proposed transaction is that opportunity. All comments filed in response to this notice, along with the petition of Ahnapee, McCloud and Green Bay will be used to determine whether or not the exemption under 49 U.S.C. 10505 should be granted.

Green Bay's petition for waiver of certain provisions of the Consolidation Procedures, also filed June 1, 1979, will be held in abeyance pending receipt of comments on exemption. The waiver petition will be decided concurrently with the decision on the proposed exemption.

This proceeding is instituted under the authority of 49 U.S.C. 10505 and pursuant to 5 U.S.C. 553, 559.

This proceeding is not a major Federal action significantly affecting energy consumption or the quality of the human environment.

Dated: August 15, 1979.

By the Commission, Chairman O'Neal, Vice Chairman Stafford, Commissioners Gresham, Clapp, Christian, Trantum, and Gaskins.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-26520 Filed 8-24-79; 8:45 am]

BILLING CODE 7035-01-M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 167
Monday, August 27, 1979

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).

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1

[M-239, Amdt. 5; Aug. 22, 1979]

CIVIL AERONAUTICS BOARD.

Notice of addition of item to the August 23, 1979 meeting agenda.

TIME AND DATE: 9 a.m., August 23, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

6a. Docket 31571: Northwest Alaska Service Investigation (Memo 7515-C, OGC).
6b. Northwest Alaska Bush Route Proceeding. (Memo 9065, OGC).

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: It is requested that Items 6a and 6b be placed on the calendar for August 23, 1979 in order to provide the United States Postal Service with sufficient formal notice of the new, changed circumstances in Northwest Alaska to permit them to make certain changes in their procedures which are anticipated are necessary. Due to pressures to meet the deadline for the calendar of August 20, the staff was unable to sumbit these items earlier. Accordingly, the following Members have voted that agency business requires that Items 6a and 6b be placed on the August 23 agenda and that no earlier announcement of these additions was possible:

Chairman, Marvin S. Cohen
Member, Elizabeth E. Bailey
Member, Gloria Schaffer.

[S-1679-79 Filed 8-23-79; 3:18 pm]

BILLING CODE 6320-01-M

2

[M-239, Amdt. 6; Aug. 22, 1979]

CIVIL AERONAUTICS BOARD.

Notice of addition of item to the August 23, 1979 meeting agenda.

TIME AND DATE: 9 a.m., August 23, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

21a. Docket 36418: Alaska Airlines, Alaska Northwest Properties, Inc., Ronald F. Cosgrave, Bruce Kennedy, and Keith J. Kennedy, investigation concerning acquisition of control of Wien Air Alaska, Inc. (OGC)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: Certain of the respondents in this investigation have requested additional time to respond to Order 79-8-100, issued on August 20, which requires them to show cause by Friday, August 24 why specified relief should not be entered. The parties' request was filed on August 22, so that earlier notification of this matter was not possible. Since this request will be effectively denied unless acted on by the Board by August 24, the following Members have voted that agency business requires the addition of Item 21a to the August 23, 1979 agenda, and that no earlier announcement of this addition was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer.

[S-1680-79 Filed 8-23-79; 3:18 pm]

BILLING CODE 6320-01-M

3

FEDERAL ENERGY REGULATORY COMMISSION.

August 22, 1979.

TIME AND DATE: 10 a.m., August 29, 1979.

PLACE: 825 North Capitol Street, NE., Washington, D.C. 20426, room 9306.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 275-4166.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the Agenda; however, all public documents may be examined in the Office of Public Information.

Power Agenda—336th Meeting, August 29, 1979, Regular Meeting (10 a.m.)

CAP-1. Docket No. ER79-506, Iowa Southern Utilities Co.
CAP-2. Docket No. ES79-51, Pacific Power and Light Co.
CAP-3. Docket Nos. ID-1841, ID-1847, ID-1849, ID-1850, ID-1851, and ID-1852, Niagara Mohawk Power Corp.

Miscellaneous Agenda—336th Meeting, August 29, 1979, Regular Meeting

CAM-1. 404 Referral—Proposed amendment to the ERA mandatory petroleum price regulations to increase the markup on wholesale and retail sales of propane. Docket No. ERA-R-79-33
CAM-2. Docket No. RA79-15, Little America Refining Co.

Gas Agenda—336th Meeting, August 29, 1979, Regular Meeting

CAG-1. Docket Nos. RP73-35 (PAG No. 79-3) and RP78-11 (AP No. 79-2), Trunkline Gas Co.
CAG-2. Docket No. RP72-157 (PGA No. 79-5) (R. & O. 79-1), Consolidated Gas Supply Corp.
CAG-3. Docket No. RP75-73 (AP No. 79-4), Texas Eastern Transmission Corp.
CAG-4. Docket No. RP72-149 (PGA No. 79-5 and 79-5A), Mississippi River Transmission Corp.
CAG-5. Docket No. RP73-3 (PGA No. 79-2 and DCA No. 79-3), Transcontinental Gas Pipe Line Corp.
CAG-6. Docket Nos. RP73-36 (PGA No. 79-3A) (DCA No. 79-2A) (AP No. 79-1A) and RP78-62, Panhandle Eastern Pipe Line Co.
CAG-7. Docket Nos. RP72-154, et al., Northwest Pipeline Corp.
CAG-8. Docket Nos. RP74-14 and RP74-34 (PGA No. 79-2A), Mountain Fuel Resources, Inc.
CAG-9. Docket No. RP71-125 (PGA Nos. 79-1 and 79-1A), Natural Gas Pipeline Co. of America
CAG-10. Docket No. RP79-79, Michigan-Wisconsin Pipe Line Co.
CAG-11. Docket Nos. RP76-136 and RP77-26, Transcontinental Gas Pipe Line Corp.
CAG-12. Docket Nos. G-6086, et al., MAPCO Production Co. (Successor to MAPCO, Inc.) et al.
CAG-13. Docket Nos. G-7241, et al., Southland Royalty Co., et al.
CAG-14. Columbia Gas Transmission.
CAG-15. Docket No. CP79-329, Mountain Fuel Supply Co.
CAG-16. Docket No. CP79-190, Consolidated Gas Supply Corp.
CAG-17. Docket No. CP79-284, Colorado Interstate Gas Co.

CAG–18. Docket No. CP79–197, Cities Service Gas Co.
CAG–19. Docket No. CP79–231, United Gas Pipe Line Co.
CAG–20. Docket No. CP78–137, Panhandle Eastern Pipe Line Co.
CAG–21. Docket No. CP71–195, Mid-Louisiana Gas Co.
CAG–22. Docket No. CP79–294, Northwest Pipeline Corp.
Docket No. CP79–270, Colorado Interstate Gas Co.

Power Agenda—336th Meeting, August 29, 1979, Regular Meeting

I. Licensed Project Matters

P–1. Project Nos. 2863 and 2877, city of Holyoke, Mass.
P–2. Project No. 382, Southern California Edison Co.
P–3. Project No. 178, Pacific Gas & Electric Co.
P–4. Project No. 1930, Southern California Edison Co.

II. Electric Rate Matters

ER–1. Docket No. ER79–166, Kansas City Power & Light Co.
ER–2. Docket Nos. E–9329 (limited issue), ER76–792, and ER76–716, Indiana & Michigan Electric Co.
ER–3. Docket Nos. E–9002 and ER76–122, Commonwealth Edison Co.
ER–4. Docket Nos. E–8187, E–8700, ER76–203, ER76–238 and ER78–516, Boston Edison Co.

Miscellaneous agenda—336th Meeting, August 29, 1979, Regular Meeting

M–1. Reserved.
M–2. Reserved.
M–3. Docket No. RM77–22, rate of interest on amounts subject to refund.
M–4. Docket No. RM79–40, determination of alternative fuels for essential agricultural users.
M–5. Docket No. GP79–33, George R. Schurman Norris SUA; Baker No. 2 Louisiana NGPA 79–858 FERC JD No. 79–3446.
M–6. Docket No. GP79–69, Grace Petroleum Corp. State Docket Nos. 4–6–7928 PD and 3–2–7912 PD FERC JD Nos. 79–9658 and 79–9659.
M–7. Well category determinations.
M–8. Docket No. RM78–12, determination of incentive rate of return, tariff and related issues for the Alaska Natural Gas Transportation System.

Gas Agenda—336th Meeting, August 29, 1979, Regular Meeting

I. Pipeline Rate Matters

RP–1. Docket No. RP73–65 (PGA 79–2), Columbia Gas Transmission Corp.
RP–2. Docket No. RP75–105, Columbia Gulf Transmission Co. Docket No. RP75–106 (Consolidated taxes), Columbia Gas Transmission Corp.
RP–3. Docket No. RP71–107 (Phase II), Northern Natural Gas Co.

II. Producer Certificate Matters

CI–1. Docket No. RI77–53, CRA, Inc.
CI–2. Docket No. CI79–415, Continental Oil Co. Docket No. CI79–532, Exxon Corp.

Kenneth F. Plumb,

Secretary.

[S–1677–79 Filed 8–23–79; 2:07 pm]

BILLING CODE 6450–01–M

4

INTER-AMERICAN FOUNDATION.

TIME AND DATE: 2:30 p.m., September 11, 1979.

PLACE: Board Room, Inter-American Foundation 1515 Wilson Blvd., Arlington, VA 22209.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Chairman's Report.
2. President's Report.
3. Financial Report.
4. Project Analysis.

CONTACT PERSON FOR MORE INFORMATION: Lawrence E. Bruce, Jr., (703) 841–3812.

[S–1678–79 Filed 8–23–79; 2:46 pm]

BILLING CODE 7025–01–M

5

POSTAL RATE COMMISSION.

TIME AND DATE: 1 p.m., Monday, August 27, 1979.

PLACE: Conference Room, Room 500, 2000 L Street NW., Washington, D.C.

STATUS: Open/closed.

MATTERS TO BE CONSIDERED:

Open

1. Budget FY80.

Closed

2. Status of Docket No. MC78–3.
3. Status of Docket No. MC78–1.

[Closed pursuant to 39 USC § 552b(c)(10).]

CONTACT PERSON FOR MORE INFORMATION: Ned Callan, Information Officer, Postal Rate Commission, Room 500, 2000 L Street NW., Washington, D.C. 20268, Telephone (202) 254–5614.

[S–1676–79 Filed 8–23–79; 10:54 am]

BILLING CODE 7715–01–M

6

TENNESSEE VALLEY AUTHORITY

Meeting No. 1225

TIME AND DATE: 9:30 a.m., Thursday, August 30, 1979.

PLACE: Conference Room B–32, West Tower, 400 Commerce Avenue, Knoxville, Tenn.

STATUS: Open.

MATTERS FOR ACTION:

Old Business

1. Final rate review.
2. Req. No. 823766—Cooling towers for heat rejection system for Yellow Creek Nuclear Plant.
3. Policy statement relating to contract demand reductions for commercial and industrial customers to encourage adoption of conservation and load management techniques.
4. Policy statement on TVA experimental cogeneration program.

New Business

Personnel Actions

[1] 1. Appointment of Marilyn E. F. Taylor as Director of Personnel, Office of Management Services, Knoxville Tennnessee.
[1] 2. Change of status for Conley L. Ballinger from Acting Director of Personnel to Acting Assistant Director of Personnel, Office of Management Services, Knoxville, Tennessee.

Consulting and Personal Services Contracts

1. Personal service contract with C–E Power Systems, Windsor, Connecticut, for assistance in connection with design of an atmospheric fluidized bed combustion steam generator, requested by the Office of Engineering Design and Construction.
2. Personal service contract with The Babcock & Wilcox Company, Alliance, Ohio for assistance in connection with design of an atmospheric fluidized bed combustion steam generator, requested by the Office of Engineering Design and Construction.
3. Personal service contract with Babcock Contractors, Inc. Pittsburgh, Pennsylvania, for assistance in connection with design of an atmospheric fluidized bed combustion steam generator, requested by the Office of Engineering Design and Construction.
4. Renewal of personal service contract with Teledyne Engineering Services, Waltham, Massachusetts, for piping analyses and related services for TVA nuclear plants, requested by the Office of Engineering Design and Construction.
5. Consulting contract with Dr. Marvin Goldman, Davis, California, for advice and assistance in connection with radiological hygiene issues, requested by the Division of Occupational Health and Safety.
6. Consulting contract with Dr. Uri Marinov, Jerusalem, Israel, for technical advice and counseling concerning various aspects of TVA's environmental programs, requested by the Office of Natural Resources Services.

Purchase Awards

1. Rejection of bids received in response to Invitation No. 823770 for nuclear control valves for Hartsville and Phipps Bend Nuclear Plants.
2. Rejection of bids received in response to Invitation No. 824853 for 600-volt control cable-insulated conductor for Hartsville and Phipps Bend Nuclear Plants.
3. Rejection of bids received in response to Invitation No. 825899 for insulated conductors tefzel insulated thermocouple cable for Bellefonte Nuclear Plant.
4. Req. No. 159768—Furnace wall tube panels for Widows Creek Steam Plant, Unit 7.

[1] These items were approved by individual Board members. This would give formal ratification to the Board's action.

5. Req. No. 572867—Indefinite quantity term contract for carbon steel (general purpose), warehouse quantities, for any TVA project or warehouse.

6. Req. No. 822158—Nonseismic pipe hangers for Yellow Creek Nuclear Plant.

7. Req. No. 824481—Spent fuel storage racks for Bellefonte Nuclear Plant.

8. Amendment to Contract No. 77K53–820732 with ITT Grinnell Corporation, Providence, Rhode Island, for seismic support for Bellefonte Nuclar Plant.

Project Authorizations

1. No. 3363.2—Additional minor modifications to the Watts Bar Nuclear Plant necessary to permit utilization of waste heat.

2. No. 3462—Installation of additional truck coal sampling and receiving facilities at Kingston Steam Plant.

3. No. 3474—Load management residential thermal storage field test to determine ability of offpeak thermal storage systems to provide space heating requirements of residences.

4. No. 3460—Demonstration in manpower training for energy conservation (in collaboration with Tennessee Community Services administration and Tennessee Community Action Agencies).

5. No. 3220.3—Amendment to Home Insulation Program for the TVA area.

Power Items

1. Lease and Amendatory Agreement with the city of Lewisburg, Tennessee, covering lease of certain facilities at TVA's Lewisburg District Substation and section of TVA's Lewisburg District-Belfast 46–kV Line.

2. Standard-Form Agreement covering arrangements for distributors' participation with TVA in wood heater financing plan.

Real Property Transactions

1. Filing of condemnation suits.

2. Abandonment of unused portion of the Athens-Pulaski Transmission Line right of way in Limestone County, Alabama—Tracts AP–1, AP–2, AP–3, AP–5, AP–6, AP–7, and a portion of AP–8.

Unclassified

[1]1. Letter Agreement among the appalachian Regional Commission, U.S. Department of Agriculture and TVA covering arrangements for participation in selected program areas.

2. Interagency Agreement between TVA and U.S. Department of Energy for TVA's technical support and assistance in processing and analyzing aquatic biological samples.

3. Agreement with Chilhowie Redevelopment and Housing Authority for implementation of the Chilhowie, Virginia, Floodplain Relocation Project.

4. Letter Agreement with U.S. Army Corps of Engineers, Mobile District, covering arrangements for engineering and environmental study of DDT contamination in the Huntsville Spring Branch-Indian Creek area of Wheeler Reservoir in north Alabama.

5. TVA policy code relating to small coal operator assistance.

6. Adoption of supplemental resolution authorizing 1979 Series C Bonds.

7. Resolution authorizing the Chairman and other Executive Officers to take further action relating to issuance and sale of 1979 Series C Bonds.

CONTACT PERSON FOR MORE INFORMATION: James L. Bentley, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245–0101.

Dated: August 23, 1979.

[S–1681–79 Filed 8–23–79; 3:52 pm]

BILLING CODE 8120–01–M

federal register

Monday
August 27, 1979

Part II

Department of Transportation

Office of the Secretary

Semi-Annual Regulations Agenda and Review List

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[49 CFR Chapters I-VI]

[OST Docket No. 58; Notice 79-17]

Department Regulations Agenda and Review List; Semi-annual Summary

AGENCY: Department of Transportation.

ACTION: Department Regulations Agenda and Review List.

SUMMARY: The Regulations Agenda is a semi-annual summary of each proposed and each final regulation that the Department of Transportation expects to publish in the **Federal Register** during the succeeding 12 months or such longer projected period as may be anticipated. The Regulations Review List is a semi-annual summary of the existing regulations that the Department of Transportation has selected for review and possible revocation or revision. The Agenda and the Review List provide the public with information about the Department of Transportation's regulatory activity. It is expected that this information will enable the public to be more aware of, and allow it to more effectively participate in, the Department's regulatory activity.

ADDRESSES: The mailing addresses for the initiating offices of the Department which appear in the Agenda and the Review List are 400 Seventh Street, SW., Washington, D.C. 20590, except for the Federal Aviation Administration and St. Lawrence Seaway Development Corporation, which are located at 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

General

For further information on the Agenda or the Review List, in general, contact: Neil R. Eisner, Assistant General Counsel, Office of Regulation and Enforcement, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590, 202-426-4723.

Specific

For further information about any particular item on the Agenda or the Review List, contact the individual listed in the column headed "Contact" for that item.

SUPPLEMENTARY INFORMATION:

Background

Improvement of Government regulations has been a prime goal of the Carter Administration. There should be no more regulations than necessary, and those that are issued should be simpler, more comprehensible, and less burdensome. Regulations should not be issued without appropriate involvement of the public; once issued, they should be periodically reviewed and revised, as needed, to assure that they continue to meet the needs for which they originally were designed.

To help the Department of Transportation ("Department") achieve these goals, and in accordance with Executive Order 12044 ("Improving Government Regulations"; 43 FR 12661; March 24, 1978), the Secretary of Transportation issued the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). These Policies and Procedures include a requirement that the Department prepare a semi-annual Department Regulations Agenda for publication in the **Federal Register**. The Agenda summarizes each proposed and each final regulation that the Department expects to publish in the **Federal Register** during the succeeding 12 months or such longer projected period as may be anticipated. The regulatory policies and procedures also include a requirement that the Department prepare a semi-annual list of existing regulations it has selected for review and possible revocation or revision for publication in the **Federal Register**.

The Agendas and Review Lists are based on reports submitted by the initiating offices by the last working days of June and December of each year. After these reports are consolidated for, and reviewed by, the Department Regulations Council, the Department's Regulations Agenda and Review List is prepared and published in the **Federal Register**. The Department's last Regulations Agenda and Review List was published in the **Federal Register** on March 1, 1979 (44 FR 11674). The next one is scheduled for publication in the **Federal Register** on February 25, 1980.

Definitions

The Agenda and the Review List cover all rules and regulations of the Department, including those that establish conditions for financial assistance. The following definitions are provided for ease in understanding the information in this document.

(1) *Initiating office* means an operating administration or other organizational element within the Department, the head of which is authorized by law or delegation to issue regulations or to formulate regulations for issuance by the Secretary.

(2) *Significant regulation* means a regulation that is not an emergency regulation and that in the judgment of the head of the initiating office or the Secretary or the Deputy Secretary—

(a) Requires a Regulatory Analysis or is otherwise costly;

(b) Concerns a matter on which there is substantial public interest or controversy;

(c) Has a significant impact on another operating administration or other parts of the Department or other Federal Agency; or

(d) Otherwise involves important Department policy.

(3) *Emergency regulation* means a regulation that, in the judgment of the head of the initiating office, circumstances require to be issued without notice and opportunity for public comment or made effective in less than 30 days after publication in the **Federal Register**.

(4) *Non-significant regulation* means a regulation that, in the judgment of the head of the initiating office, is neither a significant nor an emergency regulation.

A Regulatory Analysis is required for each proposed regulation that—

(1) Could produce a major effect on the general economy in terms of cost, consumer prices, or production;

(2) Could produce a major increase in costs or prices for individual industries, levels of government, geographic regions, or specific elements of the population; or

(3) The Secretary or head of the initiating office determines deserves such an analysis.

Explanation of Information on the Regulations Agenda

The Regulations Agenda is divided by initiating offices. For each initiating office there is a subdivision for: (1) significant regulations, (2) non-significant regulations, and (3) routine and frequent non-significant regulations. For each proposed and final regulation expected to be published, the Agenda provides the following information: (1) a short descriptive title; (2) a summary; (3) the earliest expected date for a decision on whether to issue the proposed or final regulation; (4) a contact office or official who can provide additional information, including advice on how to obtain documents referenced in the Agenda; and (5) the related regulatory citation in the Code of Federal Regulations. If final action has been taken on an item included on the previous semi-annual Agenda, that item is still contained in this Agenda and the final action is indicated under the "Summary" column for that item.

For a significant regulation, the summary includes: (1) a description of the proposed or final regulation; (2) a brief statement as to why it is

considered significant; (3) a statement as to whether a Regulatory Analysis will be required; (4) a brief statement of why the regulation is needed; (5) the legal basis for the action being taken; (6) the past and anticipated chronology of the development of the regulation, including any final action taken since the last semi-annual Agenda and (7) the related regulatory citation in the Code of Federal Regulations. It should be noted that, even though a Regulatory Analysis is not required for some items on the Agenda, either because the criteria are not met or because the regulatory project is covered by earlier regulatory requirements, the Department requires an economic evaluation for all of its regulations.

For non-significant regulations issued routinely and frequently as part of an established body of technical requirements (such as the Federal Aviation Administration's Airspace Rules) to keep those requirements operationally current, only the general category of the regulations, the identity of a contact office or official, and an indication of the expected number of regulations are included; individual regulations are not listed.

If a regulatory docket number has already been established, it is contained in parentheses immediately following the short descriptive title of the regulation. If a member of the public desires further information regarding a particular proposal or regulation, reference should be made to this docket number. The Federal Highway Administration also provides an FHPM number at this point for easier reference by those who use the Federal-aid Highway Program Manual (FHPM). The numbers following the FHPM represent, respectively, the volume, chapter, section and subsection at which the material is located in the FHPM.

In the "Decision Date" column, abbreviations are used to indicate the particular documents being considered for issuance by that date. ANPRM stands for Advance Notice of Proposed Rulemaking, NPRM for Notice of Proposed Rulemaking, and FR for Final Rule. Listing a date in this column is not an indication that a proposal or a final rule will be issued on that date; it is the date on which a final decision is expected to be made on whether to issue the document listed. If any document is issued, publication in the **Federal Register** would follow within a few days. These dates are based on current schedules. Subsequently received information could result in a decision not to take regulatory action or in changes to proposed publication dates. For example, the need for further evaluation could result in a later publication date; evidence of a greater need for the regulation could result in an earlier publication date.

It should be noted that some of the items on the Agenda result from programs that were established to review existing regulations and revoke or revise those regulations that the initiating office determined were not achieving their intended purpose. Projects under regulatory development that resulted from a review of existing regulations to determine whether they should be revoked or revised are preceded by the word "Review" in the "Title" column. Because some reviews can be large-scale undertakings, and because there are already a number of these in the regulatory development process, the Department thought it would provide the public with valuable information if it indicated not only which regulatory reviews are under consideration but also which reviews have not reached the stage where proposed revisions are being, or have been, prepared. The number of regulatory projects that an initiating office can handle is limited by available resources. Therefore, the number of projects in the regulatory development stage limits the number of reviews that can be added.

Explanation of Information on the Regulations Review List

The Regulations Review List is divided by initiating offices. For each office, it provides the following information: (1) a short description of the existing regulations involved, including the related citation to the Code of Federal Regulations; (2) a brief description of the reasons for each selection; (3) a contact office or official who can provide additional information; and (4) the target date for completing the review and determining the corrective course of action to be taken. The action taken can be a revocation or revision of the regulation, or it can be a determination that no regulatory action is necessary because the regulation is found to be achieving its goals and the goals and objectives of Executive Order 12044 and the Department Regulatory Policies and Procedures. If final action has been taken on an item included on the previous semi-annual Review List, that item is still contained in this Review List and the final action is indicated under the "Reasons for Selection" column for that item.

General

To allow for easier use of the Agenda and for quick comparison with earlier Agendas, the Department has instituted the following additional procedures in the Agenda: (1) Items listed on the Agenda or Review List retain the same order in each semi-annual publication. (2) New items are added at the end of the appropriate portion of the Agenda or Review List and are identified by an asterisk on the left side of the "Title" when first added. (3) New substantive information added to items that were on an earlier Agenda or Review List is printed in italics.

Mailing Lists for Regulatory Documents

To assist the public in obtaining regulatory documents issued within the Department of Transportation, an appendix has been included in this document. The appendix contains instructions on how to be placed on mailing lists for copies of regulatory documents, including the Department's Semi-Annual Regulations Agenda, issued by the operating administrations of the Department and the Office of the Secretary. There is no charge for this service; however, because of the costs involved, the number of copies of a document forwarded to an individual requestor may be limited. Persons already on mailing lists for particular documents within the Department will remain on those lists and should not reapply.

By following the instructions specified in the appendix, a person can be placed on a mailing list for future copies of the Department's Regulations Agenda, which will be updated and published in the **Federal Register** every year during August and February. By using the Agenda, individuals can determine which Notice or Advance Notice of Proposed Rulemaking, to be issued by elements of the Department, is of interest to them. Then, using the instructions in the appendix, such persons also can be placed on a mailing list to ensure that after the document of interest is issued a copy will be mailed to them for their review and comment. In this way, individuals will be relieved of the burden of having to review the **Federal Register**, perhaps on a daily basis. The Department expects that this process will ensure that those peopole placed on mailing lists will receive early notice so that their views on the document can be adequately prepared and presented within the established comment period.

Purpose

The Department is publishing this Regulations Agenda and Review List in the **Federal Register** to share with interested members of the public the Department's preliminary expectations

regarding its future regulatory actions. This should enable the public to be more aware of the Department's regulatory activity. Knowledge of the nature and scope of this activity, as well as the specific proposals and reviews being considered, should result in more effective public participation in the Department's regulatory activity. For example, awareness of the dates when notices may be issued seeking public comment, should allow appropriate planning and more efficient use of the comment period. By providing the expected date for a decision on whether to issue a final rule, the Department expects that more appropriate planning by those concerned with the regulation will also be possible.

This publication in the **Federal Register** does not impose any binding obligation on the Department, or any of the offices within the Department, with regard to any specific item on the Agenda or the Review List. Regulatory action in addition to the items listed is not precluded.

If further information is desired on any of the items listed in the Agenda or the Review List, the public is encouraged to contact the individual listed for the particular item. Additional information concerning the Agenda or the Review List, in general, or the Department's Regulatory Policies and Procedures may be obtained from Neil Eisner, whose address and telephone number appear above.

Issued in Washington, D.C. on August 20, 1979.

Linda Heller Kamm,

Acting Deputy Secretary of Transportation.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

OST

AGENDA

Office of the Secretary

Significant Regulations

Title	Summary	Contact	Decision date
Nondiscrimination on the Basis of Handicap in DOT-Funded Programs and Activities. (Docket No. 56).	**A. Description:** The proposed regulation implications sec. 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), prohibiting discrimination against handicapped persons in federally funded programs. The regulation establishes requirements for recipients of DOT financial assistance in order to meet the mandate of sec. 504. **B. Why Significant:** The proposed regulation would have a major impact on DOT programs, particularly those administered by FAA, FRA, UMTA. *It will have a more limited but definite impact on FHWA and NHTSA programs.* All recipients of DOT aid must take positive action to make their Federally funded programs accessible to the handicapped. **C. Regulatory Analysis:** Required **D. Need:** These regulations implement 29 U.S.C. 794 and guidelines issued by the Department of Health, Education and Welfare (HEW). They are needed to ensure that recipients of financial assistance from DOT make the programs operated in existing facilities accessible to handicapped persons, and to ensure that new facilities are constructed so as to be readily accessible to handicapped persons. **E. Legal Basis:** 29 U.S.C. 794 **F. Chronology:** HEW issued guidelines on Jan. 13, 1978, requiring Federal agencies to intergrate the requirements of sec. 504 into their respective programs and activities. (43 FR 2132). An NPRM was published on June 8, 1978 (43 FR 25016). By Supplemental Notice, the comment period was extended to October 20, 1978 (43 FR 30585). Public hearings were held in New York City, September 11; Denver, September 13; San Francisco, September 15; and Washington, D.C., September 19 (43 FR 34176). The Regulatory Analysis Review Group selected this regulation to review for its economic impact, and filed its report in the public docket on October 20, 1978. *The Final regulation requiring that the nation's transportation system be made accessible to handicapped persons was published on Thursday, May 31, 1979 (44 FR 25016). The effective date of the regulation is July 2, 1979..* **G. Citation:** 49 CFR pt. 27	Robert C. Ashby, (202)426–4723.	*Action Complete.*
Title VI Civil Rights Regulations	**A. Description:** The proposed regulations would assemble in one package all DOT procedures and requirements concerning all recipients of financial assistance under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–4). **B. Why Significant:** Substantial public interest is anticipated and it will affect all of the DOT elements and the administration of all grant programs. **C. Regulatory Analysis:** Not required **D. Need:** The Department has an existing Title VI regulation dating from 1970, and a Title VI order promulgated by Secretary Coleman on Jan. 19, 1977, and reaffirmed by Secretary Adams in March of that year. A new regulatory package is being developed to replace the previous layering of regulations. **E. Legal Basis:** 42 U.S.C. 2000d–4	Robert J. Coates, (202)426–4754.	NPRM *October 1979.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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OST — Office of the Secretary

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	F. Chronology: The proposal is currently under review. When the review is completed, it will be submitted to the Department of Justice for approval. **G. Citation:** 49 CFR pt. 21		
Minority Business Enterprise Program.	**A. Description:** This regulation would implement the requirements of DOT Order 4000.7A for DOT operating elements to take affirmative action to assure that minority business enterprises participate in Departmental procurement and financial assistance programs. **B. Why Significant:** Substantial public interest is anticipated given the proposed action's potential impact on DOT's procurement and assistance programs. **C. Regulatory Analysis:** Not required **D. Need:** To implement the provisions of the DOT Order 4000.7A by providing detailed instructions for carrying out the affirmative action requirements of the Order. *To implement the 1978 amendments to the Small Business Act.* **E. Legal Basis:** Executive Order 11625; 49 U.S.C. 1730; 45 U.S.C. 803; *Pub. L. 95-599; Pub. L. 95-507; 4 U.S.C. 471 et seq.; Title 23 of the U.S.C.; 23 U.S.C. 401 et seq.* **F. Chronology:** *NPRM was published on May 17, 1979 (44 FR 28928). The comment period closed on July 16, 1979.* **G. Citation:** No CFR citation as yet	*Terry Dowd,* (202)*426-4723.*	FR *November 1979.*
Financial Assistance to Participants in Rulemaking Proceedings (Docket No. 48).	**A. Description:** This proposal would permit, but not require, each agency of the Department to fund eligible members of the public for the reasonable and actual costs of preparing and presenting their views at selected agency rulemaking proceedings. **B. Why Significant:** This issue concerns a matter on which there is substantial public interest and controversy and would have a significant impact on the operating administrations and the Office of the Secretary. **C. Regulatory Analysis:** Not required **D. Need:** This rule would substantially increase the number of active, informed, and independent participants at many rulemaking proceedings within the Department, thereby increasing the diversity and balance of views presented to the Department, and enhancing the Department's knowledge of the interests likely to be affected by its proposed rules. **E. Legal Authority:** The Department's rulemaking authority under the Department of Transportation Act, 49 U.S.C. 1651 *et seq.,* and related statutes.	*Sam Podberesky,* (202)*426-4723.*	NPRM *September 1979.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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OST — Office of the Secretary

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	F. Chronology: On Jan. 13, 1977, the Department published regulations for a one-year demonstration program to provide financial assistance to certain participants in rulemaking proceedings of NHTSA. (42 FR 2863). At the same time, the Department issued an ANPRM, inviting public comments on the feasibility, wisdom, and scope of a permanent Department-wide program of financial assistance. Upon conclusion of the demonstration program, NHTSA evaluated the program and recommended that the Department establish an amended version of the program throughout the Department. On March 16, 1978, the demonstration program in NHTSA was extended until the Secretary decided whether to issue final, permanent Departmental regulations (43 FR 10918). *On January 23, 1979, the regulation governing the NHTSA financial assistance demonstration program was revised to improve its administration.*		
	G. Citations: *49 CFR pt. 5*		
Public Availability of Information	**A. Description:** This involves a revision of DOT's Freedom of Information Act Regulations. Specific areas to be revised may include the fee schedule and the policy on waivers of fees for public interest groups and the press.	*Rebecca Lima Dailey,* (202)426–4542.	NPRM *December 1979.*
	B. Why Significant: Substantial public interest		
	C. Regulatory Analysis: Not required		
	D. Need: Freedom of Information Regulations need periodic revision to keep current with changes in case law, policy, and implementation costs.		
	E. Legal Basis: 5 U.S.C. 552 (Freedom of Information Act)		
	F. Chronology: The regulations were last revised in 1975. (40 FR 7915) A new revision is currently under internal development.		
	G. Citation: 49 CFR pt. 7		

OST — Office of the Secretary

Non-significant Regulations

Title	Summary	Contact	Decision date
Consolidation of Transportation Grants to U.S. Territories.	The regulation would comply with Title V of Pub. L. 95–134 which permits departments and agencies to consolidate grant programs, reduce reporting requirements, and waive local matching fund requirements. NPRM was published on 1/8/79 (44 FR 1765) (49 CFR pt. 29).	*Greg Dahlberg,* (202)426–9605.	FR *August 1979.*
Maintenance of and Access to Records Pertaining to Individuals.	Revision of the Department's Privacy Act regulations. *Notice of incorporation by reference published on 8/28/78. NPRM published 12/4/78 (43 FR 56682).* (49 CFR pt. 10).	John Windsor, (202)426–1887.	FR *August 1979.*
Official Seal	Revision of regulations governing description and use of the Department's seal. (49 CFR pt. 3).	Sam Podberesky, (202)426–4723.	FR *September 1979.*
Rulemaking procedures	Amendments to the Office of the Secretary regulations on notice-and-comment rulemaking. (49 CFR pt. 5).	Sam Podberesky, (202)426–4723.	NPRM *September 1979.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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OST — Office of the Secretary

Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
*Proposed Relocation of Standard Time Zone Boundary in the State of Alaska.	This regulation would move Juneau, Alaska and part of the surrounding area from the Pacific Time Zone to the Yukon Time Zone. NPRM was published on May 16, 1979 (44 FR 28696) (49 CFR 71.11).	Jack Lusk, (202)426-5723.	FR August *1979.*
*Nondiscrimination on the Basis of Age in DOT Financial Assistance Programs.	This regulation would prohibit age discrimination by recipients of DOT financial assistance programs.	Leslie Baldwin, (202)426-4388.	NPRM September *1979.*

USCG — U.S. Coast Guard

Significant Regulations

Title	Summary	Contact	Decision date
Review: Qualifications of the Person in Charge of Oil Transfer Operations, Tankerman Requirements (Docket No. CGD 74-44, 74-44a).	**A. Description:** Would redefine and establish qualifying criteria for certifying individuals engaged in the carriage and transfer of the various categories of dangerous cargoes in bulk. **B. Why Significant:** Considered significant because this is the result of a Presidential initiative. **C. Regulatory Analysis:** Not required..... **D. Need:** Most pollution incidents are the result of personnel error; consequently the minimum qualifications of persons involved in handling pollution substances should be specified. **E. Legal Basis:** 86 Stat. 427, as amended (46 U.S.C. 391a); Sec. 6(b)(1), 80 Stat. 937 (49 U.S.C. 1655(b)(1)); 49 CFR 1.46(n)(4). **F. Chronology:** Environmental Analysis and Inflationary Impact Statement completed 2/77. NPRM published April 25, 1977 (42 FR 21190). Public hearing 6/77. Extensive comments on first NPRM warrant the issuance of another NPRM. **G. Citation:** 33 CFR pt. 155; 46 CFR pts. 10, 12, 30, 31, 35, 70, 90, 98, 105, 151, and 157.	CDR Hess, (202)426-2251.	NPRM *August 1979.*
Review: Revision of Electrical Regulations (Docket No. CGD 74-125).	**A. Description:** General revision and updating to conform with latest technology and to include steering requirements for vessels other than tank vessels. **B. Why Significant:** Considered significant since it incorporates the steering requirements set forth in the Presidential initiatives of March 17, 1977. **C. Regulatory Analysis:** Not Required..... **D. Need:** The industrial standards for electrical engineering have changed in the past few years and the regulations must be brought up-to-date to reflect the latest industry practice. **E. Legal Basis:** 46 U.S.C. 170, 367, 369, 375, 390(b), 391(a), 392, 408, 416, 445, 389, 526(p); 49 U.S.C. 1655(b).	LCDR Mowery, (202)426-2205.	NPRM *August 1979.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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USCG

U.S. Coast Guard

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	F. Chronology: NPRM published June 27, 1977 (42 FR 327000). A supplemental NPRM will be issued because of extensive changes that were necessary as a result of comments received on the first NPRM. **G. Citation:** 46 CFR pts. 110–113		
Standard for New Self-Propelled Vessel Carrying Bulk Liquefied Gases (Docket No. CGD 74–289).	**A. Description:** These regulations would adopt the Intergovernmental Maritime Consultative Organization (IMCO) Resolution, the Code for Construction and Equipment of Ships Carrying Liquefied Gases in Bulk. **B. Why Significant:** This is a significant rulemaking involving matters of substantial public interest. **C. Regulatory Analysis:** Not required **D. Need:** The increased use of liquefied gases for energy sources has produced a dramatic increase in the manufacture and use of vessels designed for that cargo. Due to the unusual and unique hazards associated with liquefied gases, these vessels must be addressed in regulations specially tailored to their unique situation. **E. Legal Basis:** R.S. 4472 as amended (46 U.S.C. 170); Sec. 201 (86 Stat. 42), as amended (46 U.S.C. 391); Sec. 6(b)(1), 80 Stat. 937 (49 U.S.C. 1655(b)(1)). **F. Chronology:** Economic and Environmental Impact Assessments and Negative Declarations were prepared before the NPRM was published October 4, 1976 (41 FR 43822). Public hearing held 11/76. *Final rule published on May 3, 1979 (44 FR 25985).* **G. Citation:** 46 CFR pts. 31, 34, 40, 54, 56, 98, 154, and 154a.	Mr. A. Rowek, (202)426–*1217.*	*Action Complete.*
Whitewater Rafts Inspection (Docket No. CGD 75–020).	**A. Description:** These proposed regulations would set forth safety requirements for whitewater rafts that would recognize the unique construction, arrangement, equipment, and general operation of these vessels. **B. Why Significant:** This project is considered significant because of substantial Congressional interest and the potential cost to a minor industry largely comprised of small businesses. **C. Regulatory Analysis:** Not required **D. Need:** Increased popularity of whitewater rafting as a commercial recreational activity has increased the potential for casualties to paying passengers. Since these rafts are engaged in interstate commerce, by law, they are subject to inspection to ensure that they meet minimum levels of safety. **E. Legal Basis:** 46 U.S.C. 390 **F. Chronology:** This project commenced in 1974. *Public response to this project indicated that it should be withdrawn at this time and reevaluated.* **G. Citation:** 46 CFR pts. 175–187	LCDR Anderson, (202)426–2183.	*Withdrawn.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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USCG **U.S. Coast Guard**

Significant Regulations—Continued

Title	Summary	Contact	Decision date
Review: *Proposed Design Standards for Tank Barges* (Docket No. CGD 75-083). Upgrade Existing Tank Barge Construction (Docket No. CGD 75-083a).	**A. Description:** This action is comprised of two regulatory projects centered on tank barge construction standards which resulted from Presidential initiatives of March 17, 1977, directing study of the tank barge pollution problem. One project will address new barge construction while the other will pertain to existing barges. Regulatory documents for both will be published at the same time and joint public hearings will be held. **B. Why Significant:** Considered significant due to substantial Congressional and public interest. **C. Regulatory Analysis:** Required. **D. Need:** Increased public awareness of the oil pollution problem, as well as international and domestic interest in this area have made increased design standards necessary as a means of reducing the possibility of pollution. **E. Legal Basis:** Sec. 201, 86 Stat. 427, as amended (46 U.S.C. 391a). **F. Chronology:** The upgrade of tank barge construction standards was published as a NPRM in the ***Federal Register*** of December 24, 1971 (36 FR 24960). As a result of the 63 written comments received, it was decided that the standards needed to be studied further, especially as they would apply to existing barges. In 1974, the Coast Guard and the Maritime Administration performed a joint study of the tank barge pollution problem which found that certain construction techniques might provide a significant advantage for eliminating oil pollution from tank barges. However, the study had several weaknesses and regulatory action was not taken. In July 1977, the Coast Guard began a reexamination of the tank barge construction standards. It was determined that new construction should be treated separately from existing barges. *An ANPRM concerning impacts related to existing barges was published on June 14, 1979 (44 FR 34440). An NPRM on the standards for new construction was published on June 14, 1979 (44 FR 34440).* **G. Citation:** 46 CFR pts. 32-40	LCDR Johnson, (202)426-4431. LCDR Sampson, (202)426-2183.	*FR April 1980.* *NPRM April 1980.*
Review: Pollution Prevention, Vessels and Oil Transfer Facilities (Docket No. CGD 75-124a).	**A. Description:** Would reduce accidental or intentional discharge of oil or oily wastes during vessel operations. **B. Why Significant:** This regulation is the significant part of Docket No. CGD 75-124. Substantive changes to the NPRM are proposed so that a supplemental NPRM is needed. It is considered significant due to opposition from the owners/operators of offshore marine service vessels and inland waterways vessels to the oil-water separator requirements of 33 CFR 155.330. Also, considerable expense may be incurred by the towing service to install separators and monitors or alarms, if alternative measures are not used. Without these sections, the remainder of CGD 75-124 is non-significant and moved to that listing. **C. Regulatory Analysis:** Not required.	LCDR J. Busavage, (202)426-9578.	NPRM *August 1979.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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USCG **U.S. Coast Guard**

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	D. Need: (1) Necessary to reduce the number of oil spills. (2) Clarification of existing rules. (3) Additional requirement for oil-water separators under the 1973 International Convention for the Prevention of Pollution from Ships. **E. Legal Basis:** Section 311(j)(1) (C) and (D) of the Federal Water Pollution Control Act as amended; 33 U.S.C. 1321(j)(1) (C) and (D). **F. Chronology:** NPRM published June 27, 1977 (42 FR 32670). Supplemental NPRM published October 27, 1977 (42 FR 56625). Public Hearings held: New Orleans, La. 11/22/77, St. Louis, Mo. 11/30/77, Wash., D.C., 11/28/77. **G. Citation:** 33 CFR 155.330 thru 155.410		
Offshore Oil Spill Pollution Fund (Docket No. CGD 77-055).	**A. Description:** Would establish procedural rules concerning administration and operation of fund, including liability limits for certain facilities, financial responsibility factors, damage claim settlement procedures, et al. **B. Why Significant:** Involves matters of substantial public interest and important DOT policy. **C. Regulatory Analysis:** Required **D. Need:** To implement administration of the fund by creating procedures for prompt settlement of claims arising from damage caused by oil pollution. **E. Legal Basis:** Outer Continental Shelf Lands Act of 1978. P.L. 95-372, 92 Stat. 629 (43 U.S.C. 1811). **F. Chronology:** NPRM published December 4, 1978. (43 FR 56840). Public hearings were held in New Orleans, La., January 8, 1979, and Washington, D.C., January 8, 1979. *Final Rule published March 19, 1979 (44 FR 16860).* **G. Citation:** 33 CFR *135 and 136*	F. Martin, (202)426-2606.	*Action Complete.*
Inert Gas System (Docket No. CGD 77-057).	**A. Description:** Would require certain oil tankers of 20,000 deadweight tons and over to be fitted with inert gas system. **B. Why Significant:** This is a result of a Presidential Initiative and meets major cost impact criteria. **C. Regulatory Analysis:** Required **D. Need:** As part of the President's initiatives to reduce marine pollution, this regulation will reduce the possibility of in-tank explosions which have been the cause of some pollution incidents. **E. Legal Basis:** R.S. 4417(a) as amended by section 5, P.L. 95-474, (46 U.S.C. 391a); 49 CFR 1.46(n)(4). **F. Chronology:** Inflationary Impact Statement completed 5/77. NPRM published May 16, 1977 (42 FR 24874). Public hearings held in Washington, D.C., and San Diego 6/77. Port and Tanker Safety Act (PTSA) of 1978, enacted October 1978. *NPRM published February 12, 1979 (44 FR 8984). Hearings were held on March 21, 1979 in Washington, D.C., and March 2, 1979, in San Francisco.* **G. Citation:** 46 CFR 32.53	Mr. D. Sheehan, (202)426-2205.	FR *September 1979.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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USCG **U.S. Coast Guard**

Significant Regulations—Continued

Title	Summary	Contact	Decision date
Segregated Ballast for Oil Tankers (Docket No. CGD 77-058).	**A. Description:** On March 17, 1977 President Carter directed the Secretary of Transportation to issue new rules for oil tanker standards which were to include segregated ballast on all tankers and double bottoms on all new tankers which call at American ports. The provisions of these proposed regulations have been changed by the February 1978 Inter-governmental Maritime Consultative Organization (IMCO) Conference to include Crude Oil Washing (COW) and Clean Ballast Tanks (CBT). **B. Why Significant:** This rulemaking is considered significant because of substantial Congressional and public interest. **C. Regulatory Analysis:** Required..... **D. Need:** As part of the President's initiatives to reduce pollution, this regulation is needed to help reduce *pollution resulting from normal operations aboard ships.* **E. Legal Basis:** R.S. 4417(a) as amended by section 5, P.L. 95-474, (46 U.S.C. 391a). **F. Chronology:** NPRM was published May 16, 1977 (42 FR 24868). As a result of the IMCO 2/78 Tanker and Pollution Prevention Conference a new NPRM will be issued. This rulemaking was also mandated by the Port Tanker and Safety Act of 1978. *NPRM published February 12, 1979 (44 FR 8984). Hearings were held on March 21, 1979 in Washington, D.C., and March 28, 1979 in San Francisco.* **G. Citation:** 33 CFR pt. 157.....	CDR Ireland, (202)426-4431.	FR *September 1979.*
Steering Gear Design Standards to Provide Redundancy (Docket No. CGD 77-063).	**A. Description:** On March 17, 1977 President Carter directed the Secretary of Transportation to issue new rules to provide for back-up steering systems for all tankers calling at U.S. Ports. **B. Why Significant:** This rulemaking is considered significant because of Congressional and public interest. **C. Regulatory Analysis:** Not required..... **D. Need:** As part of the President's initiatives to reduce pollution, this regulation is needed to help reduce the possibility of a marine collision due to a loss of steering. **E. Legal Basis:** R.S. 4417(a) as amended by section 5, P.L. 95-474 (46 U.S.C. 391a). **F. Chronology:** NPRM published May 16, 1977 (42 FR 24869). As a result of the IMCO 2/78 Tanker Safety and Pollution Prevention Conference a new NPRM will be issued. *NPRM published February 12, 1979 (44 FR 8984). Hearings were held on March 21, 1979 in Washington, D.C., and March 28, 1979 in San Francisco.* **G. Citation:** 46 CFR pt. 58.....	CDR Williams, (202)426-2160.	FR *September 1979.*
Review: Construction and Equipment Existing Self-Propelled Vessels Carrying Bulk Liquefied Gases (Docket No. 77-069).	**A. Description:** Would amend regulations for existing self-propelled vessels that carry bulk liquefied gases by including the substantive requirements for the "Code for Existing Ships Carrying Liquefied Gases in Bulk" adopted by Intergovernmental Maritime Consultative Organization (IMCO) which would increase safety levels of existing ships carrying gas.	LCDR Pluta, (202)426-2160.	NPRM *November 1979.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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USCG **U.S. Coast Guard**

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	B. Why Significant: This is significant because it involves a large number of existing U.S. and foreign flag ships which carry liquefied gas and is the subject of substantial public interest. **C. Regulatory Analysis:** Required **D. Need:** Increased use of liquefied gases has intensified the problems associated with this product. Since this product has unique properties and dangers, a dedicated set of regulations is needed to address them. **E. Legal Basis:** R.S. 4417(a) as amended by section 5, P.L. 95-474, (46 U.S.C. 391a); See 6(b)(1), 80 Stat 937 (49 U.S.C. 1655 (b)(1)). **F. Chronology:** An Advance Notice of Proposed Rulemaking was published June 30, 1977 (42 FR 33353). Regulatory Analysis was completed 2/79. An Environmental Impact Assessment *was* completed 2/79. This action is also mandated by the Port and Tanker Safety Act of 1978. **G. Citation:** 46 CFR pts. 31, 34, 38, 40, 54, 98, 154		
Review: Licensing of Pilots (Docket No. CGD 77-084).	**A. Description:** This proposal would require recency of service for each route upon which a pilot is authorized to serve; licenses would be issued with tonnage limitations commensurate with pilot experience; and consideration of shiphandling simulator training for pilots of very large vessels including Very Large Crude Carriers (VLCC). **B. Why Significant:** Considered significant because there is substantial interest among marine personnel on this matter with opposition expected from Federal pilots. **C. Regulatory Analysis:** Not required **D. Need:** Increased ship size has led to unusual handling characteristics with which some pilots may not be familiar. This rule will allow use of simulator training for these kinds of vessels. **E. Legal Basis:** *46 U.S.C. 214, 224, 230, 233, 237; 49 U.S.C. 1655(b)(1).* **F. Chronology:** A Regulatory Analysis and Work Plan were completed 10/78. A public hearing will probably be held shortly after the publication of the NPRM. **G. Citation:** 46 CFR pt. 10	LCDR Norman, (202)426-2240.	NPRM *August 1979.*
Tank Vessel Operations Regulations, Puget Sound (Docket No. CGD 78-041).	**A. Description:** This regulation would govern the operation of tank vessels in the Puget Sound area to protect against environmental harm resulting from vessel or structure damage, destruction, or loss. **B. Why Significant:** This is considered a significant rulemaking due to Congressional and public interest. In addition it may generate controversy among the public, environmentalists, and the oil industry. **C. Regulatory Analysis:** Not required **D. Need:** To reduce the possibility of environmental harm resulting from oil spills in Puget Sound by governing the operation of tankers to reduce the risk of collision or grounding.	CAPT R. Janecek, (202)426-1935.	FR *January 1980.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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USCG **U.S. Coast Guard**

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	E. Legal Basis: Port and Waterways Safety Act (33 U.S.C. 1221). **F. Chronology:** Secretary Adams signed 180 day Interim Rule on March 14, 1978 prohibiting entry of oil tankers in excess of 125,000 Deadweight Tons in Puget Sound March 23, 1978 (43 FR 12257). ANPRM published March 27, 1978 (43 FR 12840) with public hearing held April 20–21, 1978. *NPRM published April 12, 1979 (44 FR 21974). Public hearings were held in Washington State on June 13 and 14, 1979. The interim navigation rule will remain in effect until cancelled (44 FR 36174).* **G. Citation:** 33 CFR pts. 160, 161		
Personnel Job Safety Requirements for Industrial Vessels *(No Docket Number).*	**A. Description:** This regulation would develop health and safety requirements for personnel employed on artificial islands, fixed installations and vessels engaged in oil field exploration and development. **B. Why Significant:** This action concerns a matter that is of significant public interest and which will impact on other Federal agencies. Action mandated by pending Outer Continental Shelf legislation. **C. Regulatory Analysis:** Not required **D. Need:** Exploration and development of the offshore resources requires a growing fleet of vessels which perform a variety of industrial functions. The regulations will provide more comprehensive protection for personnel employed on these vessels. **E. Legal Basis:** 43 U.S.C. 1333(e) **F. Chronology:** Work plan prepared 11/78 **G. Citation:** 46 CFR Subchapters I and IA	*LT Whipple,* (202)472–5160.	NPRM *October 1979.*
Personnel Job Safety Requirements for Fixed Installations on the Outer Continental Shelf *(Docket CGD 79–077).*	**A Description:** This regulation would develop personnel safety and health requirements for artificial islands, fixed installations and other devices on the Outer Continental Shelf (OCS). **B. Why Significant:** This action concerns a matter that is of significant public interest and which will impact on other Federal agencies. Action mandated by Outer Continental Shelf legislation. **C. Regulatory Analysis:** Not required **D. Need:** More comprehensive requirements will improve personnel working conditions and the level of safety on fixed installations on the OCS. The regulations will also help fulfill the mandates for safety and health in the impending legislation on the OCS Land Act Amendments of 1978. **E. Legal Basis:** 43 U.S.C. 1333(e) **F. Chronology:** Work plan prepared 11/78 **G. Citation:** 33 CFR Subchapter N; 46 CFR Subchapters IA and V.	R. Barrett, (202)472–5160.	ANPRM *October 1979.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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USCG

U.S. Coast Guard

Significant Regulations—Continued

Title	Summary	Contact	Decision date
Revision of 46 CFR 157.20-5 Division into Three Watch Regulation (Docket No. CGD 78-037).	**A. Description:** This revision would require an adjustment in vessel manning requirements, to bring them into line with current legislation. It would change the requirements which identify personnel who must be used on the three watches and personnel who may be employed in a day working status. **B. Why Significant:** Involves a matter that is of significant interest to the public. Also, opposition is anticipated from the maritime labor unions. **C. Regulatory Analysis:** Not required. **D. Need:** The regulations in this section no longer reflect present CG policy and need updating. **E. Legal Basis:** R. S. 4463, as amended (46 U.S.C. 222); Section 2 of the Seamen's Act of 1915, as amended (49 Stat. 1933; 46 U.S.C. 673). **F. Chronology:** Prepared Work Plan 5/78 **G. Citation:** 46 CFR 157.20-5	CDR McCowen, (202)426-2240.	NPRM *August 1979.*
Drawbridge Operation Regulations—Newark Bay and Passaic and Hackensack Rivers, New Jersey (Docket No. CGD 78-173).	**A. Description:** Would amend the regulations to provide more equitable balance between the needs of land and marine modes of transportation in scheduling drawbridge openings and generally update the regulations. **B. Why significant:** Involves coordination with other agencies within DOT and is a matter of significant public interest. **C. Regulatory Analysis:** Not required **D. Need:** Increased use of rail, road, and water transportation in this heavily industrialized and heavily populated area, mariners' complaints of long delays before bridge openings, and a general need to update existing regulations. **E. Legas Basis:** Sec. 5, 28 Stat. 362, 33 U.S.C. 499; 80 Stat. 937, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5). **F. Chronology:** A fact-finding public hearing was held November 17, 1977 to provide the basis for formulating the proposed rule. **G. Citation:** 33 CFR 117.200	Mr. F. Teuton, (202)426-0942.	NPRM *October 1979.*
Review: Eight-Hour Day, Voluntary Overtime (Docket No. CGD 78-146).	**A. Description:** Under 46 CFR 157.20-10, no licensed officer or seaman should be required to be on duty more than eight hours in any one day except in extraordinary conditions. The regulations do not address overtime and do not consider any possible "fatigue factor". **B. Why Significant:** Involves a matter that is of public interest. In addition, opposition may be forthcoming from maritime labor unions, or management, or both. **C. Regulatory Analysis:** Not required. **D. Need:** In recent years Coast Guard studies have shown that a "fatigue factor" must be recognized as having a profound effect on one's reaction time, judgment, and well being.	CDR McCowen, (202)426-2240.	ANPRM *October 1979.*

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USCG **U.S. Coast Guard**

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	E. Legal Basis: Section 2 of Seaman Act of 1915, as amended. (49 Stat. 1933; 46 U.S.C. 673). **F. Chronology:** Prepared Work Plan 1/79. Submitted to OST May 1979. **G. Citation:** 46 CFR 157.20–10		

USCG **U.S. Coast Guard**

Non-significant Regulations

Title	Summary	Contact	Decision date
Vessel Traffic Service (VTS), Berwick Bay, LA, (Docket 73–186).	Would codify certain operating procedures now being done under local order. (33 CFR pt. 161).	LTJG Molessa, (202)426–4958.	NPRM *November 1979.*
Review: Lights on Pipelines (Docket No. CGD 73–216).	Would require warning lights on unattended dredge pipelines. NPRM published February 13, 1978 (43 FR 6200). *FR published February 26, 1979 (44 FR 11052); (33 CFR pts. 80, 90, 95).*	LTJG Molessa, (202)426–4958.	*Action Complete.*
Review: Cargo Location Signs and Cargo Information Cards on Barges (Docket No. CGD 73–243).	Would require notification of the vessel's crew of the hazards and locations of dangerous cargoes carried on barges. *NPRM published March 29, 1979 (44 FR 18709)* (46 CFR pt. 35).	Mr. R. Query, (202)426–1217.	*FR January 1980.*
VTS San Francisco, CA. (Docket No. CGD 73–274).	Would make mandatory a now voluntary vessel traffic service. (33 CFR pt. 161).	Mr. F. Schwer, (202)426–4958.	NPRM *October 1979.*
VTS Houston-Galveston, Texas (Docket No. CGD 74–029).	Would make mandatory a now voluntary vessel traffic service. (33 CFR pt. 161).	LTJG Molessa, (202)426–4958.	NPRM *December 1979.*
Powered Pilot Hoists and Ladders (Docket No. CGD 74–140).	Would establish new regulations for pilot hoists and revise regulations for pilot ladders and chain ladders. (46 CFR pts. 160, 163). *NPRM published July 23, 1979 (44 FR 43016).*	Mr. R. Markle, (202)426–1445.	FR November 1979.
Review: Measurement of Size of Accesses to Exemptible Water Ballast Spaces (Docket No. CGD 74–211).	Would establish measurement of vessel size of access to exemptible water ballast space. (46 CFR pt. 69).	Mr. Stitt, (202)426–2192.	*Withdrawn.*
Review: Fixed Fire Extinguishing Systems on Uninspected Vessels (Docket No. CGD 74–284).	Would establish standards for the construction and installation of Halon 1301 and other fixed fire extinguishing systems. (46 CFR 162.029).	Mr. K. Wahle, (202)426–1444.	NPRM *August 1979.*
Elevators and Dumbwaiters (Docket No. CGD 75–001).	Would adopt the American National Standards Institute (ANSI) code with certain modifications for vessel construction. NPRM published April 5, 1976 (41 FR 14386). (46 CFR pt. 58).	Mr. B. Jackson, (202)426–2206.	FR *December 1979.*
Review: Compatibility of Bulk Liquid Cargoes (Docket No. CGD 75–059).	Would establish cargo loading standards to prevent the intermingling of cargo likely to create dangerous conditions. (46 CFR pt. 150).	Mr. R. Query, (202)426–1217.	NPRM August 1979.
Benzene Carriage Requirements, Vapor Exposure Limitations (Docket No. CGD 75–075).	Proposed requirements to prevent exposure of crew to hazardous vapors. NPRM published August 21, 1978 (43 FR 37149). (46 CFR pts. 151, 153).	*LTJG Murray,* (202)426–2192.	FR August 1979.
Review: Ocean Operator (Docket No. CGD 75–178).	Proposed licensing requirements for rank of ocean operator. NPRM published March 14, 1977 (42 FR 13844). (46 CFR pts. 157 and 186). *An alternate approach is under consideration; this may be withdrawn.*	CDR McCowen, (202)426–2240.	FR *August 1979.*

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Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
Review: Launching Devices for Liferafts (Docket No. CGD 75-217).	Proposed specification for approval of devices used for launching inflatable liferafts. (46 CFR Pts. 160 and 163).	Mr. M. Daniels, (202)426-1445.	NPRM *December 1979.*
Review: Helicopter Operations with Tank Vessels (Docket No. 75-221).	Would establish guidelines for helicopter operations on tank vessels and Liquefied Natural Gas (LNG) Vessels. (46 CFR pts. 32, 34, and 25).	LTJG Sedlak, (202)*426-2197.*	NPRM August 1979.
Review: Advance Notice of Arrival (Docket No. CGD 75-238).	Would require advance notice to Captain of the Port (COTP) of vessel arrivals, departures and hazardous conditions. NPRM published June 15, 1978 (43 FR 25958). *Public hearing held October 12, 1978 in Washington, D.C., and October 20, 1978 in Houston Texas* (33 CFR pt. 161).	*LT Dickman,* (202)426-1927.	FR *August* 1979.
Review: Stability Standards for Tug Boats (Docket No. CGD 76-018).	Would establish impact stability standards for vessels normally engaged in towing operations to increase their resistance to capsizing. ANPRM published April 12, 1976 (41 FR 15349). (46 CFR pt. 42).	F. Perrini, (202)426-2187.	NPRM *January 1980.*
Review: Tug Assistance in Confined Waters (Docket No. CGD 76-025).	Would require tug assistance for large vessels operating in confined waters. ANPRM published May 6, 1976 (41 FR 18770). (33 CFR pt. 164).	Mr. F. Schwer, (202)426-4958.	NPRM November 1979.
Review: Lights and Retro-Reflective Material for Life Preservers and Other Lifesaving Equipment (Docket No. CGD 76-028).	Would require lights and retro-reflective material on life preservers in order to aid rescue efforts. NPRM published May 23, 1977 (42 FR 26229). *Final Rule published July 2, 1979 (44 FR 38778).* (46 CFR pts. 25, 33, 75, 94, 161, 167, 180, 192).	LCDR Anderson, (202)426-2183.	*Action Complete.*
Review: Lifesaving systems for Great Lakes Vessels (Docket No. CGD 76-033).	Would amend lifesaving equipment regulations to improve chances of personnel survival following abandonment of vessel (46 CFR Subchapter D, H, I, T, and Q).	Mr. R. Markle, (202)426-1445.	NPRM *October 1979.*
Review: Exposure Suits on Great Lakes Vessels (Docket No. CGD 76-033a).	Proposed approval, specification and vessel requirements for low-temperature exposure. NPRM published June 8, 1978 (43 FR 25000). (46 CFR pts. 33, 75, 99, 160).	Mr. R. Markle, (202)426-1445.	FR *August 1979.*
Review: Factory Inspection Approval Procedures (Docket No. CGD 76-048).	Proposed procedures to allow third party inspection of specified equipment. NPRM published October 23, 1978 (43 FR 49440). (46 CFR pt. 159).	Mr. R. Markle, (202)426-1445.	FR *August 1979.*
Review: Factory Inspector, Distress Signal (Docket No. CGD 76-048a).	Proposed procedures to allow third party inspection of distress signals. NPRM published October 23, 1978 (43 FR 49445). (46 CFR pt. 160).	Mr. R. Markle, (202)426-1445.	FR *August 1979.*
Minimum Net Bottom Clearance (Docket No. CGD 76-051).	Would require vessels to maintain a minimum net bottom clearance while transiting certain navigable waters of the United States. ANPRM published May 6, 1976 (41 FR 18770). (33 CFR p. 168).	Mr. F. Schwer, (202)426-4958.	*Withdrawn.*
Review: Subdivision of Passenger Vessels (Docket No. CGD 76-053).	Proposes more flexible regulations by allowing alternate compliance with Intergovernmental Maritime Consultative Organization as an alternative to existing requirements. (46 CFR pts. 73, 74).	Mr J. Howell, (202)426-2187.	NPRM *February 1980.*
Review: Stability Standards for Hopper Dredges (Docket No. CGD 76-080).	Would improve capability of a dredge to withstand flooding caused by damage to hull or interior piping. (46 CFR pt. 93).	Mr. D. Ewing, (202)426-2187.	NPRM*October 1979.*
Requirements for Boat Ventilation (Docket No. CGD 76-082).	Would establish requirements for ventilation of fuel and engine compartments on boats. NPRM published July 27, 1978 (43 FR 32606). (33 CFR pt. 183).	Mr. L. Granholm, (202)426-4027.	FR *August 1979.*
Review: Combination Fire Hose Nozzles (Docket No. CGD 76-086).	Proposed requirement for an approved combination nozzle on most vessels. NPRM published June 16, 1977 (42 FR 30649). *Final Rule published January 11, 1979. (44 FR 2390).* (46 CFR pts. 34, 76, 95, 162, 193).	Mr. F. Thompson, (202)426-2174.	*Action Complete.*

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Title	Summary	Contact	Decision date
Review: Cadets of the Coast Guard (Docket No. CGD 76-087).	Would revise present regulatory language to indicate desired procedures for Cadet appointments. NPRM published November 1, 1976 (41 FR 47944). *FR published May 29, 1979 (44 FR 30094)* (33 CFR pt. 40).	LTJG Marshall, (202)426-1370.	*Action Complete.*
Oil/Water Separator (Docket No. CGD 76-088a).	Would establish approval procedures and specifications for oil-water separators, cargo and bilge monitors, and bilge alarms for use on merchant vessels. NPRM published June 27, 1977 (42 FR 32686). (46 CFR pt. 162).	LT McCall, (202)426-1445.	FR *August 1979.*
Cargo Monitors on Tank Vessels (Docket No. CGD 76-088b).	Proposed requirements for installation and use of cargo monitors. NPRM published June 27, 1977 (42 FR 32684). (33 CFR pt. 157).	*LT Cool, (202)426-2168.*	FR *December 1979.*
Review: Deepwater Port Safety Zone Regulations, (Docket No. CGD 76-096).	Would establish regulations for safety zones at U.S. Deepwater Ports. (33 CFR pt. 157).	Mr. F. Martin, (202)426-2606.	NPRM *September 1979.*
Review: Lights on Barges (Docket No. CGD 76-109).	Would extend requirements for flashing yellow lights at heads of tows to all inland waters. NPRM published July 13, 1978 (43 FR 30256). *Final rule published June 14, 1979 (33 FR 34129)* (33 CFR 80.16).	LTJG Molessa, (202)426-4958.	*Action Complete.*
Review: Applicability of Western Rivers/Inland Rules (Chief Counsel's Interpretive Rules) (Docket No. CGD 76-129).	Would define where the Inland and Western Rivers rules apply on the Port Allen-Morgan City Alternate and Landside Routes. *Final rule published April 16, 1979. (44 FR 22456)* (33 CFR 80.04 and 33 CFR 95.02).	Mr. T. Foley, (202)426-4958.	*Action Complete.*
Review: Approval Procedures Whistles (Docket No. CGD 76-132).	Would prescribe approval procedures for the manufacture of whistles required by the 72 COLREGS. (33 CFR pt. 87).	LTJG Molessa, (202)426-4958.	NPRM *September 1979.*
Review: Amendments to Vessel Numbering Requirements (Docket No. CGD 76-155).	Would make minor changes to the vessel numbering and accident reporting requirements to make them more consistent and efficient. NPRM published November 10, 1977 (42 FR 58722). *Rule published January 25, 1979 (44 FR 5308).* (33 CFR pts. 173, 174).	Mr. Gauthier, (202)426-4176.	*Action Complete.*
Review: Casualty Reporting (Docket No. 76-170).	Would update the regulation by changing the monetary and other damage criteria. NPRM published October 19, 1978. *Correction published October 23, 1978 (43 FR 49316). As a result of numerous comments a revised NPRM is being published.* (43 CFR 48982). (46 CFR 4.05).	*CDR Blomquist, (202)426-1455.*	*NPRM August 1979.*
Visual Distress Signals for Boats (Docket No. CGD 76-183).	Would require visual distress signals to be carried on boats when operating on coastal waters and on the high seas. NPRM published April 10, 1978 (43 FR 15118). Comment period reopened in conjunction with CGD 76-183a October 23, 1978 (43 FR 49440) (33 CFR pt. 175).	Mr. Gauthier, (202)426-4176.	FR *August 1979.*
Visual Distress Signals for Boats (Docket No. CGD 76-183a).	Would establish approval specifications for certain new visual distress signals to be required in CGD 76-183 (above entry). NPRM published October 23, 1978 (43 FR 49451). (33 CFR pt. 175 and 46 CFR pt. 160).	Mr. Gauthier, (202)426-4176.	FR *August 1979.*
Review: Use of Dangerous Articles as Ships' Stores and Supplies on Vessels (Docket No. CGD 76-191).	Proposed storage and labeling requirements (46 CFR pt. 147).	Mr. J. McAnulty, (202)426-1577.	*Withdrawn.*
Review: Radar Observer Endorsement for Personnel (Docket No. CGD 76-193a).	Would require specialized training in use of radar equipment. This will be a supplemental notice based on a document published earlier. (46 CFR pt. 10).	CDR Hess, (202)426-2251.	NPRM *August 1979.*
Review: Reexamination Procedures for Unlicensed Ratings (Docket No. CGD 76-203).	Would eliminate confusion about reexamination procedures. NPRM published July 28, 1977 (42 FR 38394). (46 CFR pt. 12).	CDR Hess, (202)426-2251.	FR *September 1979.*

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Title	Summary	Contact	Decision date
Review: Shipboard Fumigation Standards (Docket N. CGD 76-206).	Proposed operational requirements for fumigation procedures on vessels. (46 CFR pt. 147a).	LT Norris, (202)426-1577.	NPRM *October 1979.*
Review: Exemption for Cargo Vessel in Alaska Serving Remote Villages (Docket No. CGD 76-223).	Would allow special uses for specific vessels serving in the Alaskan Trade. (46 CFR pts. 6, 30, 42, 43, 70, 90, and 151 and 33 CFR pt. 1).	*LTJG Murray,* (202)426-2190.	NPRM *November 1979.*
Requirement to Stop to Permit Boarding (Docket No. CGD 76-232).	Would require boat operators to stop when ordered to do so by the CG Boarding Officer. (33 CFR pt. 177).	ENS Strickland, (202)426-4176.	NPRM *August 1979.*
Review: Administrative Amendment to Delete Incorrect References and Add New Proper Reference (Docket No. CGD 76-014).	Would revise incorrect reference in the Code of Federal Regulations. *Final Rule published February 25, 1979. (44 FR 5316)* (46 CFR pt. 2).	*LT Rolman,* (202)426-2183.	*Action Complete.*
Review: Marine Safety Investigations (Docket No. CGD 77-018).	Would implement investigation authority under Ports and Waterways Safety Act. *NPRM published January 25, 1979 (44 FR 5368)* (33 CFR pt. 168).	*LT Dickman,* (202)426-1927.	FR *November 1979.*
Ocean Dumping Surveillance Equipment Requirements, (new Part) (Docket No. CGD 77-029).	Would establish equipment requirements to conduct surveillance to prevent unlawful dumping of material into ocean waters. (33 CFR pt. 158).	LT Voyik, (202)426-9573.	NPRM *September 1979.*
Review: Suspension & Revocation Proceedings—Consolidation of Regulations (Docket No. CDG 77-037).	*Would combine disparate regulations to clarify the appeal process. Certain substantive changes require issuance of a NPRM.* (46 CFR pts. 1, 5).	*LT McDaniel,* (202)426-9776.	*NPRM August 1979.*
Review: Semi-Portable Fire Extinguishers (Docket No. CGD 77-039).	Would amend specification to allow approval of wheeled units for use on stable platforms. NPRM published November 9, 1978. *Final Rule published June 14, 1979 (44 FR 34132)* (43 FR 52261). (46 CFR 162.039).	Mr. F. Thompson, (202)426-2174.	*Action Complete.*
Review: Manning of Uninspected Towing Vessels (Docket No. CGD 77-062).	Would clarify the applicabilty of the three watch system to towing vessels. NPRM published September 14, 1978 (43 FR 41178). (46 CFR pt. 157).	CDR McCowen, (202)426-2240.	*To be withdrawn.*
Review: Designation of Oceanographic Vessels (Docket No. CGD 77-081).	Would delegate means of designating an Oceanographic Research vessel to Officers in Charge, Marine Inspection (OCMI). (46 CFR pt. 188).	CDR McCowen, (202)426-2240.	NPRM *August 1979.*
Operational Specification for Radar (Docket No. CGD 77-085).	Would develop specifications for radar systems on vessels over 1600 gross tons. (33 CFR pt. 164).	Mr. F. Schwer, (202)426-4958.	NPRM *December 1979.*
Vessel Traffic Service (VTS) New York, N.Y. (Docket No. CGD 77-087).	Would establish regulations for vessel traffic service in New York Harbor. NPRM published February 16, 1978 (43 FR 6906). (33 CFR pt. 161).	Mr. F. Schwer, (202)426-4958.	FR *August 1979.*
Requirement for First Purchaser List Kept by Boat Dealers (Docket No. CGD 77-115).	Would require boat dealers to assist in creating a list of retail purchasers so manufacturers could send notices to alert of safety defects. (33 CFR pt. 179).	*Mr. Ellison,* (202)426-1757.	NPRM *October 1979.*
Review: Optional Numbering Requirements (Docket No. CGD 77-117).	Would make certain vessel numbering requirements applicable to States optional. NPRM published April 13, 1978 (43 FR 15583). (33 CFR pts. 173, 174).	Mr. Gauthier, (202)426-4176.	FR *August 1979.*
Review: Waterfront Facilities (Docket No. CGD 77-128).	Would revise waterfront facility regulations by consolidating and updating general regulations. ANPRM published April 10, 1978 (43 FR 15108). (33 CFR pt. 126-*32*).	*Lt Dickman,* (202)426-1927.	NPRM *September 1979.*
Review: Amendments to Alternative Compliance (Docket No. CGD 77-136).	Would provide editorial improvement and clarification of existing regulations. (33 CFR pt. 87).	Mr. T. Foley, (202)426-4958.	FR *November 1979.*

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Title	Summary	Contact	Decision date
Review: Barge Loadline Exemptions (Docket No. CGD 77-135a).	Would provide exemptions for barges operating on waters between Chicago and Burns Harbor (46 CFR pt. 42).	Mr. D. Ewing, (202)426-2160.	NPRM *August 1979.*
Review: Barge Loadline Exemptions (Docket No. CGD 77-135b).	Would provide exemption for barges operating on waters between St. Markes and Carabelle (46 CFR pt. 42).	Mr. D. Ewing, (202)426-2160.	NPRM *August 1979.*
Review: Acceptance of American Society of Mechanical Engineers (ASME) "U" or "UM" vessels (Docket No. CGD 77-147).	Would accept pressure vessels bearing the ASME "U" or "UM" stamp without U.S. Coast Guard inspection. (46 CFR pt. 54).	Mr. H. Hime, (202)426-2160.	NPRM *September 1979.*
Review: Amendments to Customs Regulations for Boats (Docket No. CGD 77-157).	Would amend the joint Coast Guard-Customs regulations for imported boats. Minor revision to improve administration of the regulations. *NPRM completed and forwarded to U.S. Customs Service* (19 CFR pt. 12).	ENS Ziegenfuss, (202)426-1757.	NPRM *October 1979.*
Damage Stability Information on Cargo Ships (Docket No. CGD 77-161).	Would require masters of vessels to have damage stability information on board. (46 CFR pt. 93).	*Mr. J. Howell,* (202)426-2187.	ANPRM *December 1979.*
Review: Appointment to Officer Status (Docket No. CGD 77-165).	Would reflect changing requirements for commissioning licensed officers of the Merchant Marine. (33 CFR pt. 33).	LCDR Zawadzki, (202)426-0935.	NPRM *August 1979.*
Electronic Navigation Equipment (Docket No. CGD 77-168).	Would require LORAN-C or Alternative System on all vessels 1600 gross tons and greater. NPRM published November 14, 1977 (42 FR 59012). *Supplemental NPRM published January 25, 1979 (44 FR 5312). Interim final rule published May 31, 1979 (44 FR 31592).* (33 CFR pt. 164).	Mr. F. Schwer, (202)426-4958.	*Action Complete.*
Review: Establishment of Second-Class Ocean Operator (Docket No. CGD 77-176).	Would establish qualification for a second operator on small passenger vessels required to have more than one Ocean Operator on Board. NPRM published March 23, 1978 (43 FR 12218). *An alternative approach is under consideration, this project may be withdrawn.* (46 CFR pts. 157, 186 and 187).	CDR McCowen, (202)426-2240.	FR *October 1979.*
Review: Amend Navigation Safety Regulations (Docket No. CGD 77-183).	Would relax some navigation requirements for Great Lakes and provide editorial corrections. (33 CFR pt. 164).	Mr. T. Foley, (202)426-4958.	NPRM *August 1979.*
Designation of Confined or Congested Waters (Docket No. CGD 77-196).	Would establish list of waters to be designated as "Confined or Congested"—in accordance with Navigation Safety Regulations. *NPRM published April 16, 1979 (44 FR 22686)* (33 CFR pt. 164).	Mr. C. Llana, (202)426-4958.	*FR November 1979.*
Review: Second Class Operator for Towing Vessels (Docket No. CGD 77-204).	Would allow for able seaman service on ocean going vessels to be credited toward second class towboat license. NPRM published May 25, 1978 (43 FR 22653). (46 CFR pt. 10).	LCDR Norman, (202)426-2240.	FR *August 1979.*
Review: Inland Waterways Navigation Regulations (Docket No. CGD 77-217).	Would provide editorial changes to certain regulations previously issued by the Corps of Engineers and transferred to the Coast Guard under the Ports and Waterways Safety Act of 1972. *Final Rule published December 28, 1978. (43 FR 60458).* (33 CFR pt. 162).	LTJG Molessa, (202)426-4958.	*Action Complete.*
Review: Halon 1301 Fire Extinguishing Systems for Merchant Vessels (Docket No. CGD 77-232).	Would allow Halon 1301 for specific types of installations. (46 CFR 164.035).	Mr. R. Eberly, (202)426-2197.	NPRM *August 1979.*

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Title	Summary	Contact	Decision date
Navigation Lights for Small Vessels (Docket No. CGD 77-233).	Would specify approval procedures and installation requirements for International Rules navigation lights for small vessels. NPRM published September 7, 1978 (43 FR 39946). (33 CFR pt. 89).	*Mr. L. Gray, (202)426-4027.*	FR *January 1980.*
Review: Administrative Update of COTP Areas (Docket No. CGD 77-241).	Would make editorial changes to listing of certain Captain of the Port Areas. *Final Rule published February 26, 1979 (44 FR 10982).* (33 CFR pt. 3).	LTJG Molessa, (202)426-4958.	*Action Complete.*
Great Lakes Winter Navigation (Docket No. CGD 77-246).	Would establish three regulated navigation areas for Great Lakes. NPRM published August 17, 1978 (43 FR 36486). *Final Rule published January 25, 1979 (44 FR 5118).* (33 CFR pt. 128).	Mr. D. Ziegfeld, (202)426-1934.	*Action Complete.*
Review: Safety Orientation for Passenger Vessels (Docket No. CGD 78-009).	Would alert passengers to locations and use of safety devices. NPRM published June 29, 1978 (43 FR 28426.) (46 CFR pts. 185 and 26).	LCDR Rock, (202)426-2183.	FR *September 1979.*
Review: Handling of Explosives and Other Dangerous Cargoes Within or Contiguous to Waterfront Facilites (Docket No. CGD 78-023).	Would eliminate errors and outdated cross references in existing waterfront facilities regulations. *Final Rule published January 22, 1979 (44 FR 4642).* (33 CFR pt. 126).	LT Dickman, (202)426-1927.	*Action Complete.*
Requests for Temporary Documents (Docket No. CGD 78-024).	Would change procedure of merchant seaman appeal for temporary document in suspension/revocation cases so appeal can be made directly to the Commandant. Rule published January 25, 1979 (44 FR 5293).	LCDR King, (202)426-2215.	*Action Complete.*
Hazardous Substances, Pollution Prevention for Vessels and Marine Transfer Facilities (Docket No. CGD 78-032).	Would establish regulations for pollution prevention for hazardous substances for vessels and marine transfer facilities. (33 CFR pts. 154, and 156).	LCDR Busavage, (202)426-9578.	ANPRM *September 1997.*
Review: Amendment to Boat Capacity Labels (Docket No. CGD 78-034).	Would make information in safe loading capacity labels clearer and easier to use. NPRM published September 21, 1978 (44 FR 43006). *Correction to NPRM published November 16, 1978; (43 FR 53471).* (33 CFR pt. 183).	Mr. L. Granholm, (202)426-4027.	FR *August 1979.*
Liquefied Natural Gas Regulations (Docket No. CGD 78-038).	Would establish LNG Waterfront Facility Safety Regulations in accordance with Memorandum of Understanding between USCG and Materials Transportation Bureau (a bureau within RSAA) ANPRM published August 3, 1978 (43 FR 34362). *Will merge with CGD 77-128. Supplemental ANPRM published March 8, 1979 (44 FR 12693).* (33 CFR pt. 126).	*LT Dickman,* (202)426-1927.	NPRM November *1979.*
Tows Navigating the Pass Manchac Bridge, LA (Docket No. CGD 78-050).	Would provide for regulation of tows navigating the waters in the vicinity of the Pass Manchac Bridge, LA. NPRM published December 21, 1978 (43 FR 59524). *Correction published January 29, 1979 (44 FR 5680).* (33 CFR pt. 162).	LTJG Molessa, (202)426-4958.	FR *October 1979.*
Review: International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) Demarcation Line (Docket No. CGD 78-052).	Would change 72 COLREGS demarcation line in Florida. (33 CFR pt. 82).	LTJG Molessa, (202)426-4958.	NPRM *September 1979.*
Review: Appointment of the Permanent Commissioned Teaching Staff (Docket No. CGD 78-077).	Would delete regulatory language to conform to the appointment process desired by the Superintendent, U.S. Coast Guard Academy. (33 CFR pts. 33, 40). *Regulation published May 24, 1979. (44 FR 30094).*.	LT Lee, (202)426-9866.	*Action Complete.*
Crane Operator Qualifications and *Standards for Offshore Crane Design, Inspection, Testing and Operation (Docket No. CGD 79-59).*	Would develop required qualifications for crane operators employed on the Outer Continental Shelf. (33 CFR pt. 146 and 46 CFR pt. 92).	*ENS Silka,* (202)472-5160.	ANPRM *September 1979.*

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Title	Summary	Contact	Decision date
Deepwater Port Liability Fund Requirements.	Would implement provisions of the Deepwater Port Act of 1974 to establish and administer liability limits and compensation relative to accidental oil spills at deepwater port sites. (33 CFR pt. 150).	Mr. F. Martin, (202)426-2606.	*NPRM* September 1979.
Liquefied Natural Gas Waterfront Facilities, Delegation to Commandant (DOT Docket 1, Amend 1-137).	Would delegate authority to the Commandant to regulate Liquefied Natural Gas (LNG) Waterfront Facilities under the Natural Gas Pipeline Safety Act. *Final Rule published January 26, 1979. (44 CFR 5436) (49 CFR pt. 1).*	*Lt Dickman,* (202)426-1927.	*Action Complete.*
Review: Pollution Prevention, Vessels and Oil Transfer Facilities (Docket No. CGD 75-124).	Would revise pollution prevention regulations for vessels and oil transfer facilities. NPRM published June 27, 1977 (42 FR 32670). Supplemental NPRM published October 27, 1977 (42 FR 56625). (33 CFR pts. 154, 155, and 156).	LCDR Busavage, (202)426-9578.	FR *August 1979.*
Review: Inspection and Approval Procedures, Distress Signals (Docket No. CGD 76-048b).	Would introduce revised inspection procedures for Distress Signals. NPRM published October 23, 1978 (43 FR 49447). (46 CFR pt. 160).	Mr. R. Markle, (202)426-1445.	FR *September 1979.*
Damage Stability, Subchapter "O" Barges (Docket No. CGD 77-027).	*Would apply damage stability requirements for chemical vessels to ocean chemical barges.* (46 CFR 151.10-10).	Mr. F. Perrini, (202)426-2187.	NPRM *September 1979.*
Review: Miscellaneous Changes to Subchapter "F" (Docket No. CGD 77-140).	Would update Title 46, Subchapter F—Marine Engineering. (46 CFR pts. 50-63).	*LCDR Jenkins,* (202)426-2160.	NPRM *September 1979.*
Oxygen/Explosive Meter Requirements (Docket No. CGD 78-021).	Would require Oxygen/Explosive Meters in place of flame safety lamps (46 CFR pts. 35, 96, and 160).	LTJG Murray, (202)426-2183.	NPRM *October 1979.*
Amendment to clarify (Docket No. CGD 78-027).	This amendment would clarify 46 CFR 157.30-10 regarding the number of deck officers and engineers to be on board uninspected vessels. (46 CFR 157.30).	CDR McCowen, (202)426-2240.	NPRM *December 1979.*
Review: St. Mary's River, Vessel Traffic Service (Docket No. CGD 78-079).	Would revise and restate existing anchorage and navigation regulations for St. Mary's River, re-promulgating them under the authority of the Ports and Waterways Safety Act. (33 CFR pt. 161).	Mr. T. Foley, (202)426-4958.	NPRM *October 1979.*
Vessel Traffic Service, New Orleans Amendments (Docket No. 78-080).	Would update existing regulations comprising VTS New Orleans to reflect present river practices. *NPRM published January 1, 1979 (44 FR 2401).* (33 CFR pt. 161).	LTJG Molessa, (202)426-4958.	FR *August 1979.*
Amendment to Electrical Standard for Overcurrent Protection (Docket No. CGD 78-090).	Would make provisions of the standard concerning overcurrent protection more reasonable by allowing use of a jumper conductor under certain conditions. NPRM published December 28, 1978 (43 FR 60850). (33 CFR pt. 183).	Mr. L. Granholm, (202)426-4027.	FR *August 1979.*
Notification of Marine Casualties (Docket No. CGD 78-098).	Would require vessels within a certain distance of United States' coasts to notify the Coast Guard of certain casualties. *ANPRM published April 16, 1979 (44 FR 22476)* (33 CFR pt. 124 transferred to 161).	*Lt Dickman,* (202)426-1927.	*Study Pending.*
Marine Investigation Regulations (Docket No. CGD 78-105).	Would clarify the Coast Guard's subpoena power in marine investigation proceedings (46 CFR pt. 4).	LT Harden, (202)426-1455.	*FR August 1979.*
Review: Bulk Chemical Tanker Update (Docket No. CGD 78-128).	Would update and revise standards for self-propelled vessels carrying hazardous liquid. (46 CFR pt. 153).	LT Trainer, (202)426-1217.	NPRM *October 1979.*
Review: Accessibility of Fire Extinguishers on Boats (Docket No. CGD 78-137).	Would require boat operators to keep portable fire extinguishers in a readily accessible location. (46 CFR pt. 25).	ENS Strickland, (202)426-4176.	NPRM *January 1980.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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USCG **U.S. Coast Guard**

Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
Unregulated Hazardous Working Conditions on the Outer Continental Shelf (OCS). *(Docket No. CGD 79-073).*	Would identify any presently unregulated hazardous working conditions on the OCS and if necessary regulate such conditions. (33 CFR Subchapter N).	LCDR Barrett, (202)472-5160.	ANPRM *August 1979.*
VTS New Orleans (Docket No. 75-112).	Would make voluntary system mandatory. (33 CFR pt. 161) ...	LTJG Molessa, (202)426-4958.	NPRM *December 1980.*
Pilotage Requirements (Docket No. CGD 76-060).	Would clearly delineate when and in what areas pilots are required. (46 CFR 157.20-40).	CDR McCowen, (202)426-2240.	NPRM September *1979.*
Aluminum Hatch Covers Aboard Tank Vessels (Docket No. CGD 78-121).	Would prohibit aluminum hatch covers on tank vessels. (46 CFR 32.60-1).	Mr. R. Eberly, (202)426-2197.	NPRM *August 1979.*
Review: Private Electronic Aids to Navigation (Docket No. CGD 78-145).	Would delete the prohibition of Private Aids to Navigation to provide uniform regulatory treatment. (33 CFR pt. 66).	LT Johnson, (202)426-1974.	NPRM *September 1979.*
Review: Tables of Vessels Examined or Inspected under Various Coast Guard Regulations (Docket No. CGD 78-152).	Would update tables in various parts of Title 46 to reflect the new requirements implemented by the recently published Mobile Offshore Drilling Unit Regulations.	LTJG M. Rolman, (202)426-2190.	FR *August 1979.*
Review: Survey Period for Oil Lubricated Tailshafts with Mechanical Seals (Docket No. CGD 78-153).	Would extend the drawing interval for oil lubricated tailshafts with Mechanical Seals. (46 CFR pt. 61).	LTJG M. Rolman, (202)426-2190.	NPRM *October 1979.*
Review: Footnote Reference to Flexible Loops on Fixed Semi-Portable CO_2 Systems (Docket No. CGD 78-154).	Would update footnotes in various parts of Title 46 to provide an accurate cross-reference to inspection requirements. *Final Rule published March 12, 1979 (44 FR 13491).* (46 CFR pts. 31, 71, 91, 176, and 189).	LT D. Zedan, (202)426-2190.	*Action Complete.*
Review: Mandatory Marking of Obstructions (Docket No. CGD 78-156).	Would clarify and consolidate the requirements for marking of obstructions. (33 CFR pt. 64).	LT Johnson, (202)426-1974.	*NPRM October 1979.*
Review: Private Aids to Navigation and State Aids to Navigation (Docket No. CGD 78-157).	Would codify and clarify the Aids to Navigation regulations concerning State and Private Aids to Navigation (33 FR pt. 66).	LT Johnson, (202)426-1974.	*NPRM January 1980.*
Review: Mandatory Markings for Artificial Islands *Installations, and Other Devices* (Docket No. CGD 78-158).	Would revise the marking regulations to bring them into agreement with the latest procedures. (33 CFR pt. 67).	LT Johnson, (202)426-1974.	*NPRM March 1980.*
Review: Aids to Navigation—General Interference with, Damages to and Charges for Aids to Navigation (Docket No. CGD 78-159).	Would codify, revise and clarify the existing regulations. (33 CFR pts. *60, 62, 66, 70, 74, and 76*).	LT Johnson, (202)426-1974.	*NPRM January 1980.*
Review: General Revision to Subchapter N (Docket No. CGD 78-160).	Proposed general revisions to Subchapter N, Artificial Islands and Fixed Structures on the Outer Continental Shelf. Revisions to include changes made necessary by new legislation and the Coast Guard Commercial Diving Rules. (33 CFR pt. 140).	*LCDR Barrett,* (202)372-5160.	NPRM *August 1979.*
Review: Update of Marine Inspection Office Table (Docket No. CGD 78-161).	Would bring the regulations into agreement with the present description of Marine Inspection Offices. *Final Rule published March 12, 1979 (44 FR 13492).* (46 CFR pt. 50).	LTJG Heyl, (202)426-2299.	*Action Complete.*
Review: Requirement of Shipping Papers for Unslaked Lime (Docket No. CGD 78-165).	Would make clear the Coast Guard's requirements for the carriage of shipping papers for bulk shipments of unslaked lime.	Mr. J. McAnulty, (202)426-1578.	NPRM *June 1980.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

USCG **U.S. Coast Guard**

Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
Approval of Inflatable Personal Flotation Devices (PFDs) (Docket No. CGD 78-174).	Would establish performance standards for inflatable PFDs and procedures for granting pound approval to these devices. *ANPRM published March 15, 1979.* (46 CFR pt. 160).	LT Gasch, (202)426-1444.	*NPRM November 1979.*
Offshore Oil Lightering (Docket No. CGD 78-160).	Would establish requirements for vessel to vessel transfers of oil or hazardous materials if the cargo is bound for a U.S. port. *NPRM published May 31, 1979 (44 FR 31486).* (33 CFR pt. 156).	LCDR Busavage, (202)426-9578.	*FR March 1980.*
*Review: Amendment to Hull Iderltification Requirements (Docket No. CGD 79-013).	Would further delineate responsibility for marking boats with a hull identification number. Would require a second number inside the boat to aid in identification of stolen boats. (33 CFR pt. 181).	LCDR Pettit, (202)426-1757.	NPRM October 1979.
*Port and Tanker Safety Act Delegations (Docket No. CGD 79-024).	Would delegate authority under the Port and Tanker Safety Act of 1978 to Coast Guard District Commanders and Captains of the Port. (33 CFR pt. 160).	LT Dickman, (202)426-1927.	FR August 1979.
*Port and Tanker Safety Act Delegations Under Section 9, Ports and Waterways Safety Act (Docket No. CGD 79-026).	Would delegate to Captains of the Port authority and responsibility to prohibit vessel operations and cargo transfers which may be unsafe. (33 CFR pt. 160).	LT Dickman, (202)426-1927.	NPRM August 1979.
*Limited Access Areas (Docket No. CGD 79-34).	Would realign limited access area regulations in 33 CFR. (33 CFR pts. 125, 127, 128, and 165).	LT Dickman, (202)426-1927.	FR January 1980.
*Inland Waters Navigation Regulations—Waters Connecting Lake Huron and Lake Erie (Docket No. CGD 78-151).	Would update existing regulations. (33 CFR pt. 162)	Mr. LaRue, (202)426-4958.	NPRM January 1980.
*Opening signals for Drawbridges (Docket No. CGD 75-237).	Would establish uniform signals for opening draw bridges. (33 CFR pt. 117).	Mr. Teuton, (202)426-1380.	NPRM August 1979.
*Substitute Licenses/Merchant Marine Documents in Suspension Cases (Docket No. CGD 78-033).	Would allow the issuance of a substitute license/Merchant Marine Document pending the outcome of a hearing. (46 CFR 5.05-25).	LT McDaniel, (202)426-9776.	FR August 1979.
*Review: Termination of Windsurfer Exemption (Docket No. CGD 78-163).	Determine whether to continue an exemption that allows operators of Windsurfer boats to not carry Personal Flotation Devices. ANPRM published March 29, 1979. (49 CFR 1.46).	Mr. Gauthier, (202)426-4176.	NPRM January 1980.

USCG **U.S. Coast Guard**

Routine and Frequent Non-significant Regulations

Title	Total	Contact	Decision date
Safety/Security Zone Regulations	10	*LCDR McDonald, (202)426-1927.*	*July 1979-July 1980.*
Anchorage Area Regulations	16	LCDR Snow, (202)426-1940.	*July 1979-July 1980.*
Drawbridge Regulations	90	Mr. F. Teuton, (202)426-1380.	*July 1979-July 1980.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

FAA **Federal Aviation Administration**

Significant Regulations

Title	Summary	Contact	Decision date
Section 30 Regulations—Civil Rights (Docket No. 16419). (Cont.).	**A. Description:** Develop regulations to implement Section 30 of the Airport and Airway Development Act of 1970, as amended by the Airport and Airway Development Act Amendments of 1976 (Act). The regulations would assure that no person is excluded on the grounds of race, creed, color, national origin, or sex from participating in any project for airport development, airport master planning, or airport system planning conducted with or benefiting from funds received from a grant made under the Act.. **B. Why Significant:** The proposed regulations implementing Section 30 are considered significant inasmuch as there is substantial public interest and they involve important Department policy. **C. Regulatory Analysis:** Required. **D. Need:** To assure that minorities and minority businesses are afforded full and equal opportunity with respect to employment contracting, and leasing of concessions on airports operated by sponsors receiving grants from airport development projects. **E. Legal Basis:** Section 30 of the Airport and Airways Development Act of 1970 (49 U.S.C. 1730) and § 1.47(f)(1) of the Regulations of the Office of the Secretary of Transportation (49 CFR § 1.47(f)(1)) Paul Gallis, (202) 246-3050 FR October 1979. **F. Chronology:** The proposed regulations were set forth in a Notice of Proposed Rule Making (Notice No. 77-1) on January 13, 1977 (42 FR 2850). The regulations are proposed to be included in existing Part 152 as new Subpart E—Nondiscrimination in Airport Aid Program. The public was invited to comment on the proposed rule by March 14, 1977, which date was twice extended to May 20, 1977, upon numerous requests from the public. *Following consideration of the comments, a proposed Final Rule was submitted to the Secretary on February 4, 1979. The Secretary concurred on February 15, 1979, and transmitted a copy to the Equal Employment Opportunity Commission pursuant to Executive Order 12067, for its review. After submittal to EEOC, several discussions were held among representatives of the Office of the Secretary, FAA, and EEOC. Based upon these discussions, additional information has been submitted to EEOC concerning: (1) Reporting requirements; (2) Applicability of requirements to small organizations on airports; (3) The complaints and investigations procedure; and (4) Monitoring responsibilities. The information is being reviewed by EEOC staff members and will be presented to the Commissioner. After completion of EEOC review certain reporting forms must be submitted by the FAA to OMB for clearance.*		

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

FAA **Federal Aviation Administration**

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	G. Citation: 14 CFR Pt. 152		
Flammability Standard for Crewmember Uniforms (Docket No. 14451).	**A. Description:** Proposed revision to establish flammability specifications for crewmember uniforms that will provide protection against heat and flame. **B. Why Significant:** This proposal is considered a significant rulemaking project due to substantial public interest and potential cost to airlines. **C. Regulatory Analysis:** Required **D. Need:** To establish basic flammability specifications for crewmember uniforms, since clothing now used is made of conventional fabrics which may be ignited under many of the emergency conditions that may result. **E. Legal Basis:** Secs. 313(a), 601, and 604, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421(a), 1422), Sec. 6(c) DOT Act (49 U.S.C. § 1655(c)). **F. Chronology:** Prior to April 1974, a number of informal conferences were held with members of the public including the Association of Flight Attendants (AFA), regarding flammability of flight attendant uniforms. A project was established to examine AFA claims regarding uniform flammability. National Bureau of Standards (NBS) Center for Fire Research was selected as research contractor. ANPRM No. 75-13 was issued March 16, 1975 (40 FR 11737), to solicit public information and comments. A follow-up contract was established with the NBS to evaluate comments and conduct further testing. *The contract has been extended through August 1979.*	William J. Sullivan, (202)755-8716.	NPRM *September 1979.*
	G. Citation: 14 CFR Pt. 121		
Parts Manufacturer Approvals (Docket No. 17147).	**A. Description:** Proposes to revise the Parts Manufacturer Approval application and reporting requirements and provisions related to showing identicalness of parts. **B. Why Significant:** The proposed revision is considered to be significant because it is controversial. **C. Regulatory Analysis:** Not required **D. Need:** Differences of opinion exist with respect to the methods available for showing identicalness of parts. Also the Parts Manufacturer Approval application and reporting requirements may be unnecessarily burdensome. **E. Legal Basis:** Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958. (49 U.S.C. 1354(a), 1421, and 1423). **F. Chronology:** Project No. 76-257-R was initiated December 23, 1975. NPRM No. 77-19 published in the Federal Register (42 FR 43985). Comment period later reopened until January 4, 1978 (NPRM No. 77-19A, 42 FR 61048) and again reopened until May 15, 1978 (NPRM No. 77-19B, 43 FR 15432). Portions of NPRM dealing with other subjects to be handled separately.	William J. Sullivan, (202)755-8716.	FR *October 1979.*
	G. Citation: 14 CFR Pt. 21		
Lithium Sulfur Dioxide Batteries	**A. Description:** Proposed airworthiness directive (AD) requiring removal of Lithium Sulfur Dioxide ($LiSO_2$) batteries from all aircraft including those installed in Emergency Locater Transmitters (ELT's), and companion Technical Standard Order (TSO) prescribing standards for acceptable batteries. *Subsequent to completing the processing of this proposal, increased service difficulties with the $LiSO_2$ batteries necessitated the issuance of an "Emergency" adopted airworthiness directive (AD) on February 21, 1979 to remove the batteries from the aircraft.*	William J. Sullivan, (202)755-8716.	NPRM *August 1979.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

FAA — Federal Aviation Administration

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	The original proposal included a "Significant" airworthiness directive to remove $LiSO_2$ batteries and a new "non-significant" technical standard order (TSO) for $LiSO_2$ batteries. In view of this, the remaining non-significant TSO portion of this action is now shown in the non-significant portion of the agenda.		
Review: Part 91 Upgrade.....	**A. Description:** To upgrade the general aviation standards applicable to the operation of certain large aircraft, when not operated as an air carrier and to revise certain regulations applicable to commercial operators and air travel clubs. **B. Why Significant:** This is considered significant due to substantial public interest in the constraints to be proposed for safer operations of large aircraft under the regulations. **C. Regulatory Analysis:** Not required..... **D. Need:** Experience indicates that these proposed regulations are necessary to replace the current regulations with clearer regulations that are based upon safety, rather than economic criteria. **E. Legal Basis:** Secs. 313(a) and 601–610 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a) and 1421–1430) and Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c). **F. Chronology:** Project approved in March 1978..... **G. Citation:** 14 CFR Pt. 91.....	William J. Sullivan, (202)755–8716.	NPRM *August 1979.*
Aircraft Cabin Ozone Contamination (Docket No. 16854).	**A. Description:** Proposed revision to limit the concentration of high altitude ozone allowed in an aircraft cabin. **B. Why Significant:** The proposal is considered a significant project because it involves an area of substantial public interest and will be controversial. **C. Regulatory Analysis:** Not required..... **D. Need:** To alleviate physical discomfort to crewmembers and passengers, due to ozone gas, on high altitude flights. **E. Legal Basis:** Secs. 313, 601, 603, and 604, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354, 1421, 1423, and 1424); and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)). **F. Chronology:** In the winter of 1976, the FAA became aware of crew and passenger complaints of discomfort on high altitude flights and in March 1977 ozone gas was believed to be the probable cause. An Advisory Circular, No. 00–52, Ozone Irritation During High Altitude Flight, was published July 21, 1977, defining ozone, its causes, and its symptoms. On May 26, 1977, FAA initiated a project to study the short and long term health effects of exposure to high altitude ozone. An ANPRM was issued on October 6, 1977 (42 FR 54427), seeking information from all interested persons. A NPRM was issued on September 27, 1978 proposing specific airplane cabin ozone concentration standards and was published in the Federal Register on October 5, 1978 (43 FR 46034). The closing date for comments was Jan. 5, 1979. **G. Citation:** 14 CFR Pts. 25 and 121.....	William J. Sullivan, (202)755–8716.	FR *October* 1979.
Review: Operations Review Notice No. *7* (Docket No. 17669).	**A. Description:** Proposes to revise the flight and duty time limitations and rest requirements for flight crewmembers used by domestic, flag, and supplemental air carriers, commercial operators of large aircraft, and air travel clubs.	William J. Sullivan (202)755–8716.	FR *September* 1979.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

FAA **Federal Aviation Administration**

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	B. Why Significant: This proposal is considered a significant regulation because of the controversy associated with the complexity and enforcement problems of the current rules. **C. Regulatory Analysis:** Not required..... **D. Need:** This proposal is needed to eliminate the complexity of the current regulations and to assure that flight and duty time limitations are based upon today's operating environment. **E. Legal Basis:** Secs. 313(a), 601, and 604 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 and 1424) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c). **F. Chronology:** The proposals contained in this notice are based on related proposals discussed at the December 1975 Operations Review Conference. The notice was published in the Federal Register on February 27, 1978 (43 FR 8070), with a closing date of May 30, 1978, for public comments. The initial comment period was extended by supplemental notice on May 25, 1978 (43 FR 22540), to July 14, 1978, with reply comments allowed on or before August 18, 1978. **G. Citation:** 14 CFR Pts. 121 and 123.....		
Review: Operations Review Notice No. *14*.	**A. Description:** Proposes to establish regulations for flight and duty time limitations and rest requirements for flight attendants used by domestic, flag, and supplemental air carriers, commercial operators of large aircraft and air travel clubs. **B. Significant:** This proposal is considered a significant regulation because there is substantial public interest in it. **C. Regulatory Analysis:** Not required..... **D. Need:** Because flight attendants perform important duties relating to the safety of flight, flight and duty time limitations and rest requirements are necessary to prevent excessive fatigue from adversely affecting the performance of those duties. **E. Legal Basis:** Secs. 313(a), 601, and 604 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 and 1424) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c). **F. Chronology:** The proposals contained in this notice are based on related proposals discussed at the December 1975, Operations Review Conference. **G. Citation:** 14 CFR Pts. 121 and 123.....	William J. Sullivan (202)755–8716.	NPRM *November* 1979.
Review: Airworthiness Review Amendments No. 8 Miscellaneous *Cabin Safety* Amendments (Docket No. 14779).	**A. Description:** Proposed amendments to improve and update the airworthiness standards contained in the regulations *that apply to crewmember seat restraints, flight attendant seat locations, and the use of fire resistant materials.* **B. Why Significant:** This group of amendments is considered significantly because it includes a number of costly and controversial amendments (dealing generally with cabin safety) that require modification of aircraft in service. **C. Regulatory Analysis:** Not required..... **D. Need:** The need to update and improve the Federal Aviation Regulations as covered in this group of amendment, was emphasized at public conferences held in conjunction with the Airworthiness Review Program.	William J. Sullivan (202)755–8716.	FR *October* 1979.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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FAA

Federal Aviation Administration

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	E. Legal Basis: Secs. 307, 313(a), 502, 601, 603, 604, and 605 of the Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1402, 1421, 1423, 1424, and 1425). **F. Chronology:** Notice 75-31 (40 FR 29140) appeared in the Federal Register on July 11, 1975. The final amendment is being prepared. **G. Citation:** 14 CFR Parts *23, 25, 29, 91, and 121*		
Review: Airport Aid Program	**Description:** Proposed amendment to simplify and clarify requirements for receipt of aid and to implement certain provisions of the Airport and Airway Development Act Amendments of 1976. *This proposal has been reclassified as a non-significant regulation. It is now listed in the non-significant portion of this Agenda.*	Paul Galis, (202)426-3451.	NPRM *July 1979.*
Administrative User Charges. *(Docket No. 19110).*	**A. Description:** This notice proposes to revise existing FAA fees for aircraft registration and for recording conveyances affecting title to, or any interest in, aircraft. In addition, it proposes to establish fees for FAA certification of pilots, instructors, and other airmen, including medical certification. It is intended that this proposed rule will provide for the recovery of expenses that the FAA incurs in these activities. The proposed action would be in accordance with the sense of the Congress. **B. Why Significant:** This proposal is considered a significant project because it involves an area of substantial public interest and controversy. **C. Regulatory Analysis:** Not required **D. Need:** This proposal will provide for the recovery of expenses that the FAA incurs in these activities and is in accordance with the sense of Congress. **E. Legal Basis:** Secs. 313, 503, 505, 601, 602, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354, 1401, 1403, 1421, and 1422); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c), Title V); Independent Offices Appropriation Act of 1952 (31 U.S.C. 483(a)). **F. Chronology:** NPRM published on April 20 (43 FR 16924). The closing date for comments was July 19, 1978. **G. Citation:** 14 CFR Pts. 47, 49, 61, 63, 65, 67, 143, and 187.	John M. Rodgers, (202)426-3420.	FR *October* 1979.
Wind Shear	**A. Description:** Proposed revision to require all large passenger-carrying aircraft be equipped with a device that will display wind shear information to the pilots. **B. Why Significant:** This action is considered a significant project because it will generate substantial public interest and will be controversial. **C. Regulatory Analysis:** *Not required* **D. Need:** As a result of several accidents involving wind shear, the FAA believes it is necessary to identify equipment that will enable pilots to identify low level wind shear conditions. **E. Legal Basis:** Secs. 313(a), 601 and 604 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 and 1424) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).	William J. Sullivan, (202)755-8716.	*NPRM March 1980.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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FAA

Federal Aviation Administration

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	F. Chronology: In 1975, the FAA began a two year effort to develop a wind shear program. As part of the program, FAA began work to develop wind shear warning and pilot aiding devices which has achieved encouraging results. *Following the initial announcement of this proposal it was determined that a regulatory analysis would not be required; however, an evaluation will be made and docketed. The ANPRM was published on 5/3/79 with the comment period closing 8/3/79.* (44 FR 25807). **G. Citation:** 14 CFR Pt. 121		
*Controlled Visual Flight. (Docket No. 78605).	**A. Description:** Proposed air traffic control of VFR (visual flight rules) aircraft between 10,000 feet (or 12,500 feet) and 18,000 feet, with following actions to add 44 new TCAs (terminal control areas) and raise the tops of 21 existing TCAs. **B. Why Significant:** The proposed revision is considered to be significant because there is substantial public interest. **C. Regulatory Analysis:** Not required **D. Need:** To respond to near midair collision data showing that a high percentage of incidents involving air carriers also involve aircraft that are unknown to air traffic control and that, therefore, cannot be positively separated by air traffic control. **E. Legal Basis:** Secs. 305, 306, 307, 313(a), 601, and 1110 of the Federal Aviation Act of 1958. (49 U.S.C. 1346, 1347, 1348, 1354(a), 1421, and 1522). **F. Chronology:** The proposed regulation was set forth in a NPRM published on Jan. 4, 1979 (44 FR 1322). Comment period extended until April 4, 1979. **G. Citation:** 14 CFR Pt. 91	William Broadwater, (202)426-3731.	FR September 1979.

FAA NON-SIGNIFICANT REGULATIONS

Third Attitude Gyro	Proposed amendment to add flight instrument requirement for all multiengine turbojet powered airplanes not already required to have a third gyroscopic attitude instrument independently powered in case of total aircraft electrical failure. (914 CFR pts. 23, 25, 91 and 121).	William J. Sullivan, (202)755-8716.	NPRM *August* 1979.
Export Airworthiness Approvals (Docket No. 17147).	*This* amendment (1) *provides* for the issuance of export certificates of airworthiness for unassembled normal category rotorcraft, and (2) *provides* for the issuance of export airworthiness approvals for aeronautical products that do not meet certain requirements if the importing country agrees to accept the products in such condition. The NPRMs were published on 9/1/77 (42 FR 43985) and 12/1/77 (42 FR 61048). *The amendment was published on 3/15/79 (44 FR 15648).* (14 CFR Pt. 21).	William J. Sullivan, (202)755-8716.	*Action Complete.*
Review: Aircraft Engine Regulatory Notice (Docket No. 16919).	Proposed amendment to resolve a number of regulatory issues raised by engine manufacturers and to update those standards. (14 CFR Pts. 23, 25, 27, 29 and 33).	William J. Sullivan, (202)755-8716.	NPRM *November* 1979.
Instrument Approach Procedures.	Proposed rule to clarify prescribed conditions for approach and landing under specified weather conditions. (14 CFR Pts. 91 and 121).	William J. Sullivan, (202)755-8716.	NPRM *August* 1979.
Triennial Aircraft Registration Report *(Docket No. 18958).*	Proposed rule to establish a requirement that holders of Certificate of Aircraft Registration file a report with the FAA Aircraft Registry on the current eligibility of the aircraft for registration, whenever three years have elapsed since the Registry has received information indicating registration eligibility. *The NPRM was published 4/26/79 (44 FR 24573.)* (14 CFR Pt. 47).	Virginia Swimmer, (405)686-2284.	*FR November* 1979.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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FAA — Federal Aviation Administration

Non-Significant Regulations—Continued

Title	Summary	Contact	Decision date
Controlled Visual Flight *(Docket No. 18605).*	Proposed revision to provide a means of improving air traffic control separation of aircraft above 12,500 feet. *The NPRM was published on Jan. 4, 1979 (44 FR 1381)* (14 CFR Pt. 91). *(This regulation has been reclassified as a significant regulation. It is now listed in the significant portion of this Agenda).*	Maurice Taylor, (202)426-3128.	*FR September* 1979.
Airport Noise Regulations (Docket No. 16279).	Environmental Protection Agency's proposed revision to require airport noise certification as a condition for Airport and Airway Development Act funding. The NPRM was published on 11/22/76 (41 FR 51522). (14 CFR Pt. 91).	Jim Densmore, (202)755-9468.	FR *September* 1979.
Review: Operations Review Notice No. 11.	Proposed revision to update and improve the rules applicable to mechanic certification, repair stations and aircraft equipment. (14 CFR Pts. 121, 145, and 183).	William J. Sullivan, (202)755-8716.	NPRM *July* 1979.
Review: Operations Review Notice No. 12.	Proposed extensive revisions to update and improve regulations applicable to aircraft maintenance, preventive maintenance, rebuilding and alteration of aircraft. (14 CFR Pts. 43 and 91).	William J. Sullivan, (202)755-8716.	NPRM *September* 1979.
Review: Operations Review Notice No. *13.*	Proposed miscellaneous revisions and other editorial and clarifying changes to 14 CFR Pts. 43, 63, 65, 91, 105, 121, 123, 127, 143, 145, and 147.	William J. Sullivan, (202)755-8716.	NPRM *November* 1979.
Review: Operations Review Amendment No. 8 (Docket No. 17897).	Proposed amendment to update and improve airmen and crewmembers rules, training programs, flight operations, dispatching, records and reports of air carriers and commercial operators and scheduled air carriers with helicopters. NPRM published on 5/11/78 with comment period closing on 9/25/78 (43 FR 35518, 8/10/78) (14 CFR Pts. 121 and 127).	William J. Sullivan, (202)755-8716.	FR *August* 1979.
Review: Operations Review Notice No. 9 (Docket No. 18241)..	Proposed revision to update and improve equipment, maintenance, and operating rules of aircraft, airmen certification, certificated operators and agencies, flight attendants and training requirements. The NPRM was published on 8/17/78 (43 FR 36464). (14 CFR Pts. 63, 65, and 121).	William J. Sullivan, (202)755-8716.	FR November 1979.
Review: Operations Review Notice No. 10 (Docket No. 18247).	Proposes revision to update and improve the equipment and operating rules of aircraft operated by scheduled air carriers of large aircraft and agricultural aircraft operators. The NPRM was published on 8/24/78 (43 FR 37958). (14 CFR Pts. 25, 123, 127, and 137).	William J. Sullivan, (202)755-8716.	FR November 1979.
Review: Operations Review Program (Docket No. 16220).	*This amendment covers actions* on certain proposals presented during the 1975-76 Operations Review Program. The NPRM was published on 10/26/76 (41 FR 46875). *The amendment was published 3/15/79 (44 FR 15654).* (14 CFR Pt. 91).	William Broadwater, (202)426-3731.	*Action Complete.*
Review: Part 91 Notice (Docket No. 16431).	The agency conducted a Regulatory Review Conference of 14 CFR Part 91, Subpart B, in September 1977, in order to update that part. This action will cover all proposals covered by the review except for lost communications. (14 CFR Pt. 77).	William Broadwater, (202)426-3731..	NPRM *January 1980.*
Review: Part 91 Review Lost Communications (Docket No. 16431).	The FAA conducted a Regulatory Review Conference of 14 CFR Pt. 91 Subpart B, in September 1977, in order to update that Part, This action will cover the special proposal on lost communications.	William Broadwater, (202)426-3731..	NPRM *February* 1980.
Pearson Airpark. (Docket No. 18311).	Proposal to exclude persons from the requirement of communicating with Portland Tower while operating in the Pearson Airpark Traffic Pattern. The NPRM was published on Sept. 28, 1978 (43 FR 44549). (14 CFR Pt. 93). *Note: Further action suspended pending decision on Portland Terminal control area.*	William Broadwater, (202)426-3731..	FR *June 1980.*
Review: Objects Affecting Navigable Airspace (Docket No. 16920).	Proposal to amend regulations including areas such as notice requirements, obstruction standards, aeronautical studies, determinations, antenna farm areas and discretionary review/petition procedures. Notice of Review was published on 6/19/78 (43 FR 26322). (14 CFR Pt. 77).	O. E. Falsetti, (202)426-8777..	NPRM *October* 1979.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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FAA **Federal Aviation Administration**

Non-Significant Regulations—Continued

Title	Summary	Contact	Decision date
Reimbursement of Security Screening Costs (Docket No. 17326).	Proposes a procedure for compensating air carriers for certain security screening costs in foreign air transportation. The NPRM was published on 10/31/77 (42 FR 56957). (14 CFR Pt. 121).	R. P. Jones, (202)426-8409.	FR *August* 1979.
Registration of Aircraft by Resident Aliens (Docket No. 18604).	Proposed revision to comply with Section 14 of P.L. 95-163 enacted by Congress effective November 9, 1977, amended March 8, 1978, which provides for United States registration of aircraft by resident aliens and by corporations which do not qualify for registration as citizens. *The NPRM was published on January 2, 1979. (44 FR 63) (14 CFR Pt. 47).*	Florine G. Crockett, (405)686-2284.	FR *August* 1979.
Civil Helicopter Noise Certification (Docket No. *13410).*	This project would establish noise certification levels and procedures for civil helicopters. *An ANPRM was published 12/28/73, (38 FR 35487). (14 CFR Pt. 36).*	James Densmore, (202)755-9468.	*NPRM July* 1979.
Designated Manufacturing Inspection Representatives (Docket No. 16622).	Proposed rule to permit designated manufacturing inspection representatives (DMIR's) to conduct evaluation inspections and to perform all of their authorized functions outside the manufacturing plant at which they are employed. The NPRM was published on 4/7/77 (42 FR 18407). (14 CFR Pt. 183).	William J. Sullivan, (202)755-8716.	FR *July* 1979.
Identification (ID) Plates (Docket No. 15977).	Proposed rule to prohibit the removal, change, or placement of information on identification plates required by the regulation and the removal and installation of ID plates on aircraft, aircraft engines, propellers, and propeller blades and hubs, without the approval of the Administrator. The NPRM was published on 8/12/76 (41 FR 34076). (14 CFR Pt. 45).	William J. Sullivan, (202)755-8716.	FR *July* 1979.
Implementation of OMB Circular A-95 (Docket No. 17337).	Final procedures and regulations implementing OMB Circular A-95 (coordination of Federal assistance programs with State, areawide, and local planning agencies), based on public comment on interim procedures in Special Federal Aviation Regulation 35 (42 FR 59476, 11/17/77). (14 CFR Pt. 152).	Edward F. Rancourt, (202)426-8090.	FR *September* 1979.
Implementation of Energy Policy (Docket No. 16617).	Implementation of the Energy Policy and Conservation Act. The NPRM was published on 3/31/77 (42 FR 17135). (14 CFR Pt. 11).	Cynthia Zook, (202)426-3420.	FR *September* 1979.
Review: Update of Part 139.....	Revision of 14 CFR Part 139 to update and clarify the part including fire-fighting and rescue requirements. (14 CFR Pt. 139).	Harry Hink, (202)426-3087.	NPRM *December* 1979.
Experimental Certificates (Docket No. 18739).	Proposed revision to 14 CFR Part 21 to allow special airworthiness certificates for air racing, exhibition and amateur built aircraft to be issued for periods in excess of one year. (14 CFR Pt. 21). *The NPRM was published on 3/5/79 (43 FR 12042).*	William J. Sullivan, (202)755-8716.	*FR October* 1979.
Foreign Airman Certificate (Docket No. 19300).	Proposed revisions to provide for the issuance of special purpose airman certificates to foreign pilots and other flight crew members to permit those persons to operate U.S. registered civil aircraft leased by foreign operators for carriage of persons and property for compensation or hire. (14 CFR Pts. 61 and 63).	William J. Sullivan, (202)755-8716.	NPRM *July* 1979.
Determination of Aircraft Approach Categories (Docket No. 17538).	*This amendment eliminates the* use of maximum certificated landing weight as a criterion for grouping aircraft in approach categories in order to facilitate aircraft categorization and simplify determination of landing minimums. The NPRM was published on 1/12/78 (43 FR 1803). *Amendment published on 3/15/79 (44 FR 15659).* (14 CFR Pt. 97).	William J. Sullivan, (202)755-8716.	*Action Complete.*
Delayed Landing Flap Procedure for Turbojet-Powered Airplanes (Docket No. 15020).	Proposed regulation would require that landing flap setting for turbojet-powered airplanes be delayed until at or below 1,000 feet above airport elevation for purpose of noise abatement on approach and landing. The NPRM was published on 11/29/76 (41 FR 52396). (14 CFR Pt. 91).	William J. Sullivan, (202)755-8716.	FR *October 1979.*

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Federal Aviation Administration

Non-Significant Regulations—Continued

Title	Summary	Contact	Decision date
Publication of Petitions for Rule Making and Exemptions (Docket No. 18142).	*This Amendment established* procedures for the publication in the Federal Register of summaries of certain petitions for rule making and exemptions. *The Amendment* also provides for publication of summaries of denials of petitions for rule making and summaries of grants and denials of petitions for exemptions. The NPRM was published on July 24, 1978 (43 FR 31936). *The Amendment was published on Feb. 5, 1979 (44 FR 6897).* (14 CFR Pt. 11).	Edward P. Faberman, (202)426-3073.	*Action Complete.*
Protective Breathing Equipment	Proposed rule to establish minimum performance standards and operating rules for protective breathing equipment. (14 CFR Pts. 25, 29, 37, 91 and 121).	William J. Sullivan, (202)755-8716.	NPRM *January 1980.*
Supplemental Oxygen	Proposed rule to permit certain widebody turbojet airplanes to operate up to flight level of 45,000 feet above sea level without requirements for the pilot to use supplemental oxygen. (14 CFR Pts. 25, 29, 37, 91, and 121).	William J. Sullivan, (202)755-8716.	NPRM *November 1979.*
Type Certification Standards (Docket No. 17914).	Proposed revision of Special Federal Aviation Regulation 13 as applicable to DC-3 airplanes to provide a basis for approval of the installation of three turbo-propeller engines in place of two reciprocating engines. The NPRM was published on 5/22/78 (43 FR 21900) (14 CFR Pt. 25; SFAR 13).	William J. Sullivan, (202)755-8716.	FR *September 1979.*
Aircraft Wheels and Wheel-Brake Assemblies *(Docket No. 18564).*	Proposal to upgrade the requirements for wheels and brakes for small and transport airplanes. The NPRM was published on 12/7/78 *(43 FR 57261). (14 CFR Pts. 23, 25 and 37).*	William J. Sullivan, (202)755-8716.	FR November 1979.
Aircraft Tires (Docket No. 18887)	Proposal to determine if aircraft tire standards in the regulations should be upgraded, and, if so, the details of the upgrading. *The NPRM was published on 3/19/79 (44 FR 16430).* (14 CFR Pt. 37).	William J. Sullivan, (202)755-8716.	*FR August 1979.*
Review: Part 135 Regulatory Review Program: Additional Airworthiness Requirements for 10 or More Passenger Small Airplanes Over 12,500 Pounds *(Docket No. 18315).*	Proposed amendment to the airworthiness standards for certain turbopropeller powered multiengine small airplanes to allow their certification and operation at weights above 12,500 pounds. The NPRM was issued on September 26, 1978 (43 FR 46734, October 10, 1978). (14 CFR Pt. 135).	William J. Sullivan, (202)755-8716.	FR *September* 1979.
Review: Metropolitan Washington Airports Regulations.	Proposed revision to reflect changed operational conditions and policies and to simplify, clarify and consolidate the regulations pertaining to the National Capital Airports. (14 CFR Pt. 159).	Charles Anderson, (703)557-1433.	NPRM *September 1979.*
Takeoff Limitations	Proposed amendment to establish compensating factors for use in determining runway lengths and accelerate stop distances required for takeoff from wet runways. *(This proposed regulatory action has been cancelled.)* (14 CFR Pts. 25, 121).	William J. Sullivan, (202)755-8716.	*Withdrawn.*
Miscellaneous Minor Amendments.	Proposed nonsubstantive amendments that are routine, editorial and clarifying in nature. (14 CFR pts. 23, 25, 37, 45, 61, 63, 65, 91, and 121).	William J. Sullivan, (202)755-8716.	NPRM *November* 1979.
Aircraft Owners and Pilots Association (AOPA) Petition to Revise, Part 91 (Docket No. 18334).	Proposed amendment based upon AOPA petition to revise regulations in a format and language more understandable by pilots. The petition states that the proposed changes are not intended to significantly change the substance of the present regulations. *An ANPRM was published on Jan. 22, 1979. (44 FR 4571).* (14 CFR Pt. 91).	William J. Sullivan, (202)755-8716.	NPRM *January 1980.*
Foreign Airman Certification	Proposed amendments to establish priorities for processing applications by foreign airmen for U.S. Airman Certificates. (14 CFR Pts. 61, 63, 65, and 67).	William J. Sullivan, (202)755-8716.	NPRM *October* 1979.
Review: Airworthiness Review Amendment No. 9 Minimum Equipment Lists (Docket No. 14607).	Proposed amendment to specify the conditions under which multiengine aircraft may be operated under Pt. 91 with certain instruments and equipment inoperable. The NPRM was published on May 20, 1975 (40 FR 22110). *(14 CFR Part 91).*	William J. Sullivan, (202)755-8716.	FR *July 1979.*

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FAA **Federal Aviation Administration**

Non-Significant Regulations—Continued

Title	Summary	Contact	Decision date
Procedures for Filing Complaints and Formal Fact Finding Investigations *(Docket No. 18884).*	Proposed rules and procedures for the filing of formal complaints for orders of compliance and for conducting formal fact-finding investigations under the Federal Aviation Act of 1958, the Airport and Airways Development Act of 1970 and the Hazardous Materials Transportation Act. *The NPRM was published 3/19/79 (44 FR 16424).* (14 CFR Pt. 13).	Jonathan Howe, (202)426-3775.	*FR September* 1979.
*Extension of Time for Radiation Surveys of Airport X-Ray Inspection Cabinets.	Proposed amendment to extend the time required for surveys of baggage X-Ray Inspection Cabinets from every six months to every twelve months. The proposal is based on a Air Transport Association of America (ATA) petition for rulemaking. (14 CFR Part 121).	Theo Tsacoumis, (202)755-8715.	NPRM August 1979.
*Aircraft Loan Guarantee Program (Docket No. 18694).	Proposed regulation to comply with Public Law 95-504 which amended the Act relating to the FAA's Aircraft Loan Guarantee Program. The NPRM was published on January 25, 1979 (44 FR 5153) (14 CFR Part 199).	Richard Smith, (202)426-3480.	FR August 1979.
*Noise Standards for Propeller Driven Agricultural and Firefighting airplanes (Docket No. 16382).	Proposed regulation to restrict the operation of agricultural and firefighting airplanes which do not comply with the noise limits of Appendix F of 14 CFR Part 36. The NPRM was published on December 23, 1976 (41 FR 56065). (14 CFR Parts 21, 36, and 91).	James Densmore, (202)755-9468.	FR July 1979.
*Miscellaneous Amendments (Docket No. 16097).	Proposed minor amendments that are clarifying or corrective in nature. The Amendment was published 5/7/79 (44 FR 6757) (14 CFR Parts 121 and 135).	William J. Sullivan, (202)755-8716.	Action Complete.
*Recording of Aircraft Titles and Security Documents—Notice of Lien (Docket No. 14236).	Proposed amendment to prescribe specific procedures for filing Notice of Lien with the Aircraft Registry. This proposal would also require release of the Notice filed upon satisfaction of the lien. The NPRM was published January 13, 1975. (40 FR 2445) (14 CFR Part 49).	Virginia Swimmer, (405)686-2284.	FR November 1979
*Lithium Sulfur Dioxide Batteries Technical Standard Order (Docket No. 18889).	This proposed Technical Standard Order (TSO) is intended to provide such tests and mandatory design standards that will preclude the hazards associated with $LiSO_2$ batteries with respect to leaking, burning, and exploding. The NPRM was published 3/26/79 (44 FR 24778). (14 CFR Parts 37 and 39).	William J. Sullivan, (202)755-8716.	FR August 1979.
*Cessna Finance Petition.	Petition for rulemaking to amend Part 47 to provide all persons who hold a security interest in aircraft the same protection now afforded the seller of an aircraft under a conditional sales contract. (14 CFR Pt. 47).	Virginia Swimmer, (405)688-7284.	FR November 1979.
*Review: Airport Aid Program	Revision of 14 CFR Part 152 to update airport aid requirements in accordance with Airport and Airway Development Act Amendments of 1976. (14 CFR Pt. 152).	Paul Galis, (202)426-3050.	NPRM July 1979.
*Indirect Cost as an Allowable ADAP Project Cost.	Proposed revision to Section 152.47(c)(6) of FAR Part 152 and Appendix J thereto to make indirect cost an allowable project cost under the ADAP. (14 CFR Pt. 152).	Jack Cole, (202)426-3057.	FR July 1979.
*Security Requirements Applicable to U.S. Commuter Air Carriers Certificate Holders.	Proposed rule to implement safety standards mandated by the Airline Deregulation Act of 1978, and insure that commuter air carrier passengers enjoy the same level of security as persons traveling on air carriers holding Certificates of Public Convenience and Necessity from the CAB. (14 CFR Pt. 121)..	R. P. Jones, (202)426-8409.	NPRM August 1979.
*Heater Air Ducts.	Proposed rule to require that ventilating and combustion air ducts be made of fireproof materials whenever such ducts are located near combustion heaters. (14 CFR Pt. 23)..	William J. Sullivan, (202)426-8716.	NPRM December 1979.
*Blood Alcohol Level Tests.	Proposed rule would subject Certificated Flight Crewmembers suspected of being under the influence of alcohol to blood-alcohol tests and establish a specific blood-alcohol content level at which a pilot is considered to be intoxicated. (14 CFR Pts. 61 and 91).	William J. Sullivan, (202)426-8716.	NPRM November 1979.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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FAA — Federal Aviation Administration

Non-Significant Regulations—Continued

Title	Summary	Contact	Decision date
*1980 Winter Olympics Temporary Flight Restriction.	Proposed Special Federal Aviation Regulation (SFAR) relative to the 1980 Olympic Games covering radio communications requirements and temporary flight restriction in the Clinton County/Plattsburgh area. (14 CFR Pts. 91 and 93).	William Broadwater, (202)426-3731.	NPRM July 1979.
*Review: Airworthiness Review Amendment No. 8 Miscellaneous and Procedural Amendments (Docket No. 14779).	Proposed amendments to improve and update the airworthiness standards contained in the regulations that apply to the type certification of aircraft, engines, propellers, related operating and maintenance rules, and procedural requirements. The NPRM was published July 11, 1975. (40 FR 29140) 14 CFR Pts. 1, 21, 26, 27, 31, 33, 35, 43, and 45.).	William J. Sullivan, (202)755-8716.	FR December 1979.
*Microwave Landing System (MLS).	Proposed rule to recognize the MLS selected by ICAO and to prescribe measuring standards and procedures for the approval, installation, operation, and maintenance of such systems on non-Federal navigation facilities. (14 CFR Pt. 171).	Edward Hanlon, (202)426-8634.	NPRM September 1979.

FAA — Federal Aviation Administration

Routine and Frequent Non-significant Regulations

Title	Summary: Approximate number	Contact	Decision date
Other items:			
Part 95 Instrument Flight Rules Altitudes.	2,500	William J. Sullivan, (202)755-8716.	July 1, *1979*–June 30, *1980.*
Airworthiness Directives	300	William J. Sullivan, (202)755-8716.	July 1, *1979*–June 30, *1980.*
Standard Instrument Approach Procedures.	2,800	William J. Sullivan, (202)755-8716.	July 1, *1979*–June 30, *1980.*
Airspace Actions	525	William Broadwater, (202)426-3731.	July 1, *1979*–June 30, *1980.*

FHWA — Federal Highway Administration

Significant Regulations

Title	Summary	Contact	Decision date
Review: Outdoor Advertising Control and Acquisition.	**A. Description:** This regulation would provide a definition of "effective control" of outdoor advertising per 23 U.S.C. 131. It would also set further requirements for signs exempt from control under the statute and establish the basic framework for State development of police power regulations and procedures. The regulation would also outline the requirements for Federal participation in the acquisition of compensable nonconforming outdoor advertising devices. **B. Why Significant:** This proposal may involve substantial public interest and is controversial and involves important Department policy. **C. Regulatory Analysis:** Not Required	Richard Moeller, (202)245-0021.	NPRM December 1979 FR April 1980.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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FHWA

Federal Highway Administration

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	D. Need: This regulation is necessary for the maintenance of national uniformity in the outdoor advertising control program. Since 23 U.S.C. 131 is regulatory in nature, it is necessary to establish and maintain minimum Federal program requirements. **E. Legal Basis:** 23 U.S.C. 131, 148, and 315; 49 CFR 1.48.... **F. Chronology:** The proposal involves the consolidation of two existing regulations, 23 CFR pt. 750, subpts. D and G, and one interim regulation 23 CFR pt. 750, subpt. E. The regulations have been in effect since September 16, 1975 and July 29, 1974, respectively. The interim regulations have been in effect since October 18, 1976. The proposed consolidation will be issued as an NPRM. *An ANPRM published April 30, 1979 (44 FR 25387) and a Notice published May 17, 1979 (44 FR 28946) announced public hearings as part of an overall review of the Highway Beautification Program. These currently proposed regulations may be modified as a result of this review.* **Citation:** 23 CFR pt. 750, subpt. C. (FHPM 7-6-2).....		
Review: Air Quality Guidelines.....	**A. Description:** The regulation would establish administrative procedures on: (1) funding sanctions, (2) conformity of highway plans, programs, and projects with air quality implementation plans, and (3) priority to highway improvements with air quality benefits during an interim period. This regulation will be in addition to exisitng FHPM 7-7-9, Air Quality Guidelines. **B. Why Significant:** This regulation is considered significant because it affects another Federal agency and may be controversial. **C. Regulatory Analysis:** Not Required..... **D. Need:** Currently, administrative procedures on funding sanctions, priority of highway improvements with air quality benefits, and conformity of highway plans, programs, and projects with air quality implementation plans are lacking. These regulations are a result of the Clear Air Act Amendments of 1977 which became law in August 1977. **E. Legal Basis:** Clear Air Act Amendments of 1977. (42 U.S.C. 7401). **F. Chronology:** *A joint EPA/FHWA Notice on Sec. 176(a) of the Clear Air Act Amendments, which covers only project approval sanctions, was published June 11, 1979 (44 FR 33473). An NPRM proposed for September 1979 would provide regulations on Sections 176(c) conformity with air quality implementation plans, and 176(d) priority to improvements with air quality benefits.* **G. Citation:** 23 CFR pt. 770. (FHPM 7-7-9-1).....	Harter M. Rupert, (202)426-4836.	NPRM *9/79.*
Employee Safety and Health Standards (Docket No. MC-64).	**A. Description:** This regulation would provide safety and health standards to govern employees engaged in the operation, maintenance, and loading and unloading of motor vehicles, designed to eliminate uncertainty with regard to the jurisdictional authority of the Occupational Safety and Health Administration (OSHA). **B. Why Significant:** This proposal may have a significant impact on OSHA.	Gerald J. Davis, (202)426-9767.	FR *October 1979.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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FHWA **Federal Highway Administration**

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	C. Regulatory Analysis: Not Required. **D. Need:** These standards are designed to eliminate uncertainty with regard to the jurisdictional authority of the OSHA and to improve safety and health standards for employees of motor carriers. **E. Legal Basis:** 49 U.S.C. 304 and 1655. **F. Chronology:** An NPRM was issued March 2, 1978 (43 FR 8566) and the closing date for the comment period was May 31, 1978. A Notice on June 9, 1978 (43 FR 25145) extended the comment period to June 30, 1978. **G. Citation:** 49 CFR pt. 399		
Minimum Cab Space Dimensions (Docket No. MC–79).	**A. Description:** This regulation would specify minimum size for the cab portion of the regulated commercial vehicles manufactured after a certain date. **B. Why Significant:** This proposal has the potential of being costly if extensive changes to cab configuration become necessary. **C. Regulatory Analysis:** Required. **D. Need:** Changes in truck technology and maximum limitation on size by States have led to the development of reduced cab space in favor of increased cargo space to remain within State length limitations. The impact on safe operations and driver work place may be negatively affected. **E. Legal Basis:** 49 U.S.C. 304 and 1655. **F. Chronology:** An ANPRM was issued on February 14, 1978 (43 FR 6273). Comment period closed on July 14, 1978. **G. Citation:** 49 CFR pt. 393	D. W. Morrison, (202)426–1700.	NPRM *September 1979.*
Review: State Highway Agency Equal Employment Opportunity Programs.	**A. Description:** This regulation would set forth Federal Highway Administration (FHWA) Federal-aid policy and FHWA and State responsibilities relative to a State highway agency's internal equal employment opportunity program and to assuring compliance with the equal employment opportunity requirements of Federally assisted highway construction contracts. **B. Why Significant:** There is substantial public interest relative to this regulation. **C. Regulatory Analysis:** Not Required. **D. Need:** To set forth responsibilities for State highway agencies' equal employment opportunity programs and to ensure compliance with the equal opportunity requirements of Federal assisted highway construction contracts. **E. Legal Basis:** 23 U.S.C. 140(a); Executive Order 11246 as amended. **F. Chronology:** *The Department Office of Civil Rights is developing a directive consolidating similar EEO requirements for States by DOT Administrations.* **G. Citation:** 23 CFR pt. 230, subpt. C. (FHPM 2–2–2)	Ted. B. Sennett, (202)426–0693.	*Withdrawn.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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FHWA — **Federal Highway Administration**

Significant Regulations—Continued

Title	Summary	Contact	Decision date
Review: Construction Contract Equal Opportunity Compliance Procedures.	**A. Description:** This regulation would prescribe policies and procedures to standardize the implementation of the equal opportunity contract compliance program, including compliance reviews, consolidated compliance reviews, and the administration of areawide plans. **B. Why Significant:** There is substantial public interest relative to this regulation. **C. Regulatory Analysis:** Not Required..... **D. Need:** To standardize the implementation of the equal opportunity contract compliance program. **E. Legal Basis:** Executive Order 11246, as amended, 23 U.S.C. 112(b) and 140(a). **F. Chronology:** *The DOT/FHWA are in the process of negotiating a Memorandum of Understanding with the Department of Labor/Office of Federal Contract Compliance Programs relative to each agency's Executive Order 11246 and Title 23 responsibilities.* **G. Citation:** 23 CFR pt. 230, subpt. D. (FHPM 2-2-3).....	*Edward W. Morris, Jr., (202)245-0357.*	NPRM *December 1979.*
Geometric Design Criteria for Resurfacing, Restoration, and Rehabilitation (R-R-R) of Streets and Highways Other Than Freeways (Docket No. 78-10).	**A. Description:** This regulation would contain criteria intended to provide additional flexibility in some of the basic geometric features of design, primarily those in which modification would result in appreciable savings in costs and other impacts while improving safety. **B. Why Significant:** This regulation is considered significant because the adoption of new design criteria specifically for R-R-R projects has proven to be controversial. **C. Regulatory Analysis:** Required..... **D. Need:** To implement the 1976 amendment to 23 U.S.C. 101 redefining "construction" to include resurfacing, restoration, and rehabilitation. Geometric design criteria are needed to effectively administer a R-R-R program for preservation work on the Federal-aid highway systems. **E. Legal Basis:** 23 U.S.C. *101,* 109, 315, and 402; 49 CFR 1.48(b). **F. Chronology:** An ANPRM published in the ***Federal Register*** on August 25, 1977, (42 FR 42876) offered three alternatives. A Notice published in the ***Federal Register*** on October 28, 1977 (42 FR 56751) extended the comment period for the ANPRM to November 22, 1977. A notice of withdrawal of the ANPRM was published in the ***Federal Register*** on January 9, 1978 (43 FR 2734). Because of the adverse comments, all alternatives were rejected and FHWA decided to develop a new set of criteria for Resurfacing, Restoration, and Rehabilitation (R-R-R) projects. An NPRM was published on August 23, 1978 (43 FR 37556). *A correction to the NPRM was published September 12, 1978 (43 FR 40539).* A Notice published on October 19, 1978 (43 FR 48658) extended the comment period for the NPRM to January 4, 1979. *On May 23, 1979 (44 FR 29921) FHWA published as a Notice a status report on the creation of an internal task force appointed to evaluate comments received on the NPRM and make recommendations to the Administrator.* **G. Citation:** 23 CFR pt. 625	Alvin R. Cowan or Seppo Sillan, (202)426-0312.	*Decision to be made as a result of further evaluation.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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FHWA

Federal Highway Administration

Significant Regulations—Continued

Title	Summary	Contact	Decision date
Certification of Motor Vehicle Size and Weight Enforcement (Docket No. 77-21).	**A. Description:** This is a proposed revision of existing regulations dealing with annual certifications by the States that all size and weight laws are being enforced. Anticipated is a requirement for an annual enforcement program against which the States' efforts could be measured at the end of the year. **B. Why Significant:** The regulation is significant because failure on the part of the State is cause for the withholding of Federal-aid highway project approval. **C. Regulatory Analysis:** Required..... **D. Need:** This regulation is needed to implement 23 U.S.C. 141, Enforcement of Requirements, as amended by the Surface Transportation Assistance Act of 1978. **E. Legal Basis:** 23 U.S.C. 141..... **F. Chronology:** ANPRM was issued January 16, 1978, (43 FR 2683) with comments due April 15, 1978. Thirty comments were received. *An NPRM was published March 14, 1979 (44 FR 15639), with comments due by June 12, 1979..* **G. Citation:** 23 CFR 658.9 (FHPM 6-8-5).....	Wm. F. Bauch, (202)426-1993.	*FR September 1979.*
Withdrawal of Interstate Segments and Substitution of Alternative Projects. (Docket No 77-9).	**A. Description:** This regulation would implement Sections 103(e)(2) and 103(e)(4) of Title 23 U.S.C., as amended by the Federal-Aid Highway Act of 1976 and the Surface Transportation Assistance Act of 1978 (STAA). Section 103(e)(2) provided for the withdrawal of nonessential Interstate routes and the substitution of alternative Interstate routes, *however, the STAA amended this Section to prohibit the designation of any Interstate routes or portions thereof under the authority of this paragraph after the date of enactment of STAA.* Section 103(e)(4) provides for the withdrawal of nonessential Interstate routes and the substitution of other transportation projects, both highway and nonhighway by dates specified in the Surface Transportation Assistance Act of 1978. NPRM *August 1979*..... **B. Why Significant:** There is substantial public interest and controversy concerning this proposal. **C. Regulatory Analysis:** Required..... **D. Need:** This regulation is needed to implement the provisions of 23 U.S.C. 103 enacted in the 1976 Federal-Aid Highway Act, as amended by the Surface Transportation Assistance Act of 1978. **E. Legal Basis:** 23 U.S.C. 103(e)(2) and 103(e)(4).....	FHWA L. A. Staron, (202)426-0404 or F. Calhoun, (202)426-0762. UMTA Richard White, (202)472-6991.	

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Significant Regulations—Continued

Title	Summary	Contact	Decision date
	F. Chronology: The current substitution regulations were issued on June 12, 1974. The Federal-Aid Highway Act Amendments of 1974 and the Federal-Aid Highway Act of 1976 amended the original statutory provisions enacted by the Federal-Aid Highway Act of 1973. Provisions of the Surface Transportation Assistance Act of 1978 will be incorporated prior to issuing the NPRM. **G. Citation:** 23 CFR pt. 476 subpt. D and pt. 450.		
Hours of Service of Drivers (Docket No. MC–70–1).	**A. Description:** The Federal Highway Administration (FHWA) is proposing a revision of the regulations pertaining to hours of service limitations for commercial vehicle drivers engaged in interstate or foreign commerce. **B. Why Significant:** This proposal may be controversial and could have a major cost impact on the motor carrier industry. **C. Regulatory Analysis:** Required. **D. Need:** This action is being taken in response to numerous petitions and requests from public interest groups, labor organizations, and individual drivers for the revision of these regulations. **E. Legal Basis:** 49 U.S.C. 304 and 1655. **F. Chronology:** An ANPRM which stated that FHWA was considering an extensive review of the Hours of Service of Drivers regulation was published on February 12, 1976 (Docket MC–70, Notice 76–14, 41 FR 6275). A second ANPRM was issued on May 22, 1978 (43 FR 21905) setting forth three plans for comments. *A notice of public hearings was published August 29, 1978 (43 FR 38608).* Public hearings wre held in 7 major cities. **G. Citation:** 49 CFR pt. 395.	Gerald J. Davis, (202)426–9767.	NPRM January 1980.
Commercial Motor Vehicle Inspection, Repair and Maintenance (Docket No. MC–48).	**A. Description:** FHWA has amended the regulation on Commercial Motor Vehicle Inspections, Repair and Maintenance to reduce vehicle defect related accidents caused by inadequate inspection and maintenance procedures. **B. Why Significant:** This proposal has generated substantial public interest. **C. Regulatory Analysis:** Required. **D. Need:** Roadside inspections of vehicles in operation in interstate commerce, supported by safety survey inspections at carrier facilities, indicate that carrier maintenance practices are less than satisfactory. This regulation will provide guidance for systematic vehicle inspection and maintenance by carriers and drivers in order to assure vehicle condition is satisfactory for safe operations. **E. Legal Basis:** 49 U.S.C. 304 and 1655. **F. Chronology:** This amendment was issued as an NPRM on April 5, 1977 (42 FR 18105). Based upon review of public comments and data submitted as a result of the NPRM, the FR was modified to eliminate the potential of a major cost impact on the motor carrier industry. *The Final Rule was published July 2, 1979 (44 FR 38523), to be effective August 31, 1979.* **G. Citation:** 49 CFR pt. 396.	Donnell W. Morrison, (202)426–1700.	*Action Complete.*

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Significant Regulations—Continued

Title	Summary	Contact	Decision date
Review: Environmental Impact and Related Statements.	**A. Description:** This regulation would implement the National Environmental Policy Act and Section 138 of the Federal-Aid Highway Act. It would specify the procedures to be used by FHWA in the preparation and processing of Environmental Impact and Section 4(f) statements. **B. Why Significant:** These regulations will involve substantial public interest and controversy and will implement important Departmental policy. **C. Regulatory Analysis:** Not Required. **D. Need:** Executive Order 11991 authorizes the Council on Environmental Quality (CEQ) to issue regulations to implement the National Environmental Policy Act. **E. Legal Basis:** These revisions are required because of regulations which were promulgated by CEQ. **F. Chronology:** The CEQ regulations were published for public comment in the **Federal Register** on June 9, 1978 (43 FR 25230). Final CEQ regulations were published November 29, 1978 (43 FR 55978). It is anticipated that these joint FHWA/UMTA regulations will be ready for publication in the *summer* of 1979. **G. Citation:** 23 CFR pt. 771. (FHPM 7-7-2).	*FHWA Dale Wilken, (202)426-4093. UMTA John Collins, (202)426-1908.*	NPRM *August 1979.*
Review: Urban Transportation Planning Process. **Review:** Transportation Improvement Program.	**A. Description:** Revisions to these regulations would implement the provisions of Section 169 of the Surface Transportation Assistance Act of 1978, accommodate simplifying recommendations made by FHWA's Regulations Reduction Task Force, and implement the transportation planning aspects of the 1977 Clean Air Act Amendments. **B. Why Significant:** These are significant regulations since they significantly impact the Urban Mass Transportation Administration (UMTA) and involve important Department policy. **C. Regulatory Analysis:** Not Required. **D. Need:** Continuing review has identified areas where added flexibility will not impair effectiveness. Air quality planning must be included in accordance with the DOT-EPA Memorandum of Understanding. **E. Legal Basis:** 23 U.S.C. 104(f)(3), 134 and 315. **F. Chronology:** The recommendations of the FHWA Regulation Reductions Task Force were adopted in October 1977. Following agreement with UMTA and EPA, insofar as air quality is concerned, proposed regulatory changes will be prepared. **G. Citation:** 23 CFR pt. 450, subpt. A and C. (FHPM 4-4-2 and 4-4-6).	FHWA V. Paparella, (202)426-2961. UMTA Bob Kirkland (202)426-4991.	NPRM *October 1979.*
Equal Employment Opportunity on Federal-aid Highway Construction Contracts.	**A. Description:** This regulation would simplify procedures relating to Equal Employment Opportunity on Federal-aid highway construction contracts. **B. Why Significant:** The regulation concerns a matter on which there is substantial public interest. **C. Regulatory Analysis:** Not Required. **D. Need:** This regulation is needed to achieve administrative effectiveness and efficiency.	K. L. Ziems, (202)426-4847.	NPRM *September 1979.*

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Significant Regulations—Continued

Title	Summary	Contact	Decision date
	E. Legal Basis: 23 U.S.C. 140 and 315. **F. Chronology:** An NPRM will be published in *September* 1979. **G. Citation:** 23 CFR pt. 230, subpt. A. (FHPM 6-4-1-2).		
Non-Urbanized Area Public Transportation (Docket No. 78-40).	**A. Description:** Proposed regulation would finalize procedures for the administration of a continuing program of non-urbanized are a public transportation including operating subsidies. **B. Why Significant:** The proposed new program involves FHWA and UMTA and impacts State and local transportation programs. **C. Regulatory Analysis:** Not Required. **D. Need:** The proposed regulation would finalize procedures for the administration of the non-urbanized area public transportation assistance program. **E. Legal Basis:** Section 18 of the Urban Mass Transportation Assistance Act of 1964, as amended. **F. Chronology:** A DOT Rural and Small Urban Working Group has summarized the policy issues for the Section 18 program. Interim operating procedures were issued as an emergency regulation December 13, 1978 (43 FR 58308), and a 90-day comment period was established. **G. Citation:** 23 CFR pt. 825.	FHWA Sheldon G. Strickland, (202)426-0150. UMTA Kay Regan, (202)472-7037.	NPRM *August 1979.*
Major Urban Transportation Investment (Docket No. 78-21).	**A. Description:** The proposed regulation requires that State and local transportation officials conduct an analysis of alternatives for all major urban transportation investments for highway or public transportation. **B. Why Significant:** The proposed rule involves important Departmental policy and major urban investments of the Urban Mass Transportation Administration and the Federal Highway Administration. **C. Regulatory Analysis:** Not Required. **D. Need:** The increased flexibility in the use of Federal-aid highway funds for mass transit-related activities has led to the need for a single investment policy for both Federal Highway Administration and Urban Mass Transportation projects to ensure that Federal funds are used effectively. **E. Legal Basis:** 23 U.S.C. 134 and 315 and 49 U.S.C. 1601 et seq. **F. Chronology:** An NPRM was published in the **Federal Register** on December 7, 1978 (43 FR 57478). **G. Citation:** 23 CFR pt. 455, subpt. A and B, and 49 CFR pt. 620.	FHWA A. F. Sevin, (202)426-0215. UMTA Joel Ettinger, (202)426-2360.	FR *August 1979.*
Certification of Speed Limit Enforcement (Docket No. 78-41).	**A. Description:** The regulation will establish standards for the States in monitoring speeds on highways with a limit of 55 miles per hour and in calculating a statewide value for the percentage of all traffic exceeding 55 miles per hour on such highways.	William F. Bauch, (202)426-1993.	NPRM *August 1979.* FR *January 1980.*

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Significant Regulations—Continued

Title	Summary	Contact	Decision date
	B. Why Significant: States failing to comply with the provisions of this regulation shall be penalized up to 10% of their Federal-aid primary, secondary and urban funds. **C. Regulatory Analysis:** Not Required. **D. Need:** This regulation is needed to implement the modified 55 mph enforcement provisions of the Surface Transportation Assistance Act of 1978. **E. Legal Basis:** 23 U.S.C. 141, 154. **F. Chronology:** Emergency regulation was published in the **Federal Register** December 20, 1978. (43 FR 59464). **G. Citation:** 23 CFR 658.7.		
Buy America Requirements (Docket No. 78–35).	**A. Description:** This regulation would establish provisions for the protection of domestic structural steel on construction projects with an estimated cost of $450,000 or more. **B. Why Significant:** This regulation involves a matter which may become controversial or arouse significant public interest. **C. Regulatory Analysis:** Not Required. **D. Need:** This regulation is required to implement the provisions of Section 401 of the Surface Transportation Assistance Act of 1978. **E. Legal Basis:** Section 401 of the Surface Transportation Assistance Act of 1978; P.L. 95–599. **F. Chronology:** An emergency regulation was issued on November 17, 1978 (43 FR 53717). FHWA asked for comments, and the comments period closed on January 17, 1979. **G. Citation:** 23 CFR 635.410.	K. L. Ziems, (202)426–4847.	NPRM *September 1979.*
Interstate Maintenance Guidelines (Docket No. 78–43).	**A. Description:** This regulation would establish guidelines describing criteria applicable to the Interstate system to ensure that the conditions of these routes are maintained at the level required by the purposes for which they were designed. Each state must certify each year to the FHWA that it has a maintenance program for the Interstate system to meet these guidelines once they are established. **B. Why Significant:** These guidelines may involve substantial public and State highway agency interest. **C. Regulatory Analysis:** Required. **D. Need:** This regulation is necessary to insure the preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic control devices as are necessary for its safe and efficient utilization. Since 23 U.S.C. 116 is regulatory in nature, it is necessary to establish Federal maintenance guidelines or level of service. **E. Legal Basis:** 23 U.S.C. 109(m), 315; 49 CFR 1.48(b). **F. Chronology:** An ANPRM was published on January 2, 1979 (44 FR 69). NPRM was published August 9, 1979.. **G. Citation:** 23 CFR pt. 635.	Paul E. Cunningham, (202)426–0436.	NPRM *August 1979.*

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Non-significant Regulations

Title	Summary	Contact	Decision date
Review: New Research and Development (R&D) Studies and Work Programs *(Docket No. 79-21).*	This regulation would cover the starting of new R&D studies and the programming of R&D work funded with Federal-Aid highway funds. (23 CFR pts. 530 and 540; FHPM 5-4-1).	Harry H. Hersey, *(703)557-5257.*	NPRM *September 1979.*
Review: R&D Management—General.	This regulation would have covered the management of R&D studies using Federal-aid highway funds. It will be withdrawn because the content is covered by other regulations. (23 CFR pt. 520; FHPM 5-2-1).	Harry H. Hersey, *(703)557-5257.*	To Be Withdrawn *September 1979.*
Review: R&D Reports and Implementation Activities (Docket No. 79-21).	This regulation would cover documentation of the results of R&D studies funded with Federal-aid highway funds without State matching to finance pooled fund studies. (23 CFR pt. 544; FHPM 5-4-3).	Harry H. Hersey, *(703)557-5257.*	NPRM *September 1979.*
Review: Federal-Aid Funds Without State Matching (Docket No. 79-21).	This regulation would cover the use of Federal-aid highway funds without State matching to finance pooled fund studies. (23 CFR pt. 560; FHPM 5-6-1).	Harry H. Hersey, *(703)557-5257.*	NPRM *September 1979.*
Review: R&D Management Option (*Docket No. 79-21*).	This regulation would provide alternate administrative procedures for State highway agencies which meet specified management standards. (23 CFR Pt. 524; FHPM 5-2-4).	Harry H. Hersey, *(703)557-5257.*	NPRM *September 1979.*
Review: Administration of Negotiated Contracts (Docket No. 78-17).	The existing three regulations (23 CFR pts. 620, 420 and 170) would be combined to coordinate and minimize requirements and to bring FHWA contracting procedures in conformance with Office of Management (OMB) Circular A-102, specifically Attachment "O" which deals with procurement standards for use by grantees. NPRM was published November 7, 1978 (43 FR 51040). (23 CFR pt. 170; Proposed FHPM 1-7-3).	*R. B. Puckett* (202)426-0175.	FR *August 1979.*
Review: Program Approval and Authorization (Docket No. 78-24).	This regulation would reflect recent policy changes in management of the Highway Planning and Research Program, e.g., allowing separate projects for Metropolitan Planning Organizations, applying matching ratio to time periods rather than a fiscal year fund, etc. *NPRM was published January 11, 1979 (44 FR 2400).* (23 CFR pt 420; FHPM 4-1-2-1)..	*R. B. Puckett (202)426-0175.*	FR *August 1979.*
Review: Public Road Mileage for Apportionment of Highway Safety Funds, Safer Off-System Roads Funds and Hazard Elimination Funds.	The revised regulation would expand the existing one, which includes only Highway Safety Funds, to include the other listed programs in the revised title. (23 CFR pt. 460; FHPM 4-5-3).	D. W. Briggs, (202)426-0199.	NPRM *September 1979.*
Review: Procedures for Abatement of Highway Traffic Noise and Construction Noise (Long-Term Revisions) *(Docket No. 78-33).*	This revision would make substantial reductions in the detailed procedures and interpretive information in the existing regulation. This is being done pursuant to the FHWA Regulation Reduction Task Force recommendations. *An ANPRM was published December 6, 1978 (43 FR 57161)* (23 CFR pt. 772; FHPM 7-7-3).	H. M. Rupert, (202)426-4836.	NPRM *September 1979.*
Review: General Policy and Definitions Regarding the Acquisition of Real Property.	This regulation prescribes the general policy of FHWA regarding the acquisition of real property for highway and related purposes and defines certain terms used in FHWA right-of-way acquisition regulations. (23 CFR pt. 710; FHPM 7-1-1).	Douglas A. Wubbels, (202)426-0142.	To be withdrawn *September 1979.*
Review: State Highway Department Responsibilities *(Docket No. 76-7).*	This regulation would prescribe the general responsibility of a State highway department in the acquisition of rights-of-way for the Federal-aid highway systems. An amendment to the existing regulation was published on August 31, 1978, eliminating the requirement for State highway agencies to submit the annual Real Property Acquisition Report. (43 FR 38818) (23 CFR pt. 710; FHPM 7-1-2).	Douglas A Wubbels, (202)426-0142.	NPRM *September 1979.*
Review: Reimbursement Provisions.	This regulation would set forth provisions governing reimbursement to a State highway department for right-of-way costs incurred in connection with Federal or Federal-aid highway projects. (23 CFR pt. 710; FHPM 7-1-3).	Douglas A. Wubbels, (202)426-0142.	NPRM *September 1979.*
Review: Civil Rights.....	This regulation would prescribe the general policy of the FHWA in the area of civil rights relative to the right-of-way acquisition function. (23 CFR pt. 710; FHPM 7-1-4).	Douglas A. Wubbels, (202)426-0142.	To be withdrawn *September 1979.*
Review: The Real Property Acquisition Function—Policy.	This regulation would prescribe FHWA policy regarding the real property acquisition function. (23 CFR pt. 712; FHPM 7-2-1).	Tom Johns, (202)426-0142.	NPRM *September 1979.*
Review: The Acquisition Function—General Provisions and Project Procedures.	This regulation would prescribe FHWA project provisions and procedures regarding the acquisition of real property for highway and highway related projects. (23 CFR pt. 712; FHPM 7-2-2).	Tom Johns, (202)426-0142.	NPRM *September 1979.*

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Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
Review: The Acquisition Function—General Provisions and Project Procedures—Functional Replacement of Real Property in Public Ownership.	This regulation would prescribe FHWA policies on functional replacement of real property in public ownership. (23 CFR pt. 712; FHPM 7-2-2-1).	Tom Johns, (202)426-0142.	NPRM *September 1979.*
Review: The Acquisition Function—Negotiations.	This regulation will be combined with the regulation on general acquisition policy (FHPM 7-2-1). (23 CFR pt. 712; FHPM 7-2-3).	Tom Johns, (202)426-0142.	To be withdrawn *September 1979.*
Review: The Acquisition Function—Administrative Settlements, Legal Settlements, and Court Awards.	This regulation will be combined with the regulation on reimbursement provisions (FHPM 7-1-3). (23 CFR pt. 712; FHPM 7-2-4).	Tom Johns, (202)426-0142.	To be withdrawn *September 1979.*
Review: Appraisal and Appraisal Review Policy.	This regulation would establish FHWA requirements for the preparation and review of appraisal reports for the acquisition of lands necessary for Federal-aid highway projects. (23 CFR pt. 720; FHPM 7-3-1).	Douglas A. Wubbels, (202)426-0142.	NPRM *September 1979.*
Review: Property Management.....	This regulation would prescribe FHWA policies and procedures for the management of real property acquired in connection with Federal-aid highway projects. (23 CFR pt. 713; FHPM 7-4-1).	Tom Johns, (202)426-0142.	NPRM *September 1979.*
Review: Disposal of Right-of-Way..	This regulation would prescribe FHWA policies and procedures for disposal of portions of highway right-of-ways no longer needed for highway purposes. (23 CFR pt. 713; FHPM 7-4-2).	Tom Johns, (202)426-0142.	NPRM *September 1979.*
Review: Junkyard Control and Abatement.	This regulation would provide definition of "effective control" of junkyards per 23 U.S.C. 136. It would identify alternative methods for abating nonconforming junkyards and establish the basic framework for State development of police power regulations and procedures. It would also identify items which are eligible for Federal participation in the various abatement techniques such as screening, removal, and relocation. *An ANPRM published April 30, 1979 (44 FR 25387) and a Notice published May 17, 1979 (44 FR 28946) announced public hearings as part of an overall review of the Highway Beautification Program. These currently proposed regulations may be modified as a result of this review.* (23 CFR pt. 751; FHPM 7-6-4).	Richard Moeller, (202)245-0021.	NPRM December 1979.
Review: Relocation Assistance—General.	This regulation would prescribe the general provisions and procedures for the uniform implementation and conduct of the nationwide relocation assistance program to assure the fair and equitable treatment of persons displaced by highway programs. (23 CFR pt. 740; FHPM 7-5-1).	R. G. King, (202)426-0116.	*NPRM September 1979.*
Review: Relocation Assistance—Relocation Services.	This regulation would set forth the requirement for that portion of the relocation program dealing with the services and assistance to be made available to persons displaced by or adversely affected by highway and related projects. (23 CFR pt. 740; FHPM 7-5-2).	R. G. King, (202)426-0116.	*NPRM September 1979.*
Review: Relocation Assistance—Moving Payments.	This regulation would prescribe the moving payments and other benefits available to individuals, families, businesses, farm operations, nonprofit organizations, and owners of outdoor advertising devices forced to relocate due to highway activities. (23 CFR pt. 740; FHPM 7-5-3).	R. G. King, (202)426-0116.	*NPRM September 1979.*
Review: Relocation Assistance—Replacement Housing Payments.	This regulation would prescribe the payments and eligibility requirements for home owners and tenants forced to vacate their dwellings located on lands needed for highway purposes. (23 CFR pt. 740; FHPM 7-5-4).	R. G. King, (202)426-0116.	*NPRM September 1979.*
Review: Relocation Assistance—Mobile Homes.	This regulation would set forth the special provisions for payments and benefits applicable to owners and occupants of mobile homes located on lands required for highway purposes. (23 CFR pt. 740; FHPM 7-5-5).	R. G. King, (202)426-0116.	*NPRM September 1979.*

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Title	Summary	Contact	Decision date
Review: Relocation Assistance Replacement—Housing As Last Resort.	This regulation would implement Section 206 of Public Law 91-646 and prescribe the procedures and methods for providing replacement housing "as a last resort" when it is determined that a Federal or Federal-aid project cannot proceed to actual construction because comparable replacement housing is not available for persons to be displaced from their dwellings because of such construction. (23 CFR pt. 740; FHPM 7-5-6).	R. G. King, (202)426-0116.	*NPRM September 1979.*
Review: Land Service Facilities.....	This regulation would establish FHWA policy on participation in costs of facilities to provide or restore access to affected real property. (23 CFR pt. 712; FHPM 7-2-2-2).	Tom Johns, (202)426-0142.	NPRM *September 1979.*
Review: Right-of-Way Revolving Fund.	This regulation would prescribe FHWA policy on acquisition of right-of-way with funding pursuant to 23 U.S.C. 108(c). (23 CFR pt. 712; FHPM 7-2-7).	Tom Johns, (202)426-0142.	NPRM *September 1979.*
Review: Management of Airspace.	This regulation would prescribe FHWA policy on the use of airspace on Federal-aid highways for nonhighway purposes. (23 CFR pt. 713; FHPM 7-4-3).	Tom Johns, (202)426-0142.	NPRM *September 1979.*
Review: State Audit Expense—Contract Costs.	This regulation would establish (a) the State's responsibility for the audit of costs incurred by "third parties" pursuant to a State/claimant contract on Federal-aid and other highway projects undertaken cooperatively with the FHWA and (b) the reimbursement criteria for Federal participation in audit expense to be incurred. (23 CFR pt. 140; FHPM 1-4-2-3).	J. E. Lewis, (202)426-0562.	FR *September 1979.*
Review: State Legal Expense—Contract Claims.	This regulation would establish the basis of eligibility for reimbursement of administrative settlement costs, and other legal expenses, including attorney salaries and fees, in the defense of contract claims on Federal-aid projects, including any Federal projects performed by a State under Federal-aid procedures. (23 CFR pt. 140; FHPM 1-4-2-4).	J. E. Lewis, (202)426-0562.	FR *September 1979.*
Review: Bond Issue Projects.....	This regulation would prescribe policies and procedures for the use of Federal funds in aiding the States in the retirement of the principal of bonds, pursuant to 23 U.S.C. 122. (23 CFR pt. 140; FHPM 1-4-8).	*J. E. Lewis, (202)426-0562.*	FR *September 1979.*
Review: Advance Construction of Federal-aid Projects.	This regulation would prescribe procedures for the construction by a State of projects on any of the Federal-aid systems, in advance of apportionment of Federal-aid funds, or in lieu of apportioned funds for the Interstate System only, and for the subsequent reimbursement to the State of the Federal share of the cost of the project, prusuant to 23 U.S.C. 115 as amended. (23 CFR pt. 630; FHPM 6-3-2-7).	K. C. Kippley, (202)426-0673.	FR *October 1979.*
Review: Reimbursement for Employment of Public Employees on Federal-aid Projects.	This regulation would prescribe policies and procedures governing the extent to which Federal funds may participate in the cost of salaries and wages and related labor costs, incurred by public forces of State Highway departments, counties, cities, or other political subdivisions. (23 CFR pt. 140; FHPM 1-4-5).	J. E. Lewis, (202)426-0562.	FR *October 1979.*
Review: Tire Requirements.....	The FHWA has amended the Tire Requirements regulation (49 CFR 393.75) for the purpose of (1) exempting front tires on single unit vehicles from tire marking requirements, (2) exempting all vehicles operating in commercial zones from tire marking requirements, and (3) providing an exemption for tire overloading for vehicles operating under State permits. *ANPRM published October 10, 1978 (43 FR 46555). Final Rule published May 1, 1979 (44 FR 25455). (49 CFR 393.75).* (49 CFR pt. 393.75).	Donnell W. Morrison, (202)426-1700.	*Action Complete.*
Review: Disqualifying Offenses, Drugs.	The FHWA is considering amending the Disqualification of Drivers regulation (49 CFR 391.15) by reviewing and enlarging that group of substances and drugs, whose use by drivers, operating commercial motor vehicles, is forbidden and is considered a disqualifying offense. (49 CFR pt. 391).	Gerald S. Davis, (202)426-9767.	NPRM *September 1979.*

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Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
Review: Visual Acuity	The FHWA is considering amending the Physical Qualification for Drivers regulation (49 CFR 391.41) by reviewing and determining minimum visual acuity in each eye separately as well as binocular acuity for commercial vehicle drivers. (49 CFR pt. 391).	Gerald S. Davis, (202)426-9767.	NPRM *September 1979.*
Review: Highway Safety Improvements Program (Docket No. 78-4).	When setting priorities for railroad-grade crossing improvements, present regulations require States to consider hazard rating, accident history, and the results of on site inspections. It is necessary that consideration also be given to other factors which have the potential for catastrophic accidents. The change in regulation adds two more factors to be used in determining priority for grade crossing projects: (1) The frequency with which trains carrying hazardous materials use the crossing; (2) The number of persons exposed to the crossing (passenger load of train; crossing use by school or passenger bus, pedestrians or other situations involving large numbers of people.) NPRM was published April 7, 1978 (43 FR 14683). *Final Rule published March 1, 1979 (44 FR 11543).* (23 CFR pt. 924, FHPM 8-2-3).	J. L. Rummel, (202)426-2131.	*Action Complete.*
Review: Indian Reservation Roads.	This regulation would contain procedures implementing 23 U.S.C. 208 and the FHWA-Bureau of Indian Affairs (BIA) (Department of Interior) Interagency Agreement covering FHWA overview of BIA Highway Projects. (FHPM 6-3-2-8).	George Hutzelmann, (202)426-0460.	ANPRM *September 1979*
Review: Public Lands Development Roads and Trails.	This regulation would contain procedures implementing 23 U.S.C. 214 and the FHWA-Bureau of Land Management (BLM) (Department of Interior) Interagency Agreement covering FHWA overview of BLM Highway Projects. (FHPM 6-9-4-2).	George Hutzelmann, (202)426-0460.	ANPRM *October 1979.*
Review: Forest Highways	This regulation would contain administrative procedures applicable to Forest Highway projects administered by direct Federal Offices and State highway *agencies.* (23 CFR pt. 660; FHPM 6-9-2-1).	*R. C. Coles,* (202)426-0460.	NPRM *September 1979.*
Review: *Highway* Bridge Replacement Program.	This regulation prescribes the policies and procedures for project eligibility, application filing and evaluation and project funding for the FHWA Special Bridge Replacement Program. Final regulations published on August 8, 1978 (43 FR 35031). The Surface Transportation Assistance Act of 1978 expanded the program to include all public roads and allowed rehabilitation as well as replacement. *Final Rule published March 15, 1979 (44 FR 15665).* (23 CFR pt. 650; Subpt. D; FHPM 6-7-4-1).	L. A. Herr, (202)426-0426 or Stanley Gordon, (202)472-7697.	*Action Complete.*
Review: Location and Hydraulic Design of Encroachments on Flood Plains (Docket No. 78-9).	This regulation would establish FHWA policy and procedures to assure good flood-plain management practices are followed in the Federal-aid highway programs. NPRM published on December 27, 1978 (43 FR 60298). (23 CFR pt. 650; FHPM 6-7-3-2).	Frank L. Johnson, or Philip L. Thompson, (202)472-7690.	FR *August 1979.*
Review: Erosion and Sediment Control on Highway Construction Projects.	This regulation would prescribe practices for the prevention and abatement of erosion and sediment damage on highway projects. (23 CFR pt. 650; FHPM 6-7-3-1).	Frank L. Johnson, (202)472-7690.	FR *October 1979.*
Review: Permits for Highway Work in or Adjacent to Streams.	This regulation would contain procedures dealing with permits and include memoranda of understanding with the Coast Guard and the Corps of Engineers as appendices. (23 CFR pt. 650; FHPM 6-7-1-1).	Frank L. Johnson, (202)472-7690.	FR *December 1979.*
Review: Coordination of Water Resources Development Projects.	This regulation would prescribe policy and procedures for the coordination and financing of highway—water resources development projects. (FHPM 6-1-1-4).	Edward D. Johnson, (202)426-0334 or Frank L. Johnson, (202)472-7690.	FR December 1979.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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Federal Highway Administration

Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
Fracture Control Plan (for Bridges Containing Fracture—Critical Members).	This regulation would supersede provisions of materials and welding specifications published by the American Association of State Highway and Transportation Officials (AASHTO) and the American Welding Society (AWS), where the materials and welding are to be used in tension components of a bridge whose failure could result in the collapse of the bridge. (23 CFR pt. 650).	Mr. L. A. Herr or Mr. C. E. Hartbower, (202)426-0426.	NPRM *September 1979.*
Review: Required Contract Provisions—Federal-aid Contracts.	This regulation would update and clarify the required contract provisions for Federal-aid construction contracts. (23 CFR pt. 633; FHPM 6-4-1-1).	K. L. Ziems, (202)426-4847.	FR *September 1979.*
Review: Contract Procedures (Docket No. 78-16).	This regulation would simplify Federal-aid contract procedures. NPRM was published in the **Federal Register** on August 18, 1978 (43 FR 36685). (23 CFR pt. 633; FHPM 6-4-1-6).	K. L. Ziems, (202)426-4847.	FR *August 1979.*
Review: Contract and Force Account, Justifications Required for Force Account Work.	This regulation would simplify procedures relating to Federal-aid construction work performed by other than competitively awarded contract. (23 CFR pt. 635; FHPM 6-4-1-14).	K. L. Ziems, (202)426-4847.	NPRM *September 1979.*
Review: General Materials Requirements.	This regulation would simplify procedures relating to general material requirements for Federal-aid construction work. (23 CFR pt. 635; FHPM 6-4-1-16).	K. L. Ziems, (202)426-4847.	NPRM *August 1979.*
Review: Authorization to Proceed to Physical Construction.	This regulation would *update* procedures relating to authorization of physical construction. (23 CFR pt. 635; FHPM 6-4-2-1).	K. L. Ziems, (202)426-4847.	*FR September 1979.*
Review: Sampling and Testing of Materials and Construction (Docket No. 78-28).	This regulation revises current procedures relating to sampling and testing of materials and construction in Federal-aid highway projects except those constructed pursuant to 23 U.S.C. 117 which deals with certification acceptance and projects constructed under direct supervision of the Federal Highway Administration. Final Rule published January 11, 1979 *(44 FR 2170).* (23 CFR pt. 637; FHPM 6-4-2-7).	Ross Martinez, (202)426-0420.	*Action Complete.*
Review: Inspection of Federal-Aid Construction Projects.	This regulation was to prescribe the policies, procedures, and guides for inspection and approval of Federal-aid highway construction projects, except those constructed pursuant to 23 U.S.C. 117 which deals with certification acceptance. *A revocation of this rule was published April 19, 1979 (44 FR 23212).* (23 CFR pt. 637; FHPM 6-4-2-8).	Donald Steinke, (202)426-0436.	*Withdrawn.*
Review: Landscape and Roadside Development (Docket No. 78-2).	This regulation would prescribe policies and procedures relating to highway landscaping and plant establishment, safety rest areas and information centers and systems, and scenic strips in connection with Federal-aid Highway Projects. Interim Final Regulations published in **Federal Register** May 5, 1978 (43 FR 19390). (23 CFR pt. 752; FHPM 6-2-5-1).	Ken Rickerson, (202)426-0314.	FR *October 1980.*
Resurfacing, Restoration and Rehabilitation (R-R-R) Work.	This regulation would set forth policy and project procedures for implementing R-R-R program as it relates to pavement design practices. (FHPM 6-2-4-2).	Leon M. Noel, (202)426-0327.	FR *October 1979.*
Review: Skid Resistant Surface Design.	This regulation would set forth pavement design policy as it pertains to skid resistance on Federal-aid highway projects. (FHPM 6-2-4-3).	Leon M. Noel (202)426-0327.	NPRM *August 1979.*
Pavement Type Selection and Alternate Bids.	This regulation would set forth policy for the selection of pavement type on Federal-aid projects, and procedures to be used for bidding on more than one alternate. (FHPM 6-2-4-4).	Leon M. Noel, (202)426-0327.	NPRM November 1979.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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Federal Highway Administration

Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
Review: Plans, Specifications, and Estimates.	This regulation prescribes policies and procedures relating to the preparation, submission and approval of plans, specifications, and estimates and supporting documents for Federal-aid projects. *Final Rule published December 19, 1978 (43 FR 58563).* (23 CFR pt. 630; FHPM 6-3-3-1).	Alvin R. Cowan, (202)426-0312.	*Action Complete.*
Review: Traffic Control Devices on Federal-aid and Other Streets and Highways.	This regulation would prescribe the policies and procedures of FHWA relative to obtaining basic uniformity in the visible features and functioning of traffic control devices on all highways open to public travel in accordance with the Manual on Uniform Traffic Control Devices for Streets and Highways. (23 CFR pt. 655; FHPM 6-8-3-1).	Donald P. Ryan, (202)426-0411.	*NPRM August 1979.*
Review: Motorists Aid Systems	This regulation would provide policies and procedures relating to motorist-aid systems on Federal-aid highways. (23 CFR pt. 655; FHPM 6-8-3-3).	Robert Harp, (202)426-0411.	FR *January 1980.*
Review: Traffic Surveillance and Control.	This regulation would establish policies and procedures relating to the expenditure of Federal-aid funds for traffic surveillance and control measures and equipment to reduce congestion, improve traffic flow and increase safety. (23 CFR pt. 655; FHPM 6-8-3-4).	Robert Harp, (202)426-0411.	FR *January 1980.*
National Standards for Specific Information Signs, (Docket No: 77-6).	This regulation applies existing standards for specific information signs on the Interstate System and other freeways on the Primary System to other primary highways as authorized by Section 122(a), Federal-Aid-Highway Act of 1976. *Final rule was published February 2, 1979 (44 FR 6708).* (23 CFR pt. 655; FHPM 6-8-3-8).	Donald P. Ryan, (202)426-0411.	*Action Complete.*
Great River Road	This regulation outlines procedures to be followed in the funding, programming, and execution of a program for a National Scenic and Recreational Highway in the Mississippi River Valley known as the Great River Road. *Final Rule was published March 1, 1979 (44 FR 11542).* (23 CFR pt. 661; FHPM 6-9-15).	V. Ciletti, *(202)426-0450.*	*Action Complete.*
Review: Relinquishment of Highway Facilities.	This regulation would prescribe Federal Highway Administration procedures relating to relinquishment of highway facilities. (23 CFR pt. 620; FHPM 6-1-1-8).	R. J. Kreklau or C. R. Green, (202)426-0334.	NPRM *December 1979.*
Review: Reimbursement for Railroad Work.	This regulation would prescribe policies and procedures on reimbursement to the States for railroad work done on projects undertaken pursuant to the provisions of 23 CFR pt. 646 B. (23 CFR pt. 140; FHPM 1-4-3).	J. A. Carney, (202)426-0104.	*ANPRM August 1979.*
Review: Utility Relocation and Adjustment.	This regulation would prescribe the policies and procedures for the adjustment and relocation of utility facilities on Federal-aid highway projects and projects under the direct supervision of the Federal Highway Administration. *An ANPRM was published March 8, 1979 (44 FR 12209).* (23 CFR pt. 645; FHPM 1-4-4).	J. A. Carney, (202)426-0104.	*NRPM November 1979.*
Review: Accommodation of Utilities.	This regulation would prescribe policies and procedures for accommodating utility facilities on the rights-of-way of Federal and Federal-aid highway projects. (23 CFR pt. 645; FHPM 6-6-3-2).	J. A. Carney, (202)426-0104.	ANPRM *August 1979.*
Review: Railroad Highway Projects.	This regulation would prescribe policies and procedures for advancing Federal-aid projects involving railroad facilities. (23 CFR pt. 646; FHPM 6-6-2-1).	J. A. Carney, (202)426-0104.	ANPRM *August 1979.*
Review: Public Lands Highways	This regulation would outline the procedures to be followed in administering funds authorized for Public Lands Highways. *Final Rule published July 9, 1979 (44 FR 40065).* (23 CFR pt. 660; FHPM 6-9-4-1).	V. Ciletti, (202)426-0450.	*Action Complete.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
Review: Project Agreements.....	This regulation would prescribe the forms and procedures for the preparation and execution of the project agreements required by 23 U.S.C. 110(a) for Federal-aid projects. (23 CFR pt. 630)..	L. Pettigrew or C. R. Green, (202)426-0334.	NPRM September 1979.
Review: Exemption from Preparing Driver's Daily Logs for Operations Between Certain Fixed Locations (Docket No. MC-70-2).	This regulation would propose to exempt certain drivers from preparing the driver's log when they operate between specified fixed locations or over the same route day after day within the allowable hours of service. ANPRM published in ***Federal Register*** on November 9, 1978 (43 FR 58418). (49 CFR pt. 395).	Gerald J. Davis, (202)426-9767.	NPRM January 1980.
Review: Rear End Underride Protection (Docket No. MC-77).	This regulation would propose to provide improved rear end protection on heavy motor vehicles manufactured after a certain date to prevent the underriding of vehicles which impact the rear of those vehicles. (49 CFR pt. 393).	D. W. Morrison, (202)426-1700.	NPRM *September 1979.*
Review: 100-Mile Exemption-Driver's Logs (Docket No. MC-78).	This regulation would propose to increase the present 50-mile radius exemption from the daily log requirement to a radius of 100-miles. NPRM published in ***Federal Register*** on October 13, 1978 (43 FR 55109). (49 CFR pt. 395).	Gerald J. Davis, (202)426-9767.	FR January 1980.
Toxic Gases in Truck Cabs (Docket No. MC-80).	This regulation would set maximum toxic gas levels in truck cabs. ANPRM published January 1978 (43 FR 120). *NPRM published June 18, 1979 (44 FR 34992).* (49 CFR pt. 392).	Gerald J. Davis, (202)426-9767.	*FR January 1980.*
Ambient Temperature in Heavy Duty Truck Cabs (Docket No. MC-81).	This regulation would set maximum permissible ambient temperatures in truck cabs. ANPRM published in ***Federal Register*** on February 8, 1978 (43 FR 5397). (49 CFR pt. 399)..	Gerald J. Davis, (202)426-9767.	NPRM *September 1979.*
Review: Parts and Accessories Necessary for Safe Operations (Docket No. MC-82).	This regulation aligns the Federal Motor Carrier Safety Regulations with the Federal Motor Vehicle Safety Standards of the National Highway Traffic Safety Administration to ensure manufacturing and operational compatibility. NPRM was published March 6, 1978 (43 FR 9166). *Final Rule published May 1, 1979 (44 FR 25456).* (49 CFR pt. 393).	D. W. Morrison, (202)426-1700.	*Action Complete.*
Air-brake System on Commercial Motor Vehicles—NHTSA Standard No. 121 (Docket No. MC-83).	This regulation was to require that any anti-lock system installed on the drive axle of truck tractors to comply with FMVSS No. 121 be kept operative. A court order suspended the NHTSA regulations requiring locking devices thereby eliminating the need for these regulations. *Termination of rulemaking published January 31, 1979 (44 FR 6156).*	D. W. Morrison, (202)426-1700.	*Withdrawn.*
Review: Relocation Assistance-Moving Payments-Moving Expense Schedules.	This regulation would set forth the FHWA approved moving expense schedules which are applicable to all residential moves necessitated by all Federal programs administered by all Federal agencies. These schedules are reviewed and updated by each State highway agency on a semiannual basis and approved by FHWA prior to final publication in the ***Federal Register*** semiannually. (49 CFR pt. 25; FHPM 7-5-3).	R. G. King, (202)426-0116.	*FR July 1980.* *FR January 1980.*
Employment and Materials Report PR-47.	This regulation would implement new reporting procedures for the collection of data on usage of highway construction materials, supplies and labor (FHPM 6-4-1-9). *It has been determined that the material in this directive is not regulatory. It has now been superseded by 6-1-1-11.*	L. Staron, (202)426-0404.	*Withdrawn.*
Roadway Drainage.....	This regulation would provide FHWA policy and procedures for the design of roadway drainage systems for conveying runoff from highways. (23 CFR pt. 650).	Frank L. Johnson or Philip L. Thompson, (202)472-7690.	NPRM *December 1979.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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FHWA — Federal Highway Administration

Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
Uniform Criteria for Warning Devices at Railroad-Highway Grade Crossings (Docket No. 78-13).	This regulation would issue uniform nationwide criteria for the selection of various types of warning devices to be installed at railroad-highway grade crossings. ANPRM published August 10, 1978. (43 FR 35491) (23 CFR pt. 646).	J. A. Carney, (202)426-0104.	NPRM *September 1979.*
Review: Bikeway Design and Construction Standards (Docket No 79-3).	This regulation establishes design and construction standards for bikeways. *ANPRM published on February 8, 1979 (44 FR 7979).*	Ken Rickerson (202)426-0314.	*NPRM September 1979.*
Review: The General Part of the Federal Motor Carrier Safety Regulations (FMCSR).	The FHWA is considering amending Part 390 in the first step of a general revision of the FMCSR. The purpose of the revision is to improve and simplify the regulations (49 CFR pt. 390).	Gerald J. Davis, (202)426-9767.	NPRM *January 1980.*
Review: Cardiovascular Requirements.	The FHWA considered amending the minimum cardiovascular requirements (49 CFR 391.41(b)(4) in order to introduce a classified approach for examining physicians to evaluate the status of individual drivers with cardiovascular disease. NPRM published in ***Federal Register*** on April 27, 1976 (41 FR 17569). *Termination of rulemaking published May 29, 1979 (44 FR 30704)* (49 CFR 391.4).	Gerald J. Davis, (202)426-9767.	*Withdrawn.*
Applachian Highway Procedures.....	This regulation revision would reflect the recent legislative change in the participation percentage for Appalachian funds and would make several minor changes to existing procedures. (23 CFR pt. 633, subpt. B; FHPM 6-9-10-1).	W. Bullard, (202)426-0175.	NPRM *October 1979.*
Carpool and Van Summary.....	This regulation revision would reflect the required changes brought about by the Surface Transportation Assistance Act of 1978 plus related program modifications. (23 CFR pt. 656; FHPM 4-8-3).	Barbara Reichart, (202)426-0210.	*NPRM August 1979.*
Step, Handhold, and Deck Requirements on Commercial Motor Vehicles..	This regulation would require (1) step, deck, and handhold requirements on high profile Cab Over Engine type tractors; (2) step, handhold, and deck requirements on the rear of all other truck tractors; and (3) step and handhold requirements on the front of trucks as well as all trucks/tractors. NPRM was published in the ***Federal Register*** on February 15, 1978 (42 FR 6638), *Final Rule was published July 26, 1979 (44 FR 43730).* (49 CFR pt. 393).	Gerald J. Davis, (202)426-9767.	*Action Complete.*
Safer Off-System Roads Program (Docket No. 79-1).	This revision to the regulation is necessitated by the provisions of Section 168(d) of the Surface Transportation Assistance Act of 1978 which requires that not less than 50 percent of the SOS funds be obligated for highway safety improvement projects. *Final Rule was published February 1, 1979 (44 FR 6380). (23 CFR pt. 922).*	J. L. Rummel, (202)426-2131.	*Action Complete.*
*Federal-aid Program Approval and Project Authorization (Docket No. 78-37).	This revision reflects the change of the Surface Transportation Assistance Act of 1978 requiring State highway agencies (SHA) to consult with local officials when selecting projects for the use of secondary system funds where all public roads and highways are under the control and supervision of the SHA. Final Rule was published March 1, 1979 (44 FR 11541). (23 CFR pt. 630 Subpt. A; FHPM 6-3-2-2).	V. Ciletti, (202)426-0450.	Action Complete.
*Federal Participation in Cost of Truck Weighing Station Construction Items..	This revision reflects the change of the Surface Transportation Assistance Act of 1978 to now allow the use of Federal-aid construction funds to construct scales and scale-houses which facilitate an effective vehicle weight enforcement program. The regulation prohibiting such use was rescinded March 2, 1979 (44 FR 11754). (23 CFR pt. 630 Subpt. I; FHPM 6-3-2-11).	V. Ciletti, (202)426-0450.	Withdrawn.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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FHWA

Federal Highway Administration

Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
*Hours of Service—Drivers Declared "Out of Service".	This regulation permits Bureau of Motor Carrier Safety agents to declare a driver "out of service" for a consecutive eight-hour period if the driver has not produced driver's logs for the day of examination and for the prior seven consecutive days. Final Rule published June 18, 1979 (44 FR 34960). (49 CFR 395.8).	Gerald J. Davis, (202)426-1967.	Action Complete.
*National Bridge Inspection Standards.	This regulation provides guidance and establishes procedures concerning the national bridge inspection standards in accordance with Section 124 of the Surface Transportation Assistance Act of 1978. *Final Rule published May 1, 1979 (44 FR 25434).* (23 CFR pt. 650 Subpt. C).	Stanley Gordon, (202)472-7697.	Action Complete.
*State Highway Safety Agency (Docket No. 79-10).	This rule would replace the existing Joint FHWA/NHTSA Orders on State agencies with a new Part 1251, *State Highway Safety Agency* in Title 23, Code of Federal Regulations. It proposes to establish new requirements for the authority and function of State highway safety agencies. (23 CFR pt. 1251).	FHWA J. L. Rummel, (202)426-2131. NHTSA George Reagle, (202)426-0068.	FR August 1979.
	FR August 1979.		
*State Matching of Planning and Administration Cost.	This Notice proposes to establish NHTSA and FHWA policy on State planning and administration costs associated with carrying out a highway safety program under the Highway Safety Act with a new Part 1252, *State Matching of Planning and Administration Costs* in Title 23, Code of Federal Regulations. It would define planning and administration costs, describe the expenditures that may be used to satisfy the State matching requirement, prescribe how the requirement will be met, and specify when the State will have to comply with the requirement. *NPRM was published on July 16, 1979 (44 FR 41244).* (23 CFR pt. 1252).	FHWA J. L. Rummel, (202)426-2131. NHTSA George Reagle, (202)426-0068.	FR October 1979.
	FR October 1979.		
*Innovative Project Grants	An ANPRM will be issued by FHWA and NHTSA to solicit suggestions, views and comments from all interested parties for use in the development of proposed criteria, procedures, and policies to be issued in an NPRM for administration of Innovative Project Grants under 23 U.S.C. 407 when funds are appropriated. *ANPRM published July 19, 1979 (44 FR 42233).* (23 CFR pt. 1217).	FHWA J. L. Rummel, (202)426-2131. NHTSA George Reagle, (202)426-0068.	NPRM December 1979.
	NPRM December 1979.		
*Equal Employment Opportunity on Federal-aid Highway Construction Contracts.	This rule would replace existing Forms PR 1391 and PR 1392 with revised Forms PR 1391 and PR 1392 to conform with the standard racial/ethnic categories set forth by the Office of Management and Budget Circular A-46 for statistical reporting of employment data in Federal agencies. (23 CFR pt. 230, subpt. A; FHPM 6-4-1-2).	K. L. Ziems, (202)426-4847.	FR August 1979.
*Program Approval and Project Authorization Procedures.	This rule would focus attention on the statutory provisions of 23 U.S.C. 109 and highlight a provision added by Section 141(g) of the Surface Transportation Assisstance Act of 1978 insuring continued travel routes for mopeds, bicycles and pedestrians. (23 CFR pt. 630; FHPM 6-3-2-2).	V. Ciletti, (202)426-0450.	FR August 1979.
*Bicycle Grants Programs	This rule would revise FHPM 6-9-14 Bikeway Demonstration Program to include the bicycle grants program authorized under Section 141 of the Surface Transportation Assistance Act of 1978. The FHPM title will be changed to "Bicycle Grants Program." (23 CFR pt. 663; FHPM 6-9-14).	Ken Rickerson, (202)426-0314.	NPRM September 1979.
*Seat Belts for Buses	This ANPRM would request comments on a proposal to require seat belts for passengers on buses for the two front seats and the unprotected center aisle back seat (49 CFR pt. 393).	D. W. Morrison, (202)426-1700.	ANPRM September 1979.
*Retread Tires for Trucks	This ANPRM would request comments on a proposal to extend the prohibition from buses to trucks on using retreaded or regrooved tires on the front wheels of these vehicles.	D. W. Morrison, (202)426-1700.	ANPRM September 1979.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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FHWA — Federal Highway Administration

Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
*Accessibility of Highway Rest Area Facilities to Handicapped Persons.	This proposed revision of this regulation is to be included as part of a general review of part 752. (23 CFR pt. 752).	Ken Rickerson, (202)426-0314.	NPRM April 1980.
*Manual on Uniform Traffic Control Devices.	The Manual on Uniform Traffic Control Devices (MUTCD) contains the national standards for traffic control devices erected on all streets and highways open to public travel. These standards are constantly under review and revisions and amendments are published from time to time. This portion of the Agenda lists the individual standards which are currently undergoing this process. (23 CFR pt. 1204).	J. C. Partlow, 426-0411.	
	(1) Color of Type III Object markers		NPRM October 1979.
	(2) Use of a black border around the periphery of RR crossbuck signs.		NPRM October 1979.
	(3) Addition of a bicycle parking sign		NPRM October 1979.
	(4) Color of pedestrian signal walk lenses		NPRM October 1979.

NHTSA — National Highway Traffic Safety Administration

Significant Regulations

Title	Summary	Contact	Decision date
Uniform Tire Quality Grading System (Docket No. 25).	**A. Description:** Grades tires on treadlife, wet traction and temperature resistance and requires that these relative grades be made available to purchasers.	Michael Brownlee, (202)426-1740.	*Action Complete.*
	B. Why Significant: This action is considered significant because of public interest.		
	C. Regulatory Analysis: Not required		
	D. Need: This regulation is Congressionally mandated and the Agency is under court order requiring its issuance.		
	E. Legal Basis: National Traffic and Motor Vehicle Safety Act of 1966, as amended, Title II Section 203.		
	F. Chronology: NPRM (39 FR 20808) issued in June 1974 and Final Rule issued in May 1975, (40 FR 23073). The rule was challenged by the domestic manufacturers but was upheld, except for remand for minor changes, by the Sixth Circuit Court of Appeals. Effective dates for the bias and belted bias tires issued July 12, 1978 (43 FR 30542). A notice soliciting comments on procedures for using existing rule for radials treadwear grading issued November 6, 1978 (43 FR 51735). *Comment period extended to December 19, 1978. (43 FR 57308) FR issued 3/9/79 (44 FR 15721).*		
	G. Citation: 49 CFR pt. 575.*104*		
Light Truck and Van Fuel Economy Rulemaking (Docket No. FE 78-01).	**A. Description:** Would set average fuel economy standards for Model Years 1982-1985 light trucks.	Richard Strombotne, (202)426-0846.	NPRM *September 1979.*
	B. Why Significant: The rule is considered significant because of the impact on the automotive industry, the public, and energy consumption.		

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—NHTSA

National Highway Traffic Safety Administration

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	C. Regulatory Analysis: Required **D. Need:** Conservation of petroleum **E. Legal Basis:** Motor Vehicle Information and Cost Savings Act, as amended, 15 USC 2002. **F. Chronology:** None yet **G. Citation:** 49 CFR pt. 533		
Air Brake Systems (Docket No. 75–16).	**A. Description:** Proposes a moratorium on the anti-lock requirements of Federal Motor Vehicle Safety Standard FMVSS) 121 for trailers and the establishment of a test program to determine the effects of anti-lock. **B. Why Significant:** The rule is considered significant because of the level of public and Congessional interest. **C. Regulatory Analysis:** Not required **D. Need:** In response to complaints from truck users about the safety and reliability of the anti-lock systems. **E. Legal Basis:** National Traffic and Motor Vehicle Safety Act of 1966, as amended. **F. Chronology:** *An NPRM was published March 9, 1978 which proposed a suspension of the "no lockup" provision in the performance requirements for air brake systems (43 FR 9626). Subsequently, the "no lockup" requirement was invalidated by the Ninth Circuit in Paccar v. National Highway Traffic Safety Administration and Department of Transportation. 573 F.2d 632 (9th Cir. 1978). Therefore, further rulemaking became unnecessary and the proposal was withdrawn on February 15, 1979. (44 FR 9783).*	A. Malliaris, (202)426–0842.	*Withdrawn.*
Passenger Automobile Fuel Economy Rulemaking.	**A. Description:** Reevaluates average fuel economy standards for model years 1984 and 1985 passenger automobiles and would set average fuel ecomony standards for model year 1986 passenger automobiles. **B. Why Significant:** The rule is considered significant because of the impact on the automotive industry, the public, and energy consumption. **C. Regulatory Analysis:** Required **D. Need:** Conservation of petroleum **E. Legal Basis:** Motor Vehicle Information and Cost Savings Act, as amended—15 USC 2002. Because of the recent decision to maintain the 1981-85 passenger car fuel economy standards, this rule was withdrawn. **F. Chronology:** *Because of the recent decision to maintain the 1981-85 passenger car fuel economy standards, activity on this rule was temporarily suspended.* **G. Citation:** 49 CFR pt. 531	Richard Strombotne, (202)426–0846.	*Further action to be determined pending review.*
Confidential Business Information (Docket No. 78–10).	**A. Description:** Would codify existing method of processing confidential information from manufacturers. **B. Why Significant:** This rule considered significant because of the controversial nature of confidential business information.	*Frank Berndt,* (202)426–9511.	FR *September 1979.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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NHTSA — National Highway Traffic Safety Administration

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	C. Regulatory Analysis: Not required **D. Need:** To assure the manufacturer a more predictable process of information gathering and to streamline and speed up NHTSA use of data. **E. Legal Basis:** National Traffic and Motor Vehicle Safety Act of 1966, as amended, and the Motor Vehicle Information and Cost Savings Act, as amended 15 USC 1381; 15 USC 2002. **F. Chronology:** NPRM issued 5/25/78. (43 FR 22412) **G. Citation:** 49 CFR pt. 512		
Light Truck and Van Fuel Economy Rulemaking (Docket FE 77-05).	**A. Description:** Chrysler Corporation has petitioned the NHTSA to reduce the 1981 model year light truck average fuel economy standards. **B. Why Significant:** The petition is considered significant because of the impact on the automotive industry, the public, the light truck fuel economy standards for model years 1982-1984, and energy consumption. **C. Regulatory Analysis:** Required **D. Need:** Balance the Chrysler claims of restricted light truck production against the conservation of petroleum provided by the existing standard. **E. Legal Basis:** Motor Vehicle Information and Cost Savings Act, as amended, 15 USC 2002. **F. Chronology:** September 20, 1978—Initial Chrysler recommendation. September 28, 1978—Chrysler requested that the recommendation be treated as a petition. October 16, 1978—NHTSA request for additional information to enable handling recommendation as a petition. December 13, 1978—NPRM issued. January 17, 1979—Closing date for public comments *Final rule issued 6/25/79 (44 FR 36975)* **G. Citation:** 49 CFR pt. 533	Richard Strombotne, (202)426-0846.	*Action Complete.*
Air Brake System (Docket *79-03*)	**A. Description:** *Seeks public comment on steps to be taken regarding a new Air Brake Standard No. 130 for trucks buses, and trailers to replace Air Brake Standard No. 121 including reinstatment,* without a no wheel lock-up requirement, of a stopping distance requirement in the standard to replace the one invalidated by the Ninth Circuit Court of Appeals decision. Also would seek public comment on problems associated with disconnecting anti-lock systems and in building vehicles to comply with the standard as modified by the court action. **B. Why Significant:** The rule is considered significant because of the level of public and Congressional interest. **C. Regulatory Analysis:** Not required **D. Need:** *To terminate the adversary atmosphere related to fixing the existing Air Brake Standard and* to prevent degradation of current braking performance as a result of the Court's action. **E. Legal Basis:** National Traffic and Motor Vehicle Safety Act of 1966 as amended.	A. Malliaris, (202)426-0842.	*NPRM September 1980.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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NHTSA **National Highway Traffic Safety Administration**

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	F. Chronology: *ANPRM issued 2/15/79. (44 FR 9783). Comment period closed 4/16/79.* **G. Citation:** *49 CFR 571.121*		
Truck and Trailer Brake Systems	**A. Description:** Would establish long term agency interest in such advanced braking systems concepts as antilock systems, automatic brake adjustors for heavy trucks and buses, and disc brakes for heavy trucks and buses. **B. Why Significant:** This rule is considered significant because of the level of public and Congressional interest. **C. Regulatory Analysis:** Not required **D. Need:** To establish long term plans for truck braking regulations. **E. Legal Basis:** National Traffic and Motor Vehicle Safety Act of 1966, as amended. **F. Chronology:** None yet **G. Citation:** 49 CFR 571.121. 49 CFR 571. 105–75	A. Malliaris, (202)426–0842.	ANPRM *August 1979.*
*Multipiece Rims on Trucks and Buses.	**A. Description:** NHTSA is examining the need to issue a requirement prohibiting the use of multipiece rims because of their potential for explosive separation. **B. Why Significant:** This rulemaking is considered significant because of the level of interest shown by users and manufacturers of these rims, and because of the cost impacts. **C. Regulatory Analysis:** Required **D. Need:** Balance the safety hazards associated with the use of these rims against the added costs of using safer single-piece rims. **E. Legal Basis:** National Traffic and Motor Vehicle Safety Act of 1966, as amended. **F. Chronology:** ANPRM issued March 5, 1979. (44 FR 12072). **G. Citation:** 49 CFR 571.120	A. Malliaris (202)426–0842.	Further action to be determined.
*Bumper Standard	**A. Description:** NHTSA released an updated cost benefit analysis on the bumper standard on June 1, 1979. **B. Why Significant:** This rulemaking is considered significant because of the level of interest shown by Congress, bumper manufacturers, and because of the cost impacts to consumers. **C. Regulatory Analysis:** Not required **D. Need:** Congress has asked for a cost benefit study analyzing the merits of 2.5 mph bumpers vs. 5.0 mph bumpers. **E. Legal Basis:** National Traffic and Motor Vehicle Safety Act of 1966, as amended.	Michael Brownlee, (202)426–1740.	Further action to be determined.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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NHTSA — **National Highway Traffic Safety Administration**

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	F. Chronology: ANPRM issued 3/1/79 (44 FR 11569). Comment period closed 4/30/79. Task Force organized and contractor began work on Bumper Study, April 2, 1979. Final report published June 1, 1979. **G. Citation:** 49 CFR pt. 581		

NHTSA — **National Highway Traffic Safety Administration**

Non-significant Regulations

Title	Summary	Contact	Decision date
Seat Belt Assemblies (Docket No. 74-14).	Would improve seat belt comfort, convenience, reliability and effectiveness by prescribing parameters for performance of seat belt assemblies. (49 CFR 571.208).	A. Malliaris, (202)426-0842.	NPRM *September 1979.*
Child Restraint Systems (Docket No. 74-9).	Would upgrade performance of all child restraints by performing dynamic tests using child and infant dummies; regulate infant restraints. NPRM issued 5/18/78 (49 CFR 571.213).	A. Malliaris, (202)426-0842.	FR *November 1979.*
School Bus Passenger Seating and Crash Protection.	Would amend FMVSS 222 to increase the maximum allowable seat spacing in school buses from 20 to 21 inches; this spacing would accommodate large high school students while still ensuring a safe level of school bus seat performance. *FR issued 3/29/79 (44 FR 18674)* (49 CFR 571.222).	A. Malliaris, (202)426-0842.	*Action Complete.*
School Bus Crash Protection (Docket No. 73-03).	Would amend 571.3 definitions to include a subclassification for "School Activities Bus" and amend FMVSS 222 as it would apply to this vehicle class. (49 CFR 571.222).	A. Malliaris, (202)426-0842.	NPRM *November 1979.*
Test Dummies Representing 6-Month Old and 3-Year Old Children (Docket No. *78-09).*	Would provide specifications for dummies to be used in testing for compliance with FMVSS 213, Child Restraint Systems, in conjunction with proposal to amend that standard to provide for dynamic testing and to extend its applicability. NPRM issued 5/18/78. (43 FR 21490) (49 CFR pt. 572).	A. Malliaris, (202)426-0842.	FR *November 1979.*
Adjudicative Procedures Fuel Economy.	Would establish procedures and rules of practice for adjudications to enforce the fuel economy provisions in Title V of the Motor Vehicle Information and Cost Savings Act. This was issued as an interim regulation 10/16/78 (43 FR 47507-28). Public comments will be invited. (49 CFR pt. 511).	Stephen Wood, (202)426-2992.	FR *August 1979.*
Low Volume Manufacturers Fuel Economy Rulemaking (Docket No. FE 76-04).	A rule may be proposed to streamline the requirements regarding the contents of and procedures for disposition of petitions from low volume automobile manufacturers (gasoline and diesel) for exemption and for establishment of alternative standards. *NPRM issued 4/9/79 (44 FR 21051)* (49 CFR pt. 525).	Richard Strombotne, (202)426-0846.	FR *September 1979.*
Occupant Protection in Interior Impacts.	Would extend to trucks, buses, and multipurpose vehicles of 10,000 pounds or less, the current standard for passenger cars designed to cushion impact of passengers striking interior vehicle structures. NPRM issued 11/9/78, (43 FR 52264-68), (49 CFR 571.201).	A. Malliaris, (202)426-0842.	FR *August 1979.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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NHTSA **National Highway Traffic Safety Administration**

Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
Energy Absorbing Steering Column.	Would extend to trucks, buses, and multipurpose passenger vehicles of 10,000 pounds or less, the current standard for passenger cars designed to protect drivers striking the steering column. NPRM issued 11/9/78, (43 FR 52264–68), (49 CFR 571.203).	A. Malliaris, (202)426–0842.	FR *August 1979.*
Steering Control Rearward Displacement.	Would extend to trucks, buses, and multipurpose passenger vehicles of 10,000 pounds or less, the current standard for passenger cars designed to limit the rearward movement of the steering assembly to reduce the likelihood of death and injury to the driver. NPRM issued 11/9/78, (43 FR 52264–68) (49 CFR 571.204).	A. Malliaris, (202)426–0842.	FR *August 1979.*
Door Locks and Door Retention Components.	This technical amendment would clarify existing test procedures and extend the applicability of FMVSS 206 such that present side door requirements cover transverse rear doors. (49 CFR 571.206).	A. Malliaris, (202)426–0842.	NPRM *August 1979.*
Gross Coupling Weight Rating (Docket No. 73–15).	An amendment to the regulations on certification (49 CFR pt. 567) and of vehicles manufactured in two or more stages (49 CFR pt. 568) would require labeling of the gross coupling weight rating for semi-trailers.	A. Malliaris, (202)426–0842.	FR *September 1979.*
Fields of Direct View (Docket No. 70–7).	This proposal would establish requirements for the maximum allowable size of obstructions in the field of view of drivers, the luminous transmittance of glazing, and the location and functional characteristics of sun visors. NPRM issued 11/6/78 (43 FR 51677).	A. Malliaris, (202)426–0842.	FR March 1980.
Rear View Mirrors (Docket No. 71–3a).	This proposal would amend FMVSS 111 to: (a) reduce the blind areas by upgrading mirror visibility using improved compliance testing procedures, (b) upgrade occupant protection requirements and add pedestrian protection requirements using shatter resistant and breakaway or foldaway tests, (c) set specifications for day-night reflectance requirements to reduce headlight glare, (d) set specifications for convex mirror quality and use, and (e) minimize obstruction of the forward view by establishing mirror location specifications. NPRM issued 11/6/78 (43 FR 51657), (49 CFR 571.111).	A. Malliaris, (202)426–0842.	FR March 1980.
Hydraulic Brake Systems (Docket No., 70–27).	This proposal would extend coverage of FMVSS 105–75 from passenger cars to multi-purpose vehicles, buses, and trucks. (49 CFR 571.105). For vehicles, *with* Gross Vehicle Weight Rating (GVWR) of 10,000 lbs. *or less.* For vehicles over GVWR 10,000 lbs.	A. Malliaris, (202)426–0842.	NPRM *September 1979* NPRM Fiscal Year 1980.
Brake System Inspectability	Would require vehicle modifications in order to inspect for certain levels of brake degradation in accordance with proposed test procedures and criteria for measurement.	A. Malliaris, (202)426–0842.	NPRM September 1979.
Theft Protection (Docket No. 1–21).	Would amend existing standard to require separate keys for doors and ignition, door lock modifications, internal control of hood latch, modification in ignition wiring and ignition key alarm. Would apply to passenger cars, light trucks and vans. NPRM issued 5/1/78. (49 CFR 571.114).	A. Malliaris, (202)426–0842.	*FR September 1979.*
Lamps, Reflective Devices, and Associated Equipment (Docket No. 69–19).	This proposal would revise the minimum size requirement of lenses used on moped stop lamps. It is in response to a petition that the current requirements are excessively stringent. (49 CFR 571.108).	A. Malliaris, (202)426–0842.	*NPRM August 1979.*
Vehicle Identification Number (VIN) (Docket No. 1–22).	Responds to petitions for reconsideration of FR issued 8/78. An NPRM was issued 11/9/78 (93 CFR 52268) proposing certain format changes. *FR issued 3/15/79. (44 FR 17489).* (49 CFR 571.115).	A. Malliaris, (202)426–0842.	*Action Complete.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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NHTSA **National Highway Traffic Safety Administration**

Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
Pedestrian Protection	Would reduce adult pedestrian lower torso and leg injuries and child injuries through modification of the bumper, grille and hood edges. *(49 CFR 571).*	A. Malliaris, (202)426-0842.	ANPRM *September 1979.*
Consumer Information—Wet Stopping Distance.	Develop a new rule for consumer information if tests indicate that there are significant differences in wet stopping distances among different models of cars on asphalt or concrete road surfaces. (49 CFR 105.75).	Michael Brownlee, (202)426-1740.	NPRM *November 1979.*
Bumper Standard	Extend the bumper height requirements to all vehicles under 10,000 lbs. GVWR. Increase the extent to which the vehicle population has matching bumpers, thereby reducing the underride/override problem in vehicle to vehicle accidents involving a light truck, van or multipurpose vehicle. (49 CFR pt. 581).	Michael Brownlee, (202)426-1740.	ANPRM *September 1979.*
Rear Lighting and Signalling	Would establish requirement for the separation of function of rear lighting and signalling and establish requirements for the location of brake lights. (49 CFR 571.108).	A. Malliaris, (202)426-0842.	ANPRM September 1979.
Battery Explosions	Would establish performance requirements and labeling of batteries to reduce the incidence of battery explosions while jump starting. (49 CFR 571).	A. Malliaris, (202)426-0842.	NPRM September 1979.
Interior Noise Levels	Would establish maximum allowable interior noise levels in all heavy trucks by extending the current Bureau of Motor Carrier Safety requirement to new vehicles. (49 CFR 571).	A. Malliaris, (202)426-0842.	NPRM September 1979.
*Controls & Displays (Docket No. 1-18).	(a) This final rule would respond to petitions for reconsideration by making minor clarifications.	A. Malliaris, (202)426-0842.	FR August 1979.
	(b) A NPRM will amend the standard to include several symbols adopted by the International Standards Organization (ISO).	A. Malliaris, (202)426-0842.	NPRM September 1979.
*Speedometers and Odometers	A final rule on FMVSS 127 was issued 3/22/79 (44 FR 17500) which responded to petitions for reconsideration by deleting the 10% limit on distance between graduations on speedometer scales, increasing the leadtime for speedometer accuracy and odometer tamper resistance and clarifying the irreversibility option for odometers. An NPRM (also in response to the petitions for reconsideration) was also issued on the same day to further amend the standard with regard to replacement odometers and further refinements in the irreversibility option for odometers.	A. Malliaris, (202)426-0842.	FR September 1979.
*Air Brake Systems	This final rule would ease the compliance burden by allowing parking brakes to be applied by air pressure. It would finalize a portion of a NPRM issued 9/78.	A. Malliaris, (202)426-0842.	FR August 1979.
*Truck Rear Underride Protection	Would require protective devices to eliminate vehicle penetration under the rear-ends of heavy trucks and trailers and to dissipate crash force, thus reducing accident severity.	A. Malliaris, (202)426-0842.	NPRM September 1979.
*Fuel System Integrity (Docket No. 73-20).	This ANPRM discusses the possibility of establishing specific performance requirements in Safety Standard No. 301-75 for non-metallic fuel tanks (plastic tanks) used in motor vehicles. ANPRM issued 6/2/79. (44 FR 33441).	A. Malliaris, (202)426-0842.	ANPRM September 1979.
*Tire Identification and Recordkeeping.	Amendment to require ID on outward facing sidewall of motor vehicle tires.	A. Malliaris, (202)426-0842.	NPRM September 1979.
*Consumer Information—Acceleration and Passing Ability and Tire Reserve Load.	Would amend the Consumer Information Regulations by deleting the acceleration and passing ability items and modify the class of vehicles to which the tire reserve load provisions apply. NPRM issued 3/15/79 (44 FR 15748).	Michael Brownlee (202)426-1740.	FR September 1979.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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NHTSA **National Highway Traffic Safety Administration**

Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
*Motorcycle Helmets	This technical amendment would increase the percentage of helmet sizes covered by FMVSS 218 by testing large and extra-large helmets with the medium (size "C") headform. Currently, only medium size helmets are covered. (49 CFR 571.218).	A. Malliaris, (202)426-0842.	NPRM August 1979.
*Windshield Retention and Windshield Zone Intrusion.	This technical amendment would change the crash test requirements for FMVSS 212 and 219 for trucks manufactured in more than one stage. (49 CFR 571.212, 571.219).	A. Malliaris, (202)426-0842.	NPRM August 1979.
*Side-Door Strength	This technical amendment would change the test requirements for FMVSS 214 to allow the seats to remain in the car during the side door crush test. The seats currently must be removed. NPRM issued 6/2/79 (44 FR 33444). (49 CFR 571.214).	A. Malliaris, (202)426-0842.	FR September 1979.
*Glazing Materials	This technical amendment would delete the abrasion resistance requirements for certain types of glazing used on side windows of light trucks and vans (49 CFR 571.205).	A. Malliaris, (202)426-0842.	NPRM September 1979.
*Designated Seating Position	This final rule amended the definition of "designated seating position" to clarify which seating positions must be considered as positions that will be used by vehicle occupants while the vehicle is in motion. Final rule issued 4/12/79. (44 FR 23229). (49 CFR 571.3).	A. Malliaris, (202)426-0842.	Action Complete.
Vehicle Speed Control	Trailways Bus Company petitioned for a FMVSS to require road speed governors for all commercial vehicles. A request for comments was published in the **Federal Register** on 3/19/79 with a closing date of 8/17/79. Further Agency action will await results from research.	A. Malliaris, (202)426-0842.	Further action to be determined.
*New Pneumatic Tires	Proposed amendments would delete Appendix A (Tire Tables) of FMVSS 109 to ease introduction of new tire concepts and would add criteria to insure compatibility of new concepts with existing tire types.	A. Malliaris, (202)426-0842.	ANPRM September 1979.
*Odometer disclosure	Would amend disclosure requirements to allow the States to use an abbreviated disclosure statement on all State-supplied transfer documents, as well as on certificates of title. NPRM issued 5/14/79. (44 FR 28032).	John Womack, (202)426-1834.	FR September 1979.
*State Highway Safety Agencies	Would establish new requirements for the authority and function of state highway safety agencies, in keeping with the direction of Congress in the Surface Transportation Assistance Act of 1978. The proposal would upgrade the safety agencies by authorizing them to review and comment on all highway safety programs in the state, regardless of funding source. NPRM issued 6/21/79. (44 FR 36204).	George Reagle, (202)426-0068.	FR September 1979.
*State Matching of Planning and Administration Costs.	Would establish procedure for the the States to provide 25 percent of highwary safety planning and administration costs as required by subsection 207(d) of the Surface Transportation Assistance Act of 1978.	George Reagle, (202)426-0068.	NPRM July 1979.
*Innovative Project Grants	Would establish procedures and criteria for the award of grants for innovative highway safety projects, as provided by section 208 of the Surface Transportation Assistance Act of 1978.	Charles Livingston, (202)426-0837.	ANPRM July 1979.
Fuel Economy Exemptions:			
Exemption from and Establishment of Fuel Economy Standards (Docket No. LVM 77-01).	Analysis of petition for exemption from 1979 and 1980 standards for Avanti Motor Corp. (49 CFR pt. 525).	R. Strombotne, (202)426-0846.	NPRM *September 1979.* FR *November 1979.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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NHTSA — National Highway Traffic Safety Administration

Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
Exemption from and Establishment of Fuel Economy Standards (Docket No. LVM 77-03).	Analysis of petition for exemption from 1979 and 1980 standards and setting of alternative standards for Checker Motors. NPRM issued 10/23/78. (43 FR 49336). (49 CFR pt. 525).	R. Strombotne, (202)426-0846.	FR *September 1979.*
Exemption from and Establishment of Fuel Economy Standards (Docket No. LVM 77-02).	Analysis of petition for exemption from 1978 standard and setting of alternative standard for Rolls-Royce Motors Inc. NPRM issued 7/15/78. (49 CFR pt. 525). *Final rule issued 1/18/79. (44 FR 3710).*	R. Strombotne, (202)426-0846.	*Action Complete.*
Exemption from and Establishment of Fuel Economy Standards (Docket No. LVM 77-05).	Analysis of petition for exemption from 1978 standard and setting of alternative standard for Excalibur Automobile Corp. NPRM issued 7/31/78. (49 CFR pt. 525). *Final rule isued 1/18/79. (44 FR 3708).*	R. Strombotne, (202)426-0846.	*Action Complete.*
Exemption from and Establishment of Fuel Economy Standards (Docket No. LVM 77-02).	Analysis of petition for exemption from 1979 and 1980 standards and setting of alternative standards for Rolls-Royce Motors, Inc. (49 CFR pt. 525).	R. Strombotne, (202)426-0846.	NPRM *September 1979.* FR *November 1979.*
Exemption from and Establishment of Fuel Economy Standards (Docket No. LVM 77-04).	Analysis of petition for exemption from 1979-1980 standards and setting of alternative standards for Aston Martin Lagonda. (49 CFR ot. 525).	R. Strombotne, (202)426-0846.	NPRM *September 1979.* FR *November 1979.*
Exemption from and Establishment of Fuel Economy Standards (Docket No. LVM 77-05).	Analysis of petition for exemption from 1979 and 1980 standards and setting of alternative standards for Excalibur Automobile Corp. (49 CFR pt. 525).	R. Strombotne, (202)426-0846.	NPRM *September 1979.* FR *November 1979.*
Exemption from and Establishment of Fuel Economy Standards.	Analysis of petition for exemption from 1979 and 1980 standards and setting of alternative standards for Lamborghini, S.p.A. (49 CFR pt. 525).	R. Strombotne, (202)426-0846.	NPRM *September 1979.* FR *November 1979.*
Exemption from and Establishment of Fuel Economy Standards.	Analysis of petition for exemption from 1978 standard and setting of alternative standard for Maserati S.p.A. *FR issued 3/1/79. (44 FR 11548).* (49 CFR pt. 525).	R. Strombotne, (202)426-0846.	*Action Complete.*
Exemption from and Establishment of Fuel Economy Standards.	Analysis of petition for exemption from 1979 and 1980 standards and setting of alternative standards for Maserati, S.p.A. (49 CFR pt. 525).	R. Strombotne, (202)426-0846.	NPRM *August 1979.* FR *October 1979.*

FRA — Federal Railroad Administration

Significant Regulations

Title	Summary	Contact	Date
Strobe Lights on Locomotives (Docket No. RSGC-2).	**A. Description:** Lighted warning devices that include strobe lights have been shown to be more readily visible than normal lighting devices. FRA is considering requiring the installation of strobe lights on locomotives. **B. Why Significant:** Degree of controversy reflected by response to ANPRM. **C. Regulatory Analysis:** Required..... **D. Need:** Grade crossing accidents represent the single largest group of railroad related fatalities each year. Available data indicate that the conspicuity of locomotives may be a factor in many of these accidents. Limited research with one railroad has indicated that equipping locomotives with strobe lights will improve their conspicuity and may lead to a reduction in these accident statistics. **E. Legal Basis:** The Federal Railroad Safety Act of 1970 (45 U.S.C. 431). **F. Chronology:** The ANPRM was published 3/7/78 (43 FR 9328). *NPRM was published 6/18/79 (44 FR 34982).* **G. Citation:** Will be 49 CFR pt. 222.....	John A. McNally, (202)426-9178.	FR *December 1979.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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FRA — Federal Railroad Administration

Significant Regulations—Continued

Title	Summary	Contact	Date
Final Station Program Cost Sharing Determination (FRA Intercity Passenger Docket No. 1).	**A. Description:** Title VII of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act) (45 U.S.C. 851 *et seq.*) provides for the upgrading by the Secretary of Transportation of the passenger railroad system between Washington, D.C. and Boston, Massachusetts, including the funding of certain station improvements. Non-Federal parties will have to bear one-half of the cost of the non-operational portions of stations (as determined by the Secretary) used in intercity passenger service and of related facilities. This notice would set forth the Department's determination as to what will constitute a "nonoperational portion" of a station and a "related facility" for purpose of allocating station project costs between the Federal government and other participating entities. **B. Why Significant:** Great interest on the part of State and local transportation agencies due to the shared cost implication of the Secretary's determination. **C. Regulatory Analysis:** Not required. **D. Need:** Required by statute. **E. Legal Basis:** Sec. 703(1)(B) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 853(1)(B)). **F. Chronology:** NPRM was published on 4/28/78 (43 FR 18394). It had been under development since early 1977. **G. Citation:** No CFR citation as yet.	Jeff Godwin, (202)426-*7710*.	FR *September 1979.*

FRA — Federal Railroad Administration

Non-significant Regulations

Title	Summary	Contact	Date
Construction of Railroad Employees Sleeping Quarters (Docket No. HS-2).	The final rule implements a Congressional directive in the Hours of Service Act (45 U.S.C. 62(a)(4)) making it unlawful to begin construction of sleeping quarters in the immediate vicinity of a railroad yard. FR issued 7/19/78 (43 FR 31006). Petition for reconsideration by rail unions *denied 2/6/79.*	Grady C. Cothen, (202)426-8220.	*Action Complete.*
Railroad Bridge Safety Standards	The proposed rule would establish safety standards for inspection and rating of load capacity for railroad bridges.	William R. Paxton, (202)426-0912.	ANPRM *August 1979.*
Railroad Noise Emission Compliance Regulations (Docket No. RNE-1).	The proposed rule would amend FRA Railroad Noise Emission Compliance Regulations to reflect EPA Standards for fixed railroad facilities that are to be issued by *8/79* (49 CFR pt. 210).	John A. McNally, (202)426-9178.	NPRM *January 1980.*
Rules, Standards, and Instructions for Railroad Signal Systems.	The proposed rule would seek to make miscellaneous technical amendments to the signal inspection rules (49 CFR pt. 236). To be included in general revision of Part 236 after completion of General Safety Inquiry; see FRA REVIEWS UNDER CONSIDERATION.	William R. Paxton, (202)426-0912.	Action deferred pending completion of general safety inquiry.
Safety Standards for Cabooses (Docket No. RSC-76-6).	The proposed rule would seek to establish comprehensive safety standards for cabooses.	Robert E. Abbott, (202)426-9186.	NPRM *January 1980.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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FRA **Federal Railroad Administration**

Non-significant Regulations—Continued

Title	Summary	Contact	Date
Rail Services Assistance to States Under Section 5 of the DOT Act (FRA Economic Docket No. 4).	This action would amend 49 CFR pt. 266 to provide guidelines for a more comprehensive application for substitute service assistance, to implement proposals offered by the grantees at a recent public meeting, and to make changes necessitated by the enactment of the Local Rail Service Assistance Act of 1978. NPRM published on 1/6/78 (43 FR 1108).	Larry A. Friedman, (202)426-7737.	FR—*August 1979.*
Financial Assistance for Railroad Passenger Terminals—Revision of Regulations.	On 5/22/78, the regulations (49 CFR pt. 256) were amended to exclude certain functions transferred by law out of DOT, and to extend the deadlines for filing of applications (43 FR 21886). Although the regulations were issued in final form, comments were solicited until 7/1/78. As warranted, changes will be made on the basis of the comments received. *FR published 4/11/79 (44 FR 21646).*	David Talley, (202)472-5305.	*Action Complete.*
Safety Inquiry—Lifting Lugs on Freight Cars (Docket RSSI-76-2).	On 10/5/78, FRA published an order temporarily staying effectiveness of industry standards requiring lifting lugs on all new freight cars (43 FR 46052). FRA also published a notice of a special safety inquiry on this subject and conducted a public hearing on 10/31/78 (43 FR 46106). *Termination notice published 5/18/79 (44 FR 29416).*	Rolf Mowatt-Larssen, (202)426-0924.	*Action Complete.*
Improved Glazing Materials for Railroad Rolling Equipment (Docket No. RSGM-1).	Formerly classified as significant regulation. NPRM published 10/16/78 (43 FR 47579) proposing minimum safety requirements for glazing materials in windows of locomotives, passenger cars and cabooses to increase protection, against bullets and other projectiles. Public hearing held 11/29/78 (49 CFR pt. 229).	Robert E. Abbott, (202)426-9186.	FR *August 1979.*
Review: Freight Car Safety Standards (Docket No. RSFC-6).	Outgrowth of regulatory review in general safety inquiry. NPRM published 1/5/79 (44 FR 1419) proposing to revise Part 215.	Robert E. Abbott, (202)426-9186.	FR *October 1979.*
Review: Locomotives (*Docket No. LI-6).*	Outgrowth of regulatory review in general safety inquiry. Revision and updating of regulations to reflect technological advances and eliminate requirements that are no longer necessary for safety (49 CFR pt. 230). NPRM published *5/21/79 (44 FR 29604).*	Arthur T. Ireland, (202)426-9186.	FR *December 1979.*
Review: Track Safety Regulations.	Outgrowth of regulatory review in general safety inquiry. Revision and updating of current requirements. (49 CFR pt. 213).	William R. Paxton, (202)426-0912.	NPRM *July 1979.*
Review: Safety Appliance Standards.	Outgrowth of regulatory review in general safety inquiry. Revised standards for new and existing equipment. (49 CFR pt. 231).	Ralph R. Smith, (202)426-9187.	NPRM *August 1979.*
Review: Power Brake Rules.....	Outgrowth of regulatory review in general safety inquiry. Revision and updating of current requirements. (40 CFR pt. 232).	Ralph R. Smith, (202)426-9187.	NPRM *October 1979*
Nondiscrimination in Federally Assisted Railroad Programs.	*On 6/21/79, a FR was published (44 FR 36338) amending* 49 CFR pt. 265 *by establishing a new definition of minority business enterprise (MBE) and providing guidance in determining whether a business is an MBE.*	Rufus S. Watson, (202)472-5311.	*Action Complete.*
*Review: Signal and Communication Systems.	Outgrowth of regulatory review in general safety inquiry. Revision and updating of current requirements of Parts 235 and 236.	S. H. Stotts, (202)426-0912.	NPRM November 1979.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

FRA — Federal Railroad Administration

Routine and Frequent Non-significant Regulations

Title	Summary	Contact	Date
Rules for Use of Radio in Train Operations (Docket No. RSOR-5).	This final rule would establish penalty schedules for violations of radio rule requirements (49 CFR pt. 220).	John A. McNally, (202)426-9178.	FR *September 1979*

UMTA — Urban Mass Transportation Administration

Significant Regulations

Title	Summary	Contact	Decision date
Withdrawal of Interstate Segments and Substitution of Alternative Projects (Docket No. 77-9).	The regulation is being jointly developed by UMTA and FHWA and is summarized elsewhere in this agenda by the Federal Highway Administration.	Richard White (202)472-6991.	NPRM *August* 1979.
Private Enterprise Participation in Federally-Assisted Programs.	**A. Description:** Pursuant to sections 3(e) and 8(e) of the UMT Act, as amended, UMTA plans to publish procedures regarding the involvement of private mass transit operators in federally-assisted programs. **B. Why Significant:** While these regulations would implement statutory requirements, this is a controversial issue for both the transit industry and private operators. **C. Regulatory Analysis:** Not required. **D. Need:** To resolve an area of continuing controversy. **E. Legal Basis:** Sections 3(e) (1) and (2), and Section 8(e) of the UMT Act, as amended. **F. Chronology:** 8(e) was added to the Urban Mass Transportation Act by the Federal Public Transportation Act of 1978. NPRM to be prepared by *August* 1979. **G. Citation:** 49 CFR pt. 619.	Edward Gill, (202)426-1908.	NPRM *August* 1979
Paratransit Policy.	**A. Description:** UMTA will publish a policy regarding the availability of federal assistance for public and private operators in the provision of paratransit services. In addition, an ANPRM will be issued seeking comments on development of more specific guidelines concerning paratransit and the involvement of private operators in the planning and provision of service. Paratransit services addressed in the policy are meant to encompass those forms of collective passenger transportation which provide flexible, shared-ride service to the general public, or to special categories of users (such as elderly or handicapped persons) on a regular and predictable basis, but which do not necessarily operate on fixed schedules or over prescribed routes. **B. Why Significant:** The regulation is expected to have a direct or indirect effect on competition. **C. Regulatory Analysis:** Not required. **D. Need:** To provide uniform guidance to public and applicants. **E. Legal Basis:** The UMT Act, 49 U.S.C. 1601.	Douglas Birnie, (202)426-4060.	ANPRM *December* 1979

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

UMTA — Urban Mass Transportation Administration

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	F. Chronology: ANPRM to be prepared and issued by *December* 1979. **G. Citation:** None		
Urban Transportation Planning Process/Transportation Improvement Program.	The regulation is being jointly developed by UMTA and FHWA and is summarized elsewhere in this agenda by the Federal Highway Administration.	Bob Kirkland, (202)426–4991.	NPRM *October* 1979.
Environmental Procedures	**A. Description:** These regulations will prescribe UMTA procedures for environmental assessments and preparation of environmental impact statements on major agency actions significantly affecting the quality of the human environment. **B. Why Significant:** UMTA policy in this area may be expected to be of substantial interest to both UMTA grantees and the public. **C. Regulatory Analysis:** Not required **D. Need:** To provide uniform guidance to the public and applicants. **E. Legal Basis:** National Environmental Policy Act; DOT Order 5610.1; Section 14 of UMT Act; Council on Environmental Quality Regulations implementing NEPA (40 CFR pts. 1500–1508 (43 FR 55978)). **F. Chronology:** NPRM to be issued by *August* 1979 **G. Citation:** 49 CFR pt. *622*	*John Collins,* (202)426–1908.	NPRM *August* 1979.
Public Transportation for Non-Urbanized Areas.	The regulation is being jointly developed by UMTA and FHWA and is summarized elsewhere in this agenda by the Federal Highway Administration.	Kay Regan, (202)*472–7037.*	NPRM *August* 1979.
Major Urban Transportation Investment.	The regulation is being jointly developed by UMTA and FHWA and is summarized elsewhere in this agenda by the Federal Highway Administration.	Joel Ettinger, (202)426–2360.	FR *August* 1979.
"Buy America" Requirements of Surface Transportation Assistance Act of 1978.	**A. Description:** These regulations implement section 401 of the Surface Transportation Assistance Act of 1978, which provides, with exceptions, that funds authorized may not be obligated for urban mass transportation projects unless materials and supplies are of United States origin. These regulations were issued as a final rule but comments were solicited until February 15, 1979 and changes *will* be made based on the comments received. **B. Why Significant:** There *is* substantial public interest concerning these regulations because of their impact on urban mass transportation projects. **C. Regulatory Analysis:** Not required **D. Need:** These regulations implement section 401 of the Surface Transportation Assistance Act of 1978. **E. Legal Basis:** 49 U.S.C. 1602 note; P.L. 95–599, Section 401. **F. Chronology:** The statute creating this provision was signed by the President on November 6, 1978 and required immediate implementation. The emergency final rule was published on December 6, 1978. (*43 FR 57144*) Comments were invited through February 15, 1979. *UMTA is currently analyzing the comments received and will issue revised final regulations in September 1979.*	John Collins, (202)426–1908.	*Revised FR September 1979.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

UMTA — Urban Mass Transportation Administration

Significant Regulations—Continued

Title	Summary	Contact	Decision date
Regulation Implementing the Nondiscrimination Section of the Urban Mass Transportation Act.	**G. Citation:** 49 CFR pt. 660 **A. Description:** The proposed regulations would unify the civil rights regulations that recipients of funds under the Urban Mass Transportation Act must meet.. **B. Why significant:** Substantial public interest is anticipated.. **C. Regulatory Analysis:** Not required **D. Need:** Regulations are needed to implement a new statutory provision which consolidates UMTA's authority to assure effective and uniform compliance with civil rights and equal employment opportunity requirements in a manner comparable to other agencies within the Department of Transportation. **E. Legal Basis:** Section 19 of the UMT Act (49 U.S.C. § 1615). **F. Chronology:** Section 19 was added to the UMT Act in November 1978 by the Federal Public Transportation Act of 1978. **G. Citation:** 49 CFR Chapter VI	*Edward Gill, (202)426-1906.*	NPRM *November 1979.*

UMTA — Urban Mass Transportation Administration

Non-significant Regulations

Title	Summary	Contact	Decision date
Charter and School Bus Regulations.	These regulations provide more detailed information regarding the restrictions placed on charter and school bus operations in section 3(f) and 3(g) of the UMT Act, 49 U.S.C. 1601. UMTA received considerable comments as a result of an ANPRM dated December 29, 1976 (41 FR 56680) and a hearing held thereafter and it is now planning to issue an NPRM for comment. (49 CFR pt. 604 and pt. 605).	Prentis Cook, (202)426-1906.	NPRM *October 1979.*
Innovative Techniques and Methods Set-Aside.	These regulations would prescribe policies and procedures for administering the grant programs for projects using innovative techniques and methods in the management and operation of public transportation services.	Joseph Goodman, (202)426-4984.	NPRM *January 1980.*
Rail Transit Car Testing	These regulations would prescribe policy guidance for the testing of rail transit cars, the test schedule to be followed and requirements of the tests to be performed.	Robert Haught, (202)426-9545.	NPRM *August 1979.*
Reporting Requirements for Urbanized Areas.	This regulation establishes a mechanism for submission of bus and rail data from all urbanized areas for apportionment funds under Section 5 of the UMT Act of 1964, as amended. These regulations were issued as *an emergency* final rule but comments were solicited and changes *were* made based on the comments received. *(December 18, 1978, 43 FR 58928). The revised regulations were published on May 3, 1979 (44 FR 26850).*	Peter Benjamin, (202)472-2435.	*Action Complete.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

UMTA — Urban Mass Transportation Administration

Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
Regulations Governing Formula Assistance to Urbanized Areas.	A formula assistance grant program for urbanized areas (areas whose population exceeds 50,000) was created by statute in 1974 as Section 5 of the Urban Mass Transportation Act (49 U.S.C. § 1604). The policies and procedures governing this program are described in UMTA Order 9050.1. In November of 1978, this Section 5 program was amended by P.L. 95-599 to modify the formula mechanism, to define new terms, to change the maintenance of effort provision, and to require public hearings prior to fare changes. Furthermore, Sections 304 and 319(a) of P.L. 95-599 required UMTA to collect new types of data to administer this modified Section 5 program. On December 18, 1978, UMTA published changes to 49 CFR pt. 630 which describe the types of data that must be submitted to UMTA. *These changes were amended on May 3, 1979 (44 FR 26850).*. The purpose of the new regulation that is proposed here is to streamline the policies and procedures that were described in UMTA Order 9050.1 and to modify and expand those procedures to meet the new statutory mandates. The changes made in December to 49 CFR pt. 630 will be reviewed to lessen the reporting borden to local public bodies. (49 CFR pt. 630).. *A proposed regulation governing the public hearing requirements is being published separately and is described elsewhere in this document.*	Peter Benjamin, (202)472-2435.	NPRM *September 1979.*
*Miscellaneous Amendments—Organization, Functions, and Procedures.	These amendments will reflect modifications in the organization and distribution of functions as well as changes in the delegations of authority within the Urban Mass Transportation Administration (49 CFR pt. 401).	Patricia Colbert, (202)426-4011.	FR *August* 1979.
*Public Hearing Requirements.....	UMTA is proposing regulations to implement Section 5(i)(3) of the Urban Mass Transportation Act of 1964, as amended. This section requires a public hearing or an opportunity for a public hearing prior to increases in general levels of transit fares or substantial changes in service. A notice of proposed rulemaking was published on July 16, 1979 (44 FR 41272). Comments have been invited through August 30, 1979.	Charlotte Adams, (202)472-6997.	FR September 1979.
*Standardized Specification for Rail Rapid Transit Cars.	These regulations would require UMTA grantees to use standard specifications for rapid transit cars. The emphasis in the specifications would be placed on standardizing performance requirements and subsystems rather than in the area of dimensions.	Stephen Teel, (202)426-0090.	September 1979.
*Investigation of Safety Hazards in Urban Mass Transportation Systems.	These regulations would establish the policy and proceedings to be followed in the implementation of Section 107 of the National Mass Transportation Assistance Act of 1974, including the investigation of an unsafe condition, the requiring of a plan for correcting an unsafe condition, and the withholding of financial assistance until such a plan is approved or implemented.	William Rhine, (202)426-9545.	September 1979.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

UMTA — Urban Mass Transportation Administration

Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
*Human Resource Needs in Transit Industry.	Section 20 of the Urban Mass Transportation Act of 1964, as amended, provides that the Secretary of Transportation, through UMTA, may provide financial assistance for national and local programs that address human resource needs as they apply to public transportation activities. It is intended that the number of minority and female employees in the public transportation field will be increased and that the quality of opportunities will be increased through outreach, training, and management development. The proposed regulations would set out the types of potential eligible projects and the requirements that a project must meet to receive Section 20 funds.	Irvin Bromall, (202)426-2285.	September 1979.

SLSDC — Saint Lawrence Seaway Development Corporation

Non-significant Regulations

Title	Summary	Contact	Decision date
Operational Regulations	Annual update of 33 CFR Part 401, operational regulations developed, for the most part, jointly with the Seaway Authority of Canada.	Frederick A. Bush, 315-764-0271.	August 1979. Repeated in June 1980.

RSPA — Research and Special Programs Administration

Significant Regulations

Title	Summary	Contact	Decision date
Highway Routing of Radioactive Materials (Docket No. HM-164).	**A. Description:** This regulation would establish routing requirements for the highway carriage of radioactive materials. **B. Why Significant:** There is substantial public interest and controversy over the regulation and it would have a significant impact on the Federal Highway Administration. **C. Regulatory Analysis:** Not required. **D. Need:** To provide a basis for deciding whether Federal routing requirements are necessary for the highway transportation of hazardous materials. **E. Legal Basis:** 49 U.S.C. 1803, 1804, 1808. **F. Chronology:** Administrative ruling *on federal pre-emption:* Published a public notice and invitation to comment on Aug. 15, 1977 (42 FR 41202); Public hearing was held on Nov. 10, 1977 (42 FR 54487); Ruling published April 20, 1978 (42 FR 16945); Rulemaking: ANPRM issued August 17, 1978 (43 FR 36492); Hearing in New York, held November 29, 1978. **G. Citation:** 49 CFR pt. 177.	D. Crockett, (202)426-2075.	NPRM *September* 1979.
Development of New Standards for Transportation of Hazardous Waste Materials (Docket No. HM-145A).	**A. Description:** Would establish new standards and procedures for the transportation of hazardous waste materials.	A. Roberts, (202)426-0656.	FR *December* 1979.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

RSPA **Research and Special Programs Administration**

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	B. Why Significant: This regulation would have a significant impact on the operating administration and the Environmental Protection Agency (EPA). **C. Regulatory Analysis:** Not required **D. Need:** These standards are necessary to govern the transportation of hazardous waste materials and to provide consistency with the hazardous waste materials regulations to be promulgated by EPA under the Resource Conservation and Recovery Act. **E. Legal Basis:** 49 U.S.C. 1803, 1804, 1808 **F. Chronology:** NPRM jointly developed with EPA; public hearing held on Oct. 26, 1977 (42 FR 51625); NPRM issued May 25, 1978 (43 FR 22626); public hearing on NPRM held on June 20, 1978 (43 FR 22626). **G. Citation:** 49 CFR pts. 171, 172, 173, 174, 175, 176, and 177.		
Development of New Standards for Liquefied Natural Gas (LNG) Facilities (Docket No. OPSO–46).	**A. Description:** Comprehensive new standards would be proposed for the siting, design, construction, operation, and maintenance of LNG facilities. **B. Why Significant:** Major rulemaking due to substantial public interest and controversy, and due to potential danger of large-scale LNG spills. **C. Regulatory Analysis:** Not required **D. Need:** The concerns of Federal, State, and local agencies over LNG safety. **E. Legal Basis:** 49 U.S.C. 1672 **F. Chronology:** *ANPRM Apr. 21, 1977 (42 FR 20776).* NPRM (siting, design, and construction): *Feb. 8, 1979 (44 FR 8142).* NPRM (operation and maintenance): *Sept. 1979* Final rules (siting, design, and construction) *Dec. 1979* Final rules (operation and maintenance): *July 1980* **G. Citation:** 49 CFR pt. 193 (new)	L. Furrow, (202)426–0135.	FR *December* 1979.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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RSPA **Research and Special Programs Administration**

Non-significant Regulations

Title	Summary	Contact	Decision date
Intermodal Portable Tanks (Docket No. HM-167).	Proposed standards for new specifications for portable tanks and procedures for use of these portable tanks for certain hazardous materials. NPRM published December 11, 1978 (43 FR 58050). (49 CFR *107.400-.407*, 178,271, 178.272).	E. Altemos, (202)246-0656.	FR *December* 1979.
Review: Recodification of Radioactive Requirements (Docket No. HM-169).	Proposed consolidation, simplification and recodification, of the existing requirements applicable to the transportation of radioactive materials *to make them compatible with latest revised international standards as promulgated by the International Atomic Energy Agency. NPRM published January 8, 1979 (44 FR 1852).* (New pt. 127 to 49 CFR).	R. Rawl, (202)426-*0656*.	FR *Pending Publication of Companion Document by U.S. Nuclear Regulatory Commission.*
Transportation of Asbestos (Docket No. HM-160).	Establishes standards to control asbestos emissions during transportation (49 CFR 172.101, 173.1090). NPRM published March 2, 1978 (43 FR 8562); FR published December 4, 1978 (43 FR 56664).	A. Roberts, (202)426-0656.	*Petition for reconsideration under review to be answered by August 1979.*
Safety Improvement Program for DOT 105 Tank Care (Project 264-78).	Consideration of possible changes to current safety performance standards of DOT 105 tank cars (49 CFR pt. 179.	W. Black, (202)426-2748.	NPRM *August* 1979.
Detonators and Detonating Primers (Docket No. HM-161).	Proposed standards for establishing appropriate shipping descriptions and hazard classifications for many detonators which are currently used in commercial service: NPRM issued May 4, 1978 (43 FR 19242). (49 CFR 172.101). Comment period extended to permit development of testing data.	C. Schultz, (202)755-4906.	FR *August* 1979.
Cryogenic Liquids (Docket No. HM-115)..	Proposed standards and procedures for the transportation of cryogenic liquids, *NPRM published March 8, 1979. (44 FR 12826) (49 CFR 172.101, 173.316). Hearing (Washington, D.C.) held on April 17, 1979. Comment period extended to permit further consideration of issues raised in hearing.*	P. Seay, (202)755-4906.	FR *February 1980.*
Hazardous Materials Aboard Aircraft (Docket NO. HM-168).	Proposed standards for the safe operation of aircraft having certain hazardous material aboard. NPRM published December 11, 1978 (43 FR 57928). (49 CFR pts. *107, 171,* 175).	*E. Mazzullo,* (202)*755-4902.*	FR *September* 1979.
Availability of Shipping Papers to Emergency Response Personnel (Project 259-78).	Proposal to require shipping papers covering hazardous materials to be made available by train crew to emergency personnel. This proposal has been reconsidered and will become a part of Project *273-78, Hazardous Materials Communications Regulations (49 CFR pts. 171-177).*	J. Horning, (202)755-4902.	NPRM *September* 1979.
Use of United Nations Materials Shipping Terminology/Number (Project 266-78).	Proposed incorporation of shipping descriptions and serial numbers from United Nation regulations covering the transport of dangerous goods, *NPRM published July 26, 1979 (44 FR 43864). (49 CFR 172.102).*	E. Altemos, (202)426-0656.	*FR December 1979.*
Definition of a Flammable Solid (Docket No. HM-118).	Proposed new standards for classifying a material as a flammable solid (49 CFR 173.150). Action deferred pending further review.	C. Schultz, (202)755-4906.	Review August 1979.
Radiation Exposure of Transportation Workers (Project 263-78).	Consideration of methods which will reduce radiation exposure levels to transportation workers (New Sections).	R. Rawl, (202)426-*0656*.	NPRM *November* 1979.
Requirements for Radioactive Materials (Docket No. HM-152).	Proposed revisions of certain secs. of pt. 175 which will reduce the exposure to radioactive materials for passengers aboard aircraft (49 CFR pt. 175). NPRM published June 21, 1977 (42 FR 37424).	R. Rawl, (202)426-*0656*.	FR *August* 1979.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

RSPA **Research and Special Programs Administration**

Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
Forbidden Materials (Docket No. HM-159).	Proposed standards to add the names of materials to the Hazardous Materials Table that are known to be too hazardous to be permitted in commercial transportation, *NPRM published July 26, 1979 (44 FR 43861).* (49 CFR 172.101).	C. Schultz, (202)755-4906.	*FR November 1979.*
Review: Recodification of Operating Procedures For Motor Vehicles (Project 261-78).	Proposed simplification and recodification of the existing operating procedures for transportation of hazardous materials by motor vehicles as prescribed in Part 177 (49 CFR pt. 177).	*R. Toth,* (202)426-1700.	NPRM *March 1980.*
Safety Plans for Normal Operations and Emergencies for Pipelines Carrying Highly Volatile Liquids (Docket No. PS-51).	Criteria would be proposed to govern a carrier's plans for preventing and handling emergencies for pipelines carrying highly volatile liquids, e.g., LPG/NH_3. NPRM published Aug. 10, 1978 (43 FR 35513). Comment period was extended to Nov. 6, 1978 (43 FR 46015). Final rule published July 16, 1979. (44 FR 41197) (49 CFR pt. 195).	F. Robinson, (202)426-0135.	*Action Complete.*
Standards to Reduce Spill Size Risks Associated with Pipeline Transportation of Highly Volatile Liquids such as Liquid Petroleum Gas (Docket No. PS-53).	Proposal would require valve spacing or other requirements to minimize the amount of commodity or vapor that can spread into populated areas in event of a spill. NPRM published Sept. 5, 1978 (43 FR 39402). *On reveiw, the NPRM is being isued as an amendment.* (49 CFR pt. 195).	F. Robinson, (202)426-0135.	FR August 1979.
Joining Plastic Pipe (Docket No. PS-59).	Qualifications would be established for procedures and personnel in joining plastic pipe. NPRM published Oct. 23, 1978 (43 FR 49334). Final rule published July 23, 1979 (44 FR 42968) (49 CFR pt. 192).	P. Cory, (202)426-2392.	*Action Complete.*
Standards to Reduce Pipeline Failure Rates in Pipelines Carrying Highly Volatile Liquids (LPG/NH_3) (Docket No. PS-5).	Testing or operating requirements would be proposed to assure the safe operation of existing pipelines transporting highly volatile liquids. NPRM published Nov. 7, 1978 (43 FR 52500). (49 CFR pt. 195).	F. Robinson, (202)426-0135.	FR September 1979
Corrosion Control (Docket No. PS-52).	*Specification of a sampling procedure for inspecting cathodic protection on transmission lines. NPRM issued Sept. 5, 1978* (43 FR 39401). (49 CFR pt. 192).	P. Cory, (202)426-2392.	FR November 1979.
Requirements for Reporting Gas Incidents (Docket No. OPS-49).	The present reporting forms would be revised to provide additional and more appropriate information about gas safety problems and to require reports from certain systems not now covered. NPRM issued June 5, 1978 (43 FR 24478). Comment period was extended to July 7, 1978 (43 FR 30590). *Supplemental Notice to NPRM of June 5, 1978, issued February 1, 1979.* (49 CFR pt. 191).	*R. Langley,* (202)426-2082.	FR September 1979.
Miscellaneous Proposals Concerning Rail Transportation (Project 259-78).	Proposals concerning availability of hazardous materials shipping papers to emergency personnel, car placement, compliance with track standards, and tank car safety appurtenances. (49 CFR 174.24, 174.91, 174.7, 174.31 and pt. 179). *Availability of shipping papers to emergency response personnel proposal has been reconsidered and will become a part of Project 273-78, Hazardous Materials Communications Regulations. Compliance with track standards proposal has been denied. Other proposals will be considered for incorporation into a rulemaking action at a later date.*	J. Horning, (202)755-4902.	*Withdrawn.*
Color Specifications for Hazardous Warning Labels (Docket No. HM-151).	Incorporation of color specifications for hazard warning labels printed directly on a packaging. (Correction of final rule in HM-112, April 15, 1976, 41 FR 15972). *Final rule published February 15, 1979 (44 FR 9756).* (49 CFR pt. 172).	L. Metcalfe, (202)426-0656.	*Action Complete.*
Flattening Test Requirements for Seamless Cylinders (Docket No. HM-156).	Deletion of requirement that certain seamless cylinders be hydrostatically tested prior to flattening test. (NPRM published January 19, 1978, 43 FR 2741). *Final rule published January 29, 1979* (44 FR 5666). (49 CFR pt. 178).	J. Pena, (202)755-4906.	*Action Complete.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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RSPA **Research and Special Programs Administration**

Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
Glass Carboy in Expanded Polystyrene Packaging (Docket No. HM-117).	Deletion of obsolete specification packagings; new specification for glass carboy in expanded polystyrene packaging (NPRM published June 14, 1974, 39 FR 20805). *Final rule published March 2, 1979 (44 FR 14194). (49 CFR pts. 173, 178).*	M. Gigliotti, (202)755-4906.	*Action Complete.*
Hazardous Polluting Substances *(Docket HM-145B).*	Proposed new classification for materials designated as hazardous polluting substances by EPA under the Clean Water Act. *NPRM published February 22, 1979 (44 FR 10676).* (49 CFR pts. 171-177).	*L. Metcalfe* (202)426-*0656.*	FR *September* 1979.
Use of Interested Inspectors for Cylinder Inspections (Docket No. HM-74A).	Discontinuance of "interested" inspectors to perform inspections and testing of domestically manufactured low pressure gas cylinders. NPRM published March 17, 1976 (41 FR 11179). (49 CFR pt. 178).	*H. Mitchell.* (202)*755-4902.*	*NPRM November 1979.*
Deletion of Tank Car Stenciling (Project 276-78).	Amendment to eliminate tank car stenciling requirements which duplicate or conflict with existing marking requirements. *Final Rule published April 5, 1979 (44 FR 20433).* (49 CFR pts. 174, 179).	W. Black, (202)426-2748.	Action Complete.
Hazardous Materials Communications Regulations (Project 273-78).	Development of changes to shipping papers, marking, labeling, and placarding requirements (49 CFR pts. 171-177).	A. Roberts, (202)426-0656.	NPRM *September* 1979.
Cylinders Mounted on Motor Vehicles (Project 284-74).	Proposed protection for devices and appurtenances on cylinders mounted on motor vehicles (49 CFR pt. 173).	A. Mallen, (202)755-4902.	NPRM *August* 1979.
Display of Hazardous Materials Identification Numbers (Docket No. HM-126*A*).	Development of numerical identification code for hazardous materials for use in emergencies. *NPRM published June 7,* 1979 *(44 FR 32972).* (49 CFR pt. 172).	*L Metcalfe,* (202)426-0656.	*FR November* 1979.
Development of Training Requirements for Drivers of Cargo Tank Motor Vehicles (Project 270-78).	Development of minimum driver training requirements necessary to prevent unintentional releases of hazardous materials (49 CFR pt. 177).	*R. Toth,* (202)426-1700.	ANPRM *August* 1979.
Specification for 55-gallon Plastic Drum (Project 278-78).	Proposal to authorize 55-gallon capacity plastic drums and authorization for use with certain hazardous materials (49 CFR pt. 178).	M. Gigliotti, (202)755-4906.	NPRM *October* 1979.
Development of Standards and Requalification Tests for Cargo Tank Hoses (Project 271-78).	Development of standards and periodic tests to prevent rupture of hoses used to load and unload cargo tanks (49 CFR pts. 173,177).	*R. Toth,* (202)426-1700.	ANPRM *August* 1979.
Consolidation and Revision of Requirements for the Carriage of Explosives by Vessel (Project 279-78).	Proposed consolidation and revision of requirements for the carriage of military and commercial explosives by vessel and adoption of United Nations scheme for classification and compatability of explosives for the water mode (49 CFR pt. 176).	L. Gibson, (202)426-1577.	NPRM *October* 1979.
Oxidizing Materials Definition, Criteria and Proposed Regulations (Project 160-71).	Development of new standards for classifying a material as an oxidizing material (49 CFR pt. 173).	C. Schultz, (202)755-4906.	ANPRM *November 1979.*
Attendance of Cargo Tanks During Transportation (Project 272-78).	Proposed revision of attendance requirements to include transportation activities other than loading and unloading (49 CFR pt. 177).	*R. Toth,* (202)426-1700.	NPRM *March 1980.*
Establish Performance Standards for Specification Bags (Project 280-78).	Development of performance standards for specification bags (49 CFR pt. 178).	M. Gigliotti, (202)755-4906.	ANPRM *October 1979.*
Organic Peroxide Requirements (Project 186-72).	Proposed listing of and packaging requirements for organic peroxides. (49 CFR pts. 172, 173). *May be combined with (Project 160-71) (49 CFR pt.173).*	C. Schultz, (202)755-4906.	ANPRM *November 1979.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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RSPA **Research and Special Programs Administration**

Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
Odorization of Gas (Project 277–78).	Proposed odorization requirements for certain compressed gases. *This proposal has been reconsidered and will become a part of Project 273–78, Hazardous Materials Communications Regulations.* (49 CFR pt. 173).	A. Roberts, (202)426–0656.	NPRM *September 1979.*
Inspection and Testing of Compressed Gas Cylinders (Project 235–74).	Proposed revision and simplification of requirements concerning the inspection, testing, requalification and use of compressed gas cylinders (49 CFR pts. 173, 178).	A. Mallen, *(202)755–4906.*	NPRM *July 1980 .*
Aluminum Cylinder Specification (Project 228–73).	Development of specifications for aluminum cylinders (49 CFR pts. 173, 178).	A. Mallen, (202)755–4906.	NPRM *November 1979 .*
Design and Construction of Pipelines Carrying Hazardous Volatile Liquids (*Docket No. PS–56).*	Additional or more stringent design and construction standards would be proposed for pipelines carrying highly volatile liquids. *ANPRM published February 5, 1979 (44 FR 6961).* (49 CFR pt. 195).	F. Robinson, (202)426–0135.	*ANPRM September 1979 .*
Retention of Radiographic Film	Recordkeeping requirement for radiographic film would be revoked for hazardous liquid pipelines. (49 CFR pt.195).	F. Robinson, (202)426–0135.	NPRM November 1979.
Offsetting Longitudinal Weld Seams on Adjacent Pipe Lengths (Docket No. OPSO–48).	Construction requirement for offsetting weld seams on adjacent pipe lengths in hazardous liquid pipelines would be revoked. (49 CFR pt. 195).	F. Robinson, (202)426–0135.	FR December 1979.
Time Required to Hydrostatically Test a Hazardous Liquids Pipeline.	An 8-hour minimum time period would be proposed for hydrostatically testing hazardous liquid pipelines. (49 CFR pt.195).	F. Robinson, (202)426–0135.	NPRM August 1979.
Placing Longitudinal Weld Seams in Upper Pipe Half.	Requirement to locate longitudinal weld seams in the upper half of pipe during construction of hazardous liquid pipelines. (49 CFR pt. 195).	F. Robinson, (202)426–0135.	ANPRM October 1979.
Heat Treatment of Hard Spots in Steel Pipe.	Allowable temperature for heat treating hard spots in steel pipe would be increased (49 CFR pt. 192).	P. Cory, (202)426–2392.	NPRM July 1979.
Qualifying Components for Use in Gas Pipelines.	General criteria would be proposed for qualifying the use of pipeline components other than the pipe itself. (49 CFR pt. 192).	P. Cory, (202)426–2392.	NPRM October 1979.
Transportation of Natural and Other Gas By Pipeline (PS–57).	Requirements for procedures and instrumentation for use in monitoring gas for odorants would be proposed. *NPRM published February 22, 1979 (44 FR 10604).* (49 CFR pt. 192).	P. Cory, (202)426–2392.	*FR December 1979.*
Leak Survey	Present leak survey requirements would be amended in accordance with practices necessary for safety. (49 CFR pt. 192).	P. Cory, (202)426–2392.	NPRM August 1979.
Interior Piping	The adequacy of existing standards with regard to safety problems concerning interior piping would be examined and new standards may be proposed. (49 CFR pt. 192).	P. Cory, (202)426–2392.	ANPRM December 1979.
Monitor Pressure Regulating Station.	Monitoring equipment would be required for systems served by a single district pressure regulating station. (49 CFR pt. 192).	*R. Simmons,* (202)426–2082.	NPRM *August* 1979.
Procedures to Guard Against Blasting Effects in Gas Pipelines.	Proposed standards requiring gas pipeline operators to have procedures to protect facilities affected by blasting. (49 CFR pt. 192).	*R. Langley,* (202)426–2082.	NPRM November 1979.
Location, Size, and Operating Pressure of Pipelines.	Operators would be required to maintain maps and records to identify the location, size, and operating pressure of all pipelines (49 CFR pt. 192).	*R. Langley,* (202)426–2082.	ANPRM *August* 1979.
Hot Taps in Gas Pipelines	Operators would be required to identify a pipeline by pressure monitoring or other means before performing a hot tap on it. (49 CFR pt. 192).	*R. Langley,* (202)426–2082.	NPRM September 1979.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

RSPA — Research and Special Programs Administration

Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
Excavation Damage	Operators would be required to participate in a program to prevent excavation damage to underground pipelines (49 CFR pts. 192 and 195).	*R. Langley,* (202)426-2082.	NPRM *August* 1979.
Occupational Health and Safety (Docket No. OPS-39).	Advance notice on possible occupational standards for working conditions *has been withdrawn. Withdrawn May 17, 1979. (44 FR 28831).*	L. Furrow, (202)426-0135.	*Withdrawn.*
*Matches (Project 281-78)	Proposed revision and simplification of requirements concerning matches. (49 CFR pts. 172, 173).	H. Mitchell, (202)755-4902.	NPRM *August* 1979.
*Marking and Record Retention for Cylinders (Project 284-79).	Proposed revision and clarification of cylinder marking requirements; deletion of approval for changes to owner markings, user markings, and serial numbers; deletion of submission requirements for cylinder test reports and substitute record retention requirement. (49 CFR pts. 173, 178).	H. Mitchell, (202)755-4902.	NPRM December 1979.

RSPA — Research and Special Programs Administration

Routine and Frequent Non-significant Regulations

Title	Summary	Contact	Decision date
Conversion of Individual Exemptions to Regulations of General Applicability (Docket No. HM-139).	NPRM approximately every three months; with FR targeted approximately two months thereafter.	D. Raines, (202)755-4962.	January 1979-January 1980.
Minor Regulatory Adjustments to Regulations of General Applicability (Docket No. HM-166).	NPRM approximately every four months; with FR targeted approximately two months thereafter.	D. Raines, (202)755-4962.	January 1979-January 1980.
Matter Incorporated by Reference (Docket No. HM-22).	NPRM every six months; with FR targeted two months thereafter.	J. Horning, (202)755-4902.	January 1979-January 1980.
Withdrawal of Certain Delegations of Authority to the Bureau of Explosives (Docket No. HM-163).	Prior responsibilities delegated to the Bureau of Explosives would be withdrawn in series of rulemaking actions. NPRM every three months; with FR targeted two months thereafter.	D. Raines, (202)755-4962.	January 1979-January 1980.
Matter Incorporated by Reference..	Documents incorporated by reference would be updated to later published editions. NPRM every six months, with FR three months later.	A. Garcia, (202)426-2082.	January 1979-January 1980.

REVIEW LIST

USCG — U.S. Coast Guard

Reviews Under Consideration

Title	Reasons for selection	Contact	Decision date
Charges for Duplicate Medals and Sales of Personal Property, Equipment or Services and Rental (33 CFR 1.26)..	Length of time since last evaluated: changing economic factors.	Mr. A. Bell, (202)426-1863.	September 1979.
Regulations, United States Coast Reserve (33 CFR pt. 8).	Length of time since last evaluated; need to reflect changed procedures..	Capt. Grover, (202)426-2348.	*August 1979.*
Boating Safety: Equipment requirement Personal Flotation Devices (33 CFR 175.15)..	Length of time since last evaluated; Research and Development project initiated to determine need for carriage regulations revision..	Mr. Gauthier, (202)426-4176.	August 1980.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

REVIEW LIST

USCG — U.S. Coast Guard

Reviews Under Consideration—Continued

Title	Reasons for selection	Contact	Decision date
Boats and Associated Equipment: Safe Loading (33 CFR Pt. 183, subpart C)..	Length of time since last evaluated; standards may not be effective for all boats to which these regulations apply.	Mr. L. Gray, (202)426–4027.	January 1981.
Boats and Associated Equipment: Safe Powering (33 CFR pt. 183, subpart D)..	Length of time since last evaluated; standards may not be effective for all boats to which these regulations apply.	Mr. L. Gray, (202)426–4027.	January 1980.
Boats and Associated Equipment: Flotation Standards (33 CFR pt. 183).	Length of time since last evaluated; standards may be limited in applicability.	Mr. L. Gray, (202)426–4027.	August 1980.
Vessel Inspection (46 CFR pt. 2)....	Being reviewed for purposes of simplification, clarification and accuracy.	Comdr. Delenonardis, (202)426–2183.	Action Complete.
Regattas and Marine Parades (33 CFR pt. 100).	Length of time since last evaluated; survey of District Commanders will determine if District conditions have changed.	Mr. Gauthier, (202)426–4176.	Action Complete.
Revision of Approval of Cargo Containers Regulations (Docket No. CGD 79–027).	Would update regulations implementing International Convention for Safe Containers (OSC) to incorporate internationally agreed upon interpretations and public comments.	Mr. C. Hochman, (202)426–1577.	NPRM August 1979.

FAA — Federal Aviation Administration

Reviews Under Consideration

Title	Summary	Contact	Decision date
Rotorcraft Review.....	These regulations were selected for review to determine the need for (1) developing instrument flight rules airworthiness standards for rotorcraft certification and (2) improving and updating the rotorcraft airworthiness requirements and operating regulations. *Conference scheduled for 12/9–14/79. Notification of Conference location will be published in the* ***Federal Register****.*	William J. Sullivan, (202)755–8716.	*December* 1979.
Light Transport Airplane—Airworthiness Review.	These regulations were selected for review to determine the need for developing airworthiness standards for small airplanes carrying 10 or more passengers. *Request for proposals published 3/19/79 (44 FR 16855). Proposals due by 7/9/79. Conference Scheduled for 9/17–19/79, Published 4/16/79 (44 FR 22656).*	William J. Sullivan, (202)755–8716.	*September* 1979.

FRA — Federal Railroad Administration

Reviews Under Consideration

Regulations selected for review	Reasons for selection	Contact	Target date
General Safety Inquiry.....	FRA has initiated a General Railroad Safety Inquiry to obtain information from the public to assist in evaluating and improving its safety program. A series of public hearings, each focused on a single regulatory topic, have been scheduled as indicated below.		
Topic: Locomotives (49 CFR pt. 230).	Hearing notice published May 8, 1978 (43 FR 19696). Public hearing held June 14 and 15, 1978. *Rulemaking initiated; see listing under Nonsignificant Regulations..*	R. Mowatt-Larssen, (202)426–*0924.*	*Action Complete.*
Topic: Power Brakes (49 CFR pt. 232).	Hearing notice published August 8, 1978 (43 FR 36659). Hearing held on September 13 and 14, 1978. Rulemaking to be initiated; see listing under Nonsignificant Regulations.	R. Mowatt-Larssen, (202)426–*0924.*	Completion *October 1979.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

REVIEW LIST

FRA — Federal Railroad Administration

Reviews Under Consideration—Continued

Regulations selected for review	Reasons for selection	Contact	Target date
Topic: Track and Related Structures, Appliances and Devices (49 CFR pt. 213).	Hearing notice published September 25, 1978 (43 FR 43339). Notice of rescheduling of public hearing published October 4, 1978 (43 FR 45905). Hearing held November 15 and 16, 1978. *Rulemaking to be initiated; see listing under Nonsignificant Regulations.*	R. Mowatt-Larssen, (202)426-*0924.*	Completion *August 1979.*
Topic: Signal and Communication Systems (49 CFR pts. 235 and 236).	Hearing notice published December 12, 1978 (43 FR 58100). Public hearing rescheduled for February 21 and 22, 1978; Notice of change in hearing dates published in ***Federal Register*** on 1/3/79 (44 FR 925). *Hearing held February 22 and 23, 1979. Rulemaking to be initiated; see listing under Nonsignificant Regulations.*	R. Mowatt-Larssen, (202)426-*0924.*	Completion November 1979.
Guarantee of Certificates of Trustees of Railroads in Reorganization (Pursuant to the Emergency Rail Services Act of 1970).	The financial assistance program under the Emergency Rail Services Act of 1970, 45 U.S.C. 661 *et seq.*, is likely to become active again due to the July 1, 1978 repayment of $50 million in trustee certificates by the Penn Central Trustees. The regulations' (49 CFR pt. 250) information requirements are currently being modified to make them consistent with the regulations issued under FRA's other loan guarantee program (49 CFR pt. 260). *Review completed and regulation amended 4/23/79 (44 FR 23851).*	Larry Friedman, (202)426-7737.	*Action Complete.*
Nondiscrimination in Federally Assisted Railroad Programs.	See FRA Nonsignificant Regulations.	Rufus S. Watson, (202)472-5311.	*Action Complete.*
Assistance to State, Local and Regional Transportation Authorities in the Northeast Region for Continuation of Local Rail Services.	The grant program under section 402 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 762) was repealed as of April 1, 1978. Because grants entered into prior to April 1, 1978 are still in effect and subject to the section 402 regulations (49 CFR pt. 255), a determination will be made as to when the regulations will be repealed after the grants have expired *in 1981.*	Larry Friedman, (202)426-7737.	*Withdrawn.*

NHTSA — National Highway Traffic Safety Administration

Reviews Under Consideration

Regulations selected for review	Reason for selection	Contact	Target date
*Five Year Plan for Motor Vehicle Safety & Fuel Economy Rulemaking.	Annual review to update the plan. Purpose of the plan is to inform the public of proposed safety rulemaking priorities and each planned fuel economy and safety rulemaking action for the coming 5 year period.	Deborah Parker, (202)426-1570.	April 1980.
Air Brakes (49 CFR 571.121)	Cost, Safety Benefits and Public Interest	Frank Ephraim, (202)426-1574.	*September 1979.*
Hydraulic Brakes (49 CFR 571.105).	Cost and Safety Benefits	Frank Ephraim, (202)426-1574.	December 1980.
Lamps, Reflective Devices and Associated Equipment (49 CFR 571.108).	Cost and Safety Benefits	Frank Ephraim, (202)426-1574.	December 1980.
Head Restraints (49 CFR 571.202).	Costs	Frank Ephraim, (202)426-1574.	*October 1979.*
Seating Systems (49 CFR 571.207).	Costs	Frank Ephraim, (202)426-1574.	December 1980.
Child Seating Systems (49 CFR 571.213).	Public Interest	Frank Ephraim, (202)426-1574.	Preliminary Review March 1980.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

REVIEW LIST

NHTSA — National Highway Traffic Safety Administration

Reviews Under Consideration—Continued

Regulations selected for review	Reason for selection	Contact	Target date
Occupant Protection (49 CFR 571.213).	Cost, Safety Benefits and Public Interest	Frank Ephraim, (202)426-1574.	Active Belts August 1979. Passive Belts, Air Cushion Restraints or other Passive Systems Preliminary Review FY-85.
Side Door Strength (49 CFR 571.214).	Public Interest	Frank Ephraim, (202)426-1574.	November 1979.
Exterior Protection (49 CFR 571.215) and (49 CFR pt. 581).	Cost and Public Interest	Frank Ephraim, (202)426-1574.	August 1980.
Fuel System Integrity (49 CFR 571.301).	Cost, Safety Benefits and Public Interest	Frank Ephraim, (202)426-1574.	*September 1979.*
School Bus Protection (49 CFR 571.220).	Public Interest	Frank Ephraim, (202)426-1574.	Preliminary Review December 1980.
School Bus Body Joint Strength (49 CFR 571.221).	Public Interest	Frank Ephraim, (202)426-1574.	Preliminary Review December 1980.
School Bus Seating System (49 CFR 571.222).	Public Interest	Frank Ephraim, (202)426-1574.	December 1980.
Tire Reserve Load (49 CFR 575.102).	Public Interest	Michael Brownlee, (202)426-1740.	*October 1979.*
Acceleration and Passing Ability (49 CFR 575.106).	Public Interest	Michael Brownlee, (202)426-1740.	*October 1979.*

RSPA — Research and Special Programs Administration

Reviews Under Consideration

Regulations selected for review	Reasons for selection	Contact	Decision date
Shippers-General Requirements for Shipments and Packagings (49 CFR pt. 173); Matches (49 CFR 173.176).	Due to inquiries requesting an interpretation of this section and to eliminate the possibility of noncompliance based on a misunderstanding of the requirements, there is a need to simplify and clarify present standards.	J. Horning, (202)755-4902.	*Action Complete.*
Electric Storage Batteries Wet (49 CFR 173.260).	Due to inquiries requesting an interpretation of this section and to eliminate the possibility of noncompliance based on a misunderstanding of the requirements, there is a need to simplify and clarify present standards.	J. Horning, (202)755-4902.	*September* 1979.
Charcoal (49 CFR 173.162)	Due to inquiries requesting an interpretation of this section and to eliminate the possibility of noncompliance based on a misunderstanding of the requirements, there is a need to simplify and clarify present standards.	J. Horning, (202)755-4902.	*October* 1979.
Welding of Steel in Gas Pipelines (49 CFR pt. 192, subpt. E).	Present requirements to be examined in light of changes in technology.	L. Furrow, (202)426-0135.	*August* 1979.
Maintenance of Gas Pipelines (49 CFR pt. 192, subpt. M).	The performance required by the maintenance standards needs clarification as indicated by extent of interpretations generated by these standards.	L. Furrow, (202)426-0135.	*August* 1979.
Flammable Solids; definitions criteria (49 CFR 173.150).	Inquiries; lack of objective regulatory standard	J. Horning, (202)755-4902.	August 1979.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

REVIEW LIST

RSPA
Research and Special Programs Administration

Regulations selected for review	Reasons for selection	Contact	Decision date
Toxic Materials, definitions, criteria, and proposed regulations (49 CFR 173.326, 173.343).	Need for quantitative criteria	J. Horning, (202)755-4902.	*December* 1979.
Line Markers (49 CFR 195.410)	The requirement for installation of markers at navigable waterways needs clarification as indicated by extent of interpretations.	F. Robinson, (202)462-2392.	*September* 1979.
Hydrostatic Testing (49 CFR Part 195, Subpart E).	There is a need to clarify present standards as indicated by extent of interpretation.	F. Robinson, (202)462-2392.	August 1979.
Welding Requirements (49 CFR Part 195, Subpart D).	Present requirements to be examined in light of changes in technology.	F. Robinson, (202)462-2392.	December 1979.
Petroleum Gas Systems (49 CFR 192.11).	There is a need to eliminate inappropriate regulations.	W. Dennis, (202)426-2082.	*August* 1979.

Appendix A—Instructions for Obtaining Copies of Regulatory Documents

United States Coast Guard (USCG)

Anyone desiring a copy of a USCG regulatory document listed in the Agenda should write to: U.S. Coast Guard, G-CMC/81, 400 7th Street, SW., Washington, D.C. 20590.

The request should reference the name of the document and the associated regulatory docket (CGD) number which can be found in the Agenda together with the listing of the document. Persons wishing to be placed on mailing lists for all notices and rules to be issued by the USCG or for notices and rules dealing with a particular area should indicate this clearly for proper handling.

Federal Aviation Administration (FAA)

The FAA has a mailing list system for Notices and Advance Notices of Proposed Rulemaking (NPRMs and ANPRMs). Persons interested in obtaining future copies of all of those documents to be issued by the FAA or only of those concerning certain Parts of the Federal Aviation Regulations should request a copy of Advisory Circular No. 11-2, which describes the application procedure, by calling 202-426-8058 or by writing to: Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591

Federal Highway Administration (FHWA)

The FHWA is in the process of establishing a consumer mailing list for individuals and agencies wishing to routinely receive Federal-aid highway related rulemaking actions. Persons may selectively choose to receive rulemaking materials in a number of separately identified program categories from the Code of Federal Regulations, Title 23. Those wishing to take advantage of the FHWA consumer mailing list may obtain additional information by writing to: Consumer Affairs Representative, Office of Public Affairs, Room 4208, Federal Highway Administration, 400 7th Street, SW., Washington, D.C. 20590.

Persons who desire to obtain a copy of any regulatory document to be issued by the FHWA that is listed in this Agenda should communicate with the contact person listed with the regulation either by telephone or by letter to the contact person at the following address: (Name of contact person), Federal Highway Administration, 400 7th Street, SW., Washington, D.C. 20590.

Federal Railroad Administration (FRA)

Persons who desire to obtain a copy of any regulatory document to be issued by the FRA that is listed in this Agenda should communicate with the contact person listed with the regulation either by telephone or by letter to the contact person at the following address: (Name of contact person), Federal Railroad Administration, 400 7th Street, SW., Washington, D.C. 20590.

National Highway Traffic Safety Administration (NHTSA)

Persons who desire to obtain a copy of any other regulatory document to be issued by the NHTSA that is listed in this Agenda should communicate with the contact person listed with the regulation either by telephone or by letter to the contact person at the following address: (Name of contact person), National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, D.C. 20590, (202)426-0679.

Urban Mass Transportation Administration (UMTA)

Persons who desire to obtain a copy of any regulatory document to be issued by UMTA that is listed in this Agenda should communicate with the contact person listed with the regulation either by telephone or by letter to the contact person at the following address: (Name of contact person), Urban Mass Transit Administration, 400 7th Street, S.W., Washington, D.C. 20590 (202)426-1903.

Saint Lawrence Seaway Development Corporation (SLSDC)

Persons who desire to obtain a copy of any regulatory document to be issued by SLSDC that is listed in this Agenda should communicate with the contact person listed with the regulation either by telephone or by letter to the contact person at the appropriate address specified below: *For contact persons with (202), telephone area code:* [name of contact person], Saint Lawrence Seaway Development Corporation, 800 Independence Avenue, S.W., Washington, D.C. 20591. *For contact persons with (315) telephone area code:* [name of contact person], Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, New York 13662.

Research and Special Programs Administration (RSPA)

Persons wishing to be placed on mailing lists for regulatory documents to be issued by RSPA should contact: Mrs. Marge J. Sands, Information Services Division, DMT-43, Materials Transportation Bureau, 2100 2nd Street, S.W., Washington, D.C. 20590.

Office of the Secretary (OST)

Persons desiring to receive future copies of the Regulations Agenda should submit their request to: Assistant General Counsel for Regulation and Enforcement, C-50, Office of the General Counsel, Department of Transportation, Washington, D.C. 20590, (202)426-4723.

Persons who have an interest in specific regulatory documents to be issued by the Office of the Secretary should forward requests for copies of those documents to the same address. These requests should fully identify the document desired.

[FR Doc. 79-28656 Filed 8-24-79; 8:45 am]

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federal register

Monday
August 27, 1979

Part III

Federal Trade Commission

Trade Regulations: Labeling and Advertising of Home Insulation

FEDERAL TRADE COMMISSION

16 CFR Part 460

Trade Regulation Rules; Labeling and Advertising of Home Insulation

AGENCY: Federal Trade Commission.

ACTION: Final trade regulation rule.

SUMMARY: The Federal Trade Commission issues a final rule which prescribes standardized test methods for determining the R-values of home insulation materials; mandates prepurchase point-of-sale disclosure of R-values and related information to consumers; requires disclosures in certain types of advertisements for home insulation; and requires substantiation and qualifying disclosures in connection with energy savings claims. The rule is designed to enable consumers to evaluate and compare the thermal performance characteristics of these materials, and to ensure that promotional claims for home insulation products will be fair and nondeceptive.

EFFECTIVE DATE: November 30, 1979.

FOR FURTHER INFORMATION CONTACT: Paul J. Petruccelli, Federal Trade Commission, PE–S–7319–A, 414–11th Street NW., Washington, D.C. 20580, (202) 724–1508.

SUPPLEMENTARY INFORMATION:

Statement of Basis and Purpose

I. Introduction

A. *Overview of the Rule.* Insulation can be a very significant energy conservation measure. Its insulating capacity can be measured only by its R-value, which signifies the insulation's degree of resistance to the flow of heat. No other piece of information can tell the consumer how the insulation is likely to perform as an insulator, and whether the cost of the insulation is justified. Yet the record demonstrates that the home insulation market has frequently failed to provide this crucial information to consumers. In the Commission's opinion, the industry's failure systematically to provide R-value information prior to sale is both an unfair and deceptive practice within the meaning of Section 5 of the Federal Trade Commission Act.

The primary purpose of the Rule being promulgated today is to correct the failure of the home insulation marketplace to provide this essential pre-purchase information to the consumer. The information will give consumers an opportunity to compare relative insulating efficiencies, to select the product with the greatest efficiency and potential for energy savings, to make a cost-effective purchase, and to consider the main variables limiting insulation effectiveness and realization of claimed energy savings.

The Rule mandates that specific R-value information for home insulation products be disclosed in certain ads and at the point of sale. The purpose of the R-value disclosure requirement for advertising is to prevent consumers from being misled by certain claims which have a bearing on insulating value. At the point of transaction, some consumers will be able to get the requisite R-value information from the label on the insulation package. However, since the evidence shows that packages are often unavailable for inspection prior to purchase, no labeled information would be available to consumers in many instances. As a result, the Rule requires that a fact sheet be available to consumers for inspection before they make their purchase.

In general the fact sheets and labels for each insulation product disclose the same basic kind of information about R-value. The fact sheet also gives consumers further information that has an important bearing on how they should assess their insulation needs and their likely fuel savings from insulation. The Commission believes that these additional disclosures are necessary to prevent deception and to allow consumers to make rational, well-informed choices in their insulation purchases.

The Rule also requires that R-value disclosures be accompanied by a brief explanation that R-value is a measure of insulating power; the higher the R-value, the greater the insulating power. Since the evidence shows that many consumers are unfamiliar with the concept—in part because the industry has failed to promote it—the Commission believes that an explanation of the term is needed to compensate for this market deficiency and thereby to ensure that consumers will benefit from the prescribed R-value information.

To ensure that consumers are provided with accurate and comparable R-value information, the Rule requires that R-values be determined scientifically in accordance with standard test methods published by the American Society of Testing and Materials ("ASTM"), a private standards-setting organization. Most types of home insulation can be tested at a reasonable cost using one of several permissible procedures. Because R-values per unit for most insulation materials are non-linear, and actually decrease significantly with increases in thickness up to a point, R-values must be determined either at a product's installed or "representative" thickness. The latter is the point at which the adverse effect of thickness on R-value becomes insignificant.

The other major provision of the Rule addresses energy savings and other promotional claims for home insulation products, including tax benefit and government certification claims. Claims that a product is certified or qualifies for a tax benefit are prohibited unless true. Since the amount of energy and money that can be saved by insulation is affected by a number of factors unrelated to the performance of the insulation itself, the Rule provides that energy savings must be substantiated and accompanied by a short disclaimer that savings will depend on the consumers' particular circumstances.

This discussion has highlighted the central elements of the Rule. Virtually all other provisions of the Rule are designed to ensure the integrity of this disclosure scheme. Since determining that a rule was necessary to eliminate consumer abuses in the home insulation industry, the Commission's overriding objective has been to fashion a rule that protects the consumer while minimizing the impact of compliance on the insulation industry which, while economically concentrated in the hands of a few producers, is also comprised of hundreds of relatively small businesses. The Commission believes that this Rule, one that has been tightened considerably from the original proposals, represents a reasonable and sustainable effort toward meeting this objective.

B. *Background.* On November 18, 1977, the Federal Trade Commission published in the **Federal Register** a proposed trade regulation rule governing the labeling and advertising of residential thermal insulation materials.(*1*) Shortages in fuel supplies and rising fuel prices had resulted in a dramatic increase in insulation purchases by consumers. As a result, the Commission found, pursuant to its Rules of Practice,(*2*) that the public interest required the use of expeditious procedures for this rulemaking.(*3*) The use of these procedures, coupled with the generally cooperative attitude of the rulemaking participants,(*4*) resulted in Commission consideration of the rule approximately one year after it was proposed.

Interested persons were invited to submit written comments during the two months following publication of the proposed rule.(*5*) Hearings were then held in Washington, D.C. from February

13 to March 9, 1978.(6) followed by a 30-day period during which the participants were permitted to comment on the hearing record.(7)

A wide variety of parties contributed to the record, both in writing and in oral testimony. At the hearings, approximately 50 witnesses represented manufacturers of all types of home insulation, retailers, installers, trade associations, testing laboratories and organizations, consumer and environmental groups, and state and federal government agencies.(8) In addition to the Commission's staff, nine group representatives were permitted to examine and cross-examine all witnesses.(9)

In July of 1978, approximately three months after the close of the rebuttal period, the rulemaking staff published its report analyzing the record evidence and recommending a final rule.(10) In August of 1978, the Presiding Officer published his report, noting several areas of disagreement with the staff's recommendations.(11) The procedures adopted by the Commission for this rulemaking called for 30 days of public comment following the publication of the Presiding Officer's report.(12) To ensure that all interested persons would have a full opportunity to comment on the recommended rule, however, the public was invited to submit comments immediately following publication of the staff's report in July of 1978.(13) The availability of the Presiding Officer's report was announced in August.(14) When the public comment period closed on September 22, 1978, more than 100 written comments had been received.(15)

At the close of this comment period, the Commission convened a special meeting to permit interested persons to make direct presentations to the Commissioners themselves.(16) After carefully considering the rulemaking record as a whole, the Commission has voted to promulgate a trade regulation rule governing the labeling and advertising of home insulation.

C. *Description of the Industry.* Home insulation is manufactured and sold in a variety of forms. All "mass" insulations(17) are made of solid materials—either cellular, granular, or fibrous—and are heterogeneous in nature. Gas-filled voids within these solid materials retard the flow of heat. The effectiveness of the material in retarding heat flow is measured by its "R-value." (18) The higher the R-value, the greater the insulation's resistance to heat flow.(19)

The types of insulation covered by this rule are mineral wool (fiberglass and rock wool), cellulose, cellular plastics (urea-formaldehyde foam, polystyrene, polyurethane, and polyisocyanurate), vermiculite, perlite, and reflective (aluminum foil). These materials are produced in loose-fill, formed-in-place, flexible or semirigid, and rigid forms.(20)

Fiberglass and rock wool are produced in batt, blanket, and loose-fill forms for new construction and retrofit(21) applications in ceilings, walls, and floors.(22) Cellulose is a loose-fill made from shredded waste paper, to which flame retardant chemicals are added. It is used in the ceilings of new houses, and in the ceilings and wall cavities of existing structures.(23) Vermiculite and perlite are granular loose-fill materials. They are used primarily in attics and wall cavities, and in the hollow cores of masonry block walls.(24)

Cellular plastics are low-density foams which are either manufactured as insulating boards at the factory, or foamed-in-place at the application site. Polystyrene, polyurethane, and polyisocyanurate typically are produced in rigid board form, and are used in new home construction as exterior sheathing and wall and siding insulation.(25) Urea-formaldehyde foam can be produced only through a foaming instrument at the site of application. Thus, its primary use is in insulating the enclosed wall cavities of existing houses.(26)

Reflective materials, primarily aluminum foil, are generally used to insulate residential walls and floors, often in combination with mass insulations. They are commonly found as facings on mineral wool batts and blankets or exterior sheathing materials, and on gypsum board for dry wall.(27) In addition, foil insulation is manufactured in an expandable, accordion-like foam, in which two or more sheets of foil are separated by air spaces.(28) Unlike mass insulations, the thermal resistance of reflective foil is not provided by the material itself. Rather, insulating ability is provided by installing the foil adjacent to an airspace, significantly increasing the thermal resistance of the airspace itself.(29)

The three manufacturers of fiberglass account for approximately two-thirds of the insulation currently sold for residential uses.(30) Cellulose producers, who number in the hundreds, hold a substantial share of the remaining third.(31) Rock wool and urea-formaldehyde foam account for most of the rest, with other products holding very small market shares.(32)

D. *Factors Affecting Insulation Performance.* There are a number of testing procedures available to provide a laboratory measurement of an insulation's R-value.(33) These tested R-values are not always representative of in-use effectiveness, however, because there are a variety of factors which can affect the thermal performance of an insulation material. Some of these factors are inherent in the nature of the insulation product. In other cases, environmental and installation-related occurrences can change the R-value of the insulation.

1. *Thickness.* In general, the thicker an insulating material is, the better it resists the flow of heat.(34) However, the record demonstrates that, for most mass insulations, the relationship between thickness and thermal performance is not linear.(35) In other words, the tested R-value of a one-inch sample of insulation cannot simply be multiplied by six in order to obtain the total R-value for six inches of the material. For almost all insulations, the R-value produced by such a multiplication process, which is based on an assumption of linearity, will be too high.(36) This "thickness effect" eventually levels off, usually at a thickness of approximately three or four inches.(37) As a result, the record reflects strong scientific agreement that in any reliable measurement of thermal performance, the material must be evaluated either at the thickness at which it is to be used or at a thickness beyond which the R-value per unit will remain constant despite increases in thickness (the "representative thickness").(38)

2. *Temperature.* Normally, the R-value of any mass insulation decreases as the temperature to which it is exposed rises.(39) The record demonstrates that the effect of temperature upon R-value will be about the same for all mass insulations, and that this effect can be substantial.(40) To account for this temperature effect, most members of the insulation industry use a mean temperature of 75° Fahrenheit for all R-value testing.(41) Federal purchasing specifications for insulation also prescribe a mean test temperature of 75° Fahrenheit.(42) While it is generally recognized that 75° Fahrenheit is not representative of all environmental conditions across the country,(43) this is the standard test temperature which the industry has long used to permit R-value comparisons.

3. *Aging.* For certain cellular plastics insulations, the R-value of the product will change as the material ages.(44) This aging process affects polyurethane, polyisocyanurate, and extruded polystyrene.(45) During the first few years of use, exposure of these insulations to the environment results in

a release of certain gases, lowering the R-value of the products significantly.(*46*) Thus, if the product is tested immediately after manufacture, its R-value will be much higher than it would be in actual use.(*47*) To account for this effect, some manufacturers test their products for R-value several years after the insulation has been manufactured.(*48*) Others test for R-value after subjecting their products to an "accelerated aging" process, which simulates years of aging during a three-month period.(*49*)

4. *Compression.* Compression is a problem peculiar to flexible insulation, and is particularly a problem with respect to air duct insulation. For example, compression of a mineral wool batt increases its density, thus lowering its thermal resistance.(*50*) In the case of batt insulation, the product is generally compressed during installation so that it will fit snugly between the studs in attic or wall cavities. Following installation, however, the product will generally spring back to its original thickness and R-value. Air duct insulation presents a different problem. This flexible product is wrapped around rectangular air ducts and then sealed. Thus, the insulation is compressed when it is folded at the edges of the duct, and is compressed further when it is taped. This compression results in a reduction of the product's tested R-value.(*51*)

5. *Settling.* In general, the material particles of all loose-fill insulations tend to settle after being installed in open or unconfined areas such as attics.(*52*) The particles also will settle when blown into a confined area, such as an enclosed wall cavity, if they are not sufficiently compressed during installation.(*53*) As the particles settle, the insulation becomes more dense and also loses some of its depth or height. Any settling of a loose-fill insulation reduces the R-value of the area in which it is installed.(*54*)

Industry members generally agreed that all loose-fill should be tested for R-value at the "settled density" of the product, *i.e.*, the density to which the product can be expected to settle over time.(*55*) As is the case with aging, loose-fill R-values based on tests that take settling into account will more accurately reflect the actual thermal performance of the product over time.(*56*) Although there is no generally accepted settled density test for loose-fill mineral wool insulation,(*57*) the federal purchasing specification for cellulose insulation requires that R-values be based on testing performed at the settled density of the product.(*58*) This specification provides detailed procedures for determining the settled density of any cellulosic insulation.(*59*)

6. *Shrinkage.* The inherent properties of urea-based foam insulation will interact after application to cause the material to lose volume, or "shrink," thereby leaving the wall partially uninsulated.(*60*) Although both the rate and extent of shrinkage are somewhat dependent on the quality of the on-site formulation and application of the urea-based foam material,(*61*) the shrinkage process itself is an independent event—an inherent characteristic of the product.(*62*) In other words, even if UF foam insulation is installed perfectly, the material will still shrink.

During the curing period and succeeding stages of shrinkage, the UF foam material will pull away from the wall cavity in all three directions—namely, at the sides, at the ends, and at both the top and the bottom of the "cube" formed by the wall cavity. The resulting gaps between the foam and the cavity walls and studs create a continuum of airspaces in the cavity that may encompass the insulating material. The size and position of these airspaces, and the extent of the resulting loss in insulating efficiency, will depend upon the severity of the shrinkage that occurs.(*63*)

The record indicates that it is extremely difficult to state a typical amount of UF foam shrinkage during and beyond the curing period.(*64*) Nevertheless, a substantial body of laboratory and field data has been generated on the subject. In the United States, the National Bureau of Standards (NBS) observed shrinkage of 8.1 percent over a two-year period after UF foam insulation had been installed in a test house.(*65*) The Department of Housing and Urban Development concluded from field observations that shrinkage of UF foam ranges between 1 and 11 percent, and averages about 6 percent.(*66*) Canada's National Research Council conducted field observations and reported that long-term shrinkage of UF foam varies between 5 and 10 percent, with the average rate of shrinkage being 7 percent.(*67*) Governmental bodies in Europe have also concluded that UF foam shrinkage ranges between 4 and 8 percent.(*68*) Other studies in the record confirm these findings.(*69*)

The UF foam insulation industry contends that these shrinkage findings are exaggerated, and that excessive shrinkage is invariably due to improper installation of the material.(*70*) Yet, even UF foam industry members conceded that the product shrinks between 1 and 3 percent (*71*) or 1 and 4 percent (*72*) under normal conditions. Moreover, studies submitted by these industry members reveal instances in which shrinkage of properly installed foam insulation has exceeded these levels.(*73*)

Taken as a whole, the record evidence shows that UF foam insulation invariably shrinks after application, and that the shrinkage has reached levels of 5 percent and above in a broad range of field studies. These shrinkage levels may occur even in the absence of installation problems, which are known to exacerbate the shrinkage problem.(*73a*)

The process of shrinkage reduces the effective thermal resistance of UF foam insulation by creating void spaces around the foam in the wall cavity.(*74*) Heat loss occurs through these void spaces.(*75*) and additional heat loss occurs as a result of movement of air throughout the continuum of void spaces that may encompass the UF foam cube.(*76*) The record establishes that the process of shrinkage reduces the effective thermal resistance of the UF foam-filled cavity below the R-value of the foam itself as measured under laboratory conditions.(*77*) Industry members do not dispute this conclusion.(*78*)

Nevertheless, there is considerable dispute regarding the extent of the loss in insulating efficiency caused by UF foam shrinkage. Actual heat loss measurements and laboratory tests performed by both NBS and the Canadian government have shown reductions in thermal resistance of 40 and 50 percent after shrinkage of UF foam insulation in wall cavities.(*79*) In addition, some governmental bodies have employed standard engineering calculations to determine the reduction in thermal resistance caused by shrinkage. The Department of Housing and Urban Development calculated that the effective R-value of UF foam insulation is 28 percent lower than its laboratory R-value, if shrinkage is on the order of 6 percent.(*80*) The Canadian government, assuming a shrinkage rate of 7 percent, confirmed its 40 percent "derating" (*81*) of UF foam R-values by similar engineering calculations.(*82*)

The UF foam industry contends that the specific R-value deratings assigned to its product by NBS, HUD, Canada, and others are exaggerated.(*83*) Nevertheless, the industry generally concedes that shrinkage reduces the effective R-value of a UF foam-filled wall cavity in the neighborhood of 12 to 15 percent.(*84*)

Based on the record evidence taken as a whole, the Commission concludes that UF foam insulations shrink, and that the shrinkage can significantly reduce the R-value of the insulated area.

II. Unfair and Deceptive Acts and Practices in the Home Insulation Market

A. *Characteristics of the Home Insulation Market.* As fuel prices have climbed in recent years, insulation has become an increasingly attractive investment for consumers. In addition, governmental activities have promoted insulation purchases. Because of the important role that insulation can play in conserving energy, the President's National Energy Plan set as its goal that 90 percent of all homes be insulated by 1985.(*85*) Attainment of this goal will require insulation purchases by several million homeowners each year.(*86*)

To encourage these purchases, Congress passed a sizable tax credit for consumers who buy insulation or other energy conservation measures.(*87*) Congress also has mandated a comprehensive program under which utility companies will promote energy conservation purchases.(*88*) Under this program, virtually every homeowner in the country will receive a brochure from the local utility company. These brochures will urge consumers to purchase insulation and other energy conservation products, and will contain estimates of the savings associated with such products. The utilities also will make available, at the request of any homeowner, individualized energy audits and specific recommendations for conservation purchases. They will provide lists of lending institutions, as well as contractors and suppliers of the various products, and will offer to arrange for the installation and financing of products purchased by the homeowner. In short, through this program, the federal government will be playing a pivotal role in efforts to encourage the purchase of insulation and other energy conservation measures.

Governmental bodies have also promoted insulation purchases in other ways. In recent years, numerous federal and state agencies have issued pamphlets recommending the addition of insulation to existing homes.(*89*) A federal low-income weatherization program administered by the Department of Energy funds state-run programs under which houses owned by low-income persons are insulated.(*90*) With respect to new housing, both the Farmers Home Administration and the Department of Housing and Urban Development have issued revised minimum property standards for federally-assisted housing.(*91*) The result of these revisions is an increase in the amount of insulation required in new homes.

In light of the rising fuel prices and active governmental intervention in the home insulation market, it is not surprising that nearly eight million homeowners had some insulation installed or added between 1974 and 1976.(*92*) In the first half of 1977 alone, three million homeowners added insulation to their homes.(*93*) Approximately 70 percent of the insulation being added to existing homes is installed by do-it-yourself consumers,(*94*) who generally buy their insulation through retail hardware and department stores.(*95*) Insulation is sold and installed in the remaining 30 percent of the retrofit market by seven to ten thousand contractors across the country,(*96*) and is sold or financed by a growing number of utility companies.(*97*)

Insulation is also acquired by consumers through the purchase of a new home. Housing starts in 1977 were at their highest level in several years, and the average amount of insulation being placed in each new home continued to rise.(*98*) Not surprisingly, the record shows that purchasers of new homes are increasingly attentive to energy efficiency as a critical feature of the home.(*99*) One survey showed that most new home buyers are willing to spend additional money for insulation when advised to do so by builders.(*100*)

Despite the enormous numbers of home insulation purchasers in the market today, it appears that most consumers know very little about available insulating materials and the factors that should affect any purchasing decision. Consumers have a general awareness of insulation and of the energy-saving benefits it can provide, but they are largely uninformed about insulation effectiveness. There are several obvious reasons for this state of affairs. Home insulation is an expensive product, which is purchased very rarely by homeowners.(*101*) Thus, consumers are unable to learn through repetitive purchases how effective the various insulation products are. Moreover, insulation is not the kind of product that can be readily evaluated even by relatively knowledgeable consumers. It is not possible to determine prior to purchase how the insulation material will perform, since insulation effectiveness must be measured by scientific test methods.(*102*) Similarly, after the product has been installed, the consumer has no practical way of determining whether the insulation has been installed properly to attain the desired level of effectiveness; further, the number of variables affecting home energy consumption—e.g., climate, type of dwelling, and lifestyle—make it virtually impossible for the consumer to assess whether the insulation is having any impact on the home's energy consumption, or what the impact is.(*103*) In sum, home insulation is a "credence good" because prospective purchasers do not have the sophistication, the resources, or the opportunity to evaluate its likely effectiveness or impact on energy consumption either prior or subsequent to their purchasing decisions.

B. *Unfair and Deceptive Acts and Practices.* 1. *Insulation R-values.* Since consumers cannot independently determine the effectiveness of home insulation, they need to be informed of some product feature or features that they can rely on to provide them with information concerning the material's effectiveness. The central component of the rule initially proposed by the Commission was the requirement that consumers be told, prior to purchase, the R-value of home insulation materials.(*104*) This proposal was based on the Commission's belief that R-value was that one significant piece of information that measures insulation effectiveness and without which consumers cannot make rational purchasing decisions.(*105*) In other words, the Commission believed that R-value was a material fact in any insulation purchasing decision.

The record overwhelmingly bears out this early belief.(*106*) It demonstrates that the R-value of an insulation material is the only existing measurement that enables the consumer to compare the thermal performance of competing insulations.(*107*) Thickness cannot serve as the appropriate gauge, since three inches of one insulation may be twice as effective as three inches of another.(*108*) Similarly, price is not a useful measure of performance, since a high price is not necessarily indicative of superior insulation effectiveness.(*109*) Nor is there any other performance yardstick suited to this purpose. As one industry member put it, an insulation material's R-value "is the only quantifiable . . . measure of thermal resistance that might provide the typical consumer with a means to evaluate insulation products."(*110*)

Despite the crucial role that R-value information should play in any insulation purchasing decision, the evidence demonstrates that industry members often fail to disclose product R-values to consumers.(*111*) For example, consumer protection specialists in Arizona, California, Georgia, and New Jersey noted that few insulation ads in their respective

jurisdictions disclose product R-values.(*112*) These contentions are corroborated by record evidence of numerous ads, in both print and broadcast media, for a wide variety of insulation materials.(*113*)

Nor is this widespread failure to disclose R-values necessarily remedied when the consumer actually purchases the product. In a survey of package labels in twelve retail outlets in the Washington, D.C. area, approximately 40 percent of the labels contained no R-value disclosure.(*114*) The survey further revealed that, in half of the stores, package labels are not available for inspection prior to purchase.(*115*) Thus, even if R-value information does appear on the label, consumers may have no opportunity to use the information in reaching a purchasing decision. Indeed, a survey of Wisconsin homeowners showed that 75 percent of those interviewed had never heard of the term "R-value" as applied to home insulation.(*116*)

a. *Failure to disclose R-value as an unfair practice.* These findings illustrate a classic case of deficient market performance. Despite the established centrality of R-value to evaluating insulating performance and the absence of public or private restraints against its disclosure,(*117*) market forces have not caused industry members to generate this vital information and make it available to the consuming public. Although the record evidence provides no clear explanation for this failure of the marketplace, the conditions and incentives operating in the home insulation market may account for it.

For example, the recent past has witnessed rapid growth in the insulation industry, characterized by a dramatic influx of manufacturing and contracting firms. In many cases, these firms lacked either substantial experience in the insulating business or sensitivity to the informational needs of insulation consumers. Yet, this phenomenon can account for only part of the market failure, since there are numerous established firms that have also failed to disclose this information. The failure also could be attributable in part to the economic self-interest of sellers of low R-value products, whose success in marketing their products may depend on their ability to shift the competitive focus to some other more favorable attribute of their product. Again, however, this would account for only a portion of the failure to disclose R-values, since the record evidence demonstrates that low as well as high R-values have been disclosed on occasion.

Even for firms that are experienced and that have no incentive to withhold R-value information, the insulation market simply does not encourage the promotion of R-values. For example, the failure to disclose R-values is attributable in part to the general ignorance of consumers concerning insulation products. In other words, since many consumers do not know that R-value is the performance feature that should be evaluated in an insulation purchasing decision, there has been no market demand for R-value information. In addition, this lack of understanding on the part of consumers may mean that industry members have no incentive to attempt to promote the R-value concept. Since many consumers do not know what R-value means, an advertisement that focuses on R-value is often simply another advertisement to buy insulation. Thus, the R-value information in the ad often does not benefit the advertiser. In fact, an ad that attempts boldly to educate consumers about R-value may inure as much to the benefit of competitors as it does to that of the advertiser; a competitor with comparable R-value material will be able to exploit the consumer education paid for by the advertiser. This risk, one which no reasonable advertiser wishes to take alone, encourages industry members to focus instead on product features that consumers will understand.

Moreover, the same market forces that have operated to deprive consumers of R-value information in the past will continue to do so in the future. Buyers of low R-value products will continue to be ignorant of the significance of R-value, and therefore will not demand this information. The risk of sacrificing competitive advantage from lone attempts at R-value education will remain, encouraging industry members to focus consumer attention on other product features. More importantly, governmental intervention in the insulation market will, if anything, become more intensive in the years to come.(*118*) This intervention may be a distorting factor in the marketplace, as it has been in the past. It inflates the demand for insulation products, so that industry members gain increased sales regardless of the presence or absence of R-value information about their products.

The preceding discussion demonstrates that conditions in the home insulation market are not encouraging industry members to make R-value information available to consumers. This market failure is significant because it results in substantial injury to comsumers of home insulation products.(*119*) There are several elements of the economic injury that flow from the absence of R-value information for use in making purchasing decisions.

As noted earlier, consumers are unable to assess R-value or insulation performance on their own. They cannot ascertain the R-value of a product merely by examining it,(*120*) nor will they discover through repeat purchases the relative efficiencies of insulation products. In other words, in the absence of a seller's disclosure, consumers do not have a ready means for determining R-value, and their search costs in seeking out that information would be extraordinarily high. The imposition of this search cost on consumers is in itself a genuine economic injury, which would be prevented by the introduction of R-value information into the marketplace by those who are able to do so most efficiently.(*121*) Further, extensive consumer search is an unnecessary injury, since the R-value of any particular product is already known to each manufacturer in the ordinary course of its business.(*122*) In light of this fact, it is not surprising that the record reveals a broad consensus of industry support for the Commission's proposal for mandatory disclosure of R-values.(*123*) Thus, this is not a matter in which the Commission must weigh complicated evidence concerning the relative merits of competing objectives, or decide how much consumer injury should be sustained for the sake of preserving some industry or consumer benefit.

In addition to raising consumer search costs, the failure of sellers to disclose R-value impedes the ability of consumers to make rational purchasing decisions. The only significant reason to buy insulation is to save energy, and the only measurement that permits consumers to judge the anticipated level of thermal performance is R-value. Moreover, R-values vary significantly from product to product. Thus, unless consumers know the R-values of all available products, they are effectively deprived of any opportunity to compare relative insulating efficiencies, and to select the product with the greatest efficiency and potential for energy savings. Given the general relationship between thermal resistance and potential energy savings, the inability to comparison shop for the optimum R-value can result in purchases of insulation products that are relatively ineffective. The result is that consumers' expectations of energy savings are disappointed, and the market continues to operate in a manner that frustrates the national program of energy conservation.

There is another element of the economic injury that derives from the failure to disclose R-value information. In order to judge the economic value of an insulation product, that is, to estimate whether the purchase price will be justified by insulating performance, the consumer must know the product's R-value. The only rational way to price shop for home insulation is to determine, for each competing product, how many square feet of space can be insulated to a desired level of R-value for a stated price. Without this R-value information, consumers are deprived of a rational basis for making a very expensive economic decision, and of the opportunity to seek the lowest price at which they can obtain the level of performance they desire. The consequence of this impediment to the buying process is that consumers may make unwarranted, excessively costly insulation purchases.

Thus, the failure of the home insulation market to generate R-value information causes substantial injury to consumers. What is most significant about this injury, however, is that it occurs randomly. In the absence of R-value information, no individual consumer has any assurance that his or her insulation purchase was a rational one in light of his or her needs. Each prospective purchaser is involved in a game of chance, virtually taking it on faith that this will not be one of the randomly dispersed purchases that turns out to be erroneous. On the other hand, if R-value information is available, each consumer can determine how much energy savings to strive for, how much insulation performance to buy, and what price should be paid for that level of performance. For these reasons, the Commission believes that the failure of insulation sellers to disclose R-value information prior to purchase is unfair within the meaning of section 5 of the Federal Trade Commission Act.

The foregoing analysis is sufficient to support the Rule's provision for mandatory disclosure of R-values, because of the public policy favoring the existence and efficient functioning of free markets. A free market cannot function property in the absence of effective competition which focuses on the merits and value of competing products and services. An essential element of effective competition is the availability of information that consumers need to evaluate competing products and to make the best possible choices. This fundamental public policy of encouraging informed consumer decisions has repeatedly found expression in federal statutes requiring the disclosure of material information.(*124*) Market imperfections that impede the process of providing such material information in the regular flow of commerce discourage consumer consideration of salient product features, diminish comparison shopping, and create unwarranted competitive parity or advantage for inferior products. Thus, a market that functions in this way not only harms consumers but also lessens fair and open competition. In addition, as earlier discussion of the market disincentives for R-value disclosure illustrates, a market that functions imperfectly may by its very nature be incapable of self-correction. Given the nexus between healthy competition and consumer welfare, and considering a market's own capacity to eliminate imperfections, the test of unfairness here is whether the acts or practices at issue inhibit, and are likely to continue to inhibit, the functioning of the competitive market in a manner that causes harm to consumers.(*125*) The Commission concludes that this unfairness test is met.

It is also noteworthy that the mandatory disclosure of R-value information complements the strong public policy in favor of energy conservation.(*126*) Indeed, in light of the extensive governmental participation in the home insulation market, it is especially important for the Commission to ensure that insulation purchases are not tainted by unfairness. Thus, by enhancing competition and free commerce in the insulation market, the Commission's decision to require R-value disclosure both protects insulation consumers and furthers the nation's energy conservation goals.(*127*)

b. *Failure to disclose R-value as a deceptive practice.* The failure of insulation manufacturers to disclose product R-values is also a deceptive practice under section 5. It is an established principle of section 5 that when a consumer's normal expectations concerning a product are at odds with actual information about the product, this disparity must be corrected through disclosure.(*128*) In the context of home insulation materials, the physical attributes of the most commonly purchased products lend themselves to consideration and purchase by consumers on the basis of thickness. In addition, price is an important consideration in any insulation purchase. Although the record reflects general agreement that consumers are misled when they buy insulation on the basis of price or thickness,(*129*) their erroneous expectations are being exploited and perpetuated by current marketing practices in the industry. For example, although a scientific survey of insulation ads is not available, fully 20 percent of the ads placed on the record by staff and other parties from available media refer to thickness and/or price without disclosing the product's R-value.(*130*) As noted earlier, this limited and misleading information is not always fleshed out when consumers purchase the product.(*131*) Many labels do not disclose R-values, and labels are often unavailable for inspection prior to purchase.(*132*) Since most insulation sales are made to do-it-yourself consumers,(*133*) and since the physical attributes of the most commonly purchased materials lend themselves to purchase on the basis of thickness,(*134*) it is reasonable to conclude that a significant number of insulation purchases are being made on the basis of the product's thickness or price, with no knowledge of its R-value. Yet, the record reflects general agreement that consumers are misled when they purchase insulation on the basis of price or thickness.(*135*) For example, although a material's R-value is partly a function of its thickness, insulation R-values per unit thickness vary significantly from product to product.(*136*) Thus, a three-inch thickness of one product may provide twice as much R-value as a three-inch thickness of another. Similarly, a consumer is misled when he or she is told simply that a certain area, in square feet, can be covered with insulation at a price of $100. As the record reflects, the consumer cannot evaluate this price prior to purchase without knowing the R-value that will be attained over the area for the stated price.(*137*)

Since thickness and price are the elements upon which consumers must rely in the absence of R-value disclosures, and since the record demonstrates that consumers are misled when they purchase insulation on the basis of these factors, the Commission concludes that the failure to disclose product R-values to consumers prior to purchase is deceptive.

c. *Disclosure of R-value in a deceptive and unfair manner.* In many instances, product R-values which are claimed by industry members are exaggerated. The record contains numerous examples of ads which state R-values that greatly exceed those generally agreed to be realistic values for products in that same class.(*138*) State consumer protection officials also agreed that ads with overstated R-values are common in their respective jurisdictions.(*139*) Indeed, even some industry members conceded

that excessive R-value claims are being made to consumers.(*140*)

Moreover, even if an advertiser's R-value claims accurately reflect available test results, the conditions under which R-value testing takes place can greatly enhance the resulting R-value. Testing an insulation material at a one-inch thickness, for example, inherently produces a higher R-value than testing at greater thicknesses.(*141*) Yet, most manufacturers currently base their R-value representations on one-inch R-value testing. In fact, many manufacturers affirmatively represent their product's "R-value per inch," (*142*) clearly leading consumers to believe that insulation R-values are linear. Similarly, R-value claims based on testing at a low mean temperature, such as 35° Fahrenheit, inevitably mislead consumers.(*143*) Testing performed at this lower temperature will invariably produce a higher R-value than testing performed at the standard temperature of 75° Fahrenheit.(*144*)

Further, most manufacturers fail to reduce their claimed R-value to account for factors that are known to affect thermal performance, such as settling, shrinkage, and aging.(*145*) the result is that R-value claims for these insulation products are exaggerated.(*146*) Moreover, since the deleterious effects of settling, shrinkage, and aging vary not only among classes of products but among individual materials of the same type, the failure to reduce R-values to account for these factors effectively prevents consumers from comparing product R-values on a fair and accurate basis. Finally, if R-value information is needed for comparison purposes to make the market function effectively, as discussed earlier in this section, then it is unfair not to give R-values that reliably take these comparative differences into account. The Commission therefore concludes that these practices are both deceptive and unfair to consumers of home insulation.

d. *Failure to explain the meaning of R-value.* As noted earlier in this section, consumers are unfamiliar with the concept of insulation R-values.(*147*) Indeed, one survey showed that 75 percent of the respondents had never heard of the term "R-value" as applied to home insulation materials.(*148*) This is not entirely surprising, since virtually no ads or labels for home insulation disclose the meaning of the term.(*149*) Even if the survey finding reflects a more extreme degree of consumer ignorance than can be assumed in the population at large, it nevertheless shows that many consumers cannot benefit from the Commission's decision to require R-value disclosures unless the meaning of the term is explained to them. Moreover, the same factors that, as previously discussed, have unfairly prevented dissemination of R-values, will unfairly prevent dissemination of an R-value explanation.

As a result, the Commission has decided that R-value disclosures must be accompanied by a brief explanation of the meaning and significance of the term.(*150*) In the Commission's judgment, the R-value explanation required by the Rule is justified by the industry's past failure to educate and inform consumers about R-value, and is needed to implement the Commission's R-value disclosure scheme.(*151*)

2. *Savings claims.* The record in this proceeding demonstrates that insulation consumers are frequently confronted with energy savings claims made by industry members.(*152*) In many instances, these claims take the form of advertisements that state that the consumer's fuel bills will be reduced by a specified percentage or by a specified dollar amount after insulation is installed.(*153*) These claims are often exaggerated, with some advertisers claiming that fuel bills will be reduced by as much as 50 or 60 percent.(*154*) State consumer protection officials who have asked to see the proof behind these claims have found that they cannot be substantiated by the firms.(*155*)

Moreover, the amount of energy that can be saved by any individual homeowner through the purchase of insulation is affected by a plethora of factors.

These factors include the geographic region in which the house is located; the type and size of the house; the efficiency of existing heating and cooling systems; the amount of insulation already in the house; the presence or absence of other energy saving features, such as storm windows and doors; the number of occupants and their lifestyle; and the type and cost of the fuel used in the house.(*156*) Yet, with rare exceptions, savings claims do not disclose these factors to consumers.(*157*) Nor do they disclose that savings vary from consumer to consumer and that there are other factors to be considered.(*158*) Since any individual consumer's savings from insulation will depend on his or her particular circumstances, as well as on the purchased insulation's thermal efficiency, it is misleading to suggest that insulation can save *any* energy without disclosing that savings will depend on the consumer's particular circumstances.(*159*)

3. *Other claims.* Two remaining types of claims warrant attention. First, several ads on the record deceptively suggest that consumers will qualify for a tax credit through the purchase of insulation.(*160*) In addition, one state agency pointed out that numerous retailers had been misrepresenting the availability of federal tax credits.(*161*) These claims were being made long before the National Energy Act was passed by Congress, and certainly before it was clear that federal tax credits for insulation purchases would be available.(*162*) Now that the tax credit is enacted and available, the Commission is concerned, based on this record of past deception, that some products which are not eligible for tax credits may be advertised deceptively.

Second, several ads for insulation claim that the products have been "certified" by federal agencies.(*163*) these claims are misleading. Federal agencies merely set procurement standards which apply to any insulation purchases made or funded by the agency. However, no federal agency certifies the performance or acceptability of any insulation product.(*164*)

C. *Prevalence of Unfair and Deceptive Acts and Practices.* In making its assessment of the frequency with which unfair or deceptive practices are occurring in the home insulation industry, the Commission must consider a number of factors. These include the number of consumer complaints;(*165*) the opinions of experts in the field; documentary evidence such as insulation labels, advertisements, and other promotional materials; (*166*) the testimony of industry members regarding the need for a trade regulation rule;(*167*) studies and investigations performed by state and federal governmental agencies; newspaper investigations and exposes; and the Commission's own prior experience in regulating the practices of insulation industry members through individual cease and desist orders. In sum, the issue of prevalence requires the Commission to examine all of the materials in the record. Moreover, the issue of prevalence involves an examination of both the number of industry members engaging in practices violative of section 5 and the number of consumers affected by the practices.

Millions of consumers are adding insulation to their homes each year,(*168*) and there are thousands of home insulation manufacturers, distributors, and retailers. As the preceding discussion indicates, many of the industry practices that violate section 5 of the Federal Trade Commission Act are almost uniformly used. For example, most industry members base their R-

value claims on tests performed with one-inch thick insulation samples. Similarly, almost no firms reduce their tested R-values to account for aging, compression, settling, or shrinkage of the product; nor do the firms disclose the fact that these physical changes will occur and may significantly reduce the represented R-value. Despite the abundance of savings claims on the record, almost none indicate that the consumer's savings will depend on many factors, or indicate what those factors are.

Many of the other practices found to be unfair or deceptive also are used frequently. For example, the failure of insulation sellers to disclose product R-values occurs quite often. Of the product labels examined in a survey of Washington area stores, 40 percent did not disclose the R-value of the product. Similarly, 20 percent of the insulation ads on the record state a price or thickness without disclosing the corresponding R-value.

Finally, some of the practices affected by the Rule apparently occur only occasionally. Although the record contains evidence of false or misleading certification and tax claims, the evidence does not suggest that these claims have been made on a widespread scale. However, with enactment of the federal tax credit and the residential conservation program under NECPA, the Commission anticipates that such claims will become substantially more prevalent in the future. Moreover, the Rule provisions that govern these claims merely state the obvious principle that false claims are prohibited by section 5. Since such section 5 violations are so patent, the Commission believes that the claims are appropriately addressed in the rule even if only a few firms are making them.

As this discussion indicates, most of the section 5 violations that this Rule addresses are occurring on a widespread scale. On the basis of the record taken as a whole, and in light of the extremely high demand for home insulation, the Commission is convinced that large numbers of consumers are affected by these practices, and that this number represents a significant percentage of all industry-consumer interactions. The record evidence is therefore sufficient to convince the Commission that action to protect the home insulation consumer from these unfair and deceptive practices is justified.

III. The Provisions of the Rule

A. *Scope of the Rule.* The scope of the Rule adopted by the Commission is determined mainly by the definition of "home insulation" in § 460.2, and by the provisions of § 460.4. The Rule applies generally to thermal insulation materials that are "for use in old or new homes, condominiums, cooperatives, apartments, modular homes, or mobile homes."(*169*) With two explicit exceptions,(*170*) the Rule thus covers all thermal insulation products sold for residential applications.

A number of participants contended that the Rule should also apply to other products with insulating characteristics, such as storm windows and doors.(*171*) Despite their insulating characteristics, these products are distinct in several respects from thermal insulation materials, and their treatment would have complicated and prolonged the proceeding.(*172*) In the interest of expeditiously considering regulation of the home insulation industry, the Commission determined at the outset of this proceeding that such products should be excluded from the proposed rule.(*173*) As a result, members of these related industries did not participate in the rulemaking, and the record evidence concerning practices in these industries is sparse. Under these circumstances, the Commission has determined not to include these products in the Rule.

While § 460.2 specifies which products are covered under the Rule, § 460.4 indicates when the Rule applies.(*174*) The Rule must be followed whenever a covered person imports, manufactures, distributes, sells, installs, promotes, or labels home insulation. The Rule also applies to the supplying of written information for,(*175*) and the preparation and use of, home insulation labels, fact sheets, ads, and other promotional materials for consumer use. The relevant limitation here is that the written materials must be "for consumer use." The Commission recognizes that insulation manufacturers often prepare detailed, technical data for building industry professionals, such as architects.(*176*) These professionals should already be sufficiently informed concerning insulation performance characteristics, and manufacturers may wish to provide them with information that differs from that required under the Rule. The Commission has therefore concluded that its Rule should not apply to such materials.

B. *Testing Requirements.* 1. *Duty to test R-value.* In § 460.5 of the Rule, the Commission has required that all insulation R-values disseminated to consumers be based on standard scientific tests of thermal efficiency. The specific testing schemes for mass insulation materials, and for insulation products using reflective aluminum foil, are discussed in Section III.B.3, *infra.*

As noted in Section II.B.1.c of this statement, the record shows that presently used methods for determining R-value fail to consider several factors which have a material effect on thermal performance. As a result, such methods are unreliable forms of R-value substantiation and generate results which can mislead consumers. These methods include: (1) in lieu of testing, using pre-published R-values applicable to a general insulation category but not necessarily accurate for a particular manufacturer's insulation product;(*177*) (2) extrapolating R-values from thin-sample tests, an inherently deceptive procedure because of the non-linearity of per unit R-values;(*178*) (3) testing samples at low temperatures to gain a comparative advantage over competing R-values determined at higher temperatures;(*179*) and (4) testing samples without accounting for the adverse effects of settling, aging, and shrinkage on R-value.(*180*)

In light of this evidence, R-value disclosures based on presently used test methods would sanction the continued deception of consumers. Moreover, unless all home insulation R-values are determined in a standardized manner, consumers will effectively be subjected to the unfairness associated with the failure to disclose R-values. In other words, the disclosure of R-values which are based on differing test methods and which consumers cannot effectively use in making their purchasing decisions is, for all practical purposes, a failure to disclose R-value.

As the record indicates, thermal resistance is a product characteristic reflecting physical properties and environmental factors which can be analyzed only by scientific means. It also indicates that the test methods prescribed by the Rule are the only reliable methods for accurately determining R-value.(*181*) Moreover, the Commission believes that reasonable consumers, generally recognizing the technical nature of insulation materials, would expect R-value claims to be documented by results of some form of scientific testing.(*182*) Given this set of circumstances, the Commission has required that all R-values represented by manufacturers be substantiated by particular scientific test methods as set forth in the Rule.

Section 460.5 prescribes the use of ASTM C177, C518 or C236 for determining the R-value of an insulation material.(*183*) These tests are "consensus" ASTM procedures(*184*) and are published as standard test methods in ASTM's *Annual Book of Standards.*

The prescribed test methods provide R-value measurements under "static" or "steady-state" laboratory conditions.(*185*) In other words, neither these tests nor any other available tests can take into account transient environmental factors, such as moisture and air circulation, which can have a significant effect on insulation performance.(*186*) Thus, the R-value determined by the prescribed laboratory tests may not always accurately reflect "effective," or "*in situ*," insulation performance.(*187*) Notwithstanding this limitation, the record shows that they are the most reliable and accurate test methods available.(*188*). Accordingly, their implementation will permit fair comparisons of product R-values on a standardized basis to provide consumers with a reliable, uniform, and comparative base for their purchasing decisions.

2. *R-value testing for mass insulations.* As previously noted, § 460.5(a) of the Rule designates the use of one of three tests—ASTM C177, C518, or C236—for determining the R-values of all types of mass insulation. The record shows that all three tests are highly accurate and reproducible steady-state methods.(*189*) Since manufacturers of mass insulation materials are unlikely to use on a regular basis ASTM C236, which is a "systems" test,(*190*) this section discusses the provisions relating only to ASTM C177 and C518.(*191*)

a. *Representative thickness testing.* The record shows that mathematical extrapolation of R-value from thin-sample tests is inherently inaccurate and misleading, because it fails to recognize the non-linearity of R-value with increases in thickness.(*192*) In recognition of this problem, ASTM revised both C177 and C518 in 1976(*193*) to discourage such extrapolation and to encourage instead the use of test specimens of sufficient thickness to ensure that thermal resistance measurements will reflect the effect of thickness on R-value.(*194*)

In section 460.6 of the Rule, the Commission has incorporated the 1976 revisions to ASTM C177 and C518 by requiring "representative thickness testing"(*195*) for all mass insulations. Rulemaking participants did not dispute the scientific principle behind this requirement; indeed, virtually every party agreed that changes in thickness affect R-value, and that the use of revised C177 and C518 would improve the accuracy of R-value claims made to consumers.(*196*) Nevertheless, some segments of the industry, principally the mineral wool manufacturers, repeatedly contended that the Commission should not mandate representative thickness testing at this time.(*197*) Instead, these participants recommended that they be allowed to continue promoting R-value results taken from thin-sample tests. They advanced two arguments to support this position.

The first contention is that mandatory representative thickness testing should be postponed until sufficiently thick standard calibration materials are available from the National Bureau of Standards (NBS).(*198*) Without such materials, it is alleged, there will be significant measurement uncertainties associated with representative thickness testing. As a result, different laboratories measuring the same insulation sample could produce different R-values, raising a question of the reliability and comparability of all R-value claims. For this reason, the industry members argue that standard calibration materials are essential to a representative thickness testing program.

Although the Commission recognizes the lack of standard calibration specimens as a shortcoming and encourages the development of such materials for commercial use as rapidly as possible, it also believes that the record evidence contradicts industry's contention in several respects. First, there is evidence that the availability of thin-samples for calibration of thin-samples tests has not completely eliminated measurement variations among different laboratories.(*199*) Second, even by the admission of the mineral wool manufacturers, round robin test results on thick samples using representative thickness testing techniques varied by only three or four percent.(*200*) These results are within acceptable limits,(*201*) and are more precise than those obtained in a 1976 international round robin using thin samples.(*202*) Indeed, they are a very significant improvement over the 10 to 15 percent R-value reduction that consumers unwittingly experience due to the thickness effect.(*203*) These thick-sample round robin results suggest that internal calibration programs can be used effectively until standard calibration materials become available, and that the use of such programs will enable manufacturers to stay well within the tolerance limit imposed by the Rule.(*204*) Third, the record shows that the absence of standard calibration materials has not prevented other segments of the insulation industry from accepting the fact that representative thickness testing has become a realistic objective and should be required by the Rule.(*205*) In fact, despite their recommendation for continued thin-sample testing, the mineral wool manufacturers have been testing their loose-fill products at thicknesses up to six inches for years,(*206*) as have many cellulose manufacturers.(*207*) This has occurred despite the absence of any standard calibration materials at these thicknesses.(*208*)

Lastly, it is noteworthy that this new Commission requirement follows in the wake of similar action recently taken by other governmental and standards-setting bodies. For example, the HUD materials standard for urea-based foam products requires that urea-based foam manufacturers must perform R-value tests on samples at least three inches in thickness.(*209*) Similarly, ASTM 739, the recommended specification for cellulose insulation, requires testing of cellulose at representative thickness, and the Canadian government has adopted a "derating" procedure to account for the effect of thickness on the R-value of cellulose insulation.(*210*) In addition, Canada has required since 1977 that the R-values for mineral wool batts be determined by representative thickness testing.(*211*) Finally, as discussed in Section III.B.3.a, *infra*, the reflective foil manufacturers who, like cellulose and urea-foam producers, are generally very small firms, must perform the more expensive and time-consuming ASTM C236 test so that claimed R-values will be as representative as possible of the performance of the foil system once installed.

This review indicates that many competitors of the mineral wool batt manufacturers must already perform representative thickness testing, and they must do so without any NBS calibration materials. Further, in this proceeding it has been almost exclusively the mineral wool industry members who continue to assert, somewhat contradictorily, that representative thickness testing cannot be implemented until these materials are provided by NBS. Absent immediate implementation of the representative thickness testing requirement in this Rule, the mineral wool manufacturers, who already hold an overwhelming share of the home insulation market, will preserve an unwarranted competitive advantage—at least for their batt products—over other industry members who are already or will be required to do representative thickness testing. For this reason, and in light of the evidence on the issue, the Commission concludes that standard calibration specimens, while desirable, are not essential to the implementation

of a representative thickness testing requirement.

The second argument advanced by mineral wool manufacturers is that there are not yet enough laboratories equipped with thick sample testing devices to be able to perform representative thickness testing for the entire home insulation industry.(*212*) Once again, the record refutes the industry contention. First, the evidence shows that the major fiberglass producers, which account for the great bulk of all home insulation sales, already have the necessary equipment and personnel to do representative thickness testing.(*213*) Second, several independent testing laboratories also have the requisite resources, and would be able to perform representative thickness testing for the non-fiberglass producing segments of the industry.(*214*) Third, there is evidence that additional laboratories are procuring thick-sample testing facilities in light of the 1976 ASTM revisions and in anticipation of a representative thickness testing requirement.(*215*) Fourth, it appears that some manufacturers will be able to continue testing relatively thin samples of their products,(*216*) and that there is more than enough equipment at present to meet these needs.(*217*) Finally, the Commission's deletion of the retesting requirement originally recommended by the staff(*218*) should greatly reduce the industry's testing burden and, thus, alleviate whatever backlogs might result from imposition of a representative thickness testing requirement on the non-fiberglass producers.

For the foregoing reasons, the Commission believes that the record supports its decision to require R-value testing at representative thicknesses. At the same time, the Commission recognizes that the present supply of laboratories is not abundant, and that the industry, especially those manufacturers who do not have in-house testing facilities, will need a reasonable grace period in which to prepare for the advent of mandatory representative thickness testing.(*219*) Accordingly, the Commission has determined that the new testing requirement and resultant changes in R-value disclosures should take effect 90 days following promulgation of the Rule. This length of time is based on detailed staff calculations reflecting the present numbers of testing laboratories and manufacturers in the home insulation market.(*220*)

b. *Test temperature.* As discussed in Section I.C.2 of this statement, R-values fluctute inversely with changes in temperature, so that lowering the test temperature will produce a corresponding rise in the tested R-value of a mass insulation. This aspect of thermal resistance poses a problem with respect to the manner in which R-values are reported to consumers. If two insulation products ordinarily have similar R-values under similar conditions, a significant downward adjustment of the temperature at which one of them is tested will make that product appear to have a higher R-value than the other product.

As this example shows, differences in test temperatures can distort not only the R-value of a particular product, but the comparability of R-values of different and competing products. Because such temperature distortions impede comparison-shopping and have the potential to confuse and mislead consumers, the Commission has required in section 460.5(a) of the Rule that R-value tests for mass insulation materials be conducted at a standard mean temperature.

Specifically, § 460.5(a) requires all R-value tests for these products to be done at a mean temperature of 75° Fahrenheit. The choice of this particular temperature is based on a significant volume of record evidence that 75°F is already a widely used test temperature and is incorporated in many voluntary industry standards and federal procurement specifications.(*221*)

Nevertheless, in specifying 75°F, the Commission acknowledges record evidence that this temperature has no particular advantage over any other temperature. As several participants noted, it is not representative of average temperatures in many geographical regions.(*222*) In light of this fact, the Commission has given careful consideration to recommendations that a lower standard mean temperature be prescribed,(*223*) or that disclosure of R-values tested at other temperatures be allowed to accompany the mandatory disclosure of R-values tested at 75°F.(*224*)

With respect to the first recommendation, the record shows that commenters critical of the 75°F standard nevertheless could not agree on a substitute mean temperature.(*225*) Thus, even if the standard test temperature should be one that is more representative of average climatic conditions than 75°F, the record does not indicate which alternative temperature should be prescribed. Moreover, in view of the fact that temperatures vary from region to region, the Commission doubts that any single temperature would adequately represent the range of average temperature conditions found across the country. Accordingly, the Commission rejects the recommendation that another temperature be substituted for 75°F as the standard mean temperature for R-value tests. The prescribed test temperature will be as effective as any other would be in providing a standard temperature condition for R-value comparison purposes.

With respect to the second recommendation, the Commission recognizes that R-values increase at lower temperatures and that other temperatures may be more applicable than 75°F to the average climates of many consumers. However, the Commission believes that a proliferation of R-value claims at various temperatures would confuse consumers, who are unlikely to be aware of the inverse relationship between R-value and temperature, and would complicate the process of comparison shopping which the Rule is designed to encourage. In addition, the Commission sees only marginal benefit in the recommendation to allow two R-values disclosures—one at 75°F and another at a lower standard temperature that would be designated in the Rule. Since any lower temperature, as previously noted, would not be representative of many areas, and since many consumers probably do not know the average temperature for their own geographical region, the Commission questions the utility of a second disclosure at a lower temperature. On balance, the Commission has concluded that the informational benefit would not be great enough to outweigh the risk of consumer confusion from an additional R-value disclosure at a second temperature. Accordingly, § 460.5(a) prescribes a uniform temperature standard of 75°F for all mass insulation R-value tests.(*226*)

c. *Aging of cellular plastics insulations.* As discussed in Section I.C.3 of this statement, a chemical aging process peculiar to certain cellular plastic materials causes their R-value to decrease over a period of time after manufacture. This aging process affects polyurethane, polyisocyanurate, and extruded polystyrene insulations. It lasts a variable length of time, sometimes as long as several years, and can have a significant adverse impact on the R-values of these products.(*227*) As a consequence, failure to account for this aging effect in the testing of these products results in R-value claims that are inflated and misleading to consumers.

Section 460.5(a) of the Rule addresses this problem by requiring that R-value tests for extruded polystyrene,(*228*) polyurethane, and polyisocyanurate

insulations be performed on aged samples. In particular, the Rule requires that these products be aged in accordance with the "accelerated aging" method specified in GSA Specification HH–I–530A,(*229*) or through a comparable procedure that reflects the adverse effect of aging on the product's R-value.

The GSA accelerated aging test received support from a number of commenters, who noted that it is already used by some industry members, and that it will accurately reflect years of aging.(*230*) However, the representative for the Society of the Plastics Industry noted that some products may suffer physical distortions when subjected to the GSA procedure.(*231*) In addition, at least one manufacturer already has test data showing the R-value of material that has been aged for five years.(*232*) Therefore, the Commission has not specified the use of GSA's accelerated aging test in the Rule. Rather, any procedure that results in R-values fully reflective of aging will be acceptable.

d. *Settled density testing for loose-fill insulations.* As discussed in Section I.C. 4 of this statement, loose-fill cellulosic and mineral wool materials always settle in attics, and will also settle in walls if not installed to the proper density. This settling reduces the R-value of the insulated area.(*233*) Section 460.5(a) of the Rule remedies this deception by prescribing a scheme for testing loose-fill R-values at their "settled density." With respect to cellulose insulation, this provision requires that R-value tests be performed at the settled density determined under GSA Specification HH–I–515D.(*234*) This settled density test for cellulose represents a significant technological advance in the art of insulation testing. More to the point, since cellulose R-value as tested will be discounted for settling, incorporation of the new GSA Specification obviates the need for the cellulose settling disclosure that had been recommended by the staff,(*235*) and will make the cellulose coverage chart information as accurate as current technology permits. In addition, it responds to a number of recommendations in the record for settled density testing.(*236*)

No final settled density testing procedure has yet been accepted for loose-fill mineral wool. However, the mineral wool manufacturers contend that the coverage charts for their loose-fills take settling into account, and that if the coverage information is followed, the consumer will attain the represented R-value.(*237*) Under these circumstances, the Commission is presently imposing a general requirement that loose-fill mineral wool R-values be based on tests that take the adverse effects of settling into account.(*238*) In addition, section 460.5(a) of the Rule states that as soon as a settled density test for loose-fill mineral wool becomes part of a final GSA Specification, R-value tests for that product must be done at the settled density determined under the GSA Specification.(*239*)

3. *R-value testing for foil insulations.* Sections 460.5(b), (c), and (d) of the Rule specify R-value testing requirements for insulation products that use reflective aluminum foil material. Specifically, these provisions prescribe separate testing requirements for reflective aluminum foil systems and for mass insulation materials that have foil facings.

a. *R-value test for reflective aluminum foil systems.* The record demonstrates that ASTM C236 is the appropriate R-value test method to use for reflective aluminum foil materials. Unlike C177 and C518, C236 is principally designed for thermal insulation systems, not for an individual material.(*240*) The record further shows that it is the only current standard test method that can be used to determine the thermal resistance of such integrated products as reflective foil systems.(*241*)

Section 460.5(b) of the Rule accordingly states that the R-value of a foil system with more than one sheet of foil (multiple airspaces) must be determined by the C236 method.(*242*) During the hearings, the Aluminum Association contended at first that the C236 testing requirement would be an unnecessary and undue burden on reflective insulation manufacturers. Instead, the Association recommended that these industry members be allowed to base their R-value claims on the pre-published ASHRAE R-value tables for airspaces.(*243*) The evidence in the record refutes the Association's position in two respects. First the ASHRAE tables do not provide R-values for multiple airspaces systems, but only for single-sheet systems.(*244*) Second, the record shows that extrapolation of a total R-value for a multiple system from the ASHRAE R-value for a single airspace is an unreliable procedure.(*245*) In light of these weaknesses in its position, the Association finally agreed that the rule should require C236 testing for multiple airspace systems.(*246*)

Although the Aluminum Association's argument lacked force with respect to multiple airspace systems, it did lead the staff to recommend that the Commission require a lesser burden of substantiation of R-value claims for single airspace claims by first determining the emissivity (*247*) of the foil and then finding the ASHRAE R-value which corresponded to the determined emissivity level.(*248*)

With one modification, section 460.5(c) of the Rule has incorporated this staff recommendation.(*249*) Based on hearing testimony provided by the Aluminum Association, the staff recommended that the foil's emissivity be determined in accordance with ASTM C445.(*250*) During the post-record comment period, however, it was discovered that C445 was being revoked by ASTM,(*251*) and that one appropriate emissivity test to require instead was ASTM E408.(*252*) Accordingly, section 460.5(c) of the Rule requires the emissivity of foil in single airspace systems to be tested by ASTM E408 or by a comparable test method.(*253*)

b. *Insulations with foil facings.* Mass insulation materials with foil facings (*254*) are distinctive products because they can actually have two R-values, depending on the manner in which they are installed. If the material with facing is simply installed in part of the house, it has only its "material" R-value. However, if it is installed in conjunction with an airspace, the interaction of the airspace and facing provides an additional insulating effect.(*255*) As a result, § 460.5(d) prescribes a particular testing scheme for foil-faced products used alone(*256*) and in conjunction with an airspace. In the latter case, the rule provides that a manufacturer of such a system may determine its total R-value in one of two ways:

(1) The manufacturer may test the system, with its airspace, under C236, following the applicable rules in § 460.5(a) for mass insulation testing; or

(2) The manufacturer may add to the tested R-value of the material, the R-value of the airspace as derived from the ASHRAE tables under the rules in § 460.5(c).(*257*)

Although two commenters suggested that the C236 test be deemed the only permissible method for determining the system R-value of a foil-faced material,(*258*) the Commission believes that this would be an overly burdensome requirement. The Rule already permits the use of the ASHRAE R-values for single airspace reflective systems, and there does not seem to be any basis for distinguishing between these products and single sheets of foil attached to mass insulations. Since C236 is a relatively expensive and time-consuming test, the Commission does not believe that it should be exclusively required absent strong indications that the ASHRAE R-values for single sheets

of foil are inaccurate in the context of foil-faced mass insulation. Thus, the Commission concludes that the discretionary scheme in § 460.5(d) represents the more reasonable and equitable approach to determining the system R-value of foil-faced products used in conjunction with an airspace.

4. *Changes in the test methods.* As noted earlier, the Rule requires that the current version of the referenced test methods be used. The Commission is concerned, however, that its Rule not have the undesirable effect of chilling advances in thermal testing technology. To avoid such stagnation, and, in fact, to promote improvements in the science of thermal testing, numerous participants suggested that the Rule provide for "automatic incorporation" of future test revisions.*(259)* The Commission is in basic agreement with this approach, and § 460.7 states that changes in the test methods specified in the Rule will automatically become a part of the Rule 90 days after they are published.*(260)*

The issue raised by § 460.7 is whether section 18(d)(2)(B) of the FTC Act would require a reopening of the rulemaking proceeding in order to make test method revisions a part of the Rule. The Commission need not resolve this issue at this time. In many instances, changes in the test methods may be of a technical or "housekeeping" nature and, thus, may not rise to the level of a "substantive" amendment to the Rule.*(261)* In other cases, however, a test change may be so significant that formal Commission consideration of the matter seems necessary. In order to allow parties the opportunity to call to the Commission's attention what they regard as significant test changes that should be addressed explicitly by the Commission, § 460.7 of the Rule permits the Commission's staff or any person affected by the change to petition during the 90-day period for formal Commission consideration of the matter.

5. *R-value tolerances.* It is arguable that manufacturers of home insulation products should be required to state with absolute precision the R-values of their products. Practically speaking, however, such precision is not yet possible. As noted in Section I.B.1 of this statement, most home insulations are heterogeneous in nature; that is, they have variable rather than constant properties. In addition, the quality of insulation products varies depending on the presence of inconsistencies in the manufacturing process. These variations in composition and production can have a significant effect on the thermal resistance of home insulation.*(262)* As a result, adequate quality control measures are essential to ensure that the thermal performance of insulation products will be as consistent as is practically possible.

On the other hand, the inherent variability of there materials means that it is necessary to provide manufacturers with a defense for minor R-value variations from product to product. In other words, a quality control provision in the rule serves two purposes. It ensures that represented R-values are accurate within acceptable limits, and it provides manufacturers with enough leeway so that compliance with the Rule is not rendered impossible.

Although the proposed rule did not include any quality control requirements, the notice of rulemaking invited public comments on quality control issues.*(263)* The hearings and comments produced several recommendations for Commission action on this point, ranging from leaving quality control completely unregulated to requiring manufacturers to institute comprehensive quality control programs.*(264)* Given the need for quality control, the former recommendation is clearly unacceptable. Yet, given the differences in approach and the enormous complexities in quality control systems that were described in the proceeding.*(265)* the latter recommendation seems unrealistic and too prescriptive in this context. Between these extremes, however, several more moderate recommendations were made. These included such ideas as third-party testing, sample selection, R-value tolerances, and periodic retesting.*(266)*

The rule recommended by the staff required two of these elements of quality control: periodic retesting and an R-value tolerance limit. Specifically, the staff suggested that R-value tests be repeated at least every 60 days and, in addition, that the actual R-value of an insulation material could not be more than 5 percent below the stated R-value.*(267)*

Although the commenters differed on the soundness of the 60-day retesting requirement, they generally agreed that the record brought to light no specific testing frequency that is superior to all others.*(268)* In addition, several commenters pointed out that the basic quality control standard of the Rule was in the R-value tolerance provision and not in the retesting requirement.*(269)* The reasoning behind this view is that in order to stay within the tolerance limit, manufacturers will have to institute whatever in-plant quality controls are necessary to achieve this objective. Since the record fails to illuminate how much testing is necessary to adhere to a tolerance limit for each product, and since the manufacturers themselves are the best judges of this need, the Commission has deleted the specific retesting provision. In its place, the final Rule establishes the tolerance provision as the governing quality control mechanism.

Although the Commission has decided to make a tolerance limit the chief incentive for quality control, it has raised the 5 percent tolerance ceiling recommended by the staff to 10 percent.*(270)* This change to a 10 percent tolerance limit is more in line with prevailing quality control standards in industry and GSA specifications.*(271)* and will ease the quality control burden on manufacturers. More importantly, it ensures that conscientious manufacturers will not be faced with the prospect of liability for relatively minor variations in product R-values.

The Commission wishes to note that the tolerance provision does not give manufacturers a license to raise their R-values above the levels determined through R-value testing. Rather, the testing sections impose two separate bases for potential liability. First, manufacturers will be liable if their labeled R-values do not accurately reflect the results of tests performed in accordance with the Rule. Second, if the Commission tests the manufacturer's product, the tested R-value must be within 10 percent of the R-value shown on the label. If the product is not within this 10 percent tolerance, the manufacturer will be liable even if the labeled R-value accurately reflects the test results available to the manufacturer.*(272)* In that event, failure to pass the tolerance test indicates that the manufacturer's quality control procedures are insufficient to provide consumers with any assurance that they are achieving the represented R-value.

6. *Recordkeeping.* In response to recommendations on the record and to aid enforcement, the Rule requires records of R-value tests to be kept for three years.*(273)* Under § 460.9, manufacturers and laboratories must keep the information specified in the "Report" section of the ASTM test method that is used for a test. Section 460.9 also specifies retention of the following items: (1) the name and address of the testing lab; (2) the test date; (3) the date a lab sent the test report to the manufacturer and the date the manufacturer received the test report; (4) the age (in days) of tested extruded polystyrene, polyurethane, and polyisocyanurate; and (5) the emissivity level of tested aluminum foil. The Commission believes that retention of

this information is essential to effective enforcement of the Rule.(*274*)

C. *Labeling Requirements.* As the discussion in Section II, *supra*, indicates, the most important component of this Rule is the pre-purchase disclosure to consumers of R-value information for home insulation materials. In light of the prevailing marketing practices in the industry, the Commission has chosen several mechanisms to effectuate the disclosure of this information.

1. *Insulation package labels.* a. *Coverage charts.* Under the rule as initially proposed, all insulation packages were required to be labeled with an R-value and the corresponding thickness and coverage area that would be attained.(*275*) In general, this provision found considerable support in the record.(*276*) However, because of the widespread use of coverage charts in the insulation industry, and because of the ease with which essential pre-purchase information can be conveyed on such charts,(*277*) the Commission agrees with industry members that each package label should contain a coverage chart.

Due to differences among the various forms of home insulation, the staff recommended slightly differing disclosures for the products. Thus, for batt, blanket, and boardstock insulation, all of which are pre-shaped at the factory in specified dimensions, the staff recommended disclosure of the product's R-value, the dimensions of the package, and the number of packages needed to cover 1,000 square feet.(*278*) For loose-fill, the staff's recommended disclosures included the R-value, coverage area, and weight per square foot of the insulation at thicknesses of one, three and one-half, and six inches;(*279*) the number of packages needed to cover 1,000 square feet; and the total weight of the package.(*280*) For aluminum foil insulation, the staff recommended that package labels disclose the number of foil sheets; the number and thickness of the air spaces; and the R-value provided by the foil system when the direction of heat flow is up, down, and horizontal.(*281*)

Those who commented on the Staff Report suggested numerous improvements to the staff's recommended disclosures. Batt, blanket, and boardstock manufacturers, for example, suggested clarifications of the dimensional disclosures required for their products.(*282*) Loose-fill manufacturers urged that the Commission follow the labeling provisions found in the federal purchasing specifications, since they provide essentially the same disclosures in a different format, and since many industry members already comply with the federal specifications.(*283*) Several commenters suggested that the total package weight" disclosure for loose-fills be replaced by a "minimum net weight disclosure, since minor weight variations above the stated minimum will not reduce the R-value below that stated on the label.(*284*) Finally, one manufacturer recommended a separate disclosure provision for mass insulations with reflective facings, to account for the additional R-value that is achieved when such products are installed in conjunction with an airspace.(*285*) This last suggestion received further support during the oral presentations to the Commission.(*286*)

The Rule adopted by the Commission reflects the recommendations of the commenters. With respect to all products for which an existing federal specification includes a labeling provision, the Commission is requiring the same disclosures mandated by the federal specification.(*287*) This approach will provide continuity in the labeling practices of many manufacturers and will minimize the cost of compliance with the Rule. There are several products, however, for which no existing federal specification includes a labeling provision. In these cases, the Commission has required disclosures which the record supports, taking into account the similarities among the products covered by the Rule. Thus, for both boardstock and air duct wrap, which are essentially the same as batt and blanket insulation,(*288*) the Rule requires disclosure of the dimensions and coverage of the insulation in the package, and of its R-value.(*289*) For perlite and vermiculite loose-fill, which have R-values roughly equivalent to those of loose fill mineral wool,(*290*) the Rule requires that the coverage chart in the federal specification for loose-fill mineral wool be followed.(*291*) For aluminum foil insulation, the Rule requires disclosure of the product characteristics that govern the R-value to be achieved: the number of foil sheets; the number and thickness of the airspaces; and the R-value provided by the system when the direction of heat flow is up, down, and horizontal.(*292*)

Mass insulation materials with foil facings present a unique problem: they can have both a "material" R-value and a "system" R-value. The material R-value is simply the R-value of the mass insulution itself, while the system R-value is the R-value that can be achieved if the product is installed in conjunction with an air space.(*293*) Under the Rule adopted by the Commission, the material R-value must be disclosed in all cases. In addition, manufacturers may disclose the system R-value, as long as they clearly and conspicuously state the conditions under which the system R-value can be attained.(*294*)

The labeling disclosures required by the Commission's Rule are essential to the consumer's purchasing decision. Without the dimensional disclosures for batt, blanket, boardstock, and duct wrap insulation,(*295*) for example, the consumer cannot determine whether the material will fit into the area to be insulated or how many packages of the insulation to buy.(*296*) The same is true of the thickness and coverage area disclosures for loose-fill products. A single bag of loose-fill insulation can provide almost any desired R-value, depending on how many square feet are covered and to what thickness. Thus, these disclosures are essential to an evaluation of loose-fill R-value. Finally, the disclosures required for aluminum foil concerning the product's R-value and direction of heat flow are essential to the consumer's purchasing decision. Without this information, the consumer cannot determine whether the installation of the material in a wall or ceiling, for example, will produce the desired R-value.(*297*)

In addition to being essential purchase information, certain of the disclosures required on coverage charts are also needed to effectuate the Commission's R-value disclosure scheme. The minimum weight per square foot and minimum net weight disclosures for loose-fills fall into this category. Without this information, the Commission will not be able to ascertain the accuracy of the manufacturer's R-value and settled density claims.(*298*) Similarly, unless the number of foil sheets and the number and thickness of the airspaces are disclosed for aluminum foil inslulation, the Commission will not be able to verify R-value representations for those products.

The Commission therefore concludes that the various labeling disclosures required for each insulation material covered by the Rule are both necessary and reasonable.

b. *Other label disclosures.* Section 460.12 of the Rule requires two additional disclosures that must appear on all package labels. The first of these is a brief explanation of the term "R-value."(*299*) The need for this disclosure is clear, since the record demonstrates that most consumers are totally unfamiliar with the R-value concept.(*300*) In light of this fact, the Commission believes that the R-value explanation is an essential

accompaniment to the R-value disclosures on package labels.(*301*)

The second disclosure required for all package labels concerns the need for proper installation. The record demonstrates that proper installation is crucial to the performance of any insulation material.(*302*) It is not at all clear, however, that insulation consumers are aware of this fact. Many labels on the record do not contain installation instructions, nor do they warn consumers of the critical role that installation plays in insulation performance.(*303*) In addition, two witnesses who have had extensive contact with insulation purchasers in recent years indicated that consumers do not realize the significance of proper installation.(*304*) This position is further supported by evidence that there are many instances in which improper installation occurs, causing a reduction in the R-value achieved by the consumer.(*305*)

To remedy this situation, many participants recommended a label disclosure concerning the importance of proper installation.(*306*) Indeed, a number of parties suggested that the Rule mandate the inclusion of installation instructions in all insulation package.(*307*) The Commission does not believe that it is necessary to go so far. Instead, the Rule requires only that the critical importance of proper installation be disclosed to consumers and, if installation instructions do not come with the package, that this fact also be disclosed on the label.(*308*)

2. *Insulation fact sheets.* In addition to the package labeling requirements in the Rule, the Commission is also requiring that insulation manufacturers provide fact sheets to retailers and installers of their products, for ultimate distribution to consumers. With minor exceptions,(*309*) these fact sheets must contain the same information that would appear on product labels.

There are a number of reasons why fact sheets are needed to supplement the Rule's labeling requirement. First, the evidence shows that insulation sold through retail stores to do-it-yourself consumers is often unavailable for inspection prior to purchase.(*310*) Thus, even if the package is labeled, the consumer may not be able to review the relevant R-value information prior to purchase.(*311*) Second, some products, even though they are sold through retailers, are not generally sold in packaged form.(*312*) As a result, no labeled information would be available with respect to these products.(*313*) Finally, the Rule contains no labeling requirement for insulation that is installed professionally, rather than by the homeowner.(*314*) In this situation, the fact sheet would serve as the product's label. Because of the ways in which home insulation is marketed, the Commission believes that its fact sheet requirement is necessary to effectuate the disclosure of essential pre-purchase information to consumers.

a. *Disclosures required on fact sheets.* In general, the Commission's Rule requires that fact sheets disclose the information required for the product's label under § 460.12. Thus, the sheets must contain an R-value explanation; a disclosure of the importance of proper installation, and the coverage chart required for the product under § 460.12 (b).(*315*) For foamed-in-place insulations, which are not subject to labeling under § 460.12(b),(*316*) the Rule requires a chart showing the product's R-value at a three and one-half inch thickness, and at any additional thicknesses listed by the manufacturer.(*317*) For these foamed-in-place products, the R-value and thickness disclosures provide all of the coverage chart information needed for a pre-purchase evaluation of the material.(*318*)

The Rule also requires specific disclosures on the fact sheets for urea-formaldehyde foam and duct wrap insulation. In the case of urea-formaldehyde foam insulation, the fact sheet must disclose that the product shrinks after installation, and that the shrinkage may significantly reduce the R-value attained by the consumer.(*319*) The record contains overwhelming evidence that UF foam shrinks and that shrinkage reduces R-values.(*320*) There is disagreement, however, concerning the magnitude of the R-value reduction caused by shrinkage.(*321*) Considerable evidence indicates that the R-value reduction may be as high as 28, 40, or even 50 percent,(*322*) but industry members contend that it is much lower.(*323*) Even industry members concede that the R-value reduction attributable to shrinkage may be on the order of 10 or 15 percent,(*324*) though, and the Commission believes that such a reduction is significant.

The staff originally recommended a disclosure that would have had the effect of derating all UF foam R-values by 28 percent.(*325*) Yet, some manufacturers may be able to demonstrate that the shrinkage-related R-value loss for a particular product is less than 28 percent.(*326*) Moreover, an across-the-board 28 percent derating might discourage industry efforts to control the shrinkage phenomenon. At the very least, such a provision would necessitate amendments to, or exemptions from, the Rule as the state of the art in shrinkage testing advances.

In light of these factors, the Commission has decided not to adopt the disclosure recommended by the staff. Instead, the rule requires that fact sheets for UF foam insulation disclose the fact that the product shrinks, and that the shrinkage "may significantly" reduce the R-value attained by the consumer.(*327*) In addition, the Rule provides that manufacturers may derate their products' R-values "based on reliable scientific proof of the extent of shrinkage . . . and of its effect on R-value."(*328*) If the product's R-value is derated in accordance with this provision, the manufacturer need not include the shrinkage disclosure on the fact sheet.(*329*) The Commission believes that this approach will protect consumers from deception, and at the same time encourage product and testing innovations in the UF foam industry.

The other product for which a specific disclosure is required on fact sheets is air duct insulation. This flexible material must be wrapped around the air duct during installation, causing significant compression at the edges of the duct.(*330*) This compression will reduce the R-value of the material below the tested R-value.(*331*) The precise extent of the R-value reduction will depend on the extent to which the material is compressed.(*332*) Since there is no test available to account for this compression factor,(*333*) the fact sheets for air duct wrap must disclose that the product's R-value "varies depending on how much it is compressed during installation."(*334*)

The staff originally recommended a number of other fact sheet disclosures concerning such potential problems as excessive compression of mineral wool batts,(*335*) improper handling of aluminum foil,(*336*) and moisture buildup in insulation materials.(*337*) Although there was some evidence supporting these disclosures,(*338*) they were criticized by commenters as being overly simplified and in conflict with proper installation practices.(*339*) More importantly, the disclosures provided information concerning proper installation techniques, rather than information bearing on the consumer's evaluation of the particular product's R-value.(*340*) Since the purpose of the fact sheets—and of the labeling provisions in general—is to provide information essential to the consumer's assessment of insulation R-values, the Commission has decided not to require these disclosures.

b. *Preparation and distribution of fact sheets.* Under the rule initially

recommended by the staff, manufacturers were required to prepare separate fact sheets for each insulation product they marketed.(*341*) For example, a producer of batt insulation in several different sizes was required to have a fact sheet for each product.(*342*) To minimize the costs of compliance with the Rule, the Commission has decided on a different approach. Section 460.13(c)(2) of the Rule permits manufacturers to consolidate the coverage chart information for similar products on the same fact sheet.(*343*) For example, the coverage charts for several different sizes of batt insulation products could be put on a single fact sheet. Similarly, coverage charts for two different bag sizes of loose-fill products may be consolidated on one fact sheet.(*344*) On the other hand, separate fact sheets are required for batt and loose-fill materials, since the difference between the two products concerns their characteristics, rather than their dimensions. The Commission believes that this provision of the Rule will significantly reduce the number of different fact sheets that must be prepared by each manufacturer.

The staff's recommended rule also required that manufacturers provide their retailers and installers with enough fact sheets for distribution to each purchaser of the products.(*345*) Several commenters contended that this provision would require the preparation and distribution of a large number of fact sheets.(*346*) As an alternative, they suggested that the Commission adopt a "binder system" for fact sheets, modeled on the warranty disclosure rules promulgated under the Magnuson-Moss Warranty—Federal Trade Commission Improvements Act.(*347*) Under this approach, retailers and installers would receive only one fact sheet for each product. These fact sheets would all be kept in a book or binder, which would be available for inspection by consumers.(*348*)

The Commission is not convinced that the suggested binder system should be mandated by the Rule. Instead, the Rule permits retailers and installers the flexibility to choose among various disclosure mechanisms, as long as fact sheets are made available to consumers. For example, retailers may use "Take One" displays, or may keep the fact sheets in a central binder.(*349*) Similarly, installers may actually give the fact sheets to their purchasers, or may show their customers a fact sheet binder prior to purchase.(*350*) In other words, the thrust of the requirement is simply that consumers must be given an opportunity to analyze the fact sheet information before they commit themselves to a purchase. To generate consumer awareness of the availability of fact sheets, and in support of the Commission's overall purpose of ensuring disclosure of prepurchase information, the disclosures required for certain advertisements encourage consumers to ask for fact sheets before buying insulation products. The advertising disclosures will be discussed shortly.(*351*)

3. *Disclosure by new home sellers.* Although the proposed rule did not require pre-purchase disclosures to new home buyers, the Commission specifically solicited comment on the question of whether new home sales should be covered by the disclosure provisions of the Rule.(*352*) The record indicates that most new home buyers will spend additional money on insulation if they are advised to do so by builders.(*353*) New home sellers, in turn, are capitalizing on this heightened consumer interest in energy conservation by advertising the energy efficient features of their homes.(*354*) Since a new home has no history of utility bills, the buyer is unable to evaluate anticipated energy consumption patterns. As a result, the amount of insulation to be installed in the home may significantly affect the consumer's decision to buy.(*355*) Thus, in this context no less than in the context of an insulation purchase alone, the Commission believes that the R-value of the insulation to be installed in the home is a factor material to the consumer's purchasing decision. The disclosure of this information will permit the new home buyer to evaluate the energy efficiency of his or her home, thereby furthering the national policy of energy conservation.(*356*)

Most of the rulemaking participants agreed that the Rule should require pre-purchase disclosure of R-value information to new home buyers.(*357*) However, the representative for the National Association of Home Manufacturers disagreed.(*358*) He agreed that R-values should be disclosed to new home buyers.(*359*) but he argued that new home builders are already subject to state energy conservation codes,(*360*) and that R-value information is often provided to new home buyers.(*361*) On the other hand, he conceded that energy conservation codes only set minimum performance standards, and do not require that R-value be disclosed to consumers.(*362*) He further conceded that R-values are not always disclosed to new home buyers, and that, in fact, he could not estimate how often such disclosures were made.(*363*) Since the Commission believes that R-value data must be disclosed, and since the evidence suggests that some consumers are not being provided with this information, a disclosure requirement for new home sales is necessary.

The staff originally recommended that R-value information be provided to new home purchasers via the fact sheets.(*364*) Under this approach, the seller was to give the buyer fact sheets for the various types of insulation installed in the home, and let the buyer read the fact sheets before signing a sales contract.(*365*) In the Commission's view, this is a cumbersome scheme, which may be difficult to implement and, possibly, to enforce. In its place, the Rule simply requires that new home sellers disclose in the sales contract the type, thickness, and R-value of the insulation that will be installed in each part of the house.(*366*) In the event that the buyer signs a sales contract before this information is known, or if the builder substitutes a different material under the terms of the contract,(*367*) the Rule states that the R-value disclosures must be made as soon as the information is known.(*368*)

Although the Rule requires that R-value information for new homes appear in the sales contract, the Commission makes no judgment concerning potential state law remedies for nondisclosure or inaccurate disclosure of R-values. Such a disclosure might constitute a warranty in some states, but not in others. The Commission's intent is merely to require that this information be disclosed, and the sales contract provides the most convenient and appropriate vehicle for the disclosure.

4. *Additional disclosure by installers.* Under the rule as initially proposed, all installers were required to provide their customers, after installation, with a written statement of the R-value and thickness of the insulation that was installed.(*369*) Although various additional disclosures were suggested, this provision was generally supported by the participants.(*370*) Of course, consumers who purchase from installers will have received a fact sheet prior to their purchase.(*371*) Unlike do-it-yourself consumers, however, these purchasers will never actually see a label stating the R-value, thickness, and coverage area achieved. Consumers who buy insulation through installers are, thus, in the same position as new home buyers. Absent a requirement to disclose exactly what was installed, they cannot fully assess the energy efficiency of their homes.(*372*) In addition, disclosure of this information

will provide them with an available reference, if they consider the purchase of additional insulation in the future. The Commission therefore believes that its R-value disclosure program cannot be fully effective unless these consumers, like do-it-yourselfers and new home buyers, are informed of the R-value that is actually installed in their homes.

The general requirement embodied in § 460.17 of the Rule is that R-value, thickness, and coverage area be disclosed to the consumer on a contract or receipt that is dated and signed by the installer. For loose-fill insulation, the receipt must also state the number of bags.(*373*) For aluminum foil, the number and thickness of the air spaces, the direction of heat flow, and the R-value must be disclosed. The Rule explicitly states that the installer may not multiply the R-value for one inch of the material by the number of inches installed. Instead, installers must use the R-value data provided by manufacturers, which will be based on representative thickness testing in accordance with the Rule.

D. *Insulation Advertisements.* 1. *Claims that trigger R-value disclosures.* When this rule was proposed, the Commission solicited comments concerning the circumstances under which insulation advertisements should be required to disclose R-value, thickness, and coverage area information.(*374*) The record evidence on this point indicates that there are several circumstances under which advertising disclosures are necessary.

First, the evidence shows that thickness and R-value must always go hand in hand. A thickness disclosure is necessary before consumers can evaluate products with the same R-value, since different materials provide the same R-value at disparate thicknesses.(*375*) Conversely, a thickness representation leads consumers to believe, mistakenly, that insulation materials can be evaluated without reference to their R-values. The Commission believes that a reference to either of these product attributes, thickness or R-value, without mentioning the other, is unfair and deceptive to consumers. Sections 460.18 (a) and (c) of the Rule therefore require that an ad which states the product's thickness must disclose the corresponding R-value, and that an ad which states the product's R-value must disclose the corresponding thickness.

The Commission also sought comment on the question whether a statement of an insulation material's price in an ad should trigger additional disclosures.(*377*) Based on the record evidence, the Commission concludes that a price claim, standing alone, is both unfair and deceptive. For example, a consumer cannot evaluate the significance of a claim that his or her attic can be insulated for "as little as $100," without knowing what R-value will be attained at that price. Moreover, even if the ad includes the price for a stated R-value and thickness, the consumer may still be misled. A very high R-value can be achieved at a very low price if, for that price, only a small area will be insulated.(*378*) Thus, the Commission's rule requires that price claims be accompanied by the R-value, thickness, and coverage area at that price.(*379*)

The proposed rule contained a provision requiring comparative claims of thermal performance to be based on equal coverage area and to include R-value, thickness, and coverage area disclosure.(*380*) As the discussion of price claims suggests, the requirement that comparisons be based on equal coverage areas is necessary to prevent unfair and deceptive comparisons. In addition, the record contains a number of examples of comparative claims which fail to disclose the R-values of the products being compared.(*381*) This is so despite general agreement that R-value is the measure of thermal performance that permits consumers to evaluate competing insulation products.(*382*) Section 460.18(d) of the Rule thus requires that ads which compare the thermal performance of one type of insulation with that of another disclose the R-value and thickness of each material.(*383*)

2. *The R-value explanation.* The proposed rule stated that, whenever an ad mentioned a product's R-value, it was required to disclose the explanation: "The higher the R-value for a given area, the more you save on fuel."(*384*) This provision was based on the Commission's belief that consumers do not understand the R-value concept, a belief which is fully supported on the record, and on the view that the market has contributed directly to this lack of understanding by failing to educate and inform consumers about insulation R-values.(*385*)

In light of this fact, there was general agreement that R-value disclosures should be accompanied by an explanation of the term.(*386*) However, the disclosure initially proposed by the Commission was criticized because it erroneously implied a direct correlation between adding insulation and saving fuel.(*387*) The explanation in the Rule now states: "The higher the R-value, the greater the insulating power. Ask your seller for the fact sheet on R-values."(*388*) The first sentence of this disclosure explains the R-value concept correctly and succinctly. The second sentence, as noted earlier, is a necessary component of the Commission's effort to provide consumers with pre-purchase R-value information.(*389*)

As initially proposed, the R-value explanation was to be required in ads for only a one-year period.(*390*) Since insulation is a very infrequently purchased commodity, (*391*) however, the Commission is uncertain that the R-value concept will become widely and permanently understood in a short period of time. Unfortunately, the record does not provide a basis for selecting a longer period of time, such as three or five years. In light of this fact, the Rule does not indicate any expiration date for the R-value explanation disclosure in ads. Nevertheless, the Commission intends to conduct a survey several years from now, and will then reexamine the need for a continuation of the R-value explanation in insulation ads.

3. *Other disclosures.* As the discussion in Section II.C.2.a noted, the R-values achieved by consumers who purchase urea-formaldehyde foam insulation will be lower than the tested R-value.(*392*) This occurs because current testing practices for these materials do not take shrinkage into account.(*393*) Absent a disclosure of the effects of shrinkage, ads that state urea-formaldehyde foam R-values will always deceive consumers. The Commission's Rule therefore requires a skrinkage disclosure, or a reduction in the claimed R-value to account for this factor,(*394*) whenever ads for the product mention its R-value.(*395*)

E. *Savings Claims.* As noted in Section I.E.2 of this statement, the evidence shows that many industry members are making savings claims for their products. Some of these claims are general in nature, stating that consumers can cut their fuel bills by installing insulation.(*396*) Others refer specifically to a dollar amount or percentage by which fuel bills can be reduced.(*397*)

It seems obvious that a consumer's purpose in buying insulation is to reduce fuel use and, consequently, fuel bills.(*398*) Savings claims, then, are not mere "puffing" by the advertiser, which no one expects the consumer to believe. Rather, the claims are designed to persuade consumers to purchase the products. Yet, because so many factors affect the savings achieved by an individual homeowner,(*399*) any savings claim is untrue with respect to many consumers. In other words, those

consumers who save will do so as a function of their own particular circumstances, and are unlikely to save the amount represented by the advertiser.(400) Moreover, as noted earlier, some consumers will save little or no fuel by adding insulation to their homes.(401)

To remedy this problem, the staff originally recommended that savings claims include a series of disclosures designed to inform consumers of the particular circumstances under which the advertised savings were achieved.(402) The Commission has decided against this approach for two reasons. First, the length and detail of the disclosures would possibly overburden the ad and, as a result, unduly discourage savings claims in advertisements.(403) Second, it could be very difficult for consumers to absorb and comprehend this amount of information in the usually modest amount of advertising space or time available to insulation advertisers, most of which (except for the mineral wool manufacturers, as discussed above) are quite small. Third, even if the staff's proposed disclosures could be adequately presented and absorbed most of the time, the Commission does not believe that consumers could use the disclosed information to evaluate the claim.(404)

Instead of the approach suggested by the staff, the Commission has adopted a much simpler and far less burdensome disclosure provision. This provision is based on the conclusion that, to remedy the deception inherent in savings claims, consumers must be told that savings depend on many factors, and what those factors are. Since a disclosure containing all of this information would be lengthy, however, section 460.19(b) of the Rule simply requires a brief statement that savings vary and a reference to the fact sheets for further information.(405) A detailed enumeration of the factors that affect fuel savings is required in the fact sheets, where space limitations are not so serious a problem.(406) The Commission believes that this disclosure provision will serve as an effective remedy for the misleading nature of savings claims, and will also contribute to the Rule's overall pre-purchase disclosure mechanism.(407)

In light of the evidence that some savings claims are unsubstantiated, and in accordance with the principles announced in the *Pfizer* decision,(408) the Rule also requires that industry members have a reasonable basis for such claims.(409) Since the record indicates that the state of the art in savings claim substantiation is developing,(410) it is not possible to specify in the Rule precisely what would be an acceptable basis for the variety of possible claims. It is clear that scientifically reliable measurements of fuel use in actual houses, or reliable computer models or methods of heat flow calculation, would meet the reasonable basis requirement imposed by the Rule. However, the Commission cautions advertisers that the language used in a savings claim will influence the level of substantiation required. Thus, an advertiser who claims that adding insulation will "slash fuel bills," or "cut fuel use in half," will be required to produce competent and reliable scientific proof that such high levels of savings will be achieved.

The record also indicates that some industry members claim that a combination of products, such as attic insulation and storm doors, will combine to reduce fuel use.(411) At least in some cases, one of the products results in substantially greater savings than the other or others in the combination.(412) Since savings claim substantiation is still a developing technology, however, it is not always possible to determine precisely how much of the savings was attributable to each product.(413) As a result, the Rule requires that savings claims for more than one product disclose the combination of products used.(414) The ad must also indicate how much of the savings came from each product. However, if the exact or approximate contributions of the products cannot be ascertained under available technologies, the advertiser may rank the products in order of their relative degrees of contribution.(415) This disclosure, while imperfect, will at least apprise consumers of the fact that not all of the products in the combination contributed equally to the savings achieved.

F. *Miscellaneous Provisions.* 1. *R-value per inch claims.* Since the record demonstrates that R-values are not linear,(416) ads, labels, and other promotional materials that express a product's thermal resistance in terms of its R-value per inch deceive consumers.(417) In addition, the Commission believes that references to the R-value for a one-inch thickness of the material will encourage consumers to think that it is appropriate to multiply this figure by the desired number of inches, as though the R-value per inch was constant. Section 460.20 consequently prohibits unqualified R-value per inch claims or references to the R-value for one inch of the material, unless the product is recommended for use at a one-inch thickness(418) or actual test results prove that its R-value per inch does not drop at increased thicknesses. However, the section provides an alternative to industry members who wish to refer to a product's R-value per inch. The Rule permits these industry members to state a range of R-values per inch, if the claim is accompanied by an explanation of the inverse relationship between thickness and R-value.(419)

2. *Certification claims.* Although the proposed rule did not treat false governmental certification claims, ads on the record reveal that manufacturers sometimes deceptively associate their products with federal agencies.(420) While an insulation material may meet federal procurement standards, no product is certified or recommended by the government for private use.(421) The Rule therefore prohibits false representations that governmental agencies use, certify, recommend, or otherwise favor a product, or that the product complies with a government standard or specification.(422)

3. *Tax claims.* The record also contains evidence that industry members deceptively suggested to consumers that products were eligible for federal tax credits before the tax credit had been passed by Congress.(423) In addition, now that the tax credit legislation is in effect, the Commission is concerned that some products which are not eligible for tax credits may be advertised deceptively. The Commission therefore concludes that it is necessary to prohibit false claims that a product is eligible for tax credits. This conclusion is reflected in § 460.22 of the Rule.

4. *Clear and conspicuous requirement.* Section 460.10 of the Rule restates the Commission's long-standing view that affirmative disclosures must be made clearly and conspicuously, if they are to remedy the unfair or deceptive practices to which they relate. The determination that a disclosure is clear and conspicuous rests on a variety of factors. However, the Rule states that, among other things, the Commission's previous Enforcement Policy Statements for Foreign Language Advertising(424) and for Clear and Conspicuous Disclosures in Television Advertising,(425) both of which are appended to the Rule, must be followed.

There is one important exception to the requirement that television advertisers must adhere to the Commission's earlier Enforcement Policy Statement. The Statement would require, for TV ads, that any disclosures mandated by the Rule be made in print

with a voice-over. Although the Commission believes that this provision generally is appropriate, the voice-over requirement must be tempered by practical considerations of the cost it imposes upon advertisers. In this case, the Commission has decided to require a voice-over only for the R-value explanation and the savings disclaimer. These are the most important disclosures in the Rule and, since they will contribute significantly to the Rule's pre-purchase disclosure scheme, they should be made in the most effective manner possible. With respect to other disclosures required by the Rule, the Commission has concluded, on balance, that the benefits provided by a voice-over would be outweighed by the costs to advertisers of complying with such a requirement.(*426*)

G. *Preemptive Effect of the Rule.* In § 460.23 of the Rule, the Commission has indicated the extent to which state and local laws and regulations are preempted by the Rule. The Commission does not believe it appropriate for it to preempt incipient efforts to experiment with alternative forms of consumer protection in areas covered by the Rule, except to the extent necessary to prevent frustration of the Commission's own efforts.

The determination that a state law does or does not "frustrate the purposes of" the Commission's Rule will not be a simple one. For example, while some additional disclosures mandated by a state law could be helpful to consumers, a state law that mandates excessive disclosures by insulation marketers could seriously disrupt the Commission's pre-purchase disclosure provisions. This is a determination that will have to be made on a case-by-case basis, as provided in the Rule. On the other hand, less stringent testing requirements for insulation materials would clearly be preempted by § 460.23(b).

The Commission has specified in § 460.23(b) of the Rule that state or local governmental entities may petition the Commission, for good cause, to obtain an exemption for statutory or regulatory provisions that would otherwise be preempted. Any action by the Commission to grant such an exemption petition will be conducted in accordance with 5 U.S.C. section 553.(*427*) It should be emphasized that only state or local governmental entities may request exemptions under § 460.23(b). Insulation manufacturers and other private parties may not avail themselves of this process. Since the determination to grant an exemption will necessarily place the primary enforcement burden on the state to enforce its provision, the decision to seek an exemption should be made solely by the state entity involved.(*428*)

H. *Economic Impact on Small Businesses and Consumers.* The Commission's objective in fashioning a final rule in this proceeding has been wherever possible, to select the least restrictive alternative for providing essential information and protection to the insulation consumer. Based on the proposals and choices available to it, the Commission believes that it has been successful in achieving this goal. As a consequence, the Rule generally provides significant benefits to both consumers and competitors, at a minimal cost to the industry. In this regard, this section briefly sets forth the benefits and burdens likely to be associated with the Rule.

One cost associated with the Rule derives from the testing provisions. Some manufacturers are already testing at representative thickness, in conformance with the tests prescribed by the Rule. The record indicates that these tests are not unduly expensive.(*429*) In addition, several other manufacturers also have already been testing their R-values, but under different procedures than those required by the Rule. However, there is no reason to believe that compliance with the required tests will impose significantly higher costs than those associated with thin-sampling testing. In short, testing is an inherent burden assumed by a manufacturer who wishes to market an insulation product, and frequently is already done to meet the requirements of many existing industry and governmental specifications, such as the federal government's procurement specifications. Further, since the 60-day retesting provision originally recommended by the staff has been deleted, the Commission does not believe that the testing requirements will impose significant new costs on manufacturers. Nor are the Rule's recordkeeping requirements apparently considered burdensome by industry members; no participants commented on the recordkeeping provisions of the rule initially proposed by the Commission.

On the other hand, home insulation consumers will derive considerable benefit from the testing provisions. R-value claims will now reflect, as accurately as current technology permits, the effects of temperature, increased thickness, settling, shrinkage, and aging on the thermal performance consumers can expect. In addition, all R-values will be determined on a standardized basis, so that competing products can be compared and rationally evaluated by consumers. Without these Rule provisions, many consumers will continue to make erroneous and costly purchasing decisions, because the R-values they are comparing will not be comparable. With standardized, comparative R-value information, consumers will be better able to select the product with the optimal R-value for their needs. Further, in many cases, R-value competition also should redound to the benefit of smaller manufacturers whose products often compare well on an R-value basis with those manufactured by the dominant members of the industry. As a result, the Rule should provide real market incentives to small manufacturers and enhance competition throughout the industry.

The advertising disclosure provisions also do not impose substantial costs on industry members. The disclosures originally recommended by the staff have been pared down to their essentials, particularly in the area of savings claims. The result is a minimum intrusion on advertising space and time.

The benefits of the advertising provisions are that they eliminate unfairness and deception in the marketplace. Generally, they ensure that consumers have an opportunity to understand and evaluate claims that would otherwise lead to misguided purchasing decisions. For the reasons stated above, they also should allow smaller industry members to compete more effectively with the largest members of the industry. The R-value explanation for advertisements is somewhat different, however. Insofar as it explains the meaning of R-value to consumers, it is a subsidiary disclosure, which is needed to make the R-value disclosure itself meaningful. Insofar as it directs consumers toward fact sheets, it substitutes for a more detailed and costly scheme to ensure that home insulation purchasers get the pre-purchase information they need.

Thus, to the extent that there is a significant new cost placed on industry members under the Rule, it arises in the context of the labeling requirements, and particularly with respect to fact sheets. Most manufacturers already label their products with some information, and many of them follow the federal specification labeling requirements with which the Rule coincides. Thus, while new labels will be required initially, continuous relabeling should not be necessary. In fact, industry members gave strong support to the labeling requirement.(*430*)

and apparently do not view the initial relabeling cost as burdensome.

The fact sheet provision, however, imposes a new cost on manufacturers. As originally recommended by the staff, this requirement could have been very costly, for a number of reasons. First, separate fact sheets would have been required not only for each different product, but for varying sizes of the same product. Second, the coverage chart data on the fact sheets would not always have been identical to that on the product's label. As a result, many manufacturers would have been forced to generate new data in order to comply with the fact sheet requirement. Third, the staff recommended that each consumer be given at least one fact sheet, and suggested that a fact sheet might be needed with each *package* of insulation sold.(*431*)

In response to comments on the staff's recommendations, and out of its own concern to minimize any compliance costs associated with the Rule, the Commission has modified the fact sheet sections. As noted earlier, the coverage chart data on fact sheets is identical to that on the product's label so that any costs of generating new information have been eliminated. The Rule also permits consolidation of fact sheets for similar products, thus reducing the number of different fact sheets that any individual manufacturer must produce. Moreover, the Rule will not require that each individual consumer be given a fact sheet. Rather, under the modified binder system approach adopted by the Commission, a relatively small number of fact sheets would suffice for binder purposes. Indeed, for the small businesses which operate in localized areas, a handful of fact sheets may be enough. Based on its experience under the Warranty Rules,(*432*) the Commission believes that the cost of preparing and distributing fact sheets, for any individual manufacturer, will not be burdensome.

The benefits derived from fact sheets, as noted earlier, are that consumers will be provided with information which the record shows is essential in the context of a home insulation purchasing decision. Through this provision of the Rule, consumers will have available to them a tool that permits them to compare the thermal performance features of insulation materials based on full and complete information, and thereby to participate effectively in the national program of energy conservation.

I. *Readability of the Rule.* With the adoption of this Rule, the Commission again realizes its goal of writing understandable regulations.(*433*) The Commission has for some time required that disclosures to consumers be written in plain and easily understandable language. Likewise, the consumer disclosures required under this Rule for fact sheets and advertisements have been carefully written and reviewed by readability experts to ensure that the intended message will be conveyed in a clear and succinct manner.

Of even greater significance, however, is the fact that the Rule itself is written in understandable language. This reflects the Commission's commitment to the principle that regulations which apply to the actions of small businesses should be readily understood by such persons. After reviewing the language of the Rule carefully, the Commission is convinced that its provisions will be understood by the affected industry members.

Footnotes

1. 42 FR 59678 (1977).
2. 16 CFR 1.20 (1978).
3. 42 FR 59678, 59679 (1977). The most significant departure from previous rulemaking procedures was the abandonment of the two-notice procedure for the designation of disputed issues of material fact. For a discussion of this point and of the other procedures followed, see Report of the Presiding Officer on Proposed Trade Regulation Rule Concerning Thermal Insulation 1–4, 7–8 (1978) [hereinafter cited as Presiding Officer's Report].
4. *See* Presiding Officer's Report at 3–4.
5. 42 FR 59678 (1977).
6. *Id.; see* Presiding Officer's Report at 6. A transcript of the proceedings was filed in Category L of the rulemaking record, and appears in volumes 215–59–1–2–8 through 215–59–1–2–21.
7. *See* Presiding Officer's Report at 4.
8. *Id.* at 5–6.
9. The designated groups were as follows: (1) Consumer Group; (2) Environmental Group; (3) Cellulose Group; (4) User Group; (5) Mineral Wool Group; (6) Plastics Group; (7) Government Group; (8) Urea-formaldehyde Foam Group; and (9) Aluminum Group. *Id.*
10. Federal Trade Commission, Bureau of Consumer Protection, Staff Report on Labeling and Advertising of Home Insulation and Proposed Trade Regulation Rule (1978) [hereinafter cited as Staff Report]. For the sake of convenience, many of the citations in this Statement are to the Staff Report. However, the Commission notes that the Staff Report recounts and summarizes the record evidence.
11. *See generally* Presiding Officer's Report at 8–22.
12. 42 FR 59678, 59684–85 (1977).
13. 43 FR 32142 (1978).
14. 43 FR 37203 (1978).
15. These comments were filed in Category P of the rulemaking record, and appear in volumes 215–59–1–2–26 through 215–59–1–2–8.
16. 16 CFR 1.13 (1978) authorized oral presentations to the Commission in rulemaking proceedings. *See* 43 Fed. Reg. 51038 (1978). Although the oral presentation meeting was originally scheduled for November 15, 1978, several participants requested an extension of time in order to prepare for the meeting. *See* motions of Aluminum Ass'n and Borden, Inc., A–13; Environmental and Consumer Groups, A–14. To give the participants an opportunity to digest the staff's recommendations completely, the Commission postponed the meeting until November 21, 1978. *See id.*
17. With the exception of reflective foil, all of the insulations covered by the rule are "mass" insulations. Staff Report at 6.
18. *Id.* at 61.
19. *Id.* at 7 n.14.
20. *Id.* at 6–7; Final Trade Regulation Rule § 460.2 [hereinafter cited as TRR].
21. The term "retrofit" refers to applications in which insulation is added to a house that is already occupied.
22. Staff Report at 7–9.
23. *Id.* at 10–13.
24. *Id.* at 20–21.
25. *Id.* at 15–18.
26. *Id.* at 14–15.
27. *Id.* at 19.
28. *Id.* at 19–20.
29. *Id.*
30. *Id.* at 8; *see id.* at 11.
31. *See id.* at 11, 12.
32. *See id.* at 10, 15–18, 20, 21.
33. These procedures are discussed in greater detail in Section II.B, *infra.*
34. Staff Report at 26.
35. *Id.*
36. *Id.;* Tye, M/809.
37. Tye, M/809.
38. Staff Report at 27.
39. *Id.* at 34.
40. *Id.* Industry members agreed that a product's R-value can be raised 10–30% by decreasing the temperature to which the material is exposed. *Id.* n.220.
41. *Id.* at 63–64.
42. *Id.*
43. *See id.* at 194–95.
44. *Id.* at 33.
45. *Id.* at 33–34.
46. *See id.* at 33; Polycell Industries, Inc., P–69 at 5.
47. Staff Report at 34.
48. *Id.* at 33.
49. *See, e.g.,* Dow Chemical Co., P–61 at 7; Naval Construction Battalion Center, P–70 at 1; California Energy Resources Commission, P–82 at 1. Under this procedure, the test sample is aged for 90 days at 140°F, under conditions of intended use. HH–I–530A, ¶4.6.4, L/3227, 3236.
50. Staff Report at 31–32.
51. Owens-Corning Fiberglas Corp., L/222, T/123, P–96 at 39.
52. Staff Report at 37.
53. *Id.*
54. *Id.*
55. *Id.* at 63.
56. *Id.*
57. *Id.* GSA has proposed a new specification for loose-fill mineral wool, which includes a settled density test. *Id.* n. 398. Despite the absence of an accepted settling procedure for their products, the mineral wool manufacturers contend that the coverage charts on their package labels take settling into account. According to these

manufacturers, if the material is installed in accordance with the coverage chart, the represented R-value will be attained. *See* O. Richards, T/130–31; Mineral Insulation Manufacturers' Ass'n, P–79 at 7–8; Owens-Corning Fiberglas Corp., P–96 at 37–38.

58. This document is HH–I–515D, L/3131.

59. *Id.* ¶ 4.5.1, L/3135–36.

60. Staff Report at 44.

61. *Id.*

62. *Id.*

63. *Id.* at 46.

65. *Id.* at 47.

66. *Id.* at 48–49.

67. *Id.* at 49.

68. *Id.* at 49–50.

69. *Id.* at 50–52.

70. *Id.* at 50–51.

71. *Id.* at 50 nn.333–34.

72. *Id.*

73. *Id.* at 51.

73a. For example, the temperature and humidity at the time of installation, as well as the quality of the on-site formulation and application, can affect the level of shrinkage. *See id.* at 45.

74 *Id.* at 53.

75. *Id.*

76. *Id.*

77. *Id.* at 53–54.

78. *Id.* at 58.

79. *Id.* at 55, 57–58.

80 *Id.* at 57.

81. The term "derating" refers to a reduction in the tested R-value of a product.

82. *Id.* at 58.

83. *Id.*

84. *Id.* at 59.

85. *Id.* at 1.

86. *Id.*

87. Energy Tax Act of 1978, Pub. L. No. 95–618, § 101, 92 Stat. 3174 (1978). Purchasers of specified energy conservation measures are entitled to a tax credit in the amount of 15% of the first $2,000 expended.

88. National Energy Conservation Policy Act, Pub. L. No. 95–619, § 212, 92 Stat. 3211 (1978).

89. *See* Staff Report at 110–11.

90. Energy Conservation in Existing Buildings Act of 1976, 42 U.S.C. §§ 6861 *et seq.* (1976), *as amended by* National Energy Conservation Policy Act, Pub. L. No. 95–619, § 231, 92 Stat. 3224 (1978). The Farmers Home Administration is now developing a similar program for low-income families in rural areas. National Energy Conservation Policy Act, Pub. L. No. 95–619, § 232, 92 Stat. 3226 (1978).

91. *See* HUD, Interim Rule on Increases in Thermal Requirements for HUD Minimum Property Standards, 44 Fed. Reg. 22444 (1979); FMHA, Thermal Performance Standards, 42 Fed Reg. 56444 (1977).

92. Staff Report at 5.

93. *Id.*

94. *Id.* at 101.

95. *Id.*

96. *Id.*

97. *Id.* at 101–02.

98. *Id.* at 5.

99. *Id.* at 103.

100. *Id.*

101. *Id.* at 101, 113. One participant suggested that insulation purchases could cost between $400 and $1,600. California Dep't of Consumer Affairs, L/1655.

102. Staff Report at 114.

103. *Id.* at 108–09, 114–15.

104 Proposed Rule § 460.4(a), 42 FR 59678, 59680 (1977).

105. *See Id.* at 59691.

106. Staff Report at 208009.

107. *Id.* at 105–06.

108. *See generally id.* at 7–21.

109. *See* text accompanying note 137 *infra.*

110. W. R. Grace & Co., I/316; *see* Staff Report at 208–09.

111. *See* Staff Report at 116–19.

112. *Id.* at 117–18.

113. *Id.* at C–1.

114. *See* Environmental Group, M/509–14.

115. *Id.* at 511.

116. Staff Report at 106.

117. Rather than restraints, there have been pressures to disclose R-value emanating from a few trade associations and the General Services Administration. *See id.* at 155–56, 168–71. As the record shows, these pressures have been largely ineffective.

118. *See* text accompanying note 88 *supra.*

119. *See* Statement of Basis and Purpose, Trade Regulation Rule Concerning Unfair or Deceptive Advertising and Labeling of Cigarettes in Relation to Health Hazards of Smoking, 29 FR 8324, 8355 (1964); FTC v. Sperry & Hutchinson Co., 405 U.S. 233, 244–45 & n.5 (1972).

120. *See* Section III.B.1, *infra.*

121. The Commission recognized the economic injury that derives from consumer search in Pfizer, Inc., 81 F.T.C. 23, 61–62 (1972).

122. *See id.* at 62–63.

123. Staff Report at 208–09.

124. *See, e.g.*, Fair Packaging and Labeling Act, 15 U.S.C. §§ 1451 *et seq.* (1976) (label disclosures of package contents); Truth-in-Lending Act, 15 U.S.C. §§ 1601 *et seq.* (1976) (consumer credit disclosures); Interstate Land Sales Full Disclosure Act, 15 U.S.C. §§ 1701 *et seq.* (1976) (disclosure of facts regarding land offered for sale); Securities Act of 1933, 15 U.S.C. §§ 77a *et seq.* (1976); Securities Exchange Act of 1934, 15 U.S.C. § 77b (1976).

125. *See* Statement of Basis and Purpose in Trade Regulation Rule Concerning Advertising of Ophthalmic Goods and Services, 43 FR 23992, 24001 (1978).

126. This strong public policy has been articulated in many places, including the Energy Policy and Conservation Act, 42 U.S.C. §§ 6201 *et seq.* (1976); Energy Conservation and Production Act, 42 U.S.C. §§ 6801 *et seq.* (1976); Petroleum Marketing Practices Act, 15 U.S.C. 2801 *et seq.* (Supp., 1979); National Energy Conservation Policy Act, Pub. L. No. 95–619, 92 Stat. 3206 (1978).

127. It is interesting to note that Congress has, on several occasions, chosen to promote energy conservation through required informational disclosures to consumers. *See, e.g.*, Rules Governing the Certification and Posting of Octane Ratings Under Title II of the Petroleum Marketing Practices Act, 16 C.F.R. Part 306 (1979); Proposed Rules for Disclosure of Energy Cost and Consumption Information in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act, 43 FR 31806 (1978).

128. Statement of Basis and Purpose of Trade Regulation Rule for the Prevention of Unfair or Deceptive Advertising and Labeling of Cigarettes in Relation to the Health Hazards of Smoking 88–89 (1964), and cases cited herein.

129. *See* Staff Report at 26–27, 208009, 241–42; Council of Better Business Bureaus, L/1287; SAI Corp., T/2066; Cellutron Products Corp., T/2690.

130. Advertisements, H/1052; H/1071; H/1082; H/1110; H/1145; H/1148; H/1155; H/2097; M/559; M/560; M/561; M/564; M/565; M/649; M/1209; M/1210.

131. *See* text accompanying notes 114–16 *supra.*

132. *See* Environmental Group, M/509–14.

133. *See* Staff Report at 101.

134. Approximately two-thirds of the home insulation market is held by the 3 fiberglass manufacturers. *See* Staff Memorandum to Commission, dated January 11, 1979, at 1. Most of the insulation produced by these companies is in the form of batts and blankets of specified thicknesses. *See* Staff Report at 7.

135. Sources cited note 129 *supra.*

136. *See generally* Staff Report at 7–21.

137. At a cost of $100, a consumer might be able to insulate 50 square feet of space to a level of R–10, or 100 square feet to a level of R–5, or 200 square feet to a level of R–2.5.

138. Staff Report at 120–22.

139. *Id.* at 121.

140. *Id.* at 121–23.

141. *Id.* at 61–62, 122.

142. Advertisements, M/1071; M/1092; M/1105; M/1109; M/1111; M/1127; M/1185.

143. Staff Report at 122–23.

144. *Id.* at 123.

145. *Id.* at 126–28.

146. *See id.*

147. *See* text accompanying notes 111–15 *supra.*

148. Staff Report at 106.

149. *Id.* at 123.

150. The specific circumstances in which the R-value explanation must appear are discussed later in this Statement.

151. Section 18(a)(1)(B) of the FTC Act states that the Commission's rulemaking authority includes the authority to impose "requirements prescribed for the purpose of preventing" unfair or deceptive acts or practices.

152. Staff Report at 129, C–2.

153. *Id.* at 130–31.

154. *Id.*

155. *Id.*

156. *Id.* at 108.

157. *Id.* at 109, 133–35, C–2.

158. *See id.* at 133–35, C–2.

159. *Id.* at 107. Several participants suggested that, under certain circumstances, adding insulation could actually increase fuel costs. *See* National Ass'n of Home Manufacturer, T/1338–40; Brick Institute of America, P–98 at 4. Others agreed that once a minimum level of insulation is achieved, the savings that can be derived from additional insulation is negligible or non-existent. *See* Consumers Union, D/11; Chevron Study, H/1622–24; Dow Chemical Co., I/245–46; Mobay Chemical Corp., I/415; National Ass'n of Home Manufacturers, L/199; Council of Better Business Bureaus, L/1288; Environmental Group, L/1604; National Consumers League, L/1714; Consumer

Federation of America, L/5149; Arizona Consumers Council, T/1792; Cellulose Insulation Manufacturers' Ass'n, T/2748.

160. Staff Report at 140.

161. *Id.*

162. *See id.*

163. *Id.* at 142.

164. *Id.*

165. The volume of consumer complaints unearthed in this proceeding was relatively small. *See id.* at 104–05. However, home insulation is not the kind of product that can be readily evaluated even by knowledgeable consumers, and few consumers are informed concerning product attributes. *See* text accompanying notes 101–03 *supra*. As a result, state consumer protection officials generally agreed that, in this industry, the volume of consumer complaints is a poor indicator of the prevalence of consumer abuses. *See* Staff Report at 104–05.

166. The record contains a great deal of such promotional material. *See* Staff Report at App. C, App. D.

167. *Id.* at 179 nn.1167–68.

168. *See* text accompanying notes 86, 92–93 *supra*. This figure does not even include the numerous consumers who buy insulation in other ways, such as through the purchase of a new home.

169. TRR § 460.2. Several participants suggested that the Commission exclude new homes from the scope of its Rule. The Commission has decided to include new homes, for the reasons discussed in Section III.C.3, *infra*.

170. Pipe insulation, which has unique qualities and is generally installed only by professionals, is excluded from the Rule. TRR § 460.2; *see* Staff Report at 21–22, 188. Similarly, of the various kinds of duct installation, only duct wrap is used extensively in the residential setting. *See id.* at 7 n.13; Owens-Corning Fiberglas Corp., P–96 at 5–6. As a result, § 460.2 of the Rule excludes all kinds of duct insulation other than duct wrap.

171. Staff Report at 186 n.1196. For a discussion of these products, see *id.* at 22–25.

172. *See id.* at 19; 3M Company, I–14.

173. 42 F. R. 59678 (1977).

174. Section 460.3 clarifies who is covered by the Rule. In general, all members of the home insulation industry, including utility companies and trade associations, are covered by the Rule. In addition, advertising agencies, testing labs, and sellers of new homes are covered, insofar as they are engaged in activities in the home insulation area.

175. The Commission has determined, in other contexts, that one who furnishes retailers with the means of deceiving the public violates the FTC Act. *See, e.g.*, Baltimore Luggage Co. v. FTC, 296 F.2d 608 (4th Cir. 1961); Clinton Watch Co. v. FTC, 291 F.2d 838 (7th Cir. 1961); Riviera Trading Corp., 63 F.T.C. 114 (1963). The last paragraph of § 460.4 clarifies the application of this priniciple to testing labs with respect to testing services that they perform for manufacturers. They must follow the provisions of the Rule when they test home insulation materials. The assumption behind this provision is that test results supplied by a lab will be used as the basis for a manufacturer's claims. However, a manufacturer may wish to depart from the testing procedures at times, in order to observe the product's performance under specified conditions. Section 460.4 permits such activities by testing labs, as long as they have been informed in writing that promotional materials for the insulation will not be based on the test results.

176. *See* Owens-Corning Fiberglas Corp., P–96 at 7–8.

177. Staff Report at 69, 190; *see* Initial Staff Memorandum, B–1 at 4.

178. Staff Report at 190.

179. *Id.* at 34–35, 194.

180. *See id.* at 33–34, 42–43, 53–60, 63, 195, 228.

181. Staff Report at 67, 190–191.

182. Thus, the testing requirement imposed here is consistent with the Commission's position in Pfizer, Inc., 81 F.T.C. 23 (1972). There, the Commission held that it was both unfair and deceptive, within the meaning of section 5 of the FTC Act, for an advertiser to make a claim for which the advertiser did not have substantiation at the time the claim was made. *Id.* at 64. In fact, the *Pfizer* opinion emphasized that the unfairness of not having substantiation was particularly evident in the case of complex products, with respect to which consumers cannot practically ascertain the truthfulness of claims before sale. *Id.* at 61.

183. In addition to these test methods, the proposed rule also allowed the use of ASTM C653 and C687, test standards specially designed for low-density blanket and loose-fill insulations. 42 Fed. Reg. 58678, 59679 (1977). In light of the record evidence that these standards are not longer appropriate means of determining R-value, *see* Staff Report at 191, they have been deleted from the Rule. The proposed rule also specified ASTM C335 and C691 for pipe insulations. 42 Fed. Reg. 59678, 59679 (1977). Since pipe insulation have been excluded from the Rule's coverage, these tests have been deleted. *See* note 171 *supra*.

184. For a discussion of the ASTM procedures for adopting test standards, see Staff Report at 65; Tye Report, H/1916; Tye, T/215–19. Until now, the use of these test methods has been strictly voluntary. Staff Report at 66.

185. Staff Report at 66.

186. *Id.* However, the "calibrated hot box," when it becomes an ASTM standard test method, will take transient environmental factors into account. *Id.* at 84–85. Since the record indicates that this test method will provide the most accurate R-values possible, *id.*, § 460.5(a) of the Rule states that the calibrated hot box will be a permissible test method once it becomes an ASTM standard test method.

187. Staff Report at 66.

188. *Id.* at 67.

189. For a discussion of the specific levels of accurary and reproducibility for C177, C518, and C236, see *id.* at 70–71, 74–77.

190. A "systems" test is one in which an assembly of materials, such as a built-up wall section, is tested. In contrast, the C177 and C518 methods are used to test only the insulation material itself.

191. ASTM C236 is discussed in Section II.B.3, *infra*, which covers the R-value testing requirements for foil insulations.

192. *See* Sections I.C.1, II.B.1.c, *supra*.

193. Contrary to allegations made during the proceeding, the 1976 revisions to C177 and C518 were not suspended and are currently in effect. Staff Report at 81.

194. *Id.* at 62, 68.

195. "Representative thickness," as defined in the test methods and in § 460.6 of the Rule, means a thickness at which the material's R-value per unit will vary no more than ±2% with increases in thickness.

196. Staff Report at 192.

197. *See id.* at 192–93; U.S. Gypsum Co., P–41 at 3; Dow Chemical Co., P–61 at 7; Johns-Manville Sales Corp., P–64 at 2–5; Rock Wool Mfg. Co., P–89 at 2; Oren Corp., P–94 at 1; Owens-Corning Fiberglas Corp., P–96 at 8–11, 13; CertainTeed Corp., P–100 at 3–4; NAHB Research Foundation, P–105 at 2–3.

198. Staff Report at 192–93; *see* U.S. Gypsum Co., P–41 at 3; Dow Chemical Co., P–61 at 7; Johns-Manville Sales Corp., P–64 at 2–5; Rock Wool Mfg. Co., P–89 at 2; Owens-Corning Fiberglas Corp., P–96 at 13; CertainTeed Corp., P–100 at 3–4, NAHB Research Foundation, P–105 at 2–3.

199. *See* R.P. Tye, T/204, M/717.

200. *See* Staff Report at 82–83; Johns-Manville Sales Corp., P–64 at 4. This was the variation between the results achieved by Dynatech Laboratories and the National Research Council of Canada. *Id.* However, the variation between the results achieved by Dynatech and the other American labs was approximately 1.5%. *See* R.P. Tye, M/717.

201. Staff Report at 82–83,

202. *Id.*

203. *Id.* at 26–27; R.P. Tye, M/718, 809.

204. *See* Staff Report at 83–84, 193. *See generally* Section II.B.5, *infra*.

205. For example, despite the staff's earlier recommendation that representative thickness testing be implemented immediately, the representative for cellulose manufacturers commented only that a delay was needed so that manufacturers could complete their initial round of representative thickness testing. Cellulose Insulation Manufacturers' Ass'n, P–88 at 4. Manufacturers in other segments of the industry also did not question the propriety of a representative thickness testing requirement.

206. *See* ASTM C687–71, Standard Recommended Practice for Determination of the Thermal Resistance of Low-Density Fibrous Loose Fill-Type Building Insulation, H/458. Thus, the witness for Johns-Manville testified that the company's loose-fill product is normally tested at a 6-inch thickness, and that these tests form the basis for the company's R-value claims to consumers. T/476–77. Similarly, Rockwool Industries tests its loose-fill at a representative thickness. L/4657–58.

207. *See* ASTM C739–73, Standard Specification for Cellulosic Fiber (Wood-Base) Loose-Fill Thermal Insulation, L/2076; National Cellulose Corp., L/4758–59.

208. *See, e.g.*, Johns-Manville Sales Corp., T/468, 478. In fact, both ASTM C687 and C739 indicate that, if a C518 apparatus is used to test thick samples, it should be correlated

with results obtained on C177 or C236 equipment.

209. Use of Materials Bulletin No. 74, ¶6.2.7, 42 Fed. Reg. 55143, 55145 (1977), L/3109, 3111.

210. *See* note 207 *supra;* C. Shirtliffe, M/814.

211. *Id.;* R.P. Tye, M/716.

212. Staff Report at 193; *see* U.S. Gypsum Co., P–41 at 3; Dow Chemical Co., P–61 at 7; Rock Wool Mfg. Co., P–89 at 2; Oren Corp., P–94 at 1; Owens-Corning Fiberglas Corp., P–96 at 10–11; CertainTeed Corp., P–100 at 3–4.

213. Staff Report at 193.

214. *Id.*

215. *Id.*

216. For example, most cellular plastics boardstock is produced in thicknesses of only an inch or two. Urea-formaldehyde foam typically is installed at a thickness of about 3½ inches. Moreover, the effect of thickness of R-value may level off, for some products, at only a few inches. Thus, R-value tests at greater thicknesses would not be required for these products.

217. *See, e.g.,* R.P. Tye, T/250.

218. Staff Report at 199–202; *id.* at A–3, § 460.7. For further discussion of this point, see text accompanying notes 264–68 *infra.*

219. *See, e.g.,* Cellulose Insulation Manufacturers' Ass'n, P–88 at 4; CertainTeed Corp., P–100 at 6.

220. *See* Staff Memorandum of November 3, 1978, to Commission, Attachment B.

221. Staff Report at 63–64, 194; *see, e.g.,* Polymer Building Systems, P–12 at 1; SPI, P–46 at 4; Environmental Group, P–48 at 4–6; Dow Chemical Co., P–61 at 7; Jim Walter Corp., P–63 at 4; Naval Construction Battalion Center, P–70 at 1; Roy & Sons, Inc., P–87 at 1; R.P. Tye, P–92 at 3.

222. Staff Report at 194–95; *see* Warren Sales Corp., P–6 at 1; Southern Ohio Foam, P–14 at 1–2; ENFO Environmental Systems, P–43 at 1; Polycell Industries, P–69 at 1–3; BASF Wyandotte Corp., P–97 at 2–3.

223. *See* sources cited note 222 *supra.*

224. Post-record comment of Dow Chemical Co., P–61 at 7.

225. Suggested lower temperatures included 25°F, 40°F, and 45°F. *See* Warren Sales Corp., P–6 at 1; Jim Walter Corp., P–63 at 4; Dow Chemical Co., P–67 at 7. *See also* Staff Report at 195.

226. Of course, this means that R-values disclosed to consumers in labels, fact sheets, and ads must be the R-values as tested at 75°F.

227. Staff Report at 195.

228. The aging requirement initially recommended by the staff applied to all types of polystyrene insulation. However, the provision has been limited to extruded polystyrene in light of post-record comments that it is the only type that ages significantly after manufacture. *See, e.g.,* ENFO Environmental Systems, P–43 atl; SPI, P–46 at 6.

229. "Accelerated aging" involves aging the product for 90 days at 140°F in the form of intended use. *See* GSA Specification HH–I–530A, ¶ 4.6.4, L/3227, 3236; Naval Construction Battalion Center, P–70 at 1; California Energy Resources Commission, P–82 at 1; Dow Chemical Co., P–61 at 7. This accelerated aging process reflects expected performance after 5 years of use. *Id.*

230. *See* U.S. Mineral Products Co., P–11 at 1; Dow Chemical Co., P–61 at 7; Naval Construction Battalion Center, P–70 at 1; California Energy Resources Commission, P–82 at 1.

231. Oral presentation of Society of the Plastics Industry, Inc., Transcript at 55–56.

232. Staff Report at 33.

233. *Id.* at 42–43.

234. HH–I–515D, ¶ 4.5.1, L/3135–36. This specification was pending at the time of the hearings, but was published by GSA in June.

235. Staff Report at A–6, § 460.15(d); *id.* at A–9, § 460.20(f).

236. Staff Report at 63; *see* Naval Construction Battalion Center, P–70 at 2; Oren Corp., P–94 at 2.

237. *See* note 57 *supra* and accompanying text.

238. TRR § 460.5(a).

239. GSA has proposed an amendment that would incorporate a settled density test procedure into its specification for loose-fill mineral wool. HH–I–1030B, L/3272.

240. Staff Report at 76–77. For a discussion of the operation, accuracy, and reproducibility of this method, *see id.* at 77–78.

241. *Id.*

242. The test must be conducted at a mean temperature of 75°F, with a temperature differential of 30°F. TRR § 460.5(b).

243. Staff Report at 196.

244. *Id.* at 197.

245. *Id.*

246. *Id.*

247. The emissivity value of a reflective material represents its ability to retain heat. It has a significant impact on the thermal resistance that is achieved. *See id.* at 19.

248. *Id.* at A–2, § 460.5(a)(3); *see id.* at 196–97.

249. This recommendation received further support in the post-record comments. Simplex Products Group, P–5 at 1.

250. Staff Report at 196–97.

251. *See* Aluminum Ass'n, P–49 at 1; Johns-Manville Sales Corp., P–46 at 2; U.S. Fiber Corp., P–67 at 3; Insulation Contractors of America, P–77 at 3; Rockwool Industries, Inc., P–104 at 4.

252. U.S. Fiber Corp., P–67 at 3. The Aluminum Association suggested in its post-record comment that C835 might be referenced in place of C445. P–49 at 1. However, during its oral presentation to the Commission, the Association recommended that the Rule require emissivity testing under E408 or a comparable method. Transcript at 104–05.

253. The Rule also states that the R-value derived from the ASHRAE tables for a single sheet of aluminum foil must be the R-value listed at 50°F, with a temperature differential of 30°F. The ASHRAE tables do not list a single airspace R-value at 75°F, and this alternative temperature is supported by the record. *See* Staff Report at 197–98. *See also* oral presentation of Aluminum Ass'n, Transcript at 105.

One commenter pointed out that when aluminum foil insulation is installed on the exterior of a wall that already has at least R–11 insulation in it, the temperature differential is less than 30°F. While this may be true, it would be impossible to predict in advance whether the particular insulation product will be installed in such a wall. In other words, the same reasons that support a single test temperature standard, despite the fact that it does not always represent actual environmental conditions, also support the 30°F temperature differential provision.

254. Facings are often used on mineral wool batts and blankets, and on exterior sheathing insulations. *See* Staff Report at 19.

255. For example, if the material R-value of a foam board is 4.0, the system R-value provided by insulation of the board in conjunction with a one-inch airspace would be approximately 6.0 for a wall application. *See* ASHRAE Handbook, H/1272–73.

256. Materials with foil facings must be tested alone (excluding any airspaces) in accordance with § 460.5(a) of the Rule, to establish the material R-value.

257. These alternatives were suggested in the post-record comments. SPI, P–46 at 3–4; Dow Chemical Co., P–61 at 6; Jim Walter Corp., P–63 at 3.

258. SPI, P–46 at 3–4; Dow Chemical Co., P–61 at 6.

259. Staff Report at 198.

260. The ASTM consensus process gives industry members an opportunity to keep abreast of, participate in, and plan for prospective changes in the ASTM test methods. *Id.* at 199. Similarly, changes in the GSA specifications are made with the knowledge and technical assistance of the affected industry. As a result, the Commission believes that, except under unusual circumstances, 90 days will provide industry members with enough time to come into compliance with a test change.

261. Section 18(d)(2)(B) of the FTC Act states: "A substantive amendment to . . . a rule promulgated under subsection (a)(1)(B) shall be prescribed . . . in the same manner as a rule prescribed under such subsection."

262. Staff Report at 88.

263. 42 Fed. Reg. 59678, 59683 (1977) (question 3).

264. Staff Report at 199.

265. *See generally id.* at 88–100.

266. *Id.* at 199.

267. *Id.* at 202. The hearings indicated that periodic retesting is an effective way of detecting changes in R-value caused by production or product variations. *Id.* at 200. However, the staff's selection of a 60-day retesting period was a compromise between extremes of retesting periods that seemed either too lenient or too strict, and is reasonable in the absence of evidence providing a more precise basis for designating a retesting interval. *Id.* at 201.

268. *See, e.g.,* Incel Corp., P–13 at 1; Conwed Corp., P–65 at 2; Polycell Industries, Inc., P–69 at 4; Alfol, Inc., P–81 at 2.

269. Mineral Insulation Manufacturers' Ass'n, P–79 at 5; R.P. Tye, P–92 at 3; Rockwell Industries, Inc., P–104 at 4.

270. TRR § 460.8.

271. *See* Staff Report at 202.

272. Non-manufacturers, on the other hand, may rely on the R-value data provided by the manufacturer, unless they know or should know that the data is incorrect or not based on proper tests. TRR § 460.8.

273. *Id.* § 460.9; *see* Staff Report at 202–03.

274. *Cf.* Proprietary Vocational and Home Study Schools Rule § 438.3(f)(2), 43 FR 60796, 60819–20 (1978).

275. *See* Proposed Rule § 460.4(a), 42 FR 59678, 59680 (1977).

276. *See* Staff Report at 208–13.

277. *Id.* at 209.

278. *Id.* at A–4, § 406.14(b)(1). For air duct insulation, the staff recommended disclosure of the product's R-value and the dimensions of the package. *Id.* at A–5, § 406.14(b)(4).

279. *Id.* at A–4, § 460.14(b)(2). The same information was required to be disclosed at any additional thicknesses listed by the manufacturer. *Id.*

280. *Id.*

281. *Id.* at A–4, § 460.14(b)(3).

282. In particular, these commenters pointed out that the relevant information was not the "dimensions of the package" or "packaged thickness," but the dimensions of the material itself and the amount of material in the package. *See, e.g.*, SPI, P–46 at 11–12; Owens-Corning Fiberglas Corp., P–96 at 26; CertainTeed Corp., P–100 at 8.

283. *See, e.g.*, U.S. Fiber Corp., P–67 at 4; Mineral Insulation Manufacturers' Ass'n, P–88 at 4–5.

284. *See, e.g.*, Incel Corp., P–13 at 2; Conwed Corp., P–65 at 3; Cellulose Insulation Manufacturers' Ass'n, P–88 at 5. This position received further support from the cellulose group during the oral presentations to the Commission. Transcript at 17–18.

285. Dow Chemical, P–61 at 10.

286. Transcript at 57–60 (cellular plastics group); *id.* at 110–11 (aluminum group).

287. There is one exception to this approach. The federal specification for cellulose insulation requires disclosure of the number of bags needed to cover 1,000 square feet. HH–I–515D, ¶ 3.2(e).

While this information may be useful to consumers, the Commission does not deem it essential, since it adds little to the disclosure of the number of square feet covered by the package. In any event, some manufacturers already provide this information on their labels, *e.g.*, Fibertherm label, M/1212; Everguard label, M/1231; Monotherm label, M/1232, and the Commission's Rule will not prohibit them from continuing to do so.

288. *See* text accompanying note 278 *supra.*

289. TRR §§ 460.12(b) (4) & (7).

290. The R-value for one inch of loose-fill fiberglass is approximately 2.2, and the corresponding R-value for loose-fill rockwool is roughly 2.9. Staff Report at 7, 9. Similarly, the R-value for one inch of vermiculite is in the 2.2 range, while an inch of perlite has an R-value of about 2.7. Staff Report at 20–21; Perlite Institute pamphlet, H/669; *see* W. R. Grace & Co., T/557–58 (vermiculite R-value for one inch is 2.8 to 3.0).

291. *See* TRR § 460.12(b)(2).

292. *See id.* § 460.12(b)(5). There is an exception to this provision. The manufacturer may disclose the R-value for only one direction of heat flow, as long as the label clearly and conspicuously states that the product can only be used in that application. *Id.*

293. *See* Staff Report at 19; Jim Walter Corp., I/481, 482, 490.

294. TRR § 460.12(b)(6).

295. The dimensional disclosures are the length, width, and thickness of the insulation in the package, and the number of square feet covered by the package.

296. *See* Staff Report at 209–10.

297. *See id.* at 213–14.

298. *Cf.* TRR § 460.5(a).

299. *Id.* § 460.12(c).

300. *See* Section II.B.1.d, *supra.*

301. There was widespread support for the inclusion of a brief R-value explanation on insulation labels. Staff Report at 215. However, the disclosure originally proposed by the Commission was criticized because it implied that there is a direct correlation between adding insulation and saving fuel. *Id.* The R-value explanation was redrafted in light of these comments.

302. *Id.* at 216.

303. *See id.* at D–1, D–2.

304. Dr. Leland Gallup, I/1744, T/779, 786; Allan Ackerman, T/2529–31, M/30, 34.

305. *See* Staff Report at 149–51; Allan Ackerman, M/33.

306. Staff Report at 217.

307. *Id.*

308. TRR §§ 460.12(d) & (e).

309. The exceptions are discussed in the text accompanying notes 319–34 *infra.*

310. National Retail Hardware Ass'n, T/1503; David Reister, T/2498. Five of the 11 Washington, D.C. area stores surveyed by the Environmental Group keep all or most of their insulation stock in warehouses or other locations inaccessible to consumers. Environmental Group, M/511.

311. *See* Staff Report at 219.

312. Polystrene, polyurethane, and polyisocyanurate boardstock materials are often broken down at the retail level and sold as loose boards. W.R. Grace & Co., I/323; Dow Chemical, I/253.

313. Of course, the relevant labeling information could be stamped on each board individually. However, manufacturers contend that this would be difficult and expensive. *See, e.g.*, W.R. Grace & Co., I/324, T/591, 595–97.

314. The disclosure required by § 460.17 of the Rule occurs after the insulation has been installed. *See* Section II.C.4, *infra.*

315. TRR §§ 460.13(c)(1), 460.13(g) paragraphs 1 & 3. The fact sheets must also state the name and address of the manufacturer, information needed by the Commission for enforcement purposes. In addition, the manufacturer must indicate the type and form of the insulation. Consumers need this information in order to purchase the product. *Id.* §§ 460.13(a) & (b).

316. These products are "manufactured" from component materials at the site of application, and immediately installed by the contractor. *See* Staff Report at 14, 17. Prior to installation, there is never an actual insulation material that can be labeled.

317. TRR § 460.13(c)(1).

318. No coverage area disclosure is necessary with respect to these products, since the installer simply contracts to fill an entire cavity area with a certain R-value and thickness of the material.

319. TRR § 460.13(e).

320. *See* Section I.C.6, *supra.*

321. *See* text accompanying notes 79–84 *supra.*

322. Text accompanying notes 79–82 *supra.*

323. Text accompanying note 83 *supra.*

324. Text accompanying note 84 *supra.*

325. Staff Report at A–6, § 460.15(f); *see* Presiding Officer's Report at 10–12. The disclosure stated, among other things, that the Department of Housing and Urban Development "has found that the actual R-value is 28% below the marked R-value."

326. *See* Presiding Officer's Report at 11; Borden, Inc., P–60 at 24–25.

327. TRR § 460.13(e).

328. *Id.*

329. *Id.*

330. Staff Report at 231–32; Owens-Corning Fiberglas Corp., P–96 at 39.

331. *See* Staff Report at 31–32, 231; Owens-Corning Fiberglas Corp., L/222, T/123, P–96 at 39.

332. *See* Owens-Corning Fiberglas Corp., L/222.

333. Staff Report at 231. The Thermal Insulation Manufacturers Association is in the process of developing such a test for air duct wrap. *Id.*

334. TRR § 460.13(f).

335. Staff Report at A–6, § 460.15(c).

336. *Id.*, § 460.15(e).

337. *Id.*, §§ 460.15(c), (d), & (e).

338. *See* Staff Report at 227–29.

339. *See, e.g.*, Owens-Corning Fiberglas Corp., P–96 at 35 (compression); CertainTeed Corp., P–100 at 9 (compression); Aluminum Ass'n, P–49 at 2 (moisture); Mineral Insulation Manufacturers' Ass'n, P–79 at 7.

340. *Cf.* National Ass'n of Home Insulation Contractors, P–103 at 9–14.

341. *See* Staff Report at A–5, § 460.15.

342. *See id.* at 221 n.1385.

343. TRR § 460.13(c)(2).

344. Of course, different types of loose-fill, such as cellulose and rockwool, would require different fact sheets.

345. *See* Staff Report at A–5, § 460.15. The rule stated that manufacturers must give installers at least one fact sheet for each customer, and that manufacturers who install their own insulation must give each customer a fact sheet. Due to a drafting error, it stated that retailers were to be supplied one fact sheet for *each package* of insulation sold to them.

346. *See, e.g.*, United Stated Mineral Products, P–11 at 2; Johns-Manville Sales Corp., P–64 at 6; Oren Corp., P–94 at 2; CertainTeed Corp., P–100 at 9. Many comments were based on the belief that the recommended rule required one fact sheet for each package of insulation sold. *See* note 345 *supra.*

347. 16 CFR 702 (1978).

348. Owens-Corning Fiberglas Corp., P–96 at 42–44. This was also the approach recommended during the hearings by the National Retail Hardware Association. T/1503–05, 1511–14.

349. TRR § 460.14.

350. *Id.* § 460.15.

351. *See* Section II.D, *infra.*

352. 42 FR 59678, 59683 (1977) (question 4).

353. Staff Report at 145; *see id.* at 234; H & H Housing Research Report, L/2388.

354. *See* Staff Report at 145–47.

355. *Id.* at 234; *see id.*

356. *See* notes 126–27 *supra* and accompanying text.

357. Staff Report at 187, 234. It is noteworthy that the National Association of

Home Builders supported such a requirement. L/193.

358. National Ass'n of Home Manufacturers, L/201–03.

359. National Ass'n of Home Manufacturers, T/1410–11.

360. *See id.* at 1384–93; National Ass'n of Home Builders, T/1351–52. Approximately 20 to 30 states have such codes.

361. National Ass'n of Home Manufacturers, T/1397–98.

362. *See id.* at 1382–83, 1388–92; National Ass'n of Home Builders, T/1336–38, 1351–52, 1392.

363. National Ass'n of Home Manufacturers, T/1400, 1407. Indeed, the witness for NAHB noted that many new home ads simply refer to the thichness of the home's insulation and not its R-value, T/1348–49, thus encouraging consumers to believe that insulation performance can be evaluated on the basis of thickness alone.

364. Staff Report at 234–36.

365. *Id.* at A–8, § 460.18.

366. TRR § 460.16.

367. Many building contracts give the builder a right to substitute equivalent insulation material, if the type contracted for becomes unavailable. National Ass'n of Home Builders, T/1328–31.

368. TRR § 460.16.

369. Staff Report at B–4, § 460.4(c).

370. *Id.* at 237.

371. TRR § 460.15.

372. This is especially true in light of the Commission's decision to allow R-value information for more than one product to be consolidated on one fact sheet. *See* text accompanying notes 343–44 *supra.*

373. The bag count disclosure was suggested primarily by installers, but also by others. *See* Staff Report at 237–38. Since loose-fill products settle after installation, the bag count assures both the consumer and the installer that, according to the manufacturer's coverage chart data, enough insulation was installed to achieve the represented R-value. *See id.*

374. 42 FR 59678, 59680, 59683 (1977) (question 5).

375. *See* Staff Report at 241. Moreover, the Commission cannot determine the accuracy of an R-value claim without knowing the thickness to which it is alleged to correspond.

376. *See* Section II.B.1.b, *supra.*

377. 42 FR 59678, 59680, 59683 (1977) (question 5).

378. For example, at a cost of $100, a consumer might be able to insulate 50 square feet of space to a level of R–10, or 100 square feet to a level of R–5, or 200 square feet to a level of R–2.5. In short, the consumer needs to know that at the stated price and R-value, the entire attic, or half of the attic, or a corner of it, will be insulated. *See* note 143 *supra* and accompanying text.

379. TRR § 460.18(b). If the price is stated in terms of a price per square foot, the consumer can calculate the coverage area, and the coverage area disclosure is no longer required. *Id.*

380. 42 Fed. Reg. 59678, 59680 (1977).

381. E.g., Advertisements, H/1051; H/1062; H/1093; M/585–88; M/1083.

382. *See* text accompanying notes 105–07 *supra.*

383. Although the proposed rule also required a coverage area disclosure, that provision has been dropped. The comparison must be based on equal coverage areas, but the consumer does not need this information in order to evaluate the comparison. On the other hand, the last two sentences of § 460.18(d) make clear that if a comparison claim includes a price, the disclosures required by subsections (b) *and* (d) must be made.

384. 42 FR 59678, 59680 (1977).

385. *See* text accompanying notes 153–55 *supra; see also* Section II.B.1.d.; *supra.*

386. Staff Report at 106.

387. *Id.* at 244.

388. TRR § 460.18(a).

389. *See* text accompanying notes 156, 356 *supra.*

390. 42 FR 59678, 59680 (1977).

391. Staff Report at 101.

392. *See* text accompanying notes 324–29 *supra.*

393. *See* text accompanying note 333 *supra.*

394. The disclosure provision in § 460.18(e) is identical to that in § 460.13(d) on the fact sheets. If UF foam R-values are properly derated to account for shrinkage, then the disclosure is not required.

395. Although consumers should ultimately receive this disclosure via the fact sheets, the ads are nevertheless deceptive without the disclosures. *See* Resort Car Rental System, Inc. v. FTC, 518 F.2d 962 (9th Cir.), *cert. denied sub nom.* Mackenzie v. United States, 423 U.S. 827 (1975); Exposition Press, Inc. v. FTC, 295 F.2d 869 (2d Cir. 1971).

396. Staff Report at C–2.

397. *Id.*

398. *See, e.g.,* Dow Chemical Co., L/131, 132, 134; Georgia Governor's Office of Consumer Affairs, L/160. Center for Public Representation, L/616–17 (Exhibit 1).

399. Staff Report at 108–09.

400. *See id.* at 108, 129–30.

401. *See* Section II.B.2, *supra.*

402. Staff Report at A–10, § 460.21(b). The staff's disclosure requirement would have applied only to savings claims that referred to a specific percentage of fuel saved. *Id.* Nevertheless, the Commission believes that more general claims are equally deceptive, since some consumers will save little or nothing by adding insulation.

The Commission has also rejected the staff's proposed ban on "dollar" savings claims. *Id.* § 460.21(a). The distinctions between dollar claims and other types of savings claims are insufficient to warrant such drastically different treatment, and the Commission believes that the deceptive character of the claims can be cured through the Rule's disclosure provisions.

403. *See, e.g.,* Dow Chemical Co., P–61 at 12; Mineral Insulation Manufacturers' Ass'n, P–79 at 9; Rock Wool Mfg. Co., P–89 at 2; Owens-Corning Fiberglas Co., P–96 at 54–56.

404. Although a consumer could have determined that the circumstances decribed in the ad were similar to his or her own, it would not have been possible to predict the impact of one or more differences between the advertised conditions and the consumer's conditions.

405. The disclosure states: "Savings vary. Find out why in the seller's fact sheet on R-values. Higher R-values mean greater insulating power." TRR § 460.19(b).

406. TRR § 460.13(g), paragraph 2.

407. It is noteworthy that the savings claim disclosure takes precedence over the R-value explanation; that is, if a savings claim also triggers disclosures under § 460.18 of the Rule, the R-value explanation in § 460.18(a) may be omitted. *Id.* § 460.19(d).

408. Pfizer, Inc., 81 F.T.C. 23 (1972).

409. TRR § 460.19(a). However, non-manufacturers may rely on savings claim information provided by the manufacturer, unless they know or should know that the manufacturer does not have a reasonable basis for the claim. *Id.* § 460.19(e).

410. *See* Staff Report at 249–51, 258–59.

411. Georgia Governor's Office of Consumer Affairs, L/160.

412. *Id.*

413. *See* Staff Report at 257–58.

414. TRR § 460.19(c).

415. *Id.*

416. Staff Report at 261.

417. *Id.*

418. Insulation products manufactured in boardstock form are often used at a one-inch thickness. *Id.* at 262.

419. For example, the manufacturer could state the R-value per inch of the material varies between 3.0 at a one-inch thickness and 2.6 at a six-inch thickness. TRR § 460.20.

420. Staff Report at 142–43.

421. *Id.*

422. TRR § 460.21.

423. Staff Report at 140.

424. 16 CFR 14.9 (1978).

425. 2 CCH Trade Reg. Rep. ¶ 7569 (1971).

426. *Cf.* Statement of Basis and Purpose for Trade Regulation Rule Governing Proprietary Vocational and Home Study Schools, 43 Fed. Reg. 60786, 60808 (1978).

427. This exemption process is similar to that approved by the Commission in the recently-adopted Trade Regulation Rule Governing Proprietary Vocational and Home Study Schools, § 438.9 *See* 43 FR 60796, 60811 (1978).

428. The only exemption available to industry members is that available under § 18(g) of the FTC Act. Under this provision, an industry member whose peculiar circumstances warrant an exemption from the Rule may petition the Commission.

429. ASTM C177 and C518 cost, respectively, approximately $200 and $150 per test. Staff Report at 72, 75. These are the test methods that will be most widely used. The C236 test is more expensive than C177, but exact figures are not available. *See id.* at 78.

430. *See id.* at 208–09.

431. *See* notes 350–51 *supra.*

432. 16 CFR 701 *et seq.* (1978).

433. In the Vocational Schools Rule, all of the consumer notices were written in "plain English." 43 FR 60796, 60812 (1978). In addition, the recently-promulgated Octane Posting Rule marked the first instance in which an entire regulation was written in readily understandable language. 44 FR 19160 (1979).

Accordingly, the Commission amends Subchapter D, Trade Regulation Rules of 16 CFR, Chapter I, by adding a new Part 460 to read as follows:

PART 460—LABELING AND ADVERTISING OF HOME INSULATION

Sec.

460.1 What this regulation does.
460.2 What is home insulation.
460.3 Who is covered.
460.4 When the rules apply.
460.5 R-value tests.
460.6 "Representative thickness" testing.
460.7 Which test version to use.
460.8 R-value tolerances.
460.9 What test records you must keep.
460.10 How statements must be made.
460.11 Rounding off R-values.
460.12 Labels.
460.13 Fact sheets.
460.14 How retailers must handle fact sheets.
460.15 How installers must handle fact sheets.
460.16 What new home sellers must tell new home buyers.
460.17 What installers must tell their customers.
460.18 Insulation ads.
460.19 Savings claims.
460.20 R-value per inch claims.
460.21 Government claims.
460.22 Tax claims.
460.23 Other laws, rules, and orders.
460.24 Stayed or invalid parts.
Appendix A—Enforcement Policy Statement for Foreign Language Advertising.
Appendix B—Enforcement Policy Statement for Clear and Conspicuous Disclosures in Television Advertising.

Authority: 38 Stat. 717, as amended, 15 U.S.C. 41 et seq.

§ 460.1 What this regulation does.

This regulation deals with home insulation labels, fact sheets, ads, and other promotional materials in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act. If you are covered by this regulation, breaking any of its rules is an unfair and deceptive act or practice or an unfair method of competition under section 5 of that Act. You can be fined heavily (up to $10,000) each time you break a rule.

§ 460.2 What is home insulation.

Insulation is any material mainly used to slow down heat flow. It may be mineral or organic, fibrous, cellular, or reflective (aluminum foil). It may be in rigid, semirigid, flexible, or loose-fill form. Home insulation is for use in old or new homes, condominiums, cooperatives, apartments, modular homes, or mobile homes. It does not include pipe insulation. It does not include any kind of duct insulation except for duct wrap.

§ 460.3 Who is covered.

You are covered by this regulation if you are a member of the home insulation industry. This includes individuals, firms, partnerships, and corporations. It includes manufacturers, distributors, franchisors, installers, retailers, utility companies, and trade associations. Advertisers and advertising agencies are also covered. So are labs doing tests for industry members. If you sell new homes to consumers, you are covered.

§ 460.4 When the rules apply.

You must follow these rules each time you import, manufacture, distribute, sell, install, promote, or label home insulation. You must follow them each time you prepare, approve, place, or pay for home insulation labels, fact sheets, ads, or other promotional materials for consumer use. You must also follow them each time you supply anyone covered by this regulation with written information that is to be used in labels, fact sheets, ads, or other promotional materials for consumer use. Testing labs must follow the rules unless the industry members tells them, in writing, that labels, fact sheets, ads, or other promotional materials for home insulation will not be based on the test results.

§ 460.5 R-value tests.

R-values measure resistance to heat flow. R-values given in labels, fact sheets, ads, or other promotional materials must be based on tests done under the methods listed below. They were designed by the American Society of Testing and Materials (ASTM).

The test methods are:

(a) All types of insulation except aluminum foil must be tested with ASTM C177, C518, or C236. If the "calibrated hot box" becomes an ASTM standard test method, it can also be used. The tests must be done on the insulation material alone (excluding any air spaces). The tests must be done at a mean temperature of 75° Fahrenheit.

(1) For polyurethane, polyisocyanurate, and extruded polystyrene, the tests must be done on samples that fully reflect the effect of aging on the product's R-value. To age the sample, follow the procedure in paragraph 4.6.4 of GSA Specification HH–I–530A, or another reliable procedure.

(2) For cellulose, the tests must be done at the settled density determined under GSA Specification HH–I–515D.

(3) For loose-fill mineral wool, the tests must be done on samples that fully reflect the effect of settling on the product's R-value. When a settled density procedure becomes part of a final GSA Specification for loose-fill mineral wool, the tests must be done at the settled density determined under the GSA Specification.

(b) Aluminum foil systems with more than one sheet must be tested with ASTM C236 (or the calibrated hot box). The tests must be done at a mean temperature of 75° Fahrenheit, with a temperature differential of 30° Fahrenheit.

(c) Single sheet systems of aluminum foil must be tested with ASTM E408 or another test method that provides comparable results. This tests the emissivity of the foil—its power to radiate heat. To get the R-value for a specific emissivity level, air space, and direction of heat flow, use the tables in the most recent edition of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers' (ASHRAE) Handbook. You must use the R-value shown for 50° Fahrenheit, with a temperature differential of 30° Fahrenheit.

(d) For insulation materials with foil facings, you must test the R-value of the material alone (excluding any air spaces) under the methods listed in subsection (a). You can also determine the R-value of the material in conjunction with an air space. You can use one of two methods to do this:

(1) You can test the system, with its air space, under ASTM C236 (or the calibrated hot box). If you do this, you must follow the rules in subsection (a) on temperature, aging, and settled density.

(2) You can add up the tested R-value of the material and the R-value of the air space. To get the R-value for the air space, you must follow the rules in subsection (c).

§ 460.6 "Representative thickness" testing.

All tests except aluminum foil tests must be done at a representative thickness for every thickness shown in a label, fact sheet, ad, or other promotional material. "Representative thickness" means a thickness at which the R-value per unit will vary no more than plus or minus 2% with increases in thickness. However, if the thickness shown in your label, fact sheet, ad, or promotional material is less than the representative thickness, then you can test the insulation at the thickness shown.

§ 460.7 Which test version to use.

Use the version of the ASTM test method that was in effect when this regulation was promulgated. If ASTM changes a test method, the new version will automatically replace the old one in these rules 90 days after ASTM first publishes the change. However, the Commission's staff or a person affected by the change can petition the

Commission during the 90-day period not to adopt the change or to reopen the proceeding to consider it further.

§ 460.8 R-value tolerances.

If you are an industry member, the R-value of any insulation you sell cannot be more than 10% below the R-value shown in a label, fact sheet, ad, or other promotional material for that insulation. However, if you are not a manufacturer, you can rely on the R-value data given to you by the manufacturer, unless you know or should know that the data is false or not based on the proper tests.

§ 460.9 What test records you must keep.

Manufacturers and testing labs must keep records of each item of information in the "Report" section of the ASTM test method that is used for a test. They must also keep the following records:

(a) The name and address of the testing lab that did each test.

(b) The date of each test.

(c) For manufacturers, the date each test report was received from a lab. For labs, the date each test report was sent to a manufacturer.

(d) For extruded polystyrene, polyurethane, and polyisocyanurate, the age (in days) of the specimen that was tested.

(e) For aluminum foil, the emissivity level that was found in the test.

Manufacturers who own their own testing labs need not keep records of the information in subsection (c).

Keep these records for at least three years. If the documents show proof for your claims, the three years will begin again each time you make the claim. Federal Trade Commission staff members can check these records at any time, but they must give you reasonable notice first.

§ 460.10 How statements must be made.

All statements called for by this regulation must be made clearly and conspicuously. Among other things, you must follow the Commission's Enforcement Policy Statement for Foreign Language Advertising (July 24, 1973) (Appendix A). For TV ads, you must follow the Commission's Enforcement Policy Statement for Clear and Conspicuous Disclosures in Television Advertising (October 21, 1970) (Appendix B). However, only the quoted statements required by §§ 460.18(a) and 460.19(b) must be made in a voice-over. Both of the above documents are in the Appendix to this regulation.

§ 460.11 Rounding off R-values.

R-values shown in labels, fact sheets, ads, or other promotional materials must be rounded to the nearest tenth. However, R-values of 10 or more may be rounded to the nearest whole number.

§ 460.12 Labels.

If you are a manufacturer, you must label all packages of your insulation. The labels must contain:

(a) The type of insulation.

(b) A chart showing these items:

(1) For mineral fiber batts and blankets: the R-value, length, width, thickness, and square feet of insulation in the package.

(2) For all loose-fill insulation except cellulose: the minimum thickness, maximum net coverage area, and minimum weight per square foot at R-values of 11, 19, and 22. You must also give this information for any additional R-values you list on the chart. Labels for these products must state the minimum net weight of the insulation in the package.

(3) For loose-fill cellulose insulation: the minimum thickness, maximum net coverage area, number of bags per 1,000 square feet, and minimum weight per square foot at R-values of 13, 19, 24, 32, and 40. You must also give this information for any additional R-values you list on the chart. Labels for this product must state the minimum net weight of the insulation in the package.

(4) For boardstock: the R-value, length, width, and thickness of the boards in the package, and the square feet of insulation in the package.

(5) For aluminum foil: the number of foil sheets; the number and thickness of the air spaces; and the R-value provided by that system when the direction of heat flow is up, down, and horizontal. You can show the R-value for only one direction of heat flow if you clearly and conspicuously state that the foil can only be used in that application.

(6) For insulation materials with foil facings, you must follow the rule that applies to the material itself. For example, if you manufacture boardstock with a foil facing, follow subsection (4). You can also show the R-value of the insulation when it is installed in conjunction with an air space. This is its "system R-value." If you do this, you must clearly and conspicuously state the conditions under which the system R-value can be attained.

(7) For air duct insulation: the R-value, length, width, thickness, and square feet of insulation in the package.

(c) The following statement: "R means resistance to heat flow. The higher the R-value, the greater the insulating power."

(d) If installation instructions are included on the label or with the package, add this statement: "To get the marked R-value, it is essential that this insulation be installed properly. If you do it yourself, follow the instructions carefully."

(e) If no instructions are included, add this statement: "To get the marked R-value, it is essential that this insulation be installed properly. If you do it yourself, get instructions and follow them carefully. Instructions do not come with this package."

§ 460.13 Fact sheets.

If you are a manufacturer, you must give retailers and installers fact sheets for the insulation products you sell to them. Each sheet must contain what is listed here. You can add any disclosures that are required by state or local laws, rules, and orders, unless they are inconsistent with the provisions of this regulation. Do not add anything else.

Each fact sheet must contain these items:

(a) The name and address of the manufacturer. It can also include a logo or other symbol that the manufacturer uses.

(b) A heading: "This is ———— insulation." Fill in the blank with the type and form of your insulation.

(c) The heading must be followed by a chart:

(1) If section 460.12(b) requires a chart for your product's label, you must use that chart. For foamed-in-place insulations, you must show the R-value of your product at 3½ inches. You can also show R-values at other thicknesses.

(2) You can put the charts for similar products on the same fact sheet. For example, if you sell insulation boards or batts in three different thicknesses, you can put the label charts for all three products on one fact sheet. If you sell loose-fill insulation in two different bag sizes, you can put both coverage charts on one fact sheet, as long as you state which coverage chart applies to each bag size.

(d) For urea-based foam insulation, the chart must be followed by this paragraph:

"Foam insulation shrinks after it is installed. This shrinkage may significantly reduce the R-value you get."

However, you can lower your product's R-value to account for shrinkage. To do this, you must have reliable scientific proof of the extent of shrinkage for your product and of its effect on R-value. If you lower your product's R-value, you need not make the above statement.

(e) For air duct insulation, the chart must be followed by this statement:

"The R-value of this insulation varies depending on how much it is compressed during installation."

(f) After the chart and any statement dealing with the specific type of insulation, ALL fact sheets must carry this statement, boxed, in 12-point type:

Read This Before You Buy

What You Should Know About R-values

The chart shows the R-value of this insulation. R means resistance to heat flow. The higher the R-value, the greater the insulating power. Compare insulation R-values before you buy.

There are other factors to consider. The amount of insulation you need depends mainly on the climate you live in. Also, your fuel savings from insulation will depend upon the climate, the type and size of your house, the amount of insulation already in your house, and your fuel use patterns and family size. If you buy too much insulation, it will cost you more than what you'll save on fuel.

To get the marked R-value, it is essential that this insulation be installed properly.

§ 460.14 How retailers must handle fact sheets.

If you sell insulation to do-it-yourself customers, you must have fact sheets for the insulation products you sell. You must make the fact sheets available to your customers. You can decide how to do this, as long as your insulation customers are likely to notice them. For example, you can put them in a display, and let customers take copies of them. You can keep them in a binder at a counter or service desk, and have a sign telling customers where the fact sheets are.

§ 460.15 How installers must handle fact sheets.

If you are an installer, you must have fact sheets for the insulation products you sell. Before customers agree to buy insulation from you, you must show them the fact sheet(s) for the type(s) of insulation they want. You can decide how to do this. For example, you can give each customer a copy of the fact sheet(s). You can keep the fact sheets in a binder, and show customers the binder before they agree to buy.

§ 460.16 What new home sellers must tell new home buyers.

If you are a new home seller, you must put the following information in every sales contract: the type, thickness, and R-value of the insulation that will be installed in each part of the house. There is an exception to this rule. If the buyer signs a sales contract before you know what type of insulation will be put in the house, or if there is a change in the contract, you can give the buyer a receipt stating this information as soon as you find out.

§ 460.17 What installers must tell their customers.

If you are an installer, you must give your customers a contract or receipt for the insulation you install. For all insulation except loose-fill and aluminum foil, the receipt must show the coverage area, thickness, and R-value of the insulation you installed. For loose-fill, the receipt must show those three items plus the number of bags used. For aluminum foil, the receipt must show the number and thickness of the air spaces, the direction of heat flow, and the R-value. The receipt must be dated and signed by the installer. To figure out the R-value of the insulation, use the data that the manufacturer gives you. Do not multiply the R-value for one inch by the number of inches you installed. If you put insulation in more than one part of the house, put the data for each part on the receipt. You can do this on one receipt, as long as you do not add up the coverage areas or R-values for different parts of the house.

§ 460.18 Insulation ads.

(a) If your ad gives an R-value, you must give the type of insulation and the thickness needed to get that R-value. Also, add this statement explaining R-values: "The higher the R-value, the greater the insulating power. Ask your seller for the fact sheet on R-values."

(b) If your ad gives a price, you must give the type of insulation, the R-value at a specific thickness, the statement explaining R-values in subsection (a), and the coverage area for that thickness. If you give the price per square foot, you do not have to give the coverage area.

(c) If your ad gives the thickness of your insulation, you must give its R-value at that thickness and the statement explaining R-values in subsection (a).

(d) If your ad compares one type of insulation to another, the comparison must be based on the same coverage areas. You must give the R-value at a specific thickness for each insulation, and the statement explaining R-values in subsection (a). If you give the price of each insulation, you must also give the coverage area for the price and thickness shown. However, if you give the price per square foot, you do not have to give the coverage area.

(e) If your ad gives the R-value of urea-based foam insulation, you must add this statement: "Foam insulation shrinks after it is installed. This shrinkage may significantly reduce the R-value you get." However, you can lower your product's R-value to account for shrinkage. To do this, you must have reliable scientific proof of the extent of shrinkage for your product and of its effect on R-value. If you lower your product's R-value, you need not make the above statement.

§ 460.19 Savings claims.

(a) If you say or imply in your ads, labels, or other promotional materials that insulation can cut fuel bills or fuel use, you must have a reasonable basis for the claim. For example, if you say that insulation can "slash" or "lower" fuel bills, or that insulation "saves money," you must have a reasonable basis for the claim. Also, if you say that insulation can "cut fuel use in half," or "lower fuel bills by 30%," you must have a reasonable basis for the claim.

(b) If you say or imply in your ads, labels, or other promotional materials that insulation can cut fuel bills or fuel use, you must make this statement about savings: "Savings vary. Find out why in the seller's fact sheet on R-values. Higher R-values mean greater insulating power."

(c) If you say or imply that a combination of products can cut fuel bills or use, you must have a reasonable basis for the claim. You must make the statement about savings in subsection (b). Also, you must list the combination of products used. They may be two or more types of insulation; one or more types of insulation and one or more other insulating products, like storm windows or siding; or insulation for two or more parts of the house, like the attic and walls. You must say how much of the savings came from each product or location. If you cannot give exact or approximate figures, you must give a ranking. For instance, if your ad says that insulation and storm doors combined to cut fuel use by 50%, you must say which one saved more.

(d) If your ad or other promotional material is covered by section 460.18(a), (b), (c), or (d), and also makes a savings claim, you must follow the rules in §§ 460.18 and 460.19. However, you need not make the statement explaining R-value in § 460.18(a).

(e) Manufacturers are liable if they do not have a reasonable basis for their savings claims before the claim is made. If you are not a manufacturer, you are liable only if you know or should know that the manufacturer does not have a reasonable basis for the claim.

(f) Keep records of all data on savings claims for at least three years. For the records showing proof for claims, the three years will begin again each time you make the claim. Federal Trade Commission staff members can check these records at any time, but they must give you reasonable notice first.

§ 460.20 R-value per inch claims.

In labels, fact sheets, ads, or other promotional materials, do not give the R-value for one inch or the "R-value per inch" of your product. There are two exceptions:

(1) You can do this if you suggest using your product at a one-inch thickness.

(2) You can do this if actual test results prove that the R-values per inch of your product does not drop as it gets thicker.

You can list a range of R-value per inch. If you do, you must say exactly how much the R-value drops with greater thickness. You must also add this statement: "The R-value per inch of this insulation varies with thickness. The thicker the insulation, the lower the R-value per inch."

§ 460.21 Government claims.

Do not say or imply that a government agency uses, certifies, recommends, or otherwise favors your product unless it is true. Do not say or imply that your insulation complies with a governmental standard or specification unless it is true.

§ 460.22 Tax claims.

Do not say or imply that your product qualifies for a tax benefit unless it is true.

§ 460.23 Other laws, rules, and orders.

(a) If an outstanding FTC Cease and Desist Order applies to you but differs from the rules given here, you can petition to amend to order.

(b) State and local laws and regulations that are inconsistent with, or frustrate the purposes of, the provisions of this regulation are preempted. However, a state or local government may petition the Commission, for good cause, to permit the enforcement of any part of a state or local law or regulation that would be preempted by this section.

(c) The Commission's three-day cooling-off rule stays in force.

§ 460.24 Stayed or invalid parts.

If any part of this regulation is stayed or held invalid, the rest of it will stay in force.

Appendix A—Enforcement Policy Statement for Foreign Language Advertising

Title 16—Commercial Practices

Chapter I—Federal Trade Commission

PART 14—ADMINISTRATIVE INTERPRETATIONS, GENERAL POLICY STATEMENTS, AND ENFORCEMENT POLICY STATEMENTS

§ 14.9 Requirements concerning clear and conspicuous disclosures in foreign language advertising and sales materials.

The Federal Trade Commission has noted that, with increasing intensity, advertisers are making special efforts to reach foreign language-speaking consumers. As part of this special effort, advertisements, brochures and sales documents are being printed in foreign languages. In recent years the Commission has issued various cease-and-desist orders as well as rules, guides and other statements, which require affirmative disclosures in connection with certain kinds of representations and business activities. Generally, these disclosures are required to be "clear and conspicuous." Because questions have arisen as to the meaning and application of the phrase "clear and conspicuous" with respect to foreign language advertisements and sales materials, the Commission deems it appropriate to set forth the following enforcement policy statement:

(a) Where cease-and-desist orders as well as rules, guides and other statements require "clear and conspicuous" disclosure of certain information, that disclosure must be in the same language as that principally used in the advertisements and sales materials involved.

(b) Any respondent who fails to comply with this requirement may be the subject of a civil penalty proceeding for violating the terms of a Commission cease-and-desist order.

(Sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

[38 FR 21494, Aug. 9, 1973]

Appendix B—Enforcement Policy Statement for Clear and Conspicuous Disclosures in Television Advertising

.09 "Clear and conspicuous" disclosure.—The FTC issued an enforcement policy statement setting forth the standards it considers in determining whether, in fact, an affirmative disclosure in a television commercial is "clear and conspicuous." The FTC explained that in recent years it has issued various opinions, orders and trade regulation rules concerned with the need for affirmative disclosures in connection with various kinds of representations. In making a determination, the FTC said that it will take into consideration all the technical factors, such as the size of letters and the duration of disclosure, used in presenting the disclosure to a television audience, as well as the substance of the individual disclosure. The following standards should be met for a television disclosure to be deemed "clear and conspicuous": (a) the disclosure should be presented simultaneously in both the audio and video portions of the television advertisement; (b) the video portion of the disclosure must contain letters of sufficient size so that it can be easily seen and read on all television sets, regardless of picture tube size; (c) the video portion of the disclosure should contain letters of a color or shade that readily contrast with the background, and the background should consist of only one color or shade; (d) no other sounds, including music, should occur during the audio portion of the disclosure; (e) the video portion of the disclosure should appear on the screen for a sufficient duration to enable it to be completely read by the viewer; and (f) the audio and video portions of the disclosure should immediately follow the specific sales representations to which they relate and should occur each time the representation is presented during the advertisement; in cases where a disclosure is required, but is not linked to a specific representation, it should appear in immediate conjunction with the major sales theme of the advertisement. Television advertisers should also consider the audience to whom the disclosure is directed in order to assure that persons (such as children) can understand the full meaning of the disclosure. If securing this understanding is impractical, then the advertisements containing such representations should not be used on television. *FTC Statement of Enforcement Policy*, October 21, 1970.

Trade Regulation Reports, Volume 2, ¶7569 at 12, 166 (1971)

By direction of the Commission dated August 10, 1979.

Loretta Johnson,

Acting Secretary.

[FR Doc. 79-26592 Filed 8-24-79; 8:45 am]

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Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Community Development Block Grants; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-79-704]

Community Development Block Grants; Technical Amendments; Interim Rule

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Interim rule and request for comments.

SUMMARY: This amendment clarifies provisions of the Community Development Block Grant (CDBG) regulations (Subparts C and D) and corrects various erroneous references, typographical mistakes and other errors.

DATES:

EFFECTIVE DATE: September 26, 1979.
COMMENT DUE DATE: October 30, 1979.

EFFECTIVE DATE: September 26, 1979.

COMMENT DUE DATE: October 30, 1979.

ADDRESS: Send comments to the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of HUD, 451 Seventh Street, S.W., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: James R. Broughman, Entitlement Cities Division, Office of Community Planning and Development, Department of HUD, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755-9267. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

Background

On March 1, 1978, HUD published final rules (43 FR 8434) for the CDBG program covering eligible activities (Subpart C) and entitlement grants (Subpart D) to carry out Title I of the Housing and Community Development Act of 1974, as amended. Those rules contain various incorrect references, typographical mistakes and other errors and omissions. This amendment corrects these errors and makes a number of changes to conform the regulations to other statutory requirements added in 1978.

Special Assessments

Paragraph (f)(2) of § 570.200 has been revised to clarify the treatment of a special assessment, levied by an applicant with HUD authorization, for less than the total cost of a public improvement which has been funded with both block grant and local funds. Where the special assessment does not exceed the local investment, the applicant may retain the entire amount collected. Where the special assessment exceeds the local investment, the applicant shall apportion the assessment, as collected, between itself, up to the amount of the local investment, and block grant program income.

In addition, paragraph (f)(3) of § 570.200 has been revised to include the requirement that an applicant must carry out the appropriate environmental reviews and clearances for public improvements under 24 CFR 58 where it proposes to use block grant funds to pay special assessments levied against properties owned and occupied by low- and moderate-income persons for the capital costs of such improvements. Although this requirement was stated in the preamble of the March 1, 1978, regulation, it was inadvertently omitted from the text of the regulation.

Consulting Services

Section 408 of the Fiscal Year 1979 HUD and Independent Agencies Appropriations Act prohibits the use of block grant funds to pay the salary of a consultant in excess of the daily equivalent rate paid to GS-18 employees. (The Fiscal Year 1978 Act included a similar limitation.) On the basis of the legislative history for the Fiscal Year 1979 Act clarifying the intent of the provision, § 570.200(g) has been revised to apply the limitation only to individual consultant services of a purely personal nature which create an employer-employee type relationship, and not to consultant services provided under an independent contractor relationship.

Planning and Administrative Costs

The Fiscal Year 1979 HUD and Independent Agencies Appropriations Act places a 20 percent ceiling on expenditures for planning and administrative costs under §§ 570.205 and 570.206.

Accordingly, paragraph (i) has been added to § 570.200 to state that no more than 20 percent of the total block grant resources available to pay program year costs may be budgeted or expended for such costs. Paragraph (a)(5) of § 570.205 has been revised to clarify that eligible planning costs include the development of individual project plans, such as the collection of detailed data and the preparation of analyses, but exclude the engineering and design costs of carrying out an activity eligible under §§ 570.201 through 570.204. Paragraph (a) of § 570.206 has been revised to clarify that eligible administrative costs include reasonable costs of overall program management, coordination, monitoring and evaluation, and similar costs associated with carrying out multi-activity projects, but exclude direct activity delivery costs eligible as part of the cost of carrying out a specific activity under §§ 570.201 through 570.204. Paragraph (b) of § 570.201 has been revised to include reasonable costs of temporarily managing real property acquired with block grant funds or under urban renewal. Paragraph (c)(4) has been added to § 570.202, eligible rehabilitation and preservation activities, to provide for rehabilitation services, such as rehabilitation counseling, loan processing, preparation of work specifications, and other services related to assisting owners to rehabilitate their properties in conjunction with block grant funded rehabilitation financing and Section 312 rehabilitation loans.

Residential Facilities

The provisions of § 570.201(c)(1) and (3), which prohibit residential facilities from eligibility under public facilities and improvements, and the provisions of § 570.202(a)(2) and (c)(1), which permit rehabilitation of residential facilities, appear to have confused applicants. Section 570.201(c) is intended to ensure that block grant assistance is not used for new construction of residential facilities because construction of new housing is not generally permitted under the block grant program. Rehabilitation of residential facilities is, however, an eligible block grant activity and is covered under § 570.202. To clear up any misunderstandings, references to § 570.202(a)(2) and (c)(1) have been added to § 570.201(c)(1) and (3).

Public Services

Paragraph (e)(1) of § 570.201 has been revised to clarify that an area which meets the requirement for a Neighborhood Strategy Area (NSA) may be so designated by the applicant for purposes of qualifying the continuation of previously approved public services for no more than three years even though the block grant assisted physical development activities in the area have been completed or substantially completed.

In addition, paragraph (e)(1) of § 570.201 has been revised to clarify that, for the Small Cities Program, there is no requirement that an NSA be established. However, under the Small Cities Program, public services are to be provided for residents of areas where block grant assisted physical development activities are being carried out in a concentrated manner. The phrase "concentrated manner" is defined in § 570.201(e)(1)(ii).

Paragraph (e)(2) of § 570.201 has been revised to clarify language that was

misprinted. The revised paragraph indicates that, while public services must be directed toward meeting the needs of residents of NSA's in which block grant assisted physical development activities are being carried out in a concentrated manner, the services may be provided on an incidental basis to persons who are not residents of such areas. HUD recognizes that it may not be feasible to exclude persons from receipt of public services on the basis that they are not residents of an NSA. Accordingly, services may be rendered in such circumstances. However, where a frequent pattern of such presumably incidental delivery occurs, or where it is clear that the design of the public service is such that it is intended to be delivered to non-residents to a significant degree, block grant assistance will not be permitted.

Relocation

The Housing and Community Development Amendments of 1978 extend the availability of relocation payments and assistance to displaced individuals, families, businesses, nonprofit organizations, and farm operations, when determined by the applicant to be appropriate to the community development program. The previous provision limited the eligibility of relocation payments and assistance to those displaced by activities assisted with block grants. The effect of this amendment is to permit the use of block grant funds for relocation payments and assistance for those displaced by activities such as development of Section 8 housing, private development, and other activities causing displacement, so long as the payments and assistance are determined by the applicant to be appropriate to its community development program. Accordingly, paragraph (i) of § 570.201 and paragraph (d) of § 570.602 have been revised to implement the statutory amendment.

Local Development Corporations

The provisions of § 570.204(a)(2)(iv), which describe the local development corporations that are eligible to receive block grant funds, appear to have confused applicants by including the phrase "other similar entity." Accordingly, paragraph (a)(2)(iv) has been revised to clarify that an "other similar entity" means an entity that provides economic development assistance within a specified geographical area and is usually composed of and controlled by representatives of the residents of the area.

Reimbursement of Costs

Paragraph (e) of § 570.301 has been revised to include the costs for relocation and acquisition activities carried out pursuant to § 570.602 which the applicant may incur with local funds before approval of its application and may be reimbursed for with block grant funds after approval of its application. However, to be reimbursed, the applicant must carry out the appropriate environmental reviews and clearances for such activities under 24 CFR Part 58.

Program Benefit

Minor revisions have been made to paragraphs (d)(2)(iv) and (e)(1) of § 570.302. Paragraph (d)(2)(iv) has been revised to indicate that a senior center is only one example of a public facility qualifying under the block grant program. Paragraph (e)(1) has been revised to state explicitly that economic development activities under § 570.203 may be undertaken in an NSA qualifying under the category of projects designed to prevent or eliminate slums or blight.

Opportunity for Participation by, and Benefits to, the Handicapped

The 1977 amendments to the Housing and Community Development Act of 1974 contain a provision that applicants shall design their comprehensive strategies to address community development and housing needs in order that the provision of all improved community facilities and public improvements, including supporting health, social and similar services where necessary or appropriate, shall be described in a manner that provides assurance that there will be opportunity for participation by, and benefits to, the handicapped. Although this provision was contained in the proposed regulations issued for Subpart D on October 25, 1977 (42 FR 56469), it was unintentionally omitted from the final rules issued for Subpart D on March 1, 1978. Accordingly, paragraph (b) of § 570.304 has been amended to include the provisions governing opportunities for participation by, and benefits to, the handicapped under the CDBG program. The applicant should consider such opportunities for the handicapped in developing each component part of the comprehensive strategy.

Expected-to-Reside (ETR)

The interim rule revising the ETR requirement was published on August 9, 1979 (44 FR 46836). That interim rule has been incorporated in these technical amendments.

Procurement Standards

Section 570.507 has been revised to clarify that the requirements of Attachment O of OMB Circular No. A-102 apply to the procurement of materials and services by States, units of general local government, Indian Tribes, public instrumentalities, and eligible entities under § 570.204(a)(2), as subgrantees or subrecipients, as well as by direct grant recipients. In addition, the revised section states clearly that the procurement of materials and services by private homeowners who receive block grant assistance, such as rehabilitation loan financing, is not subject to such requirements.

Other Changes

A number of other minor technical changes are included to correct inaccurate references and printing errors contained in Subparts C and D.

Because this amendment is technical in nature, correcting various errors and omissions and making changes to conform the regulations to other statutory amendments, the Secretary has determined that it is unnecessary to invite public comment on this amendment before its effective date. However, interested persons are invited to participate in this rulemaking by filing data, comments and suggestions with the Rules Docket Clerk at the above address, on or before the comment due date. Each comment should include the commentor's name and address, and must refer to the docket number indicated in the heading to this document. All relevant comments will be considered before adoption of a final rule and copies of all comments received will be available for copying and inspection in the Office of the Rules Docket Clerk at the above address.

A finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this Finding of Inapplicability is available for public inspection in the Office of the Rules Docket Clerk at the above address.

Accordingly, the Department amends Chapter V of Title 24 of the Code of Federal Regulations as follows:

I. The Table of Contents to 24 CFR Part 570, Subpart C, is revised to read as follows:

Subpart C—Eligible Activities

Sec.

570.200 General policies.
570.201 Basic eligible activities.
570.202 Eligible rehabilitation and preservation activities.
570.203 Eligible economic development activities.

Sec.

570.204 Eligible activities by private nonprofit entities, neighborhood-based nonprofit organizations, local development corporations, and small business investment companies.
570.205 Eligible planning and urban design costs.
570.206 Eligible administrative costs.
570.207 Ineligible activities.

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301, et seq.); Title I, Housing and Community Development Act of 1977 (Pub. L. 95–128); and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

II. Subpart C, Eligible Activities is revised to read as follows:

Subpart C—Eligible Activities

§ 570.200 General policies.

(a) *Determinations of eligibility.* This subpart sets forth the variety of eligible activities that may be undertaken with assistance under this Part (block grant funds) to meet community development and housing needs and priorities principally for low- and moderate-income persons or for the prevention or elimination of slums and blight. The listing of certain eligible types of activities in this subpart does not by itself, however, render specific activities, proposed to be conducted by individual applicants, eligible for block grant assistance. There are other requirements that must also be met to qualify a specific activity for assistance. An activity may be assisted only in those instances where it complies with the eligibility criteria of this subpart, with all other applicable requirements of this Part as they may apply to applicants under Subparts D, E, F, or G, such as those relating to equal opportunity, and the basic statutory objectives of the block grant program. In particular, activities conducted by entitlement recipients under Subpart D must comply with the requirements set forth in § 570.302 regarding benefit to low- and moderate-income persons or elimination of slums and blight, and small city discretionary recipients must comply with similar requirements set forth in Subpart F. Further, there must be compliance with all applicable environmental review and clearance procedures set forth in 24 CFR Part 58.

(b) *Urban Development action grants.* Grant assistance may be provided with Urban Development Action Grants pursuant to Subpart G for:

(1) Activities eligible for assistance pursuant to this Subpart; and

(2) Such other activities, including new housing construction, as the Secretary may determine to be consistent with the statutory objectives of the Urban Development Action Grant (UDAG) program as provided for in § 570.453. The provisions of § 570.207 regarding ineligible activities apply to the UDAG program, except where an activity is determined to be consistent with the statutory objectives of the UDAG program pursuant to § 570.453, the limitations set forth in § 570.207 do not apply.

In making determinations of eligibility with regard to Urban Development Action Grants, for the purposes of §§ 570.201–207, the term "Community Development and Housing Plan" as used in this subpart shall also mean the "Urban Development Action Program."

(c) *Model cities activities.* Notwithstanding anything to the contrary in this subpart, any ongoing model cities activity being carried out in a model cities program shall be eligible for funding under this Part from that portion of the hold-harmless amount attributable to such model cities program until the applicant has received five years of funding for such activities as calculated pursuant to § 570.103(c)(2)(iii). For the purpose of this paragraph, the term "ongoing activity" means any model cities activity underway as of January 1, 1975, that was approved and funded by HUD on or before June 30, 1974. Upon expiration of the eligibility of activities under this paragraph, applicants should refer to the other requirements of this subpart which must be satisfied in order for block grant assistance to continue to be provided for model cities activities.

(d) *Special policies governing facilities.* The following special policies apply to: (1) *Facilities containing both eligible and ineligible uses.* Where a facility, otherwise eligible for assistance under the block grant program in § 570.201(c), is to be provided as a part of a multiple-use building and/or facility that also contains otherwise ineligible uses, the portion of the costs attributed to the eligible facility may be assisted with block grant funds where:

(i) The facility, which is otherwise eligible and proposed for assistance, will occupy a designated and discrete area within the larger facility; and

(ii) The applicant can determine the costs attributable to the facility proposed for assistance as separate and distinct from the overall costs of the multiple-use building and/or facility.

For example, a senior center, which is to occupy space within a building that is otherwise used for the conduct of general governmental business, may be assisted when it exclusively occupies a separate and designated area within the building (i.e, the senior center does not "float" to different locations within the building that happen to be available on a less than permanent basis) and the applicant can determine the cost associated with providing the senior center as distinct from those costs associated with all remaining ineligible portions of the building.

(2) *Facilities located on school property.* Any facility eligible for assistance pursuant to § 570.201(c), which is designed primarily for a public purpose other than education, is not considered to be a school or educational facility where, although it is to be located on a site controlled by a school district, school board or similar body responsible for public education, the facility will only be used by any adjacent school or educational facility on an incidental basis. In order to determine whether the facility is to be used on an incidental basis, the applicant shall at a minimum demonstrate that:

(i) After school hours and on weekends, the facility shall be available for use by the general public to the same extent as similar facilities operating within the applicant's jurisdiction; and

(ii) During school hours, the facility is not used for school purposes for more than four hours each day.

(e) *Activities outside an applicant's boundaries.* Applicants may conduct activities which are otherwise eligible for block grant assistance outside of their boundaries which are not inconsistent with State or local law and which are not plainly inappropriate to meet identified needs of the applicant. This may include an urban county carrying out otherwise eligible activities within a metropolitan city with block grant assistance where the activities are not plainly inappropriate to meeting identified needs of the urban county.

(f) *Special assessments under the block grant program.* The following policies relate to the use of special assessment under the block grant program:

(1) *Definition of special assessment.* The term "special assessment" means a fee or charge levied or filed as a lien against a parcel of real estate as a direct result of benefit derived from the installation of a public improvement, such as streets, curbs, and gutters. The amount of the fee represents the pro rata share of the capital costs of the public improvement levied against the benefitting properties. This term does not relate to taxes, or the establishment of the value of real estate for the purpose of levying real estate, property, or ad valorem taxes.

(2) *Special assessments to recover capital costs funded in whole or in part with block grant funds.* (i) The general

rule is that special assessments shall not be used to recover any of the capital costs of public improvements funded in whole or in part with block grant funds. Applicants may request an exception to this rule where the use of special assessments as a means to leverage private investment is necessary and appropriate to implement the applicant's strategy for economic development or neighborhood revitalization. HUD will not recover the capital costs of public improvements funded in whole or in part with block grant funds from properties owned and occupied by low- and moderate-income persons.

(ii) Where the capital cost of a public improvement is funded entirely with block grant funds, and the applicant with HUD authorization levies a special assessment, the applicant shall credit the entire amount collected to program income under § 570.506. Where the capital cost of a public improvement is funded with both block grant and local funds, and the applicant with HUD authorization levies a special assessment in an amount not exceeding its local investment, the applicant may retain the entire amount collected. Where the capital cost of a public improvement is funded with both block grant and local funds, and the applicant with HUD authorization levies a special assessment in an amount exceeding its local investment, the applicant may retain up to the entire amount of the local investment and credit the remainder of the special assessment to program income under § 570.506. However, the applicant shall apportion the special assessment, as collected, so that the portion retained as the local investment is in the ratio of the total local investment to the total amount of the special assessment. For example, if the capital cost of a public improvement is $100,000, financed with $30,000 of local funds and $70,000 of block grant funds, and a special assessment, as collected, would be 3/7 to local funds and 4/7 to program income so that when the entire special assessment has been collected, $30,000 will have been retained as the local investment and $50,000 credited to program income.

(iii) The total amount of any special assessment and the amount of funds, as collected, shall be recorded as part of the grant program transactions in accordance with Attachment G of OMB Circular No. A–102.

(3) *Special assessments paid with block grant funds.* Block grant funds may be used to pay special assessments levied against properties owned and occupied by low- and moderate-income persons for the capital costs of eligible public facilities and improvements financed from local revenue sources, other than block grant funds, which (i) are described in the Community Development Program; (ii) are initiated after March 1, 1978; and (iii) represent the pro rata share of the capital cost of the eligible facility or improvement to the benefitting property. Applicants that propose to pay special assessments with block grant funds must carry out the appropriate environmental reviews and clearances for the public improvements under 24 CFR Part 58.

(g) *Consultant Activities.* Consulting services are eligible for assistance under this Part for professional assistance in program planning, application preparation, and other general professional guidance relating to program execution. The use of consultants is governed by the following:

(1) *Employer-employee type of relationship.* No person providing consultant services in an employer-employee type of relationship shall receive more than a reasonable rate of compensation for personal services paid with block grant funds which, on a daily basis, shall not exceed the maximum daily rate of compensation for a GS–18 as established by Federal law. Such services shall be evidenced by written agreements between the parties which detail the responsibilities, standards and compensation. Adjustments of eligible costs for such services may be made where audit and monitoring reviews indicate that the rates of compensation were not reasonable, or exceeded the maximum daily rate for a GS–18.

(2) *Independent contractor relationship.* Consultant services provided under an independent contactor relationship are governed by the Procurement Standards of Attachment O of OMB Circular No. A–102 and are not subject to the GS–18 limitation.

(h) *Transition policy for fiscal year 1978.* A number of activities set forth in Subpart C contain, as a part of the criteria for eligibility for block grant assistance, requirements that activities be necessary and appropriate to the implementation of certain strategies for community development and housing described in Subpart D, or that activities take place within Neighborhood Strategy Areas (NSA).

(1) *Interim strategy statement.* For those applications submitted during fiscal year 1978 prior to the effective date for the submission of strategies, applicants may submit a brief narrative interim strategy statement for activities subject to this requirement. The interim strategy statement shall include:

(i) a brief description of the activity;

(ii) a brief description of the needs and conditions the activity is designed to address; and

(iii) a brief description of how the activity will impact upon the needs and conditions which it is designed to address.

(2) *Interim NSA designation.* For those applications submitted during fiscal year 1978, applicants may designate interim NSA's for activities subject to this requirement. An interim NSA is selected by the applicant and designated in the Community Development Program. In determining the size of the NSA, the applicant shall take into account the severity of its problems and the amount of resources to be provided to address those problems. For each area designated as an NSA, the applicant shall include a brief narrative description of its plan for stabilizing and upgrading the area which:

(i) provides for a combination of physical improvements, necessary public facilities and services, private investment and citizen self-help activities appropriate to the needs of the area; and

(ii) coordinates public and private investment efforts.

(i) *Limitation on planning and administrative costs.* No more than 20 percent of the total block grant resources available to pay program year costs may be budgeted or expended for planning and administrative costs under § 570.205 and § 570.206. Total block grant resources available to pay program year costs are calculated in the cost summary, submitted, as part of the Annual Community Development Program, under § 570.305(b).

§ 570.201 Basic eligible activities.

Grant assistance may be used for the following activities:

(a) *Acquisition.* Acquisition in whole or in part by a public agency, by purchase, lease, donation or otherwise, of real property (including air rights, water rights, rights-of-way, easements, and other interests therein) which is:

(1) Blighted, deteriorated, deteriorating, undeveloped or inappropriately developed from the standpoint of sound community development and growth, as determined by the recipient pursuant to State and local laws;

(2) Appropriate for rehabilitation or conservation activities;

(3) Appropriate for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open spaces, natural resources and scenic areas, the

provision of recreational opportunities or the guidance of urban development;

(4) To be used for the provision of public works, facilities and improvements eligible for assistance under this subpart; or

(5) To be used for other public purposes, including the conversion of land to other uses where necessary or appropriate to the community development program. Examples include an applicant purchasing land to be used for the development of housing for low- and moderate-income persons, and an applicant which is a central city of a metropolitan area using block grant funds to purchase existing houses in a non-impacted suburban jurisdiction in order to provide a wider choice of housing opportunities for central city lower-income residents.

(b) *Disposition.* Disposition, through sale, lease, donation, or otherwise, of any real property acquired with block grant funds or its retention for public purposes, including reasonable costs of temporarily managing such property or property acquired under urban renewal, provided that the proceeds from any such disposition shall be program income subject to the requirements set forth in § 570.506. Further information regarding disposition is set forth in § 570.613.

(c) *Public facilities and Improvements.* Acquisition, construction, reconstruction, rehabilitation, or installation of certain publicly owned facilities and improvements. This may include the execution of architectural design features, and similar treatments intended to enhance the esthetic quality of facilities and improvements receiving block grant assistance, such as decorative pavements, railings, sculpture, pools of water and fountains, and other works of art. Public facilities and improvements eligible for assistance under this paragraph are subject to the special policies in § 570.200(d) and the rules on ineligible facilities and improvements in § 570.207 (a), (b) and (c), and include:

(1) *Senior centers,* but excluding any facility whose primary function is to provide residential accommodations or care on a 24-hour day basis (such as a group home). Further information regarding the rehabilitation of residential facilities is set forth in § 570.202 (a)(2) and (c)(1).

(2) *Parks, playgrounds and other recreational facilities* which are designed for participation, but not spectator facilities such as stadiums.

(3) *Centers for the handicapped.* The term "center for the handicapped" means any single or multipurpose facility which seeks to assist persons with physical, mental, developmental and/or emotional impairments to become more functional members of the community by providing programs or services which may include, but are not limited to, recreation, education, health care, social development, independent living, physical rehabilitation and vocational rehabilitation; but excluding any facility whose primary function is to provide residential care on a 24-hour a day basis (such as a group home or halfway house). For example, a sheltered workshop would be a single purpose center for the handicapped, and a facility providing several services for the handicapped would be a multipurpose center for the handicapped, both of which are eligible for assistance. Further information regarding the rehabilitation of residential facilities is set forth in § 570.202 (a)(2) and (c)(1).

(4) *Neighborhood facilities.* Such facilities may be of either a single purpose or multipurpose nature and be designed to provide health, social, recreational or similiar community services primarily for residents of the neighborhood service area which is either:

(i) A geographic location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in comprehensive plans, ordinances or other local documents as a neighborhood or, in a new community as defined in § 570.403(a), a neighborhood, village or similar geographical designation; or

(ii) An entire unit of general local government or a new community as defined in § 570.403(a) which is under 25,000 population, with the exception of a facility which is designed solely as a communitywide facility in a new community with a currently projected population in excess of 25,000.

(5) *Solid waste disposal facilities,* which are defined as those physical parts of solid waste management systems commencing at and including the site or sites at which publicly or privately owned collection vehicles discharge municipal solid wastes, through the point of ultimate disposal including necessary site improvements and conveying systems, including appropriate fixed and movable equipment including vehicular containers used after the first stage of disposal at transfer stations, but not including the final collections. (i) Such facilities or equipment must be located in or serve areas where other activities included in the Community Development and Housing Plan are being carried out, such as a NSA. (ii) Equipment and appurtenances used in the initial collection of solid waste are not included among those solid waste disposal facilities eligible for assistance under this Part.

(6) *Fire protection facilities and equipment.* Such facilities and equipment must be located in or serve areas where other activities included in the Community Development and Housing Plan are being carried out, such as an NSA.

(i) Fire protection facilities are defined as the land and necessary improvements thereto which are necessary for properly housing and storing fire protection equipment and personnel by a fire protection organization, but not including fire fighting schools and their appurtenances.

(ii) Fire protection equipment is defined as the appropriate equipment and apparatus which a fire protection organization requires for carrying out a program for protecting property and maintaining the safety and welfare of the public, including emergency medical aid, from the dangers of fire.

(7) *Parking facilities.* Such facilities must be located in or serve areas where other activities included in the Community Development and Housing Plan are being carried out, such as an NSA.

(8) *Public utilities,* other than water and sewer, which include:

(i) Facilities necessary for distribution of the utility (but not production or generation, such as electrical generation plants);

(ii) Buildings and improvements that are an integral part of the utility and are of such a nature that the utility will not function without them; and

(iii) The placing underground of existing or new distribution facilities. Further information regarding the eligibility of assistance to privately owned utilities is set forth in § 570.201(1).

(9) *Street improvements.* Streets, street lights, traffic signals, signs, street furniture, trees, bridges, culverts, alleys, causeways, curbs, gutters, sidewalks, and other normal appurtenances to streets and structures facilitating the passage on, or usage of, streets, but excluding expressways and other limited access ways and their appurtenances.

(10) *Water and sewer facilities,* including storm sewers, except for sewage treatment works and interceptor sewers which are described in § 570.207(a)(2)(v). The term "storm sewers" means sewers or other conduits, open or closed, or their appurtenances which collect, transport

and dispose of storm waters, surface water, street wash, other wash and ground water or drainage into an existing water course, but excluding domestic waste water and commercial and industrial wastes.

(11) *Foundations and platforms for air rights sites.*

(12) *Pedestrian malls and walkways.*

(13) *Flood and drainage facilities,* in cases where assistance for such facilities has been determined to be unavailable under other Federal laws or programs pursuant to the provisions of § 570.607. The term "flood and drainage facilities" means those undertakings designed to influence or affect the flow in a natural water course (such as a river, stream, lake, estuary, bay, ocean or intermittent stream) and excludes storm sewers.

(14) *Other public facilities and improvements,* not listed in this paragraph, except those described in § 570.207 (a)(1) and (f), which are necessary and appropriate to the implementation of the applicant's strategy for neighborhood revitalization or housing.

(i) The applicant shall provide HUD with a description of the proposed facility or improvement and the relationship to the applicant's strategy for neighborhood revitalization or housing.

(ii) Among the factors HUD will take into account in authorizing assistance under this paragraph are the amount of benefit to low- and moderate-income persons, the degree of impact on the identified needs of the applicant, and the availability of other Federal funds for the activity.

(d) *Clearance activities.* Clearance, demolition and removal of buildings and improvements, including movement of structures to other sites. Demolition of HUD assisted housing units may be undertaken only with the prior approval of HUD.

(e) *Public services.* Provision of public services (including labor, supplies and materials) which are directed toward improving the community's public services and facilities, including those concerned with employment, crime prevention, child care, health, drug abuse, education, welfare or recreational needs, and which are directed toward coordinating public and private development programs. Such services may be provided by State or local governments, quasi-public, private or nonprofit agencies, including, but not limited to, HUD-approved counseling agencies, selected by the applicant for funds provided under this Part. In order to be eligible for block grant assistance, public services must meet each of the following criteria:

(1) Public services are to be provided for residents of Neighborhood Strategy Areas in which block grant assisted physical development activities are being carried out in a concentrated manner. Physical development activities include only activities carried out under § 570.201 (other than paragraphs (i) and (j)), § 570.202 and § 570.203. Such public services may be provided with block grant funds during the period in which block grant assisted physical development activities are being carried out in a concentrated manner, and may be continued for no more than three years after the completion of such physical development activities.

(i) An area which meets the requirement for a Neighborhood Strategy Area may be so designated for purposes of qualifying the continuation of previously approved public services under this three year rule, notwithstanding the fact that such physical development activities have been completed or substantially completed.

(ii) For the Small Cities Program, there is no requirement that a Neighborhood Strategy Area be established. Rather, public services are to be provided for residents of areas where block grant assisted physical development activities are being carried out in a concentrated manner. The phrase "concentrated manner" shall mean that the block grant assisted physical development activities are being carried out within an area in a coordinated manner to serve a common objective or purpose pursuant to a locally developed plan or strategy.

(2) Such services must be directed toward meeting the needs of residents of such areas. Block grant assistance may only incidentally be used to provide public services for persons who are not residents of Neighborhood Strategy Areas.

(3) A public service must be either (i) a new service, or (ii) a quantifiable increase in the level of a service above that which has been provided by or in behalf of the applicant from local revenue sources or State funds received by the applicant in the twelve calendar months prior to submission of the block grant application. (An exception to this requirement with regard to State-funded services may be made if HUD determines that the decrease in the level of a service was the result of events not within the control of the applicant.)

(4) Federal assistance in providing or securing such public services must have been applied for and denied or not made available pursuant to the provisions of § 570.607.

(5) Public services must be determined by the applicant to be necessary or appropriate to support the physical development activities to be carried out within Neighborhood Strategy Areas or, with respect to Small Cities, pursuant to paragraph (e)(1)(ii) of this section. For example, the provision of job training for area residents working on neighborhood revitalization projects would be appropriate to support a concentration of block grant assisted physical development activities being carried out in the area. (i) The specific determination of support for each proposed public service is not required to be included in the application, but the applicant must briefly describe the relationship of the public service to its overall strategy for physical development activities within the NSA. (ii) HUD will accept the applicant's determination that a public service is necessary and appropriate to support the physical development activities unless there is substantial evidence to the contrary, in which case additional information or assurances may be requested from the applicant prior to a determination of eligibility.

(f) *Interim assistance.* Interim assistance to alleviate harmful conditions where immediate public action is determined by the applicant to be necessary.

(1) The following activities may be undertaken as a prelude to more comprehensive treatment in areas, such as NSAs, where activities included in the Community Development and Housing Plan are to be carried out to hold the area from further deterioration during the interim period:

(i) The repairing of streets, sidewalks, parks, playgrounds, publicly owned utilities and public buildings;

(ii) The improvement of private properties to the extent necessary to eliminate immediate dangers to public health, safety or welfare;

(iii) The establishment of temporary public playgrounds on vacant land; and

(iv) The execution of special garbage, trash, and debris removal, including neighborhood clean up campaigns, but not the regular curbside collection of garbage or trash in an area.

(2) The following activities may be undertaken to the extent necessary to alleviate emergency conditions threatening the public health and safety in areas where the chief executive officer of the applicant determines that an imminent threat to the public health and safety exists requiring immediate resolution of emergency conditions:

(i) the improvement of private properties;

(ii) the repair of streets, sidewalks, utilities, and other public facilities and improvements; and

(iii) the removal of trash and debris, unsafe structures, clearance of streets including snow removal, and other similar activities.

The chief executive officer, or his designee, shall notify the appropriate HUD Area Office within seven days of determining that a situation exists which poses an imminent threat to the public health and safety and that block grant funds will be used to alleviate the emergency conditions.

(g) *Payment of the non-Federal share* required in connection with a Federal grant-in-aid program undertaken as part of the block grant activities, *Provided,* That such payment shall be limited to activities otherwise eligible under this subpart.

(h) *Urban renewal completion.* Payment of the cost of completing an urban renewal project funded under Title I of the Housing Act of 1949 as amended. Further information regarding the eligibility of such costs is set forth in § 570.801.

(i) *Relocation.* Relocation payments and assistance for displaced individuals, families, businesses, nonprofit organizations, and farm operations, when determined by the applicant to be appropriate to the community development program. Further information regarding the eligibility of relocation costs is set forth in § 570.602.

(j) *Loss of rental income.* Payments to housing owners for losses of rental income incurred in holding for temporary periods housing units to be utilized for the relocation of individuals and families displaced by program activities assisted under this Part.

(k) *Removal of architectural barriers.* Special projects directed to the removal of material and architectural barriers which restrict the mobility and accessibility of elderly or handicapped persons to publicly owned and privately owned buildings, facilities, and improvements. Further information regarding the removal of architectural barriers is available in publication ANSI A117.1–1961 (R. 1971) of the American National Standards Institute, Inc.

(l) *Privately owned utilities.* Acquisition, construction, reconstruction, rehabilitiation, or installation of distribution facilities and lines of privately owned utilities where necessary and appropriate to implement the applicant's strategy for neighborhood revitalization or housing. Activities may include the placing underground of new or existing distribution facilities.

(1) The applicant shall provide HUD with a description of the proposed activity and the relationship to the applicant's strategy for neighborhood revitalization or housing.

(2) Among the factors HUD will take into account in authorizing such activities are:

(i) The degree of benefit to low- and moderate-income persons;

(ii) The degree of impact on the identified needs of the applicant; and

(iii) The availability of other Federal funds for the activity.

§ 570.202 Eligible rehabilitation and preservation activities.

Grant assistance may be used for the following activities for the rehabilitation of buildings and improvements:

(a) *Rehabilitation of public residential structures.* Rehabilitation of publicly owned or acquired properties for use or resale in the provision of housing, including:

(1) *Permanent housing units,* both single family and multifamily, for rental or sale; and

(2) *Residential facilities,* including group homes, halfway houses, and emergency shelters. For example, a group home for the handicapped or a temporary shelter for battered persons may be provided through acquisition and rehabilitation of properties for those purposes.

(b) *Public housing modernization.* Modernization and modernization planning of publicly-owned low-income housing (excluding, the new construction of office facilities for such public housing).

(N.B. block grant funds may also be provided by an applicant to a public housing agency to be used for otherwise eligible activities, e.g., public services such as security and day care meeting the requirements of § 570.201(e) and planning and policy-planning-management activities under § 570.205 related to public housing improvements.)

(c) *Rehabilitation of private properties.* Block grant assistance may be used for the rehabilitation of privately owned properties. Assistance may consist of:

(1) *Acquisition for the purpose of rehabilitation.* Block grant funds may be used to assist private entities, including those organized for profit and on a not-for-profit basis, to acquire, for the purpose of rehabilitation, and rehabilitate properties for use or resale in the provision of housing which, upon completion of rehabilitation, at a minimum will meet the Section 8 Existing Housing Quality Standards set forth in 24 CFR § 882.109, including:

(i) Permanent housing units, both single family and multifamily, for rental or sale; and

(ii) Residential facilities, including group homes, halfway houses, and emergency shelters;

(2) *Rehabilitation financing.* Block grant funds may be used to finance the rehabilitation of privately owned residential, non-residential (excluding industrial), and mixed use properties.

(i) Such financing may be provided either: (A) within areas designated in the application for comprehensive treatment, such as an NSA; (B) for persons of low- and moderate-income; or (C) to eliminate conditions detrimental to public health and safety, provided that the rehabilitation assistance is limited to the extent necessary to correct the conditions that are detrimental to public health and safety.

(ii) Block grant funds may be used directly to finance rehabilitation, including settlement costs, through the direct use of block grant funds in the provision of assistance, such as grants, loans, loan guarantees and interest supplements, for:

(A) Costs of rehabilitation of properties, including, repair directed toward cure of an accumulation of items of deferred maintenance, replacement of principal fixtures and components of existing structures, and renovation through alteration, additions to, or enhancement of existing structures, which may be undertaken singly, or in combination;

(B) Refinancing existing indebtedness secured by a property being rehabilitated if such refinancing is necessary or appropriate to the execution of the Community Development and Housing Plan;

(C) Measures to increase the efficient use of energy in structures through such means as installation of storm windows and doors, siding, wall and attic insulation, and conversion, modification or replacement of heating and cooling equipment, including the use of solar energy equipment;

(D) Financing of costs associated with the connection of residential structures to water distribution lines or local sewer collection lines; or

(E) Costs of initial homeowner warranty premiums for rehabilitation carried out with block grant assistance.

(3) *Materials.* Block grant funds may be used to provide materials, including tools, for use in the rehabilitation of properties either by the property owner or tenant, or where arrangements have been made for the provision of labor, such as through a CETA grant.

(4) *Rehabilitation services.* Block grant funds may be used to provide rehabilitation services, such as rehabilitation counseling, loan processing, preparation of work specifications, and other services related to assisting owners rehabilitate their properties, in conjunction with the provision of rehabilitation financing under paragraph (c)(2) of this section and under Section 312 of the Housing Act of 1964, as amended.

(d) *Temporary relocation assistance.* Block grant funds may be used for temporary relocation payments and assistance to individuals, families, businesses, non-profit organizations, and farm operations displaced temporarily by rehabilitation activities assisted under this part. Further information regarding the eligibility of relocation costs is set forth in § 570.602.

(e) *Code enforcement.* Code enforcement in deteriorating or deteriorated areas where activities included in the Community Development and Housing Plan are being carried out, such as an NSA, and where such enforcement together with public improvements, rehabilitation assistance, and services to be provided, may be expected to arrest the decline of the area.

(f) *Historic preservation.* Rehabilitation, preservation, restoration and acquisition of historic properties, either publicly or privately owned, which are those sites or structures that are either listed in or eligible to be listed in the National Register of Historic Places, listed in a State or local Inventory of Historic Places, or designated as a State or local landmark or historic district by appropriate law or ordinance.

Publicly owned historic properties may be assisted, including those properties which are otherwise ineligible for assistance under this subpart. However, eligibility is limited only to those costs necessary for rehabilitation, preservation or restoration of the property and not for conversion or expansion of the property for any ineligible use. For example, a city museum serving low- and moderate-income persons, and listed in the National Register may be restored, but the addition of a new wing on the museum could not normally be assisted, unless it were otherwise eligible for assistance pursuant to § 570.203(b).

§ 570.203 Eligible economic development activities.

Grant assistance may be provided for the following development activities which are not otherwise eligible for block grant assistance, which are directed toward the alleviation of physical and economic distress, or the economic development of a new community as described in § 570.403(a) through stimulation of private investment, community revitalization, and expansion of economic opportunities for low- and moderate-income persons, and handicapped persons, and which are necessary and appropriate to implement the applicant's strategy for economic development.

The applicant shall provide HUD with a description of the activity, and of the relationship to the applicant's strategy for economic development under § 570.304(b)(3). In authorizing activities, HUD will take into account the amount of long-term employment to be generated by the activity accessible to low- and moderate-income persons, the necessity of the activity to stimulate private investment, the degree of impact on the economic conditions of the applicant, and the availability of other Federal funds.

(a) *Acquisition.* Acquisition of real property for economic development purposes;

(b) *Public facilities and improvements.* Acquisition, construction, reconstruction, rehabilitation, or installation of public facilities and improvements not otherwise eligible for assistance, except buildings and facilities for the general conduct of government which are excluded by § 570.207(a)(1).

For example, in an area with an unemployment rate in excess of the national rate, a manpower training center which is designed to prepare for the work force low- and moderate-income persons who are unemployed or underemployed, may be assisted where it is determined by the applicant that such a facility is necessary and appropriate to support its economic development strategy.

(c) *Commercial and industrial facilities.* Acquisition, construction, reconstruction, rehabilitation or installation of:

(1) Commercial or industrial buildings and structures, including:

(i) Purchase of equipment and fixtures which are part of the real estate, but not personal property; and

(ii) Energy conservation improvements designed to encourage the efficient use of energy resources (including renewable energy resources or alternative energy resources);

(2) Commercial or industrial real property improvements (including railroad spurs or similar extensions).

§ 570.204 Eligible activities by private nonprofit entities, neighborhood-based nonprofit organizations, local development corporations, or small business investment companies.

(a) *General.* Grant assistance may be used by applicants to provide block grant funds for activities designed to implement the applicant's strategies for economic development and neighborhood revitalization set forth in this section to be carried out by a private nonprofit entity, a neighborhood-based nonprofit organization, local development corporation, or Small Business Investment Company (SBIC).

(1) *Applicant Responsibilities.* Applicants are nonetheless responsible for ensuring that block grant funds are utilized by such entities in a manner consistent with the requirements of this Part and other applicable Federal, State, or local law. Specific requirements governing the administration of the use of block grant funds by such entities are set forth in § 570.612. Applicants will also be responsible for the carrying out of applicable environmental review and clearance responsibilities.

(2) *Eligible Entities.* Entities eligible to receive block grant funds under this section are: (i) A private non-profit entity which is any organization, corporation, or association, duly organized to promote and undertake community development activities on a not-for-profit basis, including new community associations as defined in § 570.403(b);

(ii) A neighborhood-based nonprofit organization which is an association or corporation, duly organized to promote and undertake community development activities on a not-for-profit basis within a neighborhood as defined pursuant to § 570.201(c)(4). An organization is considered to be neighborhood-based if the majority of either its membership, clientele, or governing body are residents of the neighborhood where activities assisted with block grant funds are to be carried out;

(iii) A Small Business Investment Company (SBIC) which is an entity organized pursuant to section 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. 681(d)), including those which are profit making; and

(iv) A local development corporation which is an entity organized pursuant to Title VII of the Headstart, Economic Opportunity, and Community Partnership Act of 1974 (42 U.S.C. 2981); an entity eligible for assistance under section 502 of the Small Business Investment Act of 1958 (15 U.S.C. 696); a State development entity eligible for assistance under section 501 of the Small Business Investment Act of 1958

(15 U.S.C. 695); or any similar entity incorporated under State or local law for the principal purpose of providing economic development assistance in neighborhoods or local areas whose residents (including non-resident owners of buinesses located in such neighborhoods or areas) represent a majority of its voting membership and control.

(b) *Activities eligible under §§ 570.201–570.203, and § 570.205 and § 570.206.* Grant assistance may be provided by an applicant to be utilized by private nonprofit entities, neighborhood-based nonprofit organizations, SBIC's, or local development corporations for activities otherwise eligible for block grant assistance pursuant to §§ 570.201–570.203, § 570.205, and § 570.206. Where such entities use block grant funds to acquire title to facilities, including those described in § 570.201(c) or § 570.203(b), they shall be operated so as to be open for use by the general public during all normal hours of operation. Reasonable fees may be charged for the use of facilities acquired by such entities, but charges, such as excessive membership fees, which will have the effect of precluding low- and moderate-income persons from using the facilities are not permitted.

(c) *Community economic development or neighborhood revitalization activities.* Grant assistance may be provided by an applicant to be used by neighborhood-based nonprofit organizations, SBIC's or local development corporations, but not private nonprofit entities as defined in § 570.204(a)(2)(i), for community economic development or neighborhood revitalization activities which are not otherwise eligible for assistance under this subpart and which are determined by the applicant to be necessary or appropriate to the accomplishment of its Community Development and Housing Plan. Such activities may include the provision of block grant assistance for use by neighborhood-based nonprofit organizations, SBICs, or local development corporations for:

(1) Assistance through grants, loans, guarantees, interest supplements, or technical assistance to new or existing small businesses, minority businesses and neighborhood nonprofit businesses for

(i) Working capital or operational funds; and

(ii) Capital for land, structures, property improvements, and fixtures;

(2) Capitalization of a SBIC or local development corporation required to qualify for assistance under other Federal programs;

(3) Assistance to minority contractors to obtain performance bonding; or

(4) Other activities, excluding those described as ineligible for block grant assistance in §§ 570.207(a)(1) and (e), appropriate for community economic development or neighborhood revitalization. Where an applicant proposes to fund such entities to undertake activities pursuant to this paragraph, the applicant shall:

(i) Provide HUD with a complete description of the proposed activity;

(ii) Provide HUD with a description of the relationship of the proposed activity to the applicant's strategy for neighborhood revitalization or economic development; and

(iii) Receive specific authorization from HUD to undertake the activity.

§ 570.205 Eligible planning and urban environmental design costs.

Grant assistance may be used for the following planning, design, and environmental costs:

(a) *Development of a Comprehensive Community Development Plan.* For the purpose of this section, the term "Comprehensive Community Development Plan" means a statement or statements (in words, maps, illustrations or other methods of communication) which identify the present conditions, needs and major problems of the applicant's jurisdiction relating to the specific objectives of the Community Development Program as set forth in § 570.2(a) and set forth objectives, policies and standards to guide the development and implementation of such Community Development Program. Activities necessary to develop a Comprehensive Community Development Plan may include:

(1) *Data gathering and studies* necessary for the development of the Plan or its components, including the production of base mapping and aerial photography in coordination with the U.S. Geological Survey, and gathering information from citizens, but excluding the gathering of detailed data and preparing of analyses necessary for the engineering and design of facilities or activities ineligible for block grant assistance pursuant to § 570.207;

(2) *Development of statements of objectives,* policies and standards regarding proposed or forseeable changes in the present conditions or problems affecting the applicant's jurisdiction that are to be addressed by the Community Development Program, including policies which will affirmatively further fair housing;

(3) *Development of a three-year Community Development and Housing Plan and an Annual Community Development Program* which identify the community development, housing, and economic conditions and needs, demonstrate a comprehensive strategy for meeting those needs, specify both short- and long-term objectives and identify specific activities to carry out those objectives;

(4) *Related planning and urban environmental design acitivities including* the preparation of communitywide plans for land use, housing, open space, recreation, utilities, historic preservation, including surveys of historic properties, economic development, neighborhood preservation, removal of architectural barriers to the elderly and handicapped, and environmental assessment;

(5) *Development of individual project plans,* including collection of detailed data and preparation of analyses, but excluding the engineering and design costs of carrying out an activity eligible under § 570.201 through § 570.204; and

(6) *Development of codes, ordinances and regulations,* necessary for the implementation of the plan, including local fair housing ordinances.

(b) *Development of a policy-planning-management capacity* so that the applicant may:

(1) Set long-term and short-term objectives related to the community development and housing needs of its jurisdiction;

(2) Devise programs and activities to meet these goals and objectives;

(3) Establish an urban environmental design administrative capacity to use a systematic, interdisciplinary approach to the integrated use of natural and social sciences and environmental design arts in planning and decision making;

(4) Evaluate the progress of such programs and activities and the extent to which the goals and objectives have been accomplished; and

(5) Carry out the management, coordination and monitoring of the activities and programs that are a part of the applicant's Community Development Program.

(c) *Comprehensive planning activities.* In addition to the planning activities otherwise eligible for assistance under this section, assistance may be also provided for comprehensive planning activities eligible for assistance under the section 701 planning assistance program pursuant to 24 CFR Part 600 provided that such additional planning activities are necessary or appropriate to meeting the needs and objectives of the applicants' Community Development Program. The applicant shall submit a description of the activity to HUD.

Among the factors HUD will take into account in authorizing activities will be the impact of the activity on the needs and objectives identified by the applicant, and the availability of other Federal funds.

§ 570.206 Eligible Administrative Costs.

Payment of reasonable administrative costs and carrying charges related to the planning and execution of community development activities financed, in whole or in part, with funds provided under this Part and housing activities covered in the applicant's Housing Assistance Plan (HAP). Costs incurred in carrying out the program, whether charged to the program on a direct or an indirect basis, must be in conformance with the requirements of Federal Management Circular (FMC) 74–4, "Cost Principles Applicable to Grants and Contracts with State and Local Governments." All items of cost listed in Attachment B, Section C of that Circular (except Item 6, preagreement cost, which are eligible only to the extent authorized in § 570.301(d) and (e) are allowable without prior approval to the extent they constitute reasonable costs and are otherwise eligible under this subpart.

(a) *General management, oversight and coordination.* Reasonable costs of overall program management, coordination, monitoring and evaluation, and similar costs associated with carrying out multi-activity projects, but excluding activity delivery costs eligible as costs of carrying out the activity under § 570.201 through § 570.204. Such costs include, but are not limited to, necessary expenditures for the following:

(1) Salaries, wages and related costs of the applicant's staff and the staff of local public agencies engaged in general management, coordination, monitoring and evaluation; Travel costs incurred for official business in carrying out the program;

(3) Administrative services performed under third-party contracts or agreements, including such services as general legal services, accounting services and audit services; and

(4) Other costs for goods and services required for administration of the program, including such goods and services as rental and maintenance of office space, insurance, utilities, office supplies and rental or purchase of office equipment;

(b) *The provision of information and other resources to residents* and citizen organizations participating in the planning, implementation, or assessment of activities being carried out with block grant funds. This may include assistance to neighborhood organizations in areas of concentrated activities or to city-wide organizations conducting training or other activities designed to increase the capability of low- and moderate-income persons to be involved effectively in the development and planning and design of a community development program consistent with the applicable citizen participation requirements set forth in this Part.

(c) *Provision of fair housing counseling services* and other activities designed to further the fair housing provisions of § 570.307(1) and the housing objective of promoting greater choice of housing opportunities and avoiding undue concentrations of assisted persons in areas containing a high proportion of lower-income persons. For example, activities may include informing members of minority groups, and the handicapped, of housing opportunities in non-traditional neighborhoods and providing information about such areas, and assisting members of minority groups, and the handicapped, through provision of escort services to brokers offices in non-traditional neighborhoods.

(d) *Provision of assistance to facilitate performance and payment bonding* necessary for contractors carrying out activities assisted with block grant funds including payment of bond premiums in behalf of contractors.

(e) *Administrative costs of urban homesteading program.* Reasonable costs relating to the administration of an urban homesteading program carried out under Section 810 of the Housing and Community Development Act of 1974, as amended, in accordance with a three-year Community Development and Housing Plan.

(f) *Applications for Federal programs,* including the block grant program and UDAG program, may be prepared with block grant funds where necessary and appropriate to implement the applicant's comprehensive strategy for community development. Special provisions regarding letter to proceed for small city applicants are contained in Subpart F.

(g) *Activities to facilitate the implementation of a housing assistance plan* for necessary expenses, prior to construction, in planning and obtaining financing for the new construction or substantial rehabilitation of housing for lower-income persons. Activities may include:

(1) The costs of conducting preliminary surveys and analyses of market needs;

(2) Site and utility plans, narrative descriptions of the proposed construction, preliminary cost estimates, urban design documentation, and "sketch drawings," but excluding architectural, engineering, and other details ordinarily required for construction purposes, such as structural, electrical, plumbing, and mechanical details;

(3) Reasonable costs associated with development of applications for mortgage and insured loan commitments, including commitment fees, and of applications and proposals under the Section 8 housing assistance payments program pursuant to 24 CFR Parts 880–883; and

(4) Fees associated with processing of applications for mortgage and insured loan commitments under programs including those administered by HUD, Farmers Home Administration (FmHA), Federal National Mortgage Association (FNMA), and the Government National Mortgage Association (GNMA).

The new construction or direct financing of new construction of housing is not eligible for assistance under this Part, except as described in § 570.207(f).

(h) *Environmental Studies.* The reasonable costs of environmental studies, including historic preservation clearances, necessary to comply with 24 CFR Part 58, including project specific environmental assessments and clearances for activities eligible for assistance under this Part.

§ 570.207 Ineligible activities.

The following is a list of activities which are ineligible for block grant assistance under most circumstances and serves as a general guide regarding ineligible activities. There are several authorities set forth in Subpart C which would permit activities cited in this section to be undertaken with block grant funds. When an activity used as an example in this section meets the requirements for eligibility pursuant to Subpart C, such an activity may be assisted with block grant funds even though it is used as an example of an ineligible activity. The list of examples of ineligible activities is merely illustrative and does not constitute a list of all ineligible activities:

(a) *Public works, facilities and site or other improvements.* The general rule is that public works, facilities and site or other improvements are ineligible to be acquired, constructed, reconstructed, rehabilitated or installed unless they are eligible pursuant to § 570.201(c) or § 570.203(b), or were previously eligible under any of the programs consolidated by the Act (except the public facilities loan program, the model cities program, and as an urban renewal local grant-in-aid eligible under section 110(d)(3) of Housing Act of 1949) and cited in § 570.1(b). Activities undertaken to

make facilities and improvements otherwise ineligible for development with block grant assistance accessible to the elderly and handicapped through removal of architectural barriers, or for the purposes of historic preservation pursuant to §§ 570.201(k) and 570.202(f), respectively, are eligible for assistance with block grant funds and are not precluded by this section. Where acquisition of real property includes an existing improvement which is to be utilized in the provision of an ineligible public facility, the portion of the acquisition cost attributable to such improvement, as well as the cost of any rehabilitation or conversion undertaken to adapt or make the property suitable for such use, shall be ineligible. Examples include the following:

(1) *Buildings and facilities for the general conduct of government,* cannot be provided with block grant assistance, such as city halls and other headquarters of government where the governing body of the recipient meets regularly and which are predominantly used for municipal purposes, courthouses, police stations and other municipal office buildings;

(2) *Other facilities and improvements,* which may not be provided with block grant funds unless they are determined by HUD to be necessary and appropriate to the implementation of an applicant's strategy for community development and housing in accordance with §§ 570.201(c)(14) or 570.203(b), include:

(i) *Facilities used for exhibitions, spectator events and cultural purposes,* including stadiums, sports arenas, auditoriums, concert halls, cultural and art centers, convention centers and exhibition halls, museums, central libraries, and similar facilities. For the purpose of this paragraph, libraries (including central libraries in units of general local government under 25,000 population where the criteria set forth in § 570.201(c)(4)(ii) are satisfied), cultural, art and museum facilities which meet the requirements for neighborhood facilities set forth in § 570.201(c)(4) are considered neighborhood facilities and are therefore eligible for assistance.

(ii) *Schools and educational facilities,* (including elementary, secondary, college, and university facilities). For the purpose of this paragraph, a neighborhood facility, senior center or center for the handicapped in which classes in practical and vocational activities (such as first aid, homemaking, crafts, independent living, etc.) are among the services provided is not considered as a school or educational facility. Further information regarding facilities located on school property is set forth in § 570.200(d)(2);

(iii) *Airports, subways, trolley lines, bus or other transit terminals,* or stations, and other transportation facilities, (excluding railroad spurs assisted pursuant to § 570.203(c)).

(iv) *Hospitals, nursing homes and other medical facilities.* For the purpose of this paragraph, a neighborhood facility, senior center, or center for the handicapped, which provides general health services is not considered to be a medical facility.

(v) *Treatment works for sewage or industrial wastes of a liquid nature,* consisting of the various devices used in the treatment of sewage and commercial and industrial wastes of a liquid nature, including the necessary interceptor sewers, outfall sewers, actual treatment facilities, pumping stations, power and other equipment, and their appurtenances. The term "interceptor sewer" means a line which has as its primary purpose the diversion or transmission of sewage from a collection system to a treatment facility, and applies to the following:

(A) In those situations where raw or inadequately treated sewage is being discharged from an existing public sewer, those sewer lines, whether gravity or force, and any pumping stations or other appurtenances thereto which are necessary to prevent or eliminate the discharge into any waterway of raw or inadequately treated sewage from an existing point or points of discharge in a public system are not eligible. This includes any necessary pumping stations, force mains or other appurtenances thereto; and

(B) In all other situations, the line or lines which divert the flow to the treatment facility from the point of natural discharge of a collection system, where no treatment is to be provided, including any necessary pumping stations, force mains or other appurtenances are not eligible.

(b) *Purchase of equipment.* The purchase of equipment with block grant funds is generally ineligible.

(1) *Construction equipment.* The purchase of construction equipment is ineligible, but compensation for the use of such equipment through leasing, depreciation or use allowances pursuant to Attachment B of Federal Management Circular 74–4 for an otherwise eligible activity is an eligible use of block grant funds. An exception is the purchase of construction equipment which is used as a part of a solid waste disposal facility which is eligible for block grant assistance pursuant to § 570.201(c)(5), such as a bulldozer used at a sanitary landfill.

(2) *Furnishings and personal property.* The purchase of equipment, fixtures, motor vehicles, or furnishings or other personalty not an integral structural fixture is ineligible, except when necessary for use by a recipient or its subgrantees in the administration of its Community Development Program pursuant to § 570.206(a), or as a part of a public service pursuant to § 570.201(e).

(c) *Operating and maintenance expenses.* The general rule is that any expense associated with operating, maintaining or repairing public facilities and works or any expense associated with providing public services not assisted with block grant funds is ineligible for assistance. However, operating and maintenance expenses associated with providing public services or interim assistance otherwise eligible for assistance under this Part may be assisted. For example, the cost of a public service being operated with block grant funds in a neighborhood facility may include reasonable expenses associated with operating the public service within the facility, including costs of rent, utilities and maintenance.

Examples of activities which are not eligible for block grant assistance are:

(1) Maintenance and repair of streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for the handicapped, parking and similar public facilities. Examples of maintenance and repair activities for which block grant funds may not be used include the filling of pot holes in streets, repairing of cracks in sidewalks, the mowing of recreational areas, and the replacement of expended street light bulbs.

(2) Payment of salaries for staff, utility costs and similar expenses necessary for the operation of public works and facilities; and

(3) Expenses associated with provision of any public service which is not eligible for assistance pursuant to § 570.201(e).

(d) *General government expenses.* Except as otherwise specifically authorized in this Subpart or under Federal Management Circular 74–4, expenses required to carry out the regular responsibilities of the unit of general local government are not eligible for assistance under this part.

(e) *Political activities.* No expenditure may be made for the use of equipment or premises for political purposes, sponsoring or conducting candidates' meetings, engaging in voter registration activity or voter transportation or other partisan political activities.

(f) *New housing construction.* Assistance may not be used for the

construction of new permanent residential structures or for any program to subsidize or finance such new construction, except as provided under the last resort housing provisions set forth in 24 CFR Part 42, or pursuant to § 570.204(c)(4). For the purpose of this paragraph, activities in support of the development of low- or moderate-income housing in accordance with an approved Housing Assistance Plan including clearance, site assemblage, provision of site improvements and provision of public improvements and certain housing preconstruction costs set forth in § 570.206(g), are not considered as programs to subsidize or finance new residential construction.

(g) *Income payments.* The general rule is that assistance shall not be used for income payments for housing or any other purpose. Examples of ineligible income payments include the following: payments for income maintenance, housing allowances, down payments and mortgage subsidies.

(Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*); Title I, Housing and Community Development Act of 1977 (Pub. L. 95–128); and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).)

III. The table of contents to Subpart D is revised to read as follows:

Subpart D—Entitlement Grants

Sec.

570.300 Outline of application requirements.
570.301 Planning considerations.
570.302 Program benefit to low- and moderate-income persons.
570.303 Citizen participation requirements.
570.304 Community development and housing plan.
570.305 Annual community development program.
570.306 Housing assistance plan.
570.307 Certifications.
570.308 Timing of application submission.
570.309 [Reserved].
570.310 A-95 clearinghouse review and comment.
570.311 HUD review and approval of application.
570.312 Amendments.

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301, et seq.); Title I, Housing and Community Development Act of 1977 (Pub. L. 95–128); and Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

IV. Subpart D is revised to read as follows:

Subpart D—Entitlement Grants

§ 570.300 Outline of application requirements.

This section briefly outlines the requirements which must be met by the applicant when applying for an entitlement grant and references other sections containing more detailed information on these requirements.

(a) *Planning requirements.* Requirements that the applicant must meet in planning its community development program are covered in the following sections.

(1) Section 570.301 describes general planning considerations;

(2) Section 570.302 describes the requirement that the applicant's community development program must be planned and carried out so as to principally benefit persons having low- and moderate-income; and

(3) Section 570.303 describes the requirement that the applicant must prepare and implement a written citizen participation plan, part of which provides for citizen involvement in the planning process.

(b) *Triennial submission requirements.* Every third year, beginning with the first application submitted on or after August 1, 1978, the applicant must submit an application consisting of the following:

(1) Standard Form 424, Federal Assistance, prescribed by OMB Circular No. A–102;

(2) Community Development and Housing Plan as described in § 570.304;

(3) Annual Community Development Program as described in § 570.305;

(4) Housing Assistance Plan as described in § 570.306; and

(5) Certifications as described in § 570.307.

(c) *Annual submission requirements.* For each of the other years in a three year period the applicant must submit an application consisting of the following:

(1) Standard Form 424;

(2) Annual Community Development Program as described in § 570.305;

(3) Annual Housing Action Program as described in § 570.306(b)(4); and

(4) Certifications as described in § 570.307.

(d) *Other application requirements.* The applicant must also comply with the following requirements when applying for an entitlement grant:

(1) Requirements on the timing of applications as set forth in § 570.308; and

(2) Requirements on notifying State and areawide clearinghouses of the applicant's intent to apply for Federal assistance, on submitting the application to clearinghouse for comment, and on taking actions following clearinghouse reviews, as described in § 570.310.

§ 570.301 Planning considerations.

(a) *Comprehensive strategies.* The Act requires that applicants have a three-year plan for the use of block grant funds which demonstrates a comprehensive strategy for meeting identified community development and housing needs. The Act provides discretion to local governments to develop strategies appropriate to local conditions and permits a wide choice of projects and activities to carry out those strategies. However, a comprehensive strategy shall include: (1) a systematic assessment of the locality's community development and housing needs and the resources available to meet those needs; (2) determination of the applicant's long- and short-term objectives and priorities for the use of funds; (3) development of a three-year plan of activities designed to meet the needs and objectives identified. This plan shall provide for undertaking housing and community development activities in a coordinated and mutually supportive manner consistent with local and areawide development planning and national urban growth policies. The requirements for the summary of the three-year plan are stated in § 570.304.

(b) *Coordination of programs.* It is recognized that different strategies may be appropriate and effective in dealing with different local needs and conditions. However, the Act limits certain activities to areas in which block grant assisted physical development programs are being carried out in a concentrated manner, for example, public services pursuant to § 570.201(e). Moreover, certain other HUD programs are designed to focus on areas of concentrated community development activity, for example, Urban Homesteading, and Section 8 Substantial Rehabilitation Special Procedures pursuant to 24 CFR Part 881. Applicants are therefore encouraged to designate appropriate areas in which various programs can be carried out in a concentrated and coordinated manner. For purposes of these regulations such areas shall be designated as Neighborhood Strategy Areas as defined in paragraph (c).

(c) *Neighborhood strategy area.* This is an area which is selected by the applicant and designated in its three-year Community Development and Housing Plan for a program of concentrated community development activities. For each Neighborhood Strategy Area the applicant shall include in its Plan a comprehensive strategy for stabilizing and upgrading the area which:

(1) Provides for a combination of physical improvements, necessary public facilities and services, housing programs, private investment and

citizen self-help activities appropriate to the needs of the area;

(2) Coordinates public and private development efforts;

(3) Provides sufficient resources to produce substantial long-term improvements in the area within a reasonable period of time; in determining the size of the area the applicant shall take into account the severity of its problems and the amount of resources to be provided so that this requirement can be met.

(4) Examples of Neighborhood Strategy Area programs include: a residential rehabilitation program which provides loans and grants to property owners in a designated area in which street improvements, playgrounds, and public services are also being provided; and a redevelopment program which includes systematic demolition of substandard structures and assemblage of sites for new construction in a particular area in conjunction with site improvements and facilities necessary to attract new development.

(5) In order for a program to qualify as a Neighborhood Strategy Area program, the activities which an applicant includes in such program (including activities to be funded and implemented in more than one action year) shall be grouped and deemed by the applicant to be a project, as defined in 24 CFR § 58.3. The environmental review of such project should take into account the relationship between component activities, and the cumulative environmental effects of activities.

(d) *Planning and implementing multiyear projects.* (1) An applicant may allocate funds in an application for the payment of part of the cost of a multiyear project to be financed in increments with funds becoming available in succeeding program years, provided the full scope and estimated cost of the total project is described in the first application in which grant funds are allocated for the project. This does not preclude use of subsequent year entitlement funds to complete a project which was designed as a single year project and whose cost exceeds initial estimates.

(2) The environmental assessment of a multiyear project, performed under 24 CFR Part 58, should encompass the entire multiyear scope of activities. Upon certification that the applicant has completed the environmental requirements for a multiyear project, HUD may issue its release of funds for the entire multiyear project. Such release of funds shall be subject to the provisions of paragraphs (3) and (4) of this subsection.

(3) Approval of each increment of a multiyear project is subject to the general availability of grant funds, adequate performance, and the submission of an acceptable application in each year in which grant funds are to be applied toward payment of project cost. In those instances where the applicant exhausts previously approved grant funds before the next increment is approved, the applicant may obligate and spend local funds to continue the work and be reimbursed with funds approved for the next increment, provided the locally funded work was undertaken in compliance with the requirements of this Part.

(4) The continued authority of an applicant to commit Title I funds to a multiyear project or to be reimbursed for the expenditure of local funds for costs of such project, after completion of environmental requirements and HUD release of funds, shall be subject to the continued relevance and completeness of the environmental assessment performed. In the event of any significant or substantial change in the nature, magnitude or extent of the project, or any significant or substantial change in the environment affecting the project, the applicant shall, prior to any further commitment of Title I funds to the project, complete the requirements of 24 CFR Part 58 relating to the updating of environmental clearances.

(5) The applicant may also obligate and spend local funds prior to approval of its application for the purpose of completing activities previously approved and assisted under the urban renewal program, the water and sewer facilities program, the neighborhood facilities program, or the open space land program, described in § 570.1(b) (1), (3), (4), and (6), respectively. After approval of its application, the applicant will be reimbursed with funds programmed in the application to cover those costs, provided such locally funded work was undertaken in compliance with the requirements of this Part. The environmental review requirements of 24 CFR Part 58, except the provisions of Subpart C of Part 58, must be complied with prior to the incurring of any such costs to be reimbursed by HUD; however, the provisions of Subpart C of Part 58 must be complied with prior to the release of funds by HUD.

(e) *Reimbursement for costs of planning and environmental studies.* Prior to approval of its application, an applicant may obligate and spend local funds for the purpose of environmental assessments required by 24 CFR Part 58, for the planning and capacity building purposes authorized by § 570.205 (a) and (b), for engineering and design costs associated with an activity eligible under § 570.201 through § 570.204, for the provision of information and resources to citizens pursuant to § 570.206(b), and for relocation and/or acquisition activities carried out pursuant to § 570.602. After approval of its application, the applicant will be reimbursed with funds programmed in the application to cover those costs, provided such locally funded activities were undertaken in compliance with the requirements of this Part and Part 58.

§ 570.302 Program benefit to low- and moderate-income persons.

(a) *Statutory Provisions.* The Housing and Community Development Act states as its primary objective the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low- and moderate-income. The Act also requires the applicant to certify that its community development program has been developed so as to give maximum feasible priority to activities which will benefit low- and moderate-income families, or aid in the prevention or elimination of slums or blight. It also permits approval of activities which the applicant certifies and the Secretary determines are designed to meet other community development needs having a particular urgency. Consistent with the statutory objectives, the following rules govern the expenditure of program funds to insure that the program principally benefits low- and moderate-income persons.

(b) *General Requirements.*

(1) All projects and activities must either principally benefit low- and moderate-income persons, or aid in the prevention or elimination of slums and blight, or meet other community development needs having a particular urgency.

(2) Each annual application for funds under this subpart must provide that the applicant's program as a whole shall principally benefit low- and moderate-income persons.

(3) An application shall be presumed to principally benefit low- and moderate-income persons, absent substantial evidence to the contrary, where not less than 75 percent of the program funds to be available during the three year period covered by the applicant's Community Development and Housing Plan shall be used for projects and activities which principally benefit low- and moderate-income persons under the standards in

paragraph (d) of this section. Applications submitted between May 1, 1978 and July 15, 1978, shall be presumed to principally benefit low- and moderate-income persons if at least 75 percent of the program funds applied for shall be used for projects and activities which meet the standards in paragraph (d).

(4) The applicant shall maintain in its files the documentation on which basis it determines that projects principally benefit low- and moderate-income persons. Such documentation may include 701 planning studies, welfare and unemployment records, local surveys, and similar generally available information. HUD will monitor the applicant's performance to ensure that the applicant's community development program principally benefits low- and moderate-income persons.

(5) In designing projects and selecting areas in which to carry out activities, the applicant shall address the needs of low- as well as moderate-income persons, given the nature and relative severity of their needs, and shall include projects suitable to meeting those needs.

(c) *Review Guidelines.*

(1) An application which meets the standard in paragraph (b)(3) will not be subject to further examination by HUD prior to funding with respect to benefit to low- and moderate-income persons.

(2) An application which does not meet the standard in paragraph (b)(3) shall be subject to an examination by HUD prior to funding to determine whether the activities proposed are plainly inappropriate to meeting the needs of the applicant because of the nature and severity of the needs of low- and moderate-income persons in relation to the general needs and conditions of the applicant, and whether taken as a whole, the proposed program principally benefits low- and moderate-income persons. In making this review, HUD shall consider the information in the applicant's three year Community Development and Housing Plan, its Annual Community Development Program, past expenditure patterns in areas having concentrations of lower income persons, and other generally available data.

(d) *Projects which principally benefit low- and moderate-income persons.* A project or activity will be considered to principally benefit low- and moderate-income persons if it is designed to meet identified needs of low- and moderate-income persons as described in the applicant's Community Development and Housing Plan and it meets one of the following standards:

(1) The project has income eligibility requirements that limit the benefits of the project to low- and moderate-income persons.

(2) The project does not have income eligibility requirements but the majority of the beneficiaries are low- and moderate-income persons. The following are examples of projects which meet this standard:

(i) A neighborhood strategy area program or a public improvement activity which serves an area, delineated by the applicant, where the majority of the residents are low- and moderate-income persons. Such an area may consist of a locally defined neighborhood or planning district, one or more census tracts, enumeration districts, or parts thereof; it need not be coterminous with census boundaries.

(ii) A project designed to attract or retain neighborhood commercial facilities which provide essential services to residential areas which have a majority of low- and moderate-income residents.

(iii) Economic development projects which are designed to provide direct employment opportunities for permanent jobs, the majority of which will be for low- and moderate-income persons if the persons expected to be employed are defined as low- and moderate-income prior to employment; it is not necessary that the incomes of persons employed by economic development projects be low or moderate after the project is completed.

(iv) A facility, such as a senior center, which is used principally by persons of low- and moderate-income.

(3) Removal of architectural barriers pursuant to § 570.201(k); such projects may be assumed to principally benefit low- and moderate-income persons in the absence of substantial evidence to the contrary.

(4) A project which must be carried out prior to or as an integral part of a project which will principally benefit low- and moderate-income persons. An example is the extension of water and sewer lines to permit construction of low-income housing. The cost of such projects must not be unreasonable in relation to the low- and moderate-income benefits to be provided. The housing or other facilities on which basis the project is justified must be included in the applicant's Community Development and Housing Plan and there must be evidence acceptable to HUD that construction of the housing or other facilities will in fact be commenced within the three-year period covered by the Plan.

(5) A project which serves an area with less than a majority of low- and moderate-income persons where: (i) the applicant has no areas within its jurisdiction where low- and moderate-income persons constitute a majority, or (ii) the applicant has so few such areas that it is inappropriate to limit the grant to projects in those areas; provided that: (A) the project serves areas having the largest proportion of low- and moderate-income residents in the locality; (B) the project is clearly designed to meet identified needs of lower income persons in those areas; and (C) the project benefits such persons at least in proportion to their share of the population of the areas served.

(e) *Projects which prevent or eliminate slums or blight.* The following projects and activities will be considered to prevent or eliminate slums or blight:

(1) A project in an area which is a slum, or a blighted, deteriorated, or deteriorating area, as defined by State or local law, and in which the applicant undertakes a Neighborhood Strategy Area program, as defined in § 570.301(c), to remedy the conditions which qualify the area as an urban renewal or similar area. In such cases the applicant may undertake any otherwise eligible activity, including economic development under § 570.203, necessary to accomplish its strategy for upgrading the area. Because State laws vary, HUD will recognize those State or local laws which authorize public actions for the purpose of slum and blight prevention and elimination. It is not necessary that an area be formally designated an urban renewal or similar area, but evidence supporting a local determination that an area meets criteria for slums and blight must be maintained in the locality's records.

(2) A project designed to eliminate detrimental conditions which are scattered or located outside slum or blighted areas. Authorized activities are only those necessary to eliminate the specific conditions of blight or physical decay, by acquisition of blighted structures, demolition, historic preservation, relocation, and rehabilitation to the extent necessary to eliminate conditions detrimental to public health and safety under § 570.202(c)(2)(i)(C).

(3) Activities necessary to complete Federally assisted urban renewal projects which do not principally benefit low- and moderate-income persons.

(f) *Projects designed to meet needs having a particular urgency.* These are projects which the applicant certifies and the Secretary determines are designed to alleviate a serious and immediate threat to the health or welfare of the community which is of recent origin where the applicant is unable to finance the projects on its

own, and other sources of funding are not available. A condition will generally be considered to be of recent origin if it developed or became critical within 18 months preceding the application for funds.

(g) *Determining benefits to low- and moderate-income persons.*

(1) In determining the amount of program funds which principally benefit low- and moderate-income persons, the costs of administration and planning cited in § 570.205 and § 570.206 may be excluded as they will generally be assumed to benefit low- and moderate-income persons in the same proportion as the remainder of the grant.

(2) The amount of any program funds to be applied to the repayment of urban renewal temporary loans may also be excluded.

(3) Funds budgeted for contingencies and/or local option activities may also be excluded; such funds shall be expended in such a manner that the program will continue to meet the requirements of this section.

(4) If a project or activity meets the definition in paragraph (d) of principally benefitting low- and moderate-income persons, the entire cost of the project or activity may be determined to benefit low- and moderate-income persons. This includes projects to prevent or eliminate slums and blight and projects designed to meet a need having a particular urgency where such projects principally benefit low- and moderate-income persons under paragraph (d).

(5) If a project is designed to prevent or eliminate slums or blight or to meet needs having a particular urgency and does not also principally benefit low- and moderate-income persons under the provisions in paragraph (d), a particular activity (such as a rehabilitation loan program with income limits) within that project may nevertheless be counted in determining the amount of program funds which benefit low- and moderate-income persons.

(6) In determining whether a proposed project will actually benefit low- and moderate-income persons, the nature of the needs identified, the relationship of the project to meeting those needs, and the net effect of the completed project shall be considered. Thus, mere location of an activity in a low- or moderate-income area does not conclusively demonstrate that a project or activity benefits lower income persons. A neighborhood revitalization effort which creates improved housing and better living environment, principally for low- and moderate-income persons, would be counted as such. Where such a program results in a change in the income characteristics of the area so that a majority of the ultimate beneficiaries are higher income persons, the program would not be counted as principally benefitting low- and moderate-income persons.

(h) *Mitigating adverse effects.* Where the program will result in direct or indirect displacement or other hardships to low- and moderate-income persons, the applicant shall take appropriate steps to minimize such displacement or hardships. Section 570.304(b)(2) requires the applicant to include in its Community Development and Housing Plan the actions it will take to assist low- and moderate-income persons to remain in existing locations when they prefer to do so, and to mitigate adverse effects on such persons as a result of neighborhood revitalization activities.

§ 570.303 Citizen participation requirements.

(a) *General.* The applicant shall provide citizens with an adequate opportunity to participate in an advisory role in planning, implementing, and assessing the program. In so doing, the applicant shall also provide adequate information to citizens, hold public hearings to obtain views of citizens, and provide citizens an opportunity to comment on the applicant's community development performance. Nothing in these requirements, however, shall be construed to restrict the responsibility and authority of the applicant for the development of the application and the execution of its Community Development Program.

(b) *Written citizen participation plan.* The applicant shall prepare a written citizen participation plan that provides procedures by which each of the requirements set forth in the following paragraphs will be implemented. The plan shall go into effect no later than August 1, 1978. The provisions concerning citizen involvement in implementing and assessing the program apply to activities that are ongoing as of that date, as well as to all future activities. The plan shall remain in effect until all activities assisted under this Part are completed, or until it is superseded by a new plan. Upon request by HUD, the plan shall be submitted to HUD to aid in the handling of complaints and to facilitate monitoring and evaluation.

(c) *Standards of participation.* The applicant shall provide a process of citizen participation at the communitywide level with regard to the overall application and program. Applicants with populations of 50,000 or more shall also provide a process of citizen participation at the neighborhood level in areas where a significant amount of activity is proposed or ongoing. These processes shall meet the following standards:

(1) All aspects of citizen participation shall be conducted in an open manner, with freedom of access for all interested persons;

(2) There shall be involvement of low- and moderate-income persons, members of minority groups, residents of areas where a significant amount of activity is proposed or ongoing, the elderly, the handicapped, the business community, and civic groups who are concerned about the program. Where the applicant chooses to establish, or has established, a general communitywide citizen advisory committee, there shall be substantial representation of low- and moderate-income citizens and members of minority groups. Similarly, where the applicant chooses to establish or recognize neighborhood advisory committees in areas where low- and moderate-income persons or members of minority groups reside, there shall be substantial representation of such persons;

(3) The applicant shall make reasonable efforts to ensure continuity of involvement of citizens or citizen organizations throughout all stages of the program;

(4) Citizens shall be provided adequate and timely information, so as to enable them to be meaningfully involved in important decisions at various stages of the program;

(5) Citizens, particularly low- and moderate-income persons and residents of blighted neighborhoods, shall be encouraged to submit their views and proposals regarding the Community Development Program;

(d) *Scope of participation.* The applicant shall provide for the continuity of citizen participation throughout all stages of the program. This includes citizen involvement in the development of the citizen participation plan, as well as involvement in the following areas:

(1) *Application development.* Citizens shall be involved in development of the annual application, including:

(i) The three-year Community Development and Housing Plan, including the identification of commmunity development and housing needs, and the setting of priorities;

(ii) The Housing Assistance Plan, including the Annual Housing Action Program;

(iii) The annual Community Development Program; and

(iv) Subsequent amendments and other changes to the above, in accordance with § 570.312.

(2) *Program implementation.* The roles citizens will play in program implementation shall be indicated in the citizen participation plan. At a minimum, this shall include involvement of citizens in an advisory role in policy decisions regarding program implementation. It may also include self-help activities carried out by citizen groups and direct program operations conducted by neighborhood-based organizations and other eligible nonprofit entities.

(3) *Assessment of performance.* Citizens and citizen organizations shall be given the opportunity to assess and submit comments on all aspects of the applicant's *community development performance, including the performance of the applicant's subrecipients and contractors.* They shall also be given the opportunity to assess projects and activities to determine whether objectives are achieved. The methods by which such opportunities shall be made available shall be indicated in the citizen participation plan. The applicant shall include in its annual performance report: (i) Copies of comments submitted by citizens regarding the applicant's community development performance; (ii) the applicant's assessment of such comments; and (iii) a summary of any actions taken in response to the comments received.

(e) *Submission of views and proposals.* The applicant shall provide for and encourage the submission of views and proposals regarding the Community Development Program by citizens, particularly low- and moderate-income persons and residents of blighted neighborhoods. This includes submission of such views:

(1) Directly to the applicant during the planning period prior to public hearings on the application;

(2) To recognized neighborhood, project area, and communitywide citizen organizations;

(3) At neighborhood and other meetings, if scheduled by the applicant prior to formal public hearings; and

(4) At formal public hearings.

The applicant shall provide timely responses to all proposals submitted to it, including written responses to written proposals stating the reasons for the action taken by the applicant on the proposal. The citizen participation plan shall state the number of days within which responses will be provided. Whenever practicable, responses should be provided prior to the final hearing on the application.

(f) *Consideration of objections to applications.* Persons wishing to object to approval of an application by HUD may make such objection known to the appropriate HUD Area Office. HUD will consider objections made only on the following grounds: The applicant's description of needs and objectives is plainly inconsistent with available facts and data; or the activities to be undertaken are plainly inappropriate to meeting the needs and objectives identified by the applicant; or the application does not comply with the requirements of this Part or other applicable law; or the application proposes activities which are otherwise ineligible under this Part.

Such objections should include both an identification of the requirements not met and, in the case of objections made on the grounds that the description of needs and objectives is plainly inconsistent with significant, generally available facts and data, the data upon which the persons rely. Although HUD will consider objections submitted at any time, such objections should be submitted within 30 days of the publication of the notice that the application has been submitted to HUD, as described in paragraph (i)(3) below. In order to ensure that objections submitted will be considered during the review process, HUD will not approve an application until at least 45 days after receipt of an application.

(g) *Complaints.* The plan shall provide for answering complaints in a timely and responsive manner. The applicant shall make every reasonable effort to provide written responses within 15 working days.

(h) *Technical assistance.* To facilitate citizen participation, the plan shall provide for technical assistance. The level and type of assistance determined appropriate by the applicant shall be provided to: (1) Citizen organizations, so that they may adequately participate in planning, implementing, and assessing the program; and (2) groups of low- and moderate-income persons and groups of residents of blighted neighborhoods which request assistance in developing proposals and statements of views.

It may also be directed toward assisting citizens in organizing and operating neighborhood and project area organizations and in carrying out Community Development Program activities. Technical assistance should be provided by specialists jointly selected by the applicant and the organizations and groups to be assisted. It may be provided either by the applicant directly or through arrangements with public or private entities.

(i) *Adequate information.* The applicant shall provide for full public access to program information and affirmative efforts to make adequate information available to citizens, especially to those of low- and moderate-income and to those residing in lower-income or blighted neighborhoods.

(1) At the time the applicant begins planning for the next program year, the following program information shall be provided to citizens:

(i) The total amount of community development block grant funds available to the applicant for community development and housing activities, including planning and administrative activities,

(ii) The range of activities that may be undertaken with these funds and the kind of activities previously funded in the community,

(iii) The processes to be followed in drawing up and approving the local application and the schedule of meetings and hearings,

(iv) The role of citizens in the program, as provided under this section,

(v) A summary of other important program requirements.

(2) The applicant shall provide for full and timely disclosure of its program records and information consistent with applicable State and local laws regarding personal privacy and obligations of confidentiality. Documents relevant to the program shall be made available at the applicant's office during normal working hours for citizen review upon request (either written or oral). Such documents include the following:

(i) All mailings and promotional material,

(ii) Records of hearings,

(iii) All key documents, including all prior applications, letters of approval, grant agreements, the citizen participation plan, performance reports, evaluation reports, other reports required by HUD, and the proposed and approved application for the current year,

(iv) Copies of the regulations and issuances governing the program, and

(v) Documents regarding other important program requirements, such as contracting procedures, environmental policies, fair housing and other equal opportunity requirements, relocation provisions, and the A–95 review process.

(3) When the application is submitted to HUD upon completion of clearinghouse reviews, the applicant shall publish a notice in a newspaper of general circulation stating that the application has been submitted and is available to interested parties upon request and describing the requirements on citizen objections to applications contained in paragraph (f), above.

(4) The applicant shall make copies of the citizen participation plan, the proposed and approved application, and the annual performance report available at locations conveniently located for persons affected by the program and accessible to the handicapped.

(j) *Public hearing.* The plan shall provide for a sufficient number of hearings to obtain citizen views and to respond to citizen proposals and questions at different stages of the program. Such hearings shall be held at convenient times and locations which permit broad participation, particularly by low- and moderate-income persons and by residents of blighted neighborhoods. Hearing arrangements should make possible the full participation of handicapped citizens.

(1) *Presubmission hearings.* The applicant shall hold at least two kinds of public hearings prior to the submission of the application:

(i) To obtain views and proposals of citizens at the initial stage of application development on community development and housing needs and priorities, and to obtain comments on the applicant's community development performance;

(ii) To obtain views of citizens on the proposed application prior to submission of the application to A–95 clearinghouses.

(2) *Performance hearings.* In order to review program progress and performance, the applicant shall hold an additional public hearing or hearings thirty to sixty days prior to the start of planning for the next program year.

(3) *Notices.* In order to give adequate notice of public hearings:

(i) The applicant shall, 10 days prior to each public hearing, publish a notice in easily readable type in the nonlegal section of newspapers of general circulation, including minority and non-English language newspapers of general circulation where they exist. Such notices shall indicate the date, time, place and procedures of the hearing and topics to be considered. The applicant also shall make reasonable efforts to provide the notices, in the form of press releases, the neighborhood newspapers or periodicals serving low- and moderate-income neighborhoods.

(ii) The applicant is encouraged to take other actions to widely publicize the hearings, such as arranging for public service radio and television announcements.

(k) *Bilingual.* Wherever a significant number of low- and moderate-income persons and residents of blighted neighborhoods speak and read a primary language other than English, the plan shall provide that all notices of public hearings and summaries of basic information be produced in such language or languages and that bilingual opportunities shall be offered at required public hearings.

(*l*) *Contingency and local option activities.* The plan shall provide that if the applicant sets aside funds in its application for contingencies and/or local option activities, or if it chooses to identify in its application activities that could replace any activities disapproved by HUD during its application review, the citizen participation process shall be involved in the selection of such contingency or local option activities.

(m) *Program amendments.* The plan shall provide for citizen participation in any amendments to an approved application, except those for disaster activities. If the nature of the amendment is such that prior HUD approval is required, as specified in § 570.312, the applicant shall hold public hearings on the amendment. If the amendment does not require prior HUD approval, the plan shall describe how the citizen participation process shall be involved in the amendment.

§ 570.304 Community Development and Housing Plan.

An entitlement application shall include a summary of a Community Development and Housing Plan. This document shall be submitted every third year as part of the annual application for funds beginning with the first application submitted on or after August 1, 1978. It shall summarize the community development and housing needs of the applicant, it's comprehensive strategy for meeting those needs, including its long- and short-term objectives, and the projects and activities planned for the next three years.

(a) *Summary of community development and housing needs.* This shall include the following:

(1) *A community profile* on a form to be prescribed by HUD, which provides data regarding population and income characteristics of the community, the condition of the housing stock, and the economic condition of the community as a whole.

(2) *A narrative summary* of the applicant's community development and housing needs, particularly those of low- and moderate-income households and any special needs of identifiable segments of the total group of lower income persons. The narrative shall include a brief description of the major needs for neighborhood revitalization, for community facilities and public improvements, and for housing.

(b) *Comprehensive strategy.* The applicant shall describe how it proposes to meet its identified community development and housing needs, particularly those of low- and moderate-income households residing in or expected to reside in the community and any special needs of identifiable segments of the lower income population. The provision of all improved community facilities and public improvements, including supporting health, social and similar services where necessary or appropriate, shall be described in a manner that fully insures opportunity for participation by, and benefits to, the handicapped. The strategy shall include a communitywide component which describes the development strategy of the applicant, the major objectives the applicant seeks to accomplish, the priorities it has established for the use of block grant funds, and the factors it has taken into account in selecting areas for treatment and designing programs to meet identified needs. In addition, it shall include the following component strategies:

(1) *Neighborhood revitalization.* The applicant shall describe its strategy for maintaining and preserving viable neighborhoods and for upgrading neighborhoods affected by blight and deterioration.

This shall emphasize the actions to be taken that will improve conditions for low- and moderate-income persons residing in or expected to reside in the community.

(i) Areas targeted for concentrated action as Neighborhood Strategy Areas pursuant to § 570.301(c) shall be identified. For each such area the applicant shall describe:

(A) The objectives, both long-term and short-term, to be achieved, quantified wherever possible;

(B) The physical improvement programs to be carried out with block grant funds, such as code enforcement, rehabilitation, acquisition, demolition, or public improvements;

(C) Related programs proposed such as Urban Homesteading and section 8 Substantial Rehabilitation Special Procedures;

(D) Public services to be carried out in support of the physical improvement programs;

(E) An implementation schedule showing the anticipated timing of activities and the coordination of block grant funded activities and other local actions;

(F) The anticipated resources, including block grant funds, other Federal, State, or local funds, and private investment;

(G) The role of any neighborhood organizations;

(H) How the housing assistance goals and general locations in the Housing Assistance Plan, particularly the rehabilitation goals, support the applicant's neighborhood revitalization strategy.

(ii) Other neighborhood improvement efforts shall be described. This shall include specific actions designed to prevent and eliminate slums and blight where such actions are not carried out in a concentrated manner; it shall also include actions to provide improved community facilities and public improvements where they will principally benefit persons of low- and moderate-income. The strategy shall describe the activities to be carried out, the objectives to be accomplished, the anticipated timing, and the block grant and other funds to be provided.

(2) *Housing.* The applicant shall describe a communitywide strategy to improve housing conditions and to meet the housing assistance needs that have been identified. The strategy shall consist of a Housing Assistance Plan as described in § 570.306 as well as the following:

(i) A strategy for any programs to be carried out on a communitywide basis, such as provision of rehabilitation financing for low- and moderate-income persons or elimination of detrimental conditions; the strategy shall include the goals to be accomplished, a timetable of actions to be taken, and the amount of block grant and other funds to be provided;

(ii) Any regulatory and other actions proposed to foster housing maintenance and improvements. This may include: actions to eliminate redlining with respect to property insurance and the availability of credit for the purchase and rehabilitation of housing; and actions such as provision of tax incentives to promote investment in restoration of deteriorated or abandoned housing;

(iii) The applicant's strategy for increasing the choice of housing opportunities for low- and moderate-income persons, including members of minority groups and female-headed households, including efforts to achieve spatial deconcentration of such housing opportunities and actions to affirmatively further fair housing;

(iv) Any community facilities and improvements to be provided in furtherance of the applicant's housing strategy and to assure accomplishment of goals for assisted housing; and

(v) Where the community development program will result in direct or indirect displacement or other hardships to low- and moderate-income persons, the strategy shall describe the actions the applicant will take to assist such persons to remain in their present neighborhoods when they prefer and to mitigate any adverse effects resulting from block grant funded activities.

(3) *Economic development.* A description of the applicant's strategy for economic development is required from applicants that propose block grant funded economic development activities: The strategy shall include:

(i) A description of the major needs for economic development in the locality; this shall include discussion of the needs of identifiable population groups experiencing significant unemployment or underemployment, as well as general economic needs of the applicant experiencing a stagnating or declining tax base or loss of population;

(ii) A description of the activities proposed to further economic development and to attract private investment, including the coordination of block grant funded activities with other local actions and a timetable for provision of other Federal and State resources;

(iii) The number and types of permanent jobs expected to result from economic development projects, particularly jobs for unemployed or underemployed population groups and low- and moderate-income persons and the types and extent of any job training which will be provided to such residents; and

(iv) Evidence of commitments or interest by developers of new or expanded employment facilities.

(c) *Three-year project summary.* This shall consist of a tabular summary of the projects proposed to be carried out with block grant funds during the next three years to implement the applicant's comprehensive strategy, grouped by location, the anticipated timing, the goals to be accomplished, the population benefitting, and the estimated block grant and other funds to be provided, and indicating whether the project or activity principally benefits low- and moderate-income persons, aids in the prevention or elimination of slums and blight, or meets other community development needs having a particular urgency. The requirements of this paragraph shall not apply to:

(1) Hold harmless applicants whose entitlement ends and who do not apply for small cities comprehensive grants involving multiyear funding commitments pursuant to § 570.423(b) during the same year; and (2) any applicant for a small cities grant who does not request a multiyear funding commitment.

(d) *Maps.* The plan shall include maps showing the following information. The maps shall be on a census tract or enumeration district base, but the information need not be displayed according to the tract or enumeration district boundaries.

(1) The extent and location of low- and moderate-income persons;

(2) The extent and location of minority group residents;

(3) The extent and location of substandard and deteriorated housing;

(4) The locations of block grant funded projects included in the three-year project summary.

(5) Neighborhood Strategy Areas, if any. Maps shall be clearly legible, and all required maps submitted shall be of the same scale and cover the same areas. The applicant may submit supplementary maps of a different scale, at its discretion, where this will increase clarity. More than one type of information may be combined on one map if the information is clearly legible when combined.

(e) *Interim provisions.* Applications submitted prior to August 1, 1978, shall conform to the Community Development Plan Summary requirements published in the **Federal Register** (41 FR 4134) on January 28, 1976. However, applicants proposing to undertake activities whose eligiblity under the rules in Subpart C depends on the activities being consistent with a strategy for community development shall supplement the plan summary with a brief narrative statement containing the information required by § 570.200(h).

§ 570.305 Annual Community Development Program.

Each annual application shall contain a Community Development Program describing the projects and activities to be carried out with program year funds. Such projects and activities shall be consistent with the previously submitted three-year Community Development and Housing Plan, or an amended plan shall be submitted with the application as required by § 570.312(a). The Community Development Program shall consist of the following:

(a) *Project summary.* The following information shall be provided for each project and activity to be commenced during the program year:

(1) The name of the project or activity;

(2) A description of the project which states its purpose, the sequence of activities, duration of the project, and the entity responsible for carrying it out;

(3) The location and service area, including the census tract(s) or enumeration district(s) of the project;

(4) Whether the project or activity principally benefits low- and moderate-income persons, aids in the prevention or elimination of slums and blight, or meets other community needs having a particular urgency;

(5) A description of the activities which comprise each project, and the estimated costs and timing;

(6) The amounts and sources of other public funds and private investments anticipated to be provided;

(7) The environmental review status;

(8) Anticipated accomplishments.

(b) *Cost summary.* This will consist of a tabular summary, on a form to be prescribed, of proposed block grant expenditures in specific categories and the anticipated resources available.

(c) *A map or maps* of the applicant's jurisdiction showing the locations of proposed activities, on a base map census tracts or enumeration districts, and any designated neighborhood strategy areas. The maps shall be consistent with the requirements of scale and legibility in § 570.304(d).

§ 570.306 Housing Assistance Plan.

(a) *General Provisions.* This section contains policies, procedures, requirements and standards governing the Housing Assistance Plan (HAP).

(1) *Purpose.* The HAP is required as part of the application for assistance under this Part. The HAP serves as a measure of the conditions of the applicant's housing stock and the needs of lower (low and moderate) income persons for housing assistance. Further, the HAP serves to establish goals for assistance best suited to meet the needs of lower income persons and to further the revitalization of the community, including the restoration and rehabilitation of stable neighborhoods to the maximum extent possible, and the reclamation of the housing stock where feasible through the use of a broad range of techniques for housing restoration by local government, the private sector, or community organizations, including provisions of a reasonable opportunity for tenants displaced as a result of such activities to relocate in their immediate neighborhood. The HAP must propose general locations for assisted housing which promote greater choice of housing opportunities and avoid undue concentrations of assisted persons in areas containing a high proportion of lower-income persons, and which further fair housing and assure the availability of public facilities and services adequate to support housing facilities. In addition, all communities are expected to share in providing expanded housing opportunities for lower-income persons and to participate in areawide solutions of housing problems through promotion of spatial deconcentration of housing opportunities for lower-income persons.

(2) *Use.* The HAP is not only a requirement for assistance under this Part, but it serves as the means for HUD to distribute assisted housing resources to applicants. The HAP offers applicants a means to implement strategies to conserve and expand its housing stock in order to provide a decent home in a suitable living environment for all persons, but principally those of lower income. The HAP should facilitate the reduction of the isolation of income groups within communities and geographic areas, affirmatively further fair housing and promote the diversity and vitality of neighborhoods.

(3) *Responsibility of applicant.* Applicants are responsible for implementation of the housing assistance plan in an expeditious manner. This includes the timely achievement of all goals for assisted housing and particularly those which address the needs of families and large families requiring rental assistance. Applicants are expected to take all actions within their control to facilitate the implementation of an approved housing assistance plan including those actions specified in §§ 570.306(b)(3)(iii) and (b)(4)(ii), as well as the development of Section 8 housing when notifications of funding availability are not responded to by private developers.

(4) *Period covered by HAP.* The HAP shall be submitted and be effective for time periods as follows:

(i) Housing Assistance Plans submitted to HUD after the publication date of these regulations but prior to August 1, 1978 shall be designed to complete the requirement that housing assistance provided pursuant to the three-year goals set forth in the HAP approved during 1976 shall have been provided in the same proportion as those goals by household type (elderly and handicapped, families and non-elderly individuals, and large families). Accordingly, applicants shall submit an Annual Housing Action Program pursuant to § 570.306(b)(4) which will propose goals for housing assistance to be provided in Federal Fiscal Year 1979 which, when combined with all housing assistance provided in FFY 1977 and 1978 will result in the provision of housing assistance in the same proportion as the three year goals, by household type, set forth in the HAP submitted in 1976. For the purposes of 24 CFR 891, the three-year goal for HAP's submitted prior to August 1, 1978 is the three-year goal submitted in the 1976 HAP including any amendments thereto. For example, an applicant which has provided housing assistance primarily for elderly households during FFY 1977 and 1978 is expected to establish goals this year in the annual housing action program for families and large families so that assistance provided during FFY 1977, 1978 and 1979 will be in the same proportion, by household type, as the 1976 three-year goal. In addition, the applicant shall identify general locations for new construction and substantial rehabilitation units or projects. For HAP's submitted prior to August 1, 1978, general locations shall be applicable to the housing assistance goals as described above in this paragraph; however, the requirements for identifying such locations are set forth in § 570.306(b)(3)(ii). Unless there have been substantial changes in the housing conditions and housing assistance needs, an applicant is required to submit only an annual goal and the general locations for proposed new construction and substantial rehabilitation.

(ii) Housing Assistance Plans submitted after August 1, 1978 shall be submitted once every three years as described in § 570.306(b) and shall cover a three year period. However, each annual application shall include an Annual housing Action program. Although some revision and updating may be necessary during this period because of the availability of new data sources or significant changes in local conditions or needs, the HAP shall be in effect for three program years. A new HAP shall be submitted every third program year thereafter.

(iii) A Hold Harmless Entitlement applicant submitting a HAP after August 1, 1978, but not proposing to apply for a grant under Subpart F of these regulations during its phase out year, is subject to this section except that the establishment of a three-year numerical goal as described in § 570.306(b)(3)(i) is not applicable.

(5) *Relationship to previously approved HAP's.* (Effective August 1, 1978.) Applicants are not relieved of their responsibilities to continue to address goals established to meet the needs for assisted housing identified in prior program years. Accordingly, applicants who had approved component goals designed to address the needs of a particular tenure type (owner or renter), household type, (elderly and handicapped, family and non-elderly individuals, or large family), or housing type (existing, substantial rehabilitation, or new construction), or any combination of the above, which have not been substantially met, shall

include goals to meet such needs prior to providing further assistance for tenure, household, or housing types for which established goals have been substantially met. For example, an applicant which has identified a substantial need, and established goals for families and large families, but nonetheless has met only the goals or a substantial portion of the goals, established for elderly households shall meet the goals established for families and large families before providing additional assistance to elderly households.

(b) *Housing Assistance Plan Content.* The application shall contain a housing assistance plan which includes:

(1) *Housing Conditions.* The applicant shall describe the condition of the existing housing stock in the community by providing a statistical profile by tenure type (owner and renter), which describes housing conditions by number of units in standard and in substandard condition. If a housing rehabilitation program is proposed as part of the applicant's strategy statement as set forth in § 570.304(b), the number of units which are suitable for rehabilitation shall be stated. Estimates shall be made of vacancy rates for non-seasonal available units in standard condition, using the best estimate at the time the application is prepared, but in no case including units to be vacant at a future date.

(2) *Housing Assistance Needs.* The applicant shall describe the housing assistance needs of lower income persons.

The data for such description generally shall be derived from Federal census data; except that the applicant may also utilize other more recent data generally available from public or private sources, including areawide, regional, or State planning agencies; provided that the deviations from estimates derived from the Federal census data or from areawide, regional, or State planning agency assessments are explained. All applicants which are within the jurisdiction of an areawide planning organization having an approved Areawide Housing Opportunity Plan (AHOP) must use the data presented in the Plan. Applicants which are within the jurisdiction of an areawide planning organization which does not have an approved AHOP should use the same census, areawide, or State data unless more recent, generally available data exist for an individual applicant.

(i) The applicant shall provide estimates of housing assistance needs of lower-income persons currently residing in the community, by tenure type and by household type (lower-income households which are elderly and handicapped, families and non-elderly individuals, and large families), for all households, including those households to be displaced by public action and, where information is available, by private action during the three year program. Such estimates shall also be provided for any identifiable segment of the total group of lower-income households in the community.

(ii) the applicant shall assess the housing assistance needs of lower-income households, by household type, who could reasonably be expected to reside in the community, based on existing or projected employment. The applicant shall also assess the housing assistance needs of elderly households who could reasonably be expected to reside in the community because they are seeking housing in the community or use services, such as health facilities, in the community. The following rules shall be followed in developing estimates of needs for households who could be expected to reside.

(A) If the applicant is a participant in a State or Areawide Housing Opportunity Plan approved by the Secretary, the expected to reside estimates in the applicant's Housing Assistance Plan and those in the approved Housing Opportunity Plan shall be consistent.

(B) For all other applicants, the expected to reside estimates should be based on the following:

(*1*) *Expected to reside as a result of planned employment:* Estimate the total number of lower-income families with workers expected to be employed in the community in the next three years as a result of known commercial, industrial, governmental, or service employment to be generated by new or expanded development. Such estimates shall be derived from generally available data. Sources of information may include approved development plans, building permits, and awards of significant contracts. Of this total, estimate the number of these jobs which will likely be filled by persons not currently residing within the applicant's jurisdiction, but who would move into the jurisdiction as a result of the planned employment.

(*2*) *Expected to reside who are currently working, but not residing in the applicant's jurisdiction:* An applicant community should utilize the following methodology to derive the minimum estimate of the number of lower-income families with workers employed in the community, but living elsewhere, who can be expected to reside in the applicant community: First, estimate the number of lower-income families with workers employed in the applicant community, but living elsewhere. Second, estimate the number of lower-income families with workers employed in the community who also live in the community. The sum of these two figures is the estimated total number of lower-income families with workers employed in the applicant community. Third, for applicants in a metropolitan area, determine an overall metropolitan area percentage of lower-income families with workers who live in the same community in which they work, based on those communities in the metropolitan area for which data are available. This percentage is calculated by dividing the total number of lower-income families with workers who work and live in all such communities, by the total number of lower-income families with workers employed in all such communities. Nonmetropolitan applicants located in a county which is contiguous to a metropolitan area should use the metropolitan area percentage described above. Other nonmetropolitan applicants should use the statewide nonmetropolitan area average. (These figures will be made available by HUD.) Fourth, multiply the overall applicable percentage by the following percentage: the number of lower-income families with workers employed in the applicant community, but living elsewhere, divided by the total number of lower-income families, both resident and non-resident, with workers employed in the applicant community. Fifth, multiply the resulting percentage by the number of lower-income families with workers employed in the applicant community, but living elsewhere, to produce the estimate of the number of such families which may be expected to reside in the applicant community.

Example. As an example, an applicant who estimates that it has 1,000 lower-income families with workers employed in the applicant community but living elsewhere, estimates that it has 2,200 lower-income families, both resident and non-resident, with workers employed in the community, and estimates the overall metropolitan percentage to be forty percent, would compute the number of families expected to reside based on workers already employed as follows:

40% × (1,000 divided by 2,200) × 1,000 = 182

Note.—For most applicants who had a 1970 population in excess of 25,000, the HUD Area Office has data for this computation. For all other communities, estimates should be developed based on the most recent applicable data available from such other

sources as State Employment Services, local planning departments, major employers in the area, or local surveys. (Documentation of any such data and the basis for estimate must be submitted to HUD.)

(*3*) *Expected to reside elderly households:* Where the community has assisted housing already available for the elderly, the estimate for the elderly expected to reside may be obtained from the number of qualified non-resident elderly households on the most current waiting lists for such assisted housing. Where there is either no elderly assisted housing in the community or if there is insufficient data on non-resident elderly households on waiting lists for assisted housing that is available, the estimate for this paragraph may be based on the following: Of the total number of non-resident, elderly, lower-income households known to currently use health facilities within the applicant's jurisdiction, the number which the applicant believes would move into the community if adequate housing were available at a reasonable cost.

(C)(*1*) Applicants shall not be required to include an estimated number of lower-income households who could be expected to reside in the community to the extent that such estimated number, together with lower-income households already residing in the community, would result in a ratio of lower-income households to total households in the community which is greater than the applicable area percentage of lower-income households to total households. In such case, applicants may reduce their estimated number of households expected to reside in the community, proportionately by household type, to the point where the resultant ratio of lower-income households to total households in the community is equal to, but not less than, the applicable area percentage.

(*2*) Applicants in a metropolitan area or in counties contiguous to a metropolitan area shall use data for that metropolitan area. Applicants in a county which is neither within nor contiguous to a metropolitan area shall use data for the statewide nonmetropolitan area. (These figures will be supplied by HUD.)

(D) Applicants who wish to use an alternative methodology for developing estimates of the current employment portion of the expected to reside component (§ 570.306(b)(2)(ii)(B)(*2*)) should contact the HUD Area Office in advance of preparing such estimates to discuss such methodologies and secure HUD approval of their usage for this purpose. Alternative methodologies must address the following statutory requirements: (*1*) Estimate the number of lower-income households with workers currently employed but not residing in the jurisdiction; (*2*) estimate the number of these who could reasonably be expected to reside; and (*3*) adjust estimates to avoid impactions of lower-income households.

(E) The requirements of paragraph (b)(2)(ii) of this section are not intended to preempt a State or judicial requirement that a community undertake a greater share of the responsibility in meeting the housing needs of lower-income families.

(iii) *Use of alternative methodologies for determining estimates of lower-income households expected to reside developed by State or areawide planning organizations:* (Effective August 1, 1978.) HUD may, at its option, determine that a State or an areawide planning organization has developed an alternative methodology for one or both of these elements which evidences compliance with the objectives of this Part and is a more precise means to measure such needs within the specific geographic area of its jurisdiction. The basis for such determinations are set forth in 24 CFR Part 891, Subpart E. Having so determined, HUD may, at its option, authorize the use of such methodology, in lieu of the methodology set forth in § 570.306(b)(2)(ii), by all applicants within the jurisdiction of such areawide planning organizations.

(A) HUD shall inform all affected applicants, by publication of a Notice in the **Federal Register**, of those State or areawide planning organizations where an alternative methodology has been approved by HUD and whether such methodology will be used in lieu of the methodology set forth in § 570.306(b)(2)(ii).

(B) In determining whether an alternative methodology developed by a State or an areawide planning organization is to be used in lieu of a methodology set forth in this Part, HUD will consider whether such alternate methodology provides the estimates required to meet the standards of acceptability set forth in paragraphs (b) and (c) of this section and is statistically and mathematically sound.

(C) HUD shall monitor the estimates developed through an approved State or areawide planning organization alternative methodology. Although areawide organizations are encouraged to develop methodologies which are innovative in scope and suited to the circumstances of the jurisdiction of the areawide planning organizations, HUD may withdraw approval of or require modification of an alternative methodology which is determined to produce estimates which are plainly inconsistent with the objectives of this Part.

(iv) In addition, the applicant shall provide a narrative statement which summarizes any special housing conditions in the community and special housing needs found to exist in the total group of lower-income households in the community. Such summary shall include but need not be limited to, discussion of:

(A) Female heads of households;

(B) Individual minority groups;

(C) Handicapped persons;

(D) Special housing conditions such as concentrations of mobile homes; and

(E) Special housing needs related to a community's economic base such as military housing, migrant workers, and retirement centers.

(3) *Three Year Housing Program.* (Effective August 1, 1978 except as provided in § 570.306(a)(4)(iii).) The applicant shall describe a three year housing program for implementation of its community development and housing strategy:

(i) *Goals.* The program shall specify, by tenure type, household type, and housing type, a realistic three year goal for the number of dwelling units or persons to be assisted. The statement of the three year goal for assisted dwelling units also shall take into consideration housing conditions with respect to the availability of existing units of standard quality and units suitable for rehabilitation and shall meet the standards set forth in § 570.306(c)(1).

(ii) *General Locations.* The program shall identify the general locations of proposed new construction housing units or projects, and substantial rehabilitation units or projects, for the programs subject to 24 CFR 891 and, to the extent feasible, other assisted housing programs identified in the goals for lower-income persons on maps as called for in § 570.304(d). The locations shall be identified by census tract (or enumeration districts or geographic quadrants in those jurisdictions where a census tract includes a substantial area, such as an entire community). General locations for housing projects shall contain at least one site which conforms to the site and neighborhood standards established for the appropriate HUD assisted housing program. Where an applicant proposes assisted housing resources in areas of concentration of minorities or federally assisted housing, general locations outside of such areas also shall be proposed in order to ensure the provision of assisted housing in a balanced manner.

(iii) *Actions to be taken.* The program shall describe those actions which will be necessary for the applicant to take to

address any special housing needs and conditions cited in § 570.306(b)(2)(iv), as well as any actions determined necessary, on the basis of findings of past performance reviews pursuant to Subpart O of these regulations, to achieve the housing assistance goals, and shall set forth a timetable for such actions. In addition, applicants anticipating difficulty in achieving goals in newly prepared HAPs shall set forth actions required to achieve those goals. The actions may include, but are not limited to: (A) acquisition of sites and provision of site improvements for the development of assisted housing; (B) adoption or modification of local ordinances and land use measures to facilitate the development of assisted housing including institution of local referendum actions, where necessary; (C) issuance of appropriate zoning changes, building permits, utility connections and similar administrative requirements; (D) formation of a public housing agency or execution of an agreement with a public housing agency having powers to provide assisted housing within the jurisdiction of the applicant; (E) removal of local residency preferences for assisted housing; (F) promotional and assistance activities to encourage developers to initiate assisted housing or to allocate a portion of their planned unsubsidized developments for assisted housing, and to encourage owners to make units available for Section 8 existing housing programs; and (G) measures to reduce the cost of housing development, such as tax abatement, waiver of fees and other administrative costs.

(4) *Annual Housing Action Program.* For each program year as part of the annual submission, the applicant shall describe a program of actions to carry out each program year increment in order to achieve the three year housing program. The annual action program shall:

(i) Specify, by tenure type, household type, and housing type, a realistic annual goal for the number of dwelling units or persons to be assisted, including the relative proportion of new, rehabilitated, and existing units best suited to the needs of lower-income persons indentified by the applicant; and

(ii) Set forth specific actions, if any, to be undertaken during the program year to assure the implementation of the three-year housing program including those actions described in paragraph (b)(3)(iii) of this section.

(c) *Standards and criteria for approval of HAPs.* The following standards and criteria shall apply to the reviews and determinations of acceptability of housing assistance plans and shall be effective as of the date of publication of these regulations except as otherwise noted:

(1) *Goals for assisted housing*—(i) *Proportionality.* The three year housing assistance goals shall address the needs of the three household types (elderly and handicapped, families and non-elderly individuals, and large families) within each tenure type (owner and renter) in the same proportion as the total lower-income housing needs identified in the HAP, of those household types, by tenure type. Certain adjustments to this requirement are permitted as follows:

(A) HUD may grant an exception from this requirement when an applicant documents special needs arising from displacement of significant numbers of households of a particular size; natural disasters; meeting the housing requirements of section 105 (f) and (h) of the U.S. Housing Act of 1949, as amended; accommodating proposals for projects of feasible size which could not otherwise be developed; or implementing the goals of a HUD-approved AHOP; or

(B) (Effective August 1, 1978.) Applicants required to emphasize a particular household type or types pursuant to § 570.306(a)(5) shall make no downward adjustment in the percentage represented by such household type, but the percentage represented by other household types may be adjusted downward as necessary. For example, an applicant which has disproportionately met the needs of elderly households in prior years would not be permitted to make any downward adjustment to the percentages represented by family and large family households, but may be required to reduce the percentage represented by elderly households to zero.

(ii) *Tenure types.* The types and quantities of housing assistance proposed by tenure type (owner and renter), shall be appropriate to meeting indentified needs of both renters and owners. In this regard, unless a community can demonstrate that it can meet the needs of households expected to reside through assistance programs for homeowners, such needs shall be assumed to represent needs for rental units.

(iii) (Effective August 1, 1978.) *Minimal goals.* The goals must directly address known needs for housing assistance and contain a sufficient number of units to permit practical and economically feasible housing development. For applicants which are within the jurisidiction of a HUD-approved AHOP, HUD will accept the goals included therein. All other applicants shall propose a three-year housing assistance goal which represents assistance for at least 15 percent of the total need unless the applicant can demonstrate to the satisfaction of HUD that such a goal would be infeasible. The standard that housing assistance plans with only minimal housing assistance goals are plainly inappropriate recognizes that communities with very substantial housing assistance needs have a responsibility to propose substantial housing assistance goals and that goals should reflect the desirability of meeting a significant percentage of identified needs at an early date.

(iv) *Vacancy rates.* In establishing goals for assisted housing, the applicant shall consider the vacancy rate established pursuant to § 570.306(b)(1) and shall estimate the number of such vacant units which would be adequate to meet the needs of lower-income households.

(A) In those cases where there exists a less than adequate vacancy rate (as determined by HUD) in housing units resulting in an insufficient number of vacant, standard, available units of appropriate size, cost, and type to meet the identified housing assistance needs for rental units for lower-income households, goals for housing assistance shall emphasize a program of new construction of rental units for households of lower-income. For example, an applicant with a significant number of lower-income households expected to reside in the community and a less than adequate rental vacancy rate, would be expected to emphasize a program of new construction of rental units to address this need. However, this does not preclude the use of a vehicle such as the Section 8 Existing Housing program to address the needs of households currently residing in the community, provided that the existing program is used in concert, during the three year program, with new construction and/or substantial rehabilitation so that the housing market will not be further imbalanced.

(B) In those cases where there exists an adequate vacancy rate as determined by HUD in standard housing units creating a sufficient number of vacant, available units of appropriate size, cost, and type to meet the identified housing assistance needs of lower-income persons for rental units, goals for housing assistance shall emphasize a program of existing housing for persons of lower-income.

(v) *Urban renewal completion.* Applicants engaged in the completion of

Urban Renewal projects and having to meet requirements of Sections 105 (f) and (h) of the U.S. Housing Act of 1949 as amended, or applicants obligated to meet such requirements under close-out agreements pursuant to § 570.804 for projects which have been settled financially, shall establish goals large enough to meet such obligations.

(vi) *Adequacy of rehabilitation.* In order to be included as goals in a Housing Assistance Plan any units proposed to be rehabilitated for either owners or renters must be units which are determined by the applicant to be substandard, and upon completion of rehabilitation, will meet, at a minimum, Section 8 Existing Housing Quality Standards pursuant to 24 CFR § 882.109, and be occupied by lower-income households. Any units proposed for rehabilitation using Federal assistance, shall upon completion meet the standards of the applicable Federal program where they exceed Section 8 Existing Housing Quality Standards.

(vii) (Effective August 1, 1978.) *Relationship to previously approved goals.* Where an applicant does not provide goals to meet unfulfilled needs in accordance with § 570.306(a)(5), such housing assistance goals will be determined to be plainly inappropriate.

(viii) *Local actions to implement goals.* An applicant shall make all efforts to meet the goals in its three year housing program. When actions such as acquisition of land, formation of a public housing agency or rezoning are necessary for the development of housing, such actions should be accomplished by the second year of the three year housing program. HUD shall consider an applicant's past performance in providing assisted housing pursuant to the performance standards for implementing housing assistance plans set forth in § 570.909 in determining whether the housing assistance goals are appropriate. In those instances where an applicant's performance in the past indicates that local actions are required to facilitate delivery of housing resources, but the applicant does not provide that such actions will be undertaken on a timely basis, the goals will be determined to be plainly inappropriate.

(ix) *Consistency with areawide housing opportunity plans.* A housing assistance plan of a community which is within the jurisdiction of an areawide planning organization, shall be consistent with the approved Areawide Housing Opportunity Plan prepared by the areawide planning organization pursuant to 24 CFR Part 891.

(2) *General locations.* The applicant shall demonstrate by its selection of general locations that its HAP will promote greater spatial deconcentration of housing opportunities for lower-income persons, particularly minorities.

§ 570.307 Certifications.

The applicant shall submit certifications each year providing assurances that:

(a) It possesses legal authority to apply for the grant, and to execute the proposed program.

(b) Its governing body has duly adopted or passed as an official act a resolution, motion or similar action authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

(c) It has complied with all the requirements of OMB Circular No. A–95 as modified by this Part and that either:

(1) Any comments and recommendations made by or through clearinghouses are attached and have been considered prior to submission of the application; or

(2) The required procedures have been followed and no comments or recommendations have been received.

(d) Prior to submission of its application, the applicant has:

(1) Prepared a written citizen participation plan, which:

(i) Provides an opportunity for citizens to participate in the development of the application, encourages the submission of views and proposals, particularly by residents of blighted neighborhoods and citizens of low- and moderate-income, provides for timely responses to the proposals submitted, and schedules hearing at times and locations which permit broad participation;

(ii) Provides citizens with adequate information concerning the amount of funds available for proposed community development and housing activities, the range of activities that may be undertaken, and other important program requirements;

(iii) Provides for public hearings to obtain the views of citizens on community development and housing needs; and

(iv) Provides citizens with an opportunity to submit comments concerning the community development performance of the applicant;

(2) Followed this plan in a manner to achieve full participation of citizens in development of the application. The applicant shall also follow this plan to achieve full citizen participation in all other stages of the program.

Note.—The above certification on citizen participation is effective August 1, 1978. For applications submitted to HUD prior to August 1, 1978, the certification requirement of § 570.303(e)(4) published in the **Federal Register** (41 FR 4135) on January 28, 1976, shall apply.

(e) Its chief executive officer or other officer of applicant approved by HUD:

(1) Consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 insofar as the provisions of such Act apply to this Part;

(2) Is authorized and consents on behalf of the applicant and himself to accept the jurisdiction of the Federal courts for the purpose of enforcement of his responsibilities as such an official.

(f) The Community Development Program has been developed so as to give maximum feasible priority to activities which will benefit low- and moderate-income families or aid in the prevention or elimination of slums or blight.

[The requirement for this certification will not preclude the Secretary from approving an application where the applicant certifies, and the Secretary determines, that all or part of the Community Development Program activities are designed to meet other community development needs having a particular urgency as specifically explained in the application in accordance with § 570.302(f).]

(g) It will comply with the regulations, policies, guidelines and requirements of OMB Circular No. A–102, Revised, and Federal Management Circular 74–4 as they relate to the application, acceptance, and use of Federal funds under this Part.

(h) It will administer and enforce the labor standards requirements set forth in § 570.605 and HUD regulations issued to implement such requirements.

(i) It will comply with all requirements imposed by HUD concerning special requirements of law, program requirements, and other administrative requirements, approved in accordance with OMB Circular No. A–102 Revised.

(j) It will comply with the provisions of Executive Order 11296, relating to evaluation of flood hazards and Executive Order 11288 relating to the prevention, control, and abatement of water pollution.

(k) It will require every building or facility (other than a privately owned residential structure) designed, constructed, or altered with funds provided under this Part to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the

Physically Handicapped," Number A-117.1-R 1971, subject to the exceptions contained in 41 CFR 101-19.604. The applicant will be responsible for conducting inspections to insure compliance with these specifications by the contractor.

(*l*) It will comply with:

(1) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), and the regulations issued pursuant thereto (24 CFR Part 1), which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the applicant, this assurance shall obligate the applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits.

(2) Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), as amended, administering all programs and activities relating to housing and community development in a manner to affirmatively further fair housing; and will take action to affirmatively further fair housing in the sale or rental of housing, the financing of housing, and the provision of brokerage services.

(3) Section 109 of the Housing and Community Development Act of 1974, and the regulations issued pursuant thereto (24 CFR Part 570.601), which provides that no person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds provided under this Part.

(4) Executive Order 11063 on equal opportunity in housing and nondiscrimination in the sale or rental of housing built with Federal assistance.

(5) Executive Order 11246, and the regulations issued pursuant thereto (24 CFR Part 130 and 41 CFR Chapter 60), and Section 4(b) of the Grant Agreement, which provides that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of Federal or federally assisted construction contracts. Contractors and subcontractors on Federal and federally assisted construction contracts shall take affirmative action to insure fair treatment in employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation and selection for training and apprenticeship.

(m) It will comply with Section 3 of the Housing and Urban Development Act of 1968, as amended, requiring that to the greatest extent feasible opportunities for training and employment be given to lower-income residents of the project area and contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part by, persons residing in the area of the project.

(n) It will:

(1) To the greatest extent practicable under State law, comply with Sections 301 and 302 of Title III (Uniform Real Property Acquisition Policy) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and will comply with Sections 303 and 304 of Title III, and HUD implementing instructions at 24 CFR Part 42; and

(2) Inform affected persons of their rights and of the acquisition policies and procedures set forth in the regulations at 24 CFR Part 42 and § 570.602(b).

(o) It will:

(1) Comply with Title II (Uniform Relocation Assistance) of the Uniform Relocation Assistance and Real Property Acquistion Policies Act of 1970 and HUD implementing regulations at 24 CFR Part 42 and § 570.602(a);

(2) Provide relocation payments and offer relocation assistance as described in Section 205 of the Uniform Relocation Assistance Act to all persons displaced as a result of acquisition of real property for an activity assisted under the Community Development Block Grant Program. Such payments and assistance shall be provided in a fair and consistent and equitable manner that insures that the relocation process does not result in different or separate treatment of such persons on account of race, color, religion, national origin, sex, or source of income;

(3) Assure that, within a reasonable period of time prior to displacement, comparable decent, safe and sanitary replacement dwellings will be available to all displaced families and individuals and that the range of choices available to such persons will not vary on account of their race, color, religion, national origin, sex, or source of income; and

(4) Inform affected persons of the relocation assistance, policies and procedures set forth in the regulations at 24 CFR Part 42 and § 570.602(a).

(p) It will establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

(q) It will comply with the provisions of the Hatch Act which limits the political activity of employees.

(r) It will give HUD and the Comptroller General through any authorized representatives access to, and the right to examine all records, books, papers, or documents related to the grant.

(s) It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the program are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify HUD of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

(t) It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Pub. L. 93-234, 87 Stat. 975, approved December 31, 1973. Section 103(a) required, on and after March 2, 1974, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area, that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

(u) It will, in connection with its performance of environmental assessments under the National Environment Policy Act of 1969, comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470), Executive Order 11593, and the Preservation of Archeological and Historical Data Act of 1966 (16 U.S.C. 469a-1, et. seq.) by (a) consulting with the State Historic Preservation Officer to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to

adverse effects (See 36 CFR Part 800.8) by the proposed activity, and (b) complying with all requirements established by HUD to avoid or mitigate adverse effects upon such properties.

§ 570.308 Timing of application submissions.

(a) *Submission of applications.* (1) In order to receive an entitlement grant under this Part, each applicant is required to submit an application at least 75 days, but no more than 120 days, prior to the end of its program year.

(2) An applicant which did not receive an entitlement grant in the previous fiscal year must apply no later than April 30.

(3) Notwithstanding other provisions of this section, no application will be accepted between July 15 and October 1, in any year.

(b) *Program year.* A program year shall run for a twelve month period. An applicant may, however, either shorten or lengthen its program year by as much as three calendar months, provided:

(1) It is for the purpose of conforming the program year to State or local or fiscal budgeting requirements; and

(2) HUD receives written notice of a shortened program year at least six months prior to the date the program year would have ended if it had not been shortened, or in the case of a lengthened program year, at least three months prior to the date the program year would have ended if it had not been lengthened. An applicant may not however, receive more than one entitlement grant from a single Federal fiscal year appropriation.

§ 570.309 [Reserved]

§ 570.310 A-95 clearinghouse review and comment.

Applicants must comply with the procedures set forth in Part I of OMB Circular No. A-95 except as modified below. In addition to rules governing applications, these procedures also require that program amendments submitted to HUD in accordance with § 570.312 shall be submitted to appropriate clearinghouses for a 30-day review and comment period.

(a) *Clearinghouse notification.* The A-95 requirement that clearinghouses be notified of an applicant's intent to apply for Federal assistance will be satisfied by HUD. Each fiscal year HUD will advise the appropriate State and areawide clearinghouses, with a copy to the applicant, of those communities entitled to receive grants under this Part. This notification will be provided at least 60 days prior to the date by which the applicant must submit the completed application to HUD. Upon receipt of its copy of the HUD notification to the clearinghouses, the applicant shall make arrangements with the clearinghouses regarding early transmittal of information describing the contents of the application. An applicant wishing to submit its application to HUD before February 1 of each year shall provide its own notice of intent to file with the appropriate clearinghouses in accordance with the usual A-95 procedures.

(b) *Clearinghouse review of application.* Unless the requirement is waived by a clearinghouse, the applicant shall provide the clearinghouses a period of 45 calendar days to review the completed application and transmit to the applicant any comments or recommendations. Clearinghouses will be of assistance to both the applicant and HUD if their reviews address the application approval criteria contained in § 570.311(c), as well as the "subject matter of comments and recommendations" in Part I, Attachment A of OMB Circular No. A-95, item 5. Emphasis should be placed on consistency among State, areawide and local plans and strategies. Compliance with environmental and civil rights laws should also be emphasized.

(c) *Applicant actions after clearinghouse review.* The applicant shall include with its application to HUD all clearinghouse comments, or when no comments are received, a statement that no comments or recommendations have been received from the clearinghouses. Where activities are determined by the areawide planning agency to be inconsistent with areawide plans, the applicant shall provide in the application to HUD an explanation of the reasons for the inconsistencies.

(d) *Application modification during clearinghouse or HUD review.* An applicant which revises its application while it is under review by a clearinghouse or by HUD shall inform the clearinghouses of the revisions and, if the application has been submitted to HUD, the number of days remaining within the 75-day review period described in § 570.311(d), for HUD to complete its review of the application.

§ 570.311 HUD review and approval of application.

(a) *Acceptance of application.* (1) Upon receipt of an application, the HUD Area Office will accept it for review, provided that:

(i) It has been received before the deadline for receipt of applications established in § 570.308(a);

(ii) All of the required component parts of the application are submitted and are properly completed;

(iii) The funds requested do not exceed the entitlement amount;

(iv) Any comments and recommendations received from clearinghouses, or a statement that no comments were received, are attached to the application; and

(v) Any additional assurances previously required as a result of monitoring, inadequate local performance, or audit findings, are included.

(2) If the application is accepted in accordance with the preceding paragraph, the date of acceptance of the application will be the date of receipt of the application in the HUD field office, and the applicant will be so notified in writing. If the application is not accepted for review, the applicant will be so notified in writing, and will be advised of the specific reasons for nonacceptance.

(b) *Scope of review.* (1) HUD will normally base its review upon the applicant's certifications, statements of facts and data, and other information. The Secretary reserves the right, however, to consider relevant evidence which challenges the certifications, and information submitted by the applicant, and to require additional information or assurances from the applicant as warranted by such evidence.

(2) The review will include, but need not be limited to, the following matters contained in the application and the grantee performance report, or derived from monitoring:

(i) Eligibility of proposed activities;

(ii) Program benefit to low- and moderate-income persons in accordance with the provisions of § 570.302;

(iii) Housing Assistance Plan conformity to the requirements of § 570.306;

(iv) Coordination of housing assistance and community development activities;

(v) Consistency of the needs stated in the plan with generally available data;

(vi) Appropriateness of proposed plans and programs to meeting the applicant's needs and objectives;

(vii) Compliance with previous contract conditions or other corrective and remedial actions required by HUD;

(viii) Experience regarding the effectiveness of the proposed activities in meeting the community development needs in the locality;

(ix) Applicant's capacity to carry out the program proposed as evidenced by its previous performance record; and

(x) Compliance with the requirements of this Part and other applicable laws and regulations.

(c) *Criteria for disapproval.* The Secretary will approve the application unless:

(1) On the basis of significant facts and data, generally available, and pertaining to community and housing needs and objectives, the Secretary determines that the applicant's description of such needs and objectives is plainly inconsistent with such facts and data. The data to be considered may be published data accessible to both the applicant and the Secretary, such as census data, or other data available to both the applicant and the Secretary, such as recent local, areawide or State comprehensive planning data.

(2) On the basis of the application, the Secretary determines that the activities to be undertaken are plainly inappropriate to meeting the needs and objectives identified by the applicant. The following are examples of situations in which activities may be determined to be "plainly inappropriate" to meeting the identified needs of the applicant:

(i) Experience over a period of time has demonstrated that the types of activities proposed have not been or are unlikely to be effective in alleviating the conditions they were designed to affect;

(ii) The applicant has identified areas containing significant concentrations of deteriorated housing and blight and does not propose to undertake a concentrated program of activities in any such areas;

(iii) The application does not meet the requirements of § 570.302(b)(2) with respect to the extent of funding proposed to principally benefit low- and moderate-income persons;

(iv) Proposed activities will have a detrimental effect on low- and moderate-income persons or members of minority groups and adequate measures to mitigate such effects are not proposed;

(v) Housing goals, locations, and strategy do not meet the criteria of § 570.306(c);

(vi) Actions essential to accomplish housing assistance goals, including supportive community development activities, are not proposed;

(vii) The proposed program does not reflect previous requirements of the Secretary for corrective or remedial actions, or activities proposed have previously been the basis of such requirements.

(3) The Secretary determines that the application does not comply with the requirements of this Part with specific regard to the primary purposes of principally benefitting persons of low- and moderate-income or aiding in the prevention or elimination of slums or blight, or other applicable law, or proposes activities which are ineligible under this Part.

(d) *Timing.* The Secretary will notify the applicant in writing within 75 days, but not less than 45 days, of the date of receipt of the application, that the application has been either approved or disapproved. In the event the Secretary has not mailed a notification to the applicant within 75 days from the date of acceptance of a completed application the application shall be deemed to be approved. If the application is disapproved the applicant shall be informed of the specific reasons for disapproval.

(e) *Reduction of grant.* The Secretary may approve an application for an amount less than the full entitlement for the following reasons:

(1) Activities are not eligible under Subpart C and funds are not reprogrammed to eligible activities within the 75-day review period;

(2) Activities do not meet other program requirements, such as benefits to low- and moderate-income persons described in § 570.302; or

(3) The recipient's performance does not meet the standards prescribed in § 570.909 and a reduction is appropriate pursuant to § 570.911.

(f) *Conditional approval.* The Secretary may make a conditional approval, in which case the full entitlement amount will be approved but the obligation and utilization of funds for affected activities will be restricted. Conditional approvals may be made where:

(1) Local environmental reviews under § 570.603 have not yet been completed;

(2) The requirements of § 570.607 regarding the provision of public services and flood or drainage facilities have not yet been satisfied; or

(3) There is substantial evidence that there has been, or there will be, a lack of substantial progress, nonconformance, noncompliance, or a lack of continuing capacity, as described in § 570.909. In such case, the reason for the conditional approval and the actions necessary to remove the condition shall be specified. Failure to satisfy the condition may result in a reduction in the annual grant amounts pursuant to § 570.910(b)(10).

§ 570.312 Amendments.

(a) *Community Development Program amendments.* A recipient shall submit an amended application to the HUD Area Office when:

(1) The recipient proposes to use more than 10 percent of the entitlement amount approved for the affected program year to undertake one or more new activities, other than local option activities pursuant to § 570.600 and emergency interim assistance activities pursuant to § 570.201(f)(2).

(2) The recipient proposes to alter the stated purpose, location, or class of beneficiaries of previously approved activities whose cost exceeds 10 percent of the entitlement amount approved for the affected program year.

(3) The combination of proposed new activities (other than local option activities and disaster activities) and changes in the purpose, location, or class of beneficiaries of previously approved activities involves more than 10 percent of the entitlement amount approved for the affected program year.

(4) The cumulative effect of a number of smaller changes involving new activities (other than local option activities and disaster activities) or changes in the purpose, location, or class of beneficiaries of approved activities exceeds 10 percent of the entitlement amount approved for the affected program year. In such instances, the recipient shall include in its request for amendment documentation describing the smaller changes previously made, as well as those being proposed. After the amendment is approved by HUD, the accrual of smaller changes begins again.

(5) The recipient proposes to reduce the amount of funds previously approved for completion of urban renewal projects.

When the recipient proposes to undertake activities which are not consistent with the three-year project summary included in its Community Development and Housing Plan, it shall submit an amended summary to HUD at the same time the proposed program amendment is submitted.

(b) *Housing Assistance Plan Amendments.* The recipient shall request prior HUD approval of Housing Assistance Plan amendments when any of the following conditions exist:

(1) The recipient proposes a reduction of any goal for housing assistance pursuant to § 570.306 (b)(3)(i) or § 570.306(b)(4)(i);

(2) The recipient proposes the inclusion of a goal by household type or housing type, not previously specified pursuant to § 570.306(b)(3)(i) or (b)(4)(i);

(3) The recipient proposes to exceed any three year goal by housing type or household type by the percentage cited in 24 CFR Part 891;

(4) The recipient proposes a revision of the general locations for assisted

housing established pursuant to § 570.306(b)(3)(ii); or

(5) There is a significant change in, or new data available regarding, the conditions of the housing stock or the housing needs of lower-income persons.

(c) *Scope of submission.* Only the following documentation must be submitted in support of a request for an amendment to an approved application:

(1) The elements of the approved application to be changed, such as the affected portions of the annual Community Development Program;

(2) The certifications described in § 570.307; and

(3) Documentation regarding A–95 clearinghouse reviews as described in § 570.310(c).

(d) *Response to requested amendments.* Within 30 days of the date of receipt of the proposed amendment, HUD will notify the recipient in writing that the amendment has been approved, disapproved, or conditionally approved pursuant to § 570.311(f), or, if a final decision on the amendment has not as yet been made, the date by which the recipient will be notified of the final decision. In the event HUD has not mailed a notification to the recipient within that 30-day period, the amendment shall be deemed approved. If the proposed amendment is disapproved, the recipient shall be informed of the specific reasons for disapproval.

(e) *Other changes.* Changes not covered in paragraphs (a) or (b) of this section including local option and disaster activities, do not require prior HUD approval, but shall be reported to HUD as part of the annual performance report described in § 570.906.

(f) *Citizen participation.* All amendments and other changes to the Annual Community Development Program, the Community Development and Housing Plan, and the Housing Assistance Plan require citizen participation. Formal public hearings, however, are required only when prior HUD approval of application amendments is required. Citizen participation requirements do not apply, however, to disaster activities.

(g) *A–95 review.* The recipient shall provide the State and areawide clearinghouses with 30 days for review and comment prior to submission of an application amendment for prior HUD approval.

(h) *Environment.* The recipient shall comply with applicable provisions of 24 CFR Part 58 respecting all amendments.

V. Section 570.507 is revised to read as follows:

§ 570.507 Procurement standards.

(a) The requirements of Attachment O of OMB Circular No. A–102 shall apply to the procurement of materials and services, funded in whole or in part with block grant funds, by:

(1) Direct grant recipients; and

(2) States, units of general local government, Indian Tribes, public agencies or instrumentalities, and eligible entities under § 570.204(a)(2), as subgrantees or subrecipients.

(b) Except as provided in paragraph (a) of this section, the requirements of Attachment O of OMB Circular No. A–102 do not apply. For example, the procurement of materials and services by private homeowners who receive block grant assistance, such as rehabilitation loan financing, is not subject to such requirements.

VI. Section 570.602(d) is revised to read as follows:

§ 570.602 Relocation and acquisition.

* * * * *

(d) The recipient may provide relocation payments and assistance for individuals, families, businesses, nonprofit organizations and farm operations displaced by an activity that is not subject to § 570.602(a). The recipient also may provide relocation payments and other assistance at levels above those established under the Uniform Act. All such relocation assistance not required by the Uniform Act must be determined by the recipient to be appropriate to its community development program. Unless such payments and assistance are made pursuant to State or local law, the recipient shall adopt a written policy available to the public setting forth the relocation payments and assistance it elects to provide and providing for equal payments and assistance within each class of displacees.

VII. Section 570.906 is revised to read as follows:

§ 570.906 Performance report.

(a) *Submission requirements.* (1) Each entitlement recipient shall submit a performance report to HUD no later than the end of the eighth month of each program year. The report shall cover a twelve month period ending with the sixth month of the program year.

(2) A copy of the performance report shall be submitted to the appropriate A–95 State and areawide clearinghouses for informational purposes at the time it is submitted to HUD.

(3) The recipient shall make the report available to citizens at no charge and shall make public notice of the availability of the report at the time it is submitted.

(4) The requirements for submission of performance reports by discretionary grant recipients are set forth in § 570.400(h).

(b) *Content of report.* The report shall include the following components in a format to be prescribed:

(1) *Progress on planned activities.* The report shall describe progress on each project and activity that was to be carried out under approved applications since the inception of the applicant's block grant program, excluding projects or activities reported as completed in a previous report. The report shall list each project and activity by the program year in which it was approved and provide cumulative information on the following:

(i) Amount of funds obligated and expended;

(ii) Environmental status including the date of HUD release of funds;

(iii) The administrative unit having lead responsibility;

(iv) The steps taken to carry out the project, such as advertisement for bids, completion of a specified percentage of construction, etc.

(2) *Recipient assessment.* The report shall include the recipient's assessment of the effectiveness of the program of community development activities conducted under this Part in meeting local needs and objectives and national objectives of the block grant program.

(3) *Persons benefitting.* The report shall include an analysis of the persons actually benefitting from activities carried out under the program.

(4) *Housing assistance.* The applicant shall describe progress in carrying out the Housing Assistance Plan, including actions taken to further fair housing.

(5) *Citizen participation.* The applicant shall describe the actions it has taken to comply with the requirements of § 570.303, and include (i) copies of comments submitted by citizens regarding the applicant's community development performance; (ii) the applicant's assessment of such comments; and (iii) a summary of any actions taken in response to the comments received.

(6) *Equal opportunity.* The applicant shall present evidence of compliance with the certifications required by § 570.307(*l*).

[Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.); Title I, Housing and Community Development Act of 1977 (Pub. L. 95–128); and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d).)]

The legislative review provisions of Section 7(o) of the Department of Housing and Urban Development Act have been complied with.

Issued at Washington, D.C.

Robert C. Embry, Jr.,

Assistant Secretary for Community Planning and Development.

[FR Doc. 79–26593 Filed 8–24–79; 8:45 am]

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federal register

Monday
August 27, 1979

Part V

Federal Emergency Management Agency

Standards of Conduct; Production or Disclosure of Information; Implementation of Privacy Act of 1974; Rulemaking Policies and Procedures

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 0–10

Table of Contents for Subchapter A—General

AGENCY: Federal Emergency Management Agency.

ACTION: Designation of parts.

SUMMARY: The Federal Emergency Management Agency (FEMA) has established Title 44 of the Code of Federal Regulations entitled "Emergency Management and Assistance," and has established Chapter 1, thereof titled "Federal Emergency Management Agency" and Subchapter A, *General*. This action lists several of the parts within Subchapter A. It has been determined that publication of this rule as a proposal for public comment is unnecessary as it deals only with the establishment and arrangement of Subchapter A.

EFFECTIVE DATE: August 27, 1979.

ADDRESS: Federal Emergency Management Agency, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: George W. Jett, General Counsel, Federal Emergency Management Agency, Washington, DC 20472, (202) 254–9521.

SUPPLEMENTARY INFORMATION: In the May 2, 1979 **Federal Register** (44 FR 25797) FEMA established Title 44 of the Code of Federal Regulations, Chapter 1, Federal Emergency Management Agency and a number of Subchapters. One of these is Subchapter A entitled "General" and this Subchapter will include a number of parts dealing with matters of general applicability to all FEMA components. This document lists some of these parts. FEMA, shortly, will issue regulations on these subjects, except for part 0. Part 0 will be reserved for publication of general policy statements pursuant to 5 USC 552(a).

Accordingly, Subchapter A, General of Chapter 1 of Title 44 shall have the following parts:

Subchapter A—General

Part 0 General Statements of Policy
Part 1 Rulemaking; policy, and procedures
Part 2 Organization, functions & delegations of authority
Part 3 Standards of conduct
Part 4 Security
Part 5 Production or disclosure of information
Part 6 Implementation of the Privacy Act of 1974
Part 7 Non Discrimination in Federally-assisted programs
Part 8 Equal Employment Opportunity
Part 9 Floodplain management
Part 10 Environmental considerations

(Reorganization Plan No. 3 of 1978 (43 FR 41943). Executive Order 12127 dated March 31, 1979 (44 FR 19367).)

Dated: August 9, 1979.

John W. Macy, Jr.,

Director.

[FR Doc. 79-26620 Filed 8-24-79; 8:45 am]

BILLING CODE 4210-23-M

44 CFR Part 3

[Docket No. FEMA-Gen 3]

Standards of Conduct

AGENCY: Federal Emergency Management Agency.

ACTION: Interim Regulations and Request for Comments.

SUMMARY: These interim rules establish (1) Standards of Conduct for employees, special government employees, and former employees of the Federal Emergency Management Agency (FEMA). They are issued to implement the Ethics in Government Act of 1978 (Pub. L. 95–521), Executive Order 11222 of May 8, 1965 (3 CFR 1964–1965 Comp., p. 306), 5 CFR Part 735, Employees Responsibilities and Conduct, and other laws and regulations dealing with Federal employee Standards of Conduct. In addition, the Federal Emergency Management Agency requests public comment on these interim regulations. It is necessary for FEMA to begin its operations under these regulations immediately. Thus, FEMA is issuing a regulation which serves as an operating rule and, at the same time, affords opportunity for public comment.

DATES: Effective Date August 27, 1979. Written comments should be submitted on or before October 26, 1979.

ADDRESS: Federal Emergency Management Agency, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: George W. Jett, General Counsel, (202) 254–9521.

SUPPLEMENTARY INFORMATION: Reorganization Plan No. 3 of 1978 established the Federal Emergency Management Agency (FEMA). The plan was activated effective April 1, 1979 by Executive Order 12127 44 FR 19367.

"Federal Emergency Management Agency." The plan and Executive Order 12148 44 FR 43239, effective July 15, 1979 transferred to the new agency functions of five existing agencies in four departments or parent agencies. Under the plan, and pursuant to the order the regulations of the predecessor agencies remain in full force and effect in FEMA until those regulations are superseded.

Accordingly, to provide a single regulation on Standards of Conduct and Ethics in Government for all FEMA employees, it is necessary to adopt regulations which are interim operating rules but which also afford an opportunity for public comment.

In general, these regulations are consistent with the previous employee conduct standards of the agencies the functions of which have been transferred to FEMA, with certain additions which implement portions of the recently adopted Ethics in Government Act of 1978 and amendments thereto. The regulations in this part will hereafter be further amended to cover such matters as the exemption from scientific and technological information and the administrative enforcement proceedings for post employment restrictions.

Interested parties may participate by submitting their views, in writing, on this interim regulation to FEMA. Each comment should include the name and address of the person or organization submitting the comment and should make reference to the above-cited docket number. All comments received on or before the date set out above will be considered in promulgating final regulations on the matters addressed here. All written comments received will be docketed and made available for public inspection at FEMA.

It has been determined that the April 1, 1979 effective date of Reorganization Plan No. 3 of 1978 and the July 15 effective date for Executive Order 12148 established good cause for immediate publication of these regulations for interim effect.

Accordingly, Chapter 1 of Title 44 Code of Federal Regulation is amended by adding a new Part 3 as follows.

PART 3—STANDARDS OF CONDUCT

Subpart A—General

Sec.
3.1 Purpose.
3.2 Applicability and scope.
3.3 Definitions.
3.4 Notification to employees and special Government employees.
3.5 Interpretation and advisory service.
3.6 Employee responsibilities.
3.7 Sanction for violation.
3.8 Disqualification procedure.

Subpart B—Conduct and Responsibilities of Employees

3.10 Administrative extension of statutory limitations.
3.11 Proscribed actions.

Sec.
3.12 Financial interests.
3.13 Outside employment and other activities.
3.14 Gifts and gratuities.
3.15 Use of Government property, vehicles, and communications systems.
3.16 Misuse of information.
3.17 Gambling, betting and lotteries.
3.18 Indebtedness.
3.19 General conduct prejudicial to the Government.
3.20 Intermediaries and product recommendation.
3.21 Membership in organizations.
3.22 Use of intoxicants.
3.23 False statements.
3.24 Care of official records and documents.
3.25 Disclosure of information about an individual.

Subpart C—Conduct and Responsibilities of Special Government Employees

3.40 Applicability of Subpart B.
3.41 Use of Government employment.
3.42 Use of inside information.
3.43 Coercion.
3.44 Gifts, entertainment, and favors.
3.45 Applicability of other provisions.

Subpart D—Disclosure of Financial Interests

General Provisions

3.50 General.
3.51 Information not required.
3.52 Effect of employees' statements on other requirements.
3.53–3.59 [Reserved]

Financial Disclosure Under Ethics in Government Act of 1978

3.60 Who must file.
3.61 Form used to file.
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3.64 Supervisory review of report.
3.65 Action on report.
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3.67–3.79 [Reserved]

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3.80 Who must file.
3.81 Form used to file.
3.82 When to file.
3.83 How and where to file.
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3.85 Action on report.
3.86 Confidentiality of employees' statements.
3.87 Employees' complaint on filing requirement.
3.88 Employees not required to submit statements.
3.89 Information not known to employees.

Subpart E—Post Employment Conflicts of Interest [Reserved]

Appendix A Statutes Governing Conduct of Federal Employees

Authority: Title II of Ethics in Government Act of 1978, Pub. L. 95–521, 92 Stat. 1836 [5 U.S.C. app]; 5 CFR Parts 735, 737; EO 11222, 30 FR 6469, 3 CFR, 1964–1965 Comp., p. 306.

Subpart A—General

§ 3.1 Purpose.

(a) The purpose of this part is to set forth Federal Emergency Management Agency (FEMA) policy and procedure relating to employee responsibilities and conduct.

(b) 5 CFR 735.101 states in part: "The maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by Government employees and special Government employees is essential to assure the proper performance of the Government business and the maintenance of confidence by citizens in their Government. The avoidance of misconduct and conflicts of interest on the part of Government employees and special Government employees through informed judgment is indispensable to the maintenance of these standards".

(c) This part effectuates the requirements in Subpart A of 5 CFR 735 that FEMA issue regulations covering FEMA employees and special Government employees which (1) implement Executive Order 11222 of May 8, 1965, and 5 CFR Part 735 and (2) prescribe additional standards of ethical and other conduct appropriate to the particular functions of FEMA. This Part also effectuates the requirements placed on FEMA by the Ethics in Government Act of 1978, and implementing regulations of OPM.

§ 3.2 Applicability and scope.

(a) This part applies to all persons included within the terms "employee" and "special government employee" as defined in § 3.3. This part also applies to all former employees and special government employees of FEMA.

(b) This part prescribes general standards of conduct for FEMA employees. It is not, however, inclusive. Other FEMA regulations, instructions and issuances may include standards of ethical behavior. Employees must consult these. Among these instructions are those related to (1) the Freedom of Information Act, (2) The FEMA Employee Security Program, and (3) The FEMA Acquisition Process.

(c) This part does not apply unless there is specific provision to that effect to standards of ethical conduct required by law or regulation of FEMA contractors or grantees, nor does it apply to organizational conflicts of interest.

§ 3.3 Definitions.

For purposes of this part

(a) "FEMA" means the Federal Emergency Management Agency.

(b) "Director" means the Director, FEMA.

(c) "Employee" includes every employee of FEMA, headquarters and field, but does not include a special Government employee nor does it include a member of the Executive Reserve except during such time as the member is serving as an employee of FEMA.

(d) "Special Government employee" includes an employee of FEMA who is retained, designated, appointed, or employed to perform, with or without compensation, and for not to exceed 130 days during any period of 365 consecutive days, temporary duty on either a full time or intermittent basis. See 18 U.S.C. 202.

(e) "Person" includes an individual, corporation, company, association, firm, partnership, society, joint stock company, or other organization or institution.

(f) "Ethics Counselor" means the FEMA officer designated to administer for FEMA Titles II and V of the Ethics in Government Act of 1978 (Pub. L. 95–521), and it also means the FEMA official who serves as the Agency's designee to OPM on matters covered by Parts 735 and 737 of Title 5 of the Code of Federal Regulations and who coordinates and directs the FEMA ethics counseling service. In FEMA this is the General Counsel.

(g) "OPM" means the Office of Personnel Management.

(h) "Head of Unit" as used herein includes Deputy Director, Associate Directors, Regional Directors, Federal Insurance Administrator, and the United States Fire Administrator. For purposes of this part, the Deputy Director is "Head of unit" for any organizational component of FEMA not included in the above listing of final publication.

§ 3.4 Notification to employees and special Government employees.

(a) The provisions of this part as it is revised, shall be brought to the attention of, and made available to, each employee and special Government employee by furnishing a copy at the time of final publication. The provisions of this part shall further be brought to the attention of such employees at least annually thereafter.

(b) The provisions of this part shall be brought to the attention of each new employee and new special Government employee by furnishing a copy at the time of entrance of duty, and by such other methods of information and education as the Director may prescribe.

§ 3.5 Interpretation and advisory service.

(a) The Ethics Counselor serves as FEMA's designee to OPM on matters covered by this Part and by CFR Parts 735 and 737. The Ethics Counselor is responsible for coordinating FEMA's counseling services and for assuring that counseling and interpretations on questions of conflicts of interest and other matters covered by this part are available.

(b) Such deputy counselors as may be required shall be designated by the General Counsel from among the staff of the Office of the General Counsel to give authoritative advice and guidance to current, former and prospective employees and special Government employees who seek advice and guidance on questions of conflicts of interest and on other matters covered by this Part.

(c) To assist in avoiding situations of noncompliance the Ethics Counselor shall, in accordance with section 206 (b)(7) of the Ethics in Government Act of 1978 (Pub. L. 95–521), maintain a list of those circumstances or situations which have resulted or may result in noncompliance with laws or regulations concerning conflicts of interest and shall furnish a published list to employees subject to Title II of the Ethics in Government Act of 1978.

(d) The Ethics Counselor shall provide advice promptly to former FEMA employees and special Government employees who make inquiry on any matter arising under the post employment conflict of interest regulations of OPM (5 CFR Part 737) and this Part.

§ 3.6 Employee responsibilities.

(a) Each employee and special Government employee has a positive duty to become acquainted with the numerous statutes relating to the ethical and other conduct of employees and special Government employees of FEMA and of the Government. Appendix A of this Part contains a listing of many of the more important statutory provisions of general applicability. In case of doubt on any question of statutory application to fact situations that may arise, an individual should consult the text of the statutes, Executive Orders or regulations and may consult the Ethics Counselor or Deputy Counselor. These will be made available to the employee by the Ethics Counselor or Deputy Counselor, who have available for review copies of laws, Executive Orders, agency regulations, and pertinent issuances by OPM on this subject.

(b) In any case where any employee or special Government employee, regardless of grade or position, finds that participation in a particular matter or transaction might be considered to involve a direct or indirect financial interest, such individual shall promptly submit a request for disqualification to act in the matter or for other proposed remedial action in writing to the appropriate supervisor. This request will be acted on in accordance with § 3.8 of this Subpart.

§ 3.7 Sanction for violation.

A violation of this Part by an employee or special government employee may be cause for appropriate disciplinary action, or remedial action, which may be in addition to any penalty prescribed by law.

§ 3.8 Disqualification procedure.

(a) This section applies whether or not the conflict or apparent conflict of interest appears on any disclosure form and it applies to any employee or special government employee, regardless of grade or position. It applies to a request for disqualification to act made pursuant to paragraph (b) of this section.

(b) All disqualification or remedial action requests are referred to the Ethics Counselor. If the Ethics Counselor reaches an opinion, based on information submitted to him, that an employee or special government employee is not in compliance with applicable laws and regulations, then the Ethics Counselor shall so notify the individual of this opinion. The Ethics Counselor shall act on requests by individuals but is not required to approve the specific remedial action proposed. The individual shall be given a reasonable opportunity for an oral or written response. The Ethics Counselor may also ask for additional information.

(c) The Ethics Counselor shall consider the individual's response, and reach an opinion as to whether or not the individual is in compliance. If the opinion is that the individual is not in compliance with applicable laws and regulations, he shall notify the individual, and after consultation with the individual (if practical) determine and notify the individual of what steps if any, and the date for completion, would be appropriate for assuring compliance with the laws and regulations.

(d) These steps may include:

(1) Divestiture,

(2) Restitution,

(3) The establishment of a blind trust,

(4) Request for an exemption under section 208(b) of Title 18, United States Code, or

(5) Voluntary request for transfer, reassignment, disqualification for a particular assignment, or limitation of duties.

(e) If any of the remedial actions indicated in paragraph (d)(5) of this section is contemplated, appropriate personnel officers of FEMA shall be notified and shall participate in the determination of the action proposed to be effected.

(f) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (c) the matter shall be referred to the Director.

Subpart B—Conduct and Responsibilities of Employees

§ 3.10 Administrative extension of statutory limitations.

The provisions of the statutes identified in this Part, including those in Appendix A, which relate to the ethical and other conduct of Federal employees are adopted and will be enforced as administrative regulations, violations of which may, in appropriate cases be the basis for disciplinary action, including removal. The fact that a statute which may relate to employee conduct is not identified in this Part does not mean that it may not be the basis for disciplinary action against an employee.

§ 3.11 Proscribed actions.

An employee shall avoid any action whether or not specifically prohibited by this Subpart which might result in, or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding Government efficiency or economy;

(d) Losing complete independence or impartiality;

(e) Making a Government decision outside official channels;

(f) Affecting adversely the confidence of the public in the integrity of the Government;

(g) Discriminating contrary to any law, rule or regulation, against any other employee, or applicant for employment, on the grounds of race, color, religion, national origin, sex, age, handicapping condition, marital status, or political affiliation.

(h) Excluding contrary to any law, rule or regulation, any person from participating in, or denying to any person the benefits of, any program or activity administered by FEMA on the grounds of race, color, religion, national origin, handicapping condition, age, sex; marital status or political affiliation;

(i) Knowingly participating, while conducting official business, in or attending any segregated meetings, or

meetings held in segregated facilities, from which persons are excluded because of race, color, religion, sex or national origin, etc.

§ 3.12 Financial interests.

(a) An employee shall not:

(1) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with the employee's Government duties and responsibilities as a Federal Employee; or

(2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through Government employment.

(b) No employee shall participate in any manner, on behalf of the United States, in the negotiation of contracts, the making of loans, and grants, the granting of subsidies, the fixing of rates, or the issuance of valuable permits or certificates, or in any investigation or presecution, or in the transaction of any other official business which affects chiefly a person:

(1) By whom the individual has been employed or with whom the individual has had any economic interest within the preceding two years, or

(2) With whom the individual has any economic interest or any pending negotiations concerning a prospective economic interest, except with express prior authorization in writing by the Director.

(c) Contracts shall not knowingly be entered into between the Government and employees of the Government or business concerns or organizations which are substantially owned or controlled by Government employees, except for the most compelling reasons, such as cases where the needs of the Government cannot reasonably be otherwise supplied.

(d) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government so long as it is not prohibited by law, Executive Order, OPM regulations (5 CFR Parts 735 and 737) or the regulation in this Part.

(e)(1) The financial (or economic) interests described below are, unless otherwise determined by the Ethics Counselor in specific cases, too remote or too inconsequential to affect the integrity of an employee's services, and are thereby exempted from the prohibitions of 18 U.S.C. 208(a), and the holding of such an interest does not exclude such employee's participation in the transaction of any official business involving such financial or economic interests:

(i) Deposits in a bank, savings and loan association, building association, credit union or similar financial institution; or policies held with an insurance company;

(ii) Any holding in a widely held mutual fund, or regulated investment company which does not specialize in any particular industry;

(iii) Continued participation in a bona fide pension, retirement, group life, health, or accident insurance plan or other employee welfare or benefit plan that is maintained by a business or nonprofit organization by which the employee was formerly employed, to the extent that the employee's rights in the plan are vested and require no additional services by the employee or further payments to the plan by the organization with respect to the services of the employee. To the extent that such plans are profit sharing or stock bonus plans, this exemption shall not apply.

(2) These exempted financial interests should, however, be reported by employees on disclosure forms to the extent prescribed in Subpart D of this Part.

(3) For purposes of this Part unless otherwise provided in law, regulation, or on any form requesting disclosure, the interest of a spouse, dependent child, or other member of an employee's immediate household is considered to be an interest of the employee. For the purpose of this section, "member of an employee's immediate household" means those relations who are residents of the employee's household.

(f) Paragraph (b) of this section does not apply if the officer or employee first advises the Ethics Counselor in writing of the nature and circumstances of the matter, makes full disclosure of the financial interest, and receives in advance a written determination by such Ethics Counselor or Deputy Counselor that such interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such employee.

(g) The provisions of this section do not limit or add to the provisions of any disclosure requirements under Subpart D of this Part.

§ 3.13 Outside employment and other activities.

(a) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of his or her Government employment, and which might result in a conflict or apparent conflict between the private interests of the employee and the official Government duties and responsibilities. Incompatible activities include but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances where acceptance may result in, or create the appearance of, conflicts of interest;

(2) Outside employment which tends to impair the mental or physical capacity to perform Government duties and responsibilities in an acceptable manner;

(3) Outside activities that may be construed by the public to be the official acts of FEMA;

(4) Activities that establish relationships or property interests that may result in a conflict between one's private interests and official duties;

(b) Full-time employees and part-time employees with a regularly scheduled tour of duty must obtain the prior approval of the Ethics Counselor or Deputy Counselor before engaging in outside employment in the same professional field as that of the individual's official position.

(c) Although teaching, lecturing, and writing are outside employment, employees are encouraged to engage in such activities so long as they are not prohibited by law, Executive Order, OPM regulations or this Part.

(d) An employee shall not receive any salary or anything of monetary value from a private source as compensation for services to the Government.

(e) Any full-time employee mentioned in § 3.60 of this Part, whose appointment is required to be made by and with the advice and consent of the Senate, may not have earned income in any calendar year attributable to such year in excess of 15% of his or her salary.

(f) No employee, including the Director, shall receive outside compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance, the subject matter of which is devoted substantially to the responsibilities, programs, or operations of FEMA, or which draws substantially on official data or ideas which have not become part of the body of public information.

(g) The use of an employee's name and title in connection with articles for publication which bear upon work in FEMA is permissible only if approval is obtained from the Ethics Counselor or Deputy Counselor.

(h) This section does not preclude an employee from:

(1) Participation in the activities of National or State political parties not proscribed by law.

(2) Participation in the affairs of or acceptance of an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organization.

§ 3.14 Gifts and gratuities.

(a) Except as otherwise provided in this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with FEMA;

(2) Conducts operations or activities that are regulated by FEMA; or

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

(b) The prohibitions of paragraph (a) of this section do not apply in the following cases:

(1) Obvious family or personal relationships, such as those between the parents, children, or spouse of the employee and the employee, when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors;

(2) Acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance;

(3) Acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans; and

(4) Acceptance of unsolicited advertising or promotional materials, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value.

(5) Acceptance of a gift, gratuity, favor, entertainment, loan, payment of expenses, fees, compensation, or other thing of monetary value when such acceptance is determined in writing by the Director, to be necessary and appropriate in view of the work FEMA and the duties and responsibilities of the employee. A copy of each such determination shall be sent to the Ethics Counselor.

(c) An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness or retirement.

(d) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342.

(e) Neither this section nor § 3.13 of this Part precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for actual expenses for travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on his behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under FEMA orders when reimbursement is proscribed by decisions of the Comptroller General for such reasons as reimbursement by the person to the Agency directly.

§ 3.15 Use of Government, property, vehicles and communications systems.

(a) An employee shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities.

(b) Each employee shall protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to the employee.

(c) An employee shall not use, or authorize the use of, Government owned or leased motor vehicles or aircraft for other than official purposes (31 U.S.C. 638a(c)).

(d) An employee shall not use the Federal Telecommunications System or similar system, or commercial telephone facilities for official long-distance calls unless specifically authorized to do so. Use of these facilities for purposes other than the conduct of official business is also prohibited.

§ 3.16 Misuse of information.

(a) *Use of inside information.* For the purpose of furthering a private interest, an employee shall not, except as provided in § 3.13 of this Part, directly, or indirectly use, or allow the use of, information which has been or has the appearance of having been obtained through or in connection with Government employment and which has not been made available to the general public.

(b) *Coercion.* An employee shall not use Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to self or another person, particularly one with whom the employee has family, business, or financial ties.

(c) *Disclosure of restricted information.* Except as authorized by law, or FEMA regulation, including that related to the Freedom of Information Act, no employee shall divulge restricted commercial or economic information, or restricted information concerning the personnel or operations including procurement actions of any Government agency, or release any such information in advance of the time prescribed for its authorized release.

§ 3.17 Gambling, betting and lotteries.

An employee shall not, except as otherwise lawfully authorized, participate, while on Government-owned or leased property or while on duty for the Government, in any gambling activity, including the operation of a gambling device; in conducting a lottery or pool; in a game for money or property; or in selling or purchasing a numbers slip or ticket.

§ 3.18 Indebtedness.

(a) An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. For purposes of this section, "a just financial obligation" means one acknowledged by the employee or reduced to judgment by a court, and "in a proper and timely manner" means in a manner which, in the view of FEMA, does not under the cirsumstances, reflect adversely on the Government as employer.

(b) In the event of dispute between an employee and an alleged creditor, this section does not require FEMA to determine the validity or amount of the disputed debt.

§ 3.19 General conduct prejudicial to the Government.

(a) Officers and employees of the Federal government are servants of the people. Because of this, their conduct must, in many instances, be subject to more restrictions and to higher standards than may be the case in certain private employments. They are expected to conduct themselves in a manner which will reflect favorably upon their employer. Although the Government is not particularly

interested in the private lives of its employees, it does expect them to be honest, reliable, trustworthy, and of good character and reputation. They are expected to be loyal to the Government, and to the department or agency in which they are employed.

(b) An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

(c) Each employee shall act in a manner that facilitates the effective accomplishment of the work of FEMA, observing at all times the requirements of courtesy, consideration, and promptness in dealing with the public and with persons or organizations having business with FEMA.

§ 3.20 Intermediaries and product recommendation.

Except as authorized in connection with the performance of official duties, no employee shall recommend or suggest the use of any particular or identified nongovernmental intermediary to deal with FEMA nor shall an employee recommend any device or product tested by or for, or used by FEMA, or for which FEMA provides financial assistance.

§ 3.21 Membership in organizations.

(a) An employee may not, in his or her official capacity as an employee of FEMA, serve as a member of a non-Federal or private organization except where statutory authority exists, or where the Director has determined, in writing, that such service would be beneficial to FEMA and consistent with such employee's service as a FEMA employee.

(b) The foregoing is subject to the following. An employee may, and is encouraged to serve in an individual capacity as a member of a non-Federal or private organization, particularly those engaged in civic or community affairs on a non-political, non-profit basis, provided that:

(1) Membership does not violate any restriction, law, or regulation, including this Part, and

(2) The employee's official title or organization connection is not shown on any listing or presented in any activity of the organization in such a manner as to imply that the employee is acting in an official capacity.

(c) An employee may be designated in writing to serve as a liaison representative of FEMA to a non-Federal or private organization when the Director, an Associate Director, or a Regional Director, as appropriate, has determined that such service would be beneficial to FEMA and provided that:

(1) The activity relates to the work of FEMA;

(2) The employee does not participate by vote in the policy determinations of the organization;

(3) FEMA is in no way bound by any vote or action taken by the organization.

§ 3.22 Use of intoxicants.

An employee shall not use intoxicants habitually, to excess (5 U.S.C. 7352). Intoxicants shall not be consumed on Government-owned or leased premises. An employee found using, or under the influence of, intoxicants while at work will be subject to disciplinary action.

§ 3.23 False statements.

An employee shall not, knowingly and willfully, conceal or cover up a material fact, or make any false, or fictitious statement in connection with any official matter, document, or record (18 U.S.C. 1001, 2073).

§ 3.24 Care of official records and documents.

An employee shall not, willfully and unlawfully, conceal, remove, mutilate, falsify, or destroy any Government document or record (18 U.S.C. 285, 2071).

§ 3.25 Disclosure of information about an individual.

(a) Every employee who is involved in the design, development, operation, or maintenance of a system of records or who has access to a system of records shall familiarize himself with the requirements of the Privacy Act of 1974 (5 U.S.C. 552a) and FEMA (32 CFR Part 6) and FEMA directives issued thereunder and apply these requirements to all systems of records.

(b) No officer or employee shall disclose any record which is contained in a system of records by any means of communication to any person or to another agency, except pursuant to a written request by, or with the prior written consent of the individual to whom the record pertains, unless the disclosure is to a recipient specified in paragraph (c) of this section. The term "record", for purposes of this section, means any item, collection, or grouping of information about an individual that is maintained by an agency, including but not limited to education, financial transactions, medical history, and criminal or employment history and that contains name or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint, voice-print, or photograph. The term "system of records" means a group of any records under the control of FEMA from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The term "routine use" means, with respect to the disclosure of a record, the use of that record for a purpose which is compatible with the purpose for which it was collected. The term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence. The term "agency" is defined in 5 U.S.C. 552(e).

(c) An employee may disclose any record which is contained in a system of records without a written request by and without the prior written consent of the individual to whom the record pertains if the disclosure is:

(1) To those employees of the agency which maintains the record who have a need for the record in the performance of their duties.

(2) Pursuant to section 552 of Title 5 U.S.C. (Freedom of Information Act);

(3) For a routine use as defined in section (a)(7) of the Privacy Act of 1974 (described in paragraph (b) of this section);

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13 U.S.C.;

(5) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record and that the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of the individual;

(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress, or a subcommittee of any such joint committee;

(10) To the Comptroller General or any authorized representatives, in the course of the performance of the duties of the Genral Accounting Office; or

(11) Pursuant to the order of a court of competent jurisdiction.

(d) No employee shall maintain a record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity.

(e) No employee shall sell or rent an individual's name and address unless such action is specifically authorized by law.

(f) An employee—(1) Who by virtue of such employment or official position has possession of or access to agency records which contain individually identifiable information the disclosure of which is prohibited by paragraph (a) of this section or by any other rules, regulations, or directives of FEMA established under the Privacy Act of 1974, and who:

(i) Knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, or

(ii) Willfully maintains a system of records without meeting the notice requirements of the Privacy Act of 1974, or

(iii) Knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses, is subject to criminal penalties and administrative sanctions; or (2) who—

(i) Makes a determination not to amend an individual's record in accordance with the Privacy Act of 1974; or

(ii) Refuses to comply with an individual's request to gain access to review and to obtain a copy of any information pertaining to him; or

(iii) Fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to ensure fairness in any determination relating to the qualifications, character, rights, or opportunities of or benefits to the individual that may be made on the basis of such record and consequently a determination is made which is adverse to the individual; or

(iv) Fails to comply with any provision of the Privacy Act of 1974 or any FEMA regulation or directive implementing it, subjects to FEMA to civil penalties and self to administrative sanctions (5 U.S.C. 552a(g)(4)).

Subpart C—Conduct and Responsibilities of Special Government Employees

§ 3.40 Applicability of Subpart B.

Except as specifically provided in § 3.41–§ 3.45. Each special Government employee is subject to the provisions of Subpart B as if such individual were an employee, with the following exceptions:

(a) § 3.13 Outside employment and other outside activities;

(b) § 3.14 Gifts and gratuities;

(c) § 3.21 Membership in organizations.

§ 3.41 Use of Government employment.

A special Government employee shall not use FEMA employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for the individual or another person, particularly one with whom the employee has family, business, or financial ties.

§ 3.42 Use of inside information.

(a) A special Government employee shall not use information obtained as a result of FEMA employment which has not become part of the body of public information for private gain for the employee or another person either by direction on the employee's part or by counsel, recommendation, or suggestion to another person, particularly one with whom the employee has family, business, or financial ties.

(b) Special Government employees may teach, lecture, or write in a manner consistent with the provisions of § 3.13.

§ 3.43 Coercion.

A special Government employee shall not use Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to the employee or another person, particularly one with whom the employee has family, business, or financial ties.

§ 3.44 Gifts, entertainment and favors.

(a) Except as provided in paragraph (b) of this section, a special Government employee, while so employed or in connection with employment, shall not receive or solicit from a person having business with FEMA anything of monetary value as a gift, gratuity, loan, entertainment, or favor for the employee or another person, particularly one with whom the employee has family, business, or financial ties.

(b) The exceptions of § 3.14, which are applicable to employees, are also applicable to special Government employees.

§ 3.45 Applicability of other provisions.

(a) Each special Government employee shall acquaint himself with each statute, Executive Order, regulation, or similar provision listed in Appendix A to this part.

(b) A special Government employee engaged on irregular or occasional basis is bound by the political activity restrictions of the Former Hatch Act cited in Appendix A only while in an active duty status and for the entire 24 hours of any day during which the special government employee is actually employed.

Subpart D—Disclosure of Financial Interests

General Provisions

§ 3.50 General.

(a) Title II of the Ethics in Government Act of 1978 (Pub. L. 95–521), which became effective January 1, 1979, requires that certain officers and employees of the executive branch make specified financial disclosures in accordance with procedures for filing, review and public availability established by the office of Personnel Management.

(b) Section 402 of Executive Order 11222 of May 8, 1965 authorizes the Office of Personnel Management to prescribe regulations requiring submission by certain officers and employees of the executive branch of statements of employment and financial interest.

(c) This Subpart D describes for FEMA, the procedures required to implement the laws, Executive orders, and Office of Personnel Management Regulations concerning disclosure of financial and employment interests.

(d) An individual required to file a disclosure statement by virtue of the Ethics in Government Act of 1978 will not file a disclosure statement required by virtue of E.O. 11222 and Subpart D of 5 CFR Part 735.

§ 3.51 Information not required.

Subpart D does not require an employee to report information relating to a connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section,

educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in disclosure statements.

§ 3.52 Effect of employees' statements on other requirements.

The statements and supplementary statements required of employees pursuant to this part are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit the employee or any other person to participate in a matter in which the employee's or the other person's participation is prohibited by law, order, or regulation, including this Part.

§ 3.53–§ 3.59 [Reserved]

Financial Disclosure Under Ethics in Government Act of 1978

§ 3.60 Who must file.

The following officials of FEMA, if they have served 61 or more days during the preceding calendar year:

(a) Officers and employees (including special Government employees, as defined in 18 U.S.C. 202) whose positions are classified at GS–16 or above of the General Schedule, or whose basic rate of pay under other pay schedules is equal to or greater than the minimum rate of basic pay for GS–16. This includes all positions in the Senior Executive Service;

(b) Officers or employees in any other position determined by the Director of the Office of Government Ethics to be of equal classification to GS–16;

(c) Employees in the excepted service in positions which are of a confidential or policy-making character unless their positions have been excluded by regulations issued by the Director of the Office of Government Ethics (see 5 CFR 735.503).

(d) The Ethics Counselor.

§ 3.61 Form used to file.

The disclosure statement which must be used is Standard Form (SF) 278, "Financial Disclosure Statement for Executive Branch Personnel." Copies are available from the Ethics Counselor.

§ 3.62 When to file.

No later than May 14 annually, or 30 days after the individual assumes a position subject to the requirement in § 3.60 of this part unless the individual has within 30 days prior to assuming the position, left another position subject to the requirement. In the event of termination of employment, if the individual has not in the interim accepted another position subject to the requirement, report must be filed no later than the 30th day after termination, covering:

(a) The preceding calendar year if the annual May 15 report has not been filed, and

(b) The portion of the present calendar year up to the date of termination.

§ 3.63 How and where to file.

(a) The SF 278, with a copy of the employee's position description, shall be submitted to the Ethics Counselor (General Counsel), who shall note on the report the date it is received. The Ethics Counselor will forward the report to the Head of Unit under whom the individual serves for review.

(b) The Forms SF 278 of heads of units shall be submitted for review to the Deputy Director. The Deputy Director's Form SF 278 will be submitted to the Director for review.

(c) Special government employees who were employed for more than 60 days during CY 1978 will be required to file an annual report (SF 278) with processing of their forms to be accomplished in the same manner prescribed in paragraph (a) of this section.

§ 3.64 Supervisory review of report.

Upon receipt of an SF 278 the head of unit will consider the reported financial interests as they relate to the individual's duties, and make recommendations. The Director of head of unit then will return the form with attachments, to the Ethics Counselor for review. The review process shall be completed within 60 days after the date of filing.

§ 3.65 Action on report.

(a) If, after review, the Ethics Counselor or Deputy Counselor is of the opinion that the individual making the report is in compliance with applicable law and regulation, he or she shall state such opinion on the report, and sign same. If additional information is required, the involved individual shall be notified as to what this information is and as to when it must be submitted.

(b) If the Ethics Counselor or Deputy Counselor is of the opinion, on the basis of information submitted that the individual is not in compliance with applicable laws and regulations, the individual shall be notified and the procedure specified in § 3.8 of this part followed. Notwithstanding § 3.8 of this part, if steps for assuring compliance with applicable laws and regulations are not taken by the date set under § 3.8(c) by an individual appointment which requires the advice and consent of the Senate, the matter shall be referred to the President for appropriate action.

§ 3.66 Public release.

(a) No later than 15 days after any report (including SF 278) is received by FEMA, the Ethics Counselor shall permit inspection of, or furnish a copy of, such report including the position description to any person who requests inspection or a copy. The report shall be retained for six years after receipt. No fee shall be charged for furnishing a copy unless the cost of reproduction exceeds $10 in which case the fee shall be the same as those established under the FEMA regulations implementing the Freedom of Information Act (Part 5 of this Title). The Ethics Counselor shall maintain an accurate accounting of disclosures of reports in accordance with the requirements of Part 6 of this title, which relates to implementation of the Privacy Act of 1974. These reports are part of a system of records—OPM—Govt 4 established by the Office of Personnel Management.

(b) Notwithstanding paragraph (a) a report may not be made available under this section to any person, nor may any person except upon a written application by such person stating

(1) The person's name, occupation and address,

(2) The name and address of any other person on whose behalf the inspection or copy is requested, and

(3) That such person is aware of the prohibitions on the obtaining or use of the report.

These applications shall be made available to the public throughout the period during which the report is made available to the public.

§ 3.67–§ 3.79 [Reserved]

Financial Disclosure Under Executive Order 11222 and 5 CFR Part 735

§ 3.80 Who must file.

Except as provided in § 3.88, the following categories of employees shall submit statements of employment and financial interest:

(a) Employees classified as GS–13 or above who are in a postion identified as a postition the incumbent of which is responsible for making a Government decision or taking a Government action in regard to:

(1) Contracting or procurement,

(2) Administering or monitoring grants or subsidies;

(3) Regulating or auditing private or other non-Federal enterprise; or

(4) Other activities where the decision or action has an economic impact on the interests of any non-Federal enterprise.

(b) Employees classified at GS–13 or above who are in a position which the Director has determined has duties and responsibilities which require the incumbent to report employment and financial interests in order to avoid involvement in a possible conflicts-of-interest situation and to carry out the purpose of law, Executive order, and this part.

(c) Employees classified below GS–13 who are in a position which otherwise meet the criteria in paragraph (a) or (b) of this section, and which position has been approved by the OPM as an exception that is essential to protect the integrity of the Government and to avoid employee involvement in a possible conflict-of-interest situation.

(d) The specific postions described in paragraph (a)–(c) of this section shall be identified in a FEMA Directive issued by the Director. A copy of this directive shall be furnished to each incumbent of a position subject to the requirement of § 3.80 of this part, and shall be made available to any person upon request. The directive shall be kept current and reviewed at least annually. Designation of a position is effective upon actual notification to the incumbent, or upon inclusion of a statement in the official job description that the position is subject to this requirement.

§ 3.81 Form used to file.

The disclosure statement which must be used under this section is FEMA Form 11–1.

§ 3.82 When to file.

An employee required to submit a FEMA Form 11–1 pursuant to § 3.80 shall submit that statement not later than:

(a) Ninety days after the effective date of this part if employed on or before that effective date; or

(b) Thirty days after entrance on duty, but not earlier than 90 days after the effective date, if appointed after that effective date.

§ 3.83 How and where to file.

(a) The FEMA Form 11–1 shall be submitted to the Ethics Counselor (General Counsel) for review and custody.

(b) Changes in, or additions to, the information contained in the Form 11–1 shall be reported to the Ethics Counselor in a supplementary statement of the financial interests or employment as of September 30 each year. This supplementary statement is due by October 31. If no changes or additions occur, a negative report is required.

(c) Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest or engaging in outside employment or other activity that could result, or taking an action that would result, in a violation of the conflict-of-interest provisions of Section 208 of Title 18, United States Code, or this Part.

§ 3.84 Review of report.

The FEMA Form 11–1 is reviewed by the Ethics Counselor, or Deputy Counselor, who shall obtain copies of the relevant job description. The counselors shall show the forms to supervisors, or other employees of FEMA only to the extent required to determine if a conflict of interest exists.

§ 3.85 Action on report.

When a statement submitted pursuant to this part or information from other sources indicates a conflict between the interests of an employee and the performance of the employee's services for the government, the employee concerned shall be provided an opportunity to explain the conflict or appearance of conflict in accordance with the procedure set out in § 3.8 of this part.

§ 3.86 Confidentiality of employees' statements.

Unlike the SF 278, each FEMA Form 11–1 and each supplementary statement shall be held in confidence by FEMA. To insure this confidentiality, the OPM regulations provide that:

(a) FEMA shall designate which officials and employees are to review and retain the statements;

(b) Officials and employees designated under paragraph (a) of this section are responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this Part; and

(c) FEMA may not disclose information from a statement except as the OPM or the Director may determine for good cause shown.

§ 3.87 Employees' complaint on filing requirement.

Employees have the opportunity for review through the FEMA grievance procedures of a complaint by an employee that the position has been improperly included under these regulations as one requiring the submission of a statement of employment and financial interests.

§ 3.88 Employees not required to submit statements.

Employees in positions that meet the criteria in § 008.080 may be excluded from the reporting requirement when the Ethics Counselor determines that:

(a) The duties of a position are such that the likelihood of the incumbent's involvement in a conflict-of-interest situation is remote;

(b) The duties of a position are at such a level of responsibility that the submission of a statement of employment and financial interests is not necessary because of the degree of supervision and review over the incumbent or the inconsequential effect on the integrity of the Government.

§ 3.89 Information not known to employees.

If any information required to be included on a statement or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information in the employee's behalf.

Subpart E—Post Employment Conflicts of Interest [Reserved]

Appendix A—Statutes Governing Conduct of Federal Employees

There are numerous statutes pertaining to the ethical and other conduct of Federal employees. The important ones of general applicability are referred to in this Appendix.

A. Bribery and Graft

.01 Title 18, U.S.C., Section 201, prohibits anyone from bribing or attempting to bribe a public official by corruptly giving, offering, or promising him or any person selected by him, anything of value with intent (a) to influence any official act by him, (b) to influence him to commit or allow any fraud on the United States, or (c) to induce him to do or omit to do any act in violation of his lawful duty. As used in Section 201, "Public officials" is broadly defined to include officers, employees, and other persons carrying on activities for or on behalf of the Government.

.02 Section 201 also prohibits a public official's solicitation or acceptance of, or agreement to take a bribe. In addition, it forbids offers or payments to, and solicitations or receipt by, a public official of anything of value "for or because of" any official act performed or to be performed by him.

.03 Section 201 further prohibits the offering to or the acceptance by a witness of anything of value involving intent to influence his testimony at a trial, Congressional hearing, or agency proceeding. A similar provision applies to witnesses "for or because of" testimony given or to be given. The provisions summarized in this section do not preclude lawful witness fees, travel and subsistence expenses, or reasonable compensation for expert testimony.

B. Compensation to Officers and Employees in Matters Affecting the Government

.01 Title 18, U.S.C., Section 203, prohibits an officer or employee from receiving compensation for services rendered for others before a Federal department or agency in matters in which the Government is a party or is interested.

.02 Section 203 applies to a special Government employee as follows:

(a) If the special Government employee has served in FEMA more than 60 days during the preceding period of 365 days, Section 203 applies to him only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially in his governmental capacity, or (2) which is pending in FEMA, or

(b) If the special Government employee has served in FEMA no more than 60 days during the preceding period of 365 days, section 203 applies to him only in relation to a particular matter involving a specific party or parties in which he has at any time participated personally and substantially in his governmental capacity.

.03 Section 203 does not apply to a retired officer of the uniformed services while not on active duty and not otherwise an officer or employee of the United States.

C. Activities of Officers and Employees in Claims Against and Other Matters Affecting the Government

.01 Title 18, U.S.C., Section 205, prohibits an officer or employee, otherwise than in the performance of his official duties from:

(a) Acting as agent or attorney for prosecuting any claim against the United States, or receiving any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claims; or

(b) Acting as agent or attorney for anyone before any Government agency, court, or officer in connection with any matter in which the United States is a party or has a direct and substantial interest.

.02 Section 205 applies to a special Government employee as follows:

(a) If the special Government employee has served in FEMA more than 60 days during the preceding period of 365 days, section 205 applies to him only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially in his governmental capacity, or (2) which is pending in FEMA.

(b) If the special Government employee has served no more than 60 days during the preceding period of 365 days, Section 205 applies to him only in relation to a particular matter involving a specific party or parties in which he has at any time participated personally and substantially in his governmental capacity.

.03 Section 205 does not preclude:

(a) An employee, if not inconsistent with faithful performance of his duties, from acting without compensation as agent or attorney for any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings, in connection with those proceedings; or

(b) An employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

.04 Sections 203 and 205 do not preclude:

(a) An employee from acting as agent or attorney for his parents, spouse, child, or any person for whom, or for any estate for which he is serving as guardian, executor, administrator, trustee, or other personal fiduciary, except in those matters in which he has participated personally and substantially as a Government employee or which are the subject of his official responsibility, provided the head of the operating unit concerned approves; or

(b) A special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with, or for the benefit of, the United States provided the Director or designee shall certify in writing that the national interest so requires, and such certification shall be published in the **Federal Register.**

.05 Section 205 does not apply to a retired officer of the uniformed services while not on active duty and not otherwise an officer or employee of the United States.

D. Disqualification of Former Officers and Employees in Matters Connected With Former Duties or Official Responsibilities; Disqualification of Partners

Title 18 U.S.C. Section 207 deals with former employees and possible conflicts of interest.

E. Acts Affecting a Personal Financial Interest

.01 Title 18, U.S.C. Section 208 prohibits an officer or employee, including a special Government employee, from participating personally and substantially in a governmental capacity in any matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner, or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest.

F. Salary of Government Officials and Employees

.01 Title 18, U.S.C. Section 209, prohibits:

(a) An officer or employee from receiving any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the United States from any source other than the Government of the United States, except as may be contributed out of the treasury of a State, county, or municipality, and

(b) Any person or organization from paying, contributing to, or supplementing the salary of an officer or employee under circumstances which would make its receipt a violation of subparagraph .01(a) of this section.

.02 Section 209:

(a) Does not prevent a Government employee from continuing to participate in a bona fide pension or other welfare plan maintained by a former employer;

(b) Exempts special Government employees and employees serving the Government without compensation, and grants a corresponding exemption to any outside person paying compensation to such individuals; and

(c) Does not prohibit the payment or acceptance of sums under the terms of the Government Employees Training Act.

G. Code of Ethics for Government Service

"Code of Ethics for Government Service", House Concurrent Resolution 175, 85th Congress, 2d Session, 72 Stat. B12 of July 11, 1958, which reads as follows:

"Any Person in Government Service Should:

"PUT loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

"UPHOLD the Constitution, laws, and legal regulations of the United States and all governments therein and never be a party to their evasion.

"GIVE a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.

"SEEK to find and employ more efficient and economical ways of getting tasks accomplished.

"NEVER discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.

"MAKE no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.

"ENGAGE in no business with the Government either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.

"NEVER use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.

"EXPOSE corruption wherever discovered.

"UPHOLD these principles, ever conscious that public office is a public trust."

H. Prohibitions

.01 The prohibition against lobbying with appropriated funds (18 U.S.C. 1913) reads as follows:

"No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation, but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or

appropriations which they deem necessary for the efficient conduct of the public business.

"Whoever, being an officer or employee of the United States or of any department or agency thereof, violates or attempts to violate this section, shall be fined not more than $500 or imprisoned not more than 1 year, or both; and after notice and hearing by the superior officer vested with the power of removing him, shall be removed from office or employment."

.02 The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918). An individual may not accept or hold a position in the Government of the United States if he:

(a) Advocates the overthrow of our constitutional form of Government;

(b) Is a member of an organization that he knows advocates the overthrow of our constitutional form of government;

(c) Participates in a strike, or asserts the right to strike, against the Government of the United States or the government of the District of Columbia; or

(d) Is a member of an organization of employees of the Government of the United States or of individuals employed by the government of the District of Columbia that he knows asserts the right to strike against the Government of the United States or the government of the District of Columbia.

.03 The prohibitions in 2 U.S.C. 441 i, against receiving any single honorarium in excess of $2000, or total honorariums in excess of $25,000 in any calendar year.

.04 The prohibitions against (a) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 788); and (b) the disclosure of confidential information (18 U.S.C. 1905). Each employee who has access to classified information, e.g. confidential, secret, or top secret, or to a restricted area is responsible for knowing and for complying strictly with the security regulations of the Federal Emergency Management Agency.

.05 The prohibition against the use of the franking privilege to avoid payment of postage on private mail (18 U.S.C. 1719).

.06 The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

.07 The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001). An employee in connection with an official matter shall not knowingly and willfully conceal or cover up a material fact or falsify official papers or documents.

.08 The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508). Falsely making, altering or forging in whole or in part, any form of transportation request is prohibited.

.09 The prohibitions against:

(a) Embezzlement of Government money or property (18 U.S.C. 641). No employee may convert any Government money or Government property to his own use or the use of another person.

(b) Failure to account for public money (18 U.S.C. 643). Any employee, who, having received public money which he is not authorized to retain, fails to render his accounts for same as provided by law, is guilty of embezzlement.

(c) Embezzlement of the money or property of another person in the possession of the employee by reason of his employment (18 U.S.C. 654). An employee is prohibited from embezzling or wrongfully converting for his own use the money or property of another which comes under his control as the result of his employment.

.10 The prohibition against unauthorized removal or use of documents relating to claims from or by the Goverment (18 U.S.C. 285). No employee, without authority, may remove from the place where it was kept by authority of the United States any document, record, file, or paper intended to be used to procure the payment of money from or by the United States or the allowance or payment of any claim against the United States, regardless of whether the document or paper has already been used or the claim has already been allowed or paid; and no employee may use or attempt to use any such document, record, file, or paper to procure the payment of any money from or by the United States or the allowance or payment of any claim against the United States.

.11 The prohibition against proscribed political activities, including the following, among others:

(a) Using official authority or influence for the purpose of interfering with or influencing the result of an election, except as authorized by law (5 U.S.C. 7324);

(b) Taking an active part in political management or in political campaigns, except as authorized by law (5 U.S.C. 7324);

(c) Offering or promising to pay anything of value in consideration of the use of, or promise to use, any influence to procure any appointive office or place under the United States for any person (18 U.S.C. 210);

(d) Soliciting or receiving, either as a political contribution or for personal emolument, anything of value in consideration of a promise of support or use of influence in obtaining for any person any appointive office or place under the United States (18 U.S.C. 211);

(e) Using official authority to interfere with a Federal election (18 U.S.C. 595);

(f) Promising any employment compensation, or other benefit made possible by Act of Congress in consideration of political activity or support (18 U.S.C. 600);

(g) Action by a Federal officer or employee to solicit or receive, or to be in any manner concerned with soliciting or receiving, any contribution for any political purpose whatever from any other Federal officer or employee or from any person receiving compensation for services from money derived from the Treasury of the United States (18 U.S.C. 602);

(h) Soliciting or receiving (by any person) anything of value for any political purpose whatever on any Government premises (18 U.S.C. 603);

(i) Soliciting or receiving contributions for political purposes from anyone on Federal relief or work relief (18 U.S.C. 602);

(j) Payment of a contribution for political purposes by any Federal officer or employee to another Federal officer or employee (18 U.S.C. 607);

(k) Payment of a political contribution in excess of statutory limitations and purchase of goods, commodities, advertising, or articles, the proceeds of which inure to the benefit of certain political candidates or organizations (18 U.S.C. 608).

.12 The prohibition against an employee acting as the agent of a foreign principal registered under the Federal Agents Registration Act (18 U.S.C. 219).

Dated: August 9, 1979.

John W. Macy, Jr.,

Director.

[FR Doc. 79-26621 Filed 8-24-79; 8:45 am]

BILLING CODE 4210-23-M

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44 CFR Part 5

[Docket No. FEMA—Gen 5]

Production or Disclosure of Information

AGENCY: Federal Emergency Management Agency.

ACTION: Interim Regulation and Request for Comments.

SUMMARY: These interim rules establish policies and procedures for the Federal Emergency Management Agency (FEMA) to implement the Freedom of Information Act. In addition, FEMA requests public comment on these interim regulations. It is necessary for FEMA to initiate operations under these regulations immediately. Thus, FEMA is issuing a regulation which serves as an operating rule and at the same time affording opportunity for comment.

DATES: Effective date August 27, 1979. Written comments should be submitted on or before October 26, 1979.

ADDRESS: Send comments to Federal Emergency Management Agency, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: George W. Jett, General Counsel, (202) 254–9521.

SUPPLEMENTARY INFORMATION: Reorganization Plan No. 3 of 1978 established the Federal Emergency Management Agency (FEMA). The plan was activated effective April 1, 1979 by Executive Order 12127 of March 31, 1979, "Federal Emergency Management Agency," 44 FR 19367. The plan, Executive Order and, subsequently, Executive Order 12148, effective July 15, 1979, 44 FR 43239, together transferred to the new agency functions of five existing agencies in four departments or parent agencies. Under the plan, and pursuant to the orders, the regulations of the predecessor agencies remain in full force and effect in FEMA as if the reorganization or transfer had not taken place until such time as those regulations are superseded. This means that FEMA employees are subject to

four different sets of Freedom of Information Act regulations.

In order to correct this situation, it is necessary to adopt regulations which serve as interim rules and, at the same time, affording opportunity for public comment.

These regulations are based upon the regulations applicable to the agencies the functions of which have been or will be transferred to FEMA.

Interested parties may participate by submitting their views, in writing, on these interim rules to FEMA. Each comment should include the name and address of the person or organization submitting the comment and should make reference to the above-cited docket number. All comments received on or before the date set out above will be considered in promulgating final regulations on the matters addressed here. All written comments received will be docketed and made available for public inspection at FEMA.

It has been determined that the April 1, 1979 effective date of Reorganization Plan No. 3 of 1979 and the July 15, 1979 effective date of Executive Order 12148 establish good cause for immediate publication of these regulations for interim effect.

Accordingly, the Federal Emergency Management Agency is amending Chapter 1 of Title 44 CFR by adding a new Part 5 as follows:

PART 5—PRODUCTION OR DISCLOSURE OF INFORMATION

Subpart A—General Provisions

Sec.

5.1 Scope and purposes of part.
5.2 Application.
5.3 Definitions.
5.4 Availability of records.
5.5 Exemptions.
5.6 Congressional information.
5.7 Records of other agencies.
5.8 Records involved in litigation or other judicial process.
5.9 Inconsistent issuances of FEMA and its predecessor agencies superseded.

Subpart B—Publication of or Availability of General Agency Information, Rules, Orders, Policies, and Similar Material

5.20 Publication of rules and general policies.
5.21 Effect of failure to publish.
5.22 Coordination of publication.
5.23 Incorporation by reference.
5.24 Availability of opinions, orders, policies, interpretations, manuals, and instructions.
5.25 Available materials.
5.26 Rules for public inspection and copying.
5.27 Deletion of identifying details.
5.28 Indexes.
5.29 Effect of failure to make informational materials available.

Subpart C—Fees

Sec.

5.40 Copies of FEMA records available at a fee.
5.41 FEMA publications.
5.42 Exemptions from or reduction of fee.
5.43 Searches.
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5.45 Form of payment.
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5.50 General.
5.51 Submission of requests for described records.
5.52 Review of requests.
5.53 Approval of request.
5.54 Denial of request for records.
5.55 Appeal within FEMA of denial of request.
5.56 Extension of time limits.
5.57 Exhaustion of administrative remedies.
5.58 Judicial relief available to the public.
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5.60 Contempt for noncompliance.

Subpart E—Exemptions

5.70 General.
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5.72 Executive privilege exemption.

Subpart F—Supoena or Other Legal Demands for Records and Authentication of Copies of Records

5.80 Service of subpoena or other legal demand.
5.81 Compliance with subpoena or other legal demand.
5.82 Authentication and attestation of copies.

Authority: 5 U.S.C. 552; Reorganization Plan No. 3 of 1978, 43 FR 41943; and EO 12127 (effective April 1, 1979), 44 FR 19367.

Subpart A—General Provisions

§ 5.1 Scope and purposes of part.

This part sets forth policies and procedures concerning the availability of and disclosure of records and information held by the Federal Emergency Management Agency (FEMA) in accordance with 5 U.S.C. 552, popularly known as the "Freedom of Information Act," (FOIA).

§ 5.2 Application.

This part applies to all records and information materials generated, developed, or held by FEMA at Headquarters, in Regions, or in the field, or any component thereof.

§ 5.3 Definitions.

For purposes of the part, the following terms have the meanings ascribed to them in this section:

(a) *Records.* "Records" means all books, papers, maps, photographs, or other doucmentary materials, regardless of physical form or characteristics made or received by FEMA in pursuance of Federal Law or in connection with the transaction of public business and preserved, or appropriate for preservation, as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of FEMA or because of the information value of data contained therein. The term does not include:

(1) Material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents; or

(2) Objects or articles, such as structures, furniture, paintings, sculpture, models, vehicles or equipment; or

(3) Formulae, designs, drawings, research data, computer programs, technical data packages, and the like, which are not considered "records" within the Congressional intent of reference because of development costs, utilization, or value. These items are considered exploitable resources to be utilized in the best interest of *all* the public and are not preserved for informational value nor as evidence of agency functions. Requests for copies of such material shall be evaluated in accordance with policies expressly directed to the appropriate dissemination or use of these resources. Requests to inspect this material to determine its content for informational purposes shall normally be granted, unless inspection is inconsistent with the obligation to protect the property value of the material, as, for example, may be true for patent information and certain formulae, or is inconsistent with another significant and legitimate governmental purpose.

(b) *Reasonably Described.* "Reasonably described," when applied to a request record, means identifying it to the extent that it will permit the location of the particular document with a reasonable effort.

(c) *Agency.* "Agency," as defined in § 552(e) of Title 5 U.S.C., includes any executive department, military department, government corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

(d) *Headquarters FOIA Officer.* The Director, Administrative Services.

(e) *Regional FOIA Officer.* The Regional Director for Administration.

§ 5.4 Availability of records.

(a) FEMA records are available to the greatest extent possible for keeping with the spirit and intent of FOIA and will be

furnished promptly to any member of the public upon request addressed to the office designated in § 5.26. The person making the request need not have a particular interest in the subject matter, nor must he provide justification for the request.

(b) The requirement of 5 U.S.C. 552 that records be available to the public refers only to records in being at the time the request for them is made. FOIA imposes no obligation to compile a record in response to a request.

§ 5.5 Exemptions.

Requests for FEMA records may be denied if disclosure is exempted under the provisions of 5 U.S.C. 552, as outlined in Subpart E. Usually, except when a record is classified, or when disclosure would violate any other Federal statute, the authority to withhold a record from disclosure is permissive rather than mandatory. The authority for nondisclosure will not be invoked unless there is compelling reason to do so.

§ 5.6 Congressional information.

Nothing in this part authorizes withholding information from the Congress except when executive privilege is invoked by the President.

§ 5.7 Records of other agencies.

If a request is submitted to FEMA to make available current records which are the primary responsibility of another agency, FEMA will refer the request to the agency concerned for appropriate action. FEMA will advise the requester that the request has been forwarded to the responsible agency.

§ 5.8 Records involved in litigation or other judicial process.

Where there is reason to believe that any records requested may be involved in litigation or other judicial process in which the United States is a party, including discovery procedures pursuant to the Federal Rules of Civil Procedure or Federal Rules of Criminal Procedure, the request shall be referred to the General Counsel.

§ 5.9 Inconsistent issuances of FEMA and its predecessor agencies superseded.

Policies and procedures of any of FEMA's predecessor agencies inconsistent with this regulation are superseded to the extent of that inconsistency.

Subpart B—Publication of or Availability of General Agency Information, Rules, Orders, Policies, and Similar Material

§ 5.20 Publication of rules and general policies.

In accordance with 5 U.S.C. 552(a)(1), there are separately stated and currently published, or from time to time there will be published, in the **Federal Register** for the guidance of the public, the following general information concerning FEMA:

(a) Description of the organization of the Headquarters Office and regional and other offices and the established places at which, the employees from whom, and the methods whereby the public may obtain information, make submittals or requests, or obtain decisions.

(b) Statement of the general course and method by which FEMA functions are channeled and determined, including the nature and requirements of all formal and informal procedures available.

(c) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations.

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by FEMA.

(e) Each amendment, revision, or repeal of the materials described in this section. Much of this information will also be codified in this Subchapter A.

§ 5.21 Effect of failure to publish.

5 U.S.C. 552(a)(1) provides that, except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or to be adversely affected by, a matter required to be published in the **Federal Register** and not so published.

§ 5.22 Coordination of publication.

The General Counsel, FEMA, is responsible for coordination of FEMA materials required to be published in the **Federal Register**.

§ 5.23 Incorporation by reference.

When deemed appropriate, matter covered by this Subpart, which is reasonably available to the class of persons affected thereby may be incorporated by reference in the **Federal Register** in accordance with standards prescribed from time to time by the Director of the Federal Register (see 1 CFR Part 51).

§ 5.24 Availability of opinions, orders, policies, interpretations, manuals, and instructions.

FEMA will make available for public inspection and copying the material described in 5 U.S.C. 552(a)(2) as enumerated in § 5.25 and an index of those materials as described in § 5.28, at convenient places and times.

§ 5.25 Available materials.

FEMA materials which are available under this Subpart are as follows:

(a) Final opinions and orders made in the adjudication of cases.

(b) Those statements of policy and interpretations which have been adopted by FEMA and are not published in the **Federal Register**.

(c) Administrative staff manuals and instructions to staff that affect a member of the public, unless such materials are promptly published and copies offered for sale.

§ 5.26 Rules for public inspection and copying.

(a) *Locations.* Materials are available for public inspection and copying at the following locations:

(1) Headquarters, Federal Emergency Management Agency, 1725 I Street, NW., Washington, DC 20472.

(2) Regional Offices:

(i) Region One—15 New Chardon Street, Boston, Massachusetts 02114.

(ii) Region Two—90 Church Street, Room 801–B, New York, NY 10007.

(iii) Region Three—Curtis Building, Sixth and Walnut Streets, Philadelphia, PA 19106.

(iv) Region Four—1371 Peachtree Street, NE., Atlanta, GA 30309.

(v) Region Five—One North Dearborn Street, Chicago, IL 60602.

(vi) Region Six—Earle Cabell Building, 1100 Commerce Street, Dallas, TX 75242.

(vii) Region Seven—Federal Office Building, 911 Walnut Street, Kansas City, MO 64106.

(viii) Region Eight—Room 311, 909 17th Street, Denver, CO 80202.

(ix) Region Nine—450 Golden Gate Avenue, P.O. Box 36006, San Francisco, CA 94102.

(x) Region Ten—Arcade Plaza Building, 1321 Second Avenue, Seattle, WA 98101.

(b) *Time.* Materials will be made available for public inspection and copying during the normal hours of business.

(c) *Copying.* FEMA will furnish reasonable copying services at fees specified in Subpart C. Such reproduction services, as are required, will be arranged by the Administrative Services Division in the headquarters or by regional offices as appropriate.

(d) *Handling of Materials.* The unlawful removal or mutilation of materials is forbidden by law and is punishable by fine or imprisonment or both. FEMA personnel making materials available will ensure that all materials provided for inspection and copying are returned in the same condition as provided.

§ 5.27 Deletion of identifying details.

To the extent required to prevent a clearly unwarranted invasion of personal privacy, FEMA may delete identifying details when making available or publishing an opinion, statement of policy, interpretation, or staff manual or instruction. However, the justification for each deletion will be explained fully in writing, and will require the concurrence of the General Counsel. A copy of the justification will be attached to the material containing the deletion and a copy will also be furnished to the Headquarters FOIA Officer or appropriate Regional Director.

§ 5.28 Indexes.

FEMA will maintain and make available for public inspection and copying current indexes arranged by subject matter providing identifying information for the public regarding any matter issued, adopted, or promulgated after July 4, 1967, and described in § 5.25. FEMA will publish quarterly and make available copies of each index or supplements thereto. The indexes will be maintained for public inspection at the location described in § 5.26.

§ 5.29 Effect of failure to make information materials available.

Materials requested to be made available pursuant to § 5.24 that affect a member of the public may be relied upon, used, or cited as precedent by FEMA against any private party only if (a) they have been indexed and either made available or published as required by 5 U.S.C. 552(a)(2), or (b) the private party has actual and timely notice of their terms.

Subpart C—Fees

§ 5.40 Copies of FEMA records available at a fee.

One copy of FEMA records not available free of charge will be provided at a fee as provided in § 5.46. A reasonable number of additional copies will be provided for the applicable fee where reproduction services are not readily obtainable from private commercial sources.

§ 5.41 FEMA publications.

Anyone may obtain FEMA publications without charge from the FEMA Headquarters, Regional Officer and from the U.S. Army Publication Center, 2800 Eastern Boulevard, Baltimore, MD 21220 in accordance with standard operating procedures, including limitation on numbers of specific individual publications. FEMA Films may be obtained on loan or certain of these films may be purchased, in which case fees will be charged as set out in a FEMA catalogue. Non-exempt FEMA research reports are available from the National Technical Information Service, United States Department of Commerce which establishes its own fee schedule. Charges, if any, for these items and similar user charges are established in accordance with other provisions of law as, for example, 31 U.S.C. 483a and are not deemed search and duplication charges hereunder.

§ 5.42 Exemptions from or reduction of fee.

(a) When the Headquarters FOIA Officer or Regional Director handling the request for FEMA records determines that at least one of the following conditions exist, the fee requirement shall be waived and one copy of the FEMA records provided without charge to the requestor:

(1) When the incremental cost of collecting the fee would be an unduly large part of or an amount greater than the fee; a fee of less than $10 is considered as meeting this requirement.

(2) When the reproduction is for a foreign, state, or local Government or international agency and furnishing it without charge is an appropriate courtesy; or

(3) When furnishing the records without charge conforms to generally established business custom, such as furnishing personal reference data to prospective employers of former employees.

(b) Records may be furnished without charge, or at a reduced charge if the Headquarters FOIA Officer or Regional Director determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

§ 5.43 Searches.

(a) The time spent in the following activities may be computed in determining "search time" subject to applicable fees as provided in § 5.46.

(1) Time spent in trying to locate FEMA records which come within the scope of the request;

(2) Time spent either in transporting a necessary agency searcher to a place of record storage or in transporting records to the location of a necessary agency searcher (FEMA must document in writing the necessity of transporting either the searcher or the records); and

(3) Direct costs involving the use of computer time to locate and extract requested records.

(b) The time spent in the following activities may not be computed in determining search time subject to applicable fees as provided in § 5.46.

(1) Time spent in examining a requested record for the purpose of determining whether an exemption can and should be asserted;

(2) Time spent in deleting exempt matter being withheld from records to be made available;

(3) Time spent in monitoring a requester's inspection of agency records made available; and

(4) Time spent in operating reproduction facilities.

§ 5.44 Prepayment of fees over $25.

(a) When the Headquarters FOIA Officer or Regional FOIA Officer handling a request for FEMA records determines that the anticipated total fee (search and reproduction) is likely to exceed $25, the requestor shall be notified of the requirement to prepay the anticipated fee prior to FEMA's commencing its search or reproduction. FEMA will remit the excess paid by the requestor or bill the requestor for an additional amount according to variations between the final fee charged and the amount prepaid.

(b) When a FEMA official notifies a requestor of the necessity of prepayment as provided in paragraph (a) of this section, the official also shall notify the requestor that the computation of the applicable time limits for FEMA's response to an initial request for records or an appeal will be suspended from the mailing date of the notification of requirement to prepay until the receipt of the prepayment.

§ 5.45 Form of payment.

Payment shall be by check or money order payable to the Treasurer of the United States and shall be addressed to the official designated by FEMA in correspondence with the requestor or to the Headquarters FOIA Officer or Regional FOIA Officer, as appropriate.

§ 5.46 Fee schedule.

In computing applicable fees, FEMA will consider only the following costs in providing the requested records.

(a) *Reproduction Fees.* (1) The fee for reproducing copies of FEMA records up to and including material 8½ x 14 inches shall be $0.10 per page.

(2) The fee for reproducing copies of FEMA records over 8½ x 14 inches or

whose physical characteristics do not permit reproduction by routine electrostatic copying shall be the direct cost of reproducing the records through Government or commercial sources.

(b) *Search Fee.* (1) The standard search fee shall be $4 per hour or fraction thereof beyond the initial half hour used to locate the requested records.

(2) When professional staff must be used to search for the requested records because clerical staff would be unable to locate them, the search fee shall be $8 per hour or fraction thereof beyond the initial half hour used to locate the requested records.

(3) When the search includes non-personnel expenditures to locate and extract requested records, such as computer time or transportation expenses, the applicable fee shall be the direct cost to FEMA.

§ 5.47 Appeals regarding fees.

A requestor whose application for a fee waiver or a fee reduction is denied may appeal that decision to the Deputy Director in the manner prescribed in Subpart D.

Subpart D—Described Records

§ 5.50 General.

(a) Except for records made available pursuant to Subpart B FEMA shall promptly make records available to a requestor pursuant to a request which reasonably described such records unless FEMA invokes an exemption pursuant to Subpart E. Although the burden of reasonable description of the records rests with the requestor, FEMA will assist in identification to the extent practicable. Where requested records may be involved in litigation or other judicial proceedings in which the United States is a party, the procedures set forth under § 5.8 shall be followed.

(b) Upon receipt of a request which does not reasonably describe the records requested, FEMA may contact the requestor to seek a more specific description. The 10-day time limit set forth in § 5.52 will not start until a request reasonably describing the records is received in the office of the appropriate official identified in § 5.51.

§ 5.51 Submission of requests for described records.

(a) For records located in the FEMA Headquarters, requests shall be submitted in writing, to the Headquarters FOIA Officer, Federal Emergency Management Agency, Washington, DC 20472. For records located in the FEMA Regional Offices, requests shall be submitted to the appropriate Regional FOIA Officer, at the address listed in § 5.26. Requests should bear the legend "Freedom of Information Request" prominently marked on both the face of the request letter and the envelope. The 10-day time limit for agency determinations set forth in § 5.52 shall not start until a request is received in the office of the appropriate official identified in this paragraph.

(b) The Headquarters FOIA Officer shall respond to questions concerning the proper office to which Freedom of Information requests should be addressed.

§ 5.52 Review of requests.

(a) Upon receipt of a request for information, the Headquarters FOIA Officer, or the Regional FOIA Officer for a regional office, will forward the request to the FEMA office which has custody of the record.

(b) Upon any request for records made pursuant to § 5.20, § 5.24, or § 5.51, the office having custody of the records shall determine within 10 days (excepting Saturdays, Sundays, and legal public holidays), after receipt of any such request in the office of the appropriate official identified in § 5.51 whether to comply with the request. If the request is approved, the office having custody of the record shall notify the requestor and the Headquarters FOIA Officer whether request originated in Headquarters, Region or field.

(c) When a request is received for a record which:

(1) Was obtained by FEMA from a non-U.S. Government source; or

(2) Contains information obtained by FEMA from a non-U.S. Government source; and because of the source and the nature of the records or information, there is reason to believe that the source of the information or record may object to release or may have an enforceable right to prevent release, prompt notification of intended release shall be given to the source. Release shall normally be withheld until the source has a reasonable time to comment on the proposed release. Comments received shall be considered in determining the releasability of the document. When the source advises that it is seeking a restraining order or other court action to prevent release, release will normally not be made pending the outcome of the court action.

§ 5.53 Approval of request.

When a request is approved, records will be made available promptly in accordance with the terms of the regulation. Copies may be furnished or the records may be inspected and copies as provided in § 5.26.

§ 5.54 Denial of request for records.

(a) Each of the following officials within FEMA, or any official designated to act for the official, shall have the authority to make initial denials of requests for disclosure of records within his or her custody, and shall, in accordance with 5 U.S.C. 552(a)(6)(C), be the responsible official for denials of records made under this part.

(1) At Headquarters:

(i) The Director

(ii) The Deputy Director

(iii) Associate Directors or Office Directors

(iv) Assistant Director for Training and Education

(v) Federal Insurance Administrator

(vi) U.S. Fire Administrator

(vii) Director, Operations Support

(viii) Director, Personnel

(ix) Director, Finance and Administration

(x) Director, Program Evaluation and Research

(xi) General Counsel

(xii) Inspector General

(2) At Regions—Regional Directors.

(b) If a request is denied, the appropriate official listed in paragraph (a) of this section shall except as provided in § 5.56 advise the requestor within 10 days (excepting Saturdays, Sundays, and legal public holidays) of receipt of the request by the official specified in § 5.52 and furnish written reasons for the denial. The denial will (1) describe the record or records requested, (2) state the reasons for nondisclosure pursuant to Subpart E, (3) state the name and title or position of the official responsible for the denial of such request, and (4) state the requestor's appeal rights.

(c) In the event FEMA cannot locate requested records the appropriate official specified in paragraph (a) of this section will inform the requestor (1) that the agency has determined at the present time to deny the request because the records have not yet been found or examined, but (2) that the agency will review the request within a specified number of days, when the search or examination is expected to be complete. The denial letter will state the name and title or position of the official responsible for the denial of such request. In such event, the requestor may file an agency appeal immediately, pursuant to § 5.55.

§ 5.55 Appeal within FEMA of denial of request.

(a) A requestor denied access, in whole or in part, to FEMA records may appeal that decision within FEMA. All appeals should be addressed to the Headquarters FOIA Officer, Federal

Emergency Management Agency, Washington, DC regardless of whether the denial being appealed was made at Headquarters, in a field office, or by a Regional Director.

(b) An appeal must be received in the Headquarters FOIA Office no later than thirty calendar days after receipt by the requestor of the initial denial access in the case of a total denial, or thirty calendar days after receipt by the requestor of records made available in the case of a partial denial.

(c) An appeal must be in writing and should contain a brief statement of the reasons why the records should be released and enclose copies of the initial request and denial. The appeal letter should bear the legend, "FREEDOM OF INFORMATION APPEAL," conspicuously marked on both the face of the appeal letter and on the envelope. FEMA has twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of an appeal to make a determination with respect to such appeal. The twenty day time limit shall not begin to run until the appeal is received by the Headquarters FOIA Officer. Misdirected appeals should be promptly forwarded to that office.

(d) The Headquarters FOIA Officer will submit the appeal to the Deputy Director for final administrative determination.

(e) The Deputy Director shall be the deciding official on all appeals except in those cases in which the initial denial was made by the Director or the Deputy Director. If the Deputy Director made the initial denial, the Director shall be the deciding official on appeal. If the Director made the initial denial, there shall be no right of appeal within FEMA. In the absence of the Deputy Director the Director will be the deciding official on all appeals.

(f) If an appeal is filed in response to a tentative denial pending locating and/or examination of records, as described in § 5.53(c), FEMA will continue to search for and/or examine the requested records and will issue a response immediately upon completion of the search and/or examination. Such action in no way suspends the time for FEMA's response to the requestor's appeal which FEMA will continue to process regardless of the response under this subsection.

(g) If a requestor files suit pending an agency appeal, FEMA nonetheless will continue to process the appeal, and will furnish a response within the twenty day time limit set out in paragraph (c) of this section.

(h) If, on appeal, the denial of the request for records is in whole or in part upheld, the Deputy Director will promptly furnish the requestor a copy of the ruling in writing within the twenty day time limit set out in paragraph (c) of this section except as provided in § 5.55. The notification letter shall contain: (1) A brief description of the record or records requested; (2) a statement of the legal basis for nondisclosure; (3) a statement of the name and title or position of the official or officials responsible for the denial of the initial request as described in § 5.54 and the denial of the appeal as described in paragraph (f) of this section, and (4) a statement of the requestor's rights of judicial review.

§ 5.56 Extension of time limits.

In unusual circumstances as specified in this section, the time limits prescribed in § 5.52 and § 5.55 may be extended by an official named in § 5.54(a) who will provide written notice to the requestor setting forth the reasons for such extension and the date on which a determination is expected. Such notice will specify no date that would result in an extension of more than ten work days. In unusual circumstances, the Headquarters FOIA Officer may authorize more than one extension, divided between the initial request stage and the appeals stage, but in no event will the combined periods of extension exceed ten work days. As used in this subsection, "unusual circumstances" include only those circumstances where extension of time is reasonably necessary to the proper processing of the particular request. Examples include:

(a) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; or

(b) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(c) The need for consultation, which shall be conducted with all practicable speed, with another agency or with a non-Federal source having a substantial interest in the determination of the request or among two or more components of FEMA having substantial subject matter interest therein.

§ 5.57 Exhaustion of administrative remedies.

Any person making a request to FEMA for records under this part shall be deemed to have exhausted his administrative remedies with respect to the request if the agency fails to comply with the applicable time limit provisions set forth in § 5.52 and § 5.55.

§ 5.58 Judicial relief available to the public.

Upon denial of a requestor's appeal by the Deputy Director the requester may file a compliant in a district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency resords are situated, or in the District of Columbia, pursuant to 5 U.S.C. 552(a)(4)(B).

§ 5.59 Disciplinary action against employees for "arbitrary or capricious" denial.

Pursuant to 5 U.S.C. 552(a)(4)(F), whenever the district court, described in § 5.58 orders the production of any FEMA records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether FEMA personnel acted arbitrarily or capriciously with respect to the withholding, the Special Prosecutor in the Merit Systems Protection Board is required to initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who primarily was responsible for the withholding. The Special Prosecutor after investigation and consideration of the evidence submitted, submits findings and recommendations to the Director of FEMA and sends copies of the findings and recommendations to the officer or employee or his or her representative. The law requires the Director to take any corrective action which the Special Prosecutor recomments.

§ 5.60 Contempt for noncompliance.

In the event of noncompliance by FEMA with an order of a district court pursuant to § 5.58, the district court may punish for contempt the FEMA employee responsible for the noncompliance, pursuant to 5 U.S.C. 552(a)(4)(G).

Subpart E—Exemptions

§ 5.70 General.

The exemptions enumerated in 5 U.S.C. 552(b), under which the provisions for availability of records and informational materials will not apply, are general in nature. FEMA will decide each case on its merits in accordance with the FEMA policy expressed in Subpart A.

§ 5.71 Categories of records exempt from disclosure under 5 U.S.C. 552.

5 U.S.C. 552(b) provides that the requirements of the statute do not apply to matters that are:

(a) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are, in fact, properly classified pursuant to such Executive Order.

(b) Related solely to the internal personnel rules and practices of an agency.

(c) Specifically exempted from disclosure by statute other than section 552(b) of Title 5, provided that such statute (1) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue or (2) establishes particular criteria for withholding or refers to particular types of matter to be withheld.

(d) Trade secrets and commercial or financial information obtained from a person and privileged or confidential.

(e) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.

(f) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(g) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would:

(1) Interfere with enforcement proceedings;

(2) Deprive a person of a right to a fair trial or an impartial adjudication;

(3) Constitute an unwarranted invasion of personal privacy;

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source:

(5) Disclose investigative techniques and procedures; or

(6) Endanger the life or physical safety of law enforcement personnel.

(h) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(i) Geological and geophysical information and data, including maps, concerning wells. Any reasonable segregable portion of a record shall be provided to any person requesting the record after deletion of the portions which are exempt under this section.

§ 5.72 Executive privilege exemption.

Where application of the executive privilege exemption is desired, the matter shall be forwarded to the Director for consideration. If the request for information is Congressional, only the President may invoke the exemption. Presidential approval is not necessarily required if the request for information is in connection with judicial or adjudicatory proceedings or otherwise. In connection with judicial proceedings, the response shall be coordinated with the Department of Justice.

Subpart F—Subpoena or Other Legal Demands for Records and Authentication of Copies of Records

§ 5.80 Service of subpoena or other legal demand.

(a) A subpoena duces tecum or other legal demand by a court or other authority for the production of records held by FEMA should be addressed to the General Counsel, FEMA, Washington, DC 20472. For Regional records the subpoena should be addressed to the appropriate Regional Director listed in § 5.26.

(b) When such a subpena or demand is served on any employee of FEMA other than as provided in paragraph (a) of this section, unless otherwise directed by the Director such employees shall decline respectfully to produce such records on the ground that such employee is without authority under this Subpart F to do so.

§ 5.81 Compliance with subpoena or other legal demand.

Officials serviced with subpoena will comply with the subpoena or demand insofar as it is practicable by submitting authenticated copies of the records. Original records should be provided only if necessary.

§ 5.82 Authentication and attestation of copies.

The Director, Deputy Director, Associate Directors, and heads of offices having the records, the General Counsel, and in the regions, the Regional Directors and the Regional Directors of Administration are authorized to authenticate and attest for and in the name of the Director, copies or reproductions of the records. Appropriate fees will be charged for such copies or reproduction.

Dated: August 9, 1979.

John W. Macy, Jr.,

Director.

[FR Doc. 79-26622 Filed 8-24-79; 8:45 am]

BILLING CODE 4210-23-M

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44 CFR Part 6

[Docket No. FEMA—Gen 6]

Implementation of Privacy Act of 1974

AGENCY: Federal Emergency Management Agency.

ACTION: Interim Regulations and Request for Comments.

SUMMARY: These interim rules establish policies and procedures in which the Federal Emergency Management Agency (FEMA) implements the Privacy Act of 1974 and other laws and regulations relating to that Act such as OMB Circulars. In addition, FEMA requests public comment on these interim regulations. It is necessary for FEMA to begin its operations under these regulations immediately. Thus, FEMA is issuing a regulation which serves as an operating rule and also affords, at the same time, opportunity for public comment.

DATES: Effective Date August 27, 1979. Written comments should be submitted on or before October 26, 1979.

ADDRESS: Federal Emergency Management Agency, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: George W. Jett, General Counsel, (202) 254-9521.

SUPPLEMENTARY INFORMATION: Reorganization Plan No. 3 of 1978 established the Federal Emergency Management Agency (FEMA). The plan was activated effective April 1, 1979 by Executive Order 12127 "Federal Emergency Management Agency," 44 FR 19367. The plan, Executive Order 12127, and Executive Order 12148 "Federal Emergency Management Agency," effective July 15, 1979, 44 FR 43239, together transferred to the new agency functions of five existing agencies in four departments or parent agencies. Under the plan, and pursuant to the Executive Orders, the regulations of the predecessor agencies remain in full force and effect in FEMA as if the reorganization or transfer had not taken place until such time as those regulations are superceded. This means that FEMA employees are subject to four different sets of Privacy Act regulations.

In order to correct this situation it is necessary to adopt regulations which serve a dual role as interim operating

procedures, and afford opportunity for public comment.

These regulations are based upon the regulations applicable to employees of the agencies the functions of which have been transferred to FEMA.

Interested parties may participate by submitting their views in writting on these interim regulations to FEMA. Each comment should include the name and address of the person or organization submitting the comment and should make reference to the above-cited docket number. All comments received on or before the date set out above will be considered in promulgating final regulations on the matters addressed here. All written comments received will be docketed and made available for public inspection at FEMA.

It has been determined that the April 1, 1979 effective date of Reorganization Plan No. 3 of 1979 and the July 15, 1979 effective date of Executive Order 12148 establish good cause for immediate publication of these regulations for interim effect.

Accordingly, the Federal Emergency Management Agency is amending Chapter 1 of Title 44 CFR by adding a new Part 6 as follows:

PART 6—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

Subpart A—General

Sec.
6.1 Purpose and scope of part.
6.2 Definitions.
6.3 Collection and use of information (Privacy Act Statements).
6.4 Standards of agency.
6.5 Rules of conduct.
6.6 Safeguarding systems of records.
6.7 Records of other agencies.
6.8 Supoena and other legal demands.
6.9 Inconsistent issuances of FEMA and/or its predecessor agencies superseded.
6.10 Assistance and referrals.

Subpart B—Disclosure of Records

6.20 Conditions of disclosure.
6.21 Procedures for disclosure.
6.22 Accounting of disclosures.

Subpart C—Individual Access to Records

6.30 Form of requests.
6.31 Special requirements for medical records.
6.32 Granting access
6.33 Denials of access.
6.34 Appeal of denial of access within FEMA.

Subpart D—Requests to Amend Records

6.50 Submission of requests to amend records.
6.51 Review of requests to amend records.
6.52 Approval of requests to amend records.
6.53 Denial of requests to amend records.
6.54 Agreement to alternative amendments.
6.55 Appeal of denial of request to amend a record.
Sec.
6.56 Statement of disagreement.
6.57 Judicial review.

Subpart E—Report on New Systems and Alterations of Existing Systems

6.70 Reporting requirement.
6.71 Federal Register notice of establishment of new system or alteration of existing system.
6.72 Effective date of new system of records or alteration of an existing system of records.

Subpart F—Fees

6.80 Records available at fee.
6.81 Additional copies.
6.82 Waiver of fee.
6.83 Prepayment of fees over $25.
6.84 Form of payment.
6.85 Reproduction fees.

Subpart G—Exempt System of Records [Reserved]

Authority: Privacy Act of 1974, Pub. L. 93-579; 5 U.S.C. 552a; Reorganization Plan No. 3 of 1978, 43 FR 41943; EO 12127, 44 FR 19367.

Subpart A—General

§ 6.1 Purpose and scope of part.

This part sets forth policies and procedures concerning the collection, use and dissemination of records maintained by the Federal Emergency Management Agency (FEMA) which are subject to the provision of 5 U.S.C. 552a, popularly known as the "Privacy Act of 1974" (hereinafter referred to as the Act). These policies and procedures govern only those records as defined in § 6.2. Policies and procedures governing the disclosure and availability of records in general are in Part 5 of this chapter. This part also covers: (a) procedures for notification to individuals of a FEMA system of records pertaining to them; (b) guidance to individuals in obtaining information, including inspections of, and disagreement with, the content of records; (c) accounting of disclosure; (d) special requirements for medical records; and (e) fees.

§ 6.2 Definitions.

For the purpose of this Part:

(a) "Agency" includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency (see 5 U.S.C. 552(e)).

(b) "Individual" means a citizen of the United States or an alien lawfully admitted for permanent residence.

(c) "Maintain" includes maintain, collect, use, and disseminate.

(d) "Record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to those concerning education, financial transactions, medical history, and criminal or employment history, and that contains the name or other identifying particular assigned to the individual, such as a fingerprint, voiceprint, or photograph.

(e) "System of records" means a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identification assigned to that individual.

(f) "Statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

(g) "Routine use" means, with respect to the disclosure of a record, the use of that record for a purpose which is compatible with the purpose for which it was collected.

(h) "System manager" means the employee of FEMA who is responsible for the maintenance of a system of records and for the collection, use, and dissemination of information therein.

(i) "Subject individual" means the individual named or discussed in a record of the individual to whom a record otherwise pertains.

(j) "Disclosure" means a transfer of a record, a copy of a record, or any or all of the information contained in a record to a recipient other than the subject individual, or the review of a record by someone other than the subject individual.

(k) "Access" means a transfer of a record, a copy of a record, or the information in a record to the subject individual, or the review of a record by the subject individual.

(l) "Solicitation" means a request by an officer or employee of FEMA that an individual provide information about himself or herself.

(m) "Director" means the Director, FEMA.

(n) "Deputy Director" means the Deputy Director, FEMA.

(o) "Privacy Appeals Officer" means the Director, Finance and Administration.

§ 6.3 Collection and use of information (Privacy Act statements).

(a) *General:* Any information used in whole or in part in making a determination about an individual's rights, benefits, or privileges under FEMA programs will be collected directly from the subject individual to

the extent practicable. The system manager also shall ensure that information collected is used only in conformance with the provisions of the Act and these regulations.

(b) *Solicitation of Information:* System managers shall ensure that at the time information is solicited the solicited individual is informed of the authority for collecting that information, whether providing the information is mandatory or voluntary, the purpose for which the information will be used, the routine uses to be made of the information, and the effects on the individual, if any, of not providing the information. The Director, Finance and Administration and Regional Directors shall ensure that forms used to solicit information are in compliance with the act and these regulations.

(c) *Solicitation of Social Security Numbers:* Before an employee of FEMA requests an individual to disclose his or her social security number, the employee of FEMA shall ensure that either:

(1) The disclosure is required by Federal statute, or;

(2) The disclosure of a social security number was required under statute or regulation adopted before January 1, 1975, to verify the identity of an individual, and the social security number will become a part of a system of records in existence and operating before January 1, 1975. If solicitation of the social security number is authorized under paragraph (c) (1) or (2) of this section, the FEMA employee who requests an individual to disclose the social security account number, shall first inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority the number is solicited, and the uses that will be made of it.

(d) *Soliciting Information From Third Parties:* An employee of FEMA shall inform third parties who are requested to provide information about another individual of the purposes for which the information will be used.

§ 6.4 Standards of accuracy.

The system manager shall ensure that all records which are used by FEMA to make determinations about any individual are maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual.

§ 6.5 Rules of conduct.

Employees of FEMA involved in the design, development, operation, or maintenance of any system of records or in maintaining any record, shall conduct themselves in accordance with the rules of conduct concerning the protection of personal information in § 3.25 of this chapter.

§ 6.6 Safeguarding systems of records.

(a) Systems managers shall ensure that appropriate administrative, technical, and physical safeguards are established to ensure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could resutlt in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.

(b) Personnel information contained in both manual and automated systems of records shall be protected by implementing the following safeguards:

(1) Official personnel folders, authorized personnel operating or work folders and other records of personnel actions effected during an employee's Federal service or affecting the employee's status and service, including information on experience, education, training, special qualification, and skills, performance appraisals, and conduct, shall be stored in a lockable metal filing cabinet when not in use by an authorized person. A system manager may employ an alternative storage system providing that it furnished an equivalent degree of physical security as storage in a lockable metal filing cabinet.

(2) System managers, at their discretion may designate additional records of unusual sensitivity which require safeguards similar to those described in paragraph (a) of this section.

(3) A system manager shall permit access to and use of automated or manual personnel records only to persons whose official duties require such access, or to a subject individual or his or her representative as provided by this part.

§ 6.7 Records of other agencies.

If FEMA receives a request for access to records which are the primary responsibility of another agency, but which are maintained by or in the temporary possession of FEMA on behalf of that agency, FEMA will advise the requestor that the request has been forwarded to the responsible agency. Records in the custody of FEMA which are the primary responsibility of the Office of Personnel Management are governed by the rules promulgated by it pursuant to the Privacy Act.

§ 6.8 Subpoena and other legal demands.

Access to records in systems of records by subpoena or other legal process shall be in accordance with the provisions of Part 5 of this chapter.

§ 6.9 Inconsistent issuances of FEMA and/or its predecessor agencies superseded.

Any policies and procedures in any issuances of FEMA or any of its predecessor agencies which are inconsistent with the policies and procedures in this Part are superseded to the extent of that inconsistency.

§ 6.10 Assistance and referrals.

Requests for assistance and referral to the responsible system manager or other FEMA employee charged with implementing these regulations should be made to the Director, Finance and Administration, Federal Emergency Management Agency, Washington, D.C. 20472.

Subpart B—Disclosure of Records

§ 6.20 Conditions of disclosure.

No employee of FEMA shall disclose any record to any person or to another agency without the express written consent of the subject individual unless the disclosure is:

(a) To officers or employees of FEMA who have a need for the information in the official performance of their duties;

(b) Required by the provisions of the Freedom of Information Act, 5 U.S.C. 552.

(c) For a routine use as published in the annual notices in the **Federal Register;**

(d) To the Bureau of the Census for use pursuant to Title 13, United States Code;

(e) To a recipient who has provided FEMA with advance adequate written assurance that the record will be used solely as a statistical research or reporting record subject to the following: The record shall be transferred in a form that is not individually identifiable. The written statement should include as a minimum (1) a statement of the purpose for requesting the records; and (2) certification that the records will be used only for statistical purposes. These written statements should be maintained as accounting records. In addition to deleting personal identifying information from records released for statistical purposes, the system manager shall ensure that the identity of the individual cannot reasonably be deduced by combining various statistical records;

(f) To the National Archives of the United States as a record which has sufficient historical or other value to

warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(g) To another agency or instrumentality of any governmental jurisdiction within or under the control of the United States for civil or criminal law enforcement activity, if the activity is authorized by law, and if the head of the agency or instrumentality or his designated representative has made a written request to the Director specifying the particular portion desired and the law enforcement activity for which the record is sought;

(h) To a person showing compelling circumstances affecting the health and safety of an individual to whom the record pertains. (Upon such disclosure, a notification must be sent to the last known address of the subject individual.)

(i) To either House of Congress or to a subcommittee or committee (joint or of either House, to the extent that the subject matter falls within their jurisdiction;

(j) To the Comptroller General or any duly authorized representatives of the Comptroller General in the course of the performance of the duties of the General Accounting Office; or

(k) Pursuant to the order of a court of competent jurisdiction.

§ 6.21 Procedures for disclosure.

(a) Upon receipt of a request for disclosure, the system manager shall verify the right of the requestor to obtain disclosure pursuant to § 6.20. Upon that verification and subject to other requirements of this part, the system manager shall make the requested records available.

(b) If the system manager determines that the disclosure is not permitted under the provisions of § 6.20 or other provisions of this part, the system manager shall deny the request in writing and shall inform the requestor of the right to submit a request for review and final determination to the Director or designee.

§ 6.22 Accounting of disclosures.

(a) Except for disclosures made pursuant to § 6.20 (a) and (b), an accurate accounting of each disclosure shall be made and retained for 5 years after the disclosure or for the life of the record, whichever is longer. The accounting shall include the date, nature, and purpose of each disclosure, and the name and address of the person or agency to whom the disclosure is made;

(b) The system manager also shall maintain in conjunction with the accounting of disclosures;

(1) A full statement of the justification for the disclosure.

(2) All documentation surrounding disclosure of a record for statistical or law enforcement purposes; and

(3) Evidence of written consent to a disclosure given by the subject individual.

(c) Except for the accounting of disclosures made to agencies or instrumentalities in law enforcement activities in accordance with § 6.20 (g) or of disclosures made from exempt systems the accounting of disclosures shall be made available to the individual upon request. Procedures for requesting access to the accounting are in Subpart C of this part.

Subpart C—Individual Access to Records

§ 6.30 Form of requests.

(a) An individual who seeks access to his or her record or to any information pertaining to the individual which is contained in a system of records should notify the system manager at the address indicated in the **Federal Register** notice describing the pertinent system. The notice should bear the legend "Privacy Act Request" both on the request letter and on the envelope. It will help in the processing of a request if the request letter contains the complete name and identifying number of the system as published in the **Federal Register**; the full name and address of the subject individual; a brief description of the nature, time, place, and circumstances of the individual's association with FEMA; and any other information which the individual believes would help the system manager to determine whether the information about the individual is included in the system of records. The system manager shall answer or acknowledge the request within 10 workdays of its receipt by FEMA.

(b) The system manager, at his discretion, may accept oral requests for access subject to verification of identity.

§ 6.31 Special requirements for medical records.

(a) A system manager who receives a request from an individual for access to those official medical records which belong to the U.S. Office of Personnel Management and are described in Chapter 339, Federal Personnel Manual (medical records about entrance qualifications or fitness for duty, or medical records which are otherwise filed in the Official Personnel Folder), shall refer the pertinent system of records to a Federal Medical Officer for review and determination in accordance with this section. If no Federal Medical Officer is available to make the determination required by this section, the system manager shall refer the request and the medical reports concerned to the Office of Personnel Management for determination.

(b) If, in the opinion of a Federal Medical Officer, medical records requested by the subject individual indicate a condition about which a prudent physician would hesitate to inform a person suffering from such a condition of its exact nature and probable outcome, the system manager shall not release the medical information to the subject individual nor to any person other than a physician designated in writing by the subject individual, or the guardian or conservator of the individual.

(c) If, in the opinion of a Federal Medical Officer, the medical information does not indicate the presence of any condition which would cause a prudent physician to hesitate to inform a person suffering from such a condition of its exact nature and probable outcome, the system manager shall release it to the subject individual or to any person, firm, or organization which the individual authorizes in writing to receive it.

§ 6.32 Granting access.

(a) Upon receipt of a request for access to non-exempt records, the system manager shall make these records available to the subject individual or shall acknowledge the request within 10 workdays of its receipt by FEMA. The acknowledgment shall indicate when the system manager will make the records available.

(b) If the system manager anticipates more than a 10 day delay in making a record available, he or she also shall include in the acknowledgment specific reasons for the delay.

(c) If a subject individual's request for access does not contain sufficient information to permit the system manager to locate the records, the system manager shall request additional information from the individual and shall have 10 workdays following receipt of the additional information in which to make the records available or to acknowledge receipt of the request and indicate when the records will be available.

(d) Records will be available for authorized access during normal business hours at the offices where the records are located. A requestor should be prepared to identify himself or herself by signature; i.e., to note by

signature the date of access and/or produce other identification verifying the signature.

(e) Upon request, a system manager shall permit an individual to examine the original of a non-exempt record, shall provide the individual with a copy of the record, or both. Fees shall be charged in accordance with Subpart F.

(f) An individual may request to pick up a record in person or to receive it by mail, directed to the name and address provided by the individual in the request. A system manager shall not make a record available to a third party for delivery to the subject individual except for medical records as outlined in § 6.31.

(g) An individual who selects another person to review, or to accompany the individual in reviewing or obtaining a copy of the record must, prior to the disclosure, sign a statement authorizing the disclosure of the record. The system manager shall maintain this statement with the record.

(h) The procedure for access to an accounting of disclosure is identical to the procedure for access to a record as set forth in this section.

§ 6.33 Denials of access.

(a) A system manager may deny an individual access to that individual's record only upon the grounds that FEMA has published the rules in the **Federal Register** exempting the pertinent system of records from the access requirement. These exempt systems of records are described in Subpart G of this part.

(b) Upon receipt of a request for access to a record which the system manager believes is contained within an exempt system of records, he or she shall forward the request to the appropriate official listed below through normal supervisory channels.

(1) At Headquarters:

(i) The Director.
(ii) The Deputy Director.
(iii) Associate Directors or Office Directors.
(iv) Assistant Director for Training and Education.
(v) U.S. Fire Administrator.
(vi) Federal Insurance Administrator.
(vii) Director, Operations Support.
(viii) Director, Personnel.
(ix) Director, Finance and Administration.
(x) Director, Program Evaluation and Research.
(xi) General Counsel.
(xii) Inspector General.

(2) *At Regions: Regional Directors.* The system manager shall append to the request an explanation of the determination that the requested record is contained within an exempt system of records and a recommendation that the request be denied or granted.

(c) In the event that the system manager serves in one of the positions listed in paragraph (b) of this section, he or she shall retain the responsibility for denying or granting the request.

(d) The appropriate official listed in paragraph (b) of this section shall, in consultation with the Office of General Counsel and such other officials as deemed appropriate, determine if the request record is contained with an exempt system of records and:

(1) If the record is not contained within an exempt system of records, the above official shall notify the system manager to grant the request in accordance with § 6.32, or

(2) If the record is contained within an exempt system said official shall;

(i) Notify the requester that the request is denied, including a statement justifying the denial and advising the requestor of a right to judicial review of that decision as provided in § 6.57, or

(ii) Notify the system manager to make record available to the requestor in accordance with § 6.31, notwithstanding the record's inclusion within an exempt system.

(e) The appropriate official listed in paragraph (b) of this section shall provide the Privacy Appeals Office with a copy of any denial of a requested access.

§ 6.34 Appeal of denial of access within FEMA.

A requestor denied access in whole or in part, to records pertaining to that individual, exclusive of those records for which the system manager is the Director, may file an administrative appeal of that denial. Appeals of denied access will be processed in the same manner as processing for appeals from a denial of a request to amend a record set out in § 6.55, regardless whether the denial being appealed is made at headquarters or by a regional official.

Subpart D—Requests to Amend Records

§ 6.50 Submission of requests to amend records.

An individual who desires to amend any record containing personal information about the individual should direct a written request to the system manager specified in the pertinent **Federal Register** notice concerning FEMA's systems of records. A current FEMA employee who desires to amend personnel records should submit a written request to the FEMA Director of Personnel, Washington, D.C. 20472. Each request should include evidence of and justification for the need to amend the pertinent record. Each request should bear the legend "Privacy Act—Request to Amend Record" prominently marked on both the face of the request letter and the envelope.

§ 6.51 Review of requests to amend records.

(a) The system manager shall acknowledge the receipt of a request to amend a record within 10 workdays. If possible, the acknowledgment shall include the system manager's determination either to amend the record or to deny the request to amend as provided in § 6.53.

(b) When reviewing a record in response to a request to amend, the system manager shall assess the accuracy, relevance, timeliness, and completeness of the existing record in light of the proposed amendment and shall determine whether the request for the amendment is justified. With respect to a request to delete information, the system manager also shall review the request and the existing record to determine whether the information is relevant and necessary to accomplish an agency purpose required to be accomplished by statute or Executive Order.

§ 6.52 Approval of requests to amend records.

If the system manager determines that amendment of a record is proper in accordance with the request to amend, he or she promptly shall make the necessary corrections to the record and shall send a copy of the corrected record to the individual. Where an accounting of disclosure has been maintained, the system manager shall advise all previous recipients of the record of the fact that a correction has been made and the substance of the correction. Where practicable, the system manager shall advise the Privacy Appeals Officer that a request to amend has been approved.

§ 6.53 Denial of requests to amend records.

(a) If the system manager determines that an amendment of a record is improper or that the record should be amended in a manner other than that requested by an individual, he shall refer the request to amend and his determinations and recommendations to the appropriate official listed in § 6.33(b) through normal supervisory channels.

(b) If the official listed in § 6.33, after reviewing the request to amend a record, determines to amend the record in accordance with the request, said official promptly shall return the request to the system manager with instructions

to make the requested amendments in accordance with § 6.52.

(c) If the appropriate official listed in § 6.33, after reviewing the request to amend a record, determines not to amend the record in accordance with the request, the requestor shall be promptly advised in writing of the determination. The refusal letter (1) shall state the reasons for the denial of the request to amend; (2) shall include proposed alternative amendments, if appropriate; (3) shall state the requestor's right to appeal the denial of the request to amend; and (4) shall state the procedures for appealing.

(d) The appropriate official listed in § 6.33 shall furnish the Privacy Appeals Officer a copy of each initial denial of a request to amend a record.

§ 6.54 Agreement to alternative amendments.

If the denial of a request to amend a record includes proposed alternative amendments, and if the requester agrees to accept them, he or she must notify the official who signed the denial. That official immediately shall instruct the system manager to make the necessary amendments in accordance with § 6.52.

§ 6.55 Appeal of denial of request to amend a record.

(a) A requestor who disagrees with a denial of a request to amend a record may file an administrative appeal of that denial. The requestor should address the appeal to the FEMA Privacy Appeals Officer, Washington, D.C. 20472. If the requestor is an employee of FEMA and the denial to amend involves a record maintained in the employee's Official Personnel Folder, as described in Chapter 293 of the Federal Personnel Manual, the appeal should be addressed to the Director, Bureau of Manpower Information Systems, Office of Personnel Management, Washington, D.C. 20415.

(b) Each appeal to the Privacy Act Appeals Officer shall be in writing and must be received by FEMA no later than 30 calendar days from the requestor's receipt of a denial of a request to amend a record. The appeal should bear the legend "Privacy Act—Appeal," both on the face of the letter and the envelope.

(c) Upon receipt of an appeal, the Privacy Act Appeals Officer shall consult with the system manager, the official who made the denial, the General Counsel or a member of that office, and such other officials as may be appropriate. If the Privacy Act Appeals Officer in consultation with these officials, determines that the record should be amended, as requested, the system manager shall be instructed immediately to amend the record in accordance with § 6.52 and shall notify the requestor of that action.

(d) If the Privacy Act Appeals Officer, in consultation with the officials specified in paragraph (c) of this section, determines that the appeal should be rejected, the Privacy Act Appeals Officer shall submit the file on the request and appeal, including findings and recommendations, to the Deputy Director for a final administrative determination.

(e) If the Deputy Director determines that the record should be amended as requested, he or she immediately shall instruct the system manager in writing to amend the record in accordance with § 6.52. The Deputy Director shall send a copy of those instructions to the Privacy Act Appeals Officer, who shall notify the requester of that action.

(f) If the Deputy Director determines to reject the appeal, the requestor shall immediately be notified in writing of that determination. This action shall constitute the final administrative determination on the request to amend the record and shall include:

(1) The reasons for the rejection of the appeal.

(2) Proposed alternative amendments, if appropriate, which the requestor subsequently may accept in accordance with § 6.54.

(3) Notice of the requestor's right to file a Statement of Disagreement for distribution in accordance with § 6.56.

(4) Notice of the requestor's right to seek judicial review of the final administrative determination, as provided in § 6.57.

(g) The final agency determination must be made no later than 30 workdays from the date on which the appeal is received by the Privacy Act Appeals Officer.

(h) In extraordinary circumstances, the Director may extend this time limit by notifying the requestor in writing before the expiration of the 30 workdays. The Director's notification will include a justification for the extension.

§ 6.56 Statement of disagreement.

Upon receipt of a final administrative determination denying a request to amend a record, the requestor may file a Statement of Disagreement with the appropriate system manager. The Statement of Disagreement should include an explanation of why the requestor believes the record to be inaccurate, irrelevant, untimely, or incomplete. The system manager shall maintain the Statement of Disagreement in conjunction with the pertinent record, and shall include a copy of the Statement of Disagreement in any disclosure of the pertinent record. The system manager shall provide a copy of the Statement of Disagreement to any person or agency to whom the record has been disclosed only if the disclosure was subject to the accounting requirements of § 6.22.

§ 6.57 Judicial review.

Within 2 years of receipt of a final administrative determination as provided in § 6.34 or § 6.55, a requestor may seek judicial review of that determination. A civil action must be filed in the Federal District Court in which the requestor resides or has his or her principal place of business or in which the agency records are situated, or in the District of Columbia.

Subpart E—Report on New Systems and Alternations of Existing Systems

§ 6.70 Reporting requirement.

(a) No later than 90 calendar days prior to the establishment of a new system of records, the prospective system manager shall notify the Director, Finance and Administration of the proposed new system. The prospective system manager shall include with the notification a completed FEMA Form 11–2, System of Records Covered by the Privacy Act of 1974, and a justification for each system of records proposed to be established. If the Director, Finance and Administration determines that the establishment of the proposed system is in the best interest of the Government, then no later than 60 calendar days prior to the establishment of that system of records, a report of the proposal shall be submitted by the Director or a designee thereof, to the President of the Senate, the Speaker of the House of Representatives, and the Director of the Office of Management and Budget for their evaluation of the probable or potential effect of that proposal on the privacy and other personal or property rights of individuals.

(b) No later than 90 calendar days prior to the alteration of a system of records, the system manager responsible for the maintenance of that system of records shall notify the Director, Finance and Administration of the proposed alteration. The system manager shall include with the notification a completed FEMA Form 11–2, System of Records Covered by the Privacy Act of 1974, and a justification for each system of records he proposes to alter. If it is determined that the proposed alteration is in the best interest of the Government, then, the Director, or a designee thereof, shall

submit, no later than 60 calendar days prior to the establishment of that alteration, a report of the proposal to the President of the Senate, the Speaker of the House of Representatives, and the Director of the Office of Management and Budget for their evaluation of the probable or potential effect of that proposal on the privacy and other personal or property rights of individuals.

(c) The reports required by this regulation are exempt from reports control.

§ 6.71 Federal Register notice of establishment of new system or alteration of existing system.

Notice of the proposed establishment or alteration of a system of records shall be published in the Federal Register, in accordance with FEMA procedures when:

(a) Notice is received that the Senate, the House of Representatives, and the Office of Managment and Budget do not object to the establishment of a new system or records or to the alteration of an existing system of records, or

(b) No fewer than 30 calendar days elapse from the date of submission of the proposal to the Senate, the House of Representatives, and the Office of Management and Budget without receipt of an objection to the proposal. The notice shall include all of the information required to be provided in FEMA Form 11–2, System of Records Covered by the Privacy Act of 1974, and such other information as the Director deems necessary.

§ 6.72 Effective date of new system of records or alteration of an existing system or records.

Systems of records proposed to be established or altered in accordance with the provisions of this subpart shall be effective no sooner than 30 calendar days from the publication of the notice required by § 6.71.

Subpart F—Fees

§ 6.80 Records available at fee.

The system manager shall provide a copy of a record to a requestor at a fee prescribed § 6.98 unless the fee is waived under § 6.82.

§ 6.81 Additional copies.

A reasonable number of additional copies shall be provided for the applicable fee to a requestor who indicates that he has no access to commercial reproduction services.

§ 6.82 Waiver of fee.

The system manager shall make one copy of a record, up to 50 pages, available without charge to a requestor who is an employee of FEMA. The system manager may waive the fee requirement for any other requestor if the cost of collecting the fee is an unduly large part of, or greater than, the fee, or when furnishing the record without charge conforms to generally established business custom or is in the public interest.

§ 6.83 Prepayment of fees over $25.

If the system manager determines that the anticipated total fee is likely to exceed $25, the individual will be informed that the anticipated fee must be prepaid prior to FEMA's making the records available. FEMA will remit the excess paid by the individual or bill the individual for an additional amount if there is a variation between the final fee charged and the amount prepaid.

§ 6.84 Form of payment.

Payment shall be by check or money order payable to The Federal Emergency Management Agency and shall be addressed to the system manager.

§ 6.85 Reproduction fees.

(a) The fee for reproducing a copy of a FEMA record (by routine electrostatic copying) up to and including material 8½ x 14 inches shall be $0.10 per page.

(b) The fee for reproducing a copy of a FEMA record over 8½ x 14 inches or whose physical characteristcs do not permit reproduction by routine electrostatic copying shall be the direct cost of reproducing the records through Government or commercial sources.

Subpart G—Exempt System of Records [Reserved]

Dated: August 9, 1979.

John W. Macy, Jr.,

Director.

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