ALLOTMENT OF FUNDS WITH 427 INCENTIVE FUNDS TITLE IV–B CHILD WELFARE SERVICES FISCAL YEAR 1993—Continued

Name of State	Allotment at $294,624,000 [1]	Allotment at $141,000,000 [1]	427 incentive funds
Minnesota	5,092,532	2,438,349	2,654,183
Mississippi	4,437,556	2,129,499	2,308,057
Missouri	6,217,709	2,968,921	3,248,788
Montana	1,211,809	608,414	603,395
Nebraska	2,136,670	1,044,528	1,092,142
Nevada	1,326,362	662,431	663,931
New Hampshire	1,078,123	545,375	532,748
New Jersey	5,307,662	2,539,793	2,767,869
New Mexico	2,493,475	1,212,778	1,280,697
New York	15,530,358	7,360,253	8,170,105
North Carolina	8,326,069	3,963,107	4,362,962
North Dakota	982,955	500,499	482,456
Ohio	13,052,582	6,191,871	6,860,711
Oklahoma	4,428,365	2,125,165	2,303,200
Oregon	3,576,418	1,723,434	1,852,984
Pennsylvania	12,649,960	6,002,017	6,647,943
Rhode Island	1,070,439	541,752	528,687
South Carolina	5,101,221	2,442,447	2,658,774
South Dakota	1,107,009	558,996	548,013
Tennessee	6,328,617	3,021,219	3,307,398
Texas	23,687,998	11,206,947	12,481,051
Utah	3,478,384	1,667,206	1,801,178
Vermont	749,584	390,454	359,130
Virginia	6,321,841	3,018,024	3,303,817
Washington	5,667,518	2,709,481	2,958,037
West Virginia	2,564,554	1,246,294	1,318,260
Wisconsin	6,033,052	2,881,847	3,151,205
Wyoming	751,264	391,247	360,017

[1] These totals include allotments to the United States Territories. Therefore, the summation of the States' allotments will not be equivalent.

PART 1356—REQUIREMENTS APPLICABLE TO TITLE IV–E

6. The authority citation for part 1356 is revised to read as follows:

Authority: 42 U.S.C. 620 et seq., 42 U.S.C. 670 et seq.; 42 U.S.C. 1302.

7. Section 1356.20 is amended by redesignating existing paragraphs (b) through (d) as (d) through (f) and adding new paragraphs (b) and (c) as follows:

§ 1356.20 State plan document and submission requirements.

* * * * *

(b) Failure by a State to comply with the requirements and standards for the data reporting system for foster care and adoption (§ 1355.40 of this chapter) shall be considered a substantial failure by the State in complying with the State plan for title IV–E. Penalties as described in § 1355.40(e) of this chapter shall apply.

(c) For purposes of the application of penalties described in § 1355.40 of this chapter, the requirement at § 201.6(e) regarding the withholding of funds until the Secretary "* * * is satisfied that there will no longer be any such failure to comply * * *" will be met by submission of one acceptable regularly scheduled semi-annual data transmission of the type which was the cause of the penalty.

* * * * *

8. Section 1356.60 is amended by adding a new paragraph (c) (2)(x), and new paragraph (d), and republishing the introductory text in paragraph (c)(2) to read as follows:

§ 1356.60 Fiscal requirements (title IV–E).

* * * * *

(c) * * *

(2) The following are examples of allowable administrative costs necessary for the administration of the foster care program:

* * * * *

(x) Costs related to data collection and reporting.

* * * * *

(d) *Cost of the data collection system.* (1) Costs related to data collection system initiation, implementation and operation may be charged as an administrative cost of title IV–E at the 50 percent matching rate subject to the restrictions in paragraph (d) (2) of this section

(2) For information systems used for purposes other than those specified by section 479 of the Act, costs must be allocated and must bear the same ratio as the foster care and adoption population bears to the total population contained in the information system as verified by reports from all other programs included in the system.

PART 1357—REQUIREMENTS APPLICABLE TO TITLE IV–B

9. The authority citation for part 1357 is revised to read as follows:

Authority: 42 U.S.C. 620 et seq., 42 U.S.C. 670 et seq.; 42 U.S.C. 1302.

10. Section 1357.15 is amended by adding a new paragraph (h) as follows:

§ 1357.15 Child welfare services State plan requirements and submittal.

* * * * *

(h) In meeting the requirements of section 442(b)(8), each State must provide assurances that it will meet the requirements for data reporting for foster care and adoption as described in 45 CFR 1355.40 and transmit the required data in the form and manner prescribed by that section.

[FR Doc. 93–30999 Filed 12–21–93; 8:45 am]

BILLING CODE 4130–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 1355 and 1356

RIN 0970–AB

Statewide Automated Child Welfare Information Systems

AGENCY: Office of Information Systems Management (OISM), ACF, HHS.

ACTION: Interim final rule.

SUMMARY: These interim final rules implement section 13713 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66), signed by the President on August 10, 1993. Under section 13713, funding is made available for the planning, design, development and installation of statewide automated child welfare information systems. Such systems must be comprehensive in that they must meet the requirements for an Adoption and Foster Care Analysis and Reporting System (AFCARS) required by section 479(b)(2) of the Social Security Act (the Act) and implementing regulations; to the extent practicable, be capable of interfacing with State child abuse and neglect automated systems; to the extent practicable, be capable of interfacing with, and retrieving information from the State automated system for determining eligibility for title IV–A assistance; and, be determined by the Secretary to be likely to provide more efficient, economical, and effective administration of the programs carried out under State plans approved under title IV–B or IV–E of the Act.

Enhanced Federal funding at the 75 percent matching rate is provided for such activities as well as for the cost of hardware components effective October 1, 1993. This funding rate is eliminated under the statute after September 30, 1996, at which time a Federal matching rate of 50 percent is available. Also effective October 1, 1993, Federal financial participation at the 50 percent matching rate is available for the operation of such systems.

DATES: Effective December 22, 1993. *Comments:* Comments must be received on or before January 21, 1994.

ADDRESSES: Comments should be submitted in writing to the Assistant Secretary for Children and Families, Attention: Ms. Naomi Marr, Office of Information Systems Management, room 300E, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201. Comments may be inspected between 8 a.m. and 4:30 p.m. during regular business days by making arrangements with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Naomi Marr, (202) 401–6960.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This rule contains information collection activities which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

In accordance with the Paperwork Reduction Act of 1980, the department is resubmitting for OMB clearance the APD process, described in this document, under which States may apply for and obtain Federal financial participation in their APD acquisitions. This reporting requirement was previously approved under OMB control number 0990–0174.

The reporting burden over and above what the States already do for the current APD approval process is estimated to average 10 hours for the initial submission of an APD. This includes time for reviewing instructions, and collecting and reporting the needed information in the APD. The Department will submit a new request for OMB clearance of the additional requirements imposed by the APD process for statewide automated child welfare information systems. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing burden, to the Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447 and the Office of Information and Regulatory Affairs, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503, Attn: Laura Oliven, Desk Officer for ACF.

Statutory Authority

These regulations are published under the authority of several provisions of the Social Security Act (the Act), as amended by Public Law 103–66. Section 474(a)(3) of the Act contains new requirements providing funding for statewide automated child welfare information systems to carry out the State's programs under parts IV–B and IV–E of the Act. Under section 474(a)(3)(c), Federal financial participation at the 75 percent matching rate is available from October 1, 1993 through September 30, 1996 (after which time the rate is reduced to 50 percent), for the planning, design, development and installation of statewide automated child welfare information systems (including the full amount of expenditures for hardware components for such systems) to the extent that such systems—

(i) Meet the requirements imposed by regulations promulgated pursuant to section 479(b)(2);

(ii) To the extent practicable, are capable of interfacing with the State data collection system that collects information relating to child abuse and neglect;

(iii) To the extent practicable, have the capability of interfacing with, and retrieving information from, the State data collection system that collects information relating to the eligibility of individuals under part IV–A (for the purposes of facilitating verification of eligibility of foster children); and

(iv) Are determined by the Secretary to be likely to provide more efficient, economical and effective administration of the programs carried out under a State's plans approved under part IV–B or IV–E of the Act.

Under section 474(a)(3)(D), Federal financial participation at the 50 percent matching rate is available for the operation of the systems described above.

Section 474(e) provides that the Secretary treat as necessary for the proper and efficient administration of the State plan, all expenditures of a State necessary to plan, design, develop, install, and operate the information retrieval system under section 474(a)(3)(C), without regard to whether the systems may be used with respect to foster or adoptive children other than those on behalf of whom foster care maintenance payments or adoption assistance payments may be made under part IV–E of the Act.

These regulations are also published under the general authority of section 1102 of the Act which requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which she is responsible under the Act.

Justification for Dispensing With Notice of Proposed Rulemaking

The amendments to these regulations are being published in interim final form. The Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that if the Department has good cause for finding that a Notice of Proposed Rulemaking is unnecessary, impracticable or contrary to the public interest, it may dispense with such notice if it incorporates a brief statement in the final regulation of the reasons for doing so.

The Department finds that there is good cause to dispense with Notice of Proposed Rulemaking with respect to these changes. We find that publication of these proposed rules would be impracticable, and not in the public interest. The statutory provision being implemented under these rules is effective October 1, 1993, and with respect to the availability of enhanced funding expires September 30, 1996. Publication of a proposed rule could impinge on a State's ability to take advantage of the availability of enhanced funding to improve its ability to serve at risk children, as well as the Secretary's ability to ensure that such expenditures are limited to the planning and development of efficient, economical and effective statewide automated child welfare information systems.

However, we are interested in comments on these interim final rules. We will consider any comments that are received within 30 days of the date of publication of this interim final rule and, if appropriate, we will publish final rules with any necessary changes.

Background

The title IV–E program, Foster Care and Adoption Assistance, provides Federal funds to States for the care of eligible dependent, abused or neglected children who must be placed in foster care, and for adoption assistance payments for certain children with special needs. The title IV–B, subpart 1, program provides Federal funds for service programs for children and their families aimed at strengthening families and preventing the unnecessary separation of children from their families; assuring adequate care by the State of children who are away from their homes; providing services to return children when separation occurs; and placing children for adoption or another permanent placement when restoration to the family is not possible or appropriate.

In addition, Public Law 103–66 added a new capped entitlement program under title IV–B, subpart 2, for family preservation and family support services. Family preservation services are targeted to families that are already in crisis and children who are at risk of being placed in foster care and include intensive interventions to help families weather crises, reunifications of families by returning home foster care children whenever possible, and arranging adoptions or permanent and appropriate living arrangements for those children who cannot return home. Family support services are designed to help increase the strength and stability of families and include programs to improve and reinforce parenting skills, to provide respite care for care providers and drop-in centers for families with information and referrals to access other services.

Effective statewide automated capability to support the administration of services offered under these programs in a comprehensive fashion is essential to enable long over-due improvements to program administration and service delivery. With these varied programs, States have an opportunity to operate a continuum of services to support abused, neglected and special needs children, as well as to ensure that families are helped to stay together where possible. By including these programs in a single automated information system, a State will eliminate redundant data collection and file maintenance in determining eligibility, providing services, and tracking program operations and costs. With a single Statewide automated information system, States will realize more efficient and effective processes and procedures and as a result improved service delivery. Readily available information and automated procedures to assist in case assessments and plans will allow States to be more proactive in program administration and to focus efforts on preventive services and measures rather than constantly reacting to crisis.

Families today are under tremendous stress from causes ranging from a weak job market and health care crisis to teen pregnancy, AIDS, substance abuse epidemics, and violence in our streets. These stresses on families have resulted in steadily rising caseloads (and numbers of complex cases) which are threatening to overwhelm the network of public and private service programs for children and families. Child welfare systems are now overburdened, understaffed and at a crisis point. Lawsuits are more prevalent, staff turnover continues to be a problem and administrators are forced to respond to crises without adequate resources.

To address the clear need for systemic reform, section 13713 of Public Law 103–66 amends the funding provisions under section 474 of the Act to provide funding for the development and operation of comprehensive information systems to assist in the administration of title IV–B and IV–E programs. While the statutory language does not detail the nature of such systems, we believe it was clearly Congressional intent to limit enhanced funding to systems which would facilitate a comprehensive approach to strengthen families in which children are at risk and improve child welfare service administration through the use of better business practices.

To encourage States to act quickly to develop efficient comprehensive statewide automated information systems, Congress limited the availability of Federal funding at the 75 percent matching rate for Statewide Automated Child Welfare Information Systems (SACWIS) to Fiscal Years 1994, 1995 and 1996.

For many years, concerns have been raised about the lack of information available on children in foster care and their families. To address some of these concerns, in 1986 Congress amended title IV–E of the Social Security Act by adding section 479 which required the Federal government to institute a foster care and adoption data collection system. In response, requirements for an Adoption and Foster Care Analysis and Reporting System (AFCARS) were implemented under regulations at 45 CFR 1355.40 published elsewhere in this **Federal Register**. AFCAR systems collect information on children in foster care and children adopted through the public child welfare system. Although AFCARS will substantially improve information available on children in foster care and children being adopted and provide information essential for informed policy making and planning, its primary emphasis is on data analysis and reporting.

However, comprehensive child welfare information systems which incorporate the entire spectrum of child welfare and family support services, as well as the AFCARS requirements, will play a more pivotal role by enhancing the collection of data needed by policy makers and, more importantly, by providing the tools to assist caseworkers and managers in making decisions and providing comprehensive support to families in need. By applying appropriate technology to the management of child welfare programs, administrative and system barriers that inhibit the provision of effective services to children can be largely eliminated.

Information systems technology can facilitate caseworker decisions by providing caseworkers with immediate access to case file information and reducing the time spent by workers searching for case information. These systems can also provide managers and supervisors with quick access to information to monitor and evaluate caseworker tasks and goals. In addition, reporting requirements can be met with minimal duplication of effort with properly designed information system data bases. In summary, these information systems will result in more efficient and effective practices in administering child welfare programs which in turn will ultimately result in improved service delivery.

In developing these regulations we considered all information available on the need for comprehensive child welfare services, including existing State efforts to establish such systems and the efforts of a State and Federal child welfare systems workgroup which convened prior to the enactment of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66). While we believe these rules address the basic needs of such systems yet provide maximum State flexibility, we have included a comment period with this rule and invite suggestions and comments for improvement. Final rules will be issued to the extent necessary to reflect comments received.

Regulatory Provisions

We have included the requirements for the automation of comprehensive child welfare services under 45 CFR part 1355, which provides the general requirements for Foster Care Maintenance Payments, Adoption Assistance and Child Welfare Services. A new § 1355.50 has been added to provide that the purpose of these regulations is to set forth the requirements and procedures States must meet in order to receive Federal financial participation authorized under the Budget Reconciliation Act of 1993 for the planning, design, development, installation and operation of statewide automated child welfare information systems.

A new § 1355.52, Funding authority for statewide automated child welfare information systems (SACWIS), has been added to effect the statutory provisions under section 474(a)(3)(C) of the Social Security Act authorizing funding for comprehensive child welfare systems.

Paragraph (a) provides the basic requirements a State must meet in order to be eligible for Federal financial participation at a 75 percent matching rate for fiscal years 1994, 1995 and 1996 and at a 50 percent matching rate thereafter for expenditures related to the planning, design, development and installation of a statewide automated child welfare information system.

First, under § 1355.52(a)(1), the SACWIS must provide for the collection and electronic reporting of data required under section 479(b) of the Act and the implementing regulations under § 1355.40. Under section 479(b) of the Act, States must establish and implement adoption and foster care reporting systems designed to collect uniforms, reliable information on children who are under the responsibility of the State title IV–B/IV–E agency for placement and care. Those requirements, Adoption and Foster Care Analysis and Reporting Systems (AFCARS), were recently implemented under § 1355.40 published elsewhere in this **Federal Register**.

Under paragraph (a)(2), the SACWIS must, to the extent practicable, provide for an interface with the State's data collection system for child abuse and neglect. The phrase "to the extent practicable" as used in this paragraph is statutory and reflects in part the voluntary nature of the National Child Abuse and Neglect Data Systems (NCANDS) established under Pub. L. 100–294, the Child Abuse Prevention, Adoption and Family Services Act of 1988, as well as the inherent requirement that such interface be cost beneficial to the title IV–B/IV–E programs.

However, we would expect that most States would integrate the automation of child abuse and neglect activities as part of their SACWIS, because of the direct association between child protection and child welfare services. The child protection system is actually the front end (the first point of contact) of child welfare services. In most cases, the child welfare system first learns of a new child or a new family through that child's or family's contact with child protection services. At the time of the initial contact, child protection services collects much of the information that is needed later in the foster care and adoption process and for use in any newly established family preservation and family support service activities.

While the language of the statute speaks of interfacing with child abuse and neglect data systems, we understand that in many States these data are already a part of a larger child welfare system and/or States will be considering the integration of such data as part of an overall comprehensive information/client system. Accordingly, the Statewide Automated Child Welfare Information Systems development effort may include automated procedures which will provide the State with the capability to meet the National Child Abuse and Neglect Data System. The information gathered in the NCANDS effort is critical information for making informed decisions about services and service needs at the point of deciding to maintain the child at home, or in placement, and adoption. In addition, basic demographic child and family data are the same as that required by AFCARS so that duplicate data gathering and input can be avoided. We have determined that such efforts would meet the efficient, economical and effective administration factors mentioned above.

While we believe that such interface/integration is vital, in accordance with the statute any State which can clearly demonstrate through the submission of documentation with the advanced planning document (APD) that such integration or interface is not practicable because no automated Statewide database exists to complete the interface or because of cost constraints would not be required to include this provision in the SACWIS as a condition of approval. In the latter case, the documentation should establish that the costs to develop and operate an automated interface with the existing system will exceed the combined costs of manual inquiry, verification and information exchange with the existing system, and duplicate data entry and maintenance in the SACWIS.

Similarly, paragraph (a)(3) requires that the SACWIS, to the extent practicable, provide for interface with and retrieval of information from the State automated information system that collects information relating to eligibility of individuals under title IV–A of the Act. Interface with, and access to, the data maintained by State IV–A systems is of vital importance for gathering information about clients or other relevant persons and because eligibility for foster care maintenance payments as well as adoption assistance are based in part, on a child's eligibility under the AFDC program. However, as provided in greater detail under the discussion of § 1355.53 below, this requirement need not be met if a State clearly demonstrates through the submission of documentation with the APD, as indicated under § 1355.52(a)(2), that electronic interface and data retrieval is not practicable because of limitations in the design of the IV–A system or because of cost constraints.

Finally, paragraph (a)(4) requires that the SACWIS provide for more efficient, economical and effective administration of the programs carried out under State plans approved under title IV–B and title IV–E.

As used here, efficient, economical and effective means that: The system must improve program management and administration by addressing all program services and case processing requirements by meeting the requirements of § 1355.53; the design must appropriately apply computer technology; the project must not require duplicative application system development or software maintenance;

the procurement must provide for maximum free and open competition; and the costs must be reasonable, appropriate and beneficial. These are basic standards which should be inherent in any automated systems effort. The Administration for Children and Families has used them consistently in considering State plans to automate.

The statute, in authorizing for the first time automated information systems for family and children's programs, specifically requires the Secretary to include economic considerations, along with the traditional statutory provisions for systems implementation of "efficient and effective" in determining whether a system should be funded. We believe that this clearly signals Congressional concern over the enormous costs which have occurred with respect to other public assistance systems and the expectation that the Secretary will take some measures to contain costs. In accordance with existing requirements at 45 CFR part 95, we will scrutinize the APD and the accompanying cost benefit analysis before approval as well as monitor adherence to the approved APD.

Paragraph (b) provides that Federal financial participation provided under paragraph (a) is also available for the full amount of expenditures for hardware components. The matching rate provided is 75 percent with respect to Fiscal Years 1994, 1995 and 1996, and 50 percent thereafter. The general requirements applicable to the treatment of hardware expenditures under part 95 apply to all such expenditures.

Paragraph (c) provides that Federal financial participation at the 50 percent matching rate is available for the operating costs of Statewide Automated Child Welfare Information Systems described under paragraph (a).

We have added a new paragraph § 1355.53 to specify the conditions for funding systems under § 1355.52. Functional guidelines providing details of these requirements will be issued shortly in the form of a program instruction.

Under paragraph (a), as a condition of funding, the SACWIS must be designed, developed (or an existing enhanced State system), and installed in accordance with an approved advance planning document (APD). The APD must provide for an efficient and effective design which, when implemented, will produce a comprehensive system which will improve the program management and administration of the State plans for titles IV–B and IV–E. Comprehensive means that the SACWIS must, to the extent feasible and appropriate, introduce, monitor and account for all the factors of child welfare services, foster care and adoption assistance, family preservation and support services, and independent living services, as provided under paragraph (b).

Paragraphs (b)(1) through (b)(8), provide the functional capabilities required of the SACWIS for effective management, tracking and reporting. First, under paragraph (b)(1) the system must provide the State automated support to meet the Adoption and Foster Care reporting requirements through the collection, maintenance, integrity checking and electronic transmission of the data elements specified by the Adoption and Foster Care Analysis and Reporting System (AFCARS) requirements mandated under section 479(b) of the Act and § 1355.40 of this chapter. This follows the statutory requirement that comprehensive child welfare systems development, under the new funding mechanism, support the AFCARS requirements vital to informed policy making and planning of child welfare programs.

Paragraph (b)(2) includes the requirements for system interface or integration necessary for the coordination of services with other Federally assisted programs and for the elimination of paperwork and duplication of data collection and data entry. Under this paragraph the SACWIS must provide for electronic data exchange with State systems for: (A) Title IV–A, (B) National Child Abuse and Neglect Data Systems (NCANDS), (C) title XIX, and (D) title IV–D, unless the State demonstrates that such interface or integration would not be practicable because of systems limitations or cost constraints.

Electronic exchange of casefile information will assist in service planning, allowing multiple aspects of a client's needs to be addressed, and appropriate services to be initiated in a prompt and coordinated way and will insure that the system operates more efficiently by eliminating redundant data and paper exchanges and the delays resulting from separate processes.

With respect to the electronic exchange with the NCANDS and IV–A systems, these are statutory conditions of funding which must be met to the extent practicable. As indicated previously, we have defined "practicable" to mean that the interface requirement need not be met if the responding program system is not capable of an exchange (and the State does not wish to pursue such capability) or where cost constraints render such an interface infeasible as demonstrated by the State through the submission of documentation, in the APD, that the development and operation of such an exchange would exceed the costs of manual inquiry, verification and information exchange as well as the cost of duplicate data entry and maintenance.

Similarly, the electronic data exchange with the title XIX system is required unless the State Medicaid system does not have the capacity for such an interface or the State clearly demonstrates through the submittal of documentation that such an exchange would not otherwise be practicable because of cost constraints. While this requirement was not expressly provided in statute, because the vast majority of clients under State title IV–E plans are also Medicaid eligible, an interface between the agencies is critical to efficient and effective operation of State plans for child welfare.

The requirement for an interface with the State's child support enforcement system, unless demonstrated to be impracticable, duplicates the systems requirements under the title IV–D program, requiring statewide child support enforcement systems to provide electronic data exchange with the title IV–E program, to assure that benefits and services are provided in an integrated manner and that the State is able to collect support from the responsible parent. Thus, we do not anticipate that any State will be unable to meet this requirement.

Paragraphs (b)(3) through (b)(8) provide, in accordance with section 474(a)(3)(C)(iv) of the Act, the functional requirements determined by the Secretary to be likely to provide more efficient, economical and effective administration of the programs carried out under State plans approved under parts IV–B and IV–E of the Act. We have determined, based on field experience, contact with the General Accounting Office, input from State and private sector child welfare representatives and experts and through the review of existing State and local efforts to automate child welfare information systems that the level of system functionality required by these paragraphs represents the minimum but most desirable and cost-effective requirements of a statewide automated child welfare information system.

Paragraph (b)(3) requires that the SACWIS enable the State to meet the provisions of section 427(a) of the Act by providing for the automated collection, maintenance, management and reporting of necessary information.

Section 427(a) of the Act requires that each child in foster care under the responsibility of the State agency be afforded specific protections related to case planning, case reviews and dispositional hearings. To address these protections, the State must provide for an inventory of all children in foster care; a statewide information system to describe and track children in foster care; a case review system which provides for a case plan, periodic reviews and procedural safeguards; and, a program for reunification services.

Accordingly, we are requiring under paragraph (b)(3) that the SACWIS must have automated procedures and processes to assist the State in meeting the 427(a) requirements. At a minimum, these automated procedures would include collection, maintenance, management and reporting of information on all children in foster care under the responsibility of the State, including statewide data from which the demographic characteristics, location and goals for foster children can be determined.

Under paragraph (b)(4), the SACWIS must provide for the collection and management of information necessary to facilitate the delivery of client services, the acceptance and referral of clients, client registration, and the evaluation of the need for services, including child welfare services under title IV–B subparts 1 and 2, family preservation and family support services, family reunification and permanent placement. This provision speaks to intake and assessment activities which include processing referrals for services, conducting investigations and determining the need for services.

Under paragraph (b)(5), which is self-explanatory, the SACWIS must collect and manage information necessary to determine eligibility for the foster care program, the adoption assistance program, and the independent living program.

Paragraph (b)(6) requires that the SACWIS support necessary case assessment activities. Under this requirement, the system must have automated procedures to assist in evaluating the client's needs.

Under paragraph (b)(7), the SACWIS must assist the State in monitoring case plan development, review and management, including eligibility determinations and redeterminations. Under this requirement the system must provide for service provision and case management which entails determining eligibility and supporting the caseworker's determination of whether continued service is warranted, the authorization and issuance of appropriate payments, the preparation of service plans, determining whether the agency can provide services, authorizing services and managing the delivery of services. To assist in case management, the system should provide for case status and work flow aids to determine progress toward the case plan goal and service monitoring, which could include time or event-driven caseworker ticklers.

Finally, under paragraph (b)(8), the confidentiality and security of the information and the system must be ensured. Under this paragraph, the system should provide for: the basic physical safety of the data and its security including appropriate safeguards from inappropriate disclosure, data back-up and recovery, disaster recovery and contingency planning.

Paragraph (c) provides other program functions which may be included in the SACWIS design under paragraph (a) of this section. We believe that the vast majority of States would want to incorporate these functions in their SACWIS development or enhancement activities but we are sensitive to the need for State flexibility. The discretion provided under paragraph (c) will allow States to determine their own optimal level of automation and to provide guidance to prevent inefficient or ineffective use of automation which may add significant cost and complexity to program administration but do very little to improve services provided.

Under paragraph (c)(1), the SACWIS may provide management and tracking capability to assist the State in resource management, including automated procedures to assist in managing service providers, facilities, contracts and recruitment activities associated with foster care and adoptive families. This establishes relationships with and maintains information on an array of service providers, including prevention programs, placement services and foster care providers and includes activities such as recruitment of foster/adoptive families, performance of home studies, training families and monitoring standards and violations.

Under paragraph (c)(2) the SACWIS may provide for tracking and maintenance of legal and court information, and preparation of appropriate notifications to relevant parties. This function encompasses legal activities and documentation procedures involving judicial events and might include activities such as the preparation and recording of petitions, informing parties of impending actions and tracking events and recording outcomes of petitions, hearings and proceedings.

Under paragraph (c)(3) the SACWIS may provide automated capability to assist in the administration and management of staff and workloads. This functionality would provide for a sensible and practical balance between the workload and workforce and provide a methodology for management to prioritize resource allocation and workload decisions.

Under paragraph (c)(4) of this section, the SACWIS may assist the State in tracking and management of licensing verification activities. This would provide automated capability to track and manage compliance with regulatory standards for licensing of facilities and homes and certification status as well as tracking facility capacity, limitations, level of care and utilization and could include licensing renewal and issuance if the responsibility resides with the child welfare agency.

Paragraph (c)(5) provides that the SACWIS may support the State in priority setting and risk assessment activities necessary to determine the client's level of risk. Such automated support could include an expert systems module, or rule-based automation to assist in consistent caseworker analysis and to aid in decision-making to the extent the APD justifies that such automation is both technologically and programmatically feasible as well as cost effective. Such programs use knowledge and inference procedures to assist in determining a course of action based on the level of risk, possible solutions, and prioritizing resources to reduce the risk. While expert systems cannot substitute for case workers making decisions in the field after on-site investigation, they can assist in more efficient use of case worker time and resources by sharing how other experts would proceed in a given situation.

Paragraph (d) provides that the SACWIS design may also provide for interface with other automated information systems, including, but not limited to: Accounting and licensing systems, court and juvenile justice systems, vital statistics and education, as appropriate. Such interface or integration would create a link to obtain and verify client information that is maintained in other systems to ensure appropriate delivery of services such as information on school attendance and performance. Other linkages could include resource directories and license payment systems.

Under paragraph (e), if the cost benefit analysis submitted as part of the APD indicates that full adherence to paragraph (c) and (d), would not be cost beneficial (e.g., relative to the State caseload or level of automation), final approval of the APD may be withheld pending reassessment of the State's specific automation needs and, as necessary, adjustment of the APD to reflect a level of automation which is cost beneficial. We believe this is in keeping with the intent of the statute that such systems provide more economical administration of services provided under titles IV-B and IV-E.

Paragraph (f) provides that a Statewide automated child welfare information system may be designed, developed and installed on a phased basis, in order to allow States to implement AFCARS requirements expeditiously, in accordance with section 479(b) of the Act, as long as the approved APD includes the State's plan for full implementation of a comprehensive system which meets all functional and data requirements as specified in paragraphs (a) and (b) of this section, and a system design which provides for a comprehensive system and which will support these enhancements on a phased basis. We recognize that States may need to take this approach which is designed to allow AFCARS requirements to be met expeditiously, while providing for the development a more comprehensive case management system at a slower pace.

The Administration for Children and Families will provide technical assistance to assist States in the planning, design, development and installation of a SACWIS, upon request. Such assistance includes aid in defining a case management system and in preparing a phased approach to development, as provided above, so that AFCARS requirements can be addressed expeditiously.

We will also be available to provide technical assistance to States wishing to pursue multi-State projects. Several States have indicated interest in this approach and we would certainly encourage the development of such projects to maximize the benefits of application software development and acquisition.

Finally, paragraph (f) requires that the system perform Quality Assurance functions to provide for the review of case files for accuracy, completeness and compliance with Federal requirements and State standards.

A new § 1355.54 has been added to address requirements for submittal of advance planning documents. Under § 1355.54, Submittal of advance planning documents, the State title IV-E agency must submit an APD for a statewide automated child welfare information system, signed by the appropriate State official, in accordance with procedures specified by 45 CFR part 95, subpart F.

We would note that while the requirements under part 95 related to system transfer continue to apply (States must consider system transfer as one option and provide a justification if it is not the option selected), because of the limited scope of current comprehensive child welfare systems, a flexible approach in considering justifications for not transferring an existing system will be adopted. While we encourage information sharing and will aid in this effort, we recognize that the vast majority of child welfare systems, where they exist, are under-developed unlike other public assistance information systems where an array of models are available for transfer.

The conditions for FFP at the applicable rates for the costs of automatic data processing incurred under an approved State plan for titles IV-A, IV-B and IV-E of the Act (among others) are contained in 45 CFR part 95, subpart F. At 45 CFR 95.611 we explicitly note that the State agency shall obtain prior written approval before beginning a project where enhanced FFP will be requested.

If a State is proceeding with the planning, design, development, or installation of a child welfare information system under an APD which was approved prior to October 1, 1993, an As Needed APD Update (or Annual APD Update, as appropriate) must be submitted to the Department for review and approval. The regulations related to an As Needed APD Update, which are defined at 45 CFR 95.605(3)(b), indicate that this document must be submitted when significant changes are expected to the project (e.g., changes in scope of the project, overall increase in Federal funding, or changes in the distribution of project costs). Furthermore, the regulations at 45 CFR 95.611(c)(2) indicate that the State must submit the As Needed APD Update to the Department, no later than sixty days after the occurrence of the project changes which are being reported. This regulation requires that an As Needed APD Update be submitted sixty days from the date of this Interim Final Rule. To receive enhanced funds, in this instance, the As Needed APD Update must identify the changes from the originally approved APD and address how the system will satisfy the minimum system requirements in § 1355.53.

A new § 1355.55 has been added to provide for ACF review and assessment of Statewide automated child welfare information systems. To ensure that funding is being used appropriately, it is necessary to conduct periodic reviews. Access to all aspects of the SACWIS, including design, development and operation, work performance and cost records must be made available to the Federal government by the State at intervals deemed necessary by ACF to monitor the project and to have an end of project closeout to ensure that all aspects of the project have been adequately completed.

Under paragraph (a), ACF will, on a continuing basis, review, assess and inspect the planning, design, development, installation and operation of the SACWIS to determine the extent to which such systems: (1) Meet § 1355.53 of this chapter, (2) meet the goals and objectives stated in the approved APD, (3) meet the schedule, budget, and other conditions of the approved APD, and (4) comply with the automated data processing services and acquisitions procedures and requirements of 45 CFR part 95, subpart F.

A new § 1355.56, Failure to meet the conditions of the approved APD, has been added to provide information on the consequences and actions resulting from a State's failure to meet the conditions of the approved APD. Under paragraph (a) of § 1355.56 if ACF finds that the State fails to meet any of the conditions cited in § 1355.53, or to substantially comply with the criteria, requirements and other undertakings prescribed by the approved APD, approval of the APD may be suspended. Further, paragraph (b) provides events which shall take place should suspension of the APD occur. Under paragraph (b)(1), if the approval of an APD is suspended during the planning, design, development, installation, or operation of the SACWIS the State will be given written notice of the suspension stating: (A) The reason for the suspension, (B) the date of the suspension, (C) whether the suspended system complies with part 95 criteria for 50 percent FFP, and (D) the actions required by the State for future enhanced funding. Under paragraph (b)(2), the suspension will be effective as of the date the State failed to comply with the approved APD. Paragraph (b)(3) further provides that the suspension shall remain in effect until ACF determines that such system complies with prescribed criteria, requirements, and other undertakings for future Federal funding. Should a

State cease development of an approved system, either by voluntary withdrawal or as a result of Federal suspension, paragraph (b)(4) provides that all Federal incentive funds invested to date that exceed the normal administrative FFP rate (50 percent) will be subject to recoupment.

A new § 1355.57 has been added to address the issue of cost allocation. Under paragraph (a), all expenditures of a State to plan, design, develop, install, and operate the data collection and information retrieval system described in § 1355.53 of this chapter shall be treated as necessary for the proper and efficient administration of the State plan under title IV–E, without regard to whether the system may be used with respect to children other than those on behalf of whom foster care maintenance payments or adoption assistance payments may be made under the State plan. This provision reiterates the statutory intent that the system may apply to all children under the responsibility of the State title IV–B/IV–E agency not just those eligible for title IV–E payments. However, to the extent that the system includes functionality not directly related to the purposes of title IV–B and title IV–E (e.g., adult support services), the cost to design, develop and implement such functions must be charged to the appropriate funding source they support and associated operating costs allocated as required under part 95, as provided below.

Paragraph (b) provides that cost allocation and distribution for the planning, design, development, installation and operation must be in accordance with § 95.631 and section 479(e) of the Act, if the SACWIS includes functions, processing, information collection and management, equipment or services that are not directly related to the administration of the programs carried out under the State plans approved under titles IV–B or IV–E.

We have also made a conforming change to § 1356.60, Fiscal requirements (title IV–E), by adding a new paragraph (e), Federal matching funds for SACWIS. This paragraph merely reiterates the statutory provision that all expenditures related to an approved APD under § 1355.52, will be treated as necessary for the proper and efficient administration of the State plan, without regard to whether the system is used with respect to foster or adoptive children other than those on behalf of whom foster care maintenance or adoption assistance payments are made under title IV–E.

Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. An assessment of the costs and benefits of available regulatory alternatives (including not regulating) demonstrated that the approach taken in the regulation is the most cost-effective and least burdensome while still achieving the regulatory objectives.

Regulatory Flexibility Analysis

Consistent with the Regulatory Flexibility Act (Pub. L. 96–354) which requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities, the Secretary certifies that this rule has no significant effect on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

List of Subjects

45 CFR Part 1355

Adoption and foster care, Child welfare, Data collection, Definitions grant programs—social programs

45 CFR Part 1356

Adoption and foster care, Administrative costs, Child welfare, Fiscal requirements (title IV–E), Grant programs—Social programs, Statewide information systems.

(Catalog of Federal Domestic Assistance Program No. 13.658, Foster Care Maintenance, 13.659, Adoption Assistance and 13.645, Child Welfare Services–State Grants)

Dated: October 13, 1993.

Mary Jo Bane,

Assistant Secretary for Children and Families.

Approved: November 19, 1993.

Donna E. Shalala,

Secretary.

For the reasons set forth in the preamble, 45 CFR parts 1355 and 1356 are amended as set forth below.

PART 1355—GENERAL

1. The authority citation for part 1355 continues to read as follows:

Authority: 42 U.S.C. 620 *et seq.*, 42 U.S.C. 670 *et seq.*; 42 U.S.C. 1301 and 1302.

2. A new § 1355.50 is added to read as follows:

§ 1355.50 Purpose of this part.

This part sets forth the requirements and procedures States must meet in order to receive Federal financial participation for the planning, design, development, installation and operation of statewide automated child welfare information systems authorized under section 474(a)(3)(c) of the Act.

3. A new § 1355.52 is added to read as follows:

§ 1355.52 Funding authority for statewide automated child welfare information systems (SACWIS).

(a) States may receive Federal reimbursement at the 75 percent match rate for FY 1994, FY 1995 and FY 1996, and at the 50 percent level thereafter for expenditures related to the planning, design, development and installation of a statewide automated child welfare information system, to the extent such system:

(1) Provides for the State to collect and electronically report certain data required by section 479(b) of the Act and § 1355.40 of this part;

(2) To the extent practicable, provides for an interface with the State data collection system for child abuse and neglect;

(3) To the extent practicable, provides for an interface with and retrieval of information from the State automated information system that collects information relating to the eligibility of individuals under title IV–A of the Act; and

(4) Provides for more efficient, economical and effective administration of the programs carried out under a State plan approved under title IV–B and title IV–E.

(b) States may also be reimbursed for the full amount of expenditures for the hardware components for such systems at the rates provided under paragraph (a) of this section.

(c) Expenditures for the operation of the automated information system described in paragraph (a) of this section are eligible for FFP at the 50 percent matching rate.

3. Section 1355.53 is added to read as follows:

§ 1355.53 Conditions for approval of funding.

(a) As a condition of funding, the SACWIS must be designed, developed (or an existing system enhanced), and installed in accordance with an approved advance planning document (APD). The APD must provide for a design which, when implemented, will produce a comprehensive system, which is effective and efficient, to improve the program management and administration of the State plans for titles IV–B and IV–E as provided under this section.

(b) At a minimum, the system must provide for effective management, tracking and reporting by providing automated procedures and processes to:

(1) Meet the Adoption and Foster Care reporting requirements through the collection, maintenance, integrity checking and electronic transmission of the data elements specified by the Adoption and Foster Care Analysis and Reporting System (AFCARS) requirements mandated under section 479(b) of the Act and § 1355.40 of this part;

(2) Provide, for electronic exchanges and referrals, as appropriate, with the following systems within the State, unless the State demonstrates that such interface or integration would not be practicable because of systems limitations or cost constraints:

(i) Systems operated under title IV–A,

(ii) National Child Abuse and Neglect Data Systems (NCANDS),

(iii) Systems operated under title XIX, and

(iv) Systems operated under title IV–D;

(3) Support the provisions of section 427(a) by providing for the automated collection, maintenance, management and reporting of information on all children in foster care under the responsibility of the State, including statewide data from which the demographic characteristics, location, and goals for foster care children can be determined;

(4) Collect and manage information necessary to facilitate the delivery of client services, the acceptance and referral of clients, client registration, and the evaluation of the need for services, including child welfare services under title IV–B Subparts 1 and 2, family preservation and family support services, family reunificication and permanent placement;

(5) Collect and manage information necessary to determine eligibility for:

(i) The foster care program,

(ii) The adoption assistance program, and

(iii) The independent living program;

(6) Support necessary case assessment activities;

(7) Monitor case plan development, payment authorization and issuance, review and management, including eligibility determinations and redeterminations; and

(8) Ensure the confidentiality and security of the information and the system.

(c) A system established under paragraph (a) of this section may also provide support in meeting the following program functions:

(1) Resource management, including automated procedures to assist in managing service providers, facilities, contracts and recruitment activities associated with foster care and adoptive families;

(2) Tracking and maintenance of legal and court information, and preparation of appropriate notifications to relevant parties;

(3) Administration and management of staff and workloads;

(4) Licensing verification; and

(5) Risk analysis.

(d) The system may also provide for interface with other automated information systems, including, but not limited to, accounting and licensing systems, court and juvenile justice systems, vital statistics and education, as appropriate.

(e) If the cost benefit analysis submitted as part of the APD indicates that adherence to paragraphs (c) and (d) of this section would not be cost beneficial, final approval of the APD may be withheld until resolution is reached on the level of automation appropriate to meet the State's needs.

(f) A Statewide automated child welfare information system may be designed, developed and installed on a phased basis, in order to allow States to implement AFCARS requirements expeditiously, in accordance with section 479(b) of the Act, as long as the approved APD includes the State's plan for full implementation of a comprehensive system which meets all functional and data requirements as specified in paragraphs (a) and (b) of this section, and a system design which will support these enhancements on a phased basis.

(g) The system must perform Quality Assurance functions to provide for the review of case files for accuracy, completeness and compliance with Federal requirements and State standards.

4. A new § 1355.54 is added to read as follows:

§ 1355.54 Submittal of advance planning documents.

The State title IV–E agency must submit an APD for a statewide automated child welfare information system, signed by the appropriate State official, in accordance with procedures specified by 45 CFR part 95, subpart F.

5. A new § 1355.55 is added to read as follows:

§ 1355.55 Review and assessment of the system developed with enhanced funds.

(a) ACF will, on a continuing basis, review, assess and inspect the planning, design, development, installation and operation of the SACWIS to determine the extent to which such systems:

(1) Meet § 1355.53 of this chapter,

(2) Meet the goals and objectives stated in the approved APD,

(3) Meet the schedule, budget, and other conditions of the approved APD, and

(4) Comply with the automated data processing services and acquisitions procedures and requirements of 45 CFR part 95, subpart F.

(b) [Reserved]

6. A new § 1355.56 is added to read as follows:

§ 1355.56 Failure to meet the conditions of the approved APD.

(a) If ACF finds that the State fails to meet any of the conditions cited in § 1355.53, or to substantially comply with the criteria, requirements and other undertakings prescribed by the approved APD, approval of the APD may be suspended.

(b) If the approval of an APD is suspended during the planning, design, development, installation, or operation of the system:

(1) The State will be given written notice of the suspension. This notice shall state:

(i) The reason for the suspension,

(ii) The date of the suspension,

(iii) Whether the suspended system complies with criteria for 50 percent FFP, and

(iv) The actions required by the State for future enhanced funding.

(2) The suspension will be effective as of the date the State failed to comply with the approved APD;

(3) The suspension shall remain in effect until ACF determines that such system complies with prescribed criteria, requirements, and other undertakings for future Federal funding.

(4) Should a State cease development of an approved system, either by voluntary withdrawal or as a result of Federal suspension, all Federal incentive funds invested to date that exceed the normal administrative FFP rate (50 percent) will be subject to recoupment.

7. A new § 1355.57 is added to read as follows:

§ 1355.57 Cost allocation.

(a) All expenditures of a State to plan, design, develop, install, and operate the data collection and information retrieval system described in § 1355.53 of this part shall be treated as necessary for the proper and efficient administration of the State plan under title IV–E, without regard to whether the system may be used with respect to foster or adoptive children other than those on behalf of whom foster care maintenance payments or adoption assistance payments may be made under the State plan.

(b) Cost allocation and distribution for the planning, design, development, installation and operation must be in accordance with § 95.631 of this title and section 474(e) of the Act, if the SACWIS includes functions, processing, information collection and management, equipment or services that are not directly related to the administration of the programs carried out under the State plan approved under title IV–B or IV–E.

PART 1356—REQUIREMENTS APPLICABLE TO TITLE IV–E

1. The authority citation for part 1356 continues to read as follows:

Authority: Adoption Assistance and Child Welfare Act of 1980, Pub. L. 96–272, 42 U.S.C. 670 *et seq.*; 42 U.S.C. 620 *et seq.*; 42 U.S.C. 1302.

2. Section 1356.60 is amended by adding a new paragraph (e) to read as follows:

§ 1356.60 Fiscal requirements (title IV–E).

* * * * *

(e) *Federal matching funds for SACWIS.* All expenditures of a State to plan, design, develop, install and operate the Statewide automated child welfare information system approved under § 1355.52 of this chapter, shall be treated as necessary for the proper and efficient administration of the State plan without regard to whether the system may be used with respect to foster or adoptive children other than those on behalf of whom foster care maintenance or adoption assistance payments may be made under this part.

[FR Doc. 93–31000 Filed 12–21–93; 8:45 am]

BILLING CODE 4150–04–M

federal register

Wednesday
December 22, 1993

Part III

General Services Administration

41 CFR Ch. 301

Federal Travel Regulation; Maximum Per Diem Rates; Final Rule

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

[FTR Amendment 34]

RIN 3090–AE97

Federal Travel Regulation; Maximum Per Diem Rates

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: An analysis of lodging and meal cost survey data reveals that the listing of maximum per diem rates for locations within the continental United States (CONUS) should be updated to provide for the reimbursement of Federal employees' expenses covered by per diem. This final rule increases/decreases the maximum lodging and meals and incidental expenses amounts in certain existing per diem localities, designates in-season and off-season maximum lodging amounts for use in listed seasonal localities during the designated time periods, and adds new per diem localities.

DATES: This final rule is effective on January 1, 1994, and applies for travel (including travel incident to a change of official station) performed on or after January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Donna Cooke or Karen Kinsella, Transportation Management Division (FBX), Washington, DC 20406, telephone 703–305–5745.

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

For the reasons set out in the preamble, under 5 U.S.C. 5701–5709 and E.O. 11609, July 22, 1971 (36 FR 13747), title 41, chapter 301 of the Code of Federal Regulations is amended by revising Appendix A to chapter 301 to read as follows:

CHAPTER 301—TRAVEL ALLOWANCES

Appendix A To Chapter 301—Prescribed Maximum Per Diem Rates for CONUS

The maximum rates listed below are prescribed under § 301–7.3(a) of this chapter for reimbursement of per diem expenses incurred during official travel within CONUS (the continental United States). The amount shown in column (a) is the maximum that will be reimbursed for lodging expenses including applicable taxes. The M&IE rate shown in column (b) is a fixed amount allowed for meals and incidental expenses covered by per diem. The per diem payment calculated in accordance with part 301–7 of this chapter for lodging expenses plus the M&IE rate may not exceed the maximum per diem rate shown in column (c). Seasonal rates apply during the periods indicated.

Per diem locality: Key city [1]	Per diem locality: County and/or other defined location [2 3]	Maximum lodging amount (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
CONUS, Standard rate		$40		$26		$66
(Applies to all locations within CONUS not specifically listed below or encompassed by the boundary definition of a listed point. However, the standard CONUS rate applies to all locations within CONUS, including those defined below, for certain relocation subsistence allowances. See parts 302–2, 302–4, and 302–5 of this subtitle.)						
ALABAMA						
Anniston	Calhoun	41		26		67
Birmingham	Jefferson	52		30		82
Dothan	Houston	43		26		69
Gulf Shores	Baldwin.					
(April 1–September 30)		91		26		117
(October 1–March 31)		48		26		74
Huntsville	Madison	55		34		89
Mobile	Mobile	55		30		85
Montgomery	Montgomery	51		26		77
Sheffield	Colbert	56		26		82
ARIZONA						
Casa Grande	Pinal	50		26		76
Chinle	Apache.					
(April 1–October 31)		83		26		109
(November 1–March 31)		51		26		77
Grand Canyon Nat'l Park/Flagstaff	Coconino	89		30		119
Kayenta	Navajo.					
(May 1–October 14)		77		26		103
(October 15–April 30)		48		26		74
Phoenix/Scottsdale	Maricopa.					
(December 1–April 30)		87		34		121
(May 1–November 30)		61		34		95
Prescott	Yavapai.					
(April 1–October 14)		48		30		78
(October 15–March 31)		42		30		72
Sierra Vista	Cochise	46		26		72
Tucson	Pima County; Davis–Monthan AFB.					
(November 1–April 30)		62		30		92
(May 1–October 31)		50		30		80
Yuma	Yuma	58		26		84
ARKANSAS						
Fayetteville	Washington	45		26		71
Fort Smith	Sebastian	42		26		68

Per diem locality: Key city [1]	Per diem locality: County and/or other defined location [2] [3]	Maximum lodging amount (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Helena	Phillips	44		26		70
Hot Springs	Garland	52		30		82
Little Rock	Pulaski	52		30		82
CALIFORNIA.						
Bridgeport	Mono	61		34		95
Chico	Butte	58		34		92
Clearlake	Lake	55		26		81
Death Valley	Inyo	97		38		135
El Centro	Imperial	49		30		79
Eureka	Humboldt	65		30		95
Fresno	Fresno	62		34		96
Gualala/Point Arena	Mendocino	100		34		134
Herlong	Lassen	42		26		68
Los Angeles	Los Angeles, Kern, Orange and Ventura Counties; Edwards AFB; Naval Weapons Center and Ordinance Test Station, China Lake.	102		38		140
Merced	Merced	46		34		80
Modesto	Stanislaus	54		34		88
Monterey	Monterey.					
(June 1–October 14)		82		34		116
(October 15–May 31)		74		34		108
Napa	Napa.					
(April 1–October 31)		73		34		107
(November 1–March 31)		65		34		99
Oakland	Alameda, Contra Costa and Marin	71		38		109
Ontario/Victorville/Barstow	San Bernardino	60		34		94
Palm Springs	Riverside.					
(December 1–May 14)		73		38		111
(May 15–November 30)		53		38		91
Palo Alto/San Jose	Santa Clara	70		38		108
Redding	Shasta	60		34		94
Redwood City/San Mateo	San Mateo	71		34		105
Sacramento	Sacramento	67		34		101
San Diego	San Diego	78		38		116
San Francisco	San Francisco	96		38		134
San Luis Obispo	San Luis Obispo.					
(May 1–September 30)		55		38		93
(October 1–April 30)		49		38		87
Santa Barbara	Santa Barbara	79		34		113
Santa Cruz	Santa Cruz.					
(June 1–September 30)		80		34		114
(October 1–May 31)		64		34		98
Santa Rosa	Sonoma	61		34		95
South Lake Tahoe	El Dorado (See also Stateline, NV).					
(June 1–September 30)		91		38		129
(October 1–May 31)		68		38		106
Stockton	San Joaquin	56		30		86
Tahoe City	Placer.					
(June 1–September 14)		67		38		105
(September 15–May 31)		55		38		93
Vallejo	Solano	44		30		74
Visalia	Tulare	61		30		91
West Sacramento	Yolo	48		26		74
Yosemite Nat'l Park	Mariposa	83		38		121
Yuba City	Sutter	46		30		76
COLORADO						
Aspen	Pitkin.					
(January 15–March 31)		130		38		168
(April 1–January 14)		74		38		112
Boulder	Boulder.					
(May 1–December 31)		71		34		105
(January 1–April 30)		64		34		98
Colorado Springs	El Paso.					
(May 1–August 31)		51		26		77
(September 1–April 30)		43		26		69
Denver	Denver, Adams, Arapahoe and Jefferson	77		38		115
Durango	La Plata.					
(June 1–September 30)		80		34		114
(October 1–May 31)		50		34		84
Glenwood Springs	Garfield	53		30		83

Per diem locality: Key city [1]	Per diem locality: County and/or other defined location [2 3]	Maximum lodging amount (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Grand Junction	Mesa	44		30		74
Gunnison	Gunnison.					
(May 1–October 14)		51		26		77
(October 15–April 30)		40		26		66
Keystone/Silverthorne	Summit	122		38		160
Loveland	Larimer	42		26		68
Montrose	Montrose	41		26		67
Pagosa Springs	Archuleta.					
(June 1–September 30)		47		26		73
(October 1–May 31)		40		26		66
Pueblo	Pueblo	44		26		70
Steamboat Springs	Routt.					
(February 1–March 31)		90		30		120
(April 1–January 31)		57		30		87
Trinidad	Las Animas.					
(June 1–September 14)		45		26		71
(September 15–May 31)		40		26		66
Vail	Eagle.					
(January 1–March 31)		151		38		189
(April 1–December 31)		74		38		112
CONNECTICUT						
Bridgeport/Danbury	Fairfield	77		34		111
Hartford	Hartford and Middlesex	69		38		107
New Haven	New Haven	67		34		101
New London/Groton	New London.					
(June 1–October 31)		63		30		93
(November 1–May 31)		56		30		86
Putnam/Danielson	Windham	60		26		86
Salisbury	Litchfield	78		38		116
DELAWARE						
Dover	Kent	50		26		76
Lewes	Sussex.					
(June 1–September 14)		62		30		92
(September 15–May 31)		40		30		70
Wilmington	New Castle	78		34		112
DISTRICT OF COLUMBIA						
Washington, DC (also the cities of Alexandria, Falls Church, and Fairfax, and the counties of Arlington, Loudoun, and Fairfax in Virginia; and the counties of Montgomery and Prince Georges in Maryland) (See also Maryland and Virginia.)		113		38		151
FLORIDA						
Altamonte Springs	Seminole	62		26		88
Bradenton	Manatee.					
(January 1–May 14)		60		26		86
(May 15–December 31)		42		26		68
Clewiston	Hendry	53		26		79
Cocoa Beach	Brevard.					
(May 1–December 31)		73		30		103
(January 1–April 30)		65		30		95
Daytona Beach	Volusia.					
(February 1–April 14)		65		26		91
(April 15–January 31)		49		26		75
Fort Lauderdale	Broward.					
(December 15–April 30)		79		30		109
(May 1–December 14)		61		30		91
Fort Myers	Lee.					
(January 1–April 30)		90		34		124
(May 1–December 31)		67		34		101
Fort Pierce	Saint Lucie.					
(January 1–April 30)		57		30		87
(May 1–December 31)		45		30		75
Fort Walton Beach	Okaloosa.					
(April 1–September 14)		66		30		96
(September 15–March 31)		56		30		86
Gainesville	Alachua	52		30		82
Jacksonville	Duval County; Naval Station Mayport	50		30		80
Key West	Monroe.					
(December 15–April 30)		148		38		186
(May 1–December 14)		102		38		140
Kissimmee	Osceola.					
(January 1–September 14)		68		30		98

Per diem locality: Key city[1]	Per diem locality: County and/or other defined location[2,3]	Maximum lodging amount (a)	+	M&IE rate (b)	=	Maximum per diem rate[4] (c)
(September 15–December 31)		61		30		91
Lakeland	Polk.					
(January 1–April 14)		56		26		82
(April 15–December 31)		49		26		75
Miami	Dade	73		34		107
Naples	Collier.					
(December 15–April 14)		91		34		125
(April 15–December 14)		54		34		88
Orlando	Orange	66		30		96
Panama City	Bay.					
(March 1–September 14)		49		30		79
(September 15–February 28)		40		30		70
Pensacola	Escambia	57		30		87
Punta Gorda	Charlotte.					
(January 1–April 14)		71		30		101
(April 15–December 31)		47		30		77
Saint Augustine	Saint Johns.					
(February 1–September 14)		60		30		90
(September 15–January 31)		44		30		74
Sarasota	Sarasota.					
(December 15–April 14)		68		30		98
(April 15–December 14)		46		30		76
Stuart	Martin.					
(January 1–April 30)		63		30		93
(May 1–December 31)		51		30		81
Tallahassee	Leon	53		26		79
Tampa/St. Petersburg	Hillsborough and Pinellas	57		26		83
Vero Beach	Indian River.					
(February 1–April 30)		71		26		97
(May 1–January 31)		54		26		80
West Palm Beach	Palm Beach.					
(December 15–April 30)		69		34		103
(May 1–December 14)		55		34		89
GEORGIA						
Albany	Dougherty	51		26		77
Athens	Clarke	44		26		70
Atlanta	Clayton, De Kalb, Fulton and Cobb	81		38		119
Augusta	Richmond; Savannah River Plant	44		26		70
Brunswick	Glynn	41		26		67
Columbus	Muscogee	48		26		74
Macon	Bibb	44		26		70
Norcross/Lawrenceville	Gwinnett	56		30		86
Savannah	Chatham	49		30		79
Warner Robins	Houston	43		26		69
IDAHO						
Boise	Ada	49		30		79
Coeur d'Alene	Kootenai.					
(April 1–October 31)		65		26		91
(November 1–March 31)		51		26		77
Idaho Falls	Bonneville	43		30		73
Ketchum/Sun Valley	Blaine.					
(November 15–March 31)		77		38		115
(April 1–November 14)		58		38		96
Lewiston	Nez Perce	44		26		70
McCall	Valley	50		30		80
Pocatello	Bannock	47		26		73
Stanley	Custer.					
(June 1–September 30)		51		30		81
(October 1–May 31)		41		30		71
ILLINOIS						
Alton	Madison	48		26		74
Bloomington	McLean	42		30		72
Champaign/Urbana	Champaign	48		30		78
Chicago	Du Page, Cook and Lake	104		38		142
Danville	Vermilion	43		26		69
Decatur	Macon	45		26		71
Dixon	Lee	45		26		71
East St. Louis	St. Clair	46		26		72
Joliet	Will	51		26		77
Kankakee	Kankakee	50		26		76

Per diem locality: Key city [1]	Per diem locality: County and/or other defined location [2 3]	Maximum lodging amount (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Peoria	Peoria	62		30		92
Rock Island/Moline	Rock Island	64		26		90
Rockford	Winnebago	56		30		86
Springfield	Sangamon	51		30		81
INDIANA						
Anderson	Madison	54		26		80
Bloomington/Crane	Monroe and Martin	52		30		82
Burlington Beach/Valparaiso	Porter	55		26		81
Columbus	Bartholomew	45		30		75
Dale	Spencer	45		26		71
Elkhart	Elkhart	50		26		76
Evansville	Vanderburgh	52		30		82
Fort Wayne	Allen	57		26		83
Gary	Lake	52		30		82
Indianapolis	Marion County; Fort Benjamin Harrison	71		34		105
Jasper	Dubois	45		26		71
Jeffersonville/Charlestown	Clark County; Indiana Army Ammunition Plant	45		26		71
Lafayette	Tippecanoe	52		30		82
Logansport	Cass	47		26		73
Madison	Jefferson	50		26		76
Marion	Grant	44		26		70
Michigan City	La Porte	44		26		70
Muncie	Delaware	55		26		81
Nashville	Brown.					
(June 1–September 30)		72		26		98
(October 1–May 31)		60		26		86
New Albany	Floyd	45		26		71
Richmond	Wayne	43		26		69
South Bend	St. Joseph	61		30		91
Terre Haute	Vigo	51		26		77
IOWA						
Bettendorf/Davenport	Scott	56		26		82
Cedar Rapids	Linn	48		26		74
Des Moines	Polk	55		30		85
Dubuque	Dubuque	43		30		73
Iowa City	Johnson	48		30		78
Sioux City	Woodbury	47		26		73
Waterloo	Black Hawk	47		26		73
KANSAS						
Hays	Ellis	42		26		68
Kansas City	Johnson and Wyandotte (See also Kansas City, MO)	67		34		101
Manhattan	Riley	53		26		79
Topeka	Shawnee	47		26		73
Wichita	Sedgwick	62		30		92
KENTUCKY						
Ashland	Boyd	41		26		67
Bowling Green	Warren	44		30		74
Covington	Kenton	48		34		82
Florence	Boone	49		30		79
Frankfort	Franklin	42		26		68
Lexington	Fayette	51		30		81
Louisville	Jefferson	60		34		94
Owensboro	Daviess	47		26		73
Pikeville	Pike	42		26		68
Prestonsburg	Floyd	44		26		70
LOUISIANA						
Alexandria	Rapides Parish	44		30		74
Baton Rouge	East Baton Rouge Parish	53		30		83
Bossier City	Bossier Parish	53		30		83
Lafayette	Lafayette Parish	52		30		82
Lake Charles	Calcasieu Parish	43		30		73
Monroe	Ouachita Parish	47		26		73
New Orleans	Parishes of Jefferson, Orleans, Plaquemines and St. Bernard.	66		34		100
Shreveport	Caddo Parish	53		30		83
Slidell	St. Tammany Parish	43		30		73
MAINE						
Auburn	Androscoggin.					
(July 1–October 14)		52		30		82

Per diem locality: Key city [1]	Per diem locality: County and/or other defined location [2] [3]	Maximum lodging amount (a)	+ M&IE rate (b)	= Maximum per diem rate [4] (c)
(October 15–June 30)		41	30	71
Augusta	Kennebec	53	26	79
Bangor	Penobscot.			
(July 1–October 31)		60	30	90
(November 1–June 30)		47	30	77
Bar Harbor	Hancock.			
(June 1–September 30)		76	34	110
(October 1–May 31)		66	34	100
Bath	Sagadahoc.			
(June 1–October 14)		64	26	90
(October 15–May 31)		53	26	79
Calais	Washington.			
(June 1–October 14)		64	26	90
(October 15–May 31)		48	26	74
Kennebunk/Sanford	York.			
(May 1–September 30)		69	30	99
(October 1–April 30)		44	30	74
Kittery	Portsmouth Naval Shipyard (See also Portsmouth, NH).			
(June 1–September 30)		66	30	96
(October 1–May 31)		53	30	83
Portland	Cumberland.			
(July 1–October 31)		67	30	97
(November 1–June 30)		54	30	84
Presque Isle	Aroostook	41	26	67
Rockport	Knox.			
(June 1–September 30)		83	30	113
(October 1–May 31)		63	30	93
Wiscasset	Lincoln.			
(June 1–September 30)		66	30	96
(October 1–May 31)		43	30	73
MARYLAND				
(For the counties of Montgomery and Prince Georges, see District of Columbia.)				
Annapolis	Anne Arundel	76	34	110
Baltimore	Baltimore and Harford	78	38	116
Columbia	Howard	87	34	121
Cumberland	Allegany	49	26	75
Easton	Talbot	59	30	89
Frederick	Frederick	55	34	89
Hagerstown	Washington	55	30	85
Lexington Park/St. Inigoes/ Leonardtown.	St. Marys	54	26	80
Lusby	Calvert	58	34	92
Ocean City	Worcester.			
(May 1–September 30)		107	34	141
(October 1–April 30)		46	34	80
Salisbury	Wicomico	52	30	82
Tower Garden on Bay	Queen Anne's	44	30	74
Waldorf	Charles	44	30	74
MASSACHUSETTS				
Andover	Essex	80	34	114
Boston	Suffolk	101	38	139
Cambridge/Lowell	Middlesex	95	38	133
Hyannis	Barnstable.			
(June 1–September 30)		95	30	125
(October 1–May 31)		71	30	101
Martha's Vineyard/Nantucket	Dukes and Nantucket.			
(June 1–October 31)		134	38	172
(November 1–May 31)		106	38	144
Northampton	Hampshire	59	26	85
Pittsfield	Berkshire	52	34	86
Plymouth	Plymouth.			
(June 15–October 31)		92	26	118
(November 1–June 14)		74	26	100
Quincy	Norfolk	79	34	113
South Deerfield/Greenfield	Franklin	64	26	90
Springfield	Hampden	61	30	91
Taunton/New Bedford	Bristol	58	26	84
Worcester	Worcester	61	26	87
MICHIGAN				
Adrian	Lenawee	46	26	72

Per diem locality: Key city [1]	Per diem locality: County and/or other defined location [2 3]	Maximum lodging amount (a)	+ M&IE rate (b)	= Maximum per diem rate [4] (c)
Ann Arbor	Washtenaw	65	30	95
Battle Creek	Calhoun	44	26	70
Bay City	Bay	50	26	76
Bellaire	Antrim	51	26	77
Cadillac	Wexford	49	26	75
Charlevoix	Charlevoix	88	30	118
Detroit	Wayne	80	38	118
Drummond Island	Chippewa	67	26	93
Escanaba	Delta.			
(June 1–September 30)		49	26	75
(October 1–May 31)		40	26	66
Flint	Genesee	45	30	75
Gaylord	Otsego.			
(June 1–September 30)		57	26	83
(October 1–May 31)		51	26	77
Grand Rapids	Kent	60	30	90
Grayling	Crawford	50	26	76
Hancock	Houghton	49	26	75
Holland	Ottawa.			
(May 1–September 30)		54	26	80
(October 1–April 30)		44	26	70
Houghton Lake	Roscommon	49	26	75
Jackson	Jackson	48	26	74
Kalamazoo	Kalamazoo	59	30	89
Lansing/East Lansing	Ingham	54	26	80
Leland	Leelanau.			
(May 1–September 30)		72	26	98
(October 1–April 30)		64	26	90
Ludington	Mason.			
(June 1–September 14)		72	26	98
(September 15–May 31)		41	26	67
Mackinac Island	Mackinac.			
(June 1–September 30)		91	34	125
(October 1–May 31)		80	34	114
Manistee	Manistee.			
(May 15–October 31)		51	26	77
(November 1–May 14)		40	26	66
Marquette	Marquette.			
(June 1–September 30)		47	26	73
(October 1–May 31)		42	26	68
Midland	Midland	54	26	80
Muskegon	Muskegon	45	26	71
Ontonagon	Ontonagon	49	26	75
Port Huron	St. Clair	50	34	84
Saginaw	Saginaw	51	30	81
South Haven	Van Buren.			
(May 1–September 30)		65	26	91
(October 1–April 30)		47	26	73
St. Joseph/Benton Harbor/Niles	Berrien	49	30	79
Traverse City	Grand Traverse.			
(May 1–September 30)		85	30	115
(October 1–April 30)		51	30	81
Troy/Pontiac	Oakland	59	34	93
Warren	Macomb	46	26	72
MINNESOTA				
Albert Lea	Freeborn	42	26	68
Austin	Mower	42	26	68
Bemidji	Beltrami	42	30	72
Brainerd	Crow Wing.			
(May 1–September 14)		46	30	76
(September 15–April 30)		40	30	70
Duluth	St. Louis.			
(June 1–September 30)		54	34	88
(October 1–May 31)		46	34	80
Fergus Falls	Otter Tail	57	26	83
Grand Rapids	Itasca	47	30	77
Hinckley	Pine	43	26	69
Mendota Heights	Dakota	58	30	88
Minneapolis/St. Paul	Anoka, Hennepin, and Ramsey Counties; Fort Snelling Military Reservation and Navy Astronautics Group (Detachment BRAVO), Rosemount.	64	34	98

Per diem locality: Key city [1]	Per diem locality: County and/or other defined location [2 3]	Maximum lodging amount (a)	+ M&IE rate (b)	= Maximum per diem rate [4] (c)
Rochester	Olmsted	56	30	86
St. Cloud	Stearns	41	30	71
MISSISSIPPI				
Biloxi/Gulfport/Pascagoula/Bay St. Louis.	Harrison, Jackson, and Hancock.			
(May 1–September 14)		73	30	103
(September 15–April 30)		59	30	89
Jackson	Hinds	52	30	82
Natchez	Adams	47	30	77
Oxford	Lafayette	44	26	70
Ridgeland	Madison	46	38	84
Vicksburg	Warren	45	30	75
MISSOURI				
Branson	Taney.			
(May 1–October 31)		71	30	101
(November 1–April 30)		47	30	77
Cape Girardeau	Cape Girardeau	45	26	71
Columbia	Boone	50	26	76
Hannibal	Marion.			
(June 1–September 14)		49	26	75
(September 15–May 31)		40	26	66
Jefferson City	Cole	49	26	75
Kansas City	Clay, Jackson and Platte (See also Kansas City, KS)	67	34	101
Lake Ozark	Miller	48	34	82
Osage Beach	Camden.			
(May 15–October 14)		67	30	97
(October 15–May 14)		40	30	70
Springfield	Greene	56	30	86
St. Louis	St. Charles and St. Louis	74	38	112
MONTANA				
Billings	Yellowstone	48	26	74
Great Falls	Cascade	51	26	77
Helena	Lewis and Clark	44	26	70
Kalispell/Polson	Flathead and Lake.			
(April 15–September 30)		48	26	74
(October 1–April 14)		40	26	66
NEBRASKA				
Kearney	Buffalo	42	26	68
Lincoln	Lancaster	47	26	73
North Platte	Lincoln	42	26	68
Omaha	Douglas	57	30	87
NEVADA				
Elko	Elko	51	26	77
Las Vegas	Clark County; Nellis AFB	69	38	107
Lovelock	Pershing.			
(May 1–September 30)		48	26	74
(October 1–April 30)		40	26	66
Reno	Washoe	53	30	83
Stateline	Douglas (See also South Lake Tahoe, CA).			
(June 1–September 30)		91	38	129
(October 1–May 31)		68	38	106
Winnemucca	Humboldt	42	26	68
NEW HAMPSHIRE				
Concord	Merrimack	56	26	82
Conway	Carroll.			
(June 15–October 14)		73	30	103
(October 15–June 14)		50	30	80
Cornish	Sullivan	41	26	67
Durham	Strafford.			
(June 1–October 31)		52	26	78
(November 1–May 31)		42	26	68
Laconia	Belknap.			
(June 15–October 14)		66	30	96
(October 15–June 14)		50	30	80
Lebanon/Hanover	Grafton	86	34	120
Manchester	Hillsborough	68	30	98
Portsmouth/Newington	Rockingham County; Pease AFB (See also Kittery, ME).			
(June 1–September 30)		66	30	96

Per diem locality: Key city [1]	Per diem locality: County and/or other defined location [2 3]	Maximum lodging amount (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
(October 1–May 31)		53		30		83
NEW JERSEY						
Atlantic City	Atlantic.					
(June 1–October 14)		109		38		147
(October 15–May 31)		82		38		120
Belle Mead	Somerset	58		30		88
Camden	Camden	63		34		97
Dover	Morris County; Picatinny Arsenal	58		26		84
Edison	Middlesex	65		38		103
Freehold/Eatontown	Monmouth County; Fort Monmouth	69		34		103
Millville	Cumberland	48		30		78
Moorestown	Burlington	71		34		105
Newark	Bergen, Essex, Hudson, Passaic and Union	87		38		125
Ocean City/Cape May	Cape May.					
(May 15–September 30)		111		34		145
(October 1–May 14)		70		34		104
Princeton/Trenton	Mercer	74		34		108
Salem	Salem	50		26		76
Tom's River	Ocean	78		30		108
NEW MEXICO						
Albuquerque	Bernalillo	60		34		94
Artesia	Eddy	42		26		68
Cloudcroft	Otero	74		26		100
Farmington	San Juan	54		30		84
Gallup	McKinley	50		26		76
Las Cruces/White Sands	Dona Ana	44		30		74
Los Alamos	Los Alamos	59		30		89
Raton	Colfax	47		26		73
Roswell	Chaves	41		26		67
Santa Fe	Santa Fe.					
(May 1–October 31)		95		34		129
(November 1–April 30)		80		34		114
Silver City	Grant	41		26		67
Taos	Taos	65		30		95
NEW YORK						
Albany	Albany	68		30		98
Auburn	Cayuga	50		26		76
Batavia	Genesee.					
(May 1–September 30)		60		26		86
(October 1–April 30)		49		26		75
Binghamton	Broome	58		30		88
Buffalo	Erie	72		34		106
Canton	St. Lawrence	55		26		81
Catskill	Greene.					
(July 1–September 14)		63		26		89
(September 15–June 30)		49		26		75
Corning	Steuben	62		30		92
Elmira	Chemung	57		30		87
Glens Falls	Warren.					
(June 1–October 31)		71		34		105
(November 1–May 31)		50		34		84
Ithaca	Tompkins	61		30		91
Jamestown	Chautauqua	43		30		73
Kingston	Ulster	53		30		83
Lake Placid	Essex.					
(June 1–November 14)		93		30		123
(November 15–May 31)		66		30		96
Monticello	Sullivan.					
(June 1–September 14)		55		30		85
(September 15–May 31)		47		30		77
New York City	The boroughs of the Bronx, Brooklyn, Manhattan, Queens and Staten Island; Nassau and Suffolk Counties.	142		38		180
Niagara Falls	Niagara.					
(May 15–September 30)		86		34		120
(October 1–May 14)		55		34		89
Owego	Tioga	41		26		67
Palisades/Nyack	Rockland	58		34		92
Plattsburgh	Clinton.					
(June 1–September 30)		47		30		77

Per diem locality		Maximum lodging amount (a)	+	M&IE rate (b)	=	Maximum per diem rate[4] (c)
Key city[1]	County and/or other defined location[2 3]					
(October 1–May 31)		42		30		72
Poughkeepsie	Dutchess	63		26		89
Rochester	Monroe	67		34		101
Romulus	Seneca	67		26		93
Saratoga Springs	Saratoga.					
(June 1–September 30)		69		38		107
(October 1–May 31)		51		38		89
Schenectady	Schenectady	59		34		93
Syracuse	Onondaga	64		30		94
Troy	Rensselaer	47		30		77
Utica	Oneida	60		30		90
Watertown	Jefferson	54		30		84
Watkins Glen	Schuyler.					
(May 1–October 31)		71		26		97
(November 1–April 30)		47		26		73
West Point	Orange	50		34		84
White Plains	Westchester	104		38		142
NORTH CAROLINA						
Asheville	Buncombe.					
(May 1–October 31)		53		30		83
(November 1–April 30)		45		30		75
Boone	Watauga	44		26		70
Charlotte	Mecklenburg	63		34		97
Duck	Dare.					
(May 1–September 30)		93		30		123
(October 1–April 30)		49		30		79
Elizabeth City	Pasquotank	47		26		73
Fayetteville	Cumberland	43		26		69
Greensboro/High Point	Guilford	54		30		84
Kinston	Lenoir	48		26		74
Morehead City	Carteret.					
(May 1–September 30)		59		26		85
(October 1–April 30)		40		26		66
Raleigh/Durham/Chapel Hill	Wake, Durham and Orange	70		34		104
Wilmington	New Hanover.					
(May 1–September 14)		49		26		75
(September 15–April 30)		44		26		70
Winston–Salem	Forsyth	55		30		85
NORTH DAKOTA						
Bismarck/Mandan	Burleigh and Morton	45		30		75
Fargo	Cass	48		30		78
Grand Forks	Grand Forks	46		26		72
Minot	Ward	45		26		71
OHIO						
Akron	Summit	62		34		96
Bellevue/Norwalk	Huron.					
(May 15–September 14)		70		26		96
(September 15–May 14)		40		26		66
Chillicothe	Ross	45		26		71
Cincinnati/Evendale	Hamilton and Warren	62		30		92
Cleveland	Cuyahoga	78		38		116
Columbus	Franklin	69		34		103
Dayton/Fairborn	Montgomery and Greene; Wright–Patterson AFB	63		30		93
Defiance	Defiance	51		26		77
East Liverpool	Columbiana	48		26		74
Elyria	Lorain.					
(June 1–September 30)		51		26		77
(October 1–May 31)		40		26		66
Fairfield/Hamilton	Butler	59		26		85
Findlay	Hancock	45		26		71
Geneva	Ashtabula	57		26		83
Jackson	Jackson and Pike	46		26		72
Lancaster	Fairfield	47		26		73
Martin's Ferry/Bellaire	Belmont	41		26		67
Port Clinton/Oakharbor	Ottawa.					
(May 1–September 30)		79		30		109
(October 1–April 30)		40		30		70
Portsmouth	Scioto	48		26		74
Sandusky	Erie.					
(May 15–September 14)		91		30		121

Per diem locality: Key city [1]	Per diem locality: County and/or other defined location [2 3]	Maximum lodging amount (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
(September 15–May 14)		44		30		74
Springfield	Clark	48		30		78
Tinney/Fremont	Sandusky.					
(June 1–September 14)		54		26		80
(September 15–May 31)		40		26		66
Toledo	Lucas	56		30		86
Wapakoneta	Auglaize	42		26		68
Warren	Trumbull	45		30		75
OKLAHOMA						
Ada	Pontotoc	46		26		72
Lawton	Comanche	45		26		71
Muskogee	Muskogee	41		26		67
Norman	Cleveland	47		30		77
Oklahoma City	Oklahoma	51		26		77
Stillwater	Payne	44		26		70
Tulsa/Bartlesville	Osage, Tulsa and Washington	53		30		83
OREGON						
Ashland/Medford	Jackson.					
(June 1–September 30)		63		30		93
(October 1–May 31)		44		30		74
Beaverton	Washington	61		26		87
Bend	Deschutes	53		30		83
Clackamas	Clackamas	55		26		81
Coos Bay	Coos.					
(May 1–September 30)		56		26		82
(October 1–April 30)		43		26		69
Eugene	Lane	51		30		81
Gold Beach	Curry.					
(May 15–October 14)		67		26		93
(October 15–May 14)		44		26		70
Lincoln City/Newport	Lincoln.					
(June 1–September 14)		69		30		99
(September 15–May 31)		54		30		84
Portland	Multnomah	67		30		97
Salem	Marion	49		26		75
Seaside	Clatsop.					
(May 1–September 30)		89		26		115
(October 1–April 30)		71		26		97
PENNSYLVANIA						
Allentown	Lehigh	59		34		93
Altoona	Blair	46		26		72
Bloomsburg	Columbia	48		30		78
Chester/Radnor	Delaware	88		38		126
Du Bois	Clearfield	48		26		74
Easton	Northampton	42		26		68
Erie	Erie.					
(June 1–August 31)		56		26		82
(September 1–May 31)		44		26		70
Gettysburg	Adams.					
(May 1–September 14)		63		30		93
(September 15–April 30)		42		30		72
Harrisburg	Dauphin	75		34		109
Johnstown	Cambria	48		26		74
King of Prussia/Ft. Washington	Montgomery County, except Bala Cynwyd (See also Philadelphia, PA).	83		34		117
Lancaster	Lancaster	64		30		94
Lebanon	Lebanon County; Indian Town Gap Military Reservation.	49		26		75
Mechanicsburg	Cumberland	53		30		83
Mercer	Mercer	47		26		73
Philadelphia	Philadelphia County; city of Bala Cynwyd in Montgomery County.	89		34		123
Pittsburgh	Allegheny	75		34		109
Reading	Berks	52		26		78
Scranton	Lackawanna	58		30		88
Shippingport	Beaver	47		30		77
Somerset	Somerset	56		30		86
State College	Centre	53		30		83
Stroudsburg	Monroe	43		30		73
Uniontown	Fayette	67		26		93

Per diem locality: Key city [1]	Per diem locality: County and/or other defined location [2 3]	Maximum lodging amount (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Valley Forge	Chester	82		38		120
Warminster	Bucks County; Naval Air Development Center	63		30		93
Wilkes-Barre	Luzerne	52		30		82
Williamsport	Lycoming	47		26		73
York	York	59		30		89
RHODE ISLAND.						
East Greenwich	Kent County; Naval Construction Battalion Center, Davisville.	80		34		114
Newport	Newport.					
(May 1–October 14)		102		38		140
(October 15–April 30)		62		38		100
Providence	Providence	78		34		112
Quonset Point	Washington.					
(May 15–September 30)		53		26		79
(October 1–May 14)		40		26		66
SOUTH CAROLINA						
Charleston	Charleston and Berkeley	59		30		89
Columbia	Richland	53		30		83
Greenville	Greenville	49		26		75
Hilton Head	Beaufort.					
(May 1–September 30)		73		34		107
(October 1–April 30)		42		34		76
Myrtle Beach	Horry County; Myrtle Beach AFB.					
(May 1–September 30)		89		30		119
(October 1–April 30)		40		30		70
Spartanburg	Spartanburg	49		26		75
SOUTH DAKOTA						
Custer	Custer.					
(June 1–September 30)		64		26		90
(October 1–May 31)		40		26		66
Hot Springs	Fall River.					
(May 1–September 30)		64		26		90
(October 1–April 30)		40		26		66
Rapid City	Pennington.					
(June 1–August 31)		67		26		93
(September 1–May 31)		41		26		67
Sioux Falls	Minnehaha	54		26		80
Spearfish	Lawrence.					
(June 1–September 14)		65		26		91
(September 15–May 31)		40		26		66
TENNESSEE						
Chattanooga	Hamilton	43		26		69
Clarksville	Montgomery	41		26		67
Columbia	Maury	53		26		79
Gatlinburg	Sevier.					
(May 15–October 31)		72		30		102
(November 1–May 14)		55		30		85
Johnson City	Washington	53		30		83
Kingsport/Bristol	Sullivan	43		30		73
Knoxville	Knox County; city of Oak Ridge	54		30		84
Memphis	Shelby	57		30		87
Murfreesboro	Rutherford	42		26		68
Nashville	Davidson	56		30		86
Shelbyville	Bedford	47		26		73
TEXAS						
Abilene	Taylor	44		26		70
Amarillo	Potter	51		30		81
Austin	Travis	65		34		99
Beaumont	Jefferson	44		26		70
Brownsville	Cameron	55		30		85
Brownwood	Brown	42		26		68
College Station/Bryan	Brazos	48		26		74
Corpus Christi/Ingelside	Nueces and San Patricio	64		30		94
Dallas/Fort Worth	Dallas and Tarrant	71		34		105
Denton	Denton	47		26		73
El Paso	El Paso	58		30		88
Fort Davis	Jeff Davis	59		26		85
Galveston	Galveston.					
(May 15–September 14)		74		30		104

Per diem locality: Key city[1]	Per diem locality: County and/or other defined location[2 3]	Maximum lodging amount (a)	+	M&IE rate (b)	=	Maximum per diem rate[4] (c)
(September 15–May 14)		64		30		94
Granbury	Hood	52		26		78
Houston	Harris County; L. B. Johnson Space Center and Ellington AFB.	78		38		116
Kingsville	Kleberg	41		26		67
Lajitas	Brewster	59		26		85
Laredo	Webb	55		30		85
Longview	Gregg	47		26		73
Lubbock	Lubbock	60		26		86
Lufkin	Angelina	43		26		69
McAllen	Hidalgo	59		26		85
Midland/Odessa	Ector and Midland	55		26		81
Nacogdoches	Nacogdoches	49		26		75
Plainview	Hale	42		26		68
Plano	Collin	71		26		97
San Angelo	Tom Green	45		30		75
San Antonio	Bexar	67		30		97
Temple	Bell	48		26		74
Tyler	Smith	48		26		74
Victoria	Victoria	44		26		70
Waco	McLennan	52		26		78
Wichita Falls	Wichita	46		26		72
UTAH						
Bullfrog	Garfield.					
(May 15–September 30)		90		26		116
(October 1–May 14)		54		26		80
Cedar City	Iron.					
(June 1–September 30)		56		30		86
(October 1–May 31)		41		30		71
Moab	Grand.					
(April 1–November 30)		77		26		103
(December 1–March 31)		40		26		66
Provo	Utah	48		30		78
Salt Lake City/Ogden	Salt Lake, Weber, and Davis Counties; Dugway Proving Ground and Tooele Army Depot.	68		30		98
St. George	Washington	46		30		76
Vernal	Uintah	43		26		69
VERMONT						
Burlington	Chittenden	63		30		93
Middlebury	Addison	72		30		102
Montpelier	Washington	51		26		77
Rutland	Rutland.					
(December 15–March 31)		64		30		94
(April 1–December 14)		53		30		83
White River Junction	Windsor.					
(September 15–October 14)		67		30		97
(October 15–September 14)		45		30		75
VIRGINIA						
(For the cities of Alexandria, Fairfax, and Falls Church, and the counties of Arlington, Fairfax, and Loudoun, see District of Columbia)						
Blacksburg	Montgomery	55		26		81
Bristol*		43		26		69
Charlottesville*		53		34		87
Covington*		41		26		67
Fredericksburg*		43		26		69
Lexington*		43		26		69
Lynchburg*		52		30		82
Manassas/Manassas Park*	Prince William	50		26		76
Norfolk* (also Virginia Beach, Portsmouth, Hampton, Newport News, and Chesapeake)*.	York County; Naval Weapons Station, Yorktown.					
(May 1–September 30)		83		34		117
(October 1–April 30)		61		34		95
Petersburg*	Fort Lee	44		26		70
Richmond*	Chesterfield and Henrico Counties; also Defense Supply Center.	59		34		93
Roanoke*	Roanoke	55		30		85
Staunton*		43		26		69
Wallops Island	Accomack.					
(May 15–September 30)		66		26		92

Per diem locality: Key city[1]	Per diem locality: County and/or other defined location[2 3]	Maximum lodging amount (a)	+ M&IE rate (b)	= Maximum per diem rate[4] (c)
(October 1–May 14)		46	26	72
Warrenton/Amissville	Fauquier and Rappahannock	51	30	81
Waynesboro*.				
(May 1–October 31)		51	26	77
(November 1–April 30)		40	26	66
Williamsburg*.				
(June 1–September 30)		70	34	104
(October 1–May 31)		49	34	83
Wintergreen	Nelson	83	38	121
*Denotes independent cities.				
WASHINGTON				
Anacortes/Mt. Vernon	Skagit.			
(May 1–August 31)		58	30	88
(September 1–April 30)		43	30	73
Bellingham	Whatcom	54	30	84
Bremerton	Kitsap	43	30	73
Kelso/Longview	Cowlitz	46	30	76
Lynnwood/Everett	Snohomish	57	30	87
Ocean Shores	Grays Harbor.			
(April 1–September 30)		60	26	86
(October 1–March 31)		47	26	73
Port Angeles	Clallam.			
(May 15–September 30)		60	30	90
(October 1–May 14)		41	30	71
Port Townsend	Jefferson.			
(April 15–October 14)		66	26	92
(October 15–April 14)		45	26	71
Richland	Benton	46	34	80
Seattle	King	79	34	113
Spokane	Spokane	55	30	85
Tacoma	Pierce	55	30	85
Tumwater/Olympia	Thurston	61	34	95
Vancouver	Clark	56	34	90
Whidbey Island	Island	45	30	75
Yakima	Yakima	44	30	74
WEST VIRGINIA				
Beckley	Raleigh	47	26	73
Berkeley Springs	Morgan	64	26	90
Charleston	Kanawha	55	30	85
Harpers Ferry	Jefferson	57	26	83
Huntington	Cabell	53	26	79
Martinsburg	Berkeley	49	30	79
Morgantown	Monongalia	49	30	79
Parkersburg	Wood	45	30	75
Wheeling	Ohio	44	26	70
WISCONSIN				
Brookfield	Waukesha	64	34	98
Cable	Bayfield	41	26	67
Eau Claire	Eau Claire	48	30	78
Green Bay	Brown	54	26	80
Kewaunee	Kewaunee.			
(June 1–September 14)		51	26	77
(September 15–May 31)		40	26	66
La Crosse	La Crosse	55	30	85
Lake Geneva	Walworth.			
(May 1–October 14)		71	34	105
(October 15–April 30)		52	34	86
Madison	Dane	59	30	89
Marinette	Marinette	46	26	72
Milwaukee	Milwaukee	67	30	97
Mishicot	Manitowoc	52	26	78
Oshkosh	Winnebago	53	30	83
Rhinelander/Minocqua	Oneida	54	26	80
Sturgeon Bay	Door.			
(June 1–September 14)		63	26	89
(September 15–May 31)		40	26	66
Wausau	Marathon	49	26	75
Wautoma	Waushara	43	26	69
Wisconsin Dells	Columbia.			
(June 1–September 14)		82	30	112

Per diem locality: Key city [1]	Per diem locality: County and/or other defined location [2 3]	Maximum lodging amount (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
(September 15–May 31)		42		30		72
WYOMING						
Casper	Natrona	41		30		71
Cheyenne	Laramie	48		30		78
Cody	Park.					
(May 1–September 30)		53		26		79
(October 1–April 30)		40		26		66
Gillette	Campbell	42		26		68
Jackson	Teton.					
(June 1–October 14)		75		34		109
(October 15–May 31)		57		34		91
Rock Springs	Sweetwater	41		26		67
Thermopolis	Hot Springs.					
(June 1–September 14)		47		26		73
(September 15–May 31)		40		26		66

[1] Unless otherwise specified, the per diem locality is defined as "all locations within, or entirely surrounded by, the corporate limits of the key city, including independent entities located within those boundaries."
[2] Per diem localities with county definitions shall include "all locations within, or entirely surrounded by, the corporate limits of the key city as well as the boundaries of the listed counties, including independent entities located within the boundaries of the key city and the listed counties."
[3] Military installations or Government-related facilities (whether or not specifically named) that are located partially within the city or county boundary shall include "all locations that are geographically part of the military installation or Government-related facility, even though part(s) of such activities may be located outside the defined per diem locality."
[4] Federal agencies may submit a request to GSA for review of the costs covered by per diem in a particular city or area where the standard CONUS rate applies when travel to that location is repetitive or on a continuing basis and travelers' experiences indicate that the prescribed rate is inadequate. Other per diem localities listed in this appendix will be surveyed on an annual basis by GSA to determine whether rates are adequate. Requests for per diem rate adjustments shall be submitted by the agency headquarters office to the General Services Administration, Federal Supply Service, Attn: Transportation Management Division (FBX), Washington, DC 20406. Agencies should designate an individual responsible for reviewing, coordinating, and submitting to GSA any requests from bureaus or subagencies. Requests for rate adjustments shall include a city designation, a description of the surrounding location involved (county or other defined area), and a recommended rate supported by a statement explaining the circumstances that cause the existing rate to be inadequate. The request also must contain an estimate of the annual number of trips to the location, the average duration of such trips, and the primary purpose of travel to the locations. Agencies should submit their requests to GSA no later than May 1 in order for a city to be included in the annual survey.

Dated: December 3, 1993.

Roger W. Johnson,

Administrator of General Services.

[FR Doc. 93–31174 Filed 12-21-93; 8:45 am]

BILLING CODE 6820–24–F

federal register

Wednesday
December 22, 1993

Part IV

Environmental Protection Agency

40 CFR Part 122 et al.

Treatment of Indian Tribes as States for Purposes of Sections 308, 309, 401, 402, and 405 of the Clean Water Act (CWA); Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 123, 124 and 501

[FRL-4667-9]

RIN 2040-AB70

Treatment of Indian Tribes as States for Purposes of Sections 308, 309, 401, 402, and 405 of the Clean Water Act (CWA).

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Water Quality Act of 1987 amends the CWA by adding section 518, which requires EPA to promulgate regulations specifying how Tribes will be treated in the same manner as States for various provisions of the CWA.

This final rule establishes requirements for determining eligibility of Indian Tribes to be treated in the same manner as States for several sections of the CWA. The rule establishes eligibility requirements for monitoring, inspections and entry under section 308 (in part) as well as Federal enforcement under section 309 (in part). The rule also sets requirements for certification of water quality standards for some types of NPDES permits under section 401 (in part) for the National Pollutant Discharge Elimination System (NPDES) under section 402. The rule also establishes the eligibility requirements for the pretreatment program under section 402 and the sewage sludge management program under section 405. If an Indian Tribe is found so eligible, the Tribe may apply to EPA to assume the NPDES permit program (including pretreatment) and State sludge management program. This regulation satisfies the statutory provisions in section 518 of the CWA with respect to the 402 program, and is consistent with previous Agency rulemaking addressing the eligibility of Indian Tribes to assume CWA section 405 State sludge management programs.

EFFECTIVE DATE: The rule shall be effective January 21, 1994.

ADDRESSES: The public may inspect the record for this rulemaking and all comments received on the proposed regulation, "Treatment of Indian Tribes as State (Final Rule)," at the Environmental Protection Agency, Water Docket, 401 M Street, SW., Washington, DC 20460, Room L102 between the hours of 9 a.m. and 3:30 p.m. on business days. For access to docket materials, please call (202) 260-3027 for an appointment during the aforementioned hours. A reasonable fee will be charged for copying.

FOR FURTHER INFORMATION CONTACT: Laura J. Phillips, OWEC, Permits Division (4203), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260- 9522.

SUPPLEMENTARY INFORMATION: Information in this preamble is organized as follows:

I. Background

A. Statutory Authority

The over-all objective of the CWA as amended is to restore and maintain the chemical, physical, and biological integrity of the Nation's water. The two national goals the Act established in 1972 include: (1) Eliminating the discharge of pollutants into navigable waters; and (2) achieving an interim water quality level that would protect fish, shellfish, and wildlife while providing for recreation in and on the water wherever attainable.

Since 1972, section 101(b) of the CWA makes it national policy to recognize and preserve the States' primary responsibility to meet these goals. Over the past 20 years, the Agency has focused on developing standard operating relationships with the States and localities. These relationships have generally led to the successful operation of EPA and State Programs on most lands in the United States.

Congress, through amendments to both the CWA in 1987 and the Safe Drinking Water Act (SDWA) in 1986 (as well as amendments to the Clean Air Act (CAA) and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)), has authorized EPA to treat Indian Tribes in the same manner as States under various provisions of these Acts. Amendments to both statutes required the Agency to promulgate regulations that would establish exactly how Tribes would be treated in the same manner as States.

The February 4, 1987, amendments to the CWA (33 U.S.C. 1251 *et seq.*) added a new section 518 entitled "Indian Tribes." These amendments authorize EPA to treat Indian Tribes as States for the purposes of certain provisions of the Act, and provide grant and contract assistance (for certain of these programs) to Indian Tribes where appropriate. The amendments require EPA to promulgate regulations specifying how the Agency will treat an Indian Tribe in the Same Manner as a State under the following provisions: Title II (Construction Grants), section 104 (Research, Investigation, and Training), section 106 (Grants for Pollution Control), section 303 (Water Quality Standards and Implementation Plans), section 305 (Water Quality Inventory), section 308 (Inspections, Monitoring, and Entry), section 309 (Federal Enforcement), section 314 (Clean Lakes), section 319 (Nonpoint Source), section 401 (Certification), section 402 (National Pollutant Discharge Elimination System), and section 404 (Dredge and Fill Permit Program). In addition, as will be discussed further below, today's rule also addresses Tribal assumption of CWA section 405 State sludge management programs.

Section 518(e) of the CWA establishes certain criteria an Indian Tribe must meet before Treatment in the Same Manner as a State is authorized:

(1) "The Indian Tribe has a governing body carrying out substantial governmental duties and powers";

(2) "the functions to be exercised by the Indian Tribe pertain to the management and protection of water resources which are held by an Indian Tribe, held by the United States in trust for Indians, held by a member of an Indian Tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation", and

(3) "the Indian Tribe is reasonably expected to be capable, in the Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the Act and of all applicable regulations."

In addition to the eligibility requirements specified in section 518(e), section 518(h)(2) defines Indian Tribes as follows: "'Indian Tribe' means any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation." Consequently, existing Federal recognition and governmental authority over reservation lands must also be demonstrated by an Indian Tribe seeking authorization to administer the NPDES or State sludge management programs.

B. Supplemental Statutory Background

In 1972, Congress established the NPDES permit program to regulate the discharge of pollutants into "waters of the United States." The CWA prohibits the discharge of pollutants without an NPDES permit (section 301). Congress gave States the option of assuming NPDES permit program authority, subject to EPA approval (section 402). A new State assuming this responsibility may operate a partial or phased in program in accordance with section 402(n) of the CWA.

The Act prescribes minimum requirements which States must meet before exercising their option to assume the NPDES program, and assigns program approval and oversight responsibility to EPA. EPA regulations applicable to the NPDES program appear at 40 CFR parts 122 through 125, with the procedures and criteria for State assumption of the NPDES permit program being set forth in part 123. Once a Tribe is determined to be eligible for Treatment in the Same Manner as a State, the Tribe must meet the requirements for an approvable NPDES program specified in 40 CFR part 123 in order to assume the authority to issue CWA section 402 permits, except in the area of criminal enforcement responsibility, in which case EPA has established an alternative procedure as discussed below.

Section 405 of the CWA addresses requirements regarding the utilization or disposal of sewage sludge, and directs EPA to issue regulations providing guidelines for the disposal and utilization of sewage sludge. The CWA was amended in 1987 to add a new section 405(f) establishing a permitting program to implement sewage sludge management requirements. The Agency has promulgated regulations codified at 40 CFR parts 123 and 501 which address State sludge management programs under CWA section 405 (54 FR 18716, May 2, 1989) as revised (58 FR 9404, February 19, 1993). Section 405(f) provides for incorporation of sewage sludge use or disposal requirements into either CWA section 402 NPDES permits (or other permits issued under certain other Federal environmental laws) or into State sludge management permits issued under State sludge management programs approved by EPA. The regulations applicable to State sludge management programs (including State sludge management permits) appear at 40 CFR part 501 for non-NPDES programs, and parts 122 and 123 for NPDES programs.

Section 518(e) expressly addresses assumption of section 402 NPDES permitting authority by eligible Indian Tribes, and this basis for sewage sludge permitting is addressed by today's amendments with regard to the NPDES program. While section 518(e) of the CWA does not expressly address Tribal assumption of non-NPDES State sludge management program permits under section 405, the final State sludge management program regulations addressed this issue in the preamble (54 FR 18751, May 2, 1989), and the definition of "State" set forth at 40 CFR 501.2 recognizes that Indian Tribes may assume such programs if they meet the eligibility requirements of CWA section 518(e). The preamble to the final State sludge management program regulations noted that regulations governing procedures and criteria for Tribal assumption of CWA programs were forthcoming, and today's final rule, in addition to establishing criteria for Tribal assumption of the NPDES program, would establish similar criteria for Tribal assumption of CWA section 405 State sludge management programs.

As the preamble to the final sewage sludge program regulations provided, there are several important reasons why Indian Tribes may apply for assumption of non-NPDES State sludge management programs.

> In the 1988 proposal of part 501, EPA proposed treating Indian Tribes as States for purposes of non-NPDES section 405(f) sludge management programs even though section 518(e), which addresses the status of Indian Tribes under the CWA, does not specifically list section 405 as a program for which EPA may treat an Indian Tribe as a State. EPA reasoned that omission of section 405 from section 518 was the result of oversight, not of deliberation. EPA advanced two basic reasons in support of this position. First, section 518 authorized treating Indian Tribes as States for purposes of other sludge management activities, e.g., Title II (construction grants) and section 303 (water quality standards and implementation plans). Second, section 518 would clearly allow Indian Tribes to be treated as States for purposes of administering an approved NPDES program (including sludge management) and there is no reason why Indian Tribes should not be similarly treated for purposes of administering a non-NPDES program that regulated the same activities. (54 FR 18751, May 2, 1989.)

States are also empowered by section 401 of the CWA to certify that Federal permits or licenses issued by Federal agencies, will be in compliance with, among others, the State's water quality standards. Under section 518(e) of the CWA, Indian Tribes are eligible for Treatment in the Same Manner as States for section 401 certification purposes. The assumption of 401 certification authority by Indian Tribes as States was addressed in a separate final rulemaking package (56 FR 64876, December 12, 1991) by amendment of 40 CFR part 131, governing water quality standards. 40 CFR 131.4(c) provides that "[w]here EPA determines that a Tribe qualifies for treatment as a State for purposes of water quality standards, the Tribe likewise qualifies for treatment as a State for purposes of certifications conducted under Clean Water Act section 401." 56 FR 64894.

Today's final rule also makes a corresponding change to the State certification provisions of subpart D of 40 CFR part 124. Part 124 states the procedures for issuing permits for several EPA programs. Subpart D describes various procedures applicable only to the NPDES program and specifically provides for State certification of NPDES permits pursuant to CWA section 401(a)(1). As added by this final rule, new § 124.51(c) follows § 131.4(c) in stating that an Indian Tribe qualified for Treatment in the Same Manner as a State for purposes of the Water Quality Standards Program is likewise qualified for Treatment in the Same Manner as a State for purposes of State certification pursuant to CWA section 401(a)(1).

Section 518 of the CWA also provides for Treatment of Indian Tribes in the Same Manner as States for purposes of sections 308 and 309 of the CWA (in part). Under today's final rule, any Tribe which is approved to be treated in the same manner as a State for purposes of sections 402 and/or 405 of the CWA is automatically eligible to be treated in the same manner as a State for purposes of sections 308 and 309. In addition, the Agency promulgated amendments to the regulations (58 FR 8172, February 11, 1993) codified at 40 CFR parts 232 and 233 which address the dredge and fill permit program under section 404 of the CWA and which also provide that any Tribe which is approved to be treated in the same manner as a State for purposes of section 404 is automatically eligible to be treated in the same manner as a State for purposes of sections 308 and 309. Under section 309, EPA may take specified enforcement actions whenever the Administrator finds that a person is in violation of various provisions of the Act (including section 405), of any permit condition or limitation in an NPDES permit implementing various provisions of the CWA, or of specified pretreatment program requirements. Section 309 also establishes penalties for violations of specific provisions of the Act (including section 405), of any permit condition or limitation in an NPDES permit implementing various provisions of the CWA, or of specified pretreatment program requirements. As discussed above, a Tribe treated in the same manner as a State for purposes of sections 402 and/or 405 would be eligible to apply to administer the NPDES (including the pretreatment and NPDES sludge components) or State sludge management permit programs under 40 CFR parts 123 or 501. Those State program regulations require States to have specified enforcement powers, including the power to assess stated penalties. See 40 CFR 123.27, 403.10, and 501.17. As with any authorized State, EPA has the authority to enforce any NPDES or State sludge management permit issued by an Indian Tribe which had obtained authorization under 40 CFR part 123 or 501.

In addition, any Tribe treated in the same manner as a State for purposes of the NPDES or State sludge management programs is also automatically eligible to be treated in the same manner as a State for purposes of section 308(c) (State inspection authority for point sources) for similar reasons as section 309. Recognition of State inspection authority is part of the NPDES or State sludge management permit program authorization requirements for which a State must apply under sections 402 and/or 405. See 40 CFR 123.26, 403.10, and 501.16.

Today's final rule is the last that EPA plans to issue implementing section 518 of the CWA. EPA has already issued regulations implementing section 518 under sections 106, 303, 314, 319, 401 (in part) and Title II, and sections 404, 308 (in part) and 309 (in part). Today's final rule covers sections 308 (in part), 309 (in part), 401 (in part), 402, and 405 (although not explicitly mentioned in section 518).

The only sections of the CWA explicitly identified in section 518 for which EPA has not yet specified Treatment in the Same Manner as a State procedures are sections 104 and 305. EPA does not believe, however, that additional regulations are necessary. Section 104 authorizes a variety of grants and funding to organizations for research, investigations, training, etc. Tribes currently are eligible under the major funding provisions of section 104 regardless of whether they are treated in the same manner as States for purposes of the Act. Thus, EPA has determined that specific regulations are not needed to effectuate the purposes of section 518. With respect to section 305, EPA has already waived the requirement to submit a biennial report for Indian Tribes under section 305(b). See 40 CFR 130.4; 54 FR 14354, 14357 (April 11, 1989). Thus, regulations treating Tribes in the same manner as States for section 305 would be superfluous.

C. Changes to the Proposed Rule

EPA has reviewed all comments submitted on the proposed rule, and responds to the comments in this preamble and in the "Response to Comments" document available in the docket for today's rule. EPA has determined that no changes to the actual rule (or amendments to 40 CFR to incorporate the necessary language for Treatment in the Same Manner as a State for federally recognized Indian Tribes) are currently necessary from the language proposed on March 10, 1992.

D. NPDES Application Process Simplified for Indian Tribes

This rule was originally proposed on March 10, 1992 and the comment period closed on May 11, 1992. On November 10, 1992, EPA's Deputy Administrator signed a memorandum entitled "Simplification of EPA's Process for Treating Tribes as States." By that memorandum, the Agency formally adopted a new policy for simplifying the process for treating Indian Tribes in the same manner in which it treats States under several statutes, including the Clean Water Act. A copy is available in the docket for today's rule.

EPA has decided to proceed with the issuance of this rule so that there will be no further delays in allowing interested Tribes to seek authorization for the 402 or 405 permit programs. EPA recognizes, however, that some changes to today's rule may later be necessary to implement fully its new policy on treatment as State simplification. EPA plans to make necessary changes, as appropriate, to its Treatment in the Same Manner as a State regulations across all of its programs in the near future; it will make any necessary changes to this regulation at that time. In the interim, EPA will continue to work with Tribes to ensure that the existing regulations do not pose an unreasonable burden on Tribes wishing to assume authority for the 402 or 405 permit program(s) and will implement EPA's simplification process on an ad hoc basis, as appropriate, in implementing today's rule.

II. Summary and Explanation of Today's Action

Today's final rule would implement section 518 of the CWA, which authorizes EPA to treat an Indian Tribe in the same manner as a State for assumption of the NPDES permit program if the Indian Tribe meets the eligibility criteria and would also allow Tribal assumption of CWA section 405 State sludge management programs.

The criteria for treating Indian Tribes in the same manner as States under the CWA and the SDWA are very similar. The Agency believes that it has established a reasonable process for Tribes to demonstrate State eligibility, but is reassessing this process to simplify it even further.

Most qualification criteria are of a general nature and need only be provided when a Tribe first applies for "Treatment in the Same Manner as a State" under the SDWA, CWA, or CAA. For example, the "Federal recognition" and "governmental duties and powers" criteria will almost always require the same showing for a Tribe and would ordinarily need to be demonstrated only during the first application a Tribe submitted under any of the Acts.

However, the Agency believes that even with a streamlined application procedure, some qualifications will still need to be demonstrated separately for each program, particularly regarding capability. For example, a Tribe may possess the requisite capability to establish water quality standards but not to assume the NPDES permit program. Yet the Agency does not wish to put Tribes through the burden of filing complete applications for Treatment in the Same Manner as a State for each separate program. Consequently, the Agency will allow Indian Tribes which have previously been designated as a State under the SDWA, CWA, or CAA (once regulations are promulgated) to provide only that information which is unique to the specific additional program(s) (which may include demonstrating adequate regulatory authority to administer the specific program) the Tribe is applying for.

As is the case for States, an Indian Tribe must have its own legal authorities to administer a program under the CWA; EPA cannot delegate its own authority. However, the Agency considered whether the lack of comprehensive criminal enforcement authority would preclude Tribes from applying for the NPDES (section 402) or CWA section 405 State sludge management programs, and the dredge and fill permit program (section 404) that currently require such authority for an approvable State program.

Section 1451 of SDWA specifically states that Indian Tribes are not required to exercise criminal enforcement jurisdiction for primary enforcement responsibility. The CWA amendments, however, do not include similar language indicating whether it would be appropriate to treat a Tribe not having criminal enforcement authority over all individuals on the reservation in the same manner as a State where such authority is currently required for State program assumption.

The Agency realizes that a comprehensive criminal enforcement requirement could raise substantial impediments to Tribal assumption of those CWA programs that require such authorities of States. Federal law bars Indian Tribes from trying criminally or punishing non-Indians in the absence of a treaty or other agreement to the contrary. *Oliphant* v. *Suquamish Indian Tribe*, 435 U.S. 191 (1978). In addition, the Federal Indian Civil Rights Act prohibits any Indian court or tribunal from imposing any criminal fine greater than $5,000 upon Indians within its jurisdiction (25 U.S.C. 1302(7)).

The Agency believes that even though Congress did not explicitly waive the requirement under CWA, as under SDWA, that Congress nonetheless intended Tribes to be able to obtain primacy without demonstrating comprehensive criminal enforcement authority. If EPA were to infer that Congress, by failing to insert language similar to that contained in section 1451 of SDWA, intended not to waive the criminal enforcement requirement, EPA's reading would make part of section 518 of CWA a nullity, since absent further legislative action, no Tribe would be able to assume a program under section 402 or 404 of CWA. This reading would contradict the clear intent of section 518 to allow Tribes to assume all specified CWA programs where they meet the 518(e) criteria and further would violate two traditional rules of statutory construction: (1) Legislation should not be interpreted as being meaningless, if at all possible; and (2) ambiguous Federal statutes addressing Indian affairs should be interpreted to the benefit of the Tribes.

Sections 123.27 of the NPDES regulations and 501.17 of the State sludge management program regulations require that a State have criminal enforcement authority to be approved. This rule amends the existing regulations by adding §§ 123.34 and 501.25 so that Tribes are not required to exercise comprehensive criminal enforcement jurisdiction as a condition to assuming the 402 or State sludge management programs. Under this rule, Tribes are, instead, required to provide for the timely and appropriate referral of criminal enforcement matters to the Regional Administrator when Tribal enforcement authority does not exist (i.e., for non-Indians or fines over $5,000). Such procedures must be established in a formal Memorandum of Agreement (MOA) with the Regional Administrator. Related changes to cross-reference to the enforcement authority provisions of §§ 123.34 and 501.25 would also be made in §§ 123.25, 501.1(c)(5), and 501.15(b). The Tribe is, of course, still required to carry out its monitoring and compliance responsibilities and assist in the identification of potential criminal violators. Thus, the lack of comprehensive Tribal criminal enforcement authority will not prevent a Tribe from having an approvable 402 or 405 State program. In promulgating the amendments to the regulations (58 FR 8172, February 11, 1993) codified at 40 CFR parts 232 and 233 which address the dredge and fill permit program under section 404 of the CWA, the Agency took the same position.

Because CWA program funds are limited, many Indian Tribes may decide it is not cost-effective or otherwise beneficial to apply for various CWA program authorities. The Agency encourages Tribes to carefully consider which of the available programs would be beneficial to assume and to target the Tribal efforts and resources towards those specific programs. The Agency notes that Tribal assumption of the CWA programs discussed in today's rule is voluntary on the part of the Tribes.

In order to facilitate consistent implementation of the requirements of the CWA, an Indian Tribe and the State or States adjacent to the lands where such Tribe is located may enter into a cooperative agreement, subject to the review and approval of the Administrator or his or her delegatee, to jointly plan and administer the requirements of this Act (see section 518(d) of the CWA).

The Agency strongly encourages such cooperative agreements because of the relative benefits such as information and resource sharing. The Agency does not have any specific criteria that a cooperative agreement must meet, so long as all parties involved approve it and it complies with the intent and administrative requirements of the CWA. In situations where EPA is a signatory to a cooperative agreement, all Federal requirements that govern such agreements must also be met.

Draft cooperative agreements should be submitted to the Regional Administrator for review and approval. If necessary, the Agency will develop guidance to assist the Tribes and States in developing cooperative agreements.

A. Treatment of Indian Tribes in the Same Manner as States

With the exception of criminal enforcement requirements, eligible Tribes seeking approval of the NPDES or State sludge management programs are required to comply with all existing requirements for those programs. For the NPDES program (including NPDES sludge management programs), these requirements are contained in the regulations at part 123; for the CWA section 405 State sludge management program, the applicable requirements are found at part 501. Those parts set out specific requirements for State program submissions, approval procedures, and programmatic and enforcement authorities. Today's final rule makes several revisions to 40 CFR parts 122 through 124 and 501 in order to set out and clarify NPDES and State sludge management program requirements for Indian Tribes.

No amendments have been made to 40 CFR part 403 governing the pretreatment program because no changes to part 403 are necessary to allow a Tribe to apply for pretreatment authority, once changes are made to parts 122 and 123. See 40 CFR 403.1(b)(3) and 403.10. Part 403 incorporates the definition of "State" in 40 CFR 122.2 (which is revised by this rule) in its definitional section. See 40 CFR 403.3(m).

This final rule would amend 40 CFR parts 122 through 124 and 501 to implement CWA section 518 and create procedures for Indian Tribes to apply to EPA for Treatment in the Same Manner as a State in order to be eligible to apply concurrently or sequentially for assumption of the NPDES and State sludge management programs. As will be discussed further below, the final rule adds §§ 123.31 through 123.34 and §§ 501.22 through 501.25 to the regulations to establish criteria Indian Tribes must meet for Treatment in the Same Manner as a State, lists the information the Tribe must provide in its application to EPA, and provides a procedure for EPA to formally review the application. The Administrator has delegated the authority to determine whether a Tribe meets the criteria for Treatment in the Same Manner as a State to the Regional Administrators. The requirements a Tribe must meet under all the CWA Indian regulations are as identical as possible leaving room for program specific requirements which are explained further in the capability requirements section of this notice.

As mentioned previously, section 518 of the CWA stipulates that a Tribe is eligible for Treatment in the Same Manner as a State if it meets the following criteria:

(1) The Tribe is federally recognized;

(2) The Tribe carries out substantial governmental duties and powers over a Federal Indian reservation;

(3) The Tribe has appropriate regulatory authority over surface waters of the reservation; and

(4) The Tribe is reasonably expected to be capable of administering the relevant CWA program.

The Agency believes the language in section 518 requires that each of these eligibility criteria be satisfied through a separate demonstration by a Tribe following the procedures of the regulations set forth in § § 123.31 through 123.33 for the NPDES program and § § 501.22 through 501.24 for the State sludge management program. These procedures are intended to ensure that Tribes who are treated in the same manner as States meet the requirements in the CWA, not to act as a barrier to program assumption. The Agency hopes that as many Tribes as possible will assume responsibility for the CWA programs where the Tribe and the Agency deem it appropriate.

1. Federal Recognition

With respect to Federal recognition as an Indian Tribe, the Secretary of the Interior periodically publishes a list of federally recognized Tribes. If the applicant appears on this list it need only state that this is so. If the Tribal name does not appear on this list because the list has not been updated, the Tribe can still provide appropriate documentation to EPA verifying that it is federally recognized by the Secretary of Interior. The regulations applicable to this requirement appear in § § 123.31(a)(1), 123.32(a), 501.22(a)(1), and 501.23(a)

2. "Substantial Governmental Duties and Powers"

In addition, a Tribe must satisfy the second criterion that the Tribe is "carrying out substantial governmental duties and powers." The Agency defines "substantial governmental duties and powers" to mean that the Tribe is currently performing governmental functions to promote the public health, safety, and welfare (of the affected population) within a defined geographical area. The regulations applicable to this requirement appear in § § 123.31(a)(2), 123.32(b), 501.22(a)(2), and 501.23(b). Many Indian Tribal governments perform functions traditionally performed by sovereign governments. Examples of such functions include, but are not limited to, levying taxes, acquiring land by exercising the power of eminent domain, and exercising police power (i.e., providing for the public health, safety, and general welfare of the affected population). Based on comments on the SDWA Indian Primacy Rule, the Agency believes that most Tribes will be able to meet these criteria without much difficulty. (See 53 FR 37399.)

The Agency intends to minimize the burdens to a Tribe to demonstrate that it is carrying out substantial governmental duties and powers. The Agency will require a narrative statement:

(1) Describing the form of Tribal government;

(2) describing the types of essential governmental functions currently performed such as those listed above; and

(3) identifying the legal authorities for performing these functions (e.g., Tribal constitutions, codes, etc.).

The Agency merely intends the functions listed above (e.g., police powers affecting the health, safety and welfare, taxation, and power of eminent domain) as examples. It is not necessary that an applicant be currently performing each such function to qualify for Treatment in the Same Manner as a State. The Agency intends only to require sufficient documentation to determine whether a Tribe satisfies the statutory requirement of "carrying out substantial governmental duties and powers."

3. Jurisdiction

The third requirement a Tribe must meet for Treatment in the Same Manner as a State is that "the functions to be exercised by the Tribe must pertain to the management and protection of water resources which are held by an Indian Tribe, held by the United States in trust for Indians, held by a member of an Indian Tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the boundaries of a reservation * * *" The regulations applicable to this requirement appear in § § 123.31(a)(3), 123.32(c), 501.22(a)(3), and 501.23(c).

The question of where a Tribe may exercise CWA authority has been a subject of significant comment in this and other CWA rulemakings. EPA has taken a consistent approach on this matter. EPA is responding to the various comments on this matter in this preamble and in the "Response to Comments" document.

Under today's final rule, Tribes are limited to obtaining Treatment in the Same Manner as a State status for only water resources within the borders of the reservation over which they possess authority to issue NPDES or sludge permits. EPA believes that it was the intent of Congress to limit Tribes to obtaining the status of Treatment in the Same Manner as a State for lands within the reservation. EPA bases this conclusion, in part, on the definition of "Indian Tribe" found in CWA section 518(h)(2). Nonetheless, the meaning of the term "reservation" must be determined in light of statutory law and with reference to relevant case law. EPA considers trust lands formally set apart for the use of Indians to be "within a reservation" for purposes of section 518(e)(2), even if they have not been formally designated as "reservations." *Oklahoma Tax Comm'n* v. *Citizen Band Potawatomi Indian Tribe of Oklahoma*, 111 S. Ct. 905, 910 (1991). This means it is the status and use of the land that determines if it is to be considered "within a reservation" rather than the label attached to it. EPA does not believe that section 518(e)(2) prevents EPA from recognizing Tribal authority over non-Indian water resources located within the reservation if the Tribe can demonstrate the requisite authority over such water resources. EPA does not read the holding in *Brendale* v. *Confederated Tribes and Bands of the Yakima Nation*, 492 U.S. 408 (1989), as preventing EPA from recognizing Tribes as States for purposes of administering the NPDES and/or State sludge management programs on fee lands within the reservation, even if section 518 is not an express delegation of authority to Indian Tribes to regulate the activities of non-members on Indian lands (an issue discussed in detail below). In *Brendale*, both the State of Washington and the Yakima Nation asserted authority to zone non-Indian real estate developments on two parcels within the

Yakima reservation, one in an area that was primarily Tribal, the other in an area where much of the land was owned in fee by nonmembers. Although the Court analyzed the issues and the appropriate interpretation of *Montana v.United States*, 450 U.S. 544, 565–66 (1981) at considerable length, the nine members split 4:2:3 in reaching the decision that the Tribe should have exclusive zoning authority over property in the Tribal area and the State should have exclusive zoning authority over non-Indian owned property in the fee area.

The process the Agency will establish for Tribes to demonstrate their authority includes the submission of a statement signed by the Tribal Attorney General or an equivalent official explaining the legal basis for the Tribe's regulatory authority to administer the desired program(s). The statement is similar to the statement currently required of States applying for 402 permit or State sludge management program assumption (40 CFR 123.23; 501.13). The Attorney General's Statement will supplement the other documentation mentioned in § § 123.32 and 501.23 of this final rule (e.g., a map, copies of tribal codes and ordinances, etc.). The Attorney General's Statement with the supporting documentation will assist EPA in verifying that the Tribe has the necessary authority to administer the appropriate CWA program.

The Agency presumes that, in general, Tribes are likely to possess the authority to regulate activities affecting water resources on the reservation for purposes of administering the NPDES and/or State sludge management programs. However, the Agency does not believe that it would be appropriate to recognize Tribal authority and approve Tribal NPDES and sludge management program authorization applications in the absence of verifying documentation. Just as when EPA considers a State application to assume the NPDES or State sludge management program, EPA must not authorize program responsibility to a Tribe unless the Tribe can adequately show it possesses the requisite authority. The Agency recognizes that there may be some disputes regarding the extent of Tribal authority to administer CWA programs and therefore believes it necessary to require documentation to demonstrate adequate authority by Tribes applying for CWA programs. The request that a given Tribe establish its authority to administer CWA programs is not meant to be a barrier or a deterrent to that Tribe's attainment of these programs. Rather the intent of these requirements is to raise at an early date the presence or absence of a key element to effective administration of CWA programs.

In addition, in light of the legislative history of section 518, the question of whether section 518(e) is an explicit delegation of authority over non-Indians is not resolved. Therefore, EPA does not believe it is currently appropriate to eliminate the requirement that Tribes make an affirmative demonstration of their regulatory authority. EPA will authorize Tribes to exercise responsibility for the NPDES and/or State sludge management programs once the Tribe shows that, in light of the factual circumstances and the generalized findings EPA has made regarding reservation water resources, it possesses the requisite authority.

EPA would advise Tribes, in their Attorney Generals' Statements, to outline *all* bases for concluding that the Tribe has adequate authority. This can only help EPA to make a proper determination to treat the Tribe in the Same Manner as a State.

Where the Regional Administrator concludes that a Tribe has not adequately demonstrated its authority with respect to an area in dispute, then Tribal assumption of the NPDES and/or State sludge management program would be restricted accordingly. If the authority in dispute were focused on a limited area, this would not necessarily delay the Agency's decision to treat the Tribe as a State for the non-disputed areas.

4. Tribal Capability

The fourth criterion that a Tribe must meet is that, in the Regional Administrator's judgment, the Tribe must be "reasonably expected to be capable" of administering an effective program. The regulations applicable to this criterion appear in § § 123.31(a)(4), 123.32(d), 501.22(a)(4), and 501.23(d).

In evaluating a Tribe's demonstration that it is "reasonably expected to be capable" of administering an effective program, the Regional Administrator will consider the following five factors:

(1) The Tribe's previous management experience;

(2) Existing environmental or public health programs administered by the Tribe;

(3) The mechanism(s) in place for carrying out the executive, legislative, and judicial functions of the Tribal government;

(4) The relationship between regulated entities and the administrative agency of the Tribal government which is, or will be, designated as the primacy agent; and

(5) The technical and administrative capabilities of the staff to administer and manage the program.

The Agency recognizes that certain Tribes may not have substantial experience in administering environmental programs. For this reason the Agency would require Tribes in § § 123.32(d)(5) and 501.23(d)(5) either: (1) To show that they have the necessary management and technical skills, or (2) to submit a plan detailing steps for acquiring the necessary management and technical skills. Although lack of this experience will not preclude a Tribe from demonstrating the required capability, the presence of such experience will be of significant importance to the Agency.

This demonstration, however, does not change the requisite showing which an Indian Tribe must make for assumption of the NPDES or State sludge management programs. Except in the area of criminal enforcement authority as discussed above, an Indian Tribe must fully satisfy the traditional State program requirements of 40 CFR parts 123 or 501 before NPDES or State sludge management authorization is allowed, as stated in § § 123.31(b) and 501.22(b). In evaluating a Tribal application for Treatment in the Same Manner as a State, the Regional Administrator must determine whether the Tribe is "reasonably expected to be capable" of carrying out the functions of an effective NPDES or State sludge management program. See, for example, 40 CFR 123.23(a) and 501.22. In other words, where an Indian Tribe prepares one simultaneous application for Treatment in the Same Manner as a State and to operate the NPDES or State sludge management programs, the Tribe must have an effective program in place for EPA to approve the Tribe under § 123.1 or § 501.1. Nothing would preclude EPA, however, from approving the Tribe's "Treatment in the Same Manner as a State" application while the Tribe's NPDES and/or State sludge management program was still under development.

EPA will request information on the Tribe's executive, legislative, and judicial functions to assure that the Tribe has the capability to effectively administer an approved NPDES permit program.

EPA's evaluation of the Tribe's capability will also consider the relationship between the existing or proposed Tribal agency which will assume the NPDES permit program and any potential regulated Tribal entities. A common situation among Indian Tribes is that the Tribe is both the regulator and regulatee. Such a situation could result in a conflict of interest if EPA authorized the Tribal program because the Tribe would be regulating itself. The Agency believes that independence of the regulator and regulatee is necessary to best assure effective and fair administration of these programs.

This approach is not meant to require the Tribes to divest themselves of ownership of any regulated entities it owns or operates. One possible solution to the problem could be the creation of an independent organization to regulate Tribal entities subject to CWA regulatory requirements. Similar arrangements could be established utilizing existing Tribal organizations.

Failure to resolve the regulator/regulatee conflict will not automatically preclude a Tribe from being eligible for Treatment in the Same Manner as a State but is intended to alert Tribes at an early date about a potential bar to regulatory program assumption that must be resolved. Resolution of the regulator/regulatee issue relative to the NPDES and State sludge management programs will be evaluated on a case-by-case basis and will be governed by the existing conflict-of-interest regulations applicable to those programs (40 CFR 123.25(c); 501.15(f)). EPA does not intend to limit Tribal flexibility in creating structures which will ensure adequate separation of the regulator and the regulated entity.

The Agency is aware that, in limited cases, States also are in a similar situation of being both regulator and regulatee. However, State infrastructures are typically such that the State agency operating the regulated entity is not the same State agency that has primary enforcement authority. This is in contrast to the typical situation exhibited by Indian Tribes which may own and operate most or all regulated entities.

The Agency encourages smaller Tribes to consider consortiums or inter-Tribal agencies as ways to obtain the necessary expertise to administer these programs and to make the attainment of authorization cost-effective and beneficial to the Tribe. The Agency will consider and evaluate all applications it receives, regardless of the applicant's size, on a case-by-case basis.

Although EPA will consider applications by a group or consortium of Tribes within the same geographical area, each applicant must still meet all the eligibility requirements to be treated in the same manner as a State, particularly the jurisdictional requirement.

5. Process for Evaluating Applications

Under §§ 123.33(b) and 501.24(b), within thirty days after receipt of a Tribe's complete application for Treatment in the Same Manner as a State (which has all the information required in § 123.32 or § 501.23), the Regional Administrator will notify appropriate governmental entities of the receipt of the application and the substance of and basis for the Tribe's assertion of authority over reservation waters. EPA defines the phrase "governmental entities" as States, Tribes, and other Federal entities located contiguous to the reservation of the Tribe which is applying for Treatment in the Same Manner as a State. Neighboring Tribes will be treated as "governmental entities" regardless of whether the neighboring Tribe is treated in the same manner as a State for purposes of sections 402 or 405 of the CWA. Where such governmental entities are States, EPA intends to provide notice and an opportunity to comment to the most appropriate State contacts, which may include, for example, the Governor, Attorney General, or the appropriate environmental agency head. The rule requires only that the Agency solicit and consider comments from such "governmental entities." Local governments such as cities and counties or other local governments are not included in the definition of "governmental entities."

EPA recognizes that city and county governments which may be subject to or affected by Tribal standards may also want to comment on the Tribe's assertion of authority. Although EPA believes that the responsibility to coordinate with local governments falls primarily upon the State, the Agency will make an effort to provide notice to local governments by placing an announcement in appropriate newspapers. Since the rule requires only that EPA consider comments from governmental entities, such newspaper announcements will advise interested parties to direct comments on Tribal authority to appropriate State governments.

The process of notifying States and Tribes and consulting with the Department of the Interior, as delineated in this and other EPA regulations implementing the CWA and the SDWA, was and is intended merely to assist the Agency in making its determination whether a Tribe has adequate authority to justify Treatment in the Same Manner as a State by EPA. Such notification and consultation procedures were not and are not intended to establish any form of adjudication or arbitration process to resolve differences between State and Tribal governments. Rather, EPA has a duty to determine whether a Tribe has adequate authority, as defined by Federal law and EPA policy, to carry out the grant or program under consideration. The notification and consultation procedures assist EPA in making this determination by providing information and perspectives from the points of view of neighboring Tribal and State governments and the Federal agency having extensive experience in Federal Indian law.

Under §§ 123.33(c) and 501.24(c), each of the governmental entities will have thirty days after receipt of the notice to submit comments to the Regional Administrator. Comments will be limited solely to the issue of the Tribe's showing under section 518(e)(2). EPA will not consider comments directed to whether the Tribe meets EPA's other requirements for Treatment in the Same Manner as a State.

If an Indian Tribe's assertion under section 518(e)(2) is subjected to a competing claim, §§ 123.33(d) and 501.24(d) provide that the Regional Administrator will consult with the Tribe, the governmental entity submitting comments, and the Secretary of the Department of the Interior, or designee. Currently, the Associate Solicitor, Division of Indian Affairs and the Deputy to the Assistant Secretary–Indian Affairs (Trust and Economic Development) are the designees of the Secretary of the Interior. Upon receipt of a Tribal application, EPA will forward a copy of the application and any documents asserting a competing or conflicting claim of authority to such designees as soon as possible. Comments from the Interior Department will be primarily a discussion of the law applicable to the issue to assist EPA in its own deliberations. No EPA decision will be attributed to, or determined by, the legal analysis offered by Interior employees.

After consultation, and in consideration of comments received, the Regional Administrator will determine whether the Tribe has adequately demonstrated that it meets the requirements of CWA section 518(e)(2). If the Regional Administrator concludes that a Tribe has not adequately demonstrated its authority with respect to certain reservation waters, then Tribal assumption of the program will be restricted accordingly. Any such determination by the Regional Administrator is not a determination of the Tribe's general regulatory authority but only with respect to administration of the NPDES and State sludge management programs. A dispute over a certain area over which a Tribe is asserting authority will not necessarily delay the Agency's decision to treat a Tribe as a State for the non-disputed areas.

This procedure does not imply that States or Federal agencies have veto power over Tribal applications for Treatment in the Same Manner as a State. Rather, the procedure is simply intended to ensure that the Tribe has the necessary authority to administer the program it seeks to assume. The Agency will not rely solely on the assertions of a competing regulatory authority; it will make an independent evaluation of the Tribal showing.

The Agency does not believe it will be possible to approve or disapprove all applications for "Treatment in the Same Manner as a State" within a designated time frame. The Agency fully anticipates that there will be instances where the determinations under section 518(e)(2) and (e)(3) will require the Agency to go back to a Tribe for clarification or additional information. The Agency's experience with States applying for various EPA programs indicates that at times meetings and discussions between EPA and the State are necessary before all requirements are met. The Agency believes that the same process of communication with Tribes will be beneficial in ensuring that Tribes meet the criteria under section 518(e) in an expeditious manner.

If the Regional Administrator determines that a Tribe meets the requirements for Treatment in the Same Manner as a State, § § 123.33(e) and 501.24(e) provide that the Indian Tribe is eligible to apply for assumption of the NPDES or State sludge management program. It should be noted that a determination that a Tribe does not meet the requirements does not preclude the Tribe from resubmitting the application at a future date. If the Agency determines that a Tribal application is deficient or incomplete, the Tribe should consult with EPA on what changes are necessary.

Under § § 123.33(f) and 501.24(f), Indian Tribes which are found to be eligible for Treatment in the Same Manner as a State are eligible to request assumption of the NPDES or State sludge management program in accordance with the procedures and criteria applicable to State program submissions (40 CFR part 123 for NPDES (including NPDES sludge management programs); 40 CFR part 501 for non-NPDES State sludge management program). While not required by the regulations, as a practical matter EPA expects that the Indian Tribe's request for Treatment in the Same Manner as a State for NPDES or State sludge management program purposes and the Tribe's submission to actually assume these programs may occur simultaneously. The Agency encourages use of a single submission containing the necessary information in order to minimize paperwork burdens. In addition, EPA recognizes that information required for State program submissions may duplicate or overlap with information required for Treatment of an Indian Tribe in the Same Manner as a State. For example, § § 123.32(c) and 501.23(c) provide that requests for Treatment in the Same Manner as a State are to include a Tribal Attorney General's Statement and copies of relevant Tribal law, information which is similar to required elements of State program submissions under existing § § 123.21(a)(3) and (5) and § § 501.11(a)(3) and (5). The Agency wishes to emphasize that it does not seek duplicative information, and the final rule amends existing § § 123.21(b) and 501.11(b) to make clear that when considering the completeness of an Indian Tribe's request to assume the NPDES or State sludge management program, EPA will take into account any information already submitted as a part of the Tribe's request to be treated in the same manner as a State.

B. Transition in Permitting Authority

In order to avoid disruptions to the permitting process and competing assertions of authority, it is necessary to provide procedural arrangements to allow for the smooth transition from one permitting authority to another. In the case where the existing permitting authority is EPA, the existing regulations already contain provisions addressing transition from EPA-issued permits to State-issued permits. 40 CFR 123.1(d); 123.24(b); 501.1(f) and 501.14(b)(1). Since the final rule defines approved Indian Tribes as "States" for purposes of the regulations, these existing regulations would enable an efficient change from EPA's permitting authority to the Indian Tribe's permitting authority.

However, it is possible that a State, and not EPA, is the existing authorized permitting authority for activities on the reservation. Under 40 CFR 123.23(b) and 501.13, a State seeking to carry out either the NPDES or State sludge management programs on Indian lands must provide a specific analysis of its authority to do so in the Attorney General's Statement supporting its program submission, and can be authorized by EPA to issue permits on Indian lands as part of a State NPDES or State sludge management program. EPA is unaware of any State for which it made such an explicit authorization.

The existing regulations do not contain provisions addressing the procedures for arranging the transition from such State-issued permits (which are issued by a State which has made the requisite demonstration discussed in the previous paragraph and has been authorized to issue permits consistent with this demonstration) to Indian Tribe-issued permits. Today's final rule amends the regulations in various ways to provide for such an orderly transfer once an Indian Tribe is approved for program assumption. First, existing § § 123.22 and 501.12, which address State program submissions, are amended to provide that if a State has been authorized by EPA to issue NPDES permits in accordance with § 123.23(b) or § 501.13 and an Indian Tribe subsequently seeks program assumption, the Indian Tribe's program submission is to include a description of how the Indian Tribe and the State intend to accomplish the transition in permitting authority. To the maximum extent practicable, the amendments call for (but do not require) this submission to include a MOA between the Indian Tribe and the previously authorized State describing how the transition will be accomplished. These provisions are set forth in § § 123.22(g) and 501.12(g).

Second, the final rule makes conforming changes to the existing regulations governing the contents of the MOA between EPA and the Indian Tribe seeking program approval (§ § 123.24(b)(1) and 501.14(b)). The MOA between EPA and the Indian Tribe now must specify how the Tribe and previously authorized State will accomplish the transition of permitting authority when a State (rather than EPA) is the existing authorized permitting authority for reservation lands. See § § 123.24(b)(1)(ii) and 501.14(b)(1)(ii).

Third, today's final rule revises existing regulations governing the transfer of EPA's permitting authority upon a State's obtaining program approval (§ § 123.1(d) and 501.1(f)). Those regulations currently provide that upon a State's obtaining program approval, EPA will suspend issuing permits, and, absent agreement to the contrary stated in the MOA between EPA and the State, EPA will retain jurisdiction over its existing permits as specified there. The language of § § 123.1(d)(2) and 501.1(f)(2) extends the current procedures to cover the circumstance in which a State (rather than EPA) is the existing authorized permitting authority for the reservation lands. That is, a previously authorized State will retain jurisdiction over its existing permits as described in §§123.1(d)(1) and 501.1(f)(1) absent a different arrangement provided in the MOA between EPA and the Tribe, as long as the authorized State agrees to the provisions relevant to permitting by the authorized State, in the Tribe's MOA with EPA (a State cannot be obligated by a Tribe's MOA agreements with EPA automatically).

The last mechanism for obtaining a smooth transfer to Tribal permitting authority would involve amending §123.62(a), which addresses revisions to State programs. The final rule adds language to existing §123.62(a) to make clear that if the State's approved program extends to a Federal Indian reservation and an Indian Tribe subsequently is approved for program assumption, this situation provides grounds for revision to the State program. The existing regulations governing revisions to State sludge management programs (40 CFR 501.32(b)) incorporate the revision procedures of §123.62 by reference. Thus, the final rule's amendment to §123.62(a) is also applicable to State sludge management programs.

In keeping with section 518(d) of the CWA, EPA strongly encourages Indian Tribes and States which have permitting authority on reservation lands to negotiate cooperative agreements to provide for a smooth and orderly transfer of permitting responsibility. Upon approval of the Indian Tribe's program assumption, EPA will promptly process any necessary revisions to the State's program or MOA with EPA to reflect the assumption of the program by the Indian Tribe.

Until Tribes qualify for the NPDES or State sludge management programs, however, EPA or an authorized State will administer those programs on Federal Indian reservations. EPA will, whenever possible, assume, without deciding, that existing permits on Federal Indian reservations issued by States without specific authorization under §123.23(b) or §501.13 contain enforceable limits. EPA's preliminary position on this issue was expressed in a September 9, 1988 letter from EPA's then General Counsel, Lawrence Jensen, to Dave Frohnmayer, Attorney General for the State of Oregon, a copy of which is available in the docket for today's rule. That letter provides:

> EPA is aware that some states have issued NPDES permits to certain dischargers on reservation lands. Until the NPDES program is delegated to a tribe, or until EPA otherwise determines in consultation with a state and tribe that a state lacks jurisdiction to issue NPDES permits on Indian lands, we will assume without deciding that those permits contain applicable effluent limits, in order to ensure that controls on discharges to reservation waters remain in place.

In other CWA rulemakings and for today's rule, EPA received comments on the interim statements made in Mr. Jensen's letter, and wishes to clarify that this policy is not an assertion that all State permits for reservations are necessarily valid as a matter of law. Rather, it is a mere recognition that fully implementing a role for Tribes under the CWA will require a period of transition. Were EPA simply to ignore all previously issued State permits in the interim period before the Tribes develop NPDES or State sludge management programs (or EPA issues a Federal permit), there would be a regulatory void which EPA believes would not be beneficial to preservation of water quality. EPA Regions will ensure in the future that NPDES States not authorized by EPA are not acting as the NPDES permit authority on reservations for any discharges. Prior to Tribal assumption of the NPDES or State sludge management programs previously administered by a State, EPA should issue or reissue permits on Federal Indian reservations, giving priority to Federal issuance of permits to reservation dischargers where it finds a particular need. Thus, EPA believes that the Agency's policy is the best approach to this issue, and one that best protects reservation environments in the interim period. To the extent that the interim guidance given in the Jensen letter implies a different intent in EPA's policy, today's statement supersedes it.

C. Additional Amendments

The final rule makes a number of other changes to the regulations to reflect definitions contained in CWA section 518 and make editorial and conforming changes as necessary to adjust the regulatory language to reflect that Indian Tribes would now be included in the definition of "State." A summary of these amendments is set forth below and all changes are as proposed on March 10, 1992 in the Federal Register (57 FR 8522).

With regard to definitions used in the regulations, the final rule revises §§122.2 and 501.2 of the regulations to incorporate the CWA section 518 definitions of "Indian Tribe" and "Federal Indian reservation," and also amends the existing definition of "State" to make clear that Indian Tribes may qualify for Treatment in the Same Manner as a State for purposes of assuming the NPDES and State sludge management programs.

The final rule also makes changes to the definitions set forth in §124.2 as necessary to incorporate the CWA section 518(e) definitions into part 124, which establishes procedures for decision making in several Federal environmental programs. In this regard, the SDWA Primacy Rule amended §124.2 to incorporate the definition of "Indian Tribe" used in that Act (53 FR 37410, September 26, 1988). The definition of Indian Tribe used in CWA section 518, however, differs from that used in the SDWA. The final rule leaves intact the SDWA definition, but adds separate definitions, for NPDES purposes, to incorporate the CWA's definitions of "Indian Tribe" and "Federal Indian reservation."

The SDWA Primacy Rule also amended the definition of "State" in §124.2 to include "an Indian Tribe treated as a State * * *" See 53 FR 37410. This definition is also adequate for the CWA because the terms "Indian Tribe" and "Federal Indian reservation" added in today's rule reflect the different requirements of CWA section 518(e). In addition, new §124.51(c) of this rule provides that an Indian Tribe qualified for Treatment in the Same Manner as a State for purposes of the Water Quality Standards program under 40 CFR 131.4 is qualified for Treatment in the Same Manner as a State for purposes of State certification of water quality standards pursuant to CWA section 401(a)(1).

Because the final rule adds Indian Tribes to the definition of "State," the final rule makes the necessary clarifying changes to §§123.1(h), 123.21(a)(1), 123.23(b), 501.11(a)(1), and 501.13 to clarify how their provisions apply in cases where the "State" is an approved Indian Tribe. For example, §123.1(h) refers to the fact that a State's lack of authority over Indian lands does not impede assumption of the NPDES program; the final rule rewords that provision to make clear that the section's reference to a State means a State other than an approved Indian Tribe. Similarly, §123.21 provides that requests for NPDES program assumption are to be submitted by the State Governor, and the final rule adds clarifying language to provide that in cases where the State seeking the program is an approved Indian Tribe, the submittal is to come from the Tribal authority equivalent to the Governor.

Finally, §123.1(b), which sets forth the list of authorities under which part 123 is issued, adds to the list specific reference to CWA section 518(e).

III. Response to Comments

A. Response to Comments on Proposed Rule (3/10/92)

Section 518(e) of the CWA requires consultation with Indian Tribes during regulation development. In keeping with this requirement, the Agency decided a multi-faceted consultation approach would be most appropriate. Tribal and State representatives were appointed to serve on various CWA Indian workgroups. In some cases, workgroup meetings were noticed in the **Federal Register** inviting the public to observe and offer comment. Other efforts to consult with Tribes and States included national meetings across the country to discuss the regulatory approaches proposed in the various CWA regulations with attendance by EPA officials at both Tribal and State meetings. Regulatory approaches being considered were presented and draft proposed rule language was distributed.

On April 12, 1989, a draft of this final rule was circulated for preliminary comment to various persons, including States, Indian Tribes, and EPA personnel (following a mailing list of federally recognized Tribes obtained by the Office of Water) for review and comment prior to issuing the proposed rule.

EPA believes that many difficult issues were resolved during the consultation period prior to proposal, and that this explains why relatively few comments were received on the proposal and why no changes to the final regulations are being made.

EPA received ten comments upon the proposed regulation published on March 10, 1992. The ten commenters included: Chickasaw Nation (OK), Idaho Department of Health and Welfare, Pueblo of Isleta (NM), Conoco, Inc. (TX), Muscogee (Creek) Nation (OK), Cherokee Nation (OK), Navajo Nation (AZ), Attorney General's Office (MT), Flathead Joint Board of Control for Flathead Indian Reservation (MT), and Confederated Tribes/Bands of the Yakima Indian Nation (WA).

Part A is organized by topic, for the more significant comments, into five sections: (1) Tribal regulation of fee lands of nonmembers; (2) Tribal jurisdiction under CWA section 518(e)(2); (3) transition issues; (4) criminal enforcement authority issues; and (5) other comments. Part B summarizes the comments received which support the rule and its provisions. Some sections within Part A and B, as necessary, have been further categorized by subtopic(s). Also a separate "Response to Comments" document has been prepared and is part of the docket for this rule.

1. Tribal Regulation of Fee Lands of Nonmembers

These issues concern EPA's interpretation and application of the law concerning the scope of inherent Tribal civil regulatory authority over nonmember activity(s) on fee lands within reservations.

Comment: One commenter expressed concern regarding EPA's understanding and application of the law concerning the scope of inherent Tribal civil regulatory authority over nonmember activity on fee lands within reservations. The commenter suggested that EPA's continued reference to the second *Montana* exception, (see *Montana* v. *United States*, 450 U.S. 544, 565–66 (1981)), as the basis for Tribal regulatory authority over nonmembers is at odds with the case of *Brendale* v. *Confederated Tribes and Bands of the Yakima Nation*, 492 U.S. 408 (1989) and *Duro* v.*Reina*, 110 S. Ct. 2053 (1990). The commenter believes EPA's conclusion regarding the above mentioned *Montana* exception was applied overbroadly in determining the extent of Tribal regulatory authority. The commenter adds that EPA's "interim operating rule," at 57 FR 8528, coupled with its "generalized findings," *id*. at 57 FR 8529, creates a *de facto* presumption of Tribal authority. The commenter suggests that while EPA's *de facto* presumption may be preferable from an administrative standpoint, a careful analysis is required to determine whether, in a specific instance, Tribal authority over nonmember lands is essential to protect vital Tribal interests.

A related comment was also received which seriously questioned whether Congress intended in enacting section 518 to abolish nonmembers' Fifth Amendment (U.S. Constitution) property and due process rights by subjecting them to Tribal regulatory authority.

Similar comments and recommendations were submitted by others concerning EPA's interpretation of *Brendale* and Tribal regulatory authority over nonmembers and their fee lands.

Response: With regard to the first comment, EPA does not read the holding in *Brendale* as preventing EPA from recognizing Tribes as States for purposes of administering the NPDES and/or State sludge management program on fee land within the reservation (since section 518 is not an express delegation of authority). In *Brendale*, both the State of Washington and the Yakima Nation asserted authority to zone non-Indian real estate developments on two parcels within the Yakima reservation, one in an area that was primarily Tribal, the other in an area where much of the land was owned in fee by nonmembers. Although the Court analyzed the issues and the appropriate interpretation of *Montana* at considerable length, the nine members split 4:2:3 in reaching the decision with regard to zoning authority over the two separate types of land. The decision reflects some difficult issues in this area of the law and has generated considerable controversy over the extent of Tribal authority. Given the lack of a majority rationale, EPA believes the primary significance of *Brendale* is in its result, which was fully consistent with *Montana* v.*United States*, which previously held that:

> To be sure, Indian Tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands. A tribe may regulate * * * the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements * * * A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the Tribe.

Montana, 450 U.S. at 565–66 (citations omitted).

In *Brendale*, the Court applied this test, finding Tribal authority over activities that would threaten the health and welfare of the Tribe, 492 U.S. at 443–444 (Stevens, J., writing for the Court); *id*. at 449–450 (Blackmun, J., concurring). Conversely, the Court found no Tribal jurisdiction where the proposed activities "would not threaten the Tribe's * * health and welfare." *Id*. at 432 (White, J., writing for the Court). The Agency therefore disagrees with commenters who argue that *Brendale* somehow overrules *Montana*.

Pending further judicial or Congressional guidance on the extent to which section 518 delegates additional authority to Tribes, it is EPA's opinion that the ultimate decision regarding Tribal authority must be made on a Tribe-by-Tribe basis and has finalized the proposed process for making these determinations. Therefore, EPA will not make a conclusive statement regarding the extent of Tribal jurisdiction over fee lands for all Tribes and all waters or even a statement regarding any particular reservation, except in the context of an actual Tribal application. This is consistent with the approach the Agency adopted under the SDWA, when it determined that it would not "automatically assume," or adopt, in the first instance, a rebuttable presumption of Tribal authority over all water within a reservation that would operate even in absence of any factual evidence. See 53 FR 37396, 37399 (September 26, 1988). Nonetheless, EPA sees no reason in light of *Brendale* to assume that Tribes would be *per se* unable to demonstrate authority over water resource management on fee land within reservation borders for purposes of administering the NPDES and/or State sludge management programs. Rather, EPA believes that as a general matter there are substantial legal and factual reasons to assume that Tribes ordinarily have the legal authority to regulate water resources within a reservation for purposes of administering the NPDES and/or State sludge management program, as long as the Tribes make the requisite demonstration linking this authority to regulate as protecting the public health, safety and welfare of Tribal members.

In response to the second comment, EPA for the reasons discussed earlier in this section, does not read the holding in *Brendale* as preventing EPA from recognizing Tribes in the same manner as States for purposes of administering the NPDES and/or State sludge management programs on fee lands within the reservation, even if section 518 is not an express delegation of authority. EPA agrees that Congress, by allowing Tribes to administer environmental programs for areas on which they have civil regulatory authority, did not intend to waive any due process rights of nonmembers on Indian lands. EPA does not believe, however, that recognition of a Tribe's authority over its waters would waive any such rights.

Comment: Another commenter suggested that the Agency adopt regulations which consider factors related to the size, proximity, use, character, and historical legal status of nonmember lands on reservations in deciding whether the Tribe has civil authority over those lands.

Response: EPA does not believe that such further regulations are necessary or appropriate. The Agency believes that factual determinations of Tribal jurisdiction must be made on a case-by-case basis and therefore a strict regulatory approach, as suggested by the commenter, would not be practical. Each reservation is unique and the factors considered in each determination will be different.

Comment: One commenter expressed concern regarding the intrusion of State jurisdiction on Indian reservations which would result from the proposed rule. The commenter felt that putting fee lands under the jurisdiction of the State would be detrimental to the non-Indian and Indian residents, and people who are located below the reservation.

Response: EPA agrees with the commenter that Tribal jurisdiction over land owned in fee by nonmembers should be determined on a case-by-case basis. In evaluating whether a Tribe has authority to regulate a particular activity on land owned in fee by nonmembers but located within a reservation, EPA will examine the Tribe's authority in light of the evolving case law as reflected in *Montana* and *Brendale*. EPA does not believe that this rule will cause any intrusion on Tribal jurisdiction over Indian lands.

2. Tribal Jurisdiction under CWA Section 518(e)(2)

Comment: One commenter strongly disagreed with EPA's interpretation of section 518(e) of the CWA, which sets out certain criteria for Indian Tribes to meet in order to be eligible for Treatment in the Same Manner as a State. Section 518(e)(2) lists as a requirement that:

> The functions to be exercised by the Indian tribe pertain to the management and protection of water resources which are held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation * * *

The commenter argues that EPA's interpretation of this language to allow a Tribe to seek CWA authorization only over surface waters within reservation boundaries, even if the Tribe owns water outside the reservation, is legally incorrect. The commenter suggests that EPA's interpretation of section 518 would mean that Tribes would not be able to obtain CWA program authorization over waters associated with land located outside the reservation boundaries, even if the land is held in trust. The commenter contends that if EPA's interpretation were correct, there would be no need to list the three areas covered by the statute; it would be sufficient to state simply that the Act applies to lands within the borders of the reservation. The commenter concluded with the recommendation that the listing of the three different types of land indicated Congressional intent to apply the statute to all of those lands, and not just those lands located within the reservation.

Response: For the reasons discussed above, EPA has consistently read the language of section 518(e)(2) as limiting the Tribe to acquiring Treatment in the Same Manner as a State status for the four specified categories of water resources within the borders of the reservation.

EPA believes that it was the intent of Congress to provide Tribes the opportunity to obtain Treatment in the Same Manner as a State status for land within a federally recognized Indian reservation as defined in CWA section 518(h)(1). However, EPA does not believe that section 518(e)(2) prevents EPA from recognizing Tribal authority over non-Indian water resources located within the reservation if the Tribe can demonstrate the requisite authority over such water resources. In addition, the meaning of the term "reservation" must be determined in light of statutory law and with reference to relevant case law. EPA considers trust land formally set apart for the use of Indians to be "within a reservation" for the purposes of section 518(e)(2), even if they have not been formally designated as "reservations." *Oklahoma Tax Comm'n v.Citizen Band Potawatomi Indian Tribe of Oklahoma*, 111 S. Ct. 905, 910 (1991). This means it is the status and use of the land that determines if it is to be considered "within a reservation" rather than the label attached to it. EPA will take the status of the land into consideration on a case-by-case basis when evaluating a Tribe's application for Treatment in the Same Manner as a State.

Comment: One commenter also disagreed with EPA's statement that adopting a narrow interpretation of the language in section 518(e) "may reduce the potential for disputes since Tribal authority to regulate within the reservation's borders may be more readily determined." The commenter suggested that EPA may be arbitrarily limiting a Tribe's area of legal jurisdiction in the interest of minimizing potential disputes between Tribes and States. The commenter further added that if this were EPA's intent, then the Agency would clearly be stepping outside the bounds of its administrative authority.

Response: EPA recognizes the issue of Tribal jurisdiction outside the exterior boundaries of a reservation is potentially a very real problem. The Agency recognizes that jurisdictional disputes between Tribes and States could be complex and difficult and that the Agency will, in some circumstances, be forced to address such disputes. However, EPA's ultimate responsibility is protection of the environment. In view of the mobility of environmental problems and the interdependence of various jurisdictions, EPA believes that it is imperative that all sovereign affected parties work cooperatively for environmental protection, rather than engage in confrontations over jurisdiction. EPA's statement was not intended to be an administrative limitation on Tribal authority, but merely an acknowledgement of the language in section 518(e).

Comment: Another issue raised concerned the status and use of the land in defining what constitutes a "Federal Indian reservation." The comment questioned EPA's definition of "Federal Indian reservation" as contained in proposed § § 122.2, 124.2, and 501.2. The comment requested that an additional definition be added which reflects Tribal jurisdiction over water on lands not within the reservation boundaries, or that clarified *Potawatomi's* effect on the definition of "reservation."

Response: As discussed previously, the status and use of the land are intimately tied to the specific land being evaluated. EPA, therefore, does not believe that it would be practical to attempt to define the term "Federal Indian reservation" further within the scope of this rule. Whether specific land is considered within the boundaries of a reservation must be a factual determination made on a case-by-case basis at the time of application under section 518 based on applicable law at the time. EPA believes it is appropriate for the regulatory language to reflect the statutory definition, but will interpret that language in light of all appropriate case law.

3. Transition Issues

Comment: One commenter expressed several concerns about the transfer of an NPDES program(s) from an authorized State to an authorized Indian Tribe(s). The commenter indicated that this rule "will result in long delays, bordering upon complete shutdown, unless EPA maintains close oversight, particularly during the early stages of the transition from EPA to the Indian Tribe or State to the Indian Tribe." The commenter added that there must be "a very clear showing of immediate capability" of an Indian Tribe to assume NPDES and/or State sludge management program authority before an application is approved by EPA. "Otherwise serious delays would be inevitable."

The commenter further contended that detailed procedures for the transition from an authorized State to an authorized Indian Tribe must be developed and published for public scrutiny and comment before the proposed rule was finalized.

Response: EPA does not believe that "long delays, bordering upon complete shutdown" will occur during the transition from EPA or States to Tribal authority. EPA presumes an efficient transition will occur for three reasons: (1) Only those Tribes which have demonstrated capability to implement and manage the program in question will receive program authority; (2) the demonstration of capability does not release the Tribe from the traditional requirement imposed upon all States (except for criminal enforcement, for which the responsibility remains with EPA) for assumption of an NPDES or sludge program that the State program must be fully effective at the time of program approval; and (3) EPA is responsible for oversight of the NPDES programs it authorizes through its Regional offices. See, for example, 40 CFR 123.23(a) and 501.14. Therefore, EPA does not anticipate the serious delays envisioned by the commenter.

In response to the second concern, the transition will proceed according to the same regulatory procedures outlined for State program assumption as amended by this rule for Indian Tribes (see existing and revised 40 CFR 123.22 and 501.12). Since the number of cases of transfer of authority from an authorized State (with approved authorization to regulate on Federal Indian reservations) to an Indian tribe may be relatively few, particularly since EPA has not explicitly authorized States to issue permits on Indian lands, EPA will need to retain programmatic flexibility in order to deal with transitions on a case-by-case basis. In addition, EPA will be available for requested guidance and direction during the transition, especially at the time of program submission by the Indian Tribe. Also, NPDES/Sludge management applications by Tribe(s) will be public noticed and subject to comment upon receipt. It may be appropriate at that phase of the program authorization process to raise any specific case-by-case issue(s) (see existing 40 CFR 123.22 and 501.12).

Comment: One commenter suggested that EPA should never "assume" that a State permit for discharges on reservation lands contains applicable effluent limits. The commenter also disagreed with EPA's proposal that an authorized State retain jurisdiction over its existing permits absent a different arrangement stated in the MOA executed between EPA and the Tribe. The commenter asserted that this "can only result in a bifurcated program for Tribal lands that will exacerbate the problems already inherent with the NPDES program."

Response: In other CWA rulemakings, EPA has received comments on its assumption that existing permits on Federal Indian reservations issued by States without specific authorization for issuing permits on Federally recognized Indian reservations under § 123.23(b) or § 501.13 contain enforceable limits. As noted above, this policy is not an assertion that all State permits for discharging on reservations are necessarily valid as a matter of law. Rather, it is a mere recognition that fully implementing a role for Tribes under the CWA will require a period of transition. Were EPA to simply ignore all previously issued State permits in the interim period before Tribes develop NPDES or State sludge management programs (or EPA issues a Federal permit), there would be a regulatory void which EPA believes would not be beneficial to preservation of water quality. EPA intends to reissue and exercise Federal jurisdiction when previous State permits expire (if the State does not have the requisite jurisdiction and authorization on Federal Indian reservations).

The procedures outlined for State retention of jurisdiction over its existing permits parallel those currently in place for transition from EPA to State authority. In general, these procedures have proved very workable and EPA has no reason to believe that they will not work as well for transition from State to Tribal authority. Such a transition period will also allow the new Tribal program an opportunity to implement the program in stages and will promote cooperation and contacts between the Tribal and State authorities. For this reason, EPA does not believe that the above referenced statement will result in a "bifurcated program." In addition, as a practical matter, EPA has not expressly authorized States to operate an NPDES or sludge program on Indian lands.

Comment: Another commenter expressed concern over the proposed procedures in § 123.1 for transfer of existing permits between a State and a Tribe treated in the same manner as a State. The commenter expressed concern that EPA has allowed States to assume certain permitting responsibilities on Indian lands in the absence of Tribal permitting programs. The commenter believes that any necessary NPDES permits on Indian lands should have been issued by EPA and not by any State. The commenter asserted that any State-issued permit on an Indian reservation is null and void, and therefore EPA should immediately transfer any State-issued permits into

Federal permits until such time that Tribal permitting programs are in effect.

A second issue raised by the commenter concerns§ 123.22(g), which provides that an authorized Indian Tribe and State should enter into a MOA to transfer the necessary files, applications, and other information, without any mention of the role of EPA. The commenter believes that EPA has a responsibility to administer all environmental regulatory programs in the absence of Tribal environmental programs, and, as such, should have a strong role in fulfilling this responsibility instead of leaving it to the Tribe and State to work out such an arrangement.

Response: EPA regulations allow for the possibility that a State may be authorized to issue NPDES permits on a Federal Indian reservation after adequate demonstration by the State of regulatory capability, although EPA recognizes that the threshold demonstration is high and that EPA has not expressly authorized a State to do so. Nonetheless, if such a situation were to occur and, if an Indian Tribe were subsequently to obtain approval for Treatment in the Same Manner as a State and NPDES program authorization, the regulatory authority would be transferred from the authorized State to the now authorized Tribe. As discussed above, EPA recognizes that certain States which have not been specifically authorized for issuing State permits on Federally recognized Indian reservations under § 123.23(b) or § 501.13 have nonetheless issued permits on Federal Indian reservations. As discussed in Section II.B, EPA will presume the State permits to be valid and contain enforceable limits. When the State-issued permit expires, EPA will reissue the permit on the Federal Indian reservation unless the Indian Tribe has been authorized to operate the NPDES program.

Any official transfer of authority will be from EPA to the authorized Indian Tribe(s). However, in instances where a State has been the *de facto* permitting authority on Federal Indian reservations there may be the potential for some transfer of NPDES State files to the authorized Tribe(s). A more effective administrative transfer of information may be to transmit the files directly from the NPDES State to the Tribe seeking program approval, rather than through EPA to the authorized Tribe. For this reason, EPA believes that the NPDES State and Tribe should consider entering into an MOA specifying how the Tribe and the previously authorized State will accomplish the transition of information and files relevant to permitting authority. This is not to say that EPA will have no role in this transition since EPA has ultimate oversight authority. EPA will be available for assistance to the Tribe or State as well as closely monitor the transition process. In addition, EPA will have the final review of the transition process between the Tribe and the State since it will be described in the Tribe's application for NPDES or sludge program authorization.

4. Criminal Enforcement Authority

Comment: A commenter expressed concern about the proposed amendment of § § 123.34 and 501.25 to allow Federal criminal prosecutions where the Tribe lacks jurisdiction. The commenter suggested that what may be legal under Federal or State regulation may be made criminal under Tribal regulation. Thus, it may not be an adequate substitute to have the Federal Government exercise criminal enforcement power.

Response: Section 518 of the CWA provides the opportunity for Tribes to apply for NPDES and sludge program management authorization(s). EPA may in some cases have to exercise criminal enforcement to the extent permitted under section 309 of the CWA. EPA also has oversight enforcement authority for both civil and criminal cases.

The commenter raises a valid point regarding the potential for criminal provisions in Indian programs. It is possible that a Tribe would wish to enact criminal provisions due to Tribal regulatory standards which may be different from previously established standards. The Agency is bound by its criminal enforcement authority under section 309 of the CWA. Therefore, the Agency likely would lack the authority to take a criminal enforcement action against a nonmember on a reservation subject to an authorized Indian Tribe's NPDES program in a situation where the Agency would not itself initiate action under section 309. In order to alleviate such potential conflicts, EPA will endeavor to make clear to Tribes drafting such programs this potential enforcement limitation.

Comment: One commenter disagreed with EPA's conclusion that Congressional failure to waive the criminal enforcement requirement was unintentional. The commenter noted that section 518 was enacted almost ten years after the Supreme Court decision in *Oliphant* and argued that Congress would be well aware of the relevant jurisdictional decisions of the Supreme Court. The commenter further suggested that examining the scope of a Tribe's criminal jurisdiction would not, as EPA had also concluded, prevent Tribes from implementing any program. Rather, the commenter asserted that on some reservations it would have no effect, while on others it would merely limit Tribal authority to activities by persons over which it possesses criminal jurisdiction. Therefore, in no way would the examination of the scope of Tribal authority completely eliminate the opportunity for a Tribe to implement any CWA program.

Response: EPA disagrees with the commenter's arguments. The existing NPDES regulations require States to have certain minimum criminal enforcement powers, however, this is not possible for Tribes for all possible classes of discharges on Federal Indian reservations. EPA disagrees that the proper solution is to limit the Tribal authorized program to persons over which the Tribe has criminal authority. This would mean that permits for some sources on reservations would be issued by the Tribe and others by EPA. EPA believes that this system would be less efficient than having the Tribe refer some criminal cases to EPA, but issue all permits on the reservation.

5. Other Comments

a. Simplification of Tribal Application for Treatment in the Same Manner as a State.

Comment: A commenter noted that, in the preamble to the proposed rule, EPA indicated that in most instances a Tribe need only qualify once for Treatment in the Same Manner as a State under either the SDWA or the CWA. The commenter suggested that this statement appears to be contrary to representations by EPA, in the context of section 106 grants under the CWA, that granting Treatment in the Same Manner as a State for one program did not equate to a finding that Treatment in the Same Manner as a State is appropriate for all programs designated in section 518. The commenter noted that since Tribes undoubtedly possess requisite authority to receive Federal grants, EPA's narrow explanation of the scope of Treatment in the Same Manner as a State determinations under section 106 made some sense. If in fact EPA is now deviating from its prior representations that the Agency would examine Tribal authorities when reviewing applications for Treatment in the Same Manner as a State for each distinct program, the statement in the proposed rule preamble should be revised.

Response: EPA has interpreted the required qualification criteria for Treatment in the Same Manner as a State as being basic requirements and, therefore, determined that an Indian Tribe need only demonstrate once that it meets all of the criteria, at the time of initial application under the CWA, SDWA, or other EPA program. Since no statute compels the use of a formal Treatment in the Same Manner as a State or other prequalification process, the Agency also plans in the future to modify those portions of its existing and any later regulations that effectively treat Treatment in the Same Manner as a State approval as a discrete process. After a Tribe has been approved for Treatment in the Same Manner as a State under any statute, it will subsequently need to demonstrate only that it satisfies the "capability" criterion for the individual CWA program and may possibly need to show specific jurisdiction to administer a particular CWA or other program. For example, a Tribe applying for an NPDES or sludge program authorization will need only to provide the new or uniquely different program specific demonstration criteria required of all applicants for the respective program authorization being sought. To facilitate this process, EPA is in the process of establishing identical Agency requirements based on section 518 of the CWA for making the recognition and government demonstrations under each statute as directed by a November 10, 1992 memorandum from EPA's Deputy Administrator, a copy of which is in the docket for today's rule.

b. Tribal Funding.

Comment: Several comments were received from Tribal and other commenters regarding funding for Tribes and particularly how available funding or lack thereof could affect a Tribe's regulatory program implementation and administrative success.

One Tribe commented that establishing rules and procedures when "funds are limited," without adequate funding for implementation has minimal impact on Tribes.

Another commenter felt that it was incumbent upon EPA to fund the Tribe for the protection of member resources at the same level as the States are funded. The commenter suggested that the right to Treatment of the Tribe in the Same Manner as a State is virtually meaningless without the proper funds to carry out the provisions of the CWA. The commenter further asserted that any type of reduction or cap on the funds for Tribal enforcement would be unacceptable.

Response: EPA provides available funding to authorized permitting authorities such as States or Indian Tribes through a variety of programs such as grants under sections 106 and 104(b)(3) of the CWA depending on the available funding each fiscal year.

EPA agrees with the commenter that adequate funding is essential for program development and implementation, however, Federal budget constraints may limit funding. Some Indian Tribes may decide that it is not cost-effective to apply for various CWA program authorities, however, EPA encourages Tribes to consider submitting applications for program authorizations which may result in the greatest environmental benefits to the Tribe.

c. Tribal Standards Under the CWA.

Comment: One comment agreed that the CWA clearly allows certain Tribal organizations to be treated in the same manner as States, but questioned whether Indian Tribes can impose requirements which are more stringent than Federal requirements.

Response: According to CWA section 510, States have the authority to adopt or enforce any requirements for the control of water pollution which are no less stringent than those adopted by EPA.

Once an Indian Tribe qualifies for Treatment in the Same Manner as a State and is authorized to operate the NPDES or Sludge Management Program as outlined in this rule, the Tribe is treated as any other NPDES authorized State. Therefore, such Tribes may impose any standards that are not less stringent than Federal requirements under 40 CFR 122.44 and 501.15(b)(2).

d. EPA's "Regulatory Flexibility Act" Analysis.

Comment: One commenter disagreed with EPA's conclusion that only a small fraction of Tribes who apply would be significantly impacted.

Response: In evaluating the rule under the Regulatory Flexibility Act, EPA believes that the impact of the rule will not be significant for three reasons. First, Tribal assumption of these programs is entirely voluntary and EPA anticipates that relatively few Indian Tribes will decide that it would be beneficial to apply for these CWA program authorities. Therefore, the number of impacted small governmental entities (Tribes) will be smaller than the total number of Indian Tribes. Second, the information required by this rule is considered to be the minimum necessary to effectively evaluate applications to treat Indian Tribes in the same manner as States for the purposes of the NPDES and State sludge management programs.

Third, EPA intends to establish the least burdensome process possible for Tribes to demonstrate State eligibility under both the Clean Water Act and the Safe Drinking Water Act. The Agency is developing procedures to implement a single application procedure for the SDWA and CWA programs for those aspects of Treatment in the Same Manner as a State which are similar under both statutes. For example, the "Federal recognition" and "governmental duties and powers" criteria will almost always require the same demonstration, and under most circumstances need only be demonstrated once at the time of initial application for programs under either of the Acts. In addition, if a Tribe is authorized to operate another CWA program, the Tribe will likely already have the required infrastructure and capability when applying for additional CWA programs.

B. Supporting Comments

Several comments were received expressing support for the rule's Treatment in the Same Manner as States provisions. Other comments supported some of EPA's determinations regarding authorization flexibility and other related issues. Detailed responses to each of the supporting comments can be found in the "Response to Comments" document which is contained in the docket for today's rule.

IV. Other Regulatory Requirements

A. Compliance with Executive Order 12291 (Regulatory Impact Analysis)

Executive Order 12291 (46 FR 13193, February 19, 1981) requires that a regulatory agency determine whether a new regulation will be "major" and, if so, that a Regulatory Impact Analysis be conducted. A major rule is defined as a regulation which is likely to result in:

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

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

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

Because the final rule does not meet the definition of a major regulation, the Agency is not conducting a Regulatory Impact Analysis.

EPA believes the effect on the regulated community of promulgation of this final rule will be a substitution of one permitting authority (either EPA or an authorized NPDES State) for another (the newly authorized Indian Tribe).

Indian Tribe(s) who do apply will incur costs to complete the regulatory process for obtaining State NPDES and sludge program authorization. EPA considers the information required by this rule to be the minimum necessary to demonstrate the requirements of CWA section 518(e) in order to effectively evaluate applications to treat Indian Tribes in the same manner as States for the purposes of the NPDES and State sludge management programs.

The proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. The final rule was submitted to OMB and was approved on September 24, 1993.

B. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0057.

This collection of information is estimated to have a public reporting burden averaging 155 hours per response, and to require 50 hours per recordkeeper annually. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Please send any comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch (2136); U.S. Environmental Protection Agency; 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." Copies of the ICR may be obtained by writing to the same EPA address listed above, to the attention of Sandy Farmer, Information Policy Branch (2136); or by calling (202) 260–2740.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, EPA generally must prepare a Regulatory Flexibility Analysis for all regulations that have a significant impact on a substantial number of small entities. The RFA recognizes three kinds of small entities and defines them as follows:

-Small governmental jurisdictions—any government of a district with a population of less than 50,000.

-Small business—any business which is independently owned and operated and not dominant in its field as defined by Small Business Administration regulations under section 3 of the Small Business Act.

-Small organization—any not-for-profit enterprise that is independently owned and operated and not dominant in its field (e.g., private hospitals and educational institutions).

Using the above definition of small entity, EPA has concluded that the final regulation will not have a significant impact on a substantial number of small entities, and that a Regulatory Flexibility Analysis is unnecessary. EPA has reached this conclusion based on the following considerations.

The final rule will not have a significant impact on a substantial number of small governmental organizations. There are currently 542 Federally recognized Indian Tribes. EPA anticipates that 281 reservation governments may potentially apply for the NPDES or State sludge management programs. EPA believes that the number of Tribes subject to significant impacts as a result of this regulation will be a small fraction of the total that may apply. This determination is based on the best available information EPA currently has concerning the present status of Tribal resources and existing Tribal government infrastructures as a whole. EPA believes that NPDES program authorizations for Tribes will be an evolving process and that until the applications are actually submitted to the Agency for approval and evaluated on a case-by-case basis (thus possibly yielding new information), the best facts available support a conclusion that no significant impacts will result from promulgation of this final rule. EPA considers the information required by this rule to be the minimum necessary to effectively evaluate applications to treat Indian Tribes as States for the purpose of the NPDES and State sludge management programs.

The final rule will not have a significant impact on a substantial number of small businesses. Although it is conceivable that an Indian Tribe could impose greater requirements upon a permit applicant than the existing permitting authority, such situations will be rare.

The final rule will not have a significant impact on a substantial number of small organizations for the same reasons that the final rule will not have a significant impact on a substantial number of small businesses.

Accordingly, EPA certifies that this final rule will not have a significant economic impact on a number of small entities.

List of Subjects

40 CFR Part 122

Administrative practice and procedure, Air pollution control, Confidential business information, Environmental protection, Hazardous substances, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply.

40 CFR Part 123

Administrative practice and procedure, Confidential business information, Environmental protection, Hazardous substances, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply.

40 CFR Part 124

Administrative practice and procedure, Air pollution control, Environmental protection, Hazardous substances, Indian lands, Reporting and recordkeeping requirements, Sewage disposal, Waste treatment and disposal, Water pollution control, Water supply.

40 CFR Part 501

Administrative practice and procedure, Confidential business information, Environmental protection, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Sewage disposal, Waste treatment and disposal.

Dated: December 10, 1993.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 122.2 of subpart A is amended by adding in alphabetical order, new definitions for "Federal Indian reservation" and "Indian Tribe"; and by revising the definition, "State" to read as follows:

§ 122.2 Definitions.

* * * * *

Federal Indian reservation means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

* * * * *

Indian Tribe means any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.

* * * * *

State means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, or an Indian Tribe as defined in these regulations which meets the requirements of § 123.31 of this chapter.

* * * * *

PART 123—STATE PROGRAM REQUIREMENTS

3. The authority citation for part 123 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

4. Section 123.1 of subpart A is amended by revising paragraphs (b) and (h), by redesignating (d) as (d)(1), and by adding a new paragraph (d)(2) to read as follows:

§ 123.1 Purpose and scope.

* * * * *

(b) These regulations are promulgated under the authority of sections 304(i), 101(e), 405, and 518(e) of the CWA, and implement the requirements of those sections.

* * * * *

(d)(1) * * *

(2) The procedures outlined in the preceding paragraph (d)(1) of this section for suspension of permitting authority and transfer of existing permits will also apply when EPA approves an Indian Tribe's application to operate a State program and a State was the authorized permitting authority under § 123.23(b) for activities within the scope of the newly approved program. The authorized State will retain jurisdiction over its existing permits as described in paragraph (d)(1) of this section absent a different arrangement stated in the Memorandum of Agreement executed between EPA and the Tribe.

* * * * *

(h) In many cases, States (other than Indian Tribes) will lack authority to regulate activities on Indian lands. This lack of authority does not impair that State's ability to obtain full program approval in accordance with this part, i.e., inability of a State to regulate activities on Indian lands does not constitute a partial program. EPA will administer the program on Indian lands if a State (or Indian Tribe treated as a State) does not seek or have authority to regulate activities on Indian lands.

* * * * *

5. Section 123.21 of subpart B is amended by revising paragraph (a)(1), by redesignating paragraph (b) as (b)(1), and by adding a new paragraph (b)(2) to read as follows:

§ 123.21 Elements of a program submission.

(a) * * *

(1) A letter from the Governor of the State (or in the case of an Indian Tribe eligible for treatment as a State in accordance with § 123.33(e), the Tribal authority exercising powers substantially similar to those of a State Governor) requesting program approval;

* * * * *

(b)(1) * * *

(2) In the case of an Indian Tribe eligible for treatment as a State under § 123.33(e), EPA shall take into consideration the contents of the Tribe's request for treatment as a State submitted under § 123.32, in determining if the program submission required by § 123.21(a) is complete.

* * * * *

6. Section 123.22 of subpart B is amended by adding a new paragraph (g) to read as follows:

§ 123.22 Program description.

* * * * *

(g) In the case of Indian Tribes eligible for treatment as a State under § 123.33(e), if a State has been authorized by EPA to issue permits on the Federal Indian reservation in accordance with § 123.23(b), a description of how responsibility for pending permit applications, existing permits, and supporting files will be transferred from the State to the eligible Indian Tribe. To the maximum extent practicable, this should include a Memorandum of Agreement negotiated between the State and the Indian Tribe addressing the arrangements for such transfer.

7. Section 123.23 of subpart B is amended by revising paragraph (b) to read as follows:

§ 123.23 Attorney General's statement.

* * * * *

(b) If a State (which is not an Indian Tribe) seeks authority over activities on Indian lands, the statement shall contain an appropriate analysis of the State's authority.

* * * * *

8. Section 123.24 of subpart B is amended by redesignating paragraph (b)(1) as (b)(1)(i) and by adding a new paragraph (b)(1)(ii) to read as follows:

§ 123.24 Memorandum of Agreement with the Regional Administrator.

* * * * *

(b) * * *

(1)(i) * * *

(ii) Where a State has been authorized by EPA to issue permits in accordance with § 123.23(b) on the Federal Indian reservation of the Indian Tribe seeking program approval, provisions describing how the transfer of pending permit applications, permits, and any other information relevant to the program operation not already in the possession of the Indian Tribe (support files for permit issuance, compliance reports, etc.) will be accomplished.

* * * * *

9. Section 123.25 of subpart B is amended by revising paragraph (a)(12) to read as follows:

§ 123.25 Requirements for permitting.

(a) * * *

(12) Section 122.41—(Applicable permit conditions)(Indian Tribes can satisfy enforcement authority requirements under § 123.34).

* * * * *

10. Section 123.27 of subpart A is amended by adding a new paragraph (e) to read as follows:

§ 123.27 Requirements for enforcement authority.

* * * * *

(e) Indian Tribes that cannot satisfy the criminal enforcement authority requirements of this section may still receive program approval if they meet the requirement for enforcement authority established under § 123.34.

11. Section 123.31 is added to subpart B to read as follows:

§ 123.31 Requirements for treatment of Indian Tribes as States.

(a) Consistent with section 518(e) of the CWA, 33 U.S.C. 1377(e), the Regional Administrator will treat an Indian Tribe as a State for purposes of making the Tribe eligible to apply for NPDES program authority if it meets the following criteria:

(1) The Indian Tribe is recognized by the Secretary of the Interior.

(2) The Indian Tribe has a governing body carrying out substantial governmental duties and powers.

(3) The functions to be exercised by the Indian Tribe pertain to the management and protection of water resources which are held by an Indian Tribe, held by the United States in trust

for the Indians, held by a member of an Indian Tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation.

(4) The Indian Tribe is reasonably expected to be capable, in the Regional Administrator's judgment, of carrying out the functions to be exercised, in a manner consistent with the terms and purposes of the Act and applicable regulations, of an effective NPDES permit program. This capability may be demonstrated by the existence of management and technical skills necessary to administer an effective NPDES permit program; by the existence of institutions to exercise executive, legislative, and judicial functions; and by a history of successful managerial performance of public health or environmental programs. There must be sufficient independence of regulated entities and the agency of the Indian Tribe which assumes primary responsibility for establishing and administering an NPDES program necessary to assure effective and fair administration of the program.

(b) An Indian Tribe which the Regional Administrator determines meets the criteria described in paragraph (a) of this section must also satisfy the State program requirements described in this part for assumption of the State program.

12. Section 123.32 is added to subpart B to read as follows:

§ 123.32 Request by an Indian Tribe for a determination of eligibility for treatment as a State.

An Indian Tribe may apply to the Regional Administrator for a determination that it qualifies for treatment as a State pursuant to section 518 of the Act for purposes of seeking NPDES permit program approval. The application shall be concise and describe how the Indian Tribe will meet each of the requirements of § 123.31. The application shall include the following information:

(a) A statement that the Tribe is recognized by the Secretary of the Interior;

(b) A descriptive statement demonstrating that the Tribal governing body is currently carrying out substantial governmental duties and powers over a defined area. This statement shall:

(1) Describe the form of the Tribal government;

(2) Describe the types of governmental functions currently performed by the Tribal governing body, such as, but not limited to, the exercise of police powers affecting (or relating to) the health, safety, and welfare of the affected population; taxation; and the exercise of the power of eminent domain; and

(3) Identify the source of the Tribal government's authority to carry out the governmental functions currently being performed.

(c) A map or legal description of the area over which the Indian Tribe asserts authority under section 518(e)(2) of the Act; a statement by the Tribal Attorney General (or equivalent official authorized to represent the Tribe in all legal matters in court pertaining to the program for which it seeks approval) which describes the basis for the Tribe's assertion (including the nature or subject matter of the asserted regulatory authority); a copy of all documents such as Tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions which support the Tribe's assertion under section 518(e)(2) of the Act; and a description of the location of the surface waters for which the Tribe proposes to establish an NPDES permit program.

(d) A narrative statement describing the capability of the Indian Tribe to administer an effective, environmentally sound NPDES permit program. The statement shall include:

(1) A description of the Indian Tribe's previous management experience including, but not limited to, the administration of programs and service authorized by the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*), the Indian Mineral Development Act (25 U.S.C. 2101 *et seq.*), or the Indian Sanitation Facility Construction Activity Act (42 U.S.C. 2004a);

(2) A list of existing environmental or public health programs administered by the Tribal governing body, and a copy of related Tribal laws, regulations, and policies;

(3) A description of the entity (or entities) which exercise the executive, legislative, and judicial functions of the Tribal government;

(4) A description of the existing, or proposed, agency of the Indian Tribe which will assume primary responsibility for establishing and administering an NPDES permit program (including a description of the relationship between the existing or proposed agency and its regulated entities);

(5) A description of the technical and administrative abilities of the staff to administer and manage an effective, environmentally sound NPDES permit program or a plan which proposes how the Tribe will acquire additional administrative and technical expertise. The plan must address how the Tribe will obtain the funds to acquire the administrative and technical expertise.

(e) The Regional Administrator may, at his or her discretion, request further documentation necessary to support a Tribal request for treatment as a State.

(f) If the Administrator or his or her delegatee has previously determined that a Tribe has met the requirements for "treatment as a State" for other programs authorized under the Safe Drinking Water Act or the Clean Water Act, then the Tribe need only provide that additional information unique to the NPDES program which is requested by the Regional Administrator.

13. Section 123.33 is added to subpart B to read as follows:

§ 123.33 Procedures for processing an Indian Tribe's application for treatment as a State.

(a) The Regional Administrator shall process an application of an Indian Tribe for treatment as a State submitted pursuant to § 123.32 in a timely manner. He shall promptly notify the Indian Tribe of receipt of the application.

(b) Within 30 days after receipt of the Indian Tribe's complete application for treatment as a State, the Regional Administrator shall notify all appropriate governmental entities. Notice shall include information on the substance of and bases for the Tribe's assertions that it meets the requirements of § 123.31(a)(3).

(c) Each governmental entity so notified by the Regional Administrator shall have 30 days to comment upon the Tribe's assertion of jurisdiction. Comments by governmental entities shall be limited to the Tribe's assertion under § 123.31(a)(3).

(d) If a Tribe's assertion under § 123.31(a)(3) is subject to a competing or conflicting claim, the Regional Administrator, after consultation with the Secretary of the Interior, or his designee, and in consideration of other comments received, shall determine whether the Tribe has adequately demonstrated that it meets the requirements of § 123.31(a)(3).

(e) If the Regional Administrator determines that a Tribe meets the requirements of § 123.31, the Indian Tribe is then eligible to be treated as a State for purposes of applying for assumption of the NPDES permit program.

(f) The Regional Administrator shall follow the procedures described in 40 CFR part 123, subpart D in processing a Tribe's request to assume the NPDES program.

14. Section 123.34 is added to subpart B to read as follows:

§ 123.34 Provisions for Tribal criminal enforcement authority.

To the extent that an Indian Tribe is precluded from asserting criminal enforcement authority as required under § 123.27, the Federal Government will exercise primary criminal enforcement responsibility. The Tribe, with the EPA Region, shall develop a procedure by which the Tribal agency will refer potential criminal violations to the Regional Administrator, as agreed to by the parties, in an appropriate and timely manner. This procedure shall encompass all circumstances in which the Tribe is incapable of exercising the enforcement requirements of § 123.27. This agreement shall be incorporated into a joint or separate Memorandum of Agreement with the EPA Region, as appropriate.

15. Section 123.62 of subpart D is amended by adding a sentence to the end of paragraph (a) to read as follows:

§ 123.62 Procedures for revision of State programs.

* * * * *

(a) * * * Grounds for program revision include cases where a State's existing approved program includes authority to issue NPDES permits for activities on a Federal Indian reservation and an Indian Tribe has subsequently been approved for assumption of the NPDES program under 40 CFR part 123 extending to those lands.

* * * * *

PART 124—PROCEDURES FOR DECISIONMAKING

16. The authority citation for part 124 is revised to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; Clean Air Act, 42 U.S.C. 7401 *et seq.*

17. Section 124.2 of subpart A is amended by adding in alphabetical order a definition for "Federal Indian reservation" and by revising the definition for "Indian Tribe" to read as follows:

§ 124.2 Definitions.

* * * * *

Federal Indian reservation (in the case of NPDES) means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

* * * * *

Indian Tribe means (in the case of UIC) any Indian Tribe having a federally recognized governing body carrying out substantial governmental duties and powers over a defined area. For the NPDES program, the term "Indian Tribe" means any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.

* * * * *

18. Section 124.51 of subpart D is amended by adding a new paragraph (c) to read as follows:

§ 124.51 Purpose and scope.

* * * * *

(c) As stated in 40 CFR 131.4, an Indian Tribe that is qualified for treatment as a State for purposes of the Water Quality Standards program is likewise qualified for treatment as a State for purposes of State certification of water quality standards pursuant to section 401(a)(1) of the Act and subpart D of this part.

* * * * *

PART 501—STATE SLUDGE MANAGEMENT PROGRAM REGULATIONS

19. The authority citation for part 501 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

20. Section 501.1 of subpart A is amended by revising paragraph (c)(5), by redesignating paragraph (f) as (f)(1), and by adding paragraph (f)(2) to read as follows:

§ 501.1 Purpose and scope.

* * * * *

(c) * * *

(5) The authority to abate violations of the State sludge program, including civil and criminal penalties and other ways and means of enforcement. Indian Tribes can satisfy criminal enforcement authority requirements under § 501.25.

* * * * *

(f)(1) * * *

(2) The procedures outlined in the preceding paragraph (f)(1) of this section for the suspension of permitting authority and transfer of existing permits will also apply when EPA approves an Indian Tribe's application to operate a State sludge management program and a State was the authorized permitting authority under § 501.13 for sludge management activities within the scope of the newly approved program. The authorized State will retain jurisdiction over its existing permits as described in paragraph (f)(1) of this section absent a different arrangement stated in the Memorandum of Agreement executed between EPA and the Tribe.

* * * * *

21. Section 501.2 of subpart A is amended by adding in alphabetical order definitions for "Federal Indian reservation" and "Indian Tribe", and by revising the definition for "State" to read as follows:

§ 501.2 Definitions.

* * * * *

Federal Indian reservation means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

* * * * *

Indian Tribe means any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.

* * * * *

State means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands, and an Indian Tribe as defined in these regulations which meets the requirements of § 501.22.

* * * * *

22. Section 501.11 of subpart B is amended by revising paragraph (a)(1), by redesignating paragraph (b) as (b)(1), and by adding a new paragraph (b)(2) to read as follows:

§ 501.11 Elements of a sludge management program submission.

(a) * * *

(1) A letter from the Governor of the State (or in the case of an Indian Tribe eligible for treatment as a State in accordance with § 501.24(e), the Tribal authority exercising powers substantially similar to those of a State Governor) requesting program approval;

* * * * *

(b)(1) * * *

(2) In the case of an Indian Tribe eligible for treatment as a State under § 501.24(e), EPA shall take into consideration the contents of the Tribe's request for treatment as a State submitted under § 501.22, in determining if the program submission required by § 501.11(a) is complete.

* * * * *

23. Section 501.12 of subpart B is amended by adding a new paragraph (g) to read as follows:

§ 501.12 Program description.

* * * * *

(g) In the case of Indian Tribes eligible for treatment as a State under § 501.24(e), if a State has been authorized by EPA to issue permits on the Federal Indian reservation in accordance with § 501.13, a description of how responsibility for pending permit applications, existing permits, and supporting files will be transferred from the State to the eligible Indian Tribe. To the maximum extent practicable, this should include a Memorandum of Agreement negotiated between the State and the Indian Tribe addressing the arrangements for such transfer.

24. Section 501.13 of subpart B is amended by revising the last sentence of the paragraph to read as follows:

§ 501.13 Attorney General's statement.

* * * If a State (which is not an Indian Tribe) seeks to carry out the program on Indian lands, the statement shall include an appropriate opinion and analysis of the State's legal authority.

25. Section 501.14 of subpart B is amended by redesignating paragraph (b)(1) as (b)(1)(i) and by adding paragraph (b)(1)(ii) to read as follows:

§ 501.14 Memorandum of Agreement with the Regional Administrator.

* * * * *

(b) * * *

(1)(i) * * *

(ii) Where a State has been authorized by EPA to issue permits in accordance with § 501.13 on the Federal Indian reservation of the Indian Tribe seeking program approval, provisions describing how the transfer of pending permit applications, permits, and any other information relevant to the program operation not already in the possession of the Indian Tribe (support files for permit issuance, compliance reports, etc.) will be accomplished.

* * * * *

26. Section 501.15 of subpart B is amended by adding new paragraph (b)(15) to read as follows:

§ 501.15 Requirements for permitting.

* * * * *

(b) * * *

(15) Indian Tribes can satisfy the criminal enforcement authority requirements of this section under § 501.25.

* * * * *

27. Section 501.17 of subpart B is amended by adding a new paragraph (e) to read as follows:

§ 501.17 Requirements for enforcement authority.

* * * * *

(e) Indian Tribes that cannot satisfy the criminal enforcement authority requirements of this section may still be approved under this part if they meet the requirements established in § 501.25.

28. Section 501.22 is added to subpart B to read as follows:

§ 501.22 Requirements for treatment of Indian Tribes as States.

(a) Consistent with section 518(e) of the CWA, 33 U.S.C. 1377(e), the Regional Administrator will treat an Indian Tribe as a State for purposes of making the Tribe eligible to apply for sludge management program authority if it meets the following criteria:

(1) The Indian Tribe is recognized by the Secretary of the Interior.

(2) The Indian Tribe has a governing body carrying out substantial governmental duties and powers.

(3) The functions to be exercised by the Indian Tribe pertain to the management and protection of water resources which are held by an Indian Tribe, held by the United States in trust for the Indians, held by a member of an Indian Tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation.

(4) The Indian Tribe is reasonably expected to be capable, in the Regional Administrator's judgment, of carrying out the functions to be exercised, in a manner consistent with the terms and purposes of the Act and applicable regulations, of an effective sludge management program. This capability may be demonstrated by the existence of management and technical skills necessary to administer an effective sludge management program; by the existence of institutions to exercise executive, legislative, and judicial functions; and by a history of successful managerial performance of public health or environmental programs. There must be sufficient independence of the regulated entities and the agency of the Indian Tribe which will assume primary responsibility for establishing and administering a sludge management program necessary to assure effective and fair administration of the program.

(b) An Indian Tribe which the Regional Administrator determines meets the criteria described in paragraph (a) of this section must also satisfy the State program requirements described in this part for assumption of the State program.

29. Section 501.23 is added to subpart B to read as follows:

§ 501.23 Request by an Indian Tribe for a determination of eligibility for treatment as a State.

An Indian Tribe may apply to the Regional Administrator for a determination that it qualifies for treatment as a State pursuant to section 518 of the Act for purposes of seeking sludge management program approval. The application shall be concise and describe how the Indian Tribe will meet each of the requirements of § 501.22. The application shall include the following information:

(a) A statement that the Tribe is recognized by the Secretary of the Interior;

(b) A descriptive statement demonstrating that the Tribal governing body is currently carrying out substantial governmental duties and powers over a defined area. This statement shall:

(1) Describe the form of the Tribal government;

(2) Describe the types of governmental functions currently performed by the Tribal governing body, such as, but not limited to, the exercise of police powers affecting (or relating to) the health, safety, and welfare of the affected population; taxation; and the exercise of the power of eminent domain; and

(3) Identify the source of the Tribal government's authority to carry out the governmental functions currently being performed.

(c) A map or legal description of the area over which the Indian Tribe asserts authority under section 518(e)(2) of the Act; a statement by the Tribal Attorney General (or equivalent official authorized to represent the Tribe in all legal matters in court pertaining to the program for which it seeks approval) which describes the basis for the Tribe's assertion (including the nature or subject matter of the asserted regulatory authority); a copy of all documents such as Tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions which support the Tribe's assertion under section 518(e)(2) of the Act.

(d) A narrative statement describing the capability of the Indian Tribe to administer an effective, environmentally sound sludge management program. The statement shall include:

(1) A description of the Indian Tribe's previous management experience including, but not limited to, the administration of programs and service authorized by the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*), the Indian Mineral Development Act (25 U.S.C. 2101 *et seq.*), or the Indian

Sanitation Facility Construction Activity Act (42 U.S.C. 2004a);

(2) A list of existing environmental or public health programs administered by the Tribal governing body, and a copy of related Tribal laws, regulations, and policies;

(3) A description of the entity (or entities) which exercise the executive, legislative, and judicial functions of the Tribal government;

(4) A description of the existing, or proposed, agency of the Indian Tribe which will assume primary responsibility for establishing and administering a sludge management program (including a description of the relationship between the existing or proposed agency and its regulated entities);

(5) A description of the technical and administrative abilities of the staff to administer and manage an effective, environmentally sound sludge management program or a plan which proposes how the Tribe will acquire additional administrative and technical expertise. The plan must address how the Tribe will obtain the funds to acquire the administrative and technical expertise.

(e) The Regional Administrator may, at his discretion, request further documentation necessary to support a Tribal request for treatment as a State.

(f) If the Administrator or his delegatee has previously determined that a Tribe has met the requirements for "treatment as a State" for other programs authorized under the Safe Drinking Water Act or the Clean Water Act, then the Tribe need only provide that additional information unique to the sludge management program which is requested by the Regional Administrator.

30. Section 501.24 is added to subpart B to read as follows:

§ 501.24 Procedures for processing an Indian Tribe's application for treatment as a State.

(a) The Regional Administrator shall process an application of an Indian Tribe for treatment as a State submitted pursuant to § 501.23 in a timely manner. He shall promptly notify the Indian Tribe of receipt of the application.

(b) Within 30 days after receipt of the Indian Tribe's complete application for treatment as a State, the Regional Administrator shall notify all appropriate governmental entities. Notice shall include information on the substance and bases of the Tribe's assertions that it meets the requirements of § 501.22(a)(3).

(c) Each governmental entity so notified by the Regional Administrator shall have 30 days to comment upon the Tribe's assertion of jurisdiction. Comments by governmental entities shall be limited to the Tribe's assertion under § 501.22(a)(3).

(d) If a Tribe's assertion under § 501.22(a)(3) is subject to a competing or conflicting claim, the Regional Administrator, after consultation with the Secretary of the Interior, or his designee, and in consideration of other comments received, shall determine whether the Tribe has adequately demonstrated that it meets the requirements of § 501.22(a)(3).

(e) If the Regional Administrator determines that a Tribe meets the requirements of § 501.22, the Indian Tribe is then eligible to be treated as a State for purposes of applying for assumption of the sludge management program.

(f) The Regional Administrator shall follow the procedures described in subpart C of this part in processing a Tribe's request to assume the sludge management program.

31. Section 501.25 is added to subpart B to read as follows:

§ 501.25 Provisions for Tribal criminal enforcement authority.

To the extent that an Indian Tribe is precluded from asserting criminal enforcement authority as required under §§ 501.1(c)(5) and 501.17, the Federal Government will exercise primary criminal enforcement responsibility. The Tribe, with the EPA Region, shall develop a procedure by which the Tribal agency will refer potential criminal violations to the Regional Administrator, as agreed to by the parties, in an appropriate and timely manner. This procedure shall encompass all circumstances in which the Tribe is incapable of exercising the enforcement requirements of §§ 501.1(c)(5) and 501.17. This agreement shall be incorporated into a joint or separate Memorandum of Agreement with the EPA Region, as appropriate.

[FR Doc. 93-30967 Filed 12-21-93; 8:45 am]

BILLING CODE 6560-50-F

federal register

Wednesday
December 22, 1993

Part V

Department of Transportation

Coast Guard

33 CFR Part 155

Discharge Removal Equipment for Vessels Carrying Oil; Interim Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 155

[CGD 90-068]

RIN 2115-AD66

Discharge Removal Equipment for Vessels Carrying Oil

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule.

SUMMARY: The Coast Guard is issuing regulations that require vessels carrying oil in bulk as cargo to carry discharge removal equipment, install spill prevention coamings, and install emergency towing arrangements. The Coast Guard also is requiring vessels to have a prearranged capability to calculate damage stability in the event of a casualty. Regulations requiring removal equipment are mandated by the Oil Pollution Act of 1990 (OPA 90). The purpose of the regulations is to reduce the risk of oil spills, improve vessel oil spill response capabilities, and minimize the impact of oil spills on the environment. The Coast Guard is issuing an interim final rule in order to solicit further public comment and information on emerging technologies that prevent, contain, or remove discharges of oil from vessels into the marine environment.

DATES: This rule is effective on January 21, 1994. The Director of the Federal Register approves as of January 21, 1994 publication the incorporation by reference of certain publications listed in the regulations. Comments on the interim final rule must be received on or before February 22, 1994.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 90-068), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of the docket and will be available for inspection and copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Frank Wood, Project Manager, Office of Marine Environmental Protection (G-MEP), (202) 267-6414.

SUPPLEMENTARY INFORMATION:

Request for Comments

Because considerable interest has been expressed in emerging technologies for preventing and removing discharges of oil into the environment, the Coast Guard is soliciting further comment and information from the public on booms, skimmers, temporary storage devices, or other major oil spill prevention and response equipment designed to be carried on board. Comments should address the appropriateness of the equipment, the technological and economic feasibility of requiring the equipment, and the compatibility of the equipment with safe vessel operation. Some comments on the notice of proposed rulemaking (NPRM) stated that recent technological developments have made the carriage of booms and skimmers more feasible than when the rulemaking process began. The comments noted that an intent of OPA 90 was to encourage the development of new response technologies and that final regulations should be issued without further consideration of this new technology. To this end, persons interested in demonstrating such equipment and technologies for preventing or removing oil spills should contact the project manager for this rulemaking.

Persons submitting comments should include their names and addresses, identify this rulemaking (90-068) and the specific section of the rulemaking to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound materials is requested. Persons waiting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

Drafting Information

The principal persons involved in drafting this document are Frank Wood, Project Manager, G-MEP, and Joan Tilghman, Project Counsel, OPA 90 Staff.

Background and Purpose

Section 4202(a)(6) of OPA 90 (P.L. 101-380, August 18, 1990) amended section 311(j) of the Federal Water Pollution Act (FWPCA) (33 U.S.C. 1321(j)) by, among other things, adding a new paragraph (6) to require vessels that are operating on the navigable waters of the U.S. and that are carrying oil or a hazardous substance in bulk as cargo to carry appropriate discharge removal equipment on board. OPA 90 explicitly states that this equipment must employ the best technology economically feasible and be compatible with the safe operation of the vessel.

Section 311(a)(8) of the FWPCA defines the term "remove or removal" as the containment and removal of oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare. For purposes of the regulations, removal equipment includes salvage equipment, lightering equipment, towing arrangements, sorbents, and other equipment, such as booms and skimmers, that may be used to minimize or mitigate environmental damage from oil spills.

The regulations issued under section 311(j)(6) for equipment carriage apply to all vessels carrying oil in bulk as cargo or cargo residue that are certificated as tank vessels under 46 CFR chapter I, subchapter D; all other certificated vessels that are permitted to carry limited quantities of oil, as defined in section 311(a)(1) of the FWPCA; and uninspected vessels, including foreign flag vessels, that carry oil in bulk as cargo or cargo residue. "Oil" includes, but is not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with waste other than dredge spoils.

On November 4, 1992, Congress passed the Coast Guard Authorization Act of 1992 (the Act) (Pub. L. 102-587). Section 5209(b) of the Act states that the following vessels are not tank vessels for the purposes of any law:

(1) An offshore supply vessel.

(2) A fishing or fish tender vessel of not more than 750 gross tons that transfers oil, without charge, to a fishing vessel owned by the same person.

The result of the Act is that the covered vessels are not subject to the discharge removal requirements applicable to tank vessels. However, the vessels covered by the Act are still subject to the requirements in § 155.220, "Discharge removal equipment for vessels carrying oil as secondary cargo."

Regulatory History

The Coast Guard published an advance notice of proposed rulemaking (ANPRM) on August 30, 1991, and held a public workshop on November 14, 1991, to address issues related to vessel response plans and on-board carriage of discharge removal equipment. Because the OPA 90 requirements for vessels to carry discharge removal equipment for oil spills are related to the requirements for vessels to have response plans (58 FR 7376, February 5, 1993), the Coast

Guard considered both statutory provisions concurrently. In January 1992, the Coast Guard convened the Oil Spill Response Plan Negotiated Rulemaking Committee (the Committee), comprised of 26 members from the marine, oil, and transportation industries; State and Federal governments; environmental organizations; and other public associations. The Committee discussed issues concerning both vessel response plans and the carriage of discharge removal equipment.

The Coast Guard considered all comments to the ANPRM and included the Committee recommendations in developing the NPRM on Discharge Removal Equipment for Vessels Carrying Oil (57 FR 44912, September 29, 1992). The Coast Guard is limiting this rulemaking to requirements for vessels carrying oil in bulk as cargo. Regulations requiring carriage of discharge removal equipment for vessels that carry hazardous substances in bulk as cargo will be developed in a separate rulemaking.

Discussion of Comments and Changes

The Coast Guard received 107 comments on the NPRM. Seven additional letters arrived after the close of the comment period and were considered in drafting the interim final rule.

Twenty-five comments requested a public hearing on the subject of requiring tank vessels to warehouse booms and skimmers on board. The Coast Guard has determined that delaying publication of the interim final rule to hold further public hearings is not in the public's interest. The Coast Guard is soliciting further comment on the rule. If it appears that a public hearing will help the Coast Guard reach a decision on the final rule, a public hearing will be held.

One letter discussed the designation or certification of dedicated and dual-purpose oil spill response vessels and their inclusion in response plans. The comment relates to a separate rulemaking and has been forwarded for inclusion in the appropriate docket.

Definitions

In the NPRM, the Coast Guard separated vessels that carry oil as primary cargo into four categories: tankers, offshore tank barges, coastal tank barges, and inland tank barges. One comment indicated that the requirements for coastal and offshore tank barges are duplicative. The Coast Guard agrees and is combining coastal tank barges and offshore tank barges into one category, "offshore oil barge," to simplify the regulations and eliminate confusion on this issue.

The regulations define an offshore oil barge as any tank barge, carrying oil in bulk as cargo, that is certificated by the Coast Guard under 46 CFR chapter I, subchapter D, for navigation in waters outside the "Boundary Lines," as defined in 46 CFR part 7, in any ocean or the Gulf of Mexico; any tank barge in Great Lakes service; or any foreign flag tank barge. This definition includes integrated tug-barges (ITBs) that are designed for dual-mode navigation.

The Coast Guard has revised the definition of an inland tank barge in § 155.200. The term "inland tank barge" has been changed to "inland oil barge" and now includes any tank barge certificated under 46 CFR chapter I, subchapter D, for river or canal service. The Coast Guard has also changed the term "tanker" to "oil tanker," and the definition now includes self-propelled vessels carrying oil in bulk as cargo, including ITBs designed for push-mode operation. The following preamble discussion refers to the new terms.

Discharge Removal Equipment for On-Deck Spills

In the NPRM, §§ 155.205, 155.210, 155.215, and 155.220 require oil tankers, oil barges, and vessels carrying oil as a secondary cargo to carry appropriate equipment and supplies for the containment and removal of on-deck oil cargo spills. To provide the regulated community with adequate time to prepare for compliance, under the IFR, these sections will become effective 180 days after the date of publication of the IFR in the **Federal Register**.

Several comments requested a definition of the phrase "on-deck spill." An on-deck spill is a discharge of oil on the deck of a vessel during loading, unloading, transfer, or other shipboard operation. An on-deck spill could result from a leaking fitting, an overfill, a bad connection, or similar operational mishap. This phrase is used to differentiate operational discharges from discharges caused by collision or grounding in which the hull is punctured and a tank ruptures, resulting in an uncontrolled discharge of oil into the marine environment.

The Coast Guard received 53 comments on the proposed requirements for vessels to carry sufficient discharge removal equipment to remove on-deck spills and prevent a discharge of oil into the water. Thirty-five of these comments stated that the proposed requirements were redundant because the tanker industry is already substantially in compliance with the requirements. The Coast Guard recognizes that the majority of reported tank vessel spills are relatively small and occur mostly during routine operations. However, the purpose of the rule is to ensure that oil tankers and offshore oil barges carry a sufficient amount of equipment to contain and remove an appropriate volume of oil. The fact that many oil tankers already may be in compliance indicates that the requirements are appropriate, that all tank vessels should comply with the rule, and that the cost to comply should be minimal. The Coast Guard has retained the requirements for vessels to carry the levels of discharge removal equipment as proposed.

The Coast Guard proposed in §§ 155.205, 155.210, 155.215, and 155.220 that equipment required for on-board carriage by oil tankers and offshore oil barges must be non-sparking to be safe for use in a volatile atmosphere. One comment suggested that the term "non-sparking" is overused and meaningless and suggested a definition of non-sparking to specify that hand tools and other equipment must not be a source of ignition in a volatile atmosphere. The comment suggested that the Coast Guard should require that hand tools, such as shovels and scoops, be manufactured of resin or other non-ferrous, composite material.

The Coast Guard has determined not to add a regulatory definition of non-sparking because the term reflects common maritime practice. For the purposes of this rulemaking, the Coast Guard considers non-sparking material to mean non-ferrous metals (such as brass or aluminum), plastics, resins, or other composite materials. Portable pumps that are non-sparking could be hydraulically or pneumatically powered, or otherwise made intrinsically safe, to prevent an ignition hazard.

The Coast Guard proposed in §§ 155.205 and 155.210 that pumping equipment for removing on-deck spills be on deck, rigged, and ready for immediate use on the vessel during transfer operations. Several comments suggested that the Coast Guard reconsider the proposed requirement that portable pumps be rigged. One comment stated that coamings are the first line of defense in the event of an on-deck spill and explained that before the pump can be used, oil must first be collected in a sufficient quantity. The comment also stated that stanching the discharge is the first priority and that there is adequate time to rig a pump, without risking loss of oil over the side, when the discharge is stanched.

Several other comments stated that transporting and maneuvering a pump already rigged with hoses is awkward and potentially unsafe. One comment also noted that a rigged pump may be less useful or accessible than an unrigged pump that is readily available. Other comments noted that the rigged pump would have to be repositioned frequently because of changes in vessel heel and trim that occur during normal loading and unloading operations. The Coast Guard agrees with these comments and has changed the rule to require only that portable pumps be readily available for use.

The rule requires in §§ 155.205, 155.210, 155.215, and 155.220 that containers, scoops, buckets, and shovels be readily available to aid the crew in removing and containing the waste from an on-deck spill. In §§ 155.205 and 155.210, oil tankers and offshore oil barges also are required to carry a minimum of one non-sparking portable pump with hoses. Three comments asked that the Coast Guard require specific, standard quantities of sorbents and hand tools and specific sizes and capacities of portable pumps to ensure that all vessels meet the same standards and that the rules are clear and consistently applied. In response to these comments, the Coast Guard has revised the rule to require vessel owners or operators to have at least one non-sparking, portable pump, with hoses, capable of transferring, within one-half hour, the number of barrels of oil specified for each vessel type.

The Coast Guard has determined not to require carriage of specified quantities of sorbents and hand tools because vessel owners or operators are best able to determine the quantity and location of necessary removal equipment. The interim final rule continues to require vessel owners or operators to have sufficient quantities of hand tools, sorbents, and other items to contain and remove the specified amount of oil and residue. Owners or operators also must be able to demonstrate compliance with the requirements upon random inspection by the Coast Guard.

One comment stated that the rule should apply equally to offshore oil barges and inland oil barges. The proposed requirements for inland oil barges differed from those for oil tankers and oil barges that navigate in coastwise and ocean service because inland oil barges are constructed differently. Inland oil barges have little or no secure stowage capacity for carried equipment and are typically unmanned. Therefore, for inland oil barges, the interim final rule continues to provide that the equipment for containing and removing on-deck spills must be immediately available during cargo transfer operations, but does not require the equipment to be carried on board at other times. The regulations also permit the owner or operator of inland oil barges to rely on equipment available at the transfer facility receiving from or discharging to the barge, provided the barge owner or operator has prearranged the use of equipment for vessel spills by contract or other means approved by the Coast Guard.

Deck Edge Coamings for On-Deck Spills

Nine comments addressed the proposed requirements for coamings in § 155.310. Most of the comments supported the proposed requirements. One comment expressed serious concerns about safety, stating that the coamings would collect water in rough seas or heavy rains and diminish the vessel's stability by adding topside weight, with a free surface, above the vessel's center of gravity. The Coast Guard does not believe that the requirements to install peripheral coamings endanger ocean and coastwise vessels from topside weight. Drainage through drains and scuppers can be provided; however, there must be a mechanical means of closing each scupper and drain.

Another comment suggested that the rule allow peripheral coamings to be installed within two to three feet of the deck-edge, as is common practice, and not require installation exactly at the deck edge. The Coast Guard concurs and has eliminated the term "deck edge" from paragraph (c) of § 155.310.

One comment raised specific concerns about the difficulties and hazards of having a coaming on deck when operating for prolonged periods in freezing weather. The Coast Guard recognizes the special difficulties and hazards posed by the buildup of ice through prolonged periods of operation in freezing weather and will consider requests for exemption from these requirements in accordance with the provisions of 33 CFR 155.130. Section 33 CFR 155.130 sets out the authority and process for exempting tank vessels from any of the requirements under part 155 of title 33 of the Code of Federal Regulations. With the exceptions noted, the Coast Guard has retained the requirements for peripheral coamings as proposed.

One comment stated that the proposed rule amends an existing rule that applies to vessels carrying hazardous materials as well as oil. The comment stated that the Coast Guard inadvertently proposed to require peripheral coamings on the main deck of a liquefied natural gas (LNG) carrier. LNG is not defined as oil or a hazardous material. Nothing in this rulemaking applies to or affects the regulatory status of vessels that carry LNG cargoes.

On-Water Containment and Removal Equipment

The Coast Guard received 72 comments on the issue of requiring the carriage of booms and skimmers on board tank vessels to facilitate the containment and removal of oil from the water and shorelines. The majority of the comments received on this issue were in favor of carrying this equipment aboard tank vessels. Almost two-thirds of these comments favoring equipment carriage were copies of one of three separate form letters. The letters were signed by different individuals, many of whom were small manufacturers or distributors of pollution response equipment. The majority of the comments stated that they believe Congress intended OPA 90 to require booms and skimmers aboard these vessels, and argued that they are economically feasible because the apparent cost to benefit ratio justifies carrying booms and skimmers. However, none of these comments supplied data to calculate costs and benefits or identified citations in the Conference Report for OPA 90 supporting their conclusions on Congressional intent.

Most of the comments that opposed requirements to carry equipment on board tank vessels strongly supported the conclusions reached by the Committee and adopted by the Coast Guard in the NPRM.

In OPA 90, Congress directed the Coast Guard to require the carriage of (1) appropriate removal equipment that, (2) employs the best technology economically feasible, and (3) that is compatible with the safe operation of the vessel. The Coast Guard has interpreted this requirement to be conditional and conjunctive in that any required equipment must meet all three tests.

The majority of the participants in both the public workshop and the negotiated rulemaking process, and the majority of comments on the ANPRM and NPRM, stated that the Coast Guard should not compromise safety by requiring crew deployment from the vessel to operate booms and skimmers for recovery of oil discharged into the marine environment. This is also the Coast Guard's conclusion.

Many comments argued that in any major discharge caused by fire, explosion, collision, or grounding, the crew's primary responsibility is the safety of the vessel and crew and containment of the cargo. These comments stated that requiring crew members to deploy from the vessel with equipment suitable for carriage aboard ship in anything but a benign environment would jeopardize the safety of the crew and the vessel.

Many of the comments supporting the warehousing of booms and skimmers on board tank vessels indicated that an advantage of carrying response equipment on board the vessel for deployment and use by others is that the equipment would be readily available in the event of a discharge, without transportation delays and without compromising the safety of vessel crew members.

Seventeen of the comments that advocated warehousing specifically recommended that the Coast Guard require remote control technology to facilitate deploying the equipment with minimal involvement by the crew. At least one manufacturer has developed a system which includes self-inflating boom, a remotely controlled vessel to tow the boom into place, and an anchoring system which can be remotely activated. Other manufacturers have developed or adapted technology to contain and remove oil from the water without deploying crew members from the vessel.

OPA 90 requires the carriage of discharge removal equipment that is appropriate, represents the best technology economically feasible, and is compatible with the safe operation of the vessel. The Coast Guard has considered the comments and finds that information available to date does not support a regulatory requirement for vessels to carry booms, skimmers, vessels, temporary storage devices, and other oil spill response equipment.

Given the development of emerging technology that has occurred since the regulatory process began and the controversial nature of the issues related to the carriage of booms and skimmers on board tank vessels, the Coast Guard is soliciting further public comment on these issues. The Coast Guard will consider this information in deciding whether to promulgate a final rule requiring vessels to carry booms and skimmers.

Persons who have developed oil spill prevention or response equipment or technology for carriage aboard tank vessels are invited to prepare and submit a proposal and a draft protocol for a test or demonstration of the equipment or technology for evaluation by the Coast Guard. The test or demonstration proposal should address the following: the appropriateness of the equipment for its intended use, the technological feasibility of the equipment and any advantages or disadvantages that could affect its deployment and operation from a tank vessel, and the equipment's compatibility with the safety of the crew and the safe operation of any vessel that carries it on board. The proposal also should address how the equipment or technology will be used to prevent spills or remove the various grades of oil cargo identified in 33 CFR 155.1050, within the range of environmental conditions for which the equipment or technology is designed to operate. The proposal should address the application and use of the equipment in the event of a vessel casualty.

The Coast Guard will evaluate each proposal against test standards developed by consensus organizations, such as the American Society for Testing and Materials (ASTM), and against the requirements of OPA 90. The Coast Guard may suggest amendments to each test proposal in order to evaluate more fairly the equipment or technology in accordance with established consensus standards or statutory or regulatory requirements. Persons submitting proposals for tests or demonstrations should understand that the primary measure of the technological and economic feasibility of any equipment or technology designed for oil spill response, whether carried aboard ship or prepositioned ashore, is whether it will effectively contain or recover oil or otherwise minimize or mitigate the impact of an oil spill on the environment.

If persons submitting a proposal are intending the Coast Guard to require the carriage of this equipment on board or to give credit for the equipment against some other requirement based on satisfactory performance, they also must show that the equipment performs as designed and that it is superior to equipment that is already available and required in these regulations. Economic cost and benefit data, as well as environmental impact information, also must be provided to the Coast Guard. The Coast Guard reserves the right to witness tests and demonstrations proposed to it and will consider all equipment and technologies in developing the final rule.

The interim final rule does not require the carriage of booms and skimmers or other prevention or response equipment not expressly provided for in the regulations. Nothing in the regulations precludes an owner or operator from choosing to carry the equipment, if the owner or operator determines that the equipment is compatible with the safe operation of the vessel. Booms, skimmers, temporary storage devices, or other major equipment carried on board a tank vessel may be counted toward the vessel owner's or operator's planning responsibilities, in accordance with the vessel response plan regulations at 33 CFR 155.1050.

Internal Cargo Transfer Capability and Lightering

In the NPRM, the Coast Guard proposed in § 155.225 that oil tankers and offshore oil barges carry hoses and reducers to facilitate internal transfer of cargo unless the vessel's existing cargo piping system is designed to facilitate cargo transfer in the event of damage to the vessel or the piping system. Inland oil barges are not required to carry additional hoses and reducers. The IFR maintains the provisions of § 155.220 as proposed in the NPRM, but provides that its requirements do not become effective until 180 days after the date of publication of the IFR in the **Federal Register**. This will provide the regulated community adequate time to prepare for compliance.

The Coast Guard received six comments relating to internal cargo transfer. Four comments agreed with the requirements as proposed. One comment questioned why inland oil barges are not required to have additional hoses and reducers. Another comment stated that all vessels should be required to carry emergency pumps because existing pumps could be easily disabled, preventing internal transfer.

The Coast Guard has decided to continue to exclude inland oil barges from the requirement to carry hoses and reducers because the Coast Guard finds that the environment in which these oil barges operate, and the limited capacity of these vessels to store equipment, make carriage inappropriate.

The Coast Guard recognizes the value of high-capacity, portable, submersible pumps in lightering and salvage operations and in the intraship transfer of cargo, but also recognizes that pumping equipment is often available from shore-based locations. The Coast Guard has determined that requiring a vessel to carry these pumps on board is not economically feasible. Further, the pumps may be incompatible with the safe operation of the vessel, if the pumps are employed before adequate stability information is available. Considering the time required to assess damage adequately and perform the necessary stability calculations, the difference in availability of pumps carried on board and those brought from shore may not be significant.

One comment suggested that the Coast Guard refer to the vessel response plan (VRP) requirements for owners or operators to identify and plan for lightering capability. The Coast Guard has addressed the requirements for lightering equipment and the requirements for lightering plans in the interim final rule on VRPs (58 FR 7376, February 5, 1993).

Spill Tracking Devices

The Coast Guard received five comments on spill tracking devices. Two comments supported the Committee recommendation to use OPA 90 funds for researching the feasibility of such a device. Four comments supported requiring a spill tracking device and made suggestions on the type of device that should be required. One comment stated that the device should have sufficient power to last several days, and another suggested requiring the drifting and positioning equipment that many vessels already carry on board. One comment indicated that to be effective, a tracking device must not be bulky because the device must move with the spill. This comment also stated that the Coast Guard must thoroughly test a device before requiring it to be carried. Another comment submitted detailed information on a particular device. The interim final rule does not require the carriage of a spill tracking device. If the Coast Guard decides to evaluate a design for a spill tracking device, it will consider all reasonable suggestions.

Damage Stability Information

In § 155.240, the Coast Guard proposed that an owner or operator of an oil tanker or offshore oil barge have prearranged, prompt access to computerized on-board or shore-based damage stability and residual structural strength calculation programs. The intent of the requirement was to require an owner or operator to maintain vessel strength and stability characteristics on file in the program. The Coast Guard proposed that the means of access to this program be identified in the VRP required under §§ 155.1035 or 155.1040 of title 33 of the Code of Federal Regulations.

The Coast Guard received nine comments on this proposed requirement. Four comments supported the proposed requirements and suggested that there be a one-year implementation period. The Coast Guard agrees and has changed § 155.240 accordingly.

Two writers commented that the proposed rules were in conflict with existing regulations in 46 CFR 170.001 that set out applicability requirements for part 170, "Stability Requirements For All Inspected Vessels." The Coast Guard disagrees. One comment stated that the requirements should not apply to double-hull vessels because these vessels pose less risk to the environment than other vessels. The Coast Guard is requiring owners and operators of oil tankers and offshore oil barges to prearrange access to a computerized system for calculating damage stability, because this information will facilitate salvage in the event of a casualty. In a damaged and weakened condition, single-hulled and double-hulled vessels may each pose difficult problems to a salvor who must know the vessel's stability and remaining hull girder strength. Vessel characteristics and stability data that are pre-entered into a computerized calculation program will help owners, operators, and salvors to quickly calculate damage stability and residual structural strength.

The Coast Guard intends the requirements to provide a system for producing information that will assist salvors in solving at least the following salvage problems:

a. Calculating residual hull girder strength based on the reported extent of damage.

b. Calculating residual stability when the vessel's compartments are breached.

c. Calculating the most favorable off-loading, ballasting, or cargo transfer sequences to improve residual stability, reduce hull girder stresses, and reduce ground-force reaction.

d. Calculating bending and shear stresses due to pinnacle loads from grounding or stranding.

The owner or operator of an oil tanker or offshore oil barge will have to provide a minimum amount of information for pre-entry into the computerized program to ensure the program will provide useful information to the owner, operator, salvor, and Coast Guard and to enable salvors to make the calculations rapidly in the event of a casualty. The Coast Guard is requiring that owners or operators provide sufficient information to the computer program manager to enable these calculations to be made. The program manager may be a classification society, a part of the vessel owner's or operator's organization, or another organization which, along with the means of access, is identified in the VRP in accordance with the provisions of §§ 155.1035 or 155.1040 of title 33 of the Code of Federal Regulations.

One writer commented that there should be a size limit on vessels that must meet the requirements of this section. The Coast Guard believes that any tank vessel certificated for ocean or coastwise-service under 46 CFR chapter I, subchapter D should meet these requirements.

One comment strongly suggested that the Coast Guard be more definitive in the minimum requirements necessary for the damage stability and residual structural strength programs. The Coast Guard has decided not to require specific information for damage-stability calculations because the process of calculating damage stability and residual structural strength requires the following information: The specific nature of which varies from ship to ship: The general arrangement plan; a midships section plan; the location of the draft marks; the lines plan or table of offsets; the tank or ullage tables; and the light ship characteristics. Other information that may be helpful includes the trim and stability book, the loading manual, and the load line assignment.

One comment stated that there was no need for a computerized program because damage stability and residual structural strength calculations can be made without using a computerized system. The Coast Guard believes that the value of the computerized system is its speed and accuracy. A preloaded, computerized system will facilitate the rapid development of complex stability and residual hull strength calculations that are necessary to provide decision makers with a complete range of alternatives in a short time.

Existing §§ 155.1035 and 155.1040 of title 33 of the Code of Federal Regulations require owners or operators to maintain a copy of the vessel plans necessary to perform salvage, stability, and hull stress assessments, unless the vessel has prearranged for computerized, shore-based damage stability and residual hull strength calculation capability. The Coast Guard is amending the provisions of 33 CFR 155.1035 and 155.1040 to require all oil tankers and offshore oil barges to have prearranged access to a computerized capability to compute damage stability and residual hull strength.

The Coast Guard believes that emergency actions to salvage an ocean-going oil tanker or oil barge and its cargo and to prevent injury, loss of life, and damage to the environment must be taken promptly and without the delay required to manually calculate damage stability characteristics and residual hull strength. The Coast Guard also believes that this capability must be maintained ashore, even if the owner or operator also chooses to maintain the capability on board the vessel.

Inland oil barges must maintain, at a shore-based location, a copy of the vessel plans necessary to perform salvage, stability, and hull stress assessments.

Emergency Towing Capability for Certain Oil Barges

The Coast Guard proposed that offshore oil barges carry an emergency tow wire rigged and ready for use. Two writers commented that oil barges already carried an emergency towing pendant as an industry practice. They asked whether the Coast Guard intended to require a backup tow wire which duplicates the primary wire or to simply require that a pendant, which is capable of serving as the towing pendant in an emergency, be maintained on board the barge.

Section 155.230 requires barges to carry an emergency towing pendant for use in the event that the primary pendant fails. The Coast Guard is requiring the emergency pendant to have the same towing characteristics, but not necessarily the same physical characteristics, as the primary pendant. The requirement is intended to ensure that all oil barges, whether manned or unmanned, have a suitable pendant for use in an emergency so that the towing vessel can maintain or regain control of the barge. Under the IFR, the requirements of § 155.230 do not become effective until 180 days after the date of publication of the IFR in the **Federal Register**. This will provide the regulated community with adequate time to prepare for compliance.

The Coast Guard requested comments from the public on proposed requirements for ITBs to have emergency towing arrangements. The Coast Guard received no comments on this issue. The regulations continue to require dual mode ITBs to install an emergency towing pendant. ITBs designed for push-mode only must install the same towing arrangements required for tankers in § 155.235.

Emergency Towing Capability for Oil Tankers

The Coast Guard proposed two options in the NPRM for emergency towing arrangements for oil tankers and asked for public comment on which option is best. The Coast Guard received 36 comments on these options; 25 of the comments supported Option 1 and 11 comments supported Option 2.

Option 1 proposed requiring oil tankers to meet major provisions of Navigation and Inspection Circular (NVIC) No. 8–89, which endorses International Maritime Organization (IMO) Resolution A.535(13), *Recommendations on Emergency Towing Requirements for Tankers.* Resolution A.535(13) recommends strong points, chafing chains, and fairleads at the bow and stern of a tanker. Second, it requires fittings to facilitate passing the towing pendant from the rescue vessel using the rescue vessel's power. The Resolution recommends installation of these components on all tankers greater than 50,000 deadweight tons (dwt) built after adoption of the Resolution, and on tankers greater than 100,000 dwt built before adoption of the Resolution. Option 1, as proposed, extends the applicability of these requirements to oil tankers of 20,000 dwt or greater but less than 50,000 dwt, irrespective of when the oil tankers were built.

Option 2 combine features of IMO Resolution A.535(13) and the towing arrangements described in the Prince William Sound Tanker Spill Prevention and Response Plan, Volume 2. Option 2 also includes unique features that were installed by certain vessel owners. Under Option 2, oil tankers of 20,000 dwt and above would be required to comply with the recommendations of IMO Resolution A.535(13) regarding the provisions for strong points, fairleads, and chafing chains. In addition, oil tankers must have a 400 foot long towing wire pendant on one end; a 600 foot long floating, polypropylene pickup line; and a floating pickup buoy.

Option 2, as proposed, would require the towing pendant to be constructed of 2½ to 3 inch diameter, 6x37 to 6x41, extra-improved plow steel, IWRC (independent wire rope core), galvanized wire. This option also would require vessels to preconnect and store the chafing chain, pendant wire, and polypropylene line to facilitate the deployment of the pendant by no more than three crew members on a vessel with no power (deadship).

The Coast Guard recognizes the relative merits of each option. A disabled oil tanker that is adrift and uncontrolled poses an environmental hazard and endangers the lives and safety of the crew. Both options recognize that an emergency towing bridle is a preventive measure that may not only minimize or mitigate damage from oil pollution but may also save human life.

After considering all of the comments, the Coast Guard has decided to require oil tanker owners or operators to install an emergency towing bridle as identified in IMO Resolution A.535(13) (Option 1). The IMO is a specialized agency of the United Nations with a charter to focus international attention on common issues of marine safety and environmental protection, achieve international consensus on these issues, and develop international regulations. The United States participated in the development and adoption of Resolution A.535(13). The Resolution represents the best, most recent international consensus on emergency towing packages. Further, the IMO package was subject to international technological scrutiny. The Cost Guard also believes that owners or operators have had sufficient notice of the IMO provisions and, therefore, should be familiar with most of the requirements contained in Option 1. Some vessels already have installed this emergency towing package, and others are in the process of doing so.

The Coast Guard believes that a general requirement to implement the provisions of Option 2 is premature. Option 1 is an international standard while Option 2, as specifically proposed, reflects a proprietary system that has not been universally tested or accepted. Both options were proposed by the Committee for consideration by the public in the NPRM. The Coast Guard will not preclude oil tankers from installing the additional pendant, messenger, or marker buoy recommended in Option 2, as long as the oil tanker also complies with the requirements of IMO Resolution A.535(13). Under the regulations, a strong point, fairlead, and chafing chain, as a minimum, must be installed on each end of the vessel.

The Coast Guard believes that the issues raised by the comments supporting Option 2 are valid and merit international consideration and a consensus recommendation. The Coast Guard will propose that the international shipping and salvage communities, through the Marine Safety Committee of the IMO, evaluate alternative designs for an emergency towing assembly. The evaluation should consider costs, maintenance, stowage, and retrofitting requirements. Alternative designs should facilitate a rescue vessel taking a disabled, unpowered tanker under tow, in less than one hour, in adverse weather conditions, with minimum involvement by the tanker crew.

The Coast Guard proposed in § 155.235 that the applicability of IMO Resolution A.535(13) be extended to include vessels between 20,000 and 50,000 dwt. A number of comments disagreed with this proposal because the design approved by IMO includes somewhat larger components than those used by smaller vessels, and because extending the applicability is a unilateral action not recommended by international consensus.

The Coast Guard does recognize a difference in the relative environmental risks posed by vessels of 20,000 to 50,000 dwt and vessels of 50,000 dwt and greater. Therefore, vessels of 20,000 dwt to 50,000 dwt are required under the regulations to have a towing pendant on at least one end. The Coast Guard will consider a scaled-down version of the structural dimensions for application to smaller vessels, so long as the strong point, fairlead, and chafing chain are sufficient for their intended use.

Incorporation by Reference

The Director of the Federal Register has approved the material in § 155.140 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. The material is available as indicated in that section.

Regulatory Assessment

This rule has been reviewed under Executive Order 12866 "Regulatory Planning and Review" and is significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979). An interim Regulatory Assessment is available in the docket for inspection or copying where indicated under ADDRESSES. Present value costs and barrels of oil are discounted at a rate of seven percent for the period from 1993 to 2015. The following table summarizes the present value of the costs and the benefits in terms of discounted barrels of oil of this interim final rule. The table is grouped by those measures which mitigate spills and those which potentially prevent spills.

PRESENT VALUE COMPLIANCE COSTS AND BENEFITS OF DISCHARGE REMOVAL EQUIPMENT

Equipment	Cost ($M)	Benefit (bbls)
Prevention:		
On Deck Spill (includes coamings, sorbents, etc.).	11.00	397
Towing Package.	92.07	Not quantifiable.
Mitigation:		
Source Control	100.25	7,544
Damage Stability Program.	7.68	Not quantifiable.
Total	211.00	7,941

The Coast Guard does not expect this rule to impose substantial new costs on oil tanker owners or operators for acquiring discharge removal equipment to carry on board. Equipment to contain and remove on-deck spills includes peripheral coamings, sorbents, hand scoops, mops, buckets, and small portable pumps. Oil tankers already are in substantial compliance with the requirements for on-board equipment. For owners or operators of offshore oil barges, the annualized costs of on-board spill response equipment is approximately $0.11 million. Initial outfitting costs for inland oil barges is $4.51 million and $4.84 million for vessels carrying oil in bulk as secondary cargo. The present value of the costs of this discharge-removal equipment is $1.65 million for offshore oil barges, $4.51 million for inland oil barges, and $4.84 million for secondary cargo carriers. This requirement is estimated to prevent spillage of 397 discounted barrels of oil. The present value of the cost per barrel of oil not spilled is estimated to be $27,708.

The Coast Guard projects that the annualized cost of equipping oil tankers with an emergency towing package will be about $6.66 million. The annualized cost of equipping offshore oil barges will be about $.029 million. The present value of the cost of the towing equipment requirement is $89.48 million for oil tankers and $2.59 million for offshore oil barges. The proposed emergency towing package requirements will minimize the risk of a spill from a disabled or drifting vessel. Monetary benefits cannot be directly calculated for an emergency towing package. Historically, the ability to quickly and safely rig a tow for a stricken or disabled vessel has served to reestablish control; prevent grounding, collision, or foundering; save human life; and prevent or minimize damage to the environment that could arise from the breakup of the vessel. The development of IMO Resolution A.535(13) was a result of a corrective recommendation in response to lessons learned from the AMOCO CADIZ incident in 1978.

The Coast Guard intends that the required towing assemblies will help to prevent vessel disasters resulting in the total loss of cargo, as in the AMOCO CADIZ and BRAER incidents. In drafting this interim final rule, the Coast Guard examined data on 46 major spills occurring between 1980–1990. The size of the spillage ranged from just under 2,400 barrels to nearly 250,000 barrels.

Pre-unit clean-up costs of these 46 spills averaged significantly lower than the clean-up costs of smaller spills. While the clean-up costs per barrel of oil spilled for the 46-spill group averaged $777 per barrel, the most costly cleanup from among the data was $12,012 per barrel. These marked contrasts arose because a few very costly cleanups skewed the distribution sharply to the right. Standard deviation statistics cannot reliably measure the probable spill incidence because the analysis included a few very costly clean-ups.

When the 46-spill group was stratified into sub-groups based on the size of the spillage (2,380 barrels to 11,904 barrels; 11,905 barrels to 23,809 barrels; and 23,810 barrels to 250,000 barrels), the average clean-up costs per strata ranged from $135 per barrel to $1,555 per barrel.

The Coast Guard recognizes that a wide range of factors, such as vessel design, spill cause, and spill location directly affect clean-up costs. However, at the reported aggregate sample mean cost, if only one major spill in excess of 118,000 barrels from an oil tanker the size of the OCEAN EAGLE, ARGO MERCHANT, EXXON VALDEZ, MEGA BORG, or the BRAER can be averted by using a towing bridle, the benefits accrued in avoiding clean-up expenses would exceed the costs of compliance with this provision.

Requirements for source control equipment (hoses) will impose an annualized cost of $7.37 million on the owners of oil tankers and $0.72 million on the owners of offshore oil barges. The present value of the costs for source control equipment is $91.33 million for oil tankers and $8.92 million for offshore oil barges. But this requirement is estimated to result in 7,544 discounted barrels of oil not spilled, at a present value of $13,289 for each of those barrels.

Annual costs of the damage stability and structural strength calculation programs will be approximately $0.56 million for oil tankers and $0.07 million for offshore oil barges. The present value of the costs of those programs is $6.89 million for the owners of oil tankers and $0.79 million for the owners of offshore oil barges. While the direct benefits of this requirement cannot be quantified, fast and accurate salvage analysis will facilitate a critical decision-making process and reduce vessel and cargo loss. The result will be to minimize environmental damage and the loss of real and financial assets.

The Coast Guard analyzed alternative measures, including the requirement to warehouse fixed-flotation booms and remotely-deployed and operated workboats on board tank vessels. The present value of the cost of warehousing fixed-flotation booms is $825.8 million, while these booms could prevent 2,232 discounted barrels of oil spillage. The present value of the cost to carry warehoused booms is $369,982 per barrel of oil not lost to the environment.

Requiring operators to carry reel-mounted inflatable boom could be even more costly. Remotely-controlled boom deployment capability would cost the owners of tank vessels, in present value, an additional $170.9 million. But requiring oil tankers to carry remotely-controlled workboats to deploy boom could improve the effectiveness of "warehoused" boom by 25% and, therefore, could result in an additional 558 discounted barrels of oil not lost to the environment. The requirement to carry remotely-controlled workboats to deploy boom from tank vessels would result in an additional present value of the cost of $306,272 per barrel of oil not spilled.

Although some vessel operators do carry equipment on board for on-water response to oil spills, the Coast Guard has determined that current information does not support a broad requirement for all tank vessels to warehouse oil spill response equipment, such as booms and skimmers, for use off of the tank vessel. This equipment does not appear to be economically feasible at present because the identifiable costs significantly outweigh the estimated benefits.

In the case of remotely-controlled workboats to deploy boom, the system appears to give the vessel the capability to deploy and set boom more rapidly without jeopardizing crew safety; however, the technology has not been accepted in the marketplace and has not been tested or demonstrated sufficiently to determine accurately its effectiveness or warrant its cost. At the recommendation of the Committee, the Coast Guard has decided to set strict response requirements, but will allow the vessel owner or operator to select a method of compliance, either warehoused or shore-based oil spill response equipment. The owner or operator is not precluded from carrying spill response equipment for on-water containment and removal operations, as long as the equipment is compatible with the safe operation of the vessel.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small business that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Most of the small businesses affected by this rule operate inland oil barges and vessels which carry oil in bulk as secondary cargo. This interim final rule imposes total annual costs of less than $1.2 million for offshore oil barges and initial outfitting costs of $4.51 million for inland oil barges and $4.84 million for secondary vessel industries. After initial outlays, ninety-one percent or $14.7 million of the total annual costs will be paid by the oil tanker industry, which does not have a substantial number of small entities. Because it expects the impact of this rule on small entities to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no new collection of information requirements. Damage stability information required in § 155.240 is already required under 46 CFR chapter I, subchapter S, which has an approved collection of information (OMB control number 2115–0559) that expires October 31, 1995.

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rule establishes regulations requiring certain vessels to carry discharge removal equipment. In *Ray* v. *Atlantic Richfield,* (435 U.S. 51, 98 S. Ct. 988, [1978]), the Supreme Court found that vessel design and equipment standards fall within the exclusive province of the Federal Government. The OPA 90 Conference Report explicitly says that provisions in section 1018 of OPA 90 preserving certain State authority are not meant to disturb this Supreme Court decision (House Conf. Rep., p. 122). Therefore, the Coast Guard intends this rule to preempt State action addressing the same subject matter.

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that preparation of an Environmental Impact Statement is not necessary. The Coast Guard has concluded that these regulations, when considered independently, are not expected to result in a significant impact on the quality of the human environment, as defined by the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*). Requiring vessels to carry adequate on-deck spill containment and removal equipment and cargo transfer and emergency towing capability would provide enhanced protection to the environment. An Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI) are available in the docket for this rulemaking. No comments were received on the EA or the FONSI.

List of Subjects in 33 CFR Part 155

Hazardous substances, Incorporation by reference, Oil pollution, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 155 as follows:

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

1. The authority citation for part 155 is revised to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3715; sec. 2, E.O. 12777, 56 FR 54757; 49 CFR 1.46. Sections 155.100 through 155.130, 155.350 through 155.400, 155.430, 155.440, 155.470, and 155.1010 through 155.1070 also issued under 33 U.S.C. 1903(b); and §§ 155.1110 and 155.1150 also issued under 33 U.S.C. 2735.

2. In § 155.140, revise paragraph (a), and in paragraph (b), add, in alphabetical order, a new entry to read as follows:

§ 155.140 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC, and at the U.S. Coast Guard Marine Environmental Protection Division (G–MEP), room 2100, 2100 Second Street SW., Washington, 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) * * *

* * * * *

International Maritime Organization (IMO)

Publications Section, 4 Albert Embankment, London SE1 75R, United Kingdom, Telex 23588.

Resolution A.535(13), Recommendations on Emergency Towing Requirements for Tankers, November 17, 1983	155.235

* * * * *

3. Sections 155.200, 155.205, 155.215, 155.220, 155.225, 155.230, 155.235, 155.240, and 155.245 are added to subpart B to read as follows:

§ 155.200 Definitions.

As used in this subpart:

Inland oil barge means a tank barge carrying oil in bulk as cargo certificated by the Coast Guard under 46 CFR chapter I, subchapter D for river or canal service or lakes, bays, and sounds service.

On-deck spill means a discharge of oil on the deck of a vessel during loading, unloading, transfer, or other shipboard operations. An on-deck spill could result from a leaking fitting, an overfill, a bad connection, or similar operational mishap. The term *on-deck spill* is used to differentiate these operational discharges from those caused by collision or grounding where the hull is punctured and a tank is ruptured, resulting in an uncontrolled discharge of oil into the marine environment.

Offshore oil barge means a tank barge carrying oil in bulk as cargo, including dual-mode integrated tug-barges, certificated by the Coast Guard under 46 CFR chapter I, subchapter D, for navigation in waters outside the Boundary Lines, as defined in 46 CFR part 7, in any ocean or the Gulf of Mexico; any tank barge in Great Lakes service; or any foreign flag tank barge.

Oil tanker means a self-propelled vessel carrying oil in bulk as cargo, including integrated tug-barges designed for push-mode operation.

Vessel carrying oil as secondary cargo means a vessel carrying oil pursuant to a permit issued under 46 CFR 30.01–5, 46 CFR 70.05–30, or 46 CFR 90.05–35 or pursuant to an international Oil Pollution Prevention (IOPP) or Noxious Liquid Substance (NLS) certificate required by §§ 151.33 or 151.35 of this chapter; or any uninspected vessel that carries oil in bulk as cargo.

§ 155.205 Discharge removal equipment for vessels 400 feet or greater in length.

(a) By June 20, 1994, oil tankers and offshore oil barges with an overall length of 400 feet or more must carry appropriate equipment and supplies for the containment and removal of on-deck oil cargo spills of at least 12 barrels.

(b) The equipment and supplies must include—

(1) Sorbents;

(2) Non-sparking hand scoops, shovels, and buckets;

(3) Containers suitable for holding recovered waste;

(4) Emulsifiers for deck cleaning;

(5) Protective clothing;

(6) A minimum of one non-sparking portable pump with hoses; and

(7) Scupper plugs.

(c) During cargo transfer operations, the equipment and supplies must remain ready for immediate use.

§ 155.210 Discharge removal equipment for vessels less than 400 feet in length.

(a) By June 20, 1994, oil tankers and offshore oil barges with an overall length of less than 400 feet must carry appropriate equipment and supplies for the containment and removal of on-deck oil spills of at least 7 barrels.

(b) The equipment and supplies must include—

(1) Sorbents;

(2) Non-sparking hand scoops, shovels, and buckets;

(3) Containers suitable for holding recovered waste;

(4) Emulsifiers for deck cleaning;

(5) Protective clothing;

(6) A minimum of one non-sparking portable pump with hoses; and

(7) Scupper plugs.

(c) During cargo transfer operations, the equipment and supplies must remain ready for immediate use.

§ 155.215 Discharge removal equipment for inland oil barges.

(a) By June 20, 1994, during cargo transfer operations, inland oil barges must have appropriate equipment and supplies ready for immediate use to control and remove on-deck oil cargo spills of at least one barrel.

(b) The equipment and supplies must include—

(1) Sorbents;

(2) Non-sparking hand scoops, shovels, and buckets;

(3) Containers suitable for holding recovered waste;

(4) Emulsifiers for deck cleaning; and

(5) Protective clothing.

(c) The oil barge owner or operator may rely on equipment available at the transfer facility receiving from or discharging to the barge, provided the barge owner or operator has prearranged for the use of the equipment by contract or other means approved by the Coast Guard.

§ 155.220 Discharge removal equipment for vessels carrying oil as secondary cargo.

(a) By June 20, 1994, vessels carrying oil as secondary cargo must carry appropriate equipment and supplies for the containment and removal of on-deck oil cargo spills of at least one-half barrel.

(b) The equipment and supplies must include—

(1) Sorbents;

(2) Non-sparking hand scoops, shovels, and buckets;

(3) Containers suitable for holding recovered waste;

(4) Emulsifiers for deck cleaning; and

(5) Protective clothing

(c) The equipment and supplies must be ready for immediate use during cargo transfer operations.

§ 155.225 Internal cargo transfer capability.

By June 20, 1994, oil tankers and offshore oil barges must carry suitable hoses and reducers for internal transfer of cargo to tanks or other spaces within the cargo block, unless the vessel's installed cargo piping system is capable of performing this function.

§ 155.230 Emergency towing capability for oil barges.

(a) By June 20, 1994, offshore oil barges must carry an emergency tow wire or tow line rigged and ready for use.

(b) The emergency tow wire or tow line must have the same towing characteristics as the primary tow wire or tow line.

§ 155.235 Emergency towing capability for oil tankers.

(a) Except as provided in paragraph (c) of this section, by January 21, 1997, oil tankers of 20,000 deadweight tons (dwt) or more but less than 50,000 dwt must comply with the emergency towing provisions of sections 2.2 through 2.7 of IMO Resolution A.535(13) on at least one end of the vessel.

(b) Except as provided in paragraph (c) of this section, by January 21, 1997, oil tankers of 50,000 dwt or more must comply with the emergency towing provisions of sections 2.2 through 2.7 of IMO Resolution A.535(13) on both ends of the vessel.

(c) Oil tankers that are at least 20 years old (calculated from the keel laying date, as defined in 46 CFR 30.10–37) as of January 21, 1994, must comply with the requirements of paragraphs (a) and (b) of this section by January 21, 1999.

§ 155.240 Damage stability information for oil tankers and offshore oil barges.

(a) Owners or operators of oil tankers and offshore oil barges shall ensure by no later than January 21, 1995, that their vessels have prearranged, prompt access to computerized, shore-based damage stability and residual structural strength calculation programs.

(b) Vessel baseline strength and stability characteristics must be pre-entered into such programs and be consistent with the vessel's existing configuration.

(c) Access to the shore-based calculation program must be available 24 hours a day.

(d) At a minimum, the program must facilitate calculation of the following:

(i) Residual hull girder strength based on the reported extent of damage.

(ii) Residual stability when the vessel's compartments are breached.

(iii) The most favorable off-loading, ballasting, or cargo transfer sequences to improve residual stability, reduce hull girder stresses, and reduce ground-force reaction.

(iv) The bending and shear stresses caused by pinnacle loads from grounding or stranding.

§ 155.245 Damage stability information for inland oil barges.

(a) Owners or operators of inland oil barges shall ensure by no later than January 21, 1995, that the vessel plans necessary to perform salvage, stability, and residual hull strength assessments are maintained at a shore-based location.

(b) Access to the plans must be available 24 hours a day.

4. In § 155.310, the section heading and the introductory text to paragraph (b) are revised and paragraphs (c) and (d) are added to read as follows:

§ 155.310 Containment of oil and hazardous material cargo discharges.

* * * * *

(b) An offshore tank barge with a cargo capacity of 250 or more barrels that is carrying hazardous material as cargo and an inland tank barge with the capacity of 250 or more barrels that is carrying oil or a hazardous material as cargo must meet paragraph (a) of this section or be equipped with—

* * * * *

(c) By January 21, 1997, all oil tankers and offshore oil barges with a cargo capacity of 250 or more barrels must have peripheral coamings, including port and starboard coamings and forward and aft athwartships coamings, completely enclosing the cargo deck area, cargo hatches, manifolds, transfer connections, and any other openings where cargo may overflow or leak.

(1) Coamings must be at least 4 inches high except in the aft corners.

(2) In the aft corners (port and starboard) of a vessel, the coamings must be at least 8 inches high and extend—

(i) Forward at least 14 feet from each corner; and

(ii) Inboard at least 8 feet from each corner.

(3) Each area enclosed by the coaming required under this paragraph must have—

(i) A means of draining or removing oil from the enclosed deck area without discharging oil into the water; and

(ii) A mechanical means of closing each drain and scupper in the enclosed deck-area.

(4) For a tankship, as defined in 46 CFR 30.10–67, the coaming or other barrier required in 46 CFR 32.56–15 may serve as the aft athwartships coaming if the tankship is otherwise in compliance with the requirements of this section.

(d) In addition to the requirements of paragraphs (a) and (b) of this section, an offshore oil barge with a cargo capacity of 250 or more barrels must have—

(1) A fixed or portable container that holds at least one-half barrel under each oil loading manifold and each oil transfer connection within the coaming;

(2) A mechanical means of closing each drain and scupper within the coaming; and

(3) A means of draining or removing discharged oil from the fixed or portable container and from within the coaming without discharging the oil into the water.

Dated: December 10, 1993.

J.W. Kime,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 93–30701 Filed 12–21–93; 8:45 am]

BILLING CODE 4910–14–M