federal Funds).

SHA—Advises Division Office that the Project is complete.

FHWA Division Office—Enters an FHWA–37 project transaction advancing the project to a Step 9, closing status.

The use of these procedures should ensure that highway funds utilized for transit projects administered by FTA are obligated in a timely and efficient manner.

Peter J. Basso.

J.L. Wilson.

MEMORANDUM

Date: September 3, 1992.
Reply to Attn of: HEP–32.
Subject: Public Involvement.
From: Director, Office of Environment and Planning.
To: Regional Federal Highway Administrators; Federal Lands Highway Program Administrator.

Sections 1024 and 1025 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) require opportunity for comment by the public on both long range transportation plans and Transportation Improvement Programs (TIP) for both the Metropolitan Planning processes and the statewide planning processes. By specifically identifying the intended public in each section (citizens, affected public agencies, etc.), the legislation clearly indicates the need for a broad outreach beyond the traditional focus of the most current programs. Our recent "Interim Guidance on the ISTEA Metropolitan Planning Requirements" and "Interim Guidance—23 U.S.C. 135 Statewide Planning Requirements" both specify that public involvement procedures include opportunities for interested parties to be

involved in the early stages of the plan development/update process. The somewhat more detailed Metropolitan Planning Organization (MPO) guidance adds early involvement in development of the TIP and provision for public information through publication or other dissemination of the long-range plan. The statewide planning guidance reiterates the requirement for public comment on the statewide TIP thereby implying public information and early involvement. Thus, at present, public involvement for both planning processes includes three elements: (1) Broad outreach, (2) early opportunity for involvement and comment continuing to adoption of the plan or TIP, and (3) public information.

There are, however, larger implications for public involvement than just two new, required public involvement processes. FHWA has long required public involvement for project development under National Environmental Policy Act (NEPA). The Environmental Protection Agency (EPA) intends to include a public involvement consultation as part of the air quality conformity regulations required by the Clean Air Act Amendments. All of these provisions result in the potential for four separate Federal public involvement requirements for highway project. There is considerable potential for public confusion and duplicate involvement opportunities. Here in Washington, we strongly believe that public involvement on air quality conformity issues should be conducted as part of the planning processes. I urge you to advocate with our partners in State and local governments that the public involvement processes at the planning and project development levels be coordinated with one another. Such efforts must respect the differences between individual States and between individual MPOs. Also, we need to institutionalize ways to assure that information received from public input during metropolitan or statewide planning reaches project development staff.

In addition to providing technical assistance on public involvement in project development, I have asked the Environmental Operations Division to assist the Metropolitan and Statewide Planning Divisions in providing technical assistance on public involvement in the metropolitan and statewide planning processes. As a basis for influencing FHWA policy, developing guidance and identifying research needs, we recently asked each region to provide information on good examples of public involvement procedures being used in the metropolitan planning process. As a result of this request, we received information from several regions as shown on the attachment. Since the response to our previous request was rather limited, we are now formally requesting the submission of information on any other examples of good public involvement procedures used in metropolitan planning that was not previously submitted. We would also like to receive information on any examples of good public involvement procedures being used in statewide planning. This information should be submitted by October 15 so we may use it in a report on good practices.

An informal telephone survey of the regions was conducted earlier this year to obtain an idea of the public involvement procedures being used in metropolitan and statewide planning prior to ISTEA. This information was useful and we appreciate the assistance of the Regional staff. To be able to respond to questions on the procedures and processes being used to address the ISTEA requirements and to develop a data base on public involvement, we would like to receive information on existing, new, or revised public involvement procedures that MPOs and States plan to use to satisfy these requirements. For statewide planning this should include involvement of the Indian Nations, where appropriate. We also would like any information on how States and MPOs are providing linkages between the new metropolitan and statewide public involvement processes and existing State public involvement/public hearing procedures for project development. A brief description of the procedures and techniques will be adequate.

Please send the information to Florence Mills, HEP–32. For additional information on this request, please contact Mrs. Mills at (202) 366–2062. Policy questions on public involvement in metropolitan planning should be directed to Sheldon Edner or Dean Smeins in HEP–21. Policy questions on public involvement in statewide planning should be directed to Martin Weiss or Tom Weeks in HEP–12.

Kevin E. Heanue.

Attachment

Responses Received From Field Survey

MPO Public Involvement Procedures

Region 4

Kentucky: brief summary for each MPO.

Alabama: table of MPO public involvement methods by MPO.

North Carolina: summary of State Action Plan and Winston-Salem procedures.

Florida: summary for State MPOs as a group plus relevant checklist items from Urbanized Area Transportation Planning Process Certification Procedure.

Region 5

Minnesota: section on Public Involvement from 1991 Transportation Unified Planning Work Program for the Twin Cities Metropolitan Area.

Region 8

Utah: copy of Certification Package for Salt Lake and Ogden including summary of public involvement activities 1985-present.

Region 9

Arizona: summary of Maricopa Association of Governments public involvement activities plus relevant excerpts from this MPO's 1991 Unified Planning Work Program.

California: excerpts of State requirement and guidelines for public involvement in preparing long range transportation plans and TIPs plus sample discussion of public involvement activities from San Diego.

Region 10

Oregon: brief summary of Portland procedures plus Bylaws of Transportation Policy Alternatives Committee (6 citizens, 13 local officials).

Washington: brief summary of Seattle procedures plus detailed description of public involvement for recent long range plan update by Puget Sound COG.

MEMORANDUM

Date: June 24, 1992.

Reply to Attn. of: HFL–11.

Subject: Statewide Planning and Development of Transportation Improvement Programs (TIP) for the Federal Lands Highway Program (Reply due July 20, 1992).

From: Federal Lands Highway Program Administrator; Federal Lands Highway Office.

To: Federal Lands Highway Division Engineers.

This memorandum and attachments explain the revised statewide transportation planning and programming requirements, processes, and your role. In section 1025 of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, Public Law 102–240, Congress established requirements for statewide planning. The Federal Highway Administration (FHWA) and the Federal Transit Administration jointly issued interim guidance on the ISTEA statewide transportation planning and programming requirements pending the issuance of formal guidance through the rulemaking process. A copy of the interim guidance along with the wording of Section 135, Statewide Planning, of title 23 U.S.C. are attached (Attachments 1 and 2).

The statutory requirements for statewide transportation planning and programming include:

—Implementation of a statewide transportation planning process that involves local officials and Indian tribal governments

—Increased coordination between Metropolitan Planning Organizations, States, Federal agencies, and Indian tribal governments

—A list of 20 factors that must be considered as part of the planning process

—Investment strategies to improve adjoining State and local roads that support rural economic growth and tourism development, Federal agency renewable resources management, and multipurpose land management practices, including recreational development

—Development of a long-range transportation plan for all areas of the State

—Development of a Statewide Transportation Improvement Program (STIP) that includes all projects funded under title 23 U.S.C.

—Project selection

All Federal Lands Highway Program (FLHP) projects must be in the appropriate State's STIP in order to be funded. In cooperation with our Office of Environment and Planning, we have developed interim statewide transportation planning and programming procedures for the Federal Lands Highway programs funded under 23 U.S.C. A copy of these procedures is also attached (Attachment 3).

Under these interim procedures, the Federal Lands Highway Office (FLHO) and its three divisions will:

1. Statewide Transportation Improvement Program: Develop a financially constrained transportation improvement program (TIP) for FY 93 and FY 94 (longer if the information is available) using available approved long-range programs in each FLHP category. The divisions will develop the Forest Highway TIPs for the Forest Highway programs for their respective States. The FLHO, in cooperation with the National Park Service (NPS), will develop the Park Roads and Parkways (PRP) TIP for the PRP program. The Bureau of Indian Affairs (BIA) will prepare its Indian Reservation Roads (IRR) TIP for the IRR program. All TIPs will be sent to the FLHO. The FLHO will assemble the TIPs for all FLHP categories by State and forward them to each FHWA region for inclusion in the appropriate STIPs.

2. Federal Land Management Agency Planning Information: Initiate efforts to have the Bureau of Land Management (BLM), BIA, Forest Service (FS), and NPS develop inventories of existing transportation plans and land and resource management plans, and have copies of all existing transportation plans provided to the appropriate State highway agency by October 1.

3. Federal Land Management Agency Planning Personnel: Develop directories of transportation planning personnel in the BIA, BLM, FS, and NPS. These directories will be distributed to all State highway agencies and appropriate Federal agencies by our Office of Environment and Planning later in the year.

Instructions and format for preparing the FLHP TIPs are attached (Attachment 4, Diskette). We would appreciate receiving the TIPs (paper and magnetic) on the Forest Highway portion of the program for your respective States by July 20.

We have written letters to the BIA, BLM, FS, and the NPS advising them of these statewide transportation planning and programming requirements and requesting assistance. If you have any questions, please call Mr. Paul Los on 202-336-9487.

Thomas O. Edick.

4 Attachments
June 17, 1992

Interim Statewide Transportation Planning and Programming Procedures, Federal Lands Highway Programs Funded Under 23 U.S.C.

Focus of Interim Procedures

The purpose of this Interim Statewide Transportation Planning and Programming Procedures for the Federal Lands Highway Program (FLHP) is to provide detailed guidance for complying with the Statewide Transportation Improvement Program (STIP) and Project Selection requirements that were established in section 135, Statewide Planning, of title 23 U.S.C. by section 1025(a) of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, Public Law 102-240. It defines the responsibilities of the three Federal Lands Highway Divisions, the Bureau of Indian Affairs (BIA), the Bureau of Land Management (BLM), the Forest Service (FS), and the National Park Service (NPS) and provides procedures for preparing and transmitting FLHP and project selection information for inclusion into STIPs. These procedures are expected to remain in effect until the pending rulemaking by FHWA is completed.

Background

The new section 135(f) of title 23 requires:

1. Each State to develop a STIP for all areas of the State.

2. All projects within the boundaries of the State that are funded under title 23 to be included in the STIP.

3. Opportunity for public comment on the STIP.

4. The STIP to reflect the priorities for programming and expenditure of funds.

5. Investment strategies to improve adjoining State and local roads that support rural economic growth and tourism development, Federal agency renewable resources management, and multipurpose land management practices, including recreational development.

6. Biennial review and approval of the STIP by the Secretary of the U.S. Department of Transportation.

In addition, amended section 204 of title 23 U.S.C. requires Indian tribal governments in cooperation with the BIA and as may be appropriate with State, local government, or metropolitan planning organizations (MPOs), to develop a transportation improvement program that includes all Indian reservation road projects proposed for funding. Projects are to be selected by the Indian tribal government from the (IRR) transportation improvement program and shall be subject to the approval of the Secretaries of Interior (BIA) and Transportation (FHWA).

The amended section 204 of title 23 U.S.C. also requires that no public lands highway project may be undertaken in any State unless the State concurs in the selection and planning of the project.

Policy

The Federal Lands Highway Office (FLHO) is in full support of an integrated multimodal statewide transportation planning and programming process which is used to develop a multiyear STIP of projects. The process needs to satisfy the following criteria:

- An efficient and effective process is needed to provide timely and complete project information to State highway agencies for statewide transportation planning and development of a STIP.
- The process shall not stop the allocation of Federal Lands Highway (FLH) funds for the approved program of projects on the first workday of each Federal fiscal year.
- The FLHP Administrator (or as delegated) will continue to approve the annual and long-range priority program of projects, in accordance with Interagency Agreements and/or Regulations, for the Forest Highway portion of Public Lands Highways, IRR, and PRP.

We have reviewed the May 28, 1992, Interim Guidance on ISTEA Statewide Transportation Planning and Programming (HPD-1/TGM-1) which was prepared by the Office of Environment and Planning. The proposed guidance provides adequate flexibility. The following process is intended to detail the interim guidance with respect to the FLHP.

Statewide Planning Process

The FLHO will:

- Initiate efforts to have the BLM, BIA, FS, and NPS develop inventories of all existing transportation plans and land and resource management plans by September 1.
- Initiate efforts to have copies of all existing transportation plans provided to the appropriate State highway agency by October 1.
- Develop personnel directories of transportation planning personnel in the BIA, BLM, FS, and NPS, in cooperation with the Federal agencies.
- Work with the Federal agencies to modify the existing memorandums of agreement to incorporate transportation planning and other ISTEA requirements and procedures.
- Work with the Federal agencies to develop transportation planning and programming procedures to meet ISTEA requirements.

Federal agencies need to develop or revise their procedures to improve coordination in the transportation planning area with State highway agencies, local governments, Indian tribal governments, and MPOs. The only change anticipated by the FLHO to the tri-agency Forest Highway meetings is that the meetings will need to be held earlier in the fiscal year.

Fiscal Year 1992 Federal Lands Highway Projects

Under these interim procedures, Federal funds made available under title 23 for the FLHP may be obligated without being included in a STIP until October 1 provided they are in an approved program of projects.

Process for Developing a Statewide Transportation Improvement Program (STIP)

Under these interim procedures, the FLHO and its three divisions will develop financially constrained transportation improvement programs (TIPs) for FY 93 and FY 94 (longer if the information is available) using available approved long-range programs in each FLHP category. The divisions will develop the Forest Highway TIPs for the Forest Highway programs for their respective States. The FLHO, in cooperation with the NPS, will develop the financially constrained Park Roads and Parkway (PRP) TIP for the PRP program using the existing multiyear program of projects and the NPS-wide priority list. The BIA will prepare its financially constrained IRR TIP from information provided by the Indian tribes. All TIPs will be sent to FLHO. The FLHO will assemble the FLH TIP (including all FLHP categories) by State and forward them to each FHWA region by August 1 for inclusion in the appropriate STIPs. Copies of the FLH TIP will be also be provided to Office of Environment and Planning.

The FLH TIP will be divided by FLHP funding category, fiscal year, and by State. There should be one page per fiscal year when one or more projects are planned or programmed in that State. A copy of the required TIP page format is attached. The

divisions are to furnish their TIPS in both paper and magnetic form.

The TIP will have the following information on a project:

—County
—Route number
—Highway or bridge name/identification
—Project limits or termini
—Type of project
—Net construction amount to be funded
—Contracting agency
—Priority
—Source of funding
—Fiscal year to be funded

The costs for preliminary and construction engineering for all projects should be totaled and entered on the form. The FLHO or FHWA Federal Lands Highway Division Engineer shall approve the projects in the STIP.

A signature block is provided for the State official to indicate when this information is incorporated into the STIP.

Only those projects included in the list of projects will be eligible for funding beginning October 1, 1992.

Emergency projects (i.e., bridge failure, slide, etc.) may be advanced to funding even if they were not in the original STIP submission. A revised TIP must be prepared and forwarded to the FLHO for transmission to the appropriate State.

An updated TIP should be submitted by March 1 of each subsequent fiscal year. This earlier date is necessary to provide the States with adequate time to allow for public comment on their STIP.

Instructions for Entering Information on the FLH TIP

State: Enter the State name where the projects are located.

Fiscal Year: Enter the Federal fiscal year of funding.

County: Enter the county(s) where the project is located.

Route Number: Enter the State, U.S., or Federal route number.

Highway/Bridge Project Name: Enter the highway or bridge name. The National Forest, Park, or area name can also be entered here. The National Bridge Inspection System number can be entered here.

Project Limits/Termini: Enter the limit or project termini.

Type of Project: Enter the type of project such as grade, drain, base, pave, reconstruction, overlay, bridge, signing, etc.

Net Construction Program Funding Amount: Enter the amount of program funds to be used for actual construction. Construction engineering costs are not to be included.

Contracting Agency: Enter the name of the agency or organization that will administer the construction contract.

Priority: Enter the priority of the project. Priority can be High, Medium, Low, Back-up Project, or numeric.

Engineering Costs and Funding: The costs for preliminary and construction engineering for all projects should be totaled and entered on the form. The total program funds available for the fiscal year including any carryover should also be entered.

Signature Boxes: The FHWA Federal Lands Highway Division Engineer shall approve the Forest Highway projects in the STIP. The Federal Lands Highway Program Administrator will approve the IRR and PRP projects in the STIP.

BILLING CODE 4910-22-M

PARK ROADS AND PARKWAY (PRP) TRANSPORTATION IMPROVEMENT PROGRAM FOR FEDERAL FISCAL YEAR _____

FEDERAL LANDS HIGHWAY PROGRAM, 23 U.S.C 204

STATE: _____

County	Route Number	Highway/Bridge Project Name	Project Limits/Termini	Type of Project	Net Construction Program Funding Amount($000)	Contracting Agency	Priority
Statewide	Total of Preliminary and Construction Engineering for all projects:				0		

Cost and Funding Summary

Total Program Cost for fiscal year: 0
Program Funds Available: 0
Balance: 0

Federal Lands Highway Program Approval: _____ Date: _____

State inclusion in STIP: _____ Date: _____

A:STIP-PRP.WK1 Prepared by: _____ HFL-11 Date: 17-Jun-92

Page 1

INDIAN RESERVATION ROAD (IRR) TRANSPORTATION IMPROVEMENT PROGRAM FOR FEDERAL FISCAL YEAR _____

FEDERAL LANDS HIGHWAY PROGRAM, 23 U.S.C 204

STATE: _____

County	Route Number	Highway/Bridge Project Name	Project Limits/Termini	Type of Project	Net Construction Program Funding Amount($000)	Contracting Agency	Priority
Statewide	Total of Preliminary and Construction Engineering for all projects:				0		

Cost and Funding Summary

Total Program Cost for fiscal year: 0
Program Funds Available: 0
Balance: 0

Federal Lands Highway Program Approval: _____ Date: _____

State inclusion in STIP: _____ Date: _____

A:STIP-IRR.WK1 Prepared by: _____ Date: 17-Jun-92 Page 1

FOREST HIGHWAY (FH) TRANSPORTATION IMPROVEMENT PROGRAM FOR FEDERAL FISCAL YEAR _____

FEDERAL LANDS HIGHWAY PROGRAM, 23 U.S.C 204

STATE: _____

County	Route Number	Highway/Bridge Project Name	Project Limits/Termini	Type of Project	Net Construction Program Funding Amount($000)	Contracting Agency	Priority
Statewide	Total of Preliminary and Construction Engineering for all projects:				0		

Cost and Funding Summary

Total Program Cost for fiscal year: 0
Program Funds Available: 0
Balance: 0

Federal Lands Highway Program Approval: _____ Date: _____

State inclusion in STIP: _____ Date: _____

A:STIP-FHE.WK1 Prepared by: _____ HFL-15 Date: 17-Jun-92 Page 1

BILLING CODE 4910-22-C

June 30, 1992.

The Honorable James M. Ridenour, Director, *National Park Service, Department of the Interior, Washington, DC 20240.*

Dear Mr. Ridenour: The Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, Public Law 102–240, made a number of changes to the park roads and parkways (PRP) program. During the past several months, our staffs have held a number of discussions on the procedures to implement the new provisions of the ISTEA. On May 19–21, the National Park Service (NPS) and the Federal Highway Administration (FHWA) held an interagency PRP program meeting. The enclosures provide the interim guidance for implementing 23 U.S.C. 204, Federal Lands Highway Program, as amended by the ISTEA.

The ISTEA of 1991 expands the list of items eligible for PRP program funding. In cooperation and coordination with your staff, we have updated the listing of eligible program items that was first issued in July 1983. The revised list identifies items that may be funded, items that will generally not be funded due to their low priority in relation to the large PRP backlog of needs, and items that will not be funded under the PRP program category.

We will continue working with your staff to finalize details for implementing the new program requirements. If there are any questions, please contact us.

Sincerely yours,

Allen W. Burden, for Thomas O. Edick, P.E., *Federal Lands Highway Program Administrator, Federal Lands Highway Office.*

FHWA Interim Guidance on Park Roads and Parkways Program (23 U.S.C. 101 and 23 U.S.C. 204)

June 30, 1992.

The purpose of this Interim Guidance on the Park Roads and Parkways Program is to provide guidance for complying with the requirements of 23 U.S.C. 101, 23 U.S.C. 202, and 23 U.S.C. 204, Federal Lands Highways Program, as stated and amended by section 1032 of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, Public Law 102–240.

Provision—The term "park road" means a public road, including a bridge built primarily for pedestrian use, but with capacity for use by emergency vehicles, that is located within or provides access to an area in the national park system with title and maintenance responsibilities vested in the United States, 23 U.S.C. 101.

Guidance—This provision redefines the temporary bridge between Ellis Island and Liberty State Park as a park road. A permanent replacement for the bridge is a project being executed jointly by the FHWA and the NPS. On March 20, a program schedule was developed. The design and construction of this bridge will be expedited upon approval of the Record of Decision in accordance with the National Environmental Policy Act.

Provision—The Secretary of Transportation, in cooperation with the Secretary of the Interior and the Secretary of Agriculture shall develop appropriate transportation planning procedures and safety, bridge, and pavement management systems for roads funded under the Federal Lands Highway Program, 23 U.S.C. 204(a).

Guidance—Current park roads and parkways (PRP) program transportation planning procedures will continue for the interim period. The NPS and FHWA will jointly prepare a Transportation Improvement Program (TIP) for the PRP program. The June 24, 1992, letter to the NPS describes the interim TIP procedures for roads funded under the Federal Lands Highway Program. The existing information system will be reviewed by NPS and FHWA to determine whether any enhancements are necessary to meet new management systems requirements and guidance will be jointly developed. Guidance on additional appropriate transportation planning procedures and management systems will be issued at later dates.

Provision—All appropriations for the construction and improvement of each class of Federal lands highways shall be administered in conformity with regulations and agreements jointly approved by the Secretary of Transportation and the Secretary of the appropriate Federal land managing agency, 23 U.S.C. 204(f).

Guidance—The Memorandum of Agreement signed by the NPS on May 3, 1983, and by the FHWA on May 19, 1983, remains in effect. A technical addendum updating and conforming legal references will be jointly developed by the NPS and FHWA, if necessary.

Funding of Program Items, Park Roads and Parkways Program

June 30, 1992.

Provision—The Secretary of Transportation shall allocate the sums authorized to be appropriated for such fiscal year for park roads and parkways each according to the relative needs of the various elements of the national park system, taking into consideration the need for access as identified through land use planning and the impact of such planning on existing transportation facilities, 23 U.S.C. 202(c)

Provision—Funds available for park roads, parkways, and Indian reservation roads shall be used by the Secretary of the Interior to pay for the cost of planning, research, engineering and construction thereof, 23 U.S.C. 204(b).

Provision—Funds available for each class of Federal lands highways shall be available for any kind of transportation project eligible for assistance under this title that is within or adjacent to or provides access to areas served by the particular class of Federal lands highways, 23 U.S.C. 204(b).

Provision—Funds available for each class of Federal lands highways may be available for the following: (1) Transportation planning for tourism and recreational travel including the National Forest Scenic Byways Program, Bureau of Land Management Back Country Byways Program, National Trails System Program, and similar Federal programs that benefit recreational development, (2) Adjacent vehicular parking areas, (3) Interpretive signage, (4) Acquisition of necessary easements and scenic or historic sites, (5) Provisions for pedestrians and bicycles, (6) Construction and reconstruction of roadside rest areas including sanitary and water facilities, (7) Other appropriate public road facilities such as visitor centers as determined by the Secretary of Transportation, 23 U.S.C. 204(h).

Guidance—The following updates the July 19, 1983, list of eligible park roads and parkways (PRP) program items. The list identifies items that may be funded, items that will generally not be funded, and items that will not be funded under the PRP program category. Funding for some items will be jointly determined by National Park Service (NPS) and Federal Highway Administration Headquarters based on overall relative PRP program priorities.

Items That May Be Funded

Project Support Items

- Transportation planning including planning for tourism and recreational travel that benefits recreational development.
- Research part of coordinated technology implementation program (CTIP).
- Traffic engineering and safety studies.
- Identification and surveillance of accident locations.
- Development of road and bridge standards.
- Bridge, pavement, and safety management.
- Selected preliminary engineering studies.
- Necessary interagency program/project formulation meetings.
- Interagency program review meetings (per interagency agreement).
- Necessary environmental studies and archeological investigation confined to the general roadway construction limits.
- Necessary architectural and landscape engineering services.
- Engineering design for roads and bridges.
- Necessary interagency project coordination.
- Project related revegetation.
- Construction engineering for contract administration, inspection and testing.

Construction and Improvements Items

- Engineered pavement overlays that add structural value, design life or improved skid resistance.
- Double bituminous surface treatments and chip seals that are part of predefined stage construction or form final surface on low volume roads.
- Engineered rehabilitation or reconstruction of pavement structures, bridges and bridge decks, and tunnels.
- Engineered spot safety improvements resulting from safety studies.
- Upgrading of substandard traffic barriers and bridge rails to current standards.
- Replacement of nonstandard traffic regulatory and guide signs.
- Upgrading substandard or nonconforming traffic markings (1-time only).
- Park entrance signs if the sign conforms to park standards, is in a safe location, is part of an adjacent park road project, and is of reasonable cost ($10,000 maximum).
- Handling traffic and pedestrians through construction zones.

• Public approach roads and interchange ramps which are under the jurisdiction and responsibility of the NPS.

• Installation of warranted roadway lighting.

• Adjustment of utilities directly related to roadway work.

• Conducts crossing under the roadway to accommodate future planned utilities.

• Landscaping and seeding of areas disturbed by PRP road construction.

• Landscaping required to meet EIS mitigation measures resulting from roadway construction.

• Construction of erosion control and environmental mitigation measures directly related to roadway construction.

• Experimental features where there is a planned monitoring evaluation schedule.

• Public parking lots or pull-offs to trail heads, interpretive areas, public lodging, visitor center, (including necessary supporting retaining walls, protective railings and adjacent perimeter sidewalk.

• Provisions for pedestrians within/adjacent to roadway prism when warranted for safety reasons.

• Restoration of burrow pits created by projects funded from the PRP program.

• Force account and day labor, including materials and equipment rental, being performed in accordance with approved plans and specifications, which has been determined to be cost-effective (public interest).

Funding Will Generally Not Be Made Available for the Following Items

(Funding will be determined on a case-by-case exception basis taking into consideration overall relative PRP program priorities.)

Project Support Items

• Acquisition of necessary scenic easements and scenic or historic sites.

Construction or Improvements Items

• Special use tram roads if in lieu of constructing a 2-lane public road and additional parking lots.

• Bike paths, unless they are part of the park's approved General Management Plan (GMP), constructed in conjunction with PRP projects, and are:

—part of a roadway prism necessary for safety reasons and if bike traffic warrants,

—independent paths used for transportation and safety reasons based on accident and traffic data analysis.

• Interpretive signage part of a roadway project.

• Construction of visitor information centers and related items.

• Construction of roadside rest area including sanitary and water facilities.

• Bridge painting work on structures (painting of major large structures considered on a case-by-case exception basis).

• Other public roads which provide access to areas under the jurisdiction and responsibility of the NPS.

Items That Will Not Be Funded

Project Support Items

• General park planning.

• Nonprogram specific conferences, field trips, or training conferences.

• Archeological investigations and work outside roadway construction limits.

Construction or Improvements Items

• Construction of campground roads and related parking pads (Reference NPS 3/28/89 Memorandum for relative PRP program priority funding).

• Cyclic roadway maintenance work including chip and slurry seals (seal coats), pavement patching, shoulder and ditch grading, cleaning culverts, snow removal, roadside mowing, normal sign repair and traffic markings.

• Seal coats on top of new asphalt concrete pavements.

• Cyclic bridge maintenance work including cleaning and repairing bridge joints, cleaning and repairing bridge drainage, and repairing other bridge appurtenances.

• Landscaping and irrigation systems of areas not disturbed by PRP road construction.

• Utilities and buildings not disturbed by construction.

• Sanitation facilities not disturbed by construction.

• Walls and erosion protection that are not part of or support the roadway prism.

• Recreational boat launching facilities and ramps.

• General park development project.

• Park road that serves only an administrative site such as park housing, maintenance areas, or park dormitory (or a combination of these).

• Park road that provides access to Park Headquarters which is not open to the general public (i.e., not a visitor center).

• Restoration of borrow pits (or portions of borrow pits) created by projects funded with non-PRP program funds.

• Repairs to or replacement of fences not disturbed by PRP road construction.

• Fences constructed for esthetics.

June 30, 1992.

Mr. Patrick A. Hayes, Deputy to the Assistant Secretary—Indian Affairs,

U.S. Department of the Interior, 1849 C Street, NW (Code 260 MS 4588), Washington, DC 20240.

Dear Mr. Hayes: The Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, Public Law 102-240, made a number of changes to the Indian Reservation Road (IRR) program. During the past several months, our staffs have held a number of discussions on the procedures and policy to implement the new provisions of ISTEA. The enclosures provide the interim guidance for implementing section 204, Federal Lands Highway Program, of title 23 U.S.C. as amended by ISTEA.

The ISTEA has significantly increased the items that are eligible for IRR funding. The last list of eligible program items was issued in July 1983. The revised list of program items identifies items that may be funded, items that will generally not be funded due to their low priority in relation to the large IRR backlog of needs, and items that will not be funded under the IRR program category.

We will continue working with your staff on procedures and policy for implementing new program requirements from the ISTEA. If you have any questions, please call Mr. Paul R. Los on FTS 202-366-9487 or Mr. Salim Nassif on FTS 202-366-9490.

Sincerely yours,

Allen W. Burden for Thomas O. Edick.

FHWA Interim Guidance on Indian Reservation Roads Program (23 U.S.C. 204)

June 30, 1992.

Focus of Interim Guidance

The purpose of this Interim Guidance on the Indian Reservation Roads Program is to provide guidance for complying with the requirements of 23 U.S.C. 204, Federal Lands Highway Program, as amended by sections 1030 and 1032 of the Intermodal Surface Transportation Efficiency Act of 1991, Public Law 102-240.

Provision—The Secretary of Transportation in cooperation with the Secretary of the Interior, shall develop appropriate transportation planning procedures, and safety, bridge, and pavement management systems for roads funded under the Federal Lands Highway Program, 23 U.S.C. 204(a).

Guidance—The BIA will prepare a Transportation Improvement Program (TIP) for the Indian Reservation Road program in accordance with the May 28 Interim Guidance on 23 U.S.C. 135—Statewide Planning Requirements (HEP-12/TGM-21). The IRR TIP must be sent to FLHO. FLHO will assemble the TIPs by State and forward them to each FHWA region for inclusion in the appropriate Statewide Transportation Improvement Programs. Safety, bridge, pavement management systems are required for Indian Reservation Roads. Guidance on the management systems will be issued at later dates.

Provision—Notwithstanding any other provision of this title, Indian reservation roads under the jurisdiction of the Bureau of Indian Affairs of the Department of the Interior shall be eligible to expend not more than 15 percent funds appropriated from the Highway Trust Fund for the purpose of road sealing projects. The Bureau of Indian Affairs shall continue to retain responsibility, including annual request responsibility, for road maintenance programs on Indian Reservations, 23 U.S.C. 204(c).

Guidance—Prior to expenditures of these funds, the BIA shall submit to the Federal Highway Administration (FHWA) a list of proposed sealing projects (APL) for approval and an annual report of the amount expended on road sealing projects by State.

Provision—Up to 2 percent of funds made available to IRR roads for each fiscal year shall be allocated to those Indian tribal governments applying for transportation planning pursuant to the provisions of the Indian Self-Determination and Education Assistance Act. The Indian tribal government, in cooperation with the Secretary of the Interior, and, as may be appropriate, with a State, local government, or metropolitan planning organization, shall develop a transportation improvement program, that includes all Indian reservation road projects proposed for funding. Projects

shall be selected by Indian tribal government from the transportation improvement program and shall be subject to the approval of the Secretary of the Interior and the Secretary, 23 U.S.C. 204(j).

Guidance—Interim guidance and procedures were jointly developed and issued in Mr. Patrick A. Hayes' March 12 memorandum on Interim Guidelines and Procedures for Highway Trust Funds Transportation Planning Funds for Tribes.

Funding of Program Items, Indian Reservation Roads Program

June 30, 1992.

Provision—Funds available for each class of Federal Lands Highways shall be available for any kind of transportation project eligible for assistance under this title that is within or adjacent to or provides access to the areas served by the particular class of Federal Lands Highways, 23 U.S.C. 204(b).

Provision—The Secretary of the Interior may reserve funds from the Bureau of Indian Affairs' administrative funds associated with the Indian Reservation Road Program to finance the Indian technical centers authorized under section 326, 23 U.S.C. 204(b).

Provision—Funds available for each class of Federal Lands Highways shall be available for the following: (1) Transportation planning for tourism and recreational travel including the National Forest Scenic Byways Program, Bureau of Land Management Back Country Byways Program, Programs that benefit recreational development, (2) Adjacent vehicular parking areas, (3) Interpretive signage, (4) Acquisition of necessary scenic easements and scenic or historic sites, (5) Provision for pedestrians and bicycles, (6) Construction and reconstruction of roadside rest areas including sanitary and water facilities, (7) other appropriate public road facilities such as visitor centers as determined by the Secretary, 23 U.S.C. 204(h).

Guidance—The last list of eligible program items was issued in July 1983. The ISTEA has significantly increased the items that are eligible for IRR funding. The list identifies (1) items that may be funded, (2) items that will generally not be funded due to their low priority in relation to the large IRR backlog of needs, and (3) items that will not be funded under the IRR program category. The funding for items in (2) will be determined on a case-by case exception basis taking into consideration overall relative IRR program priorities.

Items That May Be Funded

Project Support Items

- Transportation planning procedures including planning for tourism and recreational travel that benefits recreational development.
- Management systems for bridges, pavements, and safety.
- Development of reservation transportation plans and priority list of projects.
- Research part of Coordinated Technology Implementation Program (CTIP).
- Traffic engineering and safety studies.
- Identification and surveillance of accident locations.
- Development of road and bridge standards.
- Selected preliminary engineering studies.
- Necessary interagency program/project formulation meetings.

MEMORANDUM

Date: 5/28/92.
Reply to Attn of: HEP-12, TGM-21.
Subject: *Action*—Interim Guidance—23 U.S.C. 135—Statewide Planning Requirements.
From: Federal Highway Associate Administrator for Program Development; Federal Transit Associate Administrator for Grants Management.
To: Regional Federal Highway Administrators; Federal Transit Area Directors and Regional Administrators.

The attached Interim Guidance on Statewide Transportation Planning and Programming addresses the requirements of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, pending the issuance of formal guidance through the rulemaking process. It clarifies phase-in operations where new processes and documents are required and provides target dates for State compliance.

The Interim Guidance does not provide the full detail of ISTEA provisions, but does include as suggestions, some fundamental elements that may well be added by rulemaking.

Copies of the Interim Guidance should be provided to the State transportation agency, the Governor's Office, county and municipal government associations, MPOs and other regional planning organizations and transit operators. In addition, it may be provided to other interested individuals or organizations.

We expect to formally publish the Interim Guidance in the **Federal Register** shortly. Questions on the Interim Guidance should be directed to Mr. Robert Kirkland (FTA, TGM-21, FTS 366-1612) or Mr. Thomas R. Weeks (FHWA, HEP-12, FTS 366-5002).

Robert H. McManus

Anthony R. Kane

Attachment

Interim Guidance on Statewide Transportation Planning and Programming (23 U.S.C. 135)

Focus of Interim Guidance

The purpose of this Interim Guidance on Statewide Transportation Planning and Programming is to provide guidance for complying with the requirements of 23 U.S.C. 135, in conjunction with the guidance on metropolitan transportation planning issued on April 6, 1992. In establishing this interim guidance, the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) acknowledge the need for a phase-in period to fully comply with the requirements of section 135, and in particular the requirement for a statewide multi-modal transportation plan. Accordingly, this guidance is intended to provide sufficient flexibility to the States, transit operators, and local officials to maintain project authorizations within the spirit and intent of the legislation. The guidance identifies FHWA's and FTA's expectations concerning compliance with the statewide transportation improvement programming requirements during the phase-in period. The FHWA and FTA intend to issue regulations through formal rulemaking actions to establish permanent policies and procedures for implementing Section 135 and for administering revisions to planning funding.

Statewide Transportation Planning Process

Provision—A statewide transportation planning process is required that is coordinated with the transportation planning carried out in metropolitan areas and with the planning for all modes of transportation. Factors that the process must consider are specified. Included are requirements to determine transportation needs in nonmetropolitan areas in consultation with local elected officials having jurisdiction over transportation and to consider the concerns of Indian tribal governments having jurisdiction over lands within a State. [Section 135(c)]

Guidance—Pending rulemaking by the FHWA and the FTA, each State is encouraged to (1) review the requirements of 23 U.S.C. 135 and initiate steps to establish or modify its statewide transportation planning process to respond to these requirements and to include the management systems activities required by 23 U.S.C. 303, (2) review State/local legislative transportation and land use planning provisions and assess the adequacy of these provisions to comply with 23 U.S.C. 135, (3) review existing organizational arrangements affecting statewide transportation planning and programming and establish new processes as necessary, (4) initiate discussions with local officials and other State officials on nonmetropolitan multi-modal transportation needs, (5) coordinate with the metropolitan planning organizations (MPO) in the State on transportation needs and on the processes for integrating metropolitan plans and programs with statewide plans and programs, and (6) review existing public involvement procedures and identify changes necessary to meet the requirements of 23 U.S.C. 135. Where appropriate, discussions should be initiated with Indian tribal governments and appropriate Federal lands agencies to establish a cooperative process for planning and programming transportation improvements.

Statewide Transportation Plan

Provision—A long-range transportation plan for all areas of the State is required which provides for development of transportation facilities that will function as an intermodal State transportation system. With respect to metropolitan areas of the State, the land must be developed in cooperation with the MPOs. For areas of the State under the jurisdiction of an Indian tribal government, the plan needs to be developed in cooperation with the Indian tribal government and the Secretary of the Interior. Bicycle transportation and

pedestrian walkway plans are required for appropriate areas of the State. There must be opportunity for public comment on the proposed transportation plan. Additionally, Section 1006 of the ISTEA provides for the identification of a proposed National Highway System (NHS) by the States in cooperation with local officials. The NHS must be based on a functional reclassification of highways and other criteria established by FHWA. A report on the proposed NHS must be submitted to the Congress by December 18, 1993. [Section 135(e)]

Guidance—Pending further guidance, each State, in cooperation with Indian tribal governments, MPOs and local officials, is encouraged to (1) conduct an inventory of transportation plans and policies for both metropolitan and nonmetropolitan areas which can serve as an interim basis for the development of the statewide transportation improvement program, (2) identify appropriate organizational structures for use in developing the long-range multi-modal transportation plan for all areas of the state, and (3) establish an overall approach and schedule for developing a multi-modal transportation plan.

By October 1, 1992, each State must establish or modify existing public involvement procedures so that citizens, affected public agencies, representatives of transportation agency employees, private providers of transportation, and other interested parties will have a reasonable opportunity to provide input during early stages and later key stages of the development of the long-range transportation plan.

By April 1, 1993, as an interim step in the plan development, each State, in cooperation with the MPOs, should identify a preliminary arterial highway component of the Statewide long-range multi-modal transportation plan to serve as the basis for developing the proposed NHS.

Pending rulemaking by the FHWA and the FTA, a statewide transportation plan for all areas of the State must (1) be approved by January 1, 1995, by the Governor (or designee), (2) include elements for all modes, including coordination of the plan elements, (3) include policies for implementation of projects based on the plan, and (4) be developed in cooperation with the MPOs for metropolitan areas of the State in accordance with 23 U.S.C. 134 and FTA Section 8(g). The FHWA and FTA anticipate that regulations to implement 23 U.S.C. 135 will include these requirements, as a minimum.

The Federal Lands Highway Office, FHWA, will arrange with appropriate Federal lands agencies for States to receive copies of existing transportation plans.

Statewide Transportation Improvement Program (STIP) and Project Selection

Provision—All highway and transit projects in the State funded under title 23 and the Federal Transit Act must be included in a federally approved STIP. Projects in the STIP must be consistent with the statewide long-range transportation plan and metropolitan transportation improvement program(s) (TIP), and the program must reflect expected funding and priorities for programming, including transportation enhancements. Additionally, in air quality nonattainment areas, only those projects that have been determined to conform under the requirements of the Clean Air Act Amendments of 1990 may be included in the STIP. There must be opportunity for public comment on the proposed improvement program. The STIP must be reviewed and approved at least biennially by the Secretary. [Section 135(f) (1), (2), and (4)]

Projects in rural areas and urban areas of less than 50,000 population (excluding projects on the NHS, and projects funded with Bridge and Interstate Maintenance funds) are selected by the State in cooperation with affected local officials. Projects on the NHS, and Bridge and Interstate Maintenance projects are selected by the State in consultation with affected local officials. [Section 135(f)(3)]

Guidance—The duplicate programming requirements of 23 U.S.C. 105 for projects funded under title 23 were not rescinded by the ISTEA. These requirements will be applicable during a transition period but will be satisfied by following the requirements of 23 U.S.C. 135 described herein and in subsequent regulations.

Each State should develop procedures, where appropriate, to work with Federal lands agencies to ensure that Federal lands highway projects selected for the STIP are consistent with plans for other transportation facilities in the State. For public lands highway projects (including forest highways), State concurrence in the selection of projects is required. The Federal Lands Highway Office, FHWA, will provide a multi-year list of projects selected for funding for the use of each State involved.

Suballocations of the flexible Surface Transportation Program (STP) funds and the STP funds allocated for use in areas less than 200,000 to individual jurisdictions or modes by predetermined percentages or formulas are discouraged. Such suballocations minimize the benefits of transportation planning, hinder the ability of States to respond to high priority problems identified through the transportation planning process, unduly constrain the programming process, and frustrate the flexibility provisions of the Intermodal Surface Transportation Efficiency Act of 1991. (See the interim metropolitan guidance issued by the FHWA and the FTA on April 6, 1992, for further information on suballocations of STP funds within the metropolitan areas.)

Until October 1, 1992, Federal funds made available under Title 23 and the Federal Transit Act may be obligated for projects contained in a federally approved section 105 highway program of projects, Federal lands highway program, section 9 transit program of projects, section 18 transit program or section 16(b)(2) transit program without further programming actions. For projects that are not included in the above programs, the State must certify that projects submitted to FHWA or FTA for obligation of Federal funds have been selected in accordance with the requirements for the specific funding programs (e.g., Federal-aid secondary, STP, public lands, section 18 transit, etc.). (For project selection in areas greater than 50,000 population, see the interim metropolitan guidance issued jointly by the FHWA and the FTA dated April 6, 1992.)

Effective October 1, 1992, a STIP approved by FHWA and FTA is required for the obligation of Federal funds made available to each State under title 23 and the Federal Transit Act. A multi-year STIP should be developed with proposed projects and funding identified for each year, or group of years. Highway and transit projects, including Federal lands highway projects, must be selected in accordance with the specific funding programs. For projects in areas less than 50,000 population, including rural areas, the project selection requirements for cooperation or consultation with affected local officials shall be satisfied for the first year of the STIP during the development of the STIP.

Information on project scheduling and funding sources must be provided to selecting officials, FHWA and FTA for each project or group of like projects that is selected for the first year of the STIP. Projects advanced for obligation of Federal funds from subsequent years of the STIP must again meet the project selection requirements. (For areas greater than 50,000 population, see the interim metropolitan guidance issued jointly by the FHWA and the FTA dated April 6, 1992.)

The STIP shall be based on an adopted statewide transportation plan but as an interim measure may be developed utilizing other existing transportation plans and policies, and for FY 1993, the existing section 105 and transit programming processes. The provisions of section 135(f) with respect to public involvement, priorities for programming, and expenditures of funds shall be addressed.

Since the Governor or the Governor's designee must approve each metropolitan area transportation improvement program (TIP), thereby indicating state-level concurrence in each metropolitan area TIP, it is expected that the TIP for each metropolitan area or part thereof within each State will be incorporated, either directly or by reference, into the STIP ultimately approved by the State and the Secretary. Because the metropolitan area TIPs and the STIP must be financially constrained, it is essential that the States work with the MPOs during the development of the metropolitan area TIPs to ensure that the TIPs reflect available Federal and State funding and that there is one State concurrence for the TIPs, whether prior to or simultaneous with adoption of the STIP. It is particularly important that there be one State concurrence for the TIPs developed for air quality nonattainment areas, as there must be a Federal determination that the metropolitan TIPs conform to the State implementation plan.

Effective October 1, 1993, pending rulemaking by the FHWA and the FTA, the STIP must meet all requirements of section 135(f); therefore, each State should immediately establish a process for the development of the STIP, including establishing or modifying existing public involvement procedures so that citizens, affected local and other public agencies, representatives of transportation agency

employees, private providers of transportation, and other interested parties have a reasonable opportunity to comment on the proposed STIP.

Preservation of Transportation Corridors—Report to Congress

Provision—Subsection 1017(c) of the ISTEA requires the Secretary to submit a report to the Congress by December 18, 1993, that contains a national list of rights-of-way identified for preservation under sections 134 and 135 of title 23. The report is to include the mileage involved, an estimate of total costs (rights-of-way), and a strategy for preventing further loss of rights-of-way including the desirability of creating a transportation right-of-way bank to preserve vital corridors.

Guidance—The FHWA Office of Right-of-Way is coordinating the development of this report and expects to issue detailed guidance by June 30. The States and the MPOs will be asked to develop the required information for the report through the section 134 and 135 transportation planning processes.

Funding

Provision—Funds apportioned to the States under 23 U.S.C. 307(c)(1) for planning and research (2 percent) and Section 26(a)(2) of the Federal Transit Act are available to carry out the statewide transportation planning requirements as well as metropolitan transportation planning requirements. Not less than 25 percent of funds apportioned under 23 U.S.C. 307(c)(1) must be used for research, development, and technology transfer activities, unless the State certifies to the Secretary that expenditures under statewide and metropolitan transportation planning will exceed 75 percent and the Secretary accepts the certification. [Section 307]

Guidance—Statewide transportation planning is an eligible activity under the Federal-aid highway NHS and STP programs and the Federal transit section 9, 18, and 26(a)(2) programs. Statewide transportation planning activities funded with NHS and STP funds must be treated as projects and identified in the STIP. All planning activities must be included in the annual statewide transportation planning program or, when appropriate, in a unified planning work program for a metropolitan area.

A State may request approval for the use of more than 75 percent of its annual amount of highway planning and research (HPR) funds for metropolitan and statewide transportation planning. Such requests must be submitted to FHWA Headquarters for approval. Additional guidance on this subject will be provided separately by the Office of Research and Development in cooperation with the Office of Environment and Planning.

MEMORANDUM

Date: October 9, 1992.

Reply to Attn. of: HEP-12 and 21, Attn of: TGM-21.

Subject: *Information*—Interim Measures To Meet the STIP and TIP Requirements.

From: Federal Highway Associate Administrator for Program Development; Federal Transit Associate Administrator for Grants Management.

To: Regional Federal Highway Administrators; Federal Transit Area Directors and Regional Administrators.

The joint FHWA/FTA interim guidance issued on May 28, 1992, requires that a STIP be jointly approved by FHWA and FTA as a condition to obligating funds authorized by Title 23 and the Federal Transit Act after October 1, 1992. Delays have occurred in the development of the STIP in some States due in part to difficulties in getting conformity determinations completed for the metropolitan TIPs and corresponding delays in getting approvals of the metropolitan TIPs by the MPOs and the Governor. To prevent all highway and transit projects from being delayed until the STIP is approved, two interim measures may be used for meeting the STIP requirement.

Interim Measures for Meeting STIP Requirement

1. *Use the existing Section 105 and transit programs approved by FHWA and FTA prior to October 1 as an interim STIP.* These programs would serve as the basis for FHWA and FTA project funding actions until the STIP prepared for FY 1993 is jointly approved by FHWA and FTA. Project authorizations would be limited to any remaining projects in these programs. Evidence must be provided that appropriate project selection procedures have been followed. A coordinated FHWA/FTA approval action would still be required.

2. *Approve parts of the STIP.* If the STIP cannot be approved in total, specific projects or groups of projects could be approved. For example, NHS, STP, Federal Lands, and Section 18 projects in non metropolitan areas could be approved even though TIPs for metropolitan areas have not been approved by the MPO and Governor. A coordinated FHWA/FTA approval action would still be required.

Interim Measures for Meeting TIP Requirement

A number of questions have been asked about using existing TIPs for all or part of the next fiscal year. The attached Questions and Answers provide guidance on the use of existing TIPs as an interim measure.

Questions on interim measures for STIPs should be directed to Mr. Robert Kirkland (FTA, TGM-21, FTS 366-1612) or Mr. Tom Weeks (FHWA, HEP-12, FTS 366-5002). Questions on interim TIP measures should also be directed to Mr. Robert Kirkland or Mr. Dean Smeins (FHWA, HEP-21, FTS 366-9227).

Robert H. McManus

Anthony R. Kane

Attachment

Questions and Answers Regarding Use of Existing Tips

Question: If a metropolitan area does not have a new TIP approved by the MPO and the Governor (and conformity determinations completed if applicable) by the beginning of the new FY, does the authority to obligate funds for new projects in that metropolitan area stop?

Answer: Yes, unless there are projects remaining in the annual/biennial element of the approved TIP (and these projects are also included in the approved 105 program for FHWA projects or the section 3, 9, 16, and 18 programs for FTA projects). Such projects may proceed subject to the concurrence of the MPO in the project(s) selected for implementation by the State or the transit operator. This assumes good faith efforts to meet the date for the start of the new FY. Further, we would not expect this situation to exist for more than a few months.

In addition to the above, if the MPO, the State, and the transit operator agree, projects in the outyears of the TIP could be advanced if these projects are included in the first three years of the pending new TIP, the appropriate project selection procedures are used and the STIP is amended to include these projects. Again, we would not expect this situation to continue for more than a few months.

Question: Can the MPO and the Governor simply approve the current TIP for one additional year in lieu of developing and approving a new TIP that includes additional projects? Would this require a new conformity determination if a nonattainment area is involved?

Answer: Yes, the MPO and the Governor could approve the existing TIP for another year, not to extend beyond 9/30/93, if the following conditions are met:

- The MPO, State and transit operator, after full consideration of the flexibility provisions, agree that no projects need to be added or deleted.
- A financial plan is prepared and it demonstrates that the TIP is financially constrained.
- The TIP, if necessary, is reformatted so projects are grouped and prioritized in accordance with the interim guidance and new funding categories.
- It includes all projects to be funded under Title 23 or the FT Act, including Federal Lands projects.
- The MPO provides a reasonable opportunity for comment on the TIP by the public and interested parties prior to approval.

A new conformity determination for such a TIP in a nonattainment area would not be required as long as there is no significant change in priorities, particularly for TCMs, that would affect attainment of the CAA standards.

Project advancement would be subject to these projects being included in an approved STIP

Question: (Variation on the scenario for the above question) If the MPO and the Governor wish to approve a new TIP in a nonattainment area that includes the same projects that are in the existing TIP except for the addition of neutral projects is a new conformity analysis/determination necessary?

Answer: A new conformity determination would be necessary; however, since only neutral projects are being added, no additional analysis would be necessary.

MEMORANDUM

Date: May 20, 1992.
Reply to Attn of: HNG–12.
Subject: *Information*—Implementation Guidance on Section 1027 of the 1991 ISTEA—Public Transportation.
From: Associate Administrator for Program Development.
To: Regional Federal Highway Administrators; Federal Lands Highway Program Administrator.

Section 1027 of the 1991 ISTEA amends sections 142 and 156 of title 23, United States Code, covering the use of Federal-aid funds for transit activities and accommodation of transit facilities on highway right-of-way.

Pertinent modifications are:

1. In the past, only Federal-aid urban funds could be used for mass transit projects. Now, surface transportation program (STP) funds can be used for this purpose [23 U.S.C. 142(a)(2)].

2. Eligible work includes any capital transit project eligible for assistance under the Federal Transit Act. It has been further defined to include capital improvements to provide access and coordination between intercity and rural bus service and construction of facilities to provide connections between highways and other modes of transportation [23 U.S.C. 142(a)(2)].

3. Eligible work can now include modifications to existing highway facilities necessary to accommodate other modes of transportation provided these modifications will not adversely affect automotive safety [23 U.S.C. 142(c)].

4. Public transportation projects carried out under Section 142 in an urbanized area are subject to the metropolitan planning requirements of 23 U.S.C. 314 [23 U.S.C. 142(d)].

5. Prior to passage of the ISTEA, Federal-aid project right-of-way could only be made available without charge to publicly owned mass transit authorities. Now, a State may make Federal-aid project right-of-way available with or without charge to publicly or privately owned mass transit facilities. In addition to mass transit facilities, right-of-way can be made available to passenger and commuter rail facilities including those that are high speed rail and magnetic levitation lines [23 U.S.C. 142(f)]. Previously the criteria to be satisfied for allowing this use of highway right-of-way were that the accommodation would not adversely impair automotive safety or future highway improvements and such use was found to be in the public interest. The criteria now are that the accommodation will not adversely affect automotive safety [23 U.S.C. 142(f)].

Should a State desire to use STP funds for capital transit projects eligible for assistance under the Federal Transit Act, the procedures outlined in the March 19, letter to the States, transit operators and metropolitan planning organizations, jointly signed by FHWA Administrator Larson and FTA Administrator Clymer, should be followed.

Proposals to allow mass transit or other passenger and commuter rail facilities to use Federal-aid project right-of-way should continue to be processed following the procedures outlined in 23 CFR part 810, subpart C, except that the criteria for determining the acceptability of the proposed use should be that contained in amended 23 U.S.C. 142(f).

If you have any questions call Mr. Jerry Poston, Chief, Federal-Aid Program Branch at FTS 366–4652 or Mr. Robert Winans at FTS 366–4656.

Anthony R. Kane

MEMORANDUM

Date: May 15, 1992
Reply to Attn of: HNG–33
Subject: *Information*—Use of Highway Bridge Replacement and Rehabilitation Program (HBRRP) Funds for Approach Roadway Construction.
From: Associate Administrator for Program Development.
To: Regional Federal Highway Administrators; Federal Lands Highway Program Administrator.

Mr. Rex C. Leathers' memorandum of August 29, 1985, pertinent to the above subject described the concern of the Washington Headquarters for the State's use of HBRRP funds for improving deficient bridges as intended by Congress rather than for constructing long approach roadways. The guidance was to limit costs for approach roadways associated with the HBRRP project so that a nationwide average of no more than 10 percent of the total project costs would result. We felt the guidance provided sufficient flexibility to allow for a higher percentage for individual bridges in unusual or exceptional cases.

Application of the guidance since it was issued has resulted in a wide variety of projects with approach roadway costs greater than the targeted 10 percent. Typical examples have been cases where sight distance across a structure or improved underclearances require longer approach roadways to a HBRRP bridge project. Also a Division Administrator could determine that replacing a deficient bridge with a shorter span bridge and roadway fills is eligible for HBRRP funding, if this strategy is more cost-effective than replacing the deficient bridge with a similarly sized one.

The HBRRP project experience, coupled with revisions to section 104(g) of Title 23, which provides that 40 percent of HBRRP funds may be transferred to NHS or STP funds, indicates a need to ease our previous guidance regarding a 10 percent target. The eligible costs for approach roadway work for an HBRRP project should be limited to that necessary to render the replaced or rehabilitated bridge serviceable, and may exceed 10 percent of the total project cost within reasonable limits. Using HBRRP funds for an entire roadway project which happens to include an eligible deficient bridge is to be avoided.

Regarding the coding of HBRRP work items for the Fiscal Management Information System (FMIS), we are providing the attached guidelines for classification of project work items into specific work type codes. This is made necessary because of a 1991 HBRRP review conducted by the Office of Inspector General (OIG). The focus of the effort was to evaluate the FHWA's control over the use of HBRRP funds for non-bridge work items.

The OIG review concluded that the FHWA has adequate controls in place, but added guidance is required. When using HBRRP funds, inconsistencies were found in the FHWA Division Offices' coding of bridge, roadway, and miscellaneous work items in the FMIS. These inconsistencies do not impact eligibility of construction work for Federal funding, but do affect the accuracy in identifying approach roadway and bridge costs in the FMIS. Because of the many different bridge replacement and rehabilitation project situations and the engineering judgement required, it is not possible to eliminate all inconsistencies in data entry. However, this guidance should help to arrive at better uniformity in preparing the FHWA–37 and ultimately improve the validity of the FMIS data.

Anthony R. Kane

Attachment

Guidelines for Classification of HBRRP Project Work Items

A. Bridge Items

The following project work items can be classified using Bridge Work Type Codes=X—

1. Bridge Substructure and Superstructure Items
2. Structural Excavation—Required to construct bridge
3. Approach Railing—Transition sections, including approach guardrail
4. Approach Roadway—Bridge approach slab (that portion of the approach slab which spans the region of the abutment backfill)
5. Slope Protection—Concrete, rock, and other materials to protect the slopes at substructure units and abutment wingwalls
6. Rock Blankets—Necessary to protect substructure units from erosion or scour
7. Bridge Removal—Removal of substructure units and or superstructure elements
8. Mobilization—The percentage of this item attributable to bridge work
9. Traffic Control—Work items and devices, including temporary detour bridges, needed to direct traffic through the work zone or detour
10. Stream Channel Work—Bridge work codes may be used for all or part as deemed appropriate

MEMORANDUM

Date: June 22, 1992.
Reply to Attn. of: HNG–12.
Subject: *Information*—Section 1044 of the 1991 ISTEA—Credit for Non-Federal Share.
From: See Below.
To: Regional Federal Highway Administrators; Regional Federal Transit Administrators; Regional National Highway Traffic Safety Administrators; Federal Lands Highway Program Administrator.

Section 1044 permits a State to use certain toll revenue expenditures as a credit toward the non-Federal matching share of all programs authorized by Title 23 and the ISTEA. This is in essence a "soft match" provision that allows the Federal share to be

increased up to 100 percent to the extent credits are available.

The purpose of this memorandum is to provide initial guidance for implementing this provision. The following discussion covers determination of the credit amount, determination of the maintenance of effort test, and overall application of the credit.

1. Determination of Amount of Credit

The amount of credit earned is based on revenues generated by the toll authority (i.e., toll receipts, concession sales, right-of-way leases or interest) including borrowed funds (i.e., bonds, loans) supported by this revenue stream that are used by that authority to build, improve or maintain highways, bridges or tunnels that serve interstate commerce. The following requirements apply:

• The toll facility generating the revenue must be open to public travel.

• The toll authority may be a public, quasi-public or private entity.

• The amount of credit is based on expenditures (outlays) by a toll authority for capital improvements to build, improve, or maintain public highway facilities that carry vehicles involved in interstate commerce (the degree does not matter). It cannot include expenditures for items such as routine maintenance work (i.e., snow removal, mowing), debt service or costs of collecting tolls. Further, such expenditures must have been made for improvements paid for entirely without Federal funds. These improvements can be on facilities which have had prior Federal funding.

• The soft match opportunity begins with fiscal year (FY) 1992. The amount of soft match credit is based on the prior year's expenditures. A credit for any given FY can only be earned if a State's non-Federal transportation capital expenditures (as defined under Item 2 below) in the prior FY equal or exceed the average level of such expenditures for the 3 FYs preceding that prior FY. For example, to earn a credit for use in FY 1992 a State must first determine if it has qualifying toll authority expenditures in FY 1991. Then a State must also demonstrate that its FY 1991 non-Federal transportation capital expenditures equal or exceed the average of such expenditures for FYs 1988, 1989 and 1990.

• The State will have 4 FYs to use the credit amount established for any FY, these being the FY for which the credit amount was established plus the following 3 FYs. For example, if a State establishes a credit for FY 1992 based on the FY 1991 toll authority expenditures, the credit is available for projects authorized in FYs 1992, 1993, 1994 and 1995. However, any portion of this credit not used by the end of FY 1995 lapses. Accordingly, the State must establish a special account to track appropriate credit amounts and their subsequent use by FY.

• For chartered multi-State toll entities, the amount of credit must be divided equally among all the charter States.

• The State will provide the FHWA a certification that:

—The credit has been based on expenditures for improvements that met the above criteria.

—Lists the qualifying toll facilities generating the revenue and the total expenditures being proposed for use as credits along with the total non-Federal transportation capital expenditures for each of the last 4 FYs.

2. Maintenance of Effort (MOE) Determination

To be able to use the credit, a State's non-Federal transportation capital expenditures in the prior FY must have been at or above the average level of such expenditures for the 3 FYs preceding the prior FY.

The following requirements apply:

• The calculation of the non-Federal transportation capital expenditures must include expenditures to build, improve or maintain (but not routine maintenance) public highways, including toll facilities, and transit systems within the State. These would include expenditures on projects wholly funded by the State, plus the non-Federal shares of all federally funded highway and transit projects.

• The MOE determination is based on data for the previous FY compared to the preceding 3-year average. For example, if a State wants to use this credit provision in FY 1992, it would determine the amount of its non-Federal capital transportation expenditures for FYs 1988, 1989, and 1990, and compare the average of those 3 FYs with the FY 1991 expenditures. To satisfy the MOE test, FY 1991 expenditures must equal or exceed the average of FYs 1988, 1989, and 1990.

• The State will provide the FHWA a certification as to the total capital expenditures to demonstrate compliance with the MOE test.

• In addition to the certification of amount of credit (under Item 1 above) and the MOE amounts, a State must also certify that it has on file adequate documentation to support these amounts. These records will be available for audit or inspection.

3. Application

• The required certifications in Items 1 and 2 above are to be provided to the FHWA Division Office. The FHWA acceptance of a State's certifications must be accomplished prior to use of the soft match provision on any Federal-aid project. Until experience is gained in the operation of this new provision, the certifications shall be forwarded to FHWA Washington Headquarters for review prior to any field approval of a project with the increased Federal share. The FHWA Headquarters will notify FTA and NHTSA Headquarters when certifications are accepted.

• A request to use the soft match provision on a specific Federal-aid project should be submitted to the appropriate Federal Agency, FHWA, FTA or NHTSA, administering the project.

• The soft match provision is initiated at the time Federal funds are obligated and can only be used if the State has met the MOE test at that point in time. The State has the option of using amounts of credits to cover all or a portion of the non-Federal share of a project. The result is that the effective Federal share of an eligible project could be any value up to 100 percent.

• For eligible projects, whatever effective Federal share is established at the time of project authorization must be used throughout the life of the project. Subsequent overruns or underruns would be processed at this effective share provided a balance of credits are available.

• The State must establish a special account to track appropriate credits. The State may place into the special account the amount of credit that the FHWA has accepted under Item 1 above. When the State requests authorization of a project using the Section 1044 provisions, it shall request that all or a portion of the non-Federal share be credited from the special account. These projects will be processed and administered in accordance with normal procedures except the amount of funds authorized on the project and the Federal pro rata share will be increased. When the State submits a request to use credits from the special account, it will reduce the account in the same amount applied to the projects. The amount of non-Federal share credited will be deducted from the unobligated balance of Federal-aid funds available and charged to the State's obligation limitation.

Questions regarding determinations of credit and MOE or application on FHWA administered projects should be directed to Mr. Jerry Poston, HNG–12, (FTS 366–4652). Questions on application on FTA and NHTSA administered projects should be directed to Mr. Ed Fleischman, TGM–10, (FTS 366–1662) and Gary Butler, NRO–10, (FTS 366–2674) respectively.

Robert H. McManus,

Associate Administrator for Grant Management, Federal Transit Administration.

Anthony R. Kane,

Associate Administrator for Program Development, Federal Highway Administration.

Adele Derby,

Associate Administrator for Regional Operations, National Highway Traffic Safety Administration.

MEMORANDUM

Date: September 2, 1992.
Reply to Attn of: HNG–12.
Subject: Information—Section 1044 of the ISTEA, Credit for Non-Federal Share—Implementation Questions and Answers,
From: Associate Administrator for Program Development.
To: Regional Federal Highway Administrators.

Initial implementing guidance for section 1044 was provided to you by a June 22 memorandum issued jointly by the FHWA, FTA, and NHTSA. FHWA is serving as the lead agency in accepting a State's certification regarding determination of the credit and maintenance of effort (MOE) amounts.

One modification to this initial guidance is being implemented with this memorandum. The June 22 guidance did not allow the use of the soft match provision until FHWA acceptance of a State's credit and MOE certifications. Effective the date of this memorandum, Federal-aid projects may be conditionally authorized using the soft match

provisions subject to a State providing appropriate credit and MOE certifications and their subsequent acceptance by the FHWA.

Several questions have been raised by the division offices and States concerning the credit and MOE determinations and application of the soft match provisions. These questions and our responses follow.

Determination of Amount of Credit

Question 1: Do toll authority expenditures for capital improvements on public highway facilities need to be in the same year as the revenues are generated?

Answer: Toll authority expenditures are based on when the actual expenditures are made regardless of when the revenue was raised.

Question 2: A toll authority receives grant funds from the State DOT or State legislature. Can these funds, when expended by the toll authority, be included in the credit calculation?

Answer: No. Grants are not considered to be revenues generated by the toll authority.

Question 3: Does the Federal fiscal year have to be used for the credit calculation?

Answer: It is expected the Federal fiscal year will normally be used for both the credit and MOE calculation. However, if a State can demonstrate to the FHWA division office that data by Federal fiscal year is not readily available but is available by State fiscal year or on a calendar year basis, then these alternate 12-months periods can be used in making one or both of the calculations. For example, a State could use a calendar year in determining the credit amount, if that is the way toll authorities routinely keep their accounts, and then use the State's own June 30 FY in determining the MOE. If a State does use these alternate time periods, they must continue to use the same 12-month periods in future credit and MOE determinations. Notwithstanding this flexibility, the application year for use of the credit towards the non-Federal share of eligible Federal-aid projects must be the Federal fiscal year.

Question 4: For FY 92, when is the deadline for submitting the credit/MOE certifications?

Answer: The determination of credit earned for application beginning in FY 92 could theoretically be figured any time prior to that point in time the credit lapses. Lapse for the FY 92 determination would occur at the end of FY 95. Of course, the State would have to satisfy the MOE determination for FY 92 to earn the credit for the FY. In addition, for a State to be able to apply the credit in any given FY, a MOE determination for the application year must also be satisfied.

Question 5: Since funds spent by toll authorities on their own facilities are counted in the credit calculation and since those funds can be borrowed funds, can initial construction of a toll road be counted as credit even though the road is not open to traffic yet?

Answer: If the borrowed funds used to pay for initial construction are to be repaid by revenues generated by the toll authority, then the actual expenditures of these borrowed funds for initial construction in a given fiscal year can count in the credit calculation for that fiscal year.

Question 6: Can funds spent on preliminary engineering or right-of-way for future projects be counted in the credit calculation?

Answer: Yes, if they relate to construction projects that are eligible to be counted for the credit purpose.

MOE Determination

Question 1: Are expenditures actual cash outlays or are expenditures when funds are encumbered (obligated) for a contract?

Answer: Expenditures are based on actual cash outlays.

Question 2: Do non-Federal transportation expenditures include only the normal Title 23 highway construction costs or does it include the cost of computer design equipment, vehicles (ambulances and fire trucks) purchased under the 402 program, traffic monitoring equipment, etc.?

Answer: The MOE determination is based on expenditures for highways and transit systems. If data are available, the State could include expenditures for 402 program activities, traffic monitoring and computer equipment, etc., related to highways in the MOE determination. If these types of expenditures are included in the MOE determination, for consistency they should be provided for all years used in the MOE determination.

Question 3: Why were expenditures on airports excluded from MOE?

Answer: Since the soft match provision is limited in application to projects eligible for funding under Title 23 or the ISTEA, it can not be used for other DOT modal projects such as airports or maritime facilities. Accordingly, it was decided these other types of non-Title 23 or non-ISTEA projects would not be included in the MOE calculation.

Question 4: Does the Federal fiscal year have to be used for the MOE calculation?

Answer: Not necessarily (see Credit—Question 3).

Question 5: Is the MOE a "yes/no" decision or is use of soft match limited to the incremental amount of increase in the MOE.

Answer: The MOE is a determination of eligibility; either the State qualifies or does not. If the State qualifies, then it can use any or all of its credit amounts as soft match.

Question 6: Can funds spent on preliminary engineering and right-of-way for future projects be counted in the MOE calculation?

Answer: Yes, if they relate to construction projects that are eligible to be counted for MOE purposes.

Question 7: Do local government expenditures or those by toll authorities have to be included in the MOE calculation?

Answer: It is preferable that the MOE include local governmental and toll authority expenditures. However, we will accept a MOE calculation that does not. If a State excludes these types of expenditures in their initial calculation, then future MOE calculations by the State, for consistency, must also exclude these types of expenditures.

Question 8: If a toll authority receives grant funds from the State DOT or State legislature, can these funds, when expended by the authority, be included in the MOE calculation.

Answer: If the State is including toll authority expenditures in its MOE calculation (see Question 7 above), then that portion of a grant actually expended by a toll authority on construction can be included in the MOE.

Application

Question 1: If a State does not include local government expenditures in the MOE calculation, can the soft match credit be used on local government projects?

Answer: Regardless of which governmental units are included in the MOE, if a credit is approved for use, the soft match provision is available for all title 23 and ISTEA projects at the discretion of the State and with whatever conditions the State wishes to place on local entities.

Question 2: For Federal-aid highway funds, is soft match limited to only the formula funds?

Answer: No. Soft match can be used for all Federal-aid programs under title 23 or ISTEA.

Question 3: Can new projects be split funded with formula funds subject to obligation authority and other funds exempt from obligation authority?

Answer: Yes. The State has the option of applying the soft match provision to any or all of the funding sources eligible for soft match that are being used to finance the project.

Question 4: A State has an unused balance of credit at the end of FY 92 that is carried forward into FY 93. Is a new MOE determination needed before the State can use this carryover in FY 93?

Answer: Yes. A new MOE determination (for the next 12-month period the State is using) will need to be certified by the State for application of the credit (either the carryover balance or the next year's credit determination) in Federal FY 93. If this certification is not available, conditional authorization of projects using the soft match provisions may be approved subject to the State providing appropriate MOE and/or credit certification.

Question 5: Can a State which qualifies for soft match use the soft match credits on previously authorized projects?

Answer: No. However, use of conditional authorizations is allowed for work authorized on or after the date of this memorandum while a State is documenting its qualifying amounts.

Questions regarding this memorandum should be directed to Mr. Jerry Poston, Chief, Federal-Aid Program Branch, FTS 202–366–4652, or Mr. Jim Overton, FTS 202–366–4653, of his staff.

Thomas O. Willett,

for

Anthony R. Kane

MEMORANDUM

Date: June 26, 1992.

Reply to Attn of: HFS–31.

Subject: Guidance on Transfer Provisions Contained in the Intermodal Surface Transportation Act of 1991 (ISTEA).
From: Director, Office of Fiscal Services.
To: Associate Administrators, Regional Administrators, Division Administrators.

The ISTEA provides a significant amount of flexibility in the use of apportioned funds by permitting States to transfer funds between apportionments. Additionally Section 1100 provides that selected unobligated funds from prior Acts may be transferred to the new programs contained in ISTEA. It should be noted that funds may not be transferred both into and out of an appropriation within the same Fiscal Year. Guidance relating to the transfer provisions is provided below.

Transfer of Unobligated Balances

Section 1100 of the ISTEA provides that certain unobligated funds remaining from apportionments made before October 1, 1991 may be transferred to certain apportionments made after October 1, 1991. These are as follows:

• Primary System Funds may be transferred to the National Highway System (NHS) and/or the Surface Transportation Program (STP). Funds transferred into STP are not subject to sub-allocation and will be transferred into the state flexible appropriation code (33D).

• Secondary System Funds may be transferred to STP. These funds are not subject to sub-allocation and will be transferred into the state flexible appropriation code (33D).

• Urban System Funds, both attributable and non-attributable, may be transferred to STP. As required by 23 U.S.C. 150, the appropriate Metropolitan Planning Organization must approve the transfer of attributable funds. These funds are not subject to sub-allocation and will be transferred into the state flexible appropriation code (33D).

It should be noted that the lapse date for the transferred funds is 3 years after the Fiscal Year in which they were originally authorized.

Regional Administrators may approve these transfers (this may be delegated). A copy of the approval, the State's request, and the attached form must be provided to HFS–31.

Transfer of National Highway System Funds

• Up to 50% of a State's NHS funds may be transferred to STP upon the request of the State.

Regional Administrators may approve these transfers (this may be delegated). A copy of the approval, the State's request, and the attached form must be provided to HFS–31.

• Up to 100% of a State's NHS funds may be transferred to STP if approved by the Secretary of Transportation as being in the public interest. Additionally, States must provide notice to the public of the intent to request the transfer and give the public sufficient opportunity to comment.

The State's request, along with the attached form and the Regional Administrator's recommendation, should be forwarded to the Director, Office of Fiscal Services for coordination and submission to the Federal Highway Administrator for approval.

National Highway System funds transferred to STP are not subject to the sub-allocation and will be transferred to the state flexible appropriation code (33D).

Transfer of Bridge Replacement and Rehabilitation, Rail/Highway Crossing, Hazard Elimination Funds, and STP Safety Funds

• Up to 40% of a State's Bridge funds, apportioned under 23 U.S.C. 144 may be transferred to the NHS and/or STP. Funds transferred into STP are not subject to sub-allocation and will be transferred to the state flexible appropriation code (33D).

To comply with the requirements of 23 U.S.C. 144(g)(3), the funds provided under Appropriation Code 117, the 15% minimum for Off-system bridges, may not be transferred without a determination that the State has inadequate needs to justify such expenditures.

• For unobligated balances of funds from apportionments made before October 1, 1991, States may continue to transfer Bridge funds to the Rail/highway Crossing, and Hazard Elimination Programs (HES), however, the fiscal year identity must not be lost. That is, 1990 bridge funds may be transferred to the 1990 HES program but not into the 1991 HES program.

• The Rail/Highway Crossing and Hazard Elimination funds apportioned under 23 U.S.C. 130 and 23 U.S.C. 152 may continue to be transferred as in the past.

• Of the funds provided by 104(b)(3) for safety programs:

• 40% of the funds available for the Rail/highway Crossing Program and

• 40% of the funds provided for the Hazard Elimination Program safety programs.

may be transferred between the two safety programs or to the bridge apportionment. Funds transferred to bridge will be placed into appropriation 114 and be available for either on or off system bridges.

• Up to 100% of a State's safety funds may be transferred if approved as being in the public interest and with the assurance from the State that the purposes of the program have been met.

Regional Administrators may approve these transfers (this may be delegated). A copy of the approval, the State's request, and the attached form must be provided to HFS–31.

Interstate Maintenance

• Up to 20% of a State's Interstate Maintenance funds may be transferred to NHS and/or STP. Funds transferred into STP are not subject to sub-allocation and will be transferred to the state flexible appropriation code (33D).

Regional Administrators may approve these transfers (this may be delegated). A copy of the approval, the State's request, and the attached form must be provided to HFS–31.

• Up to 100% of a State's Interstate Maintenance funds may be transferred to NHS and/or STP if the State certifies that the funds are in excess of its needs for resurfacing, restoring or rehabilitating Interstate System routes and the State is adequately maintaining the Interstate System. The Secretary of Transportation must accept the certification before the transfer can be made. Funds transferred into STP are not subject to sub-allocation and will be transferred to the state flexible appropriation code (33D).

The State's request, along with the attached form and the Regional Administrator's recommendation, should be forwarded to the Director, Office of Fiscal Services for coordination and submission to the Secretary for approval.

Interstate Construction

• A State (other than Massachusetts) may transfer an amount equivalent to the Federal share of the cost to complete its open-to-traffic Interstate segments included in the 1991 Interstate Cost Estimate (ICE) from its Interstate construction funds to NHS and/or Interstate Maintenance apportionments. Upon approval of the transfer, the work on which the transfer is based will be removed from the 1991 ICE and will lose its IC fund eligibility.

The State's request, identifying the specific work to be removed from the ICE, along with the attached form and the Regional Administrator's recommendation, should be forwarded to the Director, Office of Fiscal Services for coordination and approval.

If you have any questions concerning these transfer provisions please contact the Program Analysis Division (HFS–30) on FTS 366–2906.

Peter J. Basso

Attachment

WORKSHEET FOR REVIEW OF FUND TRANSFERS—TRANSFER OF FEDERAL-AID HIGHWAY AND HIGHWAY SAFETY FUNDS

Fiscal year [1]	Funds [2]	Appropriation code [3]	Original apportionment [4]	Previous date [5]	Transfer amount [5]	Unobligated balance [6]	To be transferred [7]	Percent of original apportionment [8]
FROM:								
TO:								

[1] Enter the fiscal year of the apportionment involved. Transfers are permissible only between funds apportioned for the same fiscal year—i.e. transfers between FY 1990 rural primary and FY 1990 rural secondary are permitted but transfers between FY 1990 and FY 1991 are not. However, unobligated balances of funds apportioned prior to Oct. 1, 1991 may be transmitted to certain ISTEA categories.
[2] Enter name of funds involved.
[3] Enter appropriation codes of the funds involved.
[4] Enter original apportionment—the amount shown on the supplementary tables for the fiscal year exclusive of HPR.
[5] Enter any previous transfers involving the fiscal year fund for which the current request applies.
[6] Enter the unobligated balance of the fiscal year apportionment or apportionment segment from which funds are being transferred.
[7] Enter the amount to be transferred.
[8] Enter the percent of the orginal apportionment that is being transferred.

MEMORANDUM

Date: April 24, 1992.
Reply to Attn. of: HEP–50.
Subject: Information: National Recreational Trails Program.
From: Director, Office of Environment and Planning.
To: Regional Federal Highway Administrators Federal Lands Highway Program Administrator.

The Symms National Recreational Trails Act of 1991 (ISTEA sections 1301, 1302, 1303, and 8003) is intended to provide funds for recreational trails and trail-related projects. Dr. Larson sent a letter dated February 25, 1992, to each State Governor asking them to designate the State agency and official who would administer the Trails program in the State as required by the Symms Act. As of April 21, we have received responses from 27 States (see attached list). Please verify if the remaining States are planning to designate a State agency and official.

The Division offices should initiate contact with the State agency that will be administering the Recreational Trails Program. In most cases, it will not be the Department of Transportation. This is an opportunity to develop new State partnerships.

The Washington Headquarters Office would appreciate knowing who the contact person will be in each Regional and Division Office for the Recreational Trails Program. Please provide the name, telephone number, and routing code to Christopher B. Douwes, Recreation Trails Program Manager. He may be reached at (202) 366–5013, or FAX (202) 366–3713.

Finally, the Symms Act requires that Recreational Trail projects be identified in, or further a specific goal of, a trail plan included or referenced in a Statewide Comprehensive Outdoor Recreation Plan (SCORP) as required by the Land and Water Conservation Fund Act of 1965 (LWCF). All States have SCORPs. The National Park Service has asked each State to send three copies of their SCORPs to the Washington Headquarters Office. As they arrive, one copy will be sent directly to the Division Office. Copies for Regional offices will be held until SCORPs arrive from all States in that Region. Each SCORP mailing will include a copy of the Land and Water Conservation Fund Act. The last page will have excerpts from the LWCF Act referenced in the Symms Act.

B. Juhasz
for
Kevin E. Heanue
Attachment

BILLING CODE 4910–22–M

NATIONAL RECREATIONAL TRAILS PROGRAM DESIGNATED STATE AGENCY

As of 10 December, 1992

STATE	OFFICIAL	AGENCY
Alabama	Gene Anderson	Department of Economic and Community Affairs
Alaska	Neil Johannsen	Department of Natural Resources; Div of Parks and Outdoor Recreation
Arizona	Kenneth E. Travous	Arizona State Parks
Arkansas	Maurice Smith	Department of Highways and Transportation; *coop with Dept of Parks and Tourism*
California	Douglas P. Wheeler	The Resources Agency; Department of Parks and Recreation
Colorado	Laurie A. Mathews	Department of Natural Resources; Div of Parks and Outdoor Recreation
Connecticut	Joseph Hickey	Department of Environmental Protection; Bureau of Outdoor Recreation
Delaware	Charles Salkin	Dept of Natural Resources & Environmental Control; Div of Parks & Recreation
Dist Columbia	Carol Hill Lowe	Department of Recreation and Parks
Florida	Fran P. Mainella	Department of Natural Resources; Division of Recreation and Parks
Georgia	Joe D. Tanner	Department of Natural Resources
Hawaii	Michael Buck, Christina Meller	Dept of Land and Natural Resources; Div Forestry and Wildlife; Na Ala Hele
Idaho	Yvonne S. Ferrell	Department of Parks and Recreation
Illinois	Kirk Brown	Dept of Transportation; *Dept of Conservation to select projects / administer program*
Indiana	Patrick R. Ralston	Department of Natural Resources
Iowa	Nancy J. Burns	Department of Transportation; Office of Project Planning
Kansas	Jack Lacey	Department of Wildlife and Parks
Kentucky	Bruce Ferguson	Department of Local Government
Louisiana	General Jude Patin	Department of Transportation and Development
Maine	Herbert W. Hartman	Department of Conservation; Bureau of Parks & Recreation
Maryland	O. James Lighthizer	Department of Transportation; Maryland Greenways Commission
Massachusetts	William Steffens	Massachusetts Highway Department
jointly	Richard Thibedeau	Massachusetts Department of Environmental Management
Michigan	Roland Harmes	Department of Natural Resources
Minnesota	R. Sando/Dennis Asmussen	Department of Natural Resources; Trails and Waterways Unit
Mississippi		***NO ACTION TAKEN***
Missouri	G. Tracy Mehan	Department of Natural Resources
Montana	Bob Walker	Department of Fish, Wildlife, and Parks; Parks Division; Trails Program
Nebraska	Rex Amack	Nebraska Game and Parks Commission
Nevada		***Contact person named, but FHWA has not received formal notification***
New Hampshire	Wilbur F. LaPage	Department of Resources and Economic Development; Div. of Parks and Recreation
New Jersey	John Weingart	Department of Environmental Protection and Energy
New Mexico	Anita Lockwood	Energy, Minerals, and Natural Resources Department
New York	Orin Lehman / Ivan Vamos	Office of Parks, Recreation, and Historic Preservation; *coordinate with NYS DOT*
North Carolina	William W. Cobey, Jr.	Department of Environment, Health, and Natural Resources; *coop with NC DOT*
North Dakota	Dr. Douglas K. Eiken	Department of Parks & Tourism; Parks and Outdoor Recreation Sites
Ohio	Frances S. Buchholzer	Dept of Natural Resources; *coordinate with Jerry Wray, Dept of Transportation*
Oklahoma	James Thomas	Tourism and Recreation Department
Oregon	David Talbot / Peter Bond	Parks and Recreation Department
Pennsylvania	James R. Grace	Department of Environmental Resources
Puerto Rico	Hon. Ibrahim Pérez	Department of Recreation and Sports
Rhode Island	Judith S. Benedict	Department of Environmental Management; Planning and Development Division
South Carolina	J.W. (Bill) Lawrence	Department of Parks, Recreation, and Tourism
South Dakota	Doug Hofer	Department of Game, Fish, and Parks; *in consultation with SD DOT*
Tennessee	J.W. Luna	Department of Environment and Conservation
Texas	Andrew Sansom	Texas Parks and Wildlife Department
Utah	Dee C. Hanson	Department of Natural Resources
Vermont	Jan Eastman / C. Motyka	Agency of Natural Resources; Forests, Parks, and Recreation
Virginia	J. Robert Hicks, Jr.	Department of Conservation and Recreation
Washington	L.D. Fairleigh	Interagency Committee for Outdoor Recreation
West Virginia		***NO ACTION TAKEN***
Wisconsin	Carroll D. Besadny	Department of Natural Resources
Wyoming	Gary Thorson	Department of Commerce; State Parks and Historic Sites

BILLING CODE 4910-22-C

MEMORANDUM

Date: September 4, 1992.
Reply to Attn of: HFO–30.
Subject: Motor Carrier Safety Assistance Program Final Rule Part 350 Reference Guide.
From: Director, Office of Motor Carrier Field Operations.
To: Regional Directors, Office of Motor Carriers.

The issuance of the final rule on September 8 marks a major milestone in our efforts to carry out the provisions of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). Its provisions apply to all SEPs submitted for FY 1993. The advent of the final rule may raise questions as to how the new requirements are applied and how they will be implemented by the States. This reference guide was prepared to help answer some of these questions.

The preamble of the final rule also includes much information about the intent and rationale behind many of the new requirements. Therefore, the explanations in the preamble should help answer many of the questions that arise. The reference guide supplements the information in the preamble by expounding on issues that received limited coverage or are not addressed in the preamble. Both the preamble of the final rule and this reference guide will be made part of our policy memo. We hope that the "Q & A" format will help you to quickly pinpoint the answers to your questions.

If you need additional information, please call your Regional contact in Headquarters.

Michael F. Trentacoste

Motor Carrier Safety Assistance Program Final Rule

Reference Guide

Secondary Grant States

Question: The preamble (paragraph "e" of the Analysis of Comments) states that while the Secondary grant States are not accommodated in the formula, preference will be given to these States in the redistribution of funds and also that the funds will be reduced over the life of the authorization. In the rule this is addressed in 49 CFR 350.21(f). How will Secondary funding be reduced for the Secondary grant States (Colorado, Connecticut, Idaho, Louisiana, Massachusetts, Rhode Island, and Utah)?

Response: For FY '93, based upon availability of funds, Secondary grant States will receive 90 percent of the amount they received in Secondary funds for FY '92. The FHWA intends to gradually phase out these Secondary grants over the period of the authorization.

Question: May Secondary grant States receive additional grants in addition to their Basic formula allocation?

Response: Yes, Secondary grant States may receive Supplemental grants and Special grants above their Basic grants, i.e., Idaho's video center and Utah's drug/alcohol testing pilot project.

Question: May a State which is receiving Secondary funding request reallocated funds?

Response: Yes, a Secondary grant State may request reallocated funds for eligible activities. However, as with all States, the State should be discouraged from requesting funds to expand its work forces because additional reallocated funds may not be available in future years.

Maintenance of Effort (MOE)

Question: Must a State calculate its MOE and include it in the State Enforcement Plan (SEP)?

Response: Although the States are responsible for calculating their MOEs, the dollar amount is no longer included in the SEP. States will certify that they have calculated their MOE and are able to provide the supporting documentation if audited. This self-certification is included in 49 CFR part 350, appendix B, paragraph 8, "State Certification."

Question: Once a State has determined its new MOE based on the ISTEA, must the MOE ever be recalculated?

Response: Yes, a State would recalculate its MOE if it adds another MCSAP participating agency which has performed MCSAP eligible activities during the MOE period.

Question: For the purpose of a State determining its MOE, what is a "participating agency?"

Response: A participating agency is any jurisdiction—State or local—which receives MCSAP funding to perform MCSAP eligible activities. An agency, which employs officers who have been trained with MCSAP funds, but does not receive MCSAP funding to perform activities related to the training need not be considered a "participating agency."

Rollover Funds

Question: Section 350.21(g) provides that funds are available in the year they are obligated and the next full fiscal year. What is the procedure for a State to roll over funds to the next year's program?

Response: To ensure proper tracking of 2-year monies, a State must do the following:

1. Submit a final voucher (or a MCSAP–2A) within 90 days after the expiration of the grant for the amount expended during the fiscal year (projects to be broken out individually);
2. File a MCSAP–2A to increase the amount of the new fiscal year's grant program by the rolled over amount; and
3. Within 30 days after submitting the final voucher (or MCSAP–2A), amend the SEP to justify the higher total amount of funding now provided for the current year's grant program.

This process will deobligate the amount to be rolled over and reobligate the rolled over amount into the State's new grant program. This will then increase the current grant program by the rolled over amount. As stated in 49 CFR Section 350.21, the rollover funds must be expended before new money is used.

Question: How can rollover funds be used and tracked?

Response: Basic and Supplemental grant funding that is rolled over will be rolled over into the Basic grant and will "lose its identity." That is, rollover funding can be used for any eligible activity. Because the rolled over funds must be a part of an approved SEP, careful planning and program monitoring should keep unplanned rollover funds to a minimum.

Reallocated funds are awarded for specific high-priority activities. While these funds are generally Supplemental grants which can be rolled over for any eligible activity the following year, States are discouraged from applying for grants from reallocated funds with the desire to hold the funds in reserve in order to use them for other activities the following fiscal year. Reallocated funds should be closely monitored by the region and division to ensure the funds are used to the extent practicable for the original intent.

Rolled over funding for Special grants must be used for the same or substantially similar activities.

Question: May a State plan to reserve some funds to roll over to the next year?

Response: Yes. Now that funds are available for up to 2 years, a State may plan to combine Basic and/or Supplemental grant funds from two separate SEPs to cover large purchases. For example, a State needs to obtain computer equipment costing $20,000. Only $10,000 is available for this purchase in the present SEP. The State may include $10,000 in its present budget for rollover toward the purchase of $20,000 worth of computer equipment the next year.

SEP Guidelines

Question: What new format should be used in preparing SEPs to comply with the new activities and assurances that the ISTEA requires?

Response: The States are encouraged to submit one SEP, which includes their request for Basic, Supplemental, and Special grants, as well as requests for reallocated funds. This facilitates the Division and Region review of the State's overall safety program. Special and reallocated grant funds will be prioritized for funding if funds become available. Therefore, it is best to submit all requests in one submission, so that all applications can be evaluated at the same time. Special and reallocated grant requests may be submitted throughout the grant year, but States are encouraged to include these requests with the SEP so the requests will receive consideration in light of other requests.

Question: What is the current policy of submitting three quarterly reports in lieu of a narrative analysis?

Response: That policy is now rescinded. The new policy is to require a narrative analysis consistent with the provisions in appendix A to part 350 and based on the activities of the previous 12 months. A State may also base the analysis on the most current 12-month period in which it has complete program activities information. This analysis shall be submitted with the SEP, and is in addition to the quarterly reports, which are required to be submitted 30 days after the end of each quarter.

In-Kind Contributions

Question: A State may use either cash or non-cash contributions to satisfy the matching or cost-sharing requirements of the MCSAP. Non-cash contributions are more

commonly referred to as in-kind contributions. Please define "matching or cost sharing" contributions and "in-kind" contributions.

Response: Matching or Cost Sharing is the portion of a project or program costs not borne by the Federal Government.

In-kind contribution is the value of non-cash contributions provided by the recipient and non-Federal third parties. In-kind contributions are allowable costs valued as any other grantee cost in accordance with the cost principles. In-kind contributions may be in the form of charges for equipment, supplies and other services directly benefiting and specifically identifiable to the project or program.

For further information, reference the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, commonly referred to as the Common Rule OMB Circular A-102 published in the March 11, 1988 **Federal Register** (see 53 FR 8034-8103) as codified in the Code of Federal Regulations 49 CFR Part 18.

Eligible Activities/Costs

Question: Section 350.29(c), Eligible Costs, provides for several new initiatives within the MCSAP such as size and weight enforcement, drug interdiction activities, and traffic enforcement. What conditions must be met for these activities to be eligible?

Response: These activities are eligible for reimbursement if they are performed in conjunction with a MCSAP inspection. Additionally, the following must be met:

Size and Weight activities are eligible for funding under limited circumstances. For example, they must be performed "in conjunction with" (as part of) an eligible MCSAP inspection. Further, for size and weight activities to be eligible, they must not be conducted at a fixed scale facility. A fixed scale facility includes weighing operations that could be anticipated by a driver of a commercial motor vehicle. The following are examples of fixed scale facilities:

(a) A permanent scale site;

(b) Portable equipment placed at a specific location, operating on regularly scheduled days of the week during specific times of the day; or

(c) Portable or semi-portable equipment used on a regular basis at fixed facilities. This includes, for example, facilities with a cement structure to cradle the semi-portable scales.

Size and weight activities, including fixed scale activities, are eligible when conducted at specific sites where the weight of the vehicle has a significant effect on safety, such as steep grades or at seaports where intermodal shipping containers enter and exit the U.S. These exceptions to using MCSAP funds for fixed scale activities are specifically limited by the ISTEA.

Drug Interdiction activities are restricted to those designed to detect and deter the use and transportation of controlled substances by the drivers or other occupants of commercial motor vehicles. Funding eligibility is extended only to those officers who have been specifically trained in commercial motor vehicle drug interdiction techniques.

Traffic Enforcement activities (and subsequent vehicle and/or driver inspection) are reimbursable provided the contact arose as a direct result of a safety-related traffic law violation, such as speeding, improper lane change, following too closely, etc.

Question: What costs associated with these activities are considered to be "eligible costs" under MCSAP?

Response: The officer's time spent on eligible activities and the pro-rated share of specialized equipment used to carry out these activities are eligible costs. For example, breathalyzers, speed control equipment, and portable scale equipment, are eligible costs. Some other examples of eligible costs for these new activities are:

Drug Interdiction: Field test kits and the purchase of dogs used to detect drugs.

Traffic Enforcement: Training related to equipment use. If a piece of equipment is used on commercial motor vehicle enforcement for 50 percent of the time, then the State may charge 50 percent of the cost of the training to use such equipment to the MCSAP. If a police officer spends 75 percent of the time on commercial motor vehicle enforcement activities, the State may charge 75 percent of the officer's time to MCSAP.

HM Training: Costs associated with attendance at appropriate hazardous materials training, including shipper and cargo tank training.

Local Enforcement: Costs associated with attendance at appropriate commercial motor vehicle enforcement training and time spent on conducting inspections in accordance with the North American Uniform Driver-Vehicle Inspection Standard.

HM Shipper Reviews: Time spent conducting shipper reviews to the same extent as safety and compliance reviews.

NGA Special Grants

Question: Up to $2 million a year is provided to the States to adopt and implement the 22 NGA recommended accident data elements. How may the States apply for NGA funds made available for FY 1993?

Response: The States may include proposals for their NGA grants in their FY 1993 SEPs or later as an amendment to the SEP. Funds have been allocated to each State as a Special grant. These funds will be distributed to the lead MCSAP agency to draft forms, train officers, evaluate data, etc. These funds are available to all States—whether they participate in the MCSAP or not—to provide full accident data collection nationwide.

MEMORANDUM

Date: May 29, 1992.
Reply to Attn of: HIA-20/HFO-1.
Subject: Information on Uniformity Grant Process (Section 4008, ISTEA).
From: Director, Office of Motor Carrier Information Management; Director, Office of Motor Carrier Field Operations.
To: Regional Directors, Office of Motor Carriers, Regions 1-10.

This memorandum requests your assistance in obligating and administering grants to the States as required by Section 4008(j) of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991. Section 4008 of the ISTEA requires that all States join the International Registration Plan (IRP) and the International Fuel Tax Agreement (IFTA) by September 30, 1996. (See Attachment G for a copy of Section 4008 of the ISTEA.) States which participated in the Regional Fuel Tax Agreement (RFTA) as of January 1, 1991, are not required to join IFTA. The IRP is a base-State agreement for registering commercial trucks and buses operating in different States. Likewise, the IFTA and the RFTA are base-State agreements for reporting and paying State fuel taxes. (See Attachments H, I, and J for a more detailed description of IRP, IFTA and RFTA.)

To facilitate State participation in the IRP and IFTA agreements, Section 4008 also requires the establishment of a Working Group comprised of State officials to: (1) Recommend procedures for resolving disputes among IRP and IFTA member States, and (2) provide technical assistance to member States in their efforts to join IRP and IFTA. (See Attachment E and F for a list of members to the Base-State Working Group and State membership in the IRP, IFTA and RFTA.)

In fiscal years 1992 through 1997 Congress has authorized $5 million annually in grants to States for technical assistance, training, and equipment associated with participation in the IRP and IFTA. This memorandum and its attachments address the process and distribution of FY 1992 funds only.

Another uniformity provision is contained in Section 4003 of the ISTEA. This Section provides funds for the development of a Commercial Vehicle Information System (CVIS). These funds will be made available under a later solicitation once a lead State is identified for the CVIS project. We will provide details on the distribution of these funds next month.

The attached briefing package provides a schedule of dates, a description of the proposed grant process, sample forms, instructions for completing the work plan, a list of Working Group members, State membership lists, and background information on the IRP, IFTA and RFTA.

Attachment A: Schedule of Important Dates.

Attachment B: Description of the Grant Award Process.

Attachment C: Grant Agreement (pending).

Attachment D: Instructions for Completing a State Work Plan.

Attachment E: List of Members of the Base-State Working Group.

Attachment F: List of States in IRP, IFTA and RFTA.

Attachment G: Section 4008 of the ISTEA.

Attachment H: Description of IRP.

Attachment I: Description of IFTA.

Attachment J: Description of RFTA.

Attachment K: Description of the IRP and IFTA Repositories.

Please be advised that the lead agency for administering the Section 4008 funds will be identified by the Governor. We are requesting that he or she designate a lead agency and notify the Office of Motor Carriers (OMC)

State Director in the Federal Highway Administration's (FHWA) Division Office by mid-June. In addition, all State Work Plans should be received in the Division Office by July 15, 1992, so that grants can be awarded by August 31, 1992. (Attachment A provides a schedule of important dates related to the Section 4008 grant distribution process.)

We encourage OMC State Directors to initiate discussions with those State agencies that may be designated as the lead agency in this grant program. A copy of the letter from the FHWA Administrator to the Governors will be forwarded to you.

Note that Attachment C, the Grant Agreement is pending final clearances from our Office of Management Systems. We expect the grant agreement form to be approved by Management Systems within the near future. The approved grant agreement form will be sent to you at that time.

We will be sending you a package of section 4008 information materials to be forwarded onto the lead agencies within the States about mid-June. This informational package will inform the States about the availability of the Section 4008 grant funds and provide them with information about how and where to apply for the uniformity grants.

This is a proposed grant process. If you have any questions or suggestions pertaining to this process, please contact Nancy Emanuel at (202) 366–2948. If you have any technical questions pertaining to either IRP or IFTA or questions about State participation in the IRP or IFTA, please contact Bonnie Bass at (202) 366–0089.

Michael F. Trentacoste.

John F. Grimm.

Attachment.

Attachment A—FY '92 Uniformity Grants—Schedule of Important Dates

Late May—Briefing Package sent to OMC Regional Directors and Division Offices.

Early June—Letter from FHWA Administrator Sent to Governors Requesting the Designation of a Lead Agency to Administer Section 4008 Grant Funds.

Mid-June—OMC State Directors Notified of Lead Agency by Governor's Office.

Mid-June—Informational Package for the States Sent to Regional Directors and OMC State Directors for Distribution to Lead Agencies within the States.

July 15—State Work Plans Submitted to OMC State Directors for Review and Recommendation.

July 31—State Work Plans Submitted to OMC Regional Directors for Approval. Regional Directors Recommend to OMC Headquarters the Amounts to be Allocated to Each State.

Mid-August—OMC Headquarters Will Issue the Allocation Memo.

August 31—Grant Agreements Signed between Individual States and the FHWA Regional Director.

Attachment B—Uniformity Grants—Description of the Grant Award Process

The following narrative provides a description of the process for distributing FY '92 Section 4008 grant funds to States.

• Role of the Headquarters and Field Staff in Distributing Uniformity Grant Funds.

Headquarters: The State Programs Division (HFO–30) will oversee the allocation of section 4008 grant funds to the Regions for obligation to the States. Nancy Emanuel will be the official headquarter's contact for this activity. Ms. Emanuel can be reached on (202) 366–2948.

Regions: Regions provide guidance to the Divisions ensuring the timeliness and quality of reports. Regions support Divisions and States in achieving program status (reporting) and goals through the use of Highway Trust Fund and MCSAP funds. The Regional Directors will have final approval of State Work Plans and sign the agreement authorizing the grant award.

Divisions: Divisions work with the lead agency within the States to achieve uniformity goals developed in the State Work Plan. The Program Managers within the Division Offices will be primarily responsible for monitoring individual State activities and uniformity grant monies to the States.

• Amount of Uniformity Grant Funds to be Distributed to the States.

Although section 4008 provides $5 million in grant funds each fiscal year, only $3.5 million of the grant monies will be distributed directly to the States this fiscal year. The remaining $1.5 million will be used to fund the IRP and IFTA repositories and to provide training and technical assistance to the States. The $1.5 million will be administered by Headquarters staff through cooperative agreements with national associations such as the American Association of Motor Vehicle Administrators (AAMVA) and the IFTA Board of Directors.

• Deadline for Awarding Grants to States.

All State Work Plans should be received by the OMC Division Office no later than July 15 and all grants should be awarded by August 31, 1992. This money is available to the States for expenditure in the current fiscal year and one succeeding fiscal year.

• Criteria or Formula to be Used as a Basis for Awarding the Grants.

Because of the short time frame for awarding the grants before the end of the fiscal year, no special criteria, needs analysis or funding formula will be applied. Alaska and Hawaii are exempt from the mandate to join IRP and IFTA and so will not be eligible to receive grant funds. Therefore, the grant funds will be divided among the remaining 48 States and the District of Columbia. Under present projections, each of these States will get an equal share amounting to at least $71,000. State allocations for future fiscal years (1993–1997) may, however, be based upon special criteria or a formula.

As required by section 4008 of the ISTEA, FHWA has established a Base-State Working Group to facilitate participation in the IRP and IFTA. The Base-State Working Group will provide recommendations to FHWA on any formulas or criteria to be used in allocating future section 4008 grant funds. Because of the late distribution of these FY '92 funds, the State Work Plan should be developed to cover FY '92 and FY '93. We encourage the States to prepare this Work Plan for between $71,000 and $100,000 to be expended during FY '92 and FY '93. We are specifying up to $100,000 because some States may choose not to participate in the section 4008 grant program and their share of the funding may be redistributed to participating States. When the distribution of additional funds is decided the State can then amend the current State Work Plan to incorporate them and related activities.

• State Match Requirement.

Even though the section 4008 funds come out of the MCSAP authorization for fiscal years 1993–1997 no State match is required. These are 100% Federal grants.

• Lead Agency in the State.

At least three agencies within the State could potentially be interested in serving as the lead agency for administering the section 4008 grant funds. These agencies are: (1) The Department of Motor Vehicles; (2) the Department of Revenue; and (3) the Department of Transportation. We are requesting that the Governor's Office identify the lead agency within the State. The FHWA Administrator has sent a letter to each Governor and the Mayor of the District of Columbia requesting that the OMC State Directors be notified of a lead agency by mid-June 1992.

• Overview of the Grant Distribution Process.

The following describes the major aspects of the uniformity grant award process.

(1) The FHWA Administrator will contact the Governor's Office and request the Governors to designate a lead agency to administer the section 4008 grant funds and to notify the OMC State Directors of their decisions by mid-June.

(2) Around mid-June, OMC headquarters will send the OMC Regional Directors and State Directors an informational package to be forwarded to the State's lead agency. This informational package will notify the States about the availability of the section 4008 grant funds and provide them with information about how and where to apply for the uniformity grants.

(3) States interested in applying for the section 4008 grant funds must (a) develop a State Work Plan detailing how the grant funds will be spent; and (b) submit a completed State Work Plan to the OMC Division Office for review and recommendations. The Division Office will submit the State Work Plan to the Regional Office for approval.

(4) When the State Work Plan is approved, the authorized State representative will sign an agreement with the OMC Regional Director. (A copy of the pending grant agreement and instructions for completing the State Work Plan is attached.)

(5) A copy of the signed grant agreement and the State Work Plan will be sent to Headquarters for our records.

• State Reimbursement Procedures.

Reimbursement procedures, including the responsibility of review by the Division Office and concurrence by the Regional Director, will be the same as those used in administering the MCSAP.

A State may request periodic reimbursement for costs incurred for a project. The request shall be in the form of a voucher and shall be certified and accompanied by supporting data.

All claims by a State are to be made on Form PR-20 "Voucher for Work Performed under Provisions of the Federal-Aid and Federal Highway Acts, as amended." These vouchers are submitted to the FHWA's OMC Division Office for reimbursement after costs are incurred.

A final voucher represents the final claim and shall be submitted by a State to the FHWA within 90 days after the grant expires or the project is completed. The final voucher shows all final costs incurred, amount of Federal funds due on the project, previous Federal reimbursements, amount currently due, and a summary of project costs on the reverse side of the form. The final summary of the project costs shall contain, at a minimum, the types of costs incurred summarized by the primary functions performed under the grant.

• Reporting.

The lead agency within the State will be required to prepare a brief semiannual report within 30 days after each reporting period. For non-member States, the report shall contain a description of the State's progress in accomplishing the requirements of section 4008 over the past 6 months. For member States, the report shall contain a description of how section 4008 funds have been used to improve the operation of IRP and IFTA.

Attachment C (Pending)

Project No.

International Registration Plan (IRP)/Base-State Fuel Tax Grant Agreement for Year 19_____

Between: The Federal Highway Administration (FHWA) and

(State Agency)

entered into in accordance with the Motor Carrier Act of 1991. (Pub. L. 102-240, Title IV, 105 Stat. 2140, December 18, 1991.)

Pursuant to Sections 4008 (e) and (j) of the Motor Carrier Act of 1991, the Federal Highway Administration hereby approves the grant request of the State of _____(State Agency) (hereinafter referred to as the State) dated _____, for Federal assistance funding in the amount of $_____for the Grant Program as described in the grant request.

These grant funds are provided to assist States in meeting the mandates of Section 4008 of the Motor Carrier Act of 1991. The Act requires that after September 30, 1996 (1) no State shall establish, maintain, or enforce any commercial motor vehicle registration law, regulation or agreement which limits the operation of any commercial motor vehicle within its borders which is not registered under the laws of the State if the vehicle is registered under the laws of any other State participating in the International Registration Plan [Section 4008(f)]; (2) no State shall establish, maintain or enforce any law or regulation which has fuel use tax reporting requirements (including tax reporting forms) which are not in conformity with the International Fuel Tax Agreement [Section 4008(g)(1)]; and (3) no State shall establish, maintain, or enforce any law or regulation which provides for the payment of fuel use tax unless such law or agreement is in conformity with the International Fuel Tax Agreement with respect to the collection of such a tax by a single base State and taxes so charged are shared proportionately among the States where a commercial motor vehicle is operated [Section 4008(g)(2)].

The State hereby agrees (1) to submit to the FHWA a semiannual report covering the progress of implementation and a final report; (2) to assure that accurate and auditable records to support the costs claimed are maintained and available for inspection by FHWA for a period of 3 years after the date of submission of the final expenditure report; (3) to limit interim and final claims to those costs incurred in accordance with this agreement; and (4) to comply with all laws, regulations and requirements relating to this program and with the provisions set forth on the reverse hereof.

This agreement is effective _____, and expires _____.

(State Agency)

(Authorized Representative, Title) Date

(FHWA Regional Director) Date

Attachment D—Uniformity Grants—Instructions for Completing the Section 4008 Work Plan

To obtain grant monies under Section 4008 of the ISTEA, all States eligible for funding must complete a Work Plan to insure that the section 4008 grant funds will be spent properly. Submission of a Work Plan will also serve as the State's application for the grant. Individual State Work Plans will be submitted to the OMC Division Office for review and forwarded to OMC Regional Director for approval. An approved State Work Plan is a prerequisite for obtaining the uniformity grant funds. We anticipate these Work Plans to be approximately 2-5 pages in length. In preparing the plan, States should include the following information:

1. Name and address of the lead agency.

2. Name and address of the principal official within the lead agency responsible for the administration of the grant program.

3. Current Annual State Work Plan including:

(a) Total amount of funds requested.

(b) Percentage of funds to be used to facilitate participation in the International Registration Plan.

(c) Percentage of grant funds to be used to facilitate participation in the International Fuel Tax Agreement.

(d) Percentage of grant funds to be used to facilitate participation in the Regional Fuel Tax Agreement (RFTA).

(e) Narrative description of activities to be accomplished.

All proposed activities must facilitate State participation in the IRP and IFTA and be consistent with the eligible funding activities identified under section 4008(e) of the ISTEA. Those activities include: Providing technical assistance, personnel training, travel (e.g. technical assistance trips to other States, travel to attend IRP, IFTA or RFTA training sessions, travel to IRP, IFTA or RFTA meetings or seminars) costs, and technology and equipment associated with participation.

(f) Table which breaks down costs by activity.

(g) Detailed budget breakdown by line item.

(h) Schedule for accomplishing proposed activities.

Attachment E—List of Members to the Base State Working Group

Mr. Roger Tew (Chair), Commissioner, Utah State Tax Commission, 160 East 300 South, Salt Lake City, Utah 84134, (801) 530-6088

Mr. James Gentner (Vice Chair), Program Administrator, Arizona Department of Transportation, Motor Vehicle Division, 1801 W. Jefferson St., Drop 520M, Phoenix, Arizona 85001, (602) 255-8968

Ms. Patricia B. Adducci, Commissioner, New York State Department of Motor Vehicles, Empire State Plaza, Albany, New York 12228, (518) 474-0841

Mr. Timothy Byrnes, Program Administrator, Tax Processing Administration, Illinois Department of Revenue, 101 West Jefferson, Mail Code 3-200, Springfield, IL. 62794

Mr. R. Gary Clark, Tax Administrator, Rhode Island Division of Taxation, 1 Capitol Hill, Providence, Rhode Island 02908-5800, (401) 277-3050

Mr. Ralph Craft, Transportation Analyst, New Jersey Governor's Office, 444 N. Capitol Street, NW., Suite 201, Washington, DC 20001, (202) 638-0631

Mr. Harley Duncan, Executive Director, Federation of Tax Administrators, 444 N. Capitol Street, NW., suite 348, Washington, DC 20001, (202) 624-5890

Mr. Dennis Foushee, Director, International Registration Plan, North Carolina Division of Motor Vehicles, IRP Unit, 1100 New Bern Ave., Raleigh, NC 27697-001, (919) 733-7458

Mr. Marc D. Guthrie, State Representative, Assistant Majority Whip Ohio House of Representatives, 77 South High Street, Columbus, Ohio 43215, (614) 466-4361

Mr. John LaFaver, State Tax Assessor, Bureau of Taxation, State House Station 24, Augusta, Maine 04333, (207) 289-4702

Mr. Clark Martin, Director, Motor Carrier Services, American Association of Motor Vehicle Administrators, 4200 Wilson Blvd., suite 1100, Arlington, VA 22203, (703) 522-4200

Ms. Linley Oberman, Area Manager, Customer Service Division, Bureau of Motor Vehicles, room 104, Transportation and Safety Building, Harrisburg, Pennsylvania 17120, (717) 787-2780

Mr. Joseph Pawlowski, Deputy Secretary of State, Michigan Department of State, Bureau of Driver and Vehicle Records, 7064 Crowner Drive, Lansing, Michigan 48918, (517) 322-1528

Mr. James Poe, Fuel Tax Administrator, Indiana Department of Revenue, Special Tax Division, 100 N. Senate Ave., room 218, Indianapolis, Indiana 46204, (317) 232-1862

Mr. Fred Porter, IRP Administrator, P.O. Box 1272 MV, Little Rock, Arkansas 72203, (501) 682-4630

Mr. James J. Scheiner, President, Benatec Associates, 101 Efford Road, Camp Hill, Pennsylvania 17011, (717) 763–7391

Mr. James Sizemore, Jr., Commissioner, Alabama Department of Revenue, Gordon Persons Building, 50 N. Ripley Street, Montgomery, Alabama 36130, (205) 242–1175

Ms. Ruth Skluzacek, Director, Office of Motor Carrier Services, Iowa Department of Transportation, 5238 NW. 2nd Avenue, Des Moines, Iowa 50313, (515) 237–1021

Mr. Ronald Snell, Program Director for Fiscal Affairs, National Conference of State Legislatures, 1560 Broadway, suite 700, Denver, Colorado 80202, (303) 830–2200

Mr. James Wetzler, Commissioner, New York State Department of Taxation and Finance, W.A. Harriman Campus, Albany, New York 12227–0125, (518) 457–2244

Federal Highway Administration Liaison (non-voting)

Mr. John F. Grimm, Director, Office of Motor Carrier Information Management and Analysis, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366–4023

ATTACHMENT F.—STATE MEMBERSHIP IN IRP, IFTA AND RFTA AS OF MAY 15, 1992

	IRP	IFTA	RFTA
Alabama	X		
Alberta	X		
Arizona	X	X	
Arkansas	X	X	
California	X		
Colorado	X	X	
Connecticut	X		
Delaware			
District of Columbia			
Florida	X		
Georgia	X		
Idaho	X	X	
Illinois	X		
Indiana	X	X	
Iowa	X	X	
Kansas	X	X	
Kentucky	X		
Louisiana	X		
Maine	X		X
Maryland	X		
Massachusetts			
Michigan	X		
Minnesota	X	X	
Mississippi	X		
Missouri	X	X	
Montana	X	X	
Nebraska	X	X	
New Hampshire	X		X
New Jersey			
New Mexico	X		
New York	X		
Nevada	X	X	
North Carolina	X	X	
North Dakota	X	X	
Ohio	X		
Oklahoma	X	X	
Oregon	X		
Pennsylvania	X		
Rhode Island			
South Carolina	X		
South Dakota	X	X	
Tennessee	X		
Texas	X		
Utah	X	X	
Vermont	X		X
Virginia	X		

ATTACHMENT F.—STATE MEMBERSHIP IN IRP, IFTA AND RFTA AS OF MAY 15, 1992—Continued

	IRP	IFTA	RFTA
Washington	X	X	
West Virginia	X		
Wisconsin	X	X	
Wyoming	X	X	

Attachment G: See Section 4008 of the ISTEA

Attachments H, I, J: These attachments could not be reproduced without permission from the author.

Attachment K—Discussion of the IRP and IFTA Repositories

Both IRP and IFTA have established a Repository. The repositories are not policymaking bodies. Instead, they serve as information clearinghouses and provide technical assistance and administrative support to the States. The following represent examples of the kinds of activities performed by the repositories.

(1) Arrange for IRP/IFTA training to the States for:

(a) State motor vehicle and fuel tax administrators;

(b) State registration and fuel tax clerks.

(2) Arrange for on-site technical assistance visits.

(3) Perform clerical and administrative duties to support the agreements:

(a) Maintain historical files;

(b) Prepare and distribute ballots in accordance with the agreements;

(c) Report results in ballots to membership;

(d) Maintain current versions of the IRP and IFTA agreements, procedures, audit and compliance manuals;

(e) Maintain and distribute current registration fee schedules and fuel tax rates;

(f) Provide a focal point for collection of all relevant information;

(g) Establish and coordinate an annual schedule of Peer Reviews;

(h) Distribute minutes and agendas from conferences;

(i) Establish and maintain an accounting system, and;

(j) Prepare a proposed annual budget.

The IRP repository is the American Association of Motor Vehicle Administrators (AAMVA). The name of the contact person, the address and phone number of the IRP repository is as follows: Mr. Clark Martin, AAMVA, 4200 Wilson Blvd., suite 1100, Arlington, Va 22203, (703) 522–4200.

The IFTA repository is the Lockheed Management Service Co. The name of the contact person, the address and phone number of the IFTA Repository is as follows: Ms. Bonnie Anderson, Lockheed Management Service Co., 40 North Central Avenue, suite 2250, Phoenix, Arizona 85004, (602) 254–1687.

MEMORANDUM

Date: June 25, 1992.

Reply to Attn. of: HRD–10.

Subject: Information—Implementation of ISTEA—Minimum Expenditures on Research, Development, and Technology Transfer Activities.

From: Executive Director.

To: Associate Administrators; Regional Federal Highway Administrators.

Subsection (c) of section 307, title 23, as amended by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), requires that not less than 25 percent of the State Planning and Research (SP&R) funds apportioned to a State for a fiscal year be expended for research, development, and technology transfer activities relating to highway, public transportation, and intermodal transportation systems. The legislation provides for an exception to this requirement when the Secretary accepts a State's certification that total expenditures by the State for transportation planning under Section 134 and 135 will exceed 75 percent of the amount apportioned for this program. We have received several inquires from field offices regarding this provision.

We believe it is the intent of the language in the ISTEA to ensure that no less than 25 percent of the SP&R funds be spent on research, development, and technology transfer, unless the need for a shift in balance toward planning is compelling. Any requests to use more than 75 percent of a State's annual apportionment of SP&R (formerly Highway Planning and Research) funds for metropolitan and Statewide planning should be carefully reviewed to ensure the additional planning activities are essential and there are no other reasonable options available for funding these planning activities (including the use of National Highway System, Surface Transportation Program, or Federal Transit Administration Section 26 (a)(2) funds) or deferring lower priority activities. It should be noted that some activities which have been funded under the planning portion of the State's work program may actually be research activities that could be included in the research portion of the work program. Prior to submitting a request for an exception to the 25 percent requirement, the State and field offices should:

1. Ensure the planning projects have a higher priority than research projects in overall needs of the State of given year.

2. Ensure the total level of effort by the State in research (using both Federal and State funds) is adequate.

3. Ensure the division Administrator has negotiated with the State and both parties are agreeable to the respective levels of funding for both planning and research.

Attached is a list of additional items which should be considered when a State is requesting an exemption. If a State wishes to pursue an exception, the request, along with supporting justification and FHWA field office recommendations, should be sent to Mr. Robert J. Betsold, Acting Associate Administrator for Research and Development (HRD–10). The response to the request will be coordinated with the Office of Environment and Planning.

E. Dean Carlson.

Attachment.

Items To Be Considered in Evaluating a State's Request for an Exception to the ISTEA Requirement for Minimum Expenditure on Research, Development, and Technology Transfer Activities

1. Does the State have a process for identifying research and technology transfer (RD&T) needs, and for implementing a viable RD&T program?

2. Is the State contributing to national programs such as the National Cooperative Highway Research Program, the Transportation Research Board's activities, the implementation of products coming out of the Strategic Highway Research Program, and pooled-fund studies? (Note: Funding contributed to these programs counts towards fulfillment of the 25 percent requirement.)

3. Is the State using SP&R funds for technology transfer and for transit or intermodal research and development that are now specifically permitted, or for planning research activities, to help meet the 25 percent minimum requirement?

4. What percentage of the State's Highway Planning and Research funds was used for planning and research respectively before the ISTEA and will the percentage of funds used for RD&T activities increase if the exception is approved?

5. If an exception is approved, can the State show that in following years it will meet the requirement, or substantially increase its research expenditures toward meeting the requirement over the 6-year period of the legislation? (Note: The approval of an exception is valid only for the fiscal year in which the exception is approved.)

6. Does the amount of Federal funds needed for planning for the program period exceed the total of the 75 percent limit for the fiscal year plus any unexpected (including unused funds that can be released from completed projects) planning funds from previous apportionments?

MEMORANDUM

Date: May 22, 1992.
Reply to Attn. of: HEP–31.
Subject: Action—Joint Memorandum on "Implementation of the Intermodal Surface Transportation Act."
From: Executive Director.
To: Regional Federal Highway Administrators; Federal Lands Highway Program Administrator.

On May 1, 1992, Secretary of Transportation Andrew H. Card, Jr., along with Administrator William K. Reilly of the Environmental Protection Agency (EPA) and Army Assistant Secretary Nancy P. Dorn, signed a joint memorandum on "Implementation of the Intermodal Surface Transportation Act." The memorandum is written as official policy to Regional Administrators and District/Division Engineers of the DOT, the EPA, and Department of the Army (DOA) to improve coordination, emphasize innovative and cost-effective approaches, and integrate the requirements of the National Environmental Policy Act (NEPA) and section 404 of the Clean Water Act. On May 1, I sent a copy of the joint memorandum to the field offices for information. Today, I am attaching copies of the May 1 memorandum plus the enclosure, which was not previously available, outlining additional initiatives to improve and streamline the regulation of transportation projects under Section 404) ("Protecting the Environment and Reducing Regulatory Inefficiencies").

Funding available under ISTEA is extremely important to our Nation's transportation infrastructure, as well as being a vital stimulus to our economy. The FHWA, EPA, and DOA are totally committed to the successful implementation of all elements of ISTEA, removal of any unnecessary delays, and expeditious development of highway projects in an environmentally sound manner.

As you know, the Executive Workshop for regional field office heads of FHWA, EPA, and the Corps of Engineers (COE) held on November 15–16, 1990, was designed to discuss wetlands and transportation issues. Participants discussed six basic issues: Project Purpose and Need; Practicable Alternative Analysis; Mitigation; Assessment of Functional Values; Wetlands Delineation; and Merging NEPA and Section 404. The workshop improved participants' understanding of the FHWA/NEPA process, wetland protection, and the Section 404 permit process. Participants also pledged commitment to early coordination and timely resolution of issues at the regional and field levels.

The attached joint memorandum, with its enclosures, illustrates the continuing high-level commitment to improved interagency coordination. Where problems exist, Regional and Division Administrators are urged to become personally involved in resolving issues causing project delays.

Mr. Eugene W. Cleckley, Chief of the Environmental Operations Division, is heading a team of Washington Headquarters officials of the EPA, the DOA, and the COE to expedite resolution of section 404 issues on highway projects potentially ready for construction by October 1, 1992. He will soon be calling each Regional Administrator regarding highway projects that fit this category. The Washington Headquarters team will assist efforts by FHWA Regional Administrators and/or arrange meetings in Washington or the field with officials of the FHWA, the State DOT's, the EPA, and the COE to resolve issues. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service will be invited, where appropriate.

After October 1, the Washington Headquarters team will continue to conduct interagency workshops and meetings at the regional and/or State level with the aforementioned officials responsible for implementing the FHWA/NEPA and Section 404 permit processes. The purpose will be to resolve any misunderstandings about this policy, the initiatives, and the merger of NEPA and Section 404.

Implementation of the attached policy and initiatives is a top priority of the Administrator and Secretary Card. Every level of FHWA must do everything within its power to make the policy become a reality. Our goal is for all regions to develop measures to merge the common elements of NEPA and Section 404 by the end of fiscal year 1993. All environmental documents developed under those measures should demonstrate that the merger has been accomplished.

This policy is consistent with the National Transportation Policy, the FHWA's Environmental Policy Statement, FHWA 2000, and ISTEA. We must take full advantage of this great window of opportunity to renovate our transportation infrastructure, stimulate our economy, and provide environmentally sustainable transportation projects.

E. Dean Carlson

2 Attachments.

Department of Transportation, Environmental Protection Agency, Department of the Army

May 1, 1992

Memorandum for Regional Administrators and District/Division Engineers

Subject: Implementation of the Intermodal Surface Transportation Act

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) is landmark legislation. It sets new directions for the Nation's highway and transit programs in a post-interstate highway era.

Important provisions of the ISTEA include a new emphasis on comprehensive intermodal planning at the state and metropolitan area levels; greater flexibility in funding for both transit and highways, based on local needs and preferences; and increased attention to compatibility between transportation and environmental protection. Booklets summarizing key overall provisions of ISTEA and summarizing its environmental features are enclosed.

The rapid and successful implementation of ISTEA is a top priority for President Bush and for each one of us. The additional funding available under the Act is an important resource both for the renovation of our transportation infrastructure and as a vital stimulus to our economy. The Department of Transportation has taken steps to assure that the ISTEA funds are immediately made available to state and local agencies so the money can be put to work creating jobs and helping to jump-start the economy.

But making the funds available is only half the job. They have to be put to use on actual construction projects. All three of our agencies are firmly committed to removing any unnecessary impediments to such projects. Recognizing the importance of environmental protection and the necessity to comply with legal requirements, we believe that we can help accomplish the President's objective by, among other measures, streamlining and improving the efficiency of the environmental review and clearance process and taking prompt action on Section 404 permit applications. This is consistent with the President's comprehensive plan announced on August 9, 1991, to improve the protection of the Nation's wetlands and streamline the regulatory process.

In 1988, the Federal Highway Administration (FHWA), Army Corps of Engineers (COE), Environmental Protection Agency (EPA), Fish and Wildlife Service, and National Marine Fisheries Service jointly published as guidance the document "Applying the Section 404 Permit Process to Federal-aid Highway Projects." Better known as the "Red Book," this document provides numerous measures to improve coordination, emphasize innovative and cost-effective approaches, and integrate the NEPA and section 404 permit processes. Effective immediately, it will be the official policy of FHWA, the Corps, and EPA to fully implement the intent of the "Red Book."

Where there are interagency issues or problems delaying issuance of Section 404 permits, we urge you to become personally involved in settling disputes, assuring due protection of aquatic resources, and getting the projects moving. Please pass this message, with your personal endorsement, to each member of your staff who is working on transportation projects and permitting.

Even as we seek expedited treatment of Section 404 permit applications, we do not expect to see reduced protection and aquatic resources, including wetlands. Costs of avoiding, minimizing and compensating for wetland impacts are an eligible expense under ISTEA for projects and should be included wherever appropriate.

If there are issues on important projects which cannot be promptly resolved at the state or regional levels, please involve appropriate headquarters contacts promptly. They will arrange for review at headquarters level and, if appropriate, on site meetings with all appropriate participants to facilitate a permit decision. Headquarters contacts on this are:

Gene Cleckly (FHWA) (202) 366–0106
Greg Peck (EPA) (202) 260–8794
Michael Davis (OASA(CW)) (703) 695–1376

We appreciate your cooperation and assistance on this important initiative.

Sincerely,

Andrew H. Card, Jr.,

Secretary, Department of Transportation.

William K. Reilly,

Administrator, Environmental Protection Agency.

Nancy P. Dorn,

Assistant Secretary of the Army (Civil Works).

Enclosure.

Implementation of the Intermodal Surface Transportation Efficiency Act

Protecting the Environment and Reducing Regulatory Inefficiencies

Several initiatives currently underway or proposed by the Department of the Army (DA) will improve and streamline the regulation of Federally-aided transportation projects under section 404 of the Clean Water Act. The DA recognizes the important role that the Intermodal Surface Transportation Efficiency Act (ISTEA) can play in the Nation's economic recovery. It is the belief of the DA that significant administrative improvements in program efficiency can be accomplished without diminishing protection of the Nation's valuable aquatic resources.

To help accomplish the objectives of ISTEA in an environmentally sensitive manner, the action items listed below should be undertaken by the DA and the Department of Transportation, as well as other applicable Federal and state agencies. These items are divided into two categories: Those that are specifically designed to improve the regulation of transportation projects; and those that are components of the President's August 9, 1991, wetlands plan that will also benefit transportation projects.

Action Items Designed Specifically To Improve the Regulation of Transportation Projects

1. Effective immediately, it will be the official policy of the Federal Highway Administration (FHWA), the Army Corps of Engineers (Corps) and the Environmental Protection Agency (EPA) to implement fully the intent of the "Red Book."

2. To the extent practical, the NEPA environmental impact statement alternatives analysis and the Clean Water Act Section 404(b)(1) Guidelines alternative analysis will be consolidated.

3. The Corps will issue guidance to its field offices providing that, because of the infrastructure needs of the country and the positive impact on the economy of infrastructure development, evaluation of transportation projects be given high priority.

4. During the analysis of practicable alternatives under NEPA and Section 404, the Corps and EPA will make every effort to provide FHWA and states information on the impacts of various alternative road alignments.

5. The Corps will establish, where appropriate, additional general permits for the repair or replacement of roads and other projects which have only minimal impacts on wetlands.

6. The Corps, FHWA, EPA and other Federal agencies will work to establish wetlands mitigation banks for Federal and state highway projects.

7. The Corps and EPA will coordinate with FHWA and state DOTs to provide additional wetlands delineation training opportunities. The FHWA and state DOTs will request training and subsequently assist the Corps in conducting wetlands jurisdictional determinations.

8. The DA/Corps, FHWA, and EPA will convene, as necessary, a headquarters level team to assist in resolving controversies over NEPA and Section 404 issues. Other agencies such as the President's Council on Environmental Quality, the Fish and Wildlife Service and the National Marine Fisheries Service will be invited to participate as appropriate.

9. The Corps, FHWA and EPA will form regional interagency teams to identify the principal causes of delay during environmental review of transportation projects. Consistent with applicable law and regulation, the teams will propose specific measures to reduce identified delays.

10. The Corps, EPA, and FHWA will evaluate the need for guidance that clarifies that alternatives that would result in significant delays in project initiation will not be considered "practicable."

Components of the President's Wetlands Plan That Will Benefit Transportation Projects

1. By mid-May 1992, the Corps will issue a regulatory guidance letter which clearly articulates the role of the Corps as "project manager" and decision maker on section 404 permits. The guidance letter will also emphasize the need for effective and efficient coordination among prospective permittees, the Corps and Federal resource agencies. The need for project-related comments from the resource agencies will be emphasized.

2. By early summer 1992, the Section 404(q) Memoranda of Agreement between the Army and the Federal resource agencies will be revised to significantly streamline the agency appeal process. This will directly reduce applicant delays associated with interagency disagreements.

3. The Corps and EPA will issue guidance to their field personnel to use flexibility in requiring alternatives analysis when resource values are low (e.g., don't require a detailed alternatives analysis for a project proposed in low value wetlands).

In addition to the 13 items mentioned above, the Corps will complete in Fiscal Year 1993 a 25 percent increase in regulatory personnel. This will result in reduced permit evaluation times for highway projects. Implementation of all of the items noted will significantly streamline the permit evaluation process by minimizing delays and ensuring more timely decisions, while allowing for meaningful opportunity for substantive evaluation by the Corps and other Federal agencies. These streamlining measures are designed to maximize efficiency and are not inconsistent with reasonable environmental protection.

[FR Doc. 92–31030 Filed 12–31–92; 8:45 am]

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federal register

Monday
January 4, 1993

Part III

Department of Transportation

Federal Highway Administration
National Highway Traffic Safety Administration

23 CFR Parts 659 and 1260

Certification of Speed Limit Enforcement; Revision of Procedures; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

National Highway Traffic Safety Administration

23 CFR Parts 659 and 1260

[Docket No. 93-8]

RIN 2125-0027

Certification of Speed Limit Enforcement; Revision of Procedures

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to replace the National Maximum Speed Limit procedures contained in 23 CFR part 659 with new procedures as required by section 1029 of Public Law 102-240, the "Intermodal Surface Transportation Efficiency Act of 1991." It proposes that the speed limit compliance formula, the speed monitoring plan, and the penalty for non-compliance be modified in accordance with the requirements of this new legislation.

DATES: Comments must be received on or before February 3, 1993.

ADDRESSES: Comments should refer to the docket number set forth above and be submitted (preferably in 10 copies) to Docket 92-x, HCC-10, Federal Highway Administration, room 4232, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are from 8:30 a.m. to 3:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: In FHWA, Henry Sandhusen, Office of Highway Safety, Traffic Control Division, 202-366-2218. In NHTSA, J. Michael Sheehan, Chief, Policy Traffic Services Division, 202-366-4295.

SUPPLEMENTARY INFORMATION:

Background

The 55 mph national maximum speed limit (NMSL) was first instituted in 1974 as a temporary conservation measure in response to the oil embargo imposed by certain oil-producing nations. Because of the reduction in traffic fatalities that accompanied the institution of the speed limit, it was made permanent in 1975. The States were required to post 55 mph as their maximum speed limit, and to certify annually that they were enforcing the 55 mph limit, as a prerequisite for approval of Federal-aid highway projects.

In 1978, Congress amended the law to require that, in addition to posting and enforcing the speed limit, the States would have to achieve specific levels of compliance by their motorists or risk a reduction of up to ten percent in certain Federal-aid highway construction apportionments. The compliance level, originally enacted as a series of steps up to a final level of 70 percent, was reduced by a 1982 amendment to a level of 50 percent. The State certifications of compliance were submitted along with supporting data collected by State operated speed monitoring programs. Pursuant to regulations published in 23 CFR part 659, FHWA and NHTSA have shared responsibility for the enforcement of the national maximum speed limit since 1980.

In April 1987, Congress passed legislation which allowed States to post 65 mph maximum speed limits on rural Interstate highways. In December 1987, the President approved legislation enacting a limited demonstration program, which allowed the posting of speed limits as high as 65 mph on certain rural non-Interstate highways through the end of FY 1991.

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) made the demonstration program permanent, and allowed other rural non-Interstate highways that were not a part of the demonstration program to be posted at the 65 mph speed limit, provided they met the criteria applicable to the highways in the demonstration program.

ISTEA also required the Secretary of Transportation to publish a rule to establish speed limit compliance requirements on 65 mph roads, in addition to 55 mph roads, and to include a formula for determining compliance by the States with such requirements. The statute requires that the formula assign greater weight for violations of the applicable speed limits in proportion to the amount by which the speed of the motor vehicle exceeds the speed limit. The formula must also differentiate among the types of road on which the violations occur. In developing this formula, the Secretary has been directed to consider factors relating to the enforcement efforts made by the States, data concerning fatalities and serious injuries occurring on roads posted at the national maximum speed limits (NMSL), and any other factors relating to speed limit enforcement and speed-related highway safety trends which the Secretary determines appropriate.

The ISTEA also requires the Secretary to consider—

(1) The variability of speedometer readings;

(2) The speeds of all vehicles or a representative sample of all vehicles;

(3) The number of speeding citations, travel speeds and the posted speed limit for NMSL highways; and,

(4) The design characteristics for the NMSL highways.

In addition, the ISTEA mandates that:

(1) The data shall be collected from uniform monitoring programs; and,

(2) The data shall be obtained from devices and equipment placed at locations on NMSL highways on a scientifically random basis which takes into account the relative risk of motor vehicle accidents occurring considering the classes of highways and the speeds being attained on such highways.

Proposed Changes

The proposed rule would retain the format of the current rule, but modify it to reflect the changes mandated by ISTEA in the compliance formula, an increase in sample size required for reliability and a change in the sanctions for noncompliance.

Discussion of Proposed Compliance Formula

Two methods to determine States' compliance with the national maximum speed limit were examined. The first is a method that would compare an individual State's compliance only to itself. Under this proposal, compliance would be determined by comparing a State's compliance "score" with a baseline score determined for the State based upon a suitable data collection period, rather than measuring the State s score against a single national performance standard. However, all States would determine their compliance score using the same formula.

The second alternative is the development of a national compliance score. The former NMSL criterion, established in 1982, provided that a State would have to certify that it met a national performance standard by having at least 50 percent of its motorists on 55 mph roads travelling at or below 55 mph. The adoption of a national compliance score would continue this concept of a national compliance standard while incorporating the elements of ISTEA into the proposed formula.

State-by-State Individual Score Alternative

This method would select the first fiscal year following publication of the final rule as the initial baseline year for data collection. Data would be collected

in the identical manner for the next two fiscal years. The data for the three years would then be averaged to obtain the baseline. This computation of three years of data would determine the final baseline score each State could not exceed to maintain compliance.

To remain in compliance during the second year, States would be allowed to exceed the first year score by not more than 10 percent to account for disasters, economic anomalies, statistical variability, weather conditions, and other unforeseen circumstances that may not be reflected in one year's data. In year three, States would be allowed to exceed the average of the actual reported score of the years one and two by not more than 10 percent.

However, in the computation of the final baseline score, a State would be required to use the actual scores from years one, two and three. The basic formula, which is also used in the single national compliance score, would compute the score as the sum of multiple components, one for each highway type in question (55 mph freeways, 65 mph freeways and 55 mph nonfreeways). Each of the three highway components consists of three parts, one for each certification level: percentage exceeding 60 mph, 65 mph and 70 mph on 55 mph posted highways, and percentage exceeding 70 mph, 75 mph and 80 mph on 65 mph posted highways; i.e., 5 mph over the posted speed limit, 10 mph over the posted speed limit and 15 mph over the posted speed limit. (The rationale for these levels is discussed at greater length in the following section.)

Additionally, the score would have a "floor" to assist those States who are currently well within compliance to remain in compliance, and a "ceiling" to give a State having a very high score some incentive to improve, not to just maintain its high score.

Although this method might achieve the purposes of ISTEA, it is extremely complex in computation as well as application. The data collection would require three years of data to determine the baseline score and each State would have an individual score which would vary widely from State to State. Further examination revealed that this method would not only be extremely complicated, but would be perceived to be unfair because of the wide diversity of scoring permitted among the States. The agencies have therefore tentatively rejected it in favor of a more uniform national performance standard. Comments are nonetheless invited as to any revisions that might make this method more acceptable.

National Compliance Formula

The second alternative compliance formula would establish a national compliance score against which each State would be measured. The proposed compliance formula would assign greater weight to higher speed violations and would account for fatality risk and crash severity. It would require States to monitor traffic speeds at incremental levels on each of the three different highway categories: Freeways posted at 55 mph, freeways posted at 65 mph, and non-freeways posted at 55 mph.

Federal law permits the posting of speed limits lower than 65 mph on certain rural highways. To account for this in the proposed compliance formula, the speed limits that are higher than 55 mph but lower than 65 mph would be reported as 65 mph NMSL roads for the purposes of speed monitoring, data collection and compliance computation. Since there are so few miles posted in this range, the Department has determined that having to report additional speed limits would impose an undue burden on the States. Such additional reporting would also overly complicate the compliance formula and the monitoring plan.

For compliance purposes, speeds would be measured at 5, 10 and 15 mph over the 55 mph and 65 mph speed limits. To provide for statistical reporting and computational adjustments, two additional increments, one at the posted speed and the other at 20 mph over the posted speed limit respectively, would also be collected and reported.

The rationale to begin measuring speeds at 5 miles over the posted speed limit is based on several customs and practices generally accepted by the law enforcement community and motorists. As a general practice, police agencies do not apply the strict letter of the law to enforcement of minor speed infractions in any speed limit zone. It is unusual for motorists to be stopped or even warned if their speed is within five miles of the posted speed limit. In rare instances when enforcement action is taken for minor infractions, traffic courts generally do not reinforce the action by imposing sanctions. In essence, traffic courts expect application of reasonable judgment by police when enforcing traffic laws.

In speed ranges of 5–9 miles per hour above the limit, enforcement action is more likely. Violations in this range may be processed with either a verbal or written warning, or by issuance of a citation. Generally, all violations exceeding 10 mph over the maximum speed limit call for enforcement action, usually with the issuance of a citation.

In recognition of those enforcement practices many drivers now realize the police and courts tolerate moderate excesses of the 55 and 65 mph speed limits before applying enforcement and sanctions. The resulting average traffic speeds have slowly increased to this perceived tolerance level.

The proposed weighting scheme would encourage law enforcement agencies to focus enforcement efforts on higher speed violations on all categories of highways. These efforts should assist in controlling speed variance, which affects safety, and future increases in average travel speeds.

In sum, three speed increments (5 mph, 10 mph and 15 mph over the speed limit) account for the practical factors associated with speed enforcement and ISTEA requirements including generally accepted practices of law enforcement and courts, effects of speed variance, and giving greater weights to higher speeds.

Under this proposal, compliance would be determined based on a comparison of a State's compliance "score" with a national compliance score. Each State would determine its compliance score using data collected in a manner consistent with the monitoring plan appended to the rule. All States would use the same formula to determine compliance.

The compliance formula computes the "score" as the sum of nine components. Each of the three highway categories (freeways posted at 55 mph, freeways posted at 65 mph, and nonfreeways posted at 55 mph) has three speed levels (percentage exceeding 60 mph, 65 mph, and 70 mph on 55 posted highways, or percentage exceeding 70 mph, 75 mph, and 80 mph on 65 mph posted highways; i.e., 5 mph over the posted speed limit, 10 miles over the posted speed limit and 15 mph over the posted speed limit).

In addition, each component is weighted by a constant comprised of two factors: The relative risk of fatality per 100 million vehicle miles traveled on each highway category and a measure of crash severity.

The total urban freeway fatality rate (0.89) is used as the base for computing relative risk. The relative fatality risk on rural Interstates is computed to be 1.28 which is the rural Interstate fatality rate divided by the total urban freeway fatality rate (1.14/0.89). Similarly, using the total (2.23) fatality rate for other 55 mph roads (both arterials and collectors) and calculating the ratio to total urban freeways (both Interstate and non-Interstate [0.89]) yields 2.52 (2.23/0.89).

Thus, the relative risk of a fatality while driving on a rural freeway posted at 65 mph is 1.28 times the risk while driving on an urban freeway posted at 55 mph.

Similarly, the relative risk of a fatality while driving on a 55 mph nonfreeway road is 2.52 times as great as when driving on a 55 mph urban freeway.

The fatality rates and relative fatality risk, as explained above, are:

TABLE 1.—FATALITY RATE AND RELATIVE FATALITY RISK BY HIGHWAY TYPE

Highway type	Fatality rate 1990 fatal accident reporting system (FARS)			Relative fatality risk
	Urban	Rural	Total	
Freeway Type			0.97	
Interstate	0.70	1.14		1.28
Non-Interstate	1.28			
Total	0.89			1.00
Other 55 mph Roads			2.23	2.52
Arterials	1.62	2.52		
Collectors		3.24		

Second, to account for crash severity, 1989–1991 National Accident Sampling Survey (NASS) files at NHTSA were examined to determine the relationship between the change in velocity during a crash (a standard measure of crash severity, usually referred to as "Delta V") and the posted speed limit. Table 2 present these data for average Delta V. Delta V is related to the square of the posted speed limit. The resultant curve has an r^2 of .81. The formula is:

$$\text{Predicted Delta V} = 0.00144x^2 + 10.62838$$

where x=posted speed limit.

Predicted Delta V from the formula is also presented in the table.

TABLE 2.—AVERAGE AND PREDICTED DELTA V

[NASS data 1989, 1990, 1991]

Posted speed limit	Average Delta V	Predicted Delta V
25	11.9266	11.529
30	12.0421	11.925
35	12.3215	12.393
40	12.1859	12.933
45	13.8243	13.545
50	15.1972	14.230
55	13.3791	14.966
60		15.814
65	17.3789	16.715
70		17.687
75		18.731
80		19.848

Dividing the predicted Delta V for 5, 10 and 15 mph over the speed limit by the Delta V for a baseline speed limit (55 mph or 65 mph) yields the following table, representing the relative crash severity for vehicles exceeding the posted speed limit by 5 mph, 10 mph and 15 mph.

TABLE 3.—MULTIPLIERS WITH DELTA V

	MPH over speed limit		
Speed limit	5	10	15
55	1.055	1.115	1.180
65	1.058	1.121	1.187

The two factors (relative fatality risk and relative crash severity) are combined for use in the final formula. The first factor, freeways at 55 mph, is the baseline (1.00) freeways at 65 mph have a multiplier of 1.28 and 55 mph nonfreeways have a multiplier of 2.52.

Table 4 provides the resultant factors.

TABLE 4.—RESULTANT FACTORS

Hwy Categ	5 MPH over speed limit			10 MPH over speed limit			15 MPH over speed limit		
	Rel ftlty risk	Rel Delta V	Comb'd factor	Rel ftlty risk	Rel Delta V	Comb'd factor	Rel ftlty risk	Rel Delta V	Comb'd factor
55 FRW	1.000	1.055	1.055	1.000	1.115	1.115	1.000	1.180	1.180
65 FRW	1.280	1.058	1.354	1.280	1.121	1.434	1.280	1.187	1.520
55 NFR	2.520	1.055	2.659	2.520	1.115	2.811	2.520	1.180	2.974

Inserting the resultant constants the following:

Compliance score =
- 1.055 X (percentage >60 on 55 mph freeways)
- + 1.115 X (percentage >65 on 55 mph freeways)
- + 1.180 X (percentage >70 on 55 mph freeways)
- + 1.354 X (percentage >70 on 65 mph freeways)
- + 1.434 X (percentage >75 on 65 mph freeways)
- + 1.520 X (percentage >80 on 65 mph freeways)
- + 2.659 X (percentage >60 on 55 mph nonfreeways)
- + 2.811 X (percentage >65 on 55 mph nonfreeways)
- + 2.974 X (percentage >70 on 55 mph nonfreeways).

The percentage of vehicles exceeding a speed is expressed in percentage form. For example, 48.5% is expressed in the formula as 48.5, non 0.485. The multipliers of each of the nine components are indicative of the relative risks of fatality and crash severity on the three highway categories at each of the three certification speed levels.

When compliance is computed based on more than a single highway category, there is a possibility of trade-off. That is, compliance can improve on certain roads and decline on others. The proposed formulation weighs more dangerous roads and higher speeds more heavily. Poor speed compliance on these roads will have a grater influence on a State's score.

Calculation of the National Compliance Scores

As part of the process for certifying compliance with the 55 mph NMSL, States are required to provide quarterly travel speed data to FHWA for all roads posted at 55 mph. Information currently provided by States as part of the

certification process includes median speed, average or mean speed, 85th percentile travel speed, and the vehicle miles traveled (VMT) for each type of road posted at 55 mph. Historically, traffic studies have concluded that travel speeds follow an approximately normal, bell-shaped curve. Using this assumption, highway engineers can estimate the travel speed distribution from the average or mean speed and the 85th percentile speed. For a normal distribution, one standard deviation away from the mean contains approximately 34 percent on one side of the distribution. With this information, it is possible to estimate the standard deviation as the difference between the average speed and the 85th percentile travel speed (this difference contains 35 percent of the distribution).

Using the FY 1990 data provided by the States, unweighted national average speeds and national standard deviations were calculated for each of three highway categories: 55 mph freeways, 65 mph freeways and 55 mph nonfreeways. That is, for each highway category, each State providing data was counted exactly once, without weighting the State observations for the number of registered vehicles, vehicle miles traveled, etc. Data for both 55 mph freeways and 55 mph nonfreeways were provided by forty-nine States (one State has only 55 mph freeways and another State has only 55 mph nonfreeways and 60 mph freeways); eighteen States provided information on 65 mph freeways.

From the average speed, the standard deviation and the statistical properties of the normal distribution, it was possible to develop a normal, bell-shaped distribution for each of the three highway types. Using these three derived national normal distributions and a table of areas under the standard normal distribution, the estimated percentages of vehicles exceeding the posted speed limits by 5 mph, 10 mph, and 15 mph were determined for each of the three highway categories.

The results were:

PERCENTAGE EXCEEDING THE POSTED SPEED LIMIT

NMSL road category	5 mph	10 mph	15 mph
55 mph freeways	43	19	5
65 mph freeways	19	5	1
55 mph nonfreeways	27	9	2

Thus, it is estimated that an average 43 percent of the vehicles exceeded 60 mph on 55 mph freeways, 19 percent exceeded 65 mph on 55 mph freeways, and 5 percent exceeded 70 mph on 55 mph freeways.

These estimates are proposed for use in determining the national performance standard for speed compliance. There are four categories of States:

(1) Those with all three highway types;

(2) Those with 55 mph freeways and 55 mph nonfreeways;

(3) Those with only 55 mph nonfreeways and 60 mph freeways.

(4) Those with only 55 mph freeways; and,

Substituting these percentages into the compliance formula yields the following maximum scores, one for each of the four categories of States. The scores have been rounded up to the next whole number.

Maximum Allowable Compliance Scores

States with all highway categories	210
States with 55 mph freeways and 55 mph nonfreeways	176
States with only 55 mph nonfreeways and 60 mph freeways	138
States with only 55 mph freeways	73

Since the compliance formula is the sum of either nine, six, or three percentages (depending upon the presence of specific highway categories in each State) it is not necessary to be below the percentage exceeding each individual speed increment, but rather to be in compliance with the overall score. Thus, a State may exceed one or more of these individual percentages and still remain below the maximum score (in compliance) by having a lower percentage exceeding other speed intervals on the available highway categories.

The national performance score was established without using any of the previously allowed adjustments to the reported data, which included speedometer error, statistical error and speed monitoring equipment error. However, when a State certifies compliance, the data may be adjusted to take into account potential error sources. The current rule at 23 CFR 659.15 governing compliance with the 55 mph NMSL specifies the following areas: speedometer variability, sampling variability, and equipment error. If three separate adjustments were used, they would be applied to each of the nine, six, or three individual percentages exceeding, for a total of 27 possible adjustments. Instead of applying a maximum of 27 adjustments, this rule proposes a single adjustment.

The proposal is to use only the single adjustment which represents the average percentage in two consecutive 5 mph intervals. Thus, the single adjustment requires far fewer calculations overall (only one calculation for each percentage exceeding rather than three calculations). In addition, for the FY 1991 compliance certification, 44 States used the single adjustment, while only six States elected to use the individual adjustments for speedometer variability, sampling error and equipment error.

For example, if 45 percent of the vehicles were observed to be exceeding 60 mph on a 55 mph freeway and 35 percent were observed to be exceeding 65 mph, the single adjustment takes the average of the two estimates, yielding an adjusted 40 percent of the vehicles exceeding 60 mph. The adjustments are applied to each individual estimate of the percent exceeding a speed increment BEFORE being substituted into the compliance formula to determine the overall score.

Plan for the Collection of Monitoring Data

The monitoring of speeds remains a requirement for the States, and the proposed rule would require the States to continue to monitor speeds on national maximum speed limit roads. Each State would continue to certify to the Secretary of Transportation before January 1 of each year that it is enforcing the national maximum speed limits on all public highways in accordance with the criteria set forth in this rule. The certification shall be supported by information on activities and results achieved during the 12-month period ending on September 30 preceding the January 1 date by which certification is required.

Starting in FY 1994, the States would be required to revise their data collection procedures to conform to the new requirements. If the data a State collects under the new procedures shows that it is not in compliance, the State will be subject to a transfer of funds penalty for non-compliance in accordance with the requirements of the new rule.

It is proposed that each State develop a speed monitoring plan in accordance with the Speed Monitoring Program Procedural Manual, which is found in the Appendix to this rule. The speed monitoring plan is intended to provide reliable data to be included in a State's annual certification of NMSL enforcement.

Monitoring stations will be randomly selected from road segments in three highway categories: 55 mph freeways, 65 mph freeways (including freeways with speed limits that are higher than 55 mph but lower than 65 mph), and 55

mph nonfreeways. The number of monitoring stations required in each State will be a function of the number of different highway categories in the State, the variability in the number of vehicles using each highway category, and the number of vehicles exceeding the speed limit in each of three different speed levels (for highways posted at 55 mph the percent exceeding 60 mph, 65 mph and 70 mph; for freeways posted at 65 mph the percent exceeding 70 mph, 75 mph and 80 mph). Four times a year, once in each quarter, monitoring will occur at each monitoring station for a continuous 24-hour period.

A count of all vehicles and the speed of all vehicles in each 24-hour monitoring period must be recorded at each monitoring station. The speed data from the monitoring sessions will be summarized by each State by highway category. A State will then use the data summarized by highway category to calculate its compliance score.

The details on sampling, site selection, data collection, data analysis, and data submission can be found in the Speed Monitoring Program Procedural Manual.

Since FY 1994 would be the first year for speed monitoring, it would be advantageous to the States to initiate the selection and implementation of monitoring sites as soon as possible to ensure that data collection can commence on October 1, 1993. The FHWA division offices will work with the States in developing their monitoring plans, selecting sites, and approving deviations from the recommended procedures set forth in this NPRM.

Sanctions for Noncompliance

Statutory moratoria on sanctions against a State for non-compliance with the requirements of 23 CFR part 659 have been in effect since fiscal year FY 1986. There was no direction given in ISTEA regarding a moratorium beyond FY 1991. However, Congress required the Secretary of Transportation to develop a rule which makes it unnecessary to sanction for non-compliance until the rule becomes effective. Therefore, the effect of the proposed rule would be to continue the moratorium on sanctions for FY 1992 and FY 1993.

Section 1029(c)(1)(A) of ISTEA provides "* * * for the transfer of apportionments under section 104(b) of title 23, United States Code (other than paragraph (5)), if a State fails to enforce speed limits in accordance with this section, [and the rulemaking authorized by section 1029]." However, the legislation does not specify the amount of the apportionments to be transferred or designate the program area to which the apportionments would be transferred. The House bill had stated that the amount to be transferred would range from one to five percent of the designated apportionments for the first year of non-compliance and from two to ten percent for two or more consecutive years of non-compliance. The amounts were to be transferred to the highway safety grant programs of section 402 of title 23. The Senate bill did not provide for a transfer of apportionments.

In reviewing the ranges of the House bill for the purpose of proposing a reasonable amount to be utilized by a non-complying State, the Department determined that one and one-half percent of the designated apportionment for each State approximated the total amount of its 402 program. This amount was selected as the appropriate penalty because it represents a significant penalty and encourages the States to stay in compliance. A lesser amount may not have that effect. A greater amount, exceeding the total section 402 apportionments, would overburden a State's highway safety planning process and ability to expend the funds as intended.

In adopting the House's transfer penalty without the House language pertaining to amounts, the conferees included the following statement on page 328 of the report accompanying the conference bill:

The Conference Substitute applies that same reprogramming provision and Secretarial discretion with regard to the percentage transferred as in the House bill.

Consistent with this guidance, the agency proposes the following sanction provisions for a State having a compliance score exceeding the national compliance score:

1. One and one-half percent of the funds apportioned to the State for Federal-aid highways and highway safety construction programs under section 104(b) of title 23, United States Code (other than paragraph (5)) would be transferred to the State's apportionment under 23 U.S.C. 402 for the fiscal year, not to exceed the total section 402 apportionment for that year.

2. The funds reapportioned to section 402 Highway Safety Grant Programs would be used for section 402 highway safety programs with an emphasis on speed enforcement.

Credits in Mitigation of Noncompliance

Section 1029(c)(2) of ISTEA included the following statement:

> In developing the compliance formula * * * the Secretary shall consider factors relating to the enforcement efforts made by the States and data concerning fatalities and serious injuries occurring on (NMSL) roads * * * and any other factors relating to speed limit enforcement and speed-related highway safety trends which the Secretary determines appropriate.

The Department examined a number of factors to recognize State efforts to reduce speed related crashes and to weigh highway safety trends. Considerations were based upon the relationship to speed enforcement and whether or not the specific item could be quantified and measured. The only factor considered to be appropriate for the proposed rule is whether a State has a fatality rate below the national average.

The primary goal of highway safety is to reduce the number of deaths and injuries occurring on our nation's highways. The Department has historically used the national fatality rate to gauge the success of highway safety programs. The fatality rate is an indicator of the success of a State's overall highway safety program, and thus reflects a number of specific safety efforts within a State. In order to provide for meaningful consideration of a State's fatality rate in accordance with the statutory requirement, the rule proposes a penalty reduction for States that exceed the national compliance score but have a low fatality rate. As discussed below, a State fatality rate, rounded to the nearest tenth, of at least twenty percent below the national fatality rate would result in a reduction in the amount of the apportionment being transferred.

A number of other specific factors, listed below, were considered and rejected for inclusion in the proposed rule. In each instance, there was no way to quantify the results of a specific activity or the particular factor was covered by other sections of the ISTEA. Those factors were:

- Public information and education campaigns that are speed enforcement related;
- Use of innovative technology such as photo-radar, laser speed measuring devices, drone radar, electronic speed display and signing, variable speed limits;
- Increased use of physical speed control techniques, such as speed bumps, and rumble strips; and psycho-perceptual techniques such as pavement markings;
- Point systems for speed limit violations, with higher speeds receiving more points that lead to the suspension or revocation of a driver's license;
- Increases in the number of speeding citations issued on NMSL highways;

- Presence of a Statewide front seat safety belt use law;
- 75 percent safety belt usage rate;
- Presence of 0.08 BAC law, and,
- Presence of an administrative per se law.

Penalty Reduction

A State in noncompliance would be eligible to have its penalty reduced by one-third if it has a fatality rate at least twenty percent below the national fatality rate. This rate is determined using fatality data contained in NHTSA's Fatal Accident Reporting System Annual Report and vehicle miles of travel data reported in FHWA's Annual Highway Statistics publication. The State's fatality rate would be based on data for the calendar year preceding the fiscal year of noncompliance. The previous calendar year fatality rate is used because the State vehicle miles of travel data are not available prior to the fiscal year in which the transfer of funds occurs.

A State having a fatality rate at least twenty percent below the national fatality rate demonstrates the benefit of a balanced highway safety program. The Department has selected this level of fatality reduction as a fair and reasonable measure of traffic safety efforts. Since the ultimate purpose of all highway safety programs, including speed enforcement, is to reduce traffic fatalities, injuries and crashes, a level of twenty percent below the national fatality rate provides meaningful evidence of such efforts. Further, this measure is consistent with the objectives of ISTEA.

The Department is proposing a penalty reduction of one-third to recognize overall highway safety accomplishments which resulted in reducing fatalities. Even with a reduction of one-third, the funds transfer remains a significant penalty. The purpose of the transfer is to aid a State to return to compliance by increasing the overall level of traffic safety programs. Any reduction of the penalty shall be applied in the fiscal year in which the transfer penalty is assessed.

Although the Department believes that the proposed penalty reduction level of one-third and the proposed fatality rate level of twenty percent below the national rate are fair and reasonable levels, comments are nonetheless invited regarding whether these percentages should be increased or reduced.

Notification of Noncompliance

Under the current regulation, the States are afforded the opportunity to request a meeting to discuss compliance status and the amount and timing of any reduction of apportionments. They are allowed to request a hardship deferral and/or request a reduction in the amount of reduction of apportionments. However, these procedures are unnecessary under the proposed rule.

The specific amount of the apportionments that must be transferred is set forth in the rule and therefore no procedure is necessary to challenge the results of compliance. The legislation does not provide for hardship considerations. There is no loss of funds, only a transfer from highway construction to highway safety programs.

Regulatory Analyses and Notices

Civil Justice Reform

This proposed rule would not have any preemptive or retroactive effect. It imposes no requirements on the States, but rather encourages States to consider enacting and enforcing legislation requiring speed limits and speed limit enforcement through the potential redesignation of Federal highway construction funds to safety programs. Any redesignation of funds would not take place until FY 1996. If a State (1) submits data showing that its highway speeds are below a certain national level, and (2) submits a certification from the Governor reporting that the State is enforcing the speed limits on public highways in accordance with 23 U.S.C. 154, then it shall not be subject to a redesignation of funds. The authorizing legislation for the proposed rule does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit in court.

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

The agencies have analyzed the effect of this proposed action and determined that it is not "major" within the meaning of Executive Order 12291. However, because of the public's interest in the 55/65 MPH speed limit, it is considered to be "significant" within the meaning of Department of Transportation regulatory policies and procedures. The agencies have prepared a Preliminary Regulatory Evaluation (PRE) for this proposal, and made it available in the public docket. A copy of the PRE may be obtained by writing to the pubic docket at the address referenced above.

The PRE discusses the benefits of limiting excessive speed in general and estimates the costs of new speed monitoring devices to be $4.4 million. The PRE also presents estimated FY 1990 speed compliance data and finds that at least three States (Connecticut, Massachusetts and Wyoming) would have likely been out of compliance with the proposed maximum allowable compliance scores had they been in effect in FY 1990.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, the agencies have evaluated the effects of this proposed action on small entities. Based on the evaluation, we certify that this action will not have a significant economic impact on a substantial number of small entities. The PRE concluded that there would be no significant impact on small businesses since the portion of the highway construction funds going to noncompliant States would not be lost, but only transferred to highway safety programs. Accordingly, the preparation of Regulatory Flexibility Analysis is unnecessary.

Paperwork Reduction Act

The requirement relating to this proposal, that each State must submit speed data and related certification information necessary to calculate its compliance score, is considered to be an information collection requirement, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. Accordingly, this information collection requirement has been previously submitted to and approved by OMB, pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501, et seq.). The former requirement has been approved through March 31, 1993, and has been assigned control number OMB No. 2125–0027. A request for a revised information collection requirement under the proposed rule has been submitted to OMB for approval subject to the publication of a final rule.

This information collection requirement is specified in the Speed Monitoring Program Procedural Manual located in the appendix. The burden hours for quarterly data collection and annual certification is estimated at 93,024 hours for the respondent State Highway Departments on an annual basis. The average response time for this information collection is 364.8 hours. The FHWA will use this information to judge the effectiveness of each State's enforcement program.

The monitoring plan proposed is designed so the States collect the

minimum amount of speed data to reliably measure compliance. The Department believes that the proposed information collection requirement, specifically the number of monitoring sites and the quarterly monitoring sessions, are the minimum needed to ensure statistically reliable estimates of annual compliance.

However, comments are invited regarding whether the amount of data collection could be reduced through statistical means. That is, could fewer than four quarterly observations be conducted and still ensure the availability of reliable unbiased estimates of annual speed limit compliance? Could this be achieved through the use of conducting observations during key time periods during the year which result in minimal information loss? Is it possible to identify particular times during the year which are indicative of annual travel speed trends? Can statistical models be developed that use the information collected during these key time periods to estimate annual travel speeds and hence, compliance, based on a reduced data collection effort?

The Department requests specific details on these methods and an indication of specific times during the year when such predictive information could be collected. For example, existing surveys of energy use patterns and agricultural commodities employ model-based methods of data collection and estimation that rely on measurements conducted during key periods of the year. The data collected during these key time periods are modeled to derive annual estimates without having to conduct surveys monthly or quarterly. These statistical models are based on relationships between the annual estimates and data collected during key time periods.

For further information one may contact the Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, 202-266-4735. Comments on the proposed information collection requirements should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, to the attention of the Desk Officer for the FHWA. It is requested that comments sent to OMB also be sent to the FHWA Docket for this proposed rule.

National Environmental Policy Act

The agencies have analyzed this proposed action for the purpose of compliance with the National Environmental Policy Act and have determined that it will not have a significant effect on the human environment.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. Since the Congress has directed the Secretary of Transportation to establish a rule for monitoring and promoting compliance with the National Maximum Speed Limits described in 23 U.S.C. 154, the federalism implications pursuant to Executive Order 12612 are minimal. Moreover, the proposed rule does not impose any requirements on the States, but rather encourages States to consider enacting and enforcing legislation requiring speed limits and speed limit enforcement through a potential redesignation of the purpose of certain Federal-aid highway funds. Under these circumstances, the preparation of Federalism Assessment is not warranted.

Comments to the Docket

The agencies are providing a 30-day comment period for interested parties to present data, views, and arguments on the proposed action. The agencies invite comments on the issues raised in this notice and any other issues commenters believe are relevant to this action. All comments must not exceed 15 pages in length (49 CFR 553.21). This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion. Necessary attachments may be appended to these submissions without regard to the 15-page limit.

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

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

List of Subjects

23 CFR Part 659

Grant programs—transportation, Highway and roads, Motor vehicles, Reporting and recordkeeping requirements, Traffic regulations.

23 CFR Part 1260

Grant programs—transportation, Highway and roads, Motor vehicles, Reporting and recordkeeping requirements, Speed limit, Traffic regulations.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

In consideration of the foregoing, the FHWA and NHTSA hereby propose to remove part 659 of chapter I, subchapter G of title 23, Code of Federal Regulations (CFR), and to add part 1260 to chapter II, subchapter C of title 23, CFR, as set forth below.

Issued on: December 18, 1992.

Thomas D. Larson,

Administrator, Federal Highway Administration.

Marion C. Blakey,

Administrator, National Highway Traffic Safety Administration.

PART 1260—CERTIFICATION OF SPEED LIMIT ENFORCEMENT

Sec.

1260.1 Purpose.
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1260.21 Penalty reduction and notification of noncompliance.

Appendix to Part 1260—Speed Monitoring Program Procedural Manual

Authority: 23 U.S.C. 118, 141, 154, 315 and delegations of authority at 49 CFR 1.48 and 1.50.

§ 1260.1 Purpose.

To prescribe requirements for administering a program for monitoring speeds on public highways in order to provide reliable data to be included in a State's annual certification of speed limit enforcement.

§ 1260.3 Objectives.

To establish a valid statistical method of measuring a sample of vehicle speeds on a sample of highways to estimate the percentage of vehicles exceeding the speed limit on highways posted at 55 mph and on highways posted at 65 mph with sufficient accuracy to support a determination of compliance by a State's motoring public with the National Maximum Speed Limits in accordance with 23 U.S.C. 154; to prescribe the compliance reporting requirements for the States; and to specify fund transfer provisions for non-compliance with the National Maximum Speed Limits.

§ 1260.5 Definitions.

As used in this part:

(a) *FHWA* means the Federal Highway Administration.

(b) *Fiscal year* means the Federal fiscal year, consisting of twelve months beginning each October 1 and ending the following September 30.

(c) *Governor* means the Governor of any of the fifty States, Puerto Rico or the Mayor of the District of Columbia.

(d) *Freeway* means a divided arterial highway for through traffic with full control of access and grade separated intersections.

(e) *Highway* means all streets, roads or parkways under the jurisdiction of a State, including its political subdivisions, open for use by the general public, and including toll facilities.

(f) *Interstate System* means the Interstate System as is described in 23 U.S.C. 103(e).

(g) *Motor vehicle* means any vehicle driven or drawn by mechanical power manufactured primarily for use on public highways, except any vehicle operated exclusively on a rail or rails.

(h) *National Maximum Speed Limits* mean the speed limits provided for the highways described in § 1260.7 of this part.

(i) *NHTSA* means the National Highway Traffic Safety Administration.

(j) *Roadway Segment* means a highway performance monitoring system (HPMS) sample section as defined by the States.

(k) *State* means any one of the 50 States, the District of Columbia, or Puerto Rico.

§ 1260.7 Adoption of national maximum speed limits.

The Secretary of Transportation shall not approve any Federal-aid projects under 23 U.S.C. 106 in a State which fails to adopt or maintain maximum speed limits as follows:

(a) The maximum speed limit shall be 65 mph or less on a highway located outside of an urbanized area of 50,000 population or more, either on the Interstate System, or on a highway:

(1) Which is constructed to Interstate standards in accordance with 23 U.S.C. 109(b) and connected to a highway on the Interstate System;

(2) Which is a divided 4-lane fully controlled access highway designed or constructed to connect to a highway on the Interstate System posted at 65 miles per hour and constructed to design and construction standards as determined by the Secretary which provide a facility adequate for a speed limit of 65 miles per hour; or

(3) Which is constructed to the geometric and construction standards adequate for current and probable future traffic demands and for the needs of the locality and is designated by the Secretary as part of the Interstate System in accordance with 23 U.S.C. 139(c).

The maximum speed limit on all other public highways in the State shall be 55 mph or less. Emergency and police motor vehicles may be authorized to operate at higher speeds when necessary to protect the public health and safety.

(b) Except as provided in paragraphs (c) and (d) of this section, the speed limit on any portion of a highway shall be uniformly applicable to all types of motor vehicles using such portion of highway, if on November 1, 1973, such portion of highway had a speed limit which was uniformly applicable to all types of vehicles using it.

(c) Notwithstanding the provisions of paragraph (b) of this section, a State may establish a lower speed limit for a motor vehicle operating under a special permit because of weight or dimension of such vehicle, including any load thereon.

(d) Notwithstanding the provisions of paragraph (b) of this section, a State may specify nonuniform speed limits on any portion of a highway when the condition of the highway, weather, a crash, or other condition creates a temporary hazard to the safety of traffic on such portion of a highway.

§ 1260.9 Formulation of a plan for monitoring speeds.

(a) Each State shall develop a speed sampling plan following the guidelines in the Speed Monitoring Program Procedural Manual (SMPPM), FHWA, 1992, which is set forth in the appendix.

(b) At a minimum, the plan shall discuss the following subjects:

(1) Miles of highway posted at the National Maximum Speed Limit (NMSL) classified as follows:

(i) Miles of freeways posted at 55 mph

(ii) Miles of freeways posted at 65 mph (including freeways with posted speed limits that are higher than 55 mph but lower than 65 mph)

(iii) Miles of nonfreeways posted at 55 mph

(2) Number of sampling locations and their distribution by highway classification (55 mph freeways, 65 mph freeways and 55 mph nonfreeways), all of which shall be determined in accordance with the SMPPM. The minimum sample size needed by each State for each highway classification shall be determined in accordance with the SMPPM.

(3) Location of monitoring stations. The discussion of the location or the monitoring sites must include information on the functional classification of the highway where the monitoring station is located.

(4) Type and capabilities of speed measuring equipment to be used.

(5) Data collection. (i) Schedule. Speed monitoring sessions shall be scheduled evenly among the three-month periods of the year ending December 31, March 31, June 30, and September 30. Each monitoring station must be monitored once per three-month period. The dates that monitoring is planned must be included in the schedule.

(ii) Field data collection. The choice of a data collection site within a given segment shall reflect the geometric design conditions of the segment. In addition, data will not be acceptable in determining compliance, if conditions at a site are such that the normal flow of traffic is substantially restricted by activities such as highway construction, maintenance operations, extreme weather conditions, temporary lane closings, or the presence of non-routine enforcement activity.

(iii) A 24-hour monitoring period shall be the duration of any individual speed monitoring session.

(6) Any deviation from the analysis methods described in the SMPPM.

§ 1260.11 Guidelines and evaluations of operations.

(a) The State shall submit its initial speed monitoring plan to the FHWA Division Administrator within 90 days after publication of the Final Rule. The plan shall be in accordance with the provisions of the SMPPM. The plan shall be evaluated annually and revised as conditions dictate. The plan may also be revised at any time during the 12-month data collection period ending September 30 if the State elects to change its speed limit on eligible roads.

(b) Annual evaluations of the State's speed monitoring plan shall be submitted to the FHWA Division Administrator by December 1 following

the close of the data collection period of each year beginning with December 1, 1993, so that changes to the plan called for by the evaluation can go into effect with the subsequent quarter beginning January 1. At a minimum, the evaluation shall discuss:

(1) Adjustments to the number of sampling locations in a State.

(2) Any other changes to the plan proposed by the State.

(c) Plan revisions called for during the data collection period due to a State changing its speed limit shall also be submitted to the FHWA Division Administrator for approval, and may take effect retroactively to the date on which the speed limit was changed if such approval is granted.

§ 1260.13 Certification requirement.

Each State shall certify to the Secretary of Transportation before January 1 of each year that it is enforcing the National Maximum Speed Limit on all public highways in accordance with 23 U.S.C. 154. The certification shall be supported by information on activities and results achieved during the 12-month period ending on September 30 preceding the January 1 date by which certification is required.

§ 1260.15 Certification content.

The certification shall consist of the following elements:

(a)(1) A statement by the Governor of the State, or an official designated by the Governor, that the National Maximum Speed Limits on public highways in the State are being enforced. The certifying statement shall be worded as follows:

(Name of the certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____, is enforcing the National Maximum Speed Limits.

(2) If this statement is made by an official other than the Governor, a copy of the document designating the official, signed by the Governor, shall also be included in the certification made under this part.

(b) A copy of any State law, regulation, administrative order, statement of policy or any other written instruction relating to enforcement of the National Maximum Speed Limits shall be included with the initial certification required by this rule. If there has been no change in the applicable State law, regulation, administrative order, policy statement or written instruction concerning National Maximum Speed Limit enforcement, then a State may include a statement to that effect with the annual certification. If a change has occurred then a State need only submit a copy of the changed document with subsequent annual certifications. If a written enforcement policy on the National Maximum Speed Limits does not exist, a statement to that effect must also be included.

(c) Information relating to enforcement and monitoring as follows:

(1) Miles of highway with a 55 mph or 65 mph speed limit, by the following highway categories:

(i) Freeways posted at 55 mph;

(ii) Freeways posted at 65 mph (including freeways posted higher than 55 mph but lower than 65 mph); and

(iii) Nonfreeways posted at 55 mph.

(2) The number of speeding citations issued by all law enforcement agencies in the State with jurisdiction and responsibility to enforce speed limit violations on national maximum speed limit roads for violation of the 55 mph speed limit and 65 mph speed limit during each month of the 12-month period ending on September 30 before the date by which certification is required.

(3) Number of monitoring locations and monitoring sessions.

(4) Number of vehicles observed during monitoring sessions.

(5) Distribution of vehicles speed by each highway category listed in (c)(1).

(6) For freeways and nonfreeways posted at 55 mph. The percentage of vehicles exceeding each of the following speeds: 55, 60, 65, 70 and 75 mph.

(7) For freeways posted at 65 mph. The percentage of vehicles exceeding each of the following speeds: 65, 70, 75, 80 and 85 mph.

(8) The data must be reported as required in the SMPPM.

(d) The State's compliance score is determined by summing the product of relative fatality and a measure of crash severity, as derived from the 1989–1991 National Accident Sampling System data and 1990 Fatal Accident Reporting System data, and the percentage of vehicles exceeding 5 mph, 10 mph and 15 mph over the speed limit for each of the three highway categories. The compliance score formula is:

Compliance score =
1.055 X (percentage >60 on 55 mph freeways)
+ 1.155 X (percentage >65 on 55 mph freeways)
+ 1.180 X (percentage >70 on 55 mph freeways)
+ 1.354 X (percentage >70 on 65 mph freeways)
+ 1.434 X (percentage >75 on 65 mph freeways)
+ 1.520 X (percentage >80 on 65 mph freeways)
+ 2.659 X (percentage >60 on 55 mph nonfreeways)
+ 2.811 X (percentage >65 on 55 mph nonfreeways)
+ 2.974 X (percentage >70 on 55 mph nonfreeways)

The statewide percentage of vehicles exceeding 60, 65 and 70 mph on all 55 mph highways, and 70, 75 and 80 mph on all 65 mph highways, is derived from the speed sampling plan specified in § 1260.9, and adjusted using a single adjustment procedure to take into account potential error sources. The single adjustment formula is:

$$H = \frac{(A+B)}{2}$$

where:

H = The percent exceeding x mph after adjustment

A = the percent of vehicles exceeding x mph, and

B = the percent of vehicles exceeding x+5 mph

The adjusted percentages are then inserted into the compliance formula and the State's compliance score is calculated. The maximum allowable compliance scores are:

States with all highway categories	210
States with 55 mph freeways and 55 nonfreeways	176
States with only 55 mph nonfreeways and 60 mph freeways	138
States with only 55 mph freeways	73

The State must submit its compliance score in its annual certification statement.

§ 1260.17 Certification and statistical submittal.

(a) The Governor, or an official designated by the Governor, each year shall submit the certification to the FHWA Division Administrator. The FHWA Division Administrator shall retain the original and forward two copies each to the Regional Administrators of FHWA and NHTSA. The Regional Administrators shall each retain one copy and forward one copy of the submission, with any pertinent comments, to their respective Washington, DC headquarters, to the attention of the Chief Counsel.

(b) Any changes to the original certification or supplemental information necessitated by the review of the certifications as they are forwarded shall be submitted in the same manner as the original submission.

(c) The State is required to submit the information relating to enforcement, monitoring, and the compliance score as described in § 1260.15 (c) and (d).

(d) The data required for the annual certification under § 1260.15(c), with

the exception of the speeding citation data required under § 1260.15(c)(2), shall be submitted by each State to the FHWA Division Administrator on a quarterly basis for the 3-month periods ending December 31, March 31, June 30 and September 30 of each year. The submission of the July-September quarter shall, in addition to the quarterly report, include a summary report of the entire year's speed monitoring data (starting from the previous October 1).

§ 1260.19 Effect of failure to certify or to meet compliance standards.

(a) If a State fails to certify as required by § 1260.13, no Federal-aid highway project shall be approved under 23 U.S.C. 106 in that State.

(b) Notwithstanding the proper submission of the certification and information supporting the speed monitoring activities of any State, if the Secretary determines that a State's compliance score calculated pursuant to § 1260.15(d) is greater than the maximum allowable compliance score as provided in § 1260.15(d), one and one-half percent of the funds apportioned to that State under 23 U.S.C. 104(b)(1), 104(b)(2), 104(b)(3), 104(b)(4) and 104(b)(6) shall be transferred to such State's highway safety grant program fund under 23 U.S.C. 402 for the fiscal year subsequent to the fiscal year in which the compliance score is calculated to be greater than the maximum allowable compliance score.

§ 1260.21 Penalty reduction and notification of noncompliance.

(a) If the Administrators determine that a noncompliant State's fatality rate, rounded to the nearest tenth, is at least twenty percent below the national fatality rate, the Secretary shall reduce the amount of the apportionment transferred under § 1260.19 by one-third. The fatality rate is determined using fatality data contained in NHTSA's Fatal Accident Reporting System Annual Report and vehicle-miles of travel data reported in FHWA's Annual Highway Statistics publication. The State's fatality rate will be based on data for the calendar year preceding the fiscal year in which its compliance score is greater than the maximum allowable compliance score.

(b) On the basis of the information provided by the State and other information in the possession of the Department, the Secretary will notify the Governor of the State of the transfer of apportionments and direct the transfer of said apportionments. A copy of that notification will be transmitted promptly to the State by certified mail.

(c) The State shall expend any transferred funds pursuant to § 1260.19(b) for section 402 programs with an emphasis on speed enforcement programs within that State. In no instance shall such transfer exceed the total section 402 apportionment for that fiscal year, prior to any penalty reduction.

Appendix to Part 1260—Speed Monitoring Program Procedural Manual

Purpose

The speed monitoring program is intended to provide reliable data to be included in a State's annual certification of NMSL enforcement.

Development and Documentation of Sampling Plan

Following the requirements in the proposed rule, each State shall develop a Speed Sampling and Analysis Plan for approval by the FHWA Division Administrator. The plan shall be reviewed annually, and updated if there are changes in the number or location of monitoring stations, or in the dates that data collection is planned. At a minimum, the plan shall include:

- Grouping of highways by three highway categories:

—Freeways posted at 55 mph;
—Freeways posted at 65 mph (including freeways posted higher than 55 mph but lower than 65 mph); and,
—Nonfreeways posted at 55 mph.

- Number of miles of highway with a 55 or 65 mph speed limit, by above categories.
- Number of monitoring stations, sessions, location, and the direction that monitoring takes place (Northbound, Westbound, etc.).
- Any request for an exemption if a State proposes to limit the number of monitoring stations to a number no less than 30 percent higher than the maximum number of monitoring stations under the previous program. This request should include a justification as well as demonstrable assurances that the data integrity is being preserved.
- Type and capabilities of speed measuring equipment used.
- Functional classification of selected monitoring sites.
- Dates of planned data collection for each monitoring station.
- Any deviation from analysis methods recommended in this document.

Sampling Plan Prerequisites

The three types of data that must be assembled before a sampling plan can be developed are:

1. Miles of highway, by highway category, with a 55 or 65 mph speed limit.
2. Location of Highway Performance Monitoring System (HPMS) sample sections.
3. Location of monitoring stations under old program.

Miles of Highway, by Highway Category, With a 55 mph or 65 mph Speed Limit

Miles of highway, by highway category, with a 55 or 65 mph speed limit will be used in the random selection of monitoring stations.

Highways will be grouped into the following categories:

—Freeways posted at 55 mph;
—Freeways posted at 65 mph (including freeways posted speed limits that are higher than 55 mph but lower than 65 mph); and,
—Nonfreeways posted at 55 mph.

The monitoring category "nonfreeways posted at 55 mph" will NOT include any facilities classified as "local," any unpaved roads, and any rural minor collectors.

Location of HPMS Sample Sections

The location of the HPMS sample sections will assist in the selection of monitoring stations. HPMS sections average five miles in length. Monitoring stations will be randomly selected from among the HPMS sample sections where the entire section is posted at 55 or 65 mph.

Location of Monitoring Stations Under the Old Program

The location of existing monitoring stations must be known. Since the old monitoring stations were selected randomly, many of those stations can be retained, under the procedures discussed in the section "Selection of Sample Sites".

Sampling Guidelines

This is a sampling plan designed to monitor the speeds vehicles travel on highways posting with a 55 mph or 65 mph speed limit. Monitoring stations will be randomly selected from road segments in three highway categories:

—Freeways posted at 55 mph;
—Freeways posted at 65 mph (including freeways posted speed limits that are higher than 55 mph but lower than 65 mph); and,
—Nonfreeways posted at 55 mph.

The State shall be responsible for selecting the sites to be monitored in accordance with the procedures in this section. The following issues are addressed:

- Determination of sample sizes;
- Selection of sample sites;
- Number of sampling sessions and length of monitoring period.

Determination of Sample Sizes

The number of monitoring stations required in each State is a function of the number of different highway categories, the variability in the number of vehicles using each highway category, and the number of vehicles exceeding the speed limit in each of the three different levels (exceeding 60, 65, 70 etc). Data from past speed surveys indicate that speeds vary much more on 55 mph nonfreeways than on 55 or 65 mph freeways. In addition, most States have much more 55 mph nonfreeway mileage than 55 or 65 mph freeway mileage. Thus, most States will have more monitoring stations on nonfreeways than on freeways.

Three tables have been developed to assist the States in determining sample sizes. The tables were derived using speed data from previous surveys. Estimates of sampling errors were calculated for the 55 mph freeway and 55 mph nonfreeway monitoring categories. Since no data were available for 65 mph freeways, the assumption was made that the variability of speeds on this highway category were similar to the variability of speeds on the 55 mph freeways. An estimate of overall variance and percent of vehicles exceeding 55 mph were calculated using weighted averaging across the States examined. For the 55 mph freeways, the percent of vehicles exceeding 55 mph averaged 70.9 percent with an estimated population standard deviation of 21 percent. For the 55 mph nonfreeways, the percent of vehicles exceeding 55 mph averaged 51.8 percent with an estimated population standard deviation of 40 percent.

Using these figures the sample size tables were created. The tables show sample sizes for each highway category as a function of the required precision and the number of road segments in each category. The sample sizes given in each table at the 7.5 percent level of precision are the minimum necessary in each category to meet the precision requirement of these guidelines. Table 1 should be used to determine the number of monitoring stations for freeways with 55 mph speed limits. For example, in a State with 120 freeway road segments at 55 mph, seven monitoring stations would be required.

TABLE 1.—FREEWAYS WITH 55 MPH SPEED LIMIT

Number of road segments	Number of highway segments to be sampled*
1	1
2–3	2
4–6	3
7–10	4
11–18	5
19–36	6
37–141	7
142 or more	8

*Sample sizes are based on one standard error of 7.5 percent and the percentage of vehicles exceeding 55 equal to 70.9 percent.

Similarly, Table 2 should be used for determining the number of monitoring stations for 65 mph freeways and Table 3 for 55 mph nonfreeways. Continuing the example, if this State had 60 segments of 65 mph freeways then a sample of seven monitoring stations would be required on these roads. If the State had 1000 segments of 55 mph nonfreeways then 28 monitoring stations would be required on these roads.

TABLE 2.—FREEWAYS WITH 65 MPH SPEED LIMIT

Number of road segments	Number of highway segments to be sampled*
1	1
2–3	2
4–6	3
7–10	4

TABLE 2.—FREEWAYS WITH 65 MPH SPEED LIMIT—Continued

Number of road segments	Number of highway segments to be sampled*
11–18	5
19–36	6
37–141	7
142 or more	8

*Sample sizes are based on data from 55 mph freeways and the assumption that the two roadway categories are similar in variation.

TABLE 3.—NONFREEWAYS WITH 55 MPH SPEED LIMIT

Number of road segments	Number of highway segments to be sampled*
1	1
2	2
3	3
4–5	4
6	5
7–8	6
9–10	7
11–12	8
13–14	9
15–16	10
17–19	11
20–22	12
23–25	13
26–29	14
30–34	15
35–39	16
40–45	17
46–53	18
54–62	19
63–74	20
75–88	21
89–109	22
110–137	23
138–180	24
181–253	25
254–406	26
407–950	27
951 or more	28

*Sample sizes are based on one standard error of 7.5 percent and the percentage of vehicles exceeding 55 mph equal to 51.8 percent.

If the total number of monitoring stations required by the above methodology is more than 30 percent higher than the maximum number of stations used on roads in the State's existing speed monitoring program, then the State can petition the Division Administrator for a reduced number of stations. The reduction in stations can be to a level no lower than 30 percent higher than the maximum number of stations under the old program. However, there can be no reduction in the number of stations required on freeways posted at 65 mph. Therefore, any reduction in the number of stations must come from the highway categories freeways posted at 55 mph and nonfreeways posted at 55 mph.

In lieu of the sample size tables, States can use their own data from past speed surveys to calculate sample sizes for each of the highway categories. However, the State must document in their sampling plan that their level of precision meets the precision requirements in each highway category. For 55 mph freeways and 65 mph freeways, a relative error of 11 percent for the total percent of vehicles exceeding the speed limit is required. For 55 mph nonfreeways, a 14 percent relative error for the total percent of vehicles exceeding the speed limit is required. Relative error is defined as one standard error divided by the estimate of the percent of vehicles exceeding the speed limit. For example, for 55 mph freeways, the percent of vehicles exceeding the speed limit was 71 percent. One standard error was estimated at 7.5 percent. The relative error would be calculated as:

Relative Error=Standard Error/Estimate,
Relative Error=7.5/71=11 percent.

If a State wishes to have a higher level of statistical reliability than a 7.5 percent level of precision, then the State can modify these monitoring requirements. The State can add monitoring stations or increase the number of days per year during which data are collected. The FHWA Division Administrator must accept the State's proposal before it can be implemented.

Selection of Sample Sizes

It is not feasible to select all new monitoring stations. Therefore, existing stations should be used to the maximum extent possible. States may either have too many or too few existing monitoring stations in each highway category. For example, many States may not have a sufficient number of stations on 65 mph freeways. Under the old monitoring program, all NMSL highways were divided into segments, an average of about five miles long, and monitoring stations were randomly selected from these. A similar process will be used under the new monitoring program.

- *Too few monitoring stations within a highway category:* If more stations are needed, road segments should be chosen at random from all road segments in that category that currently do not have a monitoring station.
- *Too many monitoring stations within a highway category:* If a State has more stations in a monitoring category than required in the previous section, the State can choose to eliminate stations. However, the stations to be eliminated must be selected at random from the existing stations.

A random selection procedure for either alternative is provided in Table 4. For all new stations one of the two directions of traffic should also be chosen at random. On existing monitoring stations, monitoring should take place in the same direction as under the old program. As under the old program, monitoring will take place on all lanes of the highway segment chosen as the monitoring station.

Each year, the number of monitoring stations should be reviewed to determine if any changes are required. Events that could precipitate changing the number of monitoring stations include:

- An increase or decrease in the number of HPMS sample sections in a highway category;
- The introduction or elimination of a 65 mph maximum speed limit in a State; and
- A significant increase or decrease in the amount of 55 mph highways.

Number and Length of Sessions

Each monitoring station will be monitored four times a year, once in each quarter. This is necessary to account for seasonal variation in traffic.

A 24-hour monitoring period will be used to account for varying hourly traffic conditions and to facilitate the scheduling of data collection. It is expected that the number of vehicles counted during the 24-hour monitoring period will vary.

Data Collection

This section summarizes guidelines for data collection in the speed monitoring program. It is a brief outline of basic procedures that should be expanded on by each State in developing its speed monitoring program.

Organization

The State program manager should be responsible for selection of monitoring sites, determining location of monitoring stations, obtaining necessary speed measurement equipment, scheduling equipment installation, scheduling data collection, managing data processing and analysis, and submission of required data and certifications. For the field operation, a detailed schedule should be developed that includes as a minimum:

- Selection and location of stations;
- Date of permanent station installation;
- Date/time of equipment setup at each location;
- Date/time of equipment takedown at each location;
- Travel time;
- Makeup time for equipment malfunction; bad weather, etc; and
- Transfer of recorded data to program manager.

This schedule should be as comprehensive as possible so that each member of the data collection team knows what work is expected. This schedule should be coordinated with district or local engineers, and law enforcement officials so that data collection does not occur during construction/maintenance activities and periods of intensive enforcement that might affect vehicle speeds.

Selection and Location of Stations

Selection and location of stations should be as described in the Speed Sampling and Analysis Plan. Once sites are selected, it must be determined which sites will be permanent monitoring stations and which ones temporary. Speed monitoring has been underway since the mid 1970s and is currently planned to extend at least until FY 1997. Thus, it may be cost effective to install permanent monitoring stations.

Installation of equipment at monitoring Stations—Segments which will have permanent monitoring stations should be surveyed to determine the optimum place for the installation of the monitoring station. The location of the monitoring station should be representative of typical conditions on the section. Situations to be avoided are:

- Near or at a sharp horizontal curve with a speed advisory plate less than the posted speed limit
- Steep grades (i.e. greater than 4%)
- Within 1000 feet of a significant at-grade intersection
- Within 1000 feet of an exit ramp on entrance ramp of an interchange
- Anywhere within the interchange (defined as the distance from the beginning of a deceleration lane through the end of an acceleration lane)
- Where other unusual features exist that might influence vehicle speeds (e.g. a narrow bridge or railroad crossing)

Temporary monitoring stations should be subjected to the same criteria as permanent stations. In this case, the field crew should drive the section (a minimum of twice) to become familiar with its characteristics and to identify any unusual conditions, in addition to those mentioned above, and any other criteria developed by the program manager. The criteria established for locating the monitoring station should be carefully followed since failure to do so may yield in speed data that could result in non-compliance due to data error and/or non-comparability.

Equipment Installation and Data Collection

Two common categories of detectors are available to be placed on the roadways for speed monitoring. The first is the standard loop detector. Loop detectors are permanently placed in the pavement. The second category includes temporary sensors (e.g., tape switch, cable sensors) and pneumatic tubes. These sensors must be placed on the pavement just before the start of each speed monitoring station. Extreme care is needed in placing the cables on the pavement since all traffic in one direction must be stopped to place the temporary sensors on the highway. The sensors are attached to the pavement by glue, tape, or both. There may be some problems installing the sensors during wet or cool weather. Both types of sensors perform well when properly placed on the highway. However, under heavy traffic conditions temporary sensors may be damaged.

Data recorders can be placed at a distance from the sensors where the recorder can be secured. The deployment of the data recorder and the temporary sensors can take up to four hours depending on traffic and weather conditions. A shorter deployment period would be needed if permanent loop detectors were already in place.

Review Highway Conditions

Prior to going to the monitoring site, the State should check with district and local engineers and local enforcement officials to determine if any maintenance/construction and/or enforcement activities are present or planned for the site. When the State personnel arrive at the designated site, they should determine the suitability of conditions at the site. Speed monitoring should not be attempted under the following conditions:

- Extreme weather conditions expected during the next 24-hour period (severe rainstorms, heavy snow accumulating or icy roadway);
- Presence of non-routine enforcement activity; or
- Construction/maintenance activity or other disruptive activities which affect the speed of vehicles passing the site.

If any of these conditions exist, the field personnel should immediately contact the program manager or his/her representative so that the session can be rescheduled.

1. Document Speed Monitoring Station. The field data collection crew document the exact location, equipment setup, and equipment used. The following information should be included in station documentation:

—Location of site;
—Station number;
—Session number;
—Equipment used;
—Field data collection crew names;
—Time of arrival at site;
—Sketch of site indicating
a. Location of speed monitoring equipment (sensor, recorder, etc.)
b. Direction of traffic monitored
c. Geometrics of highway (lane, width, shoulder width, etc.), and
d. Other physical features;
—Calibration of equipment checklist completed (check manufacturer's literature); and
—Time equipment is turned on.

Each manufacturer's recommended calibration procedures should be completed before the monitoring session begins. Any discrepancy should be reported to the program manager. No measurement should be taken with uncalibrated equipment.

2. End of Session Procedures. When the crew first arrives, they should determine if the equipment is still operating and run all calibration and data checks. Any temporary speed monitoring equipment and all data recorders should be removed from the road and stored.

Scheduling the Data Collection

Data collection must account for variations in speed by the hour of the day, day of the week, and time of the year. To account for the hourly variation, all data collection sessions should be 24 hours long. At all monitoring stations, one session of data will be obtained each quarter. All sessions should be evenly distributed by day of week. Data should not be collected on any monitoring station more than once on any day of the week in any one year.

Procedures for Obtaining and Recording Data

Data must be collected at each monitoring station to allow for the calculation of the following statistics:

- At monitoring stations on highways posted at 55 mph:

—Percent of vehicles exceeding 55 mph,
—Percent of vehicles exceeding 60 mph,
—Percent of vehicles exceeding 65 mph,
—Percent of vehicles exceeding 70 mph, and
—Percent of vehicles exceeding 75 mph.

- At monitoring stations on freeways posted at 65 mph:

—Percent of vehicles exceeding 65 mph,
—Percent of vehicles exceeding 70 mph,
—Percent of vehicles exceeding 75 mph,
—Percent of vehicles exceeding 80 mph, and
—Percent of vehicles exceeding 85 mph.

- The number of vehicles observed.

To determine the above statistics, each monitoring station must record a count of all vehicles and the speed of all vehicles that pass by the monitoring station in each 24-hour monitoring period.

Information on more categories of "percent exceeding" than is specified in the compliance formula is required to allow for the single adjustment to take into account potential error sources and to gather information on percent exceeding speed limit.

Data Analysis and Sample Design Evaluation

This section describes the procedures to be used in analyzing speed monitoring data. The main objective is to develop standard procedures applicable to all States. This section is divided into two parts:

- Computation of statistics related to the percentage of vehicles exceeding 55 mph, 60 mph, 65 mph, 70 mph, 75 mph, 80 mph, and 85 mph.
- Calculation of Compliance Score

Computation of Statistics

For monitoring stations on freeways and nonfreeways posted at 55 mph, it is necessary to compute the percentage of vehicles exceeding 55 mph, 60 mph, 65 mph, 70 mph, and 75 mph. For monitoring stations on freeways posted at 65 mph, it is necessary to compute the percentage of vehicles exceeding 65 mph, 70 mph, 75 mph, 80 mph, and 85 mph.

The data in each category is then adjusted to account for the various errors inherent in the process. As under the old program (FY 1981 to FY 1993), a single adjustment will be used to take into account the potential error sources. The single adjustment formula is:

$$H=\frac{(A+B)}{2}$$

where:

A=the percent of vehicles exceeding x mph
B=the percent of vehicles exceeding x+5 mph, and
H=The percent exceeding x mph after adjustment

The adjusted percentages are then inserted into the compliance formula and the State's compliance score is calculated. The following examples demonstrates these calculations.

Example

Part 1—Percent Exceeding at One Station

The first two parts presents a computation of statistics on the percentage of vehicles exceeding 70 mph on freeways posted at 55 mph. The same procedure is to be used to calculate the percentage of vehicles exceeding 55 mph, 60 mph, 65 mph, 70 mph, and 75 mph on highways posted at 55 mph, and the percent of vehicles exceeding 65 mph, 70 mph, 75 mph, 80 mph, and 85 mph on freeways posted at 65 mph.

For example, a monitoring station on a 65 mph highway, the proportion of vehicles exceeding 70 mph is computed by dividing the number of vehicles traveling in excess of 70 mph by the total number of vehicles measured during the four monitoring sessions.

The percentage of vehicles exceeding 70 mph is derived simply by multiplying the proportion by 100. For example:

Location number	Number of vehicles exceeding 70 mph	Total vehicles measured
1	2,936	9,786
2	3,473	11,875
3	3,616	12,429
4	3,229	11,064
Total	13,254	45,154

Percentage Exceeding 70 mph for Location Number 1:

$$100\left(\frac{13,254}{45,154}\right)=29.4$$

Part 2—Percent Exceeding for One Highway Category

The percentage exceeding 70 mph for each highway category is derived by summing the number of vehicles exceeding 70 mph for all the monitoring stations within the highway category, dividing this sum by the total number of vehicles measured in the highway category, and multiplying the result by 100.

FREEWAYS POSTED AT 65 MPH

Location number	Number of vehicles exceeding 70 mph	Total vehicles measured
1	13,254	45,154
2	15,519	56,549
3	8,410	35,831
4	18,374	61,143
5	14,291	48,784
Total	69,848	247,461

Percentage Exceeding 70 mph for Freeways Posted at 65 mph:

$$x=\frac{(38.0+19.5)}{2}$$

Part 3—Single Adjustment

This adjustment is to be taken for each of the nine percentages exceeding that go into base compliance score. Using the following percentages:

38.5 percent exceeding 60 mph on 55 mph freeways
19.0 percent exceeding 65 mph on 55 mph freeways

calculate the adjusted percent exceeding 60 mph on 55 mph freeways:

$$x=\frac{(38.0+19.5)}{2}$$

x=28.8, the adjusted percent exceeding 60 mph on 55 mph freeways.

Part 4—Calculation of Compliance Score

Assume a State with all three highway categories has collected the following data:

38.5 percent exceeding 60 mph on 55 mph freeways
19.0 percent exceeding 65 mph on 55 mph freeways
9.1 percent exceeding 70 mph on 55 mph freeways
1.5 percent exceeding 75 mph on 55 mph freeways
28.2 percent exceeding 70 mph on 65 mph freeways
10.2 percent exceeding 75 mph on 65 mph freeways
3.3 percent exceeding 80 mph on 65 mph freeways
0.9 percent exceeding 85 mph on 65 mph freeways
27.0 percent exceeding 60 mph on 55 mph nonfreeways
12.5 percent exceeding 65 mph on 55 mph nonfreeways
4.9 percent exceeding 70 mph on 55 mph nonfreeways
0.5 percent exceeding 75 mph on 55 mph nonfreeways

Applying the single adjustment to these figures yield:

28.8 percent exceeding 60 mph on 55 mph freeways
14.1 percent exceeding 65 mph on 55 mph freeways
5.3 percent exceeding 70 mph on 55 mph freeways
19.2 percent exceeding 70 mph on 65 mph freeways
6.8 percent exceeding 75 mph on 65 mph freeways
2.1 percent exceeding 80 mph on 65 mph freeways
19.8 percent exceeding 60 mph on 55 mph nonfreeways
8.7 percent exceeding 65 mph on 55 mph nonfreeways
2.7 percent exceeding 70 mph on 55 mph nonfreeways

These adjusted percent exceeding figures are used to calculate the compliance score as follows:

Compliance Score=
(1.055×28.8 percent exceeding 60 mph on 55 mph freeways)
+(1.115×14.1 percent exceeding 65 mph on 55 mph freeways)
+(1.180×5.3 percent exceeding 70 mph on 55 mph freeways)
+(1.354×19.2 percent exceeding 70 mph on 65 mph freeways)
+(1.434×6.8 percent exceeding 75 mph on 65 mph freeways)
+(1.520×2.1 percent exceeding 80 mph on 65 mph freeways)
+(2.659×19.8 percent exceeding 60 mph on 55 mph nonfreeways)
+(2.811×8.7 percent exceeding 65 mph on 55 mph nonfreeways)
+(2.974×2.7 percent exceeding 70 mph on 55 mph nonfreeways)

This calculation, without the verbiage, is:

Compliance score=
(1.055×28.8)+(1.115×14.1)+(1.180×5.3)
+(1.354×19.2)+(1.432×6.8)+(1.520×2.1)
+(2.659×19.8)+(2.811×8.7)+(2.974×2.7)

The sum of this multiplication=

30.87+15.72+6.25
+26.00+9.75+3.19
+52.65+24.46+8.03

The final score=176.9

Reporting Results

Summary speed statistics from each State's monitoring program are required to be submitted to the FHWA as part of the annual certification of NMSL enforcement. In addition, the current practice of submitting quarterly reports showing results of speed monitoring during the previous 3-month period will continue. The FHWA Speed Summary Report form is to be used for reporting both annual and quarterly speed summary data. The compliance score is to be calculated on the Speed Summary Report form. In the annual certification, the following data must be reported:

• For freeways and nonfreeways posted at 55 mph:

—Percent of vehicles exceeding 55 mph,
—Percent of vehicles exceeding 60 mph,
—Percent of vehicles exceeding 65 mph,
—Percent of vehicles exceeding 70 mph, and
—Percent of vehicles exceeding 75 mph.

• For freeways posted at 65 mph:

—Percent of vehicles exceeding 65 mph,
—Percent of vehicles exceeding 70 mph,
—Percent of vehicles exceeding 75 mph,
—Percent of vehicles exceeding 80 mph, and
—Percent of vehicles exceeding 85 mph.

• In addition to the above, the following must be determined for each highway category:

—Highway mileage posted at the NMSL,
—Number of vehicles observed,
—Number of monitoring locations, and
—Number of monitoring sessions.

Data on freeways posted at 55 mph and nonfreeways posted at 55 mph must be reported separately.

The data must be reported to the following precision:

• Number of Miles—Tenth of a Mile.
• Number of Vehicles Observed—Exact Number of Vehicles.
• Number of Locations—Exact Number of Locations.
• Number of Sessions—Exact Number of Sessions.
• Percent Exceeding 55 mph—Tenth of a Percent.
• Percent Exceeding 60 mph—Tenth of a Percent.
• Percent Exceeding 65 mph—Tenth of a Percent.
• Percent Exceeding 70 mph—Tenth of a Percent.
• Percent Exceeding 75 mph—Tenth of a Percent.
• Percent Exceeding 80 mph—Tenth of a Percent.
• Percent Exceeding 85 mph—Tenth of a Percent.
• Compliance Score—1 Decimal Place.

In addition, a distribution of vehicle speeds shall be reported for each highway category. The following categories shall be used in the reporting of the distribution of vehicle speeds:

• Number of vehicles at 30 mph and below;
• Number of vehicles from 31 to 35 mph;
• Number of vehicles from 36 to 40 mph;
• Number of vehicles from 41 to 45 mph;
• Number of vehicles from 46 to 50 mph;
• Number of vehicles from 51 to 55 mph;
• Number of vehicles from 56 to 60 mph;
• Number of vehicles from 61 to 65 mph;
• Number of vehicles from 66 to 70 mph;
• Number of vehicles from 71 to 75 mph;
• Number of vehicles from 76 to 80 mph;
• Number of vehicles from 81 to 85 mph; and,
• Number of vehicles at 86 mph and above.

These data should be reported on a formatted computer disk which will be provided to each State by the Division office.

SPEED SUMMARY REPORT

[Send quarterly report to office of Highway Information Management HPM—30]
[Send annual report to Office of Highway Safety HHS—32]
[Quarterly report annual report (Circle One)—quarter of year_____state_____]

Highway category	No. of miles	No. of vehicles observed	No. of locations	No. of sessions	Percent exceeding						
					55 mph	60 mph	66 mph	70 mph	75 mph	80 mph	85 mph
Freeways posted at 55 mph	____.__	_____	_____	_____	____.__	____.__	____.__	____.__	____.__	XXXX	XXXX
Freeways posted at 65 mph	____.__	_____	_____	_____	XXXX	XXXX	____.__	____.__	____.__	____.__	____.__
Non-freeways posted at 55 mph	____.__	_____	_____	_____	____.__	____.__	____.__	____.__	____.__	XXXX	XXXX

XXXX—Data not to be reported

CALCULATION OF COMPLIANCE SCORE

[Send annual report to Office of Highway Safety HHS-32]

[Annual Report—Year _____ State _____]

Highway category	Adjusted percent exceeding				
	60 mph	65 mph	70 mph	75 mph	80 mph
Freeways Posted at 55 MPH	_____.___	_____.___	_____.___	XXXX	XXXX
Freeways posted at 65 MPH	XXXX	XXXX	_____.___	_____.___	_____.___
Non-freeways posted at 55 MPH	_____.___	_____.___	_____.___	XXXX	XXXX

XXXXX—Data not to be reported

Computation of Compliance Score:

Percent Exceeding 60 mph on 55 mph Freeways: _____.___times 1.055=_____.___

Percent Exceeding 65 mph on 55 mph Freeways: _____.___times 1.115=_____.___

Percent Exceeding 70 mph on 55 mph Freeways: _____.___times 1.180=_____.___

Percent Exceeding 70 mph on 65 mph Freeways: _____.___times 1.354=_____.___

Percent Exceeding 75 mph on 65 mph Freeways: _____.___times 1.434=_____.___

Percent Exceeding 80 mph on 65 mph Freeways: _____.___times 1.520=_____.___

Percent Exceeding 60 mph on 55 mph Non-Freeways: _____.___times 2.659=_____.___

Percent Exceeding 65 mph on 55 mph Non-Freeways: _____.___times 2.811=_____.___

Percent Exceeding 70 mph on 55 mph Non-Freeways: _____.___times 3.974=_____.___

Adjusted Compliance Score (sum of the scores for the nine highway categories) _____.___

DISTRIBUTION OF VEHICLE SPEEDS

[Send quarterly report to Office of Highway Information Statistics HPM-30, send annual report to Office of Highway Safety HHS-32]

[Quarterly Report Annual Report (circle one)—Quarter or Year _____ State _____]

Recorded speeds	Number of vehicles measured							
	Freeways posted at 55 mph				Freeways Posted at 65 mph		Non-Freeways Posted at 55 mph	
	RI	RO	UI	UO	RI	RO	Rural	Urban
30 MPH and Below.								
31 to 35 MPH.								
36 to 40 MPH.								
41 to 45 MPH.								
46 to 50 MPH.								
51 to 55 MPH.								
56 to 60 MPH.								
61 to 65 MPH.								
66 to 70 MPH.								
71 to 75 MPH.								
76 to 80 MPH.								
81 to 85 MPH.								
86 MPH and Above.								

RI—Rural Interstate, RO—Rural Other, UI—Urban Interstate, UO—Urban Other.

Table 4

Table of Random Numbers

This table contains 2800 five-digit numbers organized in 200 rows by 14 columns. Numbers from this table may be selected by any random procedure. The procedure presented here consists of five steps:

1. Decide upon some arbitrary scheme of selecting the starting point (row, column) from the table. One method is to ask a person to select a number between 1 and 14. This will be the column number. Then ask a second person to select a number between 1 and 200. This will be the row number. You have now selected a point (number) to start in the table.

2. Assign numbers 1 to 99,999 to all items (highway sections within a highway category) in the population from which the random selection will be made.

3. Decide upon some arbitrary scheme of selecting positional digits for each number chosen. If 500 is the highest sequence number used, you may decide to use the first, third, and fourth digit of each entry selected, and as a consequence a three-digit number is created from each entry choice.

4. If the number selected from the random number table is less than the highest sequence number, one item has been selected from your population. If a number selected is greater than the highest sequence number or is a repeat of a number already selected, it should be passed over and the next number selected used. This process should continue until the desired number of random numbers have been selected.

5. A method should be designed to progress through the random number table from the starting point. Any method can be used, but you should decide before the

random numbers are selected. One method is to read down the column as far as you can. Then select one of the columns on either side and read up the next column. Continue this process until the desired number of random numbers has been selected.

The following is an example that puts this procedure into practice.

Example

The problem is to randomly select 10 highway segments to be monitored from a population of 500 segments.

• Select starting point in the Random Number Table.

a. Person one selected a number between 1 and 14, 7.

b. Person two selected a number between 1 and 200, 3.

• Therefore, the starting point selected is row 3, column 7, random number 15179.

• Assign number to highway segment population 1 to 500.

• Selection of Position of Digits.

a. Since the highest sequence number is 500, three digits should be selected.

b. The first three digits from the random number table will be used to construct the random number.

• The highest number that can be used is 500, therefore, a number greater than 500 will be passed over. If the number 000 represents 1,000, and if it is encountered it will not be used as it is greater than 500.

• If a number appears more than once in a selection, it will not be selected the second time (or third time, fourth time, etc.).

• Selection of Random Numbers

a. The progress through the random number table will be down the columns selected and up one of the columns on either side of the column used before.

b. Locate starting point row 3, column 7.

c. The first randomly selected number using the position of the digits in step 3 is 151. The next number is 394 (row 4, column 7). The next number, 604 (row 5, column 7), will not be used as it is greater than 500. Continue down the column selecting only numbers that are less than or equal to 500.

This process continues until all ten numbers have been selected. The result is the ten randomly selected highway segments listed below:

151, 394, 186, 388, 363, 475, 185, 458, 328, and 379.

RANDOM NUMBER TABLE

Line/col.	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
1	10480	15011	01536	02011	81647	91646	69179	14194	62590	36207	20969	99570	91291	90700
2	22368	46573	25595	85393	30995	89198	27982	53402	93965	34095	52666	19174	39615	99505
3	24130	48360	22527	97265	76393	64809	15179	24830	49340	32081	30680	19655	63348	58629
4	42167	93093	06243	61680	07856	16376	39440	53537	71341	57004	00849	74917	97758	16379
5	37570	39975	81837	16656	06121	91782	60468	81305	49684	60672	14110	06927	01263	54613
6	77921	06907	11008	42751	27756	53498	18602	70659	90655	15053	21916	81825	44394	42880
7	99562	72905	56420	69994	98872	31016	71194	18738	44013	48840	63213	21069	10634	12952
8	96301	91977	05463	07972	18876	20922	94595	56869	69014	60045	18425	84903	42508	32307
9	89579	14342	63661	10281	17453	18103	57740	84378	25331	12566	58678	44947	05585	56941
10	85475	36857	43342	53988	53060	50533	38867	62300	08158	17983	16439	11458	18593	64952
11	28918	69578	88231	33276	70997	79936	56865	05859	90106	31595	01547	85590	91610	78188
12	63553	40961	48235	03427	49626	69445	18663	72695	52180	20847	12234	90511	33703	90322
13	09429	93969	52636	92737	88974	33488	36320	17617	30015	08272	84115	27156	30613	74952
14	10365	61129	87529	85689	48237	52267	67689	93394	01511	26358	85104	20285	29975	89868
15	07119	97336	71048	08178	77233	13916	47564	81056	97735	85977	29372	74461	28551	90707
16	51085	12765	51821	51259	77452	16308	60756	92144	49442	53900	70960	63990	75601	40719
17	02368	21382	52404	60268	89368	19885	55322	44819	01188	65255	64835	44919	05944	55157
18	01011	54092	33362	94904	31273	04146	18594	29852	71585	85030	51132	01915	92747	64951
19	52162	53916	46369	58586	23216	14513	83149	98736	23495	64350	94738	17752	35156	35749
20	07056	97628	33787	09998	42698	06691	76988	13602	51851	46104	88916	19509	25625	58104
21	48663	91245	85828	14346	09172	30168	90229	04734	59193	22178	30421	61666	99904	32812
22	54164	58492	22421	74103	47070	25306	76468	26384	58151	06646	21524	15227	96909	44592
23	32639	32363	05597	24200	13363	38005	94342	28728	35806	06912	17012	64161	18296	22851
24	29334	27001	87637	87308	58731	00256	45834	15398	46557	41135	10367	07684	36189	18519
25	02488	33062	28834	07351	19731	92420	60952	61280	50001	67658	32586	86679	50720	94953
26	81525	72295	04839	96423	24878	82651	66566	14778	76797	14780	13300	87074	79666	95725
27	29676	20591	68086	26432	46901	20849	89768	81536	86645	12659	92259	57102	80428	25280
28	00742	57392	39064	66432	84673	40027	32832	61362	98947	96067	64760	64584	96096	98253
29	05366	04213	25669	26422	44407	44048	37937	63904	45766	66134	75470	66520	34693	90449
30	91921	26418	64117	94305	26766	25940	39972	22209	71500	64568	91402	42416	07844	69618
31	00582	04711	87917	77341	42206	35126	74087	99547	81817	42607	43808	76655	62028	78630
32	00725	69884	62797	56170	86324	88072	76222	36086	84637	93161	76038	65855	77919	88006
33	69011	65797	95876	55293	18988	27354	26575	08625	40801	59920	29841	80150	12777	48501
34	25976	57948	29888	88604	67917	48708	18912	82271	65424	69774	33611	54262	85963	03547
35	09763	83473	73577	12908	30883	18317	28290	35797	05998	41688	34952	37888	38917	88050
36	91567	42595	27958	30134	04024	86385	29880	99730	55536	84855	29080	09250	79656	73211
37	17955	56349	90999	49127	20044	59931	06115	20542	18059	02008	73708	83517	36103	42791
38	46503	18584	18845	49618	02304	51038	20655	58727	28168	15475	56942	53389	20562	87338
39	92157	89634	94824	78171	84610	82834	09922	25417	44137	48413	25555	21246	35509	20468
40	14577	62765	35605	81263	39667	47358	56873	56307	61607	49518	89656	20103	77490	18062
41	98427	07523	33362	64270	01638	92477	66969	98420	04880	45585	46505	04102	48880	45769
42	34914	63976	88720	82765	34476	17032	87589	40836	32427	70002	70663	88863	77775	69348
43	70060	28277	39475	46473	23219	53416	94970	25832	69975	94884	19661	72828	00102	66794
44	53976	54914	06990	67245	68350	82948	11398	42878	80287	88267	47363	46634	06541	97809
45	76072	29515	40980	07391	58745	25774	22987	80059	39911	96189	41151	14222	60697	59583
46	90725	52210	83974	29992	65831	38857	50490	83765	55657	14361	31720	57375	56228	41546
47	64364	67412	33339	31926	14883	24413	59744	92351	97473	89286	35931	04110	23726	51900
48	08962	00358	31662	25388	61642	34072	81240	35648	56891	69352	48373	45578	78547	81788
49	95012	68379	93526	70765	10593	04542	76463	54328	02349	17247	28865	14777	62730	92277
50	15664	10493	20492	38301	91132	21999	58516	81652	27195	48223	46751	22923	32261	85653
51	16408	81899	04153	53381	79401	21438	83035	92350	36693	31238	59649	91754	72772	02339
52	18629	81953	05520	91962	04739	13092	97662	24822	94730	06496	35090	04822	86772	98289
53	73115	35101	47498	87637	99016	71060	88824	71013	18735	20286	23153	72924	35165	43040
54	57491	16703	23167	49323	45021	33132	12544	41035	80780	45393	44812	12515	89831	91202
55	30405	83946	23792	14422	15059	45799	22716	19782	09983	74353	68608	30429	70735	25499
56	16631	35006	85900	98275	32388	52390	16815	69298	82732	38480	73817	32523	41916	44437
57	96773	20206	42559	78985	05300	22164	24369	54224	35083	19687	11052	91491	60383	19746
58	38935	64202	14349	82674	66523	44133	00697	35552	35970	19124	63318	29686	03387	59846
59	31624	76384	17403	53363	44167	64486	64758	75366	76554	31601	12614	33072	60332	92325

RANDOM NUMBER TABLE—Continued

Line/col.	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
60	78919	19474	23632	27889	47914	02584	37680	20801	72152	39339	34806	08930	85001	87820
61	03931	33309	57047	74211	63445	17361	62825	39908	05607	91284	68833	25570	38818	46920
62	74426	33278	43972	10119	89917	15665	52872	73823	73144	88662	88970	74492	51805	99378
63	09066	00903	20795	95452	92648	45454	09552	88815	16553	51125	79375	97596	16296	66092
64	42238	12426	87025	14267	20979	04508	64535	31355	86064	29472	47689	05974	52468	16834
65	16153	08002	26504	41744	81959	65642	74240	56302	00033	67107	77510	70625	28725	34191
66	21457	40742	29820	96783	29400	21840	15035	34537	33310	06116	95240	15957	16572	06004
67	21581	57802	02050	89728	17937	37621	47075	42080	97403	48626	68995	43805	33386	21597
68	55612	78095	83197	33732	05810	24813	86902	60397	16489	03264	88525	42786	05269	92532
69	44657	66999	99324	51281	84463	60563	79312	93454	68876	25471	93911	25650	12682	73572
70	91340	84979	46949	81973	37949	61023	43997	15263	80644	43942	89203	71795	99533	50501
71	91227	21199	31935	27022	84067	05462	35216	14486	29891	68607	41867	14951	91696	85065
72	50001	38140	66321	19924	72163	09538	12151	06878	91903	18749	34405	56087	82790	70925
73	65390	05224	72958	28609	81406	39147	25549	48542	42627	45233	57202	94617	23772	07896
74	27504	96131	83944	41575	10573	08619	64482	73923	36152	05184	94142	25299	84387	34925
75	37169	94851	39117	89632	00959	16487	65536	49071	39782	17095	02330	74301	00275	48280
76	11508	70225	51111	38351	19444	66499	71945	05422	13442	78675	84081	66938	93654	59894
77	37449	30362	06694	54690	04052	53115	62757	95348	78662	11163	81651	50245	34971	52924
78	46515	70331	85922	38329	57015	15765	97161	17869	45349	61796	66345	81073	49106	79860
79	30986	81223	42416	58353	21532	30502	32305	86482	05174	07901	54339	58861	74818	46942
80	63798	64995	46583	09765	44160	78128	83991	42865	92520	83531	80377	35909	81250	54238
81	82486	84846	99254	67632	43218	50076	21361	64816	51202	88124	41870	52689	51275	83556
82	21885	32906	92431	09060	64297	51674	64126	62570	26123	05155	59194	52799	28225	85762
83	60336	98782	07408	53458	13564	59089	26445	29789	82505	41001	12535	12133	14645	23541
84	43937	46891	24010	25560	86355	33941	25786	54990	71899	15475	95434	98227	21824	19585
85	97656	63175	89303	16275	07100	92063	21942	18611	43748	20203	18534	03862	78095	50136
86	03299	01221	05418	38982	55758	92237	26759	86367	21216	98442	08303	56613	91511	75928
87	79626	06486	03574	17668	07785	76020	79924	25651	83325	88428	85076	72811	22717	50585
88	85636	68335	47539	03129	65651	11977	02510	26113	99447	68645	34327	15152	55230	93448
89	18039	14367	61337	06177	12143	46609	32989	74014	64708	00533	35398	58408	13261	47908
90	08362	15656	60627	36478	65648	16764	53412	09013	07832	41574	17639	82163	60859	75567
91	79556	29068	04142	16268	15387	12856	66227	38358	22478	73373	88732	09443	82558	05250
92	92608	82674	27072	32534	17075	27698	98204	63863	11951	34648	88022	56148	34925	57031
93	23982	25835	40055	67006	12293	02753	14827	22235	35071	99704	37543	11601	35503	85171
94	09915	96306	05908	97901	28395	14186	00821	80703	70426	75647	76310	88717	37890	40129
95	50937	33300	26695	62247	69927	76123	50842	43834	86654	70959	79725	93872	28117	19233
96	42488	78077	69882	61657	34136	79180	97526	43092	04098	73571	80799	76536	71255	64239
97	46764	86273	63003	93017	31204	36692	40202	35275	57306	55543	53203	18098	47625	88684
98	03237	45430	55417	63282	90816	17349	88298	90183	36600	78406	06216	95787	42579	90730
99	86591	81482	52667	61583	14972	90053	89534	76036	49199	43716	97548	04379	46370	28672
100	38534	01715	94964	87288	65680	43772	39560	12918	86537	62738	19636	51132	25739	56947
101	13284	16834	74151	92027	24670	36665	00770	22878	02179	51602	07270	76517	97275	45960
102	21224	00370	30420	03883	96648	89428	41583	17564	27395	63904	41548	49197	82277	24120
103	99052	47887	81085	64933	66279	80432	65793	83287	34142	13241	30590	97760	35848	91983
104	00199	50993	98603	38452	87890	94624	69721	57484	67501	77638	44331	11257	71131	11059
105	60578	06483	28733	37867	07936	98710	98539	27186	31237	80612	44488	97819	70401	95419
106	92140	18312	17441	01929	18163	69201	31211	54288	39296	37318	65724	90401	79017	62077
107	97458	14229	12063	59611	32249	90466	33216	19358	02591	54263	88449	01912	07436	50813
108	35249	38646	34475	72417	60514	69257	12489	51924	86871	92446	36607	11458	30440	52639
109	38980	46600	11759	11900	46743	27860	77940	39298	97838	95145	32378	68038	89351	37005
110	10750	52745	38749	87365	58959	53731	89295	59062	39404	13198	59960	70408	29812	83126
111	36247	27850	73958	20673	37800	63835	71051	84724	52492	22342	78071	17456	96104	18327
112	70994	66986	99744	72438	01174	42159	11392	20724	54322	36923	70009	23233	65438	59685
113	99638	94702	11463	18148	81386	80431	90628	52506	02016	85151	88598	47821	00265	82525
114	72055	15774	43857	99805	10419	76939	25993	03544	21560	83471	43989	90770	22965	44247
115	24038	65541	85788	55835	38835	59399	13790	35112	01324	39520	76210	22467	83275	32286
116	74976	14631	35908	28221	39470	91548	12854	30166	09073	75887	36782	00268	97121	57676
117	35553	71628	70189	26436	63407	91178	90348	55359	80392	41012	36270	77786	89578	21059
118	35676	12797	51434	82976	42010	26344	92920	92155	58807	54644	58581	95331	78629	73344
119	74815	67523	72985	23183	02446	63594	98924	20633	58842	85961	07648	70164	34994	67662
120	45246	88048	65173	50989	91060	89894	36063	32819	68559	99221	49475	50558	34698	71800
121	76509	47069	86378	41797	11910	49672	88575	97966	32466	10083	54728	81972	58975	30761
122	19689	90332	04315	21358	97248	11188	39062	63312	52496	07349	79178	33692	57352	72862
123	42751	35318	97513	61537	54955	08159	00337	80778	27507	95478	21252	12746	37554	97775
124	11946	22681	45045	13964	57517	59419	58045	44067	58716	58840	45557	96345	33271	53464
125	96518	48688	20996	11090	48396	57177	83867	86464	14342	21545	46717	72364	86954	55580
126	35726	58643	76869	84622	39098	36083	72505	92265	23107	60278	05822	46760	44294	07672
127	39737	42750	48968	70536	84864	64952	38404	94317	65402	13589	01055	79044	19308	83623
128	97025	66492	56177	04049	80312	48028	26408	43591	75528	65341	49044	95495	81256	53214
129	62814	08075	09788	56350	76787	51591	54509	49295	85830	59860	30883	89660	96142	18354
130	25578	22950	15227	83291	41737	79599	96191	71845	86899	70694	24290	01551	80092	82118
131	68763	69576	88991	49662	46704	63362	56625	00481	73323	91427	15264	06969	57048	54149
132	17900	00813	64361	60725	88974	61005	99709	30666	26451	11528	44323	34778	60342	60388
133	71944	60227	63551	71109	05624	43836	58254	26160	32116	63403	35404	57146	10909	07346
134	54684	93691	85132	64399	29182	44324	14491	55226	78793	34107	30374	48429	51376	09559
135	25946	27623	11258	65204	52832	50880	22273	05554	99521	73791	85744	29276	70326	60251
136	01353	39318	44961	44972	91766	90262	56073	06606	51826	18893	83448	31915	97764	75091
137	99083	88191	27662	99113	57174	35571	99884	13951	71057	53961	61448	74909	07322	80960
138	52021	45406	37945	75234	24327	86978	22644	87779	23753	99926	63898	54886	18051	96314
139	78755	47744	43776	83098	03225	14281	83637	55984	13300	52212	58781	14905	46502	04472
140	25282	69136	59180	16257	22810	43609	12224	25643	89884	31149	85423	32581	34374	70873

RANDOM NUMBER TABLE—Continued

Line/col.	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
141	11959	94202	02743	86847	79725	51811	12998	76844	05320	54236	53891	70226	38632	84776
142	11644	13792	98190	01424	30078	28197	55583	05197	47714	68440	22016	79204	06862	94451
143	06307	97912	68110	59812	95448	43244	31262	88880	13040	16458	43813	89416	42482	33939
144	76285	75714	89585	99296	52640	46518	55486	90754	88932	19937	57119	23251	55619	23679
145	55322	07589	39600	60866	63007	20007	66819	84164	61131	81429	60676	42807	78286	29015
146	78017	90028	90220	92503	83375	26986	74399	30850	88567	29169	72816	53357	15428	86932
147	44768	43342	20696	26331	43140	69744	82928	24988	94237	46138	77426	39039	55596	12655
148	25100	19336	14605	86603	51680	97678	24261	02464	86563	74812	60069	71674	15478	47642
149	83612	46623	62876	85197	07824	91392	58317	37726	84628	42221	10268	20692	15699	29167
150	41347	81666	82961	60413	71020	83658	02415	33322	66036	98712	46795	16308	28413	05417
151	38128	51178	75096	13609	16110	73533	42564	59870	29399	67834	91055	89917	51096	8901
152	60950	00455	73254	96067	50717	13878	03216	78274	65863	37011	91283	33914	91303	49326
153	90524	17320	29832	96118	75792	25326	22940	24904	80523	38928	91374	55597	97567	38914
154	49897	18278	67160	39408	97056	43517	84426	59650	20247	19293	02019	14790	02852	05819
155	18494	99209	81060	19488	65596	59787	47939	91225	98768	43688	00438	05548	09443	82897
156	65373	72984	30171	37741	70203	94094	87261	30056	58124	70133	18936	02138	59372	09075
157	40653	12843	04213	70925	95360	55774	76439	61768	52817	81151	52188	31940	54273	49032
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161	18348	19855	42887	08279	43206	47077	42637	45606	00011	20662	14642	49984	94509	56380
162	59614	09193	58064	29086	44385	45740	70752	05663	49081	26960	57454	99264	24142	74648
163	75688	28630	39210	52897	62748	72658	98059	67202	72789	01869	13496	14663	87645	89713
164	13941	77802	69101	70061	35460	34576	15412	81304	58757	35498	94830	75521	00603	97701
165	96656	86420	96475	86458	54463	96419	55417	41375	76886	19008	66877	35934	59801	00497
166	03363	82042	15942	14549	38324	87094	19069	67590	11087	68570	22591	65232	85915	91499
167	70366	08390	69155	25496	13240	57407	91407	49160	07379	34444	94567	66035	38918	65708
168	47870	36605	12927	16043	53257	93796	52721	73120	48025	76074	95605	67422	41646	14557
169	79504	77606	22761	30518	28373	73898	30550	76684	77366	32276	04690	61667	64798	66276
170	46967	74841	50923	15339	37755	98995	40162	89561	69199	42257	11647	47603	48779	97907
171	14558	50769	35444	59030	87516	48193	02945	00922	48189	04724	21263	20892	92955	90251
172	12440	25057	01132	38611	28135	68089	10954	10097	54243	06460	50856	65435	79377	53890
173	32293	29938	68653	10497	98919	46587	77701	99119	93165	67788	17638	23097	21468	36992
174	10640	21875	72462	77981	56550	55999	87310	69643	45124	00349	25748	00844	96831	30651
175	47615	23169	39571	56972	20628	21788	51736	33133	72696	32605	41569	76148	91544	21121
176	16948	11128	71624	72754	49084	96303	27830	45817	67867	18062	87453	17226	72904	71474
177	21258	61092	66634	70335	92448	17354	83432	49608	66520	06442	59664	20420	39201	69549
178	15072	48853	15178	30730	47481	48490	41436	25015	49932	20474	53821	51015	79841	32405
179	99154	57412	09858	65671	60655	71479	63520	31357	56968	06729	34465	70685	04184	25250
180	08759	61089	23706	32994	35426	36666	63988	98844	37533	08269	27021	45886	22835	78451
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182	09255	13986	84834	20764	72206	89393	34548	93438	88730	61805	78955	18952	46436	58740
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186	72934	40086	88292	65728	38300	42323	64068	98373	48971	09049	59943	36538	05976	82118
187	17626	02944	20910	57662	80181	38579	24580	90529	52303	50436	29401	57824	86039	81062
188	27117	61399	50967	41399	81636	16663	15634	79717	94696	59240	25543	97989	63306	90946
189	93995	18678	90012	63645	85701	85269	62263	68331	00389	72571	15210	20769	44686	96176
190	67392	89421	09623	80725	62620	84162	87368	29560	00519	84545	08004	24526	41252	14521
191	04910	12261	37566	80016	21245	69377	50420	85658	55263	68667	78770	04533	14513	18099
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193	19480	75790	48539	23703	15537	48885	02861	86587	74539	65227	90799	58789	96257	02708
194	21456	13162	74608	81011	55512	07481	93551	72189	76261	91206	89941	15132	37738	59284
195	89406	20912	46189	76376	25538	87212	20748	12831	57166	35026	16817	79121	18929	40628
196	09866	07414	55977	16419	01101	69343	13305	94302	80703	57910	36933	57771	42546	03003
197	86541	24681	23421	13521	28000	94917	07423	57523	97234	63951	42876	46829	09781	58160
198	10414	96941	06205	72222	57167	83902	07460	69507	10600	08858	07685	44472	64220	27040
199	49942	06683	41479	58982	56288	42853	92196	20632	62045	78812	35895	51851	83534	10689
200	23995	68882	42291	23374	24299	27024	67460	94783	40937	16961	26053	78749	46704	21983

[FR Doc. 92-31343 Filed 12-31-92; 8:45 am]
BILLING CODE 4910-22-M

federal register

Monday
January 4, 1993

Part IV

The President

Proclamation 6519—To Implement Tariff Modifications on Certain Plywood Originating in the Territory of Canada and for Other Purposes

Executive Order 12827—Amendment to Executive Order No. 12792

Federal Register
Vol. 58, No. 1
Monday, January 4, 1993

Presidential Documents

Title 3—

The President

Proclamation 6519 of December 30, 1992

To Implement Tariff Modifications on Certain Plywood Originating in the Territory of Canada and for Other Purposes

By the President of the United States of America

A Proclamation

1. Pursuant to section 201(c) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (Public Law 100–449) (the "CFTA Act"), the President is authorized to implement the tariff concessions described in article 2008 of the United States-Canada Free-Trade Agreement (the "CFTA") when he determines that common performance standards for the use of softwood plywood and other structural panels in construction applications have been incorporated into building codes in the United States and Canada. Article 2008 of the CFTA allowed the United States and Canada to delay implementation of tariff concessions on softwood plywood and on waferboard, oriented strand board, and particle-board of all species because a panel of experts from the two countries failed to resolve issues regarding the use of a particular grade of plywood by the date of entry into force of the CFTA.

2. Pursuant to section 201(c)(2) of the CFTA Act, the President reports to the Congress on the incorporation of common plywood performance standards into building codes in the two countries. Pursuant to section 201(c)(3) of the CFTA Act, any tariff reduction undertaken by the United States and commencing after January 1, 1991, need not be in equal annual increments.

3. Pursuant to section 201(c) of the CFTA Act, I have determined that common plywood performance standards have been incorporated into building codes in the United States and Canada and that the necessary conditions for implementing the tariff concessions under article 2008 of the CFTA have been met. Accordingly, I have reported to the Congress on such incorporation, and I have decided that the implementation by the United States of previously agreed staged reductions in duties on certain plywood originating in the territory of Canada should begin on January 1, 1993, and end on January 1, 1998.

4. Section 1204(b)(1)(C) of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3004(b)(1)(C)) (the "1988 Act") authorizes the President to proclaim modifications to the Harmonized Tariff Schedule of the United States ("HTS") as are necessary or appropriate to implement such technical rectifications as the President considers necessary. Pursuant to section 1204(b)(1)(C), I have determined that certain technical rectifications to the HTS are necessary to provide the proper tariff treatment to certain chemicals.

5. Section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2483) (the "Trade Act"), authorizes the President to embody in the HTS the substance of the provisions of that Act, and of other acts affecting import treatment, and action thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to section 201(c) of the CFTA Act, section 1204(b)(1)(C) of the 1988 Act, and section 604 of the Trade Act, do proclaim that:

(1) In order to implement, consistent with the provisions of article 2008 of the CFTA, the tariff concessions on certain plywood and on waferboard, oriented strand board, and particle-board of all species, the HTS is modified as set forth in Annex I to this proclamation.

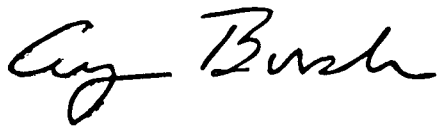
(2) In order to make technical rectifications in the tariff treatment afforded to certain chemicals, the HTS is further modified as set forth in Annex II to this proclamation.

(3) Any provisions of previous proclamations inconsistent with the provisions of this proclamation are hereby superseded to the extent of such inconsistency.

(4)(a) The modifications made by Annex I to this proclamation shall be effective with respect to goods originating in the territory of Canada entered, or withdrawn from warehouse for consumption, on or after the dates set forth in Annex I.

(b) The modifications made by Annex II to this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1993.

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



Billing code 3195-01-M

Editorial note: For the President's letter to Congressional leaders on this modification, see issue no. 53 of the *Weekly Compilation of Presidential Documents*

ANNEX I

IMPLEMENTATION OF STAGED TARIFF REDUCTIONS ON CERTAIN PLYWOOD

(a) Effective with respect to goods originating in the territory of Canada entered, or withdrawn from warehouse for consumption, on or after January 1, 1993, HTS subheading 4410.10.00 is modified by inserting, in the parentheses following the "Free" duty rate in the Rates of Duty 1-Special subcolumn, the symbol "CA" in alphabetical order.

(b) Effective with respect to goods originating in the territory of Canada entered, or withdrawn from warehouse for consumption, on or after January 1 of each of the following years, for each of the enumerated HTS subheadings in the following table, the Rates of Duty 1-Special subcolumn in the HTS is modified (i) by inserting in such subcolumn for each such subheading the rate of duty specified for such subheading in the 1993 column followed by the sumbol "CA" in parentheses, and (ii) for each of the subsequent dated columns by deleting the rates of duty that are followed by the symbol "CA" in parentheses and by inserting the following rates of duty in such subheadings in lieu thereof.

HTS subheading	1993	1994	995	1996	1997	1998
4412.19.40	10%	8%	6%	4%	2%	Free
4412.99.40	10%	8%	6%	4%	2%	Free

ANNEX II

TECHNICAL RECTIFICATIONS TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Bracketed matter is included to assist in the understanding of the proclaimed modifications. The following supersedes matter now in the HTS. The subheadings and superior text are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special", and "Rates of Duty 2", respectively.

Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1993:

(a) HTS subheading 2922.29.23 is deleted.

(b) Subheading 2922.50 of the HTS is modified by inserting the following new subheading, in numerical sequence:

	[Oxygen-function amino-compounds:]			
	[Amino-alcohol-phenols,...:]			
	[Aromatic:]			
"2922.50.11	d(-)-p-Hydroxyphenylglycine and its salts.....	3.7¢/kg + 15.6%	Free (A*,CA,E, IL,J)	15.4¢/kg + 50%"

(c) General note 3(c)(ii)(D) to the HTS is modified by deleting "2922.29.23 India" and inserting, in numerical sequence, "2922.50.11 India" in lieu thereof.

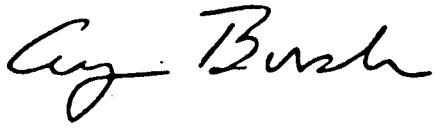
[FR Doc. 92-31947
Filed 12-30-92; 4:55 pm]
Billing code 3190-01-C

Presidential Documents

Executive Order 12827 of December 30, 1992

Amendment to Executive Order No. 12792

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2), and in order to extend the reporting period of the National Commission on America's Urban Families, it is hereby ordered that section 2(b) of Executive Order No. 12792 is amended by deleting the date "December 31, 1992" and inserting in lieu thereof the date "January 20, 1993".



THE WHITE HOUSE,
December 30, 1992.

[FR Doc. 92-31946
Filed 12-30-92; 4:51 pm]
Billing code 3195-01-M

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24 Parts:			
0–199	(869–017–00078–7)	34.00	Apr. 1, 1992
200–499	(869–017–00079–5)	32.00	Apr. 1, 1992
500–699	(869–017–00080–9)	13.00	Apr. 1, 1992
700–1699	(869–017–00081–7)	34.00	Apr. 1, 1992
1700–End	(869–017–00082–5)	13.00	Apr. 1, 1992
25	(869–017–00083–3)	25.00	Apr. 1, 1992
26 Parts:			
§§ 1.0-1–1.60	(869–017–00084–1)	17.00	Apr. 1, 1992
§§ 1.61–1.169	(869–017–00085–0)	33.00	Apr. 1, 1992
§§ 1.170–1.300	(869–017–00086–8)	19.00	Apr. 1, 1992
§§ 1.301–1.400	(869–017–00087–6)	17.00	Apr. 1, 1992
§§ 1.401–1.500	(869–017–00088–4)	38.00	Apr. 1, 1992
§§ 1.501–1.640	(869–017–00089–2)	19.00	Apr. 1, 1992
§§ 1.641–1.850	(869–017–00090–6)	19.00	Apr. 1, 1992
§§ 1.851–1.907	(869–017–00091–4)	23.00	Apr. 1, 1992
§§ 1.908–1.1000	(869–017–00092–2)	26.00	Apr. 1, 1992
§§ 1.1001–1.1400	(869–017–00093–1)	19.00	Apr. 1, 1992
§§ 1.1401–End	(869–017–00094–9)	26.00	Apr. 1, 1992
2–29	(869–017–00095–7)	22.00	Apr. 1, 1992
30–39	(869–017–00096–5)	15.00	Apr. 1, 1992
40–49	(869–017–00097–3)	12.00	Apr. 1, 1992
50–299	(869–017–00098–1)	15.00	Apr. 1, 1992
300–499	(869–017–00099–0)	20.00	Apr. 1, 1992
500–599	(869–017–00100–7)	6.00	[5] Apr. 1, 1990
600–End	(869–017–00101–5)	6.50	Apr. 1, 1992

Title	Stock Number	Price	Revision Date
27 Parts:			
1–199	(869–017–00102–3)	34.00	Apr. 1, 1992
200–End	(869–017–00103–1)	11.00	[6] Apr. 1, 1991
28	(869–017–00104–0)	37.00	July 1, 1992
29 Parts:			
0–99	(869–017–00105–8)	19.00	July 1, 1992
100–499	(869–013–00106–6)	9.00	July 1, 1992
500–899	(869–017–00107–4)	32.00	July 1, 1992
900–1899	(869–017–00108–2)	16.00	July 1, 1992
1900–1910 (§§ 1901.1 to 1910.999)	(869–017–00109–1)	29.00	July 1, 1992
1910 (§§ 1910.1000 to end)	(869–017–00110–4)	16.00	July 1, 1992
1911–1925	(869–017–00111–2)	9.00	[7] July 1, 1989
1926	(869–017–00112–1)	14.00	July 1, 1992
1927–End	(869–017–00113–9)	30.00	July 1, 1992
30 Parts:			
1–199	(869–017–00114–7)	25.00	July 1, 1992
200–699	(869–017–00115–5)	19.00	July 1, 1992
700–End	(869–017–00116–3)	25.00	July 1, 1992
31 Parts:			
0–199	(869–017–00117–1)	17.00	July 1, 1992
200–End	(869–017–00118–0)	25.00	July 1, 1992
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–189	(869–017–00119–8)	30.00	July 1, 1992
190–399	(869–017–00120–1)	33.00	July 1, 1992
400–629	(869–017–00121–0)	29.00	July 1, 1992
630–699	(869–017–00122–8)	14.00	[8] July 1, 1991
700–799	(869–017–00123–6)	20.00	July 1, 1992
800–End	(869–017–00124–4)	20.00	July 1, 1992
33 Parts:			
1–124	(869–017–00125–2)	18.00	July 1, 1992
125–199	(869–017–00126–1)	21.00	July 1, 1992
200–End	(869–017–00127–9)	23.00	July 1, 1992
34 Parts:			
1–299	(869–017–00128–7)	27.00	July 1, 1992
300–399	(869–017–00129–5)	19.00	July 1, 1992
400–End	(869–017–00130–9)	32.00	July 1, 1992
35	(869–017–00131–7)	12.00	July 1, 1992
36 Parts:			
1–199	(869–017–00132–5)	15.00	July 1, 1992
200–End	(869–017–00133–3)	32.00	July 1, 1992
37	(869–017–00134–1)	17.00	July 1, 1992
38 Parts:			
0–17	(869–013–00135–4)	24.00	July 1, 1991
18–End	(869–017–00136–8)	28.00	Sept. 1, 1992
39	(869–017–00137–6)	16.00	July 1, 1992
40 Parts:			
1–51	(869–017–00138–4)	31.00	July 1, 1992
52	(869–017–00139–2)	33.00	July 1, 1992
53–60	(869–017–00140–6)	36.00	July 1, 1992
61–80	(869–017–00141–4)	16.00	July 1, 1992
81–85	(869–017–00142–2)	17.00	July 1, 1992
86–99	(869–017–00143–1)	33.00	July 1, 1992
100–149	(869–017–00144–9)	34.00	July 1, 1992
150–189	(869–017–00145–7)	21.00	July 1, 1992
190–259	(869–017–00146–5)	16.00	July 1, 1992
260–299	(869–017–00147–3)	36.00	July 1, 1992
300–399	(869–017–00148–1)	15.00	July 1, 1992
400–424	(869–017–00149–0)	26.00	July 1, 1992
425–699	(869–017–00150–3)	26.00	July 1, 1992
700–789	(869–017–00151–1)	23.00	July 1, 1992
790–End	(869–017–00152–0)	25.00	July 1, 1992
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–017–00153–8)	9.50	July 1, 1992
101	(869–017–00154–6)	28.00	July 1, 1992
102–200	(869–017–00155–4)	11.00	[8] July 1, 1991
201–End	(869–017–00156–2)	11.00	July 1, 1992
42 Parts:			
1–60	(869–013–00157–5)	17.00	Oct. 1, 1991
61–399	(869–013–00158–3)	5.50	Oct. 1, 1991
400–429	(869–013–00159–1)	21.00	Oct. 1, 1991
430–End	(869–013–00160–5)	26.00	Oct. 1, 1991
43 Parts:			
1–999	(869–013–00161–3)	20.00	Oct. 1, 1991
1000–3999	(869–013–00162–1)	26.00	Oct. 1, 1991
4000–End	(869–013–00163–0)	12.00	Oct. 1, 1991
44	(869–017–00163–5)	26.00	Oct. 1, 1992
45 Parts:			
1–199	(869–013–00165–6)	18.00	Oct. 1, 1991
200–499	(869–013–00166–4)	12.00	Oct. 1, 1991
500–1199	(869–013–00167–2)	26.00	Oct. 1, 1991
1200–End	(869–017–00167–8)	20.00	Oct. 1, 1992
46 Parts:			
1–40	(869–013–00169–9)	15.00	Oct. 1, 1991
41–69	(869–017–00169–4)	16.00	Oct. 1, 1992
70–89	(869–013–00171–1)	7.00	Oct. 1, 1991
90–139	(869–013–00172–9)	12.00	Oct. 1, 1991
140–155	(869–013–00173–7)	10.00	Oct. 1, 1991
156–165	(869–017–00173–2)	14.00	[9] Oct. 1, 1991
166–199	(869–017–00174–1)	17.00	Oct. 1, 1992
200–499	(869–017–00175–9)	22.00	Oct. 1, 1992
500–End	(869–013–00177–0)	11.00	Oct. 1, 1991
47 Parts:			
0–19	(869–013–00178–8)	19.00	Oct. 1, 1991
20–39	(869–013–00179–6)	19.00	Oct. 1, 1991
40–69	(869–013–00180–0)	10.00	Oct. 1, 1991
70–79	(869–013–00181–8)	18.00	Oct. 1, 1991
80–End	(869–013–00182–6)	20.00	Oct. 1, 1991
48 Chapters:			
1 (Parts 1–51)	(869–013–00183–4)	31.00	Oct. 1, 1991
1 (Parts 52–99)	(869–017–00183–0)	22.00	Oct. 1, 1992
2 (Parts 201–251)	(869–017–00184–8)	15.00	Oct. 1, 1992
2 (Parts 252–299)	(869–017–00185–6)	12.00	Oct 1, 1992
3–6	(869–013–00187–7)	19.00	Oct. 1, 1991
7–14	(869–017–00187–2)	30.00	Oct. 1, 1992
15–End	(869–013–00189–3)	30.00	Oct. 1, 1991
49 Parts:			
1–99	(869–013–00190–7)	20.00	Oct. 1, 1991
100–177	(869–013–00191–5)	23.00	Dec. 31, 1991
178–199	(869–013–00192–3)	17.00	Dec. 31, 1991
200–399	(869–013–00193–1)	22.00	Oct. 1, 1991
400–999	(869–013–00194–0)	27.00	Oct. 1, 1991
1000–1199	(869–013–00195–8)	17.00	Oct. 1, 1991
1200–End	(869–013–00196–6)	19.00	Oct. 1, 1991
50 Parts:			
1–199	(869–013–00197–4)	21.00	Oct. 1, 1991
200–599	(869–017–00198–8)	20.00	Oct. 1, 1992
600–End	(869–013–00199–1)	17.00	Oct. 1, 1991
CFR Index and Findings Aids	(869–017–00053–1)	31.00	Jan. 1, 1992
Complete 1992 CFR set		775.00	1993
Microfiche CFR Edition:			
Complete set (one-time mailing)		188.00	1990

Title	Stock Number	Price	Revision Date
Complete set (one-time mailing)		188.00	1991
Complete set (one-time mailing)		188.00	1992
Subscription (mailed as issued)		223.00	1993
Individual copies		2.00	1993

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing these parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1991. The CFR volume issued January 1, 1987, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1991. The CFR volume issued April 1, 1990, should be retained.

[6] No amendments to this volume were promulgated during the period Apr. 1, 1991 to Mar. 30, 1992. The CFR volume issued April 1, 1991, should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1992. The CFR volume issued July 1, 1989, should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1992. The CFR volume issued July 1, 1991, should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 1991 to September 30, 1992. The CFR volume issued October 1, 1991, should be retained.

CFR ISSUANCES 1993
Complete Listing of 1992 Editions and Projected January, 1993 Editions

This list sets out the CFR issuances for the 1992 editions and projects the publication plans for the **January, 1993** quarter. A projected schedule that will include the **April, 1993** quarter will appear in the first **Federal Register** issue of April.

For pricing information on available 1992–1993 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. The weekly CFR checklist and the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR titles and parts, revision date and price of each volume.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

Titles revised as of January 1, 1992 editions:

Title

CFR Index

1–2

3 (Compilation)

4

5 Parts:
1–699
700–1199
1200–End

6 [Reserved]

7 Parts:
0–26
27–45
46–51
52
53–209
210–299
300–399
400–699
700–899
900–999
1000–1059
1060–1119
1120–1199
1200–1499
1500–1899
1900–1939
1940–1949
1950–1999
2000–End

8

9 Parts:
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200–End

10 Parts:
0–50
51–199
200–399 (Cover only)
400–499
500–End

11

12 Parts:
1–199
200–219
220–299
300–499
500–599
600–End

13

14 Parts:
1–59
60–139
140–199
200–1199
1200–End

15 Parts:
0–299
300–799
800–End

16 Parts:
0–149
150–999
1000–End

Titles revised as of April 1, 1992:

Title

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240–End

18 Parts:
1–149
150–279
280–399
400–End

19 Parts:
1–199
200–End

20 Parts:
1–399
400–499
500–End

21 Parts:
1–99
100–169
170–199
200–299
300–499
500–599
600–799
800–1299
1300–End

22 Parts:
1–299
300–End

23

24 Parts:
0–199
200–499
500–699
700–1699
1700–End

25

26 Parts:
1 (§§ 1.0-1–1.60)
1 (§§ 1.61–1.169)
1 (§§ 1.170–1.300)
1 (§§ 1.301–1.400)
1 (§§ 1.401–1.500)
1 (§§ 1.501–1.640)
1 (§§ 1.641–1.850)
1 (§§ 1.851–1.907)
1 (§§ 1.908–1.1000)
1 (§§ 1.1001–1.1400)
1 (§ 1.1401–End)
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600–End

27 Parts:
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200–End (Cover only)

Titles revised as of July 1, 1992:

Title

28

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500–899
900–1899
1900–1910 (§§ 1901.1–1910.999)
1910 (§§ 1910.1000–End)
1911–1925 (Cover only)
1926
1927–End

30 Parts:
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700–End

31 Parts:
0–199
200–End

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190–399
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630–699 (Cover only)
700–799
800–End

33 Parts:
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125–199
200–End

34 Parts:
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300–399
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35

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200–End

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38 Parts:
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18–End (Revised as of Sept. 1, 1992)

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40 Parts:
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Chs. 102–200 (Cover only)
Ch. 201–End

Titles revised as of October 1, 1992:

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42 Parts:
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430–End

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1000–3999
4000–End

44

45 Parts:
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500–1199*
1200–End

46 Parts:
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47 Parts:
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48 Parts:
Ch. 1 (1–51)
Ch. 1 (52–99)
Ch. 2 (201–251)
Ch. 2 (252–299)
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Chs. 7–14
Ch. 15–End*

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50 Parts:
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600–End*

Projected January 1, 1993 editions:

Title

CFR Index

1–2

3 (Compilation)

4

5 Parts:
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1200–End

6 [Reserved]

7 Parts:
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53–209
210–299
300–399
400–699
700–899
900–999
1000–1059
1060–1119
1120–1199
1200–1499
1500–1899
1900–1939
1940–1949
1950–1999
2000–End

8

9 Parts:
1–199
200–End

10 Parts:
0–50
51–199
200–399
400–499
500–End

11

12 Parts:
1–199
200–219
220–299
300–499
500–599
600–End

13

14 Parts:
1–59
60–139
140–199
200–1199
1200–End

15 Parts:
0–299
300–799
800–End

16 Parts:
0–149
150–999
1000–End

TABLE OF EFFECTIVE DATES AND TIME PERIODS—JANUARY 1993

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
January 4	January 19	February 3	February 18	March 5	April 5
January 5	January 21	February 4	February 19	March 8	April 5
January 6	January 21	February 5	February 22	March 8	April 6
January 7	January 22	February 8	February 22	March 8	April 7
January 8	January 25	February 8	February 22	March 9	April 8
January 11	January 26	February 10	February 25	March 12	April 12
January 12	January 27	February 11	February 26	March 15	April 12
January 13	January 28	February 12	March 1	March 15	April 13
January 14	January 29	February 16	March 1	March 15	April 14
January 15	February 1	February 16	March 1	March 16	April 15
January 19	February 3	February 18	March 5	March 22	April 19
January 21	February 5	February 22	March 8	March 22	April 21
January 22	February 8	February 22	March 8	March 23	April 22
January 25	February 9	February 24	March 11	March 26	April 26
January 26	February 10	February 25	March 12	March 29	April 26
January 27	February 11	February 26	March 15	March 29	April 27
January 28	February 12	March 1	March 15	March 29	April 28
January 29	February 16	March 1	March 15	March 30	April 29

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